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Terry A. Lane
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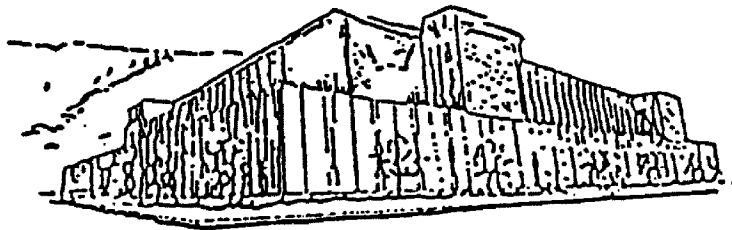
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**PUBLIC PARTICIPATION WITHIN THE NATIONAL
ENVIRONMENTAL POLICY ACT (NEPA)**

featuring
a case study of

**MALFUNCTION JUNCTION
(the Brooks/South/Russell Intersection
Traffic Improvement Project, Missoula)**

by

Terry A.M. Lane

M.S. The University of Montana, 1996

presented in partial fulfillment of the requirements

for the degree of

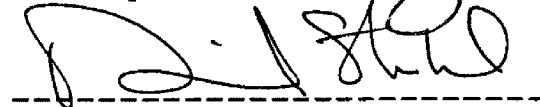
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Public Participation Within The National Environmental Policy Act (NEPA) featuring a case study of Malfunction Junction (the Brooks/South/Russell Intersection Traffic Improvement Project, Missoula) (83 pp.)

Committee Chair: Leonard Broberg 

The National Environmental Policy Act of 1969 (NEPA) has had an enormous impact on the way that federal government, state government, and private industry manage resources and how the public can participate in this process. NEPA is an administrative law that standardizes agency decision-making processes. When a NEPA project reaches the stage where the public is invited to participate by providing input, the agency is usually committed to the project and public input is requested on technical aspects of the project. There is no mechanism within NEPA that allows the public to discuss the larger issues associated with policy or to get a project canceled if the proposed action and/or environmental impacts are unacceptable.

This study examines a case study in which the public perceived a shortcoming in the NEPA process and was able to stop a project by moving into the political realm. The case study is the Brooks/South/Russell Intersection Traffic Improvement Project in Missoula. The project was initiated by the City, with engineering design, environmental studies and public participation conducted by consulting firms from Boise, Idaho. A Citizen's Action Committee was formed and public input was solicited throughout the project.

The Continuum of Community Relations model was used to evaluate public participation in the Brooks project. The Continuum consists of five phases of interaction between the public and agencies, both within and outside the NEPA process. Interviews were conducted with members of three distinct groups who participated in the project to determine how and why they participated.

The Brooks project illustrates the range of public participation that can occur within NEPA projects. Some of the activity took place within the NEPA process, while other activities were clearly outside the intent of the law. Members of the public moved into the political arena to successfully stop the project. As a result, however, the NEPA process was discredited for its failure to allow for such influence within the process.

A Citizen's Guide to Participation in NEPA has also been developed in conjunction with this study.

ACKNOWLEDGMENTS

Several people assisted directly and indirectly with this study. Many thanks to Len Broberg, Bill Chaloupka, Ron Erickson and John Horwich of the University of Montana for their support and advice during this project. I would like to acknowledge Gary Funkhouser of Bell*Walker Engineers for his continuing good humor and supply of information about the project; Dames & Moore, for documentation regarding the project specifics; and Group 2000 for news clippings. Thanks also to Bill Schultz, my supervisor at work, who allowed me the flexibility in my schedule to conduct the interviews for this project. Most importantly, a hearty thank you to the nineteen members of the Missoula community who willingly and cheerfully gave up their personal and/or business time to be interviewed for this project. And finally, to the friends and family who have been ever supportive in my quest to finish my degree; particularly, Ben Deeble for advice on project design, manuscript review and just being there.

PREFACE

The impetus for this study came from two sources, one long-term and the other, a specific event. A lifetime interest in environmental issues has been accompanied by an equally long term frustration with watching the world pursue a radically consumptive lifestyle (of which I admit to being a part). This lifestyle has led to rampant development, endangered ecosystems, declining species, industrial pollution and so on. In an effort to try to make an impact, I began to exercise my rights as a citizen in a democracy at a young age by writing letters to Congress and agencies regarding projects. The fact that these projects usually went forward despite my singular efforts was difficult to accept at times, yet I pressed on, feeling the need to participate somehow. Although I didn't know it at the time, my own involvement coincided with the birth and growth of the National Environmental Policy Act (NEPA).

Forward to 1990, when I began graduate studies at the University of Montana. A noteworthy event in the local environmental community at that time was the proposed oil and gas exploration in the Badger-Two Medicine in Northwestern Montana, an area considered culturally sacred to Blackfeet Indian Tribe. Also, the proposal to open up the Arctic National Wildlife Refuge (ANWR) in Northern Alaska for oil drilling was being considered by Congress. Both of these projects were major federal actions under the jurisdiction of NEPA with significant impacts on the human environment. Thus, both required the completion of environmental impact statements (EIS). I reviewed copies of both documents. I wrote and presented a report in one graduate seminar about the shortcomings of the ANWR EIS. I considered submitting comments to the agencies, yet, I never did. I think by that point in my environmental awareness, I had lost faith in that type of participation, and felt that there had to be other ways to influence the process.

In 1994, I went to work for an environmental consulting firm specializing in third-party contracting of environmental assessments

and EISs. It was during my tenure with this firm that I came to understand more about NEPA: its requirements, its impact on agency decision-making and its limitations. I had never really taken the time to *read* the legislation, therefore I think that I was basing my expectations on what I wanted NEPA to be, rather than what it was.

It was during this time that the event which led to the conception of this study occurred. I was sorting through a stack of public comments that had been received on a dam development project in Colorado. The Project Manager had already gone through the comments and tagged the ones that were to receive a detailed response. The rest were labeled "not substantive - no reply required." I was reading through the comments and I came upon one sent in by a 9-year old girl, who was upset with the proposed dam because it was going to flood an area near her home where she spent a lot of time playing with her two dogs. The letter was emotional and sincere and simple. To me, it spoke to an issue rarely considered in development projects, and that is quality of life. Her letter was labeled "not substantive - no reply required." I thought she asked all the right questions, namely should this project ever be done; but that was a moot point by this time. At this stage in the process, the only questions that received any consideration were technical and process oriented. There was no room for emotion, no room for values, no room for saying "perhaps we really don't need one more dam." Although it is true that there is always a "no action" alternative in NEPA documents, no action was not seriously being considered by this consulting firm or the firm that had contracted the firm to complete the EIS.

It was at this point that I realized that NEPA, despite being our "national policy on the environment," is not really an environmental law, it is just an administrative procedure, somehow designed to interject environmental values into a bureaucratic system, yet unable to overcome the system itself. This realization led me to ponder the value and effectiveness of public participation in NEPA. If you disagree with the proposition of a project itself, are you really gaining anything by participating in the NEPA process, since NEPA is really designed to perpetuate a development-oriented system?

There is no real mechanism for stopping a project in NEPA if the environmental impacts are unacceptable (although this was considered), other than through the courts (see Chapter III of this study). Yet, the courts have evolved, in their defacto enforcement of NEPA, to the point where only procedural issues are litigated, not substantive ones. So where do the concerns of the 9-year old come into play in this law? How and when do you move from the administrative process to the political process to answer these larger questions?

The task of turning these ideas into a Master's thesis proved to be daunting in terms of scope. There is no definitive answer to be applied across the board. Instead, the study became an examination of one project in which the public made a difference, in which there was room for emotion and values and for saying "we don't want this project."

The study itself was narrowed to ask three specific questions which could potentially be measured using a model borrowed from the field of conflict resolution. I was first interested in discovering if people became frustrated with the process. Second, I wanted to investigate whether participants were willing to step outside of the participation process set up by NEPA, and move into the realm of political influence to achieve their goals. Finally, if so, when did they step outside NEPA?

I have also included a guide to public participation in NEPA. This is based on my experience on all three sides of the coin: as an interested citizen wanting to make an impact; as a former third-party consultant involved in the writing and editing of categorical exclusions, environmental assessments and environmental impact statements; and finally, in my current professional position, as an agency specialist on MEPA (the state's response to NEPA) compliance.

So, to you the reader, I will provide some clues to help you find what you're looking for in this paper. Chapter I provides a brief summary of the project I used as my case study and the basic intent of NEPA. Chapter II includes a description of the model I used, the Continuum of Community Relations, as well as the research questions posed and my accompanying hypotheses.

If you are interested in NEPA, see Chapter III. This chapter presents the basic tenets of NEPA, including those specific to public participation, in detail. I have included a legislative history of the act as well.

If you want to know what happened in the Brooks/South/Russell Traffic Improvement Project, see Chapters IV and V. Chapter IV is a detailed presentation of the Brooks/South/Russell project, including a task by task breakdown (according to the terms of the contract) of the public participation program set up by the Consultants hired for that purpose, interspersed with other events, primarily as they were reported to the public through the Missoulian. Chapter V introduces the reader to the people in the community who were interviewed for this study about the Brooks/South/Russell project. They represent three distinct groups who participated in the project: members of the Citizens Action Committee (formed by the City and the Consultants), Bike Missoula (a local interest group focused on bike lanes), and the Pass on the Overpass group (comprised of local businesses at or near the intersection, formed in direct response to the final alternatives chosen in the project.) I asked each of these individuals a series of 22 questions (see Appendix) relating to their involvement in the project, four of which were specific to the Continuum of Community Relations. Their responses are summarized here according to five issues: their knowledge of NEPA, their goals in participating, how they participated, their perception of the public process, and if/when they opted out of the NEPA process to achieve their goals.

If you are curious about the reality of NEPA participation, see Chapter VI. This chapter summarizes many of the ideas that I've had over the years about the pros and cons of participating in the NEPA process into one package. This chapter includes tips for participating in the NEPA process, as well as for moving into the political/policy arena to influence decision-makers.

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I. INTRODUCTION

The Law: The National Environmental Policy Act of 1969

The National Environmental Policy Act of 1969 was enacted as a declared national policy on the environment (42 USCA §§ 4321-4347). Its provisions have had an enormous impact on the way that the federal government, state governments (some of which have 'little NEPAs'), and private industry manage resources and how the public can participate in this process. The purposes of the Act are:

To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality (42 USCA § 4321).

The Act itself is a sweeping statement of environmental policy and includes such broad statements as "each person should enjoy a healthful environment" (42 USCA § 4321(c)) and "it is the continuing responsibility of the Federal Government to use all practicable means ... that the Nation may fulfill the responsibilities of each generation of trustees of the environment for succeeding generations" (42 USCA § 4321(b)).

These broad statements of intent were followed by a unique method of implementation. The mechanism that Congress developed to standardize agency decision-making was the impact statement. The Act specified that each impact statement must include a discussion of the environmental

impacts of the proposed action, alternatives to the proposed action, an analysis of adverse and cumulative impacts, and a discussion of short-term uses versus long-term productivity and irreversible and irretrievable commitment of resources (42 USCA § 4332).

The impact statement provision of NEPA has been remarkable because it has had an enormous effect on the way federal agencies do business. Agencies are required to consistently and thoroughly evaluate the effects of projects on watersheds, wildlife, vegetation, air quality, human habitation, socioeconomics, etc., as well as be responsive to public input.

NEPA has also inadvertently created a new player in agency decision-making. An industry has emerged of third-party consultants who contract to complete impact statements for agencies and private parties whose projects are subject to NEPA review.

NEPA also included specific reference to public involvement, which has been further clarified through the publication of regulations by the Council on Environmental Quality (CEQ) and the issuance of Executive Order (EO) 11514 in 1970.

The project chosen for this academic study is particularly useful as a case study of public participation in the NEPA process. The project included a structured process for soliciting public input by the agency and the third-party consultants hired to fix the problem. The agency's public participation program was successful in generating public input from the very beginning and maintaining some level of interest throughout the project. However, it is particularly important that this project was also a demonstration of the different ways the public can influence the NEPA process. In this case, citizen input and pressure influenced the decision-makers to reject the final project alternatives.

The Problem

In August of 1993, the City of Missoula, Montana awarded a \$500,000 contract to three private consulting firms for engineering and environmental studies for the Brooks/South/Russell Intersection Traffic Improvement Project (hereafter referred to as "the Brooks project"). The intersection of Brooks Street, Russell Street and South Avenue, known locally as "Malfunction Junction," experiences ongoing traffic congestion problems which resulted in violations of the National Ambient Air Quality Standards (NAAQS).

Facing federal air quality violations, the City of Missoula, Montana initiated the design of a transportation project using federal Congestion Management and Air Quality (CMAQ) funds. The use of federal funding qualified this project as a "major federal action" which then placed the project under the jurisdiction of the National Environmental Policy Act (NEPA). NEPA required that an environmental assessment be conducted to evaluate the environmental impacts of the project. The agency responsible for final approval of the assessment was the Federal Highway Administration (FHWA).

The Montana Department of Transportation (MDT) also had jurisdiction in this project because of the state's responsibility for managing air quality. As such, the project was also required to comply with the Montana Environmental Policy Act (MEPA). MEPA is the state's version of NEPA, with most provisions identical to the national law.

A lengthy evaluation of the alternatives and extensive public scoping efforts were conducted. By December 1994, two feasible engineering alternatives were chosen for evaluation in the EA. The Missoulian published details of the preliminary design drawings approximately two weeks prior to a scheduled public presentation of these alternatives and the results of the EA. These drawings showed that several businesses along Brooks Street would be removed, and others would have their access limited or changed by construction of either the overpass or underpass alternatives.

Publication of this information sparked an active campaign by local businesses, supported by many citizens, to stop the construction

of any major structure at the intersection. Public opposition to the alternatives became loud and pervasive. Ten thousand petition signatures opposing the project were collected; a citizen's protest group was formed; and several hundred written comments were submitted at the December 1994 public presentation.

By January, the City announced that a proposal for construction of either of the alternatives would not proceed. The project remains active, with the City now focusing on "less-expensive, less-obtrusive" (Missoulian 1/10/95) alternatives to addressing problems at the intersection.

II. THE STUDY

Evaluating Public Participation

This study evaluates public participation in NEPA. The public involvement process includes the participation of both agencies and the public (defined as individuals and interest groups) in a dynamic relationship that is constantly subject to change given time and events. Decisions impact the way the public perceives their role and whether they feel that the process is being responsive to their goals. Also, agencies can have significant control over the process through the development of their public involvement programs and by their response to public input.

The potential range of relationships between agencies and the public has been explored in a model, known as the Continuum of Community Relations (Laue and Cormick 1978; Warfield 1993; McCoy *et al* 1994, see Table 1). The model is divided into five phases of participation: Cooperation, Competition, Heightened Tension, Conflict and Crisis. Each phase, moving from left to right, represents a change and escalation in the breakdown of communication and relationships between the agency and the public. Each phase is described in Table 1, with examples of the types of activities and perceptions engaged in by the public and faced by the agency.

The model is dynamic. Agencies and the public move along the continuum, some moving from one phase to another; others may enter the continuum and remain at that phase throughout their participation in a project. Yet others can occupy several phases at one time. Also, individuals and interest groups can enter the public participation arena at any time, and at any place along the continuum, depending on their interest in a particular policy or project.

Table 1. Continuum of Community Relations

Within NEPA Process			Outside NEPA Process	
COOPERATION	COMPETITION	HEIGHTENED TENSION	CONFLICT	CRISIS
<u>Characterized by:</u>	<u>Characterized by:</u>	<u>Characterized by:</u>	<u>Characterized by:</u>	<u>Characterized by:</u>
Resource trade-offs	Challenges to the status quo	Angry exchanges through media & public	Viewing the status quo as not representative	Attacks on the status quo
Creating values	Disagreement over resource allocation	Boisterous public meetings	Pursuing lawsuits and demonstrations	Disrupting public order; provoking incidents and arrests
Agreement on the process	Testing and stretching processes	Challenging public processes	Regarding the public process as unfair	Feeling public processes are illegitimate
Mutual respect		Positional, claiming stances		Traumatizing policy

Both the public and agencies can move along this continuum

Each phase of participation characterizes the individual or interest group's perspective on their role in the process. For example, Cooperation represents a relationship between the public and the agency based on mutual respect. This respect is for each other as participants and the process itself. The process, a public participation program, has been set up by the agency, and the public willingly and respectfully interacts in the process.

It is expected that those individuals or interest groups who are new to the process (either in terms of being a first-time participant in a NEPA project or having no prior experience with the specific agency) would be most likely to be cooperative, exhibiting agreement on the process and an interest in cooperating with the agencies involved. These individuals or interest groups are generally coming in with few preconceived views on the process itself that would make them

wary or suspect of the responsiveness of the agency. They may either stay in a cooperative mood for the entire process or may move into Competition if they perceive that their views are not being addressed or if they disagree over the allocation of resources (e.g., how project money is spent).

The public begins to move into the next phase, Competition, when they start to question the process and the sincerity of the agency in listening to and considering their concerns. Other individuals and interest groups may enter the process at Competition if they have a history of adversarial interaction with the agency, a mistrust of the responsiveness of the process, or a fundamental disagreement with the agency about the project.

Moving into Heightened Tension signals a breakdown in meaningful communication between the public and the agency. This occurs either when the ongoing participants reach a level of perceived futility with the responsiveness of the agency to their views or when decisions are being made (e.g., the selection of a preferred alternative) that they do not support. Relationships are strained and discussions take the form of angry exchanges and distinct challenges to the validity of the agency's public participation process. Despite the public mistrust representative of this phase of the model, the public is still operating within the NEPA process. They are still engaging in a dialogue, however strained, with the agency and are attempting to influence the outcome of the project within the process set up for input by the agency.

All of these modes - Cooperation, Competition and Heightened Tension - are valid forms of public participation within the NEPA process. They represent ways of expressing opinions, supplying information to decision-makers, and questioning policies and projects.

Somewhere in the movement between Heightened Tension and Conflict, the public steps outside of the NEPA process as indicated by their actions. They engage in lawsuits and demonstrations, clearly not actions included in the public

participation program set up by the agency, nor envisioned by the creators of the Act.

These actions become more radical by Crisis, with arrests and the disruption of policy. This phase represents the extreme method of influencing decision-makers. They are also clearly outside of the NEPA process.

For the purpose of this study, all of the agencies and staff involved in the Brooks project in an official capacity - the City of Missoula, the Montana Department of Transportation, the Federal Highway Administration, and the three consulting firms - are considered "the agency." "The public" is defined as any private citizen or interest group with no paid role in the project.

Research Questions

The general query in this study is how did public participation develop in this project in comparison to the Continuum of Community Relations? From this, three specific questions have been developed:

First, in the Brooks project, did public participation follow the continuum? By looking at the participation of specific groups, it should be possible to determine whether any of the participants exhibited any of the characteristics which would put them into one or more of the five phases of the continuum.

Second, where along the continuum did individuals or interest groups choose to leave the process? It will be important to know whether the continuum is accurate in reflecting the break between being within the NEPA process and being outside the NEPA process.

Third, what are the ramifications of opting out between Heightened Tension and Conflict? It will be useful to know whether the participants were successful in meeting their goals by opting out of the NEPA process.

III. WHAT IS NEPA?

Legislative History

Senate Bill 1075. In the 1960s, the political climate of the United States was hot and sticky, embroiled in issues of war, poverty, and racial discontent. Public advocacy of values supporting social justice was emerging along with an awareness of the negative impacts of human and industrial development on the environment. The public's concern was already being echoed through burgeoning legislative activity. Of the more than 30 environmental bills introduced in Congress in the late 1960s, it would be Senate bill 1075 (introduced February 18, 1969) that would make history as the first national policy on the environment (Caldwell 1983).

SB 1075, otherwise known as the National Environmental Policy Act of 1969, was signed into law on January 1, 1970 by President Nixon (Anderson 1974). Its purpose was to promote a general national environmental policy by requiring that agency decision-making include consideration of environmental impacts of federal projects (42 USCA § 4321 *et seq.*). Prior to the passage of NEPA, federal agencies had no consistent method or standard operating procedure for evaluating the environmental impacts of projects and proposals under their jurisdiction. "NEPA was basically directed at a multitude of federal agencies whose past lack of concern for environmental matters had produced a series of undesirable environmental consequences and a host of environmental controversies" (Liroff 1976).

The Debate. Despite the implications for change in 1969, NEPA was not considered controversial legislation. The Congressional debate was not particularly newsworthy, either in the mass media, or even with special interest groups following environmental issues and legislation. It may have been quiet outside the halls of Congress, however, inside there

were long negotiations between NEPA's primary architect and Chair of the Senate Interior Committee, Henry Jackson and Edmund Muskie, Chair of the Air & Water Pollution Subcommittee of the Senate Public Works Committee (Liroff 1976).

The House version of NEPA also ran into opposition and blockage from Representative Wayne Aspinall, Chair of the House Interior Committee, and a staunch supporter of natural resource extraction on public lands. Representative John Dingell's House Bill was later used in the development of the conference committee version of NEPA (see next section, The Compromise).

In addition to a policy statement on the environment, the legislation proposed requiring agencies to complete findings statements of environmental impacts for federal projects. The inclusion this provision was largely due to the testimony of Professor Lynton Caldwell before Senator Jackson's Committee. Caldwell contended that a broad statement of national environmental policy alone would render the bill meaningless without an "action-enforcing mechanism." This led to the drafting of an "environmental impact findings requirement" by the staff of the Senate Interior Committee. Originally, these findings were tied to the budget process, so that an agency could be fiscally penalized for not complying (Liroff 1976).

Once out of Jackson's committee, SB 1075 headed to the full Senate. Just prior to its release, Senator Muskie introduced a competing bill (SB 2391), as an amendment to a water pollution control bill in his committee. This competing proposal was introduced as a jurisdictional challenge, because Muskie feared that Jackson's bill would override his committee's control over certain existing environmental protection programs (Liroff 1976).

In addition to the internal jurisdictional entanglements that occurred, there was a fundamental disagreement between Jackson and Muskie over how to conduct environmental policy. Jackson felt that federal agencies could, through NEPA, begin to

internalize some environmental values that would eventually become inherent in their decision-making. However, Muskie feared that NEPA gave too much "self-enforcement" power to agencies. He felt they couldn't be trusted to seriously consider the environmental consequences of their actions, and so pushed for some form of "external policing mechanism" (Liroff 1976).

The Compromise. The compromise between Jackson and Muskie included: 1) changing the findings requirement to a "detailed statement" of environmental impacts; 2) requiring agencies to consult and solicit comments from other federal agencies with expertise about any environmental impacts of the proposed action; and 3) requiring the distribution of the statement and comments to federal, state and local agencies, the President, the CEQ and the public (Liroff 1976).

A conference committee added provisions from Dingell's House bill regarding the CEQ. Despite conflict in the conference committee, especially from Aspinall who had considerable disagreement with Jackson over the intent of NEPA, a conference report was released and passed by the House. It passed the Senate without even a roll-call vote (Liroff 1976).

The NEPA That Might Have Been. An interesting note, and of particular relevance to the underlying interest of this study, is that when Senator Jackson held hearings on his bill in April 1969, some witnesses recommended giving the CEQ "stop-order" power. This would have allowed the Council to stop, at least on a temporary basis, projects undertaken by federal agencies that would have environmentally harmful effects. The idea was the subject of intense consideration by Senator Jackson and the Committee staff. However, the discussion died in the Committee because the Senators felt it was inappropriate to grant such substantial veto power to the CEQ. (Liroff 1976).

Another interesting footnote in the legislative history of NEPA occurred in 1977. An Executive Order was issued

allowing CEQ to issue legally binding regulations, rather than the advisory guidelines originally specified in the Act. The CEQ decided to make a "power grab." The CEQ obtained "initial Presidential approval for an Executive Order that would have required an agency to either choose 'the environmentally preferred alternative' or explain its failure to do so. This would not only tend to embarrass the agency when it did not choose the environmentally most desirable alternative, but also perhaps encourage the courts to find the agency's balancing of environmental and economic values unreasonable" (Taylor 1984). Unfortunately, due to strong opposition from the Secretary of Interior, the CEQ lost and the order was never issued.

The loss of these important provisions has in many ways limited the potential influence of the public and other agencies in a particular agency's decision-making. As such, the agency must solicit input, however, that input is specific to the technical environmental issues addressed in NEPA documents. The law, as it was passed, provides no mechanism for a discussion of larger issues surrounding a project, such as whether it should even be carried out. Technically, these questions should instead be raised in the policy making arena. In practice, the lines distinguishing between the appropriate forums for discussion of larger issues are often blurred.

Public Participation, Courts and NEPA

Provisions. NEPA was created in response to public pressures for government responsibility with regards to the environment. As such, the law was written to include specific reference to public involvement. The general declaration of NEPA states that "it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations ... to create and maintain conditions under which man and nature can exist in productive harmony..." (42 USCA § 4321 et seq). The impact statement required by NEPA must be prepared

with input from other affected federal agencies and then released to the President, the CEQ and the public.

In addition to the specific provisions of the Act, the CEQ has also established regulations and guidelines for public participation in the NEPA process. And following the enactment of NEPA, President Nixon signed Executive Order 11514 for the Protection and Enhancement of Environmental Quality. This EO specified additional provisions for the implementation of NEPA, including requiring federal agencies to:

Develop procedures to ensure the fullest practicable provision of *timely public information* and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and *shall provide the public with relevant information*, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar *procedures for informing the public* concerning their activities affecting the quality of the environment (emphasis added) (EO N. 11514 1970).

The Courts. When NEPA was passed by Congress, it did not include any provision for enforcement. There was some initial indication that this would be a function of the Bureau of the Budget (now the Office of Management and Budget, OMB), but the Bureau bounced it back to CEQ, which basically did nothing (Anderson 1973). Enforcement has come instead from the judicial system.

Environmental groups began taking agencies to court the same year the Act was passed, and initially the courts responded quite favorably on substantive issues. In its third annual report, the CEQ stated that "citizen lawsuits continue to

provide a check on agency compliance with NEPA and to resolve important questions about its interpretation" (CEQ 1972). The report went on to say that "the willingness of citizens to sue to vindicate NEPA and the vigilance of the courts in enforcing the Act help to ensure that the agencies take their new tasks seriously" (CEQ 1972).

The courts have also been instrumental in helping to define the public's role in NEPA. In *EDF v. Corps of Engineers*, 325 F. Supp. 749 (E.D. Ark. 1970), in a challenge made to the construction of Gillham Dam on the Cossatot River in Arkansas, the court ruled that an agency had to include the views of the public in impact statements. "Where experts, or concerned public or private organizations, or even ordinary lay citizens, bring to the attention of the responsible agency environmental impacts which they contend will result from the proposed agency action, then the Section 102 statement should set forth these contentions and opinions, even if the responsible agency finds no merit in them whatsoever" (*EDF v. Corps of Engineers*, *supra* at 759).

In *Hanly v. Kleindienst*, 471 F. 2d 823 (2nd Cir. 1972), the 2nd Circuit determined, in reviewing a General Services Administration decision to build a detention center in New York City, that the agency must provide the public with information on its proposed action and solicit public input for information that might have a bearing on the proposal. (Liroff 1976)

Although the number of NEPA cases has remained steady since the 1970s, the influence of the courts has declined since the Supreme Court narrowed the scope of judicial review of NEPA. The early decisions interpreting NEPA ruled on substantive issues, evaluating agency decision-making. In one instance, *Vermont Yankee v. NRDC*, 435 U.S. 519 (1978), the Supreme Court overturned two District of Columbia Circuit Court decisions that had gone against the Nuclear Regulatory Commission (NRC) for not giving adequate treatment to environmental issues in its NEPA process. The Supreme Court

chastised the Circuit Courts for "interfering with NRC discretion and inserting its own policy preferences for that of an expert commission." (Vig and Kraft 1990).

In the 1980s, the Supreme Court began reversing decisions made by lower courts, stating that the lower courts were incorrect in trying to override the substantive authority of agencies. Thus, the real cases now are procedural, being evaluated on whether the process of how an impact statement has been prepared follows the law, rather than their content (Vig and Kraft 1990).

The Supreme Court, in *Strycker's Bay Neighborhood Council v. Karlen*, 444 U.S. 223 (1980), determined that "once an agency has made a decision subject to NEPA's procedural requirements, the only role for a court is to ensure that the agency has considered the environmental consequences; it cannot 'interject itself within the area of discretion of the executive as the choice of the action to be taken.'" (Orloff and Brooks 1980, as quoted in Taylor 1984).

Public Scoping. The role of the public in NEPA was expanded during the Carter administration with the introduction of "public scoping." Scoping was designed to open up the EIS process to public view when the critical early choices about study objectives and research design are being considered. Scoping provides public accountability of an agency's NEPA process by providing a documented history of issues and questions raised early in the process. Scoping also provides a public record of the assessment process that is often used as additional information by the courts. (Taylor 1984).

Discussion. The evolution of the court in interpreting NEPA raises an interesting point regarding public participation. It is the contention of this author that there are really two NEPAs, the one that is discussed in courts and the one that is actually implemented by agencies. If one were to look at NEPA strictly from the interpretation of the courts, there would

seemingly be no reason to expect that the public should be able to influence a project to the point of cancellation, and that the proper forum for that role lies elsewhere, as state before, in the political process. This is based on the interpretation that NEPA is designed to provide a decision-maker with environmental facts that will be used as one component in the larger realm of decision-making. Thus, for the public to expect that they can influence the life or death of a project through NEPA is unrealistic. That may be true in a realm of strict interpretation.

However, in view of how NEPA is actually implemented by agencies and third-party consultants, there is another side to the story. Agency policy making generally does not take place in view of the public eye. Certainly, there are public interest groups who watch the actions of agencies and attempt to influence direction of an agency through lobbying and public education. Yet, this is a haphazard relationship between the agency and the public. Perhaps it is the sign of a lazy public; considering that the information is available through the Freedom of Information Act.

One of the roles of NEPA, intended or not, has been to provide a consistent mechanism for informing the public and other agencies of projects through public scoping and formal comment on NEPA documents. When an agency decides to embark on a project considered a major federal action, they must pursue a NEPA process and participate in public scoping. They must actively seek out interested publics and provide the opportunity for input. Often, this is the first time the public becomes aware of a specific project.

During public scoping, issues are identified that are relevant to the proposed project, which the agency must *consider* in their assessment process. And although the agency is conducting an *environmental* assessment, the issues are not limited to the natural environment. According to the CEQ

Regulations for the implementation of NEPA:

Federal agencies shall to the fullest extent possible:
... (d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment (40 CFR §1500.2)

The "human environment" is defined as follows:

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of the people with the environment. This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. *When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment* (Emphasis added) (40 CFR §1508.14)

This means that often the natural environment isn't the only issue being discussed in the NEPA process. And if the agency identifies issues related to the human environment, then the NEPA process can actually represent one, if not *the*, largest component of interest to the decision-maker. Thus, NEPA projects in many cases take on the responsibility of being the forum in which the merits of not only the project, but also larger questions of agency policy, are debated between the public and the agency.

This is where the inherent frustration with NEPA lies. NEPA represents a formal opportunity, by invitation from the agency, for the public to get involved in a project. To stay within the provisions of the law, however, that invitation is limited to specific technical, environmental issues associated with a project. The law does not allow for the types of discussions to occur that the public may want to engage in,

such as is the project worthwhile overall. The difficulty arises in the fact that the public often does not limit their input to those specific technical, environmental issues and engages in a discussion of those larger issues anyway. Remember, this is often the only perceived opportunity for input. Some of this misperception is based on a lack of understanding by the public about the law.

The agency, meanwhile, not having a mechanism for responding to the larger discussion within NEPA, often does not address those larger issues. As such, the public comes to distrust the NEPA process because they feel the agency is not being responsive to their concerns.

The result is that the law itself and the expectations of the public in how the law is implemented are, in many ways, irreconcilable. The framers of this law set up this conflict by not including the stop-order provision discussed earlier. NEPA would be much more effective in meeting the public's expectation if there were some mechanism, other than the threat of lawsuits, to discuss the larger issues surrounding a project. And if the impacts to the natural and/or human environment are unacceptable to the public or other agencies, there should also be some way to make the agency accountable for decisions that are good for the environment.

The other perspective is that the onus is really on the public to change their expectations to coincide with the law. This is a desirable idea, however, twenty-five years of implementation of NEPA has shown little movement in this direction. Congress wanted a way to impose some form of consistency in agency decision-making, and they included public participation as an informal checks-and-balance system to achieve this goal. Yet, ultimately, they failed because they developed false expectations among the public as to the substance of their participation.

The author of this study accepts that this is an irreconcilable situation. While acknowledging the legal interpretation of NEPA, it cannot be ignored that

implementation is not always as the law intends. Given that, the project evaluated here focuses more on what *actually* happened and what people thought of it based on their expectations of the law, rather than how it *should* have happened based on the law.

Summary

NEPA was the first environmental law of its kind. It codified the interest of the country in maintaining a healthy environment and acknowledged that the work of the government has an impact on the natural environment.

NEPA mandated that all major federal actions be subject to an environmental review of impacts in the form of a detailed impact statement. This requirement was a new administrative procedure for federal agencies, which has resulted in an increased level of technical sophistication by agencies.

The Act also placed a legal obligation on federal agencies to develop a dialogue with other agencies and the public regarding decision-making through a process known as public scoping. The law could have been even more stringent if it had included a stop-order provision and if it had required agencies to choose the most environmentally-preferred alternative. However, these provisions were never incorporated into the law, and as such, the public has found other mechanisms, including the courts, to influence agency decision-making when impacts are unacceptable. In some cases, such as the Brooks project featured in this study, political pressure was the most effective mechanism for the public to employ to dramatically affect the direction of the project.

IV. BROOKS/SOUTH/RUSSELL CASE STUDY

The Project

On February 14, 1993, the City of Missoula, Montana released a Request for Proposals (RFP) for engineering services for the preliminary analysis, design and construction of the Brooks/South/Russell Intersection Traffic Improvement Project. The three-way intersection of Brooks Street, Russell Street and South Avenue, known locally as "Malfunction Junction," has had ongoing traffic congestion problems which have resulted in violations of the National Ambient Air Quality Standards (NAAQS) for carbon monoxide.

The RFP stated that the project "will consist of design services for the analysis and preliminary engineering of alternative solutions including the construction of an overpass of Brooks Street over the intersection, and other alternatives such as the modification of signal timing, development of alternative routes, street closures, restricted turning movements and any other option that will result in the long-term reduction of carbon monoxide levels" (City of Missoula 1993).

Three firms from Boise, Idaho presented a proposal that was accepted by the City in September 1993. Each firm focused on a specific aspect of the project. Bell*Walker Engineers, Inc., was awarded the primary contract and was responsible for the field survey of the intersection, preliminary designs for all of the alternatives developed, and a final estimate of costs and any subsidiary construction required (e.g., relocation of utility lines, right-of-way acquisition, etc.) for the final alternative.

Dames & Moore, an environmental consulting firm, subcontracted with Bell*Walker for the development and preparation of an environmental assessment (EA) in accordance

with the Federal Highway Administration's (FHWA) regulations for NEPA and the Montana Department of Transportation's (MDT) regulations for MEPA.

The third firm, Group 2000, also subcontracted with Bell*Walker to design and complete a public involvement program, as a requirement under NEPA and MEPA. The RFP specified that the public involvement program "shall be a two-way communications program for disseminating facts about a project to the community, determining the community's concerns, and responding to those concerns" (City of Missoula 1993).

The contract, worth \$500,000 just for this initial phase, was announced in the Missoulian on 9/15/93 ("\$500,000 Malfunction Junction Study Planned"). This announcement was followed by a Missoulian editorial the next day which said "we're hoping a concrete plan of action comes out of this study, but somehow we can envision a lot of good ideas being shot down in heated public debate on the issue. We can envision city officials paralyzed by the controversy. We can envision Missoula losing out on the rest of its \$30 million in federal money to fight air pollution [CMAQ funds] because the city can't decide how to proceed" (Missoulian 9/16/93). That's a fairly accurate description of what happened.

Chronology of the Project

The following chronology discusses the various events that occurred throughout the project. From this chronology, a timeline was developed and key events were identified that relate to the public's participation along the Continuum of Community Relations. This timeline is presented in Table 2 at the end of the following narrative.

September 1993

The Scope of Work presented by Bell*Walker, Dames & Moore, and Group 2000 (hereinafter referred to as "the

consultants") included five phases, with specific tasks in each phase. For the purposes of this study, the focus will be on Phase II - Public Participation, which was conducted by Group 2000, with participation by Bell*Walker and Dames & Moore (Bell*Walker 1993). Phase II, Task One was called Historic Research. This involved doing a search of city files and newspaper articles in order to get a feel for the sentiment of the community regarding the project.

Task Two, Public Protocol, was designed to establish a list of key community players to test ideas about the project, understand the historical concerns of the community, and determine key citizens to make up the Citizens Action Committee.¹

Task Three, Agency Protocol, was designed to establish relationships with key agency personnel to cultivate third-party support. This was accomplished through personal contacts and the inclusion of the city's Technical Advisory Committee in the project.

November 1993

Task Four was Focus Groups, which were considered the preliminary step to working with larger groups and were designed to test data to be used in the public information meetings. Two focus group meetings were conducted by Goddard*Claussen/First Tuesday, a consulting firm from

¹ A note about Citizen Action Committees (CAC). CACs are primarily formed in an effort to link the public to the policy processes through this "representative microcosm of the larger public." It is based on the assumption that a smaller group of people who accurately reflect the public's interest can facilitate the process while avoiding the bottlenecks of larger, unconfined publics. "If CAC members are chosen by the policy-makers [as they were in this case study], the definition of public is likely a function of the policy maker's perceptions of the community's important interests" as opposed to the CAC being chosen through a public forum, in which case, they would be self-selected and self-representative (Pierce and Doerksen 1976).

Boise. The firm issued a confidential report of its findings to the City and the consultants. This report, as far as has been determined, was never made public. This author received a copy of it from one of the consulting firms. The meetings were held on November 3-4, 1993, in Missoula with respondents recruited by phone. Eighteen people participated and were paid a minimal fee for their time and efforts.

The following areas were discussed:

- likes and dislikes about living in Missoula;
- perceived changes in the community;
- a general evaluation of local public officials;
- an evaluation of Missoula's transportation system and desired improvements;
- prioritization of factors to be considered in transportation planning;
- options for the Brooks/South/Russell intersection; and
- personal desire for public involvement in the project.

One interesting conclusion of the report was that the City was advised to deal with the public perception that special interest groups (namely business and environmental) would control the project's agenda and its ultimate outcome (Goddard*Claussen/First Tuesday 1993).

Task Five centered on the *Citizen's Action Committee* (CAC). The CAC was to serve as a "sounding board ... who will be sought for advice and to decide how many affected neighborhoods will have a role in defining the project" (Bell*Walker 1993). The CAC was also considered a tool to help determine how to communicate with the broader public. The CAC was formed by representatives of Bell*Walker sending a representative around to various businesses and interests around the

intersection, explaining the project, and asking for volunteers for the CAC.² The City also provided names of potential volunteers (e.g., the Bicycle/Pedestrian Coordinator), and ultimately each volunteer received an invitation by the City to participate. The CAC met monthly from November 1993 through May 1995. Their agenda, set by the City and Bell*Walker, included reviewing public comments from information meetings; discussing traffic modeling and environmental studies; and evaluating alternatives.

Task Six, the *First Public Meeting*, was designed to identify community and environmental issues, present the preliminary alternatives and to discuss the opportunities for further public involvement. The meeting was held on November 19, 1993 from 11:00 a.m. to 7:00 p.m. at the Fairgrounds Dance Building. Entrance records show that 191 people signed in, with 70 providing written comments on the information they viewed either on public comment forms, on flip charts provided at the meeting, or in letters mailed after the meeting. CAC members were encouraged to attend the meeting and be available to listen to the concerns of the public (Bell*Walker 1994).

The alternatives that received the most support at this early meeting (listed here in random order) were system improvements, traffic demand management (TDM), a roundabout, the overpass/underpass and no action (Bell*Walker 1994).

Task Seven involved Building and Maintaining Relationships with the Contracting Agency for the

² One member, Elaine Smith, was asked to join as a representative of her neighborhood after the first public meeting in November 1993, where she expressed significant interest in the project.

purpose of familiarizing the city, county and state personnel with the details of the project and the public relations process. This was primarily accomplished through the participation of Bell*Walker and Dames & Moore in the City's monthly Technical Advisory Committee (TAC) meetings. The TAC is an existing city committee comprised of the Public Works Director, the City Engineer, the City Traffic Engineer, the City/County Environmental Health Director, the City/County Transportation Planner and the MDT District Engineer.

June 1994

Task Eight, the *Second Public Meeting*, was designed to be a dress rehearsal for the formal public hearing required by FHWA guidelines for the implementation of NEPA. The meeting was designed to be an important feedback mechanism to the City and the Consultants (hereinafter referred to jointly as "the agency"). The Scope of Work for the project states that "if the preliminary work is done correctly, any public concerns voiced in this session (the second public meeting) should contain no surprises" (Bell*Walker 1993).

This meeting, advertised as the Neighborhood Meeting, was held on June 9, 1994 at Russell School from 7:00 p.m. to 9:00 p.m., a considerably shorter time than the first public meeting in November 1993.

Two days prior to the meeting, the Missoulian presented the public with a preview of the five alternatives being considered for the intersection (Missoulian 6/7/94). The alternatives were TDM, overpass, underpass, urban interchange and system improvements. Although a popular concept, the roundabout was dropped from further consideration in May 1994 after the city was told

by the world's leading expert that a roundabout would not work for Malfunction Junction (Missoulian 5/25/95).

The meeting was attended by approximately 100 people. It was the first time it became clear that the public was not interested in an overpass/underpass at the intersection. The Missoulian reported the next day that "(L)east popular among the crowd of more than 100 was the possibility of an overpass or underpass. One man drew cheers when he called the overpass an 'aesthetic abomination'" (Missoulian 6/10/94). Many of the public comments favored TDM. It was also evident that many people were taking the public input process seriously as they wrote detailed letters suggesting additional alternatives, with some even including diagrams of their ideas.

July and August 1994

During their monthly meetings, the CAC met to complete a matrix designed by the agency. This matrix scored the various proposed alternatives based on a variety of factors, including feasibility, improvement in traffic flow, environmental concerns and business displacement (Dames & Moore 1994).

August 1994

On August 28, 1994, the Missoulian published a story requesting public opinion on the alternatives being considered entitled "Make that Junction Function" (Missoulian 8/28/94). They offered a voice line for commenting and then on September 6th published a multi-page spread of comments regarding the project. Reaction was mixed, with the alternative for system improvements coming out ahead of the overpass, the overpass evenly ranked with the no action alternative

and the underpass least preferred of all the alternatives (Missoulian 9/6/94).

September 1994

Press Conference. On September 12, 1994, the City held a press conference to announce the final four alternatives: the overpass, underpass, system improvements to Reserve Street and Higgins-SW Higgins-39th Street, and no action (Dames & Moore 1994). Sometime between June and September, the popular TDM was dropped as a separate alternative after the City was informed by another consultant that one of the two TDM alternatives (proposing a 20% replacement of traffic with alternative transportation) would not work in Missoula. The remaining TDM alternative (5%) was not considered feasible on its own merit, and was tacitly incorporated into the other remaining alternatives in the form of bike lanes and sidewalks (Dames & Moore 1994).

December 1994

Task Nine was originally supposed to be a Formal Public Hearing held in December 1994. The hearing was replaced with a **Third Public Meeting** due to delays in the results of the air quality study. The delay in the study set back the release of the EA, which then could not be available fifteen days before the formal public hearing, as required by FHWA for NEPA compliance. Rather than cancel the December forum, the format was changed from a hearing to an information meeting, with new plans to hold the public hearing later in conjunction with the City Council when the EA was completed (Funkhouser 1994).

On 12/13/94, two days before the third public meeting, the Missoulian published a story detailing the preliminary design drawings for the final three

alternatives. Yet another popular alternative, system improvements had, since the previous meeting, been dropped from further consideration by the agency. This was justified by the traffic modeling results which showed that improvements to Reserve and Higgins-SW Higgins-39th Street would only add less than 10% of an improvement to the traffic flow at the intersection and therefore wasn't worth the cost, as compared to the overpass/underpass which was a more cost-effective solution.(Dames & Moore 1994).

The story that ran in the paper, "Merchants near Malfunction Junction fear project will wipe out business" provided photos and information on the businesses, featuring Ruby's Cafe, that would be eliminated by the construction of either an overpass or underpass (Missoulain 12/13/94).

The public uproar was instant and loud. An organizing effort by the affected businesses in the area had begun barely a week before the article, following a meeting held by Bell*Walker with a few of the business owners at the intersection (Weis 1996). The group included those whose access would have been altered or restricted without directly losing any property to right-of-way acquisition as well as those facing a buy-out. The organization became a formal group called Pass on the Overpass (POP), which collected money, issued petitions, and mounted a high profile campaign against the project.

By 12/15/94, the day of the third public meeting, the word was out and over 450 people attended the meeting. The agency received 273 written comments at the meeting; attendees could write their comments, type on

provided computers, or dictate their comments to student volunteers³ (Dames & Moore 1995).

Later that week, POP purchased an ad in the Missoulian featuring the meeting comment form, which encouraged people to send in their comments to the City (Meyers 1995). This ad resulted in an additional 321 comments being received by the City. Opposition to the overpass was overwhelming. Almost 80% of the respondents favored the no action alternative over the overpass/underpass; 9% favored the overpass and 6% favored the underpass (Dames & Moore 1996). POP continued to solicit petition signatures and it is estimated that over 10,000 signatures were collected (Lord 1995).

January 1995

On 1/9/95, City Engineer Bruce Bender announced that the overpass/underpass was "dead." Mayor Kemmis indicated that he would ask the agency to look at other cheaper and less visually obtrusive options for the intersection, saying, "If we had to choose between an overpass, an underpass or doing nothing, the people of Missoula would prefer to do nothing" (Missoulian 1/10/95).

1995...

Although this ends the chronology of the project for this study, the Brooks project has continued. An independent traffic consultant was hired by the City to study alternative solutions to Malfunction Junction. The interesting note is that this consultant, who had previously worked with the WalMart Corporation in their

³ The students attended Sentinel High School, which is located next door to the Missoula Vo-tech, where the third public meeting was held. The students were volunteered for this activity by Bruce Zinne, Principal of Sentinel High School and member of the CAC.

bid to move to Missoula, was originally hired by POP and only agreed to work for the City provided she could disclose her findings to POP (Meyers 1995).

Currently, options are being considered that will eliminate South Avenue as a full-functioning leg of the intersection, rerouting traffic to Brooks. This will still require some right-of-way acquisition. However, having learned from their first efforts, the agency is negotiating with affected property owners as they design the proposed routes, rather than waiting until the decisions are made and the story is leaked in the newspaper (Thibodeau 1996).

Date	----->	Event
9/93	----->	SCOPE OF WORK • Task 1 - Historic Research • Task 2 - Public Protocol • Task 3 - Agency Protocol
11/93	----->	• Task 4 - Focus Groups • Task 5 - CAC Formation **
11/19/93	----->	• Task 6 - First Public Meeting **
ongoing	----->	• Task 7 - Building Relationships with contracting agency
6/9/94	----->	• Task 8 - Second Public Meeting **
7/94	----->	CAC Meeting
8/94	----->	CAC Meeting
8/28/94	----->	Missoulian article "Make that Junction function" **
9/12/94	----->	City Press Conference on final four alternatives
12/13/94	----->	Missoulian article "Merchants near Malfunction Junction fear project will wipe out business." **
12/15/94	----->	• Task 9 - Third Public Meeting **
1/9/95	----->	Missoulian article, "Overpass Plan Dead"
1995....	----->	Project continues

Table 2. Chronology of Brooks Project (** = key events)

V. PUBLIC PARTICIPATION IN THE BROOKS PROJECT

Methodology

During November and December 1995 and January 1996, personal interviews were conducted with members of the public who participated in the NEPA process and those who stepped outside of the process. The purpose of the interviews was to determine the validity of the Continuum of Community Relations as a model for evaluating public participation in NEPA. The interviews were also designed to discover if and when participants chose to opt out of the NEPA process to meet their goals and why they opted out.

Interviews were conducted with individuals representing three specific groups: the Citizen's Action Committee (CAC), Bike Missoula, and the Pass on the Overpass Group (POP).

A summary of the results of the interviews will be presented here in order by group according to the following five issue areas: their knowledge of NEPA, their goals for participating, how they participated, their perception of the process and when (and if) they opted out of the process to meet their goals.

Each individual was asked a standard set of questions (Appendix). The interviews were tape recorded, with permission, and later transcribed.

Study Group

Citizen's Action Committee

The CAC was formed by the agency (City and the consultants) and was comprised of 16 business and community leaders, most with a particular economic or professional interest in the intersection. Nine members of the CAC accepted requests for personal interviews with the author; two were no longer in the area; one did not respond to repeated requests for an interview; two refused interviews since they did not attend any of the meetings; and two simply refused.

The following CAC members were interviewed:

- Doug Anderson, Manager, Southgate Mall
- Denis Lerum, Director, Missoula Vo-tech
- Bruce Zinne, Principal, Sentinel High School
- Ken Stoltz, Vice President of Administration & Finance, University of Montana
- John Williams, Bicycle Federation of America
- Elaine Smith, Residential Neighborhood Representative
- Sam Yewusiak, Director, Missoula Cty. Fairgrounds
- Tom Nettleton, Transportation Consultant
- Dale Mahlum, former owner of Coast to Coast Hardware (now Missoula Ace Hardware)

Bike Missoula

Bike Missoula was (for all practical purposes the organization is now defunct) a small single-issue interest group with its roots in the Environmental Studies (EVST) graduate program at the University of Montana. In 1991, the group formed to persuade the city to incorporate bike lanes in city transportation projects. A few of their members, acting individually, yet on behalf of Bike Missoula, participated in the Brooks project. Three members of the group were interviewed:

- Lila Cleminshaw, EVST graduate, employee of the Montana Environmental Information Center (MEIC)
- Jim McGrath, EVST graduate, Missoula City Council member
- Hank Harrington, Professor, University of Montana

Pass on the Overpass

POP was formed in December 1994 in direct response to the Brooks project. It was comprised approximately a dozen business owners in the vicinity of the intersection who were going to be impacted by the overpass/underpass either through right-of-way acquisition of their property or through restriction of access into their businesses. Initially, interviews were held with those individuals who appeared in the 12/13/95 Missoulian article. Those individuals then provided

suggestions of other people in their group to interview. The primary obstacle encountered was that the interviews were held during the busiest shopping season, a difficult time for merchants to be available for interviews. Seven business owners did agree to interviews:

- Gene Meyers, Owner, Ruby's Cafe
- Nabil Haddad, Owner, The Book Exchange
- Don Lord ⁴, Owner, Express Lube
- Conley Lord, President, Express Lube
- Earl Pruyn, Owner, Pruyn Veterinary Hospital
- Stewart Weis, Owner, Missoula Ace Hardware
- Bill Thibodeau, Owner, Montana Printing Co.

Results

Citizen's Action Committee

Knowledge of NEPA. In general, most of the CAC members interviewed were not familiar with NEPA, although one did have extensive knowledge of NEPA through professional experience. Some of the members recalled being briefed on the role of NEPA in the project at the first CAC meeting; others did not.

Despite their lack or limited knowledge of the law, most were aware that the public input aspect of the project was a requirement, either due to the federal Congestion Management and Air Quality (CMAQ) funds, or ISTEA (Intermodal Surface Transportation Efficiency Act of 1991), or as a general requirement of a government project. All agreed that whether or not the law required it, public involvement should be a requirement of projects.

Goals for participating. Most of the nine CAC members had a vested interest either economically (having a business located near the intersection) or professionally (education and

⁴ This interview was originally scheduled just with Don Lord. However, his son, Conley, who is President of the business also participated in the discussion.

recreation facilities near the intersection, membership in business groups, or an interest in bicycle/pedestrian transportation issues). Their goals included: wanting to see the project assessed in terms of community transportation issues not limited to the intersection; air quality improvements; efficient traffic flow and street configurations; minimizing impacts to businesses in the area; and ensuring that the federal CMAQ funds were spent wisely. Lerum indicated that he had no goals other than to participate, however, it should be noted that any of the proposals for the intersection could have impacted access to the Missoula Vo-tech.

Despite these topical goals, they all indicated that they did not support the overpass/underpass alternatives brought forth by the agency as the final proposal. The interesting point was that all but one (Smith) stated, when specifically asked whether their goals changed over time, that they had not. When queried whether their goals had been met, several stated that their goals were met because the project was stopped. They transferred their overall goals for the projects (e.g., better traffic flow) into a choice for a specific project alternative. As such, it seems that since the project was stopped, not all of their goals were met. For instance, no improvements were made to air quality, nor was efficient traffic flow achieved.

"Yeah, I think they were met. Nothing happened." (Mahlum)

"Yes, I'm satisfied right now. We're nowhere right now and that satisfies me." (Nettleton)

"I think they were met only because of the outside activities." (Williams)

How they participated. All of the CAC members interviewed participated by attending monthly agency-sponsored CAC meetings. As indicated in Chapter III, the purpose of those meetings was to inform the members of the

various elements of the project and have them serve as a link between the agency and the general public. The CAC members were also encouraged to attend the public meetings. Out of the nine members, six attended all three meetings; two attended two meetings; and one attended one meeting. All indicated that their role was to inform the public of what they had been hearing in the CAC meetings and to get a sense of the public's perception of the project.

Several commented that they talked to others in the community on their own accord, either customers or as members of the Chamber of Commerce or other business groups. One wrote letters on his own initiative (Yewusiak), detailing his ideas for alternative solutions to the problems at the intersection. (Yewusiak stated that he was upset that he never received any acknowledgment or response to those letters from either the City or the consultant.)

Other than those things, most felt that their membership on the CAC either was their best opportunity ("*far greater than most others*" Lerum) to participate and have some influence on the project; or that their role was really to stick within the process defined for them by the agency.

Perception of the process. There was much more of a split on this issue than in their general views about public input. Six were pleased with the process and the way it was handled, especially by the consultants. They felt the process was fair and none offered any challenge to the public participation process generally or the committee, specifically. It is possible that some of this can be attributed to the role these individuals play in the community and a desire to be a team player. This was evident throughout their interviews. If one looks at the makeup of those six (Anderson, Lerum, Zinne, Stoltz, Nettleton, Mahlum), they are in high level community positions in either education or in business.

The other three (Smith, Williams and Yewusiak) repeatedly distinguished themselves as the skeptics. They had

doubts and expressed that they thought they were "window dressing" for the project (Smith) or "straw men" for the agency (Yewusiak). These three felt that a decision had already been made from the beginning and that their role was to validate those decisions. Despite these criticisms, all three stayed informed, kept informed and shared their opinions. Only Williams dropped out near the end, not attending the third public meeting.

"I kind of, by that time, decided what's the point of being on this committee or going to these meetings if everything is all determined already." (Williams)

These three CAC members came from a very different perspective, having less of a professional stake in being a cooperative member of the committee. Yewusiak, although a county employee, presented himself as a maverick and seemed comfortable being critical of the agency.

Williams, formerly a member of the city's Bicycle and Pedestrian Advisory Board, and now working for a private interest group, seemed used to being in a position of the underdog, challenging the city to give importance to alternative transportation.

Smith had no professional stake in this project; as a neighborhood representative, she was interested in seeing how the changes in traffic flow would impact her neighborhood. Thus, she was in a perfect position to be critical, if she desired. And in fact, she was very vocal at the CAC meetings. She indicated in her interview that this was her first foray into a government project. She went into the process eager to be cooperative, but *"didn't think they were listening to what the public was saying."*(Smith)

One interesting note is that despite their criticism of the process and the project, neither of the three challenged the way the agency set up the project. They seemed almost bound by the process itself. As enfranchised participants, they had

bought into the process, and therefore were limited in their drive to change the process. From their testimony, it is clear that they challenged the specifics of the project, for example, traffic modeling assumptions (Williams), aesthetics (Smith), and alternative traffic routes (Yewusiak), but not the process driving their participation.

"Certainly there was a flaw in the public process. I don't think you can say there wasn't. If something like that happened, it would strike me that by the time you get to the end of the process, if you've done it such that people feel like they've been involved, then the result is not going to freak people out enough so that you get 10,000 signatures a week, or whatever it was." (Williams)

Opting out. As expected, none of the nine CAC members interviewed left the NEPA process and attempted to influence the outcome of the project through other means, such as in the political system. In some cases, their participation was viewed as the best opportunity available, and all seemed to take their role on the committee seriously, despite their criticisms. When asked to place themselves on the Continuum of Community Relations, none indicated that they moved outside of the NEPA process (see Table 3).

Bike Missoula

Knowledge of NEPA. All three members of Bike Missoula interviewed were familiar with NEPA, which was expected given their education and professional interests. They all were aware that the Brooks project was a NEPA project, and that public input was a part of that process. They also all agreed that public input should be a requirement of government projects.

Goals for participating. Bike Missoula's primary agenda was getting bike lanes incorporated into city transportation

projects. The stated goals in their literature, supported in their participation in the Brooks project, was to make Missoula's roads accessible and safe for bicycle commuters. Cleminshaw also indicated that as the project went on, her own interests broadened to include TDM and other alternative transportation issues. McGrath also stated that he wanted to see that something positive was done for the community in this project, in terms of the entire airshed.

All three stated that their goals were not really met even though they did support dropping consideration of the overpass/underpass. They indicated that the delay of the project meant that their bicycle and alternative transportation goals were not realized.

How they participated. Cleminshaw went to the first public meeting and participated in Bike Missoula meetings where the Brooks project was discussed. The group was interesting in focusing their participation on public education about their areas of concern. Cleminshaw stated that the group made phone calls to encourage people to attend the first public meeting, but it was held at a difficult time of the year and at the fairgrounds. So, they anticipated low attendance. Instead, the group collected 168 signatures on a petition which was presented to the agency at the first public meeting.⁵

"It was technically a scoping meeting, and when an issue is brought up once, its in there and doesn't need to be brought up by fifty people. But the reality is it may get more attention if fifty people bring it up instead of one." (Cleminshaw)

Harrington, who was the Chair of the city's Bicycle Pedestrian Advisory Board at this time, went to the first and

⁵ The petition read, "We, the undersigned, encourage the incorporation of non-motorized facilities, specifically bike lanes and sidewalks, into the new plans for 'Malfunction Junction' " (Bell*Walker 1994).

last public meetings as well as Bike Missoula meetings. He also wrote a letter as public testimony, expressing his concern that the alternatives that had emerged were bicycle and pedestrian unfriendly. He did indicate that he participated in the forums provided by the agency because they were the easiest things to do.

McGrath went to a few of the CAC meetings⁶ and Bike Missoula meetings. He also was on the Bicycle Pedestrian Advisory Board (from 3/94 to 9/95), and received information from the City on the project. He was also able to express his concerns in that forum. In addition, he had access to city officials more readily than other members of the general public (as did Harrington). McGrath did not attend any of the public meetings because they were "across town" and not easily accessible by foot or bicycle. He was also covering local issues for the Weekly at this time and in a story on ISTEAs, included information on the Brooks project.⁷ His direct involvement came in the form of written testimony.

Perception of the process. Each of the Bike Missoula representatives had a slightly different perspective on the NEPA process, although they all expressed doubts about the public involvement program set up for this project and the responsiveness of the agency. Cleminshaw basically agreed with the NEPA process, while Harrington indicated that he had no real opinion as this was his first real exposure to a NEPA project. McGrath was skeptical because this project coincided with the changes in federal transportation laws, notably ISTEAs, and he thought that transportation engineers really did not

⁶ A note about CAC meetings. According to Bruce Zinne, Principal of Sentinel High School and CAC member, meetings were not advertised as open to the public, however, if people were interested, they could attend and if there was time following the agenda, could be allowed to speak.

⁷ It is interesting to note that during his research on ISTEAs, McGrath found that the issue of an overpass at Malfunction Junction was reviewed by the City and rejected by the public in the 1970s. This research was privately conducted by McGrath, and was not, as far as the author is aware, presented to the Consultants.

know how to do a public process (despite the fact that FHWA has been implementing NEPA since its passage). In his words, *"So while NEPA probably looked like a good process, it really stunk."* (McGrath)

None of the three challenged the public participation process set up by the agency. McGrath felt that once the process was in place and the consultants hired, there was little that could be done to change it.

In terms of responsiveness, similar perspectives among the three emerged.

"They had their minds pretty well made up on the alternative they were going to select."
(Harrington)

"It was classic. It's like, 'Oh, here we go again.'" (Cleminshaw)

"A lot of people commented on it, but it didn't affect the decision-making." (McGrath)

Opting out. Bike Missoula was an interesting part of this study, primarily for their potential involvement rather than their actual participation. In large part, due to the looseness of the organization and the fact that they did not consider the Brooks project as crucial as other transportation projects in the city (e.g., Orange Street bridge and California Street bridge), they really did not do much as a group after the first public meeting. Individually, they kept informed, but did not take group action.

The group was also losing momentum because they had gotten the city to put bike lanes into the funding queue and as Harrington said, since "everyone's heart was in bicycle lanes," the group faltered after that goal was met.

None of the members interviewed indicated that they moved outside the NEPA process to meet their goals (see Table 3). However, this group had the potential, if they had stayed cohesive and active, to be motivated to try to influence the

decision-maker by moving outside of the process.⁸ Both Cleminshaw and McGrath indicated that it would have taken direct action and grassroots organizing to stop the project.

"From time to time, there was talk about doing a 'die-in' at Malfunction Junction, but we never did it. I don't know if we rejected it or just never moved it forward." (McGrath)

Pass on the Overpass

Knowledge of NEPA. There was a mixed base of knowledge regarding NEPA among POP. Some were familiar with the law; others not really. The same applied regarding whether they were aware that the Brooks project was under the rubric of NEPA. They all knew that the public participation program was a requirement of a public project, with some attributing it to the tie to federal funding. They all agreed that it was important to solicit public input.

Goals for participating. Although they did express an interest in community affairs, the business owners who formed POP were focused on economic survival. Each of the interviewees would have been impacted somehow by the construction of an overpass or underpass at the intersection, either being bought out directly (Ruby's Cafe) or through changes in access to their business (The Book Exchange, Missoula Ace Hardware, Montana Printing Company, Pruyn Veterinary Hospital, Express Lube).

Weis indicated that he was concerned about the air quality problem at the intersection and had been willing to accept solutions that would have contributed to solving that problem. However, he indicated that he was informed by

⁸ McGrath stated that he thought any time one did anything outside of the public participation program set up by the agency (e.g., writing a letter to the editor), then technically one is stepping outside of the process. In an effort not to create confusion, the definition of stepping outside the process as defined in the Continuum of Community Relations, will be followed.

Bell*Walker in their meeting with some of the business owners in early December that there had only been one actual violation of carbon monoxide standards at the intersection. Once he discovered this, Weis indicated that he was less concerned with the air quality and began to really fight against the overpass/underpass for the sake of his business.

Given their goals of survival, it was expected that their goals would have been met by the project being stopped. The only merchant that this was not true for was Thibodeau, who owns Montana Printing Company on South Avenue; since the agency is now considering rerouting South Avenue, his economic future is still in question. The others, however, had their goals met.

"We're still in business. That was our agenda." (C. Lord)

"Our initial goals, the survival of Ruby's Cafe, where it sits now, today, were met." (Meyers)

"Eventually yes. But only because of the decision that was made by the Mayor." (Haddad)

"Yes, we stopped the action." (Pruyn)

"Yes, there's no overpass, there's no underpass. We're still here; we're surviving; our customers still have access to us. Yeah, our goals were met." (Weis)

How they participated. Although this group was formed late, around December 5, 1994, a few of the owners had been involved prior to POP's formation. Haddad went to some of the public meetings; he did not attend any of the CAC meetings because he knew that there was a representative from Tremper's Shopping Center (Bill Tremper), where his business is located, already on the committee. He also met with city officials, namely Joe Aldegarie, then Public Works Director.

Pruyn attended public meetings and also talked to the agency on his own initiative. Both Don and Conley Lord attended some of the CAC meetings and the public meetings. Weis began attending meetings in November 1993 and indicated that he went to everything he heard about. Meyers indicated that he was aware of the project through the media, but didn't become active until his business was threatened by right-of-way acquisition. At that point, POP emerged overnight. The group collected money, drafted up petitions for placement in businesses surrounding the intersection, and paid for advertising to support their position.

Their activities culminated in their attendance at the third public meeting. In addition to being at the meeting, they set up a table with literature explaining their position, petitions and "SAVE MY JOB/STOP THE OVERPASS" buttons. Most of the interviewees were upset because Group 2000, the public relations consultant for the project, made POP move their table down the hallway at the Vo-tech, back away from the entrance to the public meeting. This was so people would know that they were not affiliated with the agency's meeting and from the perspective of POP, it was so that they would be out of the natural flow of traffic for the meeting and less accessible.

Perception of the process. In general, the business owners felt that there should have been a better, more responsive public involvement program from the agency. To at least two of them (Meyers and Pruyn), the public input process really began with the third public meeting and the other meetings were not included in their view of the public input process, mainly because they were not following the project. Or else, because no one specifically solicited their opinion, their was no real involvement until they joined POP.

"I think because of the ramifications of this project, they should have had more local involvement. Most of the involvement was after the fact. We'd heard about it, but I

definitely wasn't solicited for any information on this." (Meyers)

"If you're going to start with public input, you should start with public input before you start, not after you start." (Pruyn)

Most of the others were more concerned about how they felt the process was manipulated.

"The Consultants stacked the discussions, limited the discussions, and had a hidden agenda from the beginning." (Haddad)

"All the meetings and everything were gingerbread, just to satisfy the way the program had to work, that they had to have this input." (D. Lord)

"They [the agency] used this process to meet their own agenda - right down to the questions they asked - they were all loaded, you couldn't answer anything but agree with them; there was no other answer." (C. Lord)

Opting out. POP clearly moved outside the NEPA process in their activities, as evidenced by their self-evaluation of their activities on the Continuum (see Table 3).

"We went and got our own signatures and petitions. We had to go outside [of the process]. We felt we had to take action into our own hands." (Weis)

Their goals were clearly to influence the decision-maker in the selection of the overpass or underpass as the final alternative. This type of influence does not occur within the context of the public's input in NEPA, because that input is solicited only on the technical aspects of the project. NEPA was designed with the fundamental assumption that normally a

project being evaluated under its guidelines has a reasonable chance of getting done, even if it is modified during the process. As such, the No Action alternative is usually not seriously considered by the decision-maker. And unless the decision-maker chooses the No Action alternative, there is no provision in NEPA for stopping a project. This is why the activities of POP - petitions, setting up their own display outside the third public meeting, pressuring public officials - all support the tenet of stepping outside the NEPA process and into the political arena to achieve their goals.

"Basically, what happened at the end, we went to the Mayor and said, this is what happened so far, the political reality is that nobody in this town wants this monstrosity, nobody else is willing to listen to us, and if you take it to the City Council, you can kiss your mayorship goodbye, people are not going to vote for you." (Haddad)

At this time, the Mayor and City Council were feeling the pressure of other controversial city decisions, such as the proposed annexation of Reserve Street, which had erupted in a public demonstration at City Hall just prior to the public meeting in December 1994. Faced with those types of pressures, the collection of 10,000 plus petition signatures, the media coverage around POP, and the 523 written comments received at the public meeting, it is certainly feasible that Mayor Kemmis would have come to the same conclusion as Haddad.

Study Group's self-evaluation using the Continuum

Each of the nineteen interviewees was asked to look at the Continuum of Community Relations, and answer four questions⁹: Their responses are provided in the Table 3.

⁹ Question numbers 19 through 22 correspond to the list of interview questions in the Appendix.

Question 19. Do you think you fit any place along this continuum at any point in your involvement?

Table 3. Response to Interview Question #19.

Org.	Interviewee	Coop.	Comp.	H. T.	Conf.	Cris.
CAC:	Anderson	X				
	Lerum	X	X			
	Zinne	X				
	Stoltz	X	X			
	Williams	X	X	X		
	Smith	X	X			
	Yewusiak	X	X	X		
	Nettleton	X	X			
	Mahlum	X				
Bike Msla:	Cleminshaw		X			
	McGrath		X	X		
	Harrington	X		X		
POP:	Meyers		X		X	
	Haddad	X		X	X	
	Pruyn			X	X	
	D. Lord	X	X		X	
	C. Lord	X	X		X	
	Weis	X	X			
	Thibodeau	X	X	X	X	

The self-evaluation by the interviewees shows most readily that the continuum itself may either be misnamed or not responding as expected. If this were a true continuum, one would not expect to see gaps from one phase to the next, but rather movement directly from one phase to another. However, it is clear from the interviews that some members of Bike Missoula and POP felt that they did not engage in activities or perceptions that characterized the adjacent phase, yet did identify with attributes of a non-adjacent phase.

This represents more of a semantic failure, in the authors of the model labeling this a continuum, than a substantive failure of the usefulness of the model at this point. It would be more valuable to view this model in terms of independent classifications of participation rather than consistent movement from one phase to another. Perhaps a more appropriate title for the model would be "Classifications of Public-Agency Relationships in Public Participation."

Question #20. Did you move around the continuum? When? What prompted that movement?

All of the CAC members, except Smith and Yewusiak felt they were in their respective locations on the continuum (even occupying several positions simultaneously) throughout the entire process. Smith moved to Competition at the third CAC meeting when she began to disagree over resource allocation - how the agency was planning to spend the CMAQ funds. Yewusiak moved to Competition when he realized he wasn't going to receive any acknowledgment or response to the detailed letters he sent to the agency.

In Bike Missoula, Cleminshaw felt she stayed in Competition throughout her involvement in the project. McGrath moved from Competition to Heightened Tension as the Consultants *"consistently ignored or rejected or distorted what that group [POP], let alone what the public meetings came up with ... then it was much more of a process that was*

discredited." (McGrath) Harrington initially started in Cooperation in this, his first NEPA project, but quickly, after the first public meeting, moved directly to Heightened Tension when he began to view his participation in terms of "positional claiming stances" (see Continuum in Chapter II) and challenged public processes.

The members of POP showed much more radical movement than the other groups. Meyers felt he entered the process at Competition. Given his late entry, he vaulted directly into Conflict when his business was threatened. Haddad started in Cooperation, then moved to Heightened Tension and Conflict by the third public meeting when it was clear that the overpass and underpass were going to restrict access to his business. Pruyn didn't really understand the model¹⁰; he did express the thought that the public input process was unfair and *"they [the agency] were no more responsive than they had to be."* (Pruyn) Both Conley and Don Lord answered the continuum questions similarly; they entered the process in Competition, skeptical that the process would be open. Then they moved to Conflict, *"at one point, in the Fall of 94, all of a sudden, we could see the handwriting on the wall and it didn't look good for any of us. And that's when we jumped very quickly to the other side of the chart [continuum]."* (D. Lord)¹¹

Weis had a very different interpretation of the model than the author or the other interviewees, as indicated in the

¹⁰ This interview was constantly interrupted by phone calls and staff, so it was difficult to get him to concentrate on the model and answer specific questions about it. Given that his input was still important, inferences were made on his location on the continuum based on the answers to the other questions in the interview.

¹¹ The Lords indicated in their interview that they thought, when looking at the model, they went to crisis. However, it was evident from their views that they were interpreting "crisis" in a personal sense; in other words, they felt they were in a personal and professional crisis due to the threat to their business. This is not what is indicated by the label "conflict" in the model, rather crisis in the model reflects severely disruptive behavior that leads to arrest and possibly violence. Their participation in the project was really more reflective of conflict, as defined in the model.

table above. He stated that he felt he was in Cooperation and Competition during the entire project; although he did admit that the formation and activities of POP were outside the scope of the process.

Question #21. Did you ever get to Conflict or Crisis? If yes, what motivated you? Were you satisfied with the results of your actions in this phase?

This question in this series only applied to members of POP because they were the only ones to get to Conflict as evidenced in Table 3. The motivations of POP have already been discussed earlier in this chapter. They were all satisfied with the results, except for Thibodeau, who as indicated earlier, is still facing a potential threat now that the project has shifted to looking at ways to shunt traffic from South Avenue to Brooks Street, the location of his business and property.

Question #22. If you answered no to #21, did you identify with any of the tenets under Conflict and/or Crisis, but choose not to act? Why? Did you consider legal action to meet your goals?

This question had two parts. The first applied to the members of the CAC and Bike Missoula. The question's aim was to determine if people considered the actions under Conflict and Crisis to be legitimate forms of public participation. The second, regarding legal action, applied to all three groups.

Only one of the CAC members interviewed (Smith) felt she identified with the tenets under Conflict and Crisis, even though she did not move to this phase herself. Smith felt that moving into Conflict/Crisis was a legitimate way for people to meet their goals, and she mentioned that she was supportive of the efforts of POP. The rest of the CAC members did not identify with Conflict or Crisis either because they preferred to

do business in a more cooperative manner or they felt it went against their personal nature.

Two members of Bike Missoula (Cleminshaw and McGrath) identified with Conflict and Crisis. However, Harrington did not; *"because I kind of like NEPA. It was there and I wanted it to work."*

The question of legal action was directly tied to the responses given regarding identifying with Conflict/Crisis. None of the CAC members would have considered legal action, Bike Missoula was not in a position to sue anyone since they did not even have recognized non-profit status.

Not surprisingly, most of the POP members felt that legal action would have been their only recourse had their attempts at political pressure failed.

"If this hadn't of worked, the only other alternative I feel would we would have ended up in court." (Meyers)

"I think that had the Mayor and the City Council gone along with that proposal, then eventually I think we would have taken the city to court." (Haddad)

"I think we probably would have looked at, down the road, having to do something like that [legal action]." (D. Lord)

"Yes. I'm certain that legal action may still take place." (Pruyn)

Conclusions

In the Brooks project, did public participation follow the continuum?

All of the phases of the model, except Crisis, were ultimately present in this project. Yet, as discussed earlier, they were represented more in terms of independent states than as a continuum. The term "continuum" does not

accurately describe this model in evaluating this project. Despite that, the author feels that there is some useful information to be gleaned about public participation and perception from the examination of individual phases of the model.

Although all groups were represented in the first phase, Cooperation was evidenced most clearly in the CAC. Most of the CAC members felt that their role was to participate in a forum set up by the agency and to act as a liaison between the agency and the general public. Most felt that they were in a cooperative mode, some of which can be attributed to their professional roles in the community, but also in their willingness to believe in the legitimacy of the public process. Three of the nine CAC members expressed skepticism about the process, indicating that since the end product (the overpass) was pre-determined, in their view, that ultimately the public input process was suspect. And given that, their participation may not have been very meaningful. They expressed that they stayed involved for the most part even having this attitude in order to stay informed and try to continue to influence the direction of the project, even though the effort may have been futile.

The question arises as to how influential the CAC was in the project. This is difficult to measure since there is no written record of how the agency responded to CAC's concerns about specific aspects of the project. As such, judgment on the level of influence of the CAC is left to the self-perception of its members. The three skeptics felt the agency was being unresponsive. The other six CAC members who supported the role of the CAC in the process felt that their suggestions and questions were being addressed by the agency, and therefore the CAC could have been influential.

In terms of the model, being in the phase of Cooperation would tend to support the latter view. The agency and the CAC were engaging in mutual respect in this phase and it would be expected that the CAC could influence the specifics of the

project. However, it would not be expected that the CAC would be able to influence the overall life or death of the project in this phase, which indeed they did not.

Conceivably, any member of the public could be influential within the NEPA process, provided it is within the context of the specifics of the project. As such, the influence of the various groups is highlighted here because the CAC was most interested in influencing the consultants on project specifics (e.g., engineering designs, air quality, etc.), while the POP was interested in influencing the decision-maker on the selection of a final alternative.

All of the groups had a representative in the second phase, Competition. Individuals in Competition disagreed over resource allocation (such as how the CMAQ funds would be spent) or challenged the status quo.

Heightened Tension is also represented by at least one member of each group. Only one person, Pruyn, started in Heightened Tension. Pruyn never really trusted the process, participating almost begrudgingly because of the potential impact on this business. Other members of POP participated in the third public meeting as part of the agency process, and exhibited loud, angry and confrontational behavior.

Two members of the CAC (Williams and Yewusiak) and one member of Bike Missoula (McGrath) ended, by their own evaluation, in Heightened Tension. However, their perception is notable more for a sense of futility rather than active exchanges or challenges to the process. This points to a weakness in the model. The model assumes that all interaction is characterized by pro-active behavior, as evidenced by terms such as "creating", "testing", "challenging", "pursuing", and "disrupting." There is no discussion of apathy.

As such, the model overlooks a category of behavior in public participation, one particularly noteworthy in the public's interaction with government. This behavior is really

characterized by reluctant participation, feeding on a sense of futility that it is doubtful anything will ever change, but one has to try anyway. While these three individuals ended up in Heightened Tension, it was largely due to a sense of futility with the process. This is in contrast to the members of POP who were in Heightened Tension during their participation and were actively pursuing their goals in a manner characterized in the model.

Conflict is only represented by members of POP. The formation of the protest group really happened in the transition from Heightened Tension to Conflict. However, it is clear that when POP members began their own campaign to stop the overpass/underpass, they had moved out of the NEPA process into the political realm.

Weis rejected the idea that POP's activities reflected Heightened Tension or Conflict. He recalls that all of the activities of the group were conducted with mutual respect and never any loud or confrontational behavior. Despite the fact that Weis' characterization of his own actions on the continuum do not support the contention that the activities of POP placed them in Heightened Tension or Conflict, he thought their activities were outside the scope of the process. And my own observation of Weis' confrontational behavior at the third public meeting would seem to support his placement at least in Heightened Tension. It is understandable that since there is seemingly no longer a direct threat to Weis' business or anyone else's in Tremper's Shopping Center given the current proposals, that time has softened his memory or the recounting of events.

The results of the interviews indicate that none of the public ever reached Crisis. Although there was discussion by Bike Missoula of a "die-in", an incident that surely could have provoked arrests, that was never carried out.

Where on the continuum did the public choose to leave the process?

As indicated in Chapter IV, the only individuals identified as part of this study that left the process were members of POP. While Bike Missoula had that potential, their lack of cohesiveness and interest as an organization in this particular project precluded that from occurring.

POP were in both Heightened Tension and Conflict simultaneously in December when Meyers first discovered the City's plans for an overpass or underpass.

"I found out about it - I was never notified by any city, governmental or study commission - when the blueprints came out, the public meeting had already been set. And it was another neighbor, Dr. Pruyn, who was the first one who notified me." (Meyers)

Forty-eight hours later, the Missoulian published details of the preliminary design drawings of the alternatives showing the proposed removal and restriction of access for several businesses along Brooks Street. Simultaneously, the POP group was forming and the members (previously involved in the project as individuals) were moving from Heightened Tension into Conflict. So, though the formation of the group and the movement into the Conflict phase of the continuum actually occurred just before the article was printed, the article itself would have been the first public notice of the event.

It is important to clarify how the POP could be in two phases of the continuum simultaneously, yet also be perceived to be moving between phases. As stated in the original discussion of the continuum in Chapter II, the continuum is a dynamic model. As such, it is possible that there could be constant movement between phases, or that there several phases could be occupied at the same time.

This is evidenced by POP because they were trying to keep all of their potential avenues for influence open. On one hand, they continued to participate in agency-sponsored events, such as the third public meeting. However, literally simultaneously, outside the hall of the public meeting, they also were operating in the political arena, trying to influence the decision-maker by generating mass public support for their position. As such, it should be pointed out that when POP members "left the process", they weren't necessarily thus operating in only one phase of the continuum.

Based on their interviews, they would have continued to participate within the process as long as necessary, for example by attending the public hearing, in an attempt to influence the outcome of the project. However, not trusting that they would be able to achieve their goals solely within the process, they moved into the political arena as well, thus attempting to maximize their influence.

Where they were when they left the process varied among POP members. As shown in Table 3, Haddad, Pruyn and Thibodeau were in Heightened Tension and then moved to Conflict. The others, Meyers and the Lords, moved from Competition to Conflict. The Lord's attributed their jump from Competition to Conflict (thus skipping Heightened Tension) to the fact that they were participating in the process, with disagreements with the agency. Then when they saw the blueprints, they felt they were in a very different kind of situation. Suddenly, it became necessary, in their eyes, to take additional and direct action to stop the overpass/underpass. This explanation of their "jump" further supports the idea that the continuum may not be a continuum after all, but rather a collection of independent phases of action and participation.

When queried about why they pursued the methods they did (e.g., petition drive), most POP members indicated that they felt this was the only way to get their point across. The project had been ongoing for over a year by the time they moved into conflict, and most felt that they needed to take action or the

project would go through as the agency planned. All of the POP members stated that the project could currently be under construction right now if they hadn't taken action when they did. They indicated that there were still a few other methods they could have employed, either demonstrating at the City Council meeting where the project was to be approved, or else litigation.

They felt that the agency was going to make the decision to go ahead with the overpass/underpass regardless of what the public had to say.

"Our interpretation was that this situation was so close to done deal." (Meyers)

"Until they were beat over the head, they never stopped." (Pruyn)

The signal to move out of the process was their feeling and frustration that the agency was not going to change plans for implementing one of the final alternatives, regardless of the public's opinion.

What are the ramifications of opting out between Heightened Tension and Conflict?

My initial assumption, in light of the Continuum, was that when participants chose to opt out of the NEPA process, they would do so between Heightened Tension and Conflict. This was a natural break point in the model for opting out. However, it is clear from the self-evaluation that some members of POP chose to opt out while they were still in Competition. This evidence, combined with the author's earlier critique that the continuum may instead be a series of independent classifications, leads to the conclusion that opting out can occur either at Competition or Heightened Tension.

It would seem that there would be no real difference whether participants opted out at Competition or Heightened

Tension. This may be a product of timing. For instance, the Lords who had been participating in Competition (e.g., attending meetings) until the immediate threat to their business (when the blueprints become public) initiated their jump to Conflict. It also may be that some participants reach a point of frustration and futility with the process before they reach Heightened Tension and decide to opt out at Competition. It is unlikely that opting out would occur at Cooperation, given the mutual interest in maintaining working relationships in this phase between the agency and the public.

Since participants in this project did choose to opt out of the NEPA process, however, it remains useful to discuss the ramifications of that action. The protest group attempted to gain control of the outcome by moving outside of the process, since they felt that the process was unresponsive to their goals. In this case, they were successful, largely because of the support they received from the community (in the form of petition signatures and donations), their economic influence as business owners, and the high level of political tension already in existence for City officials over other controversial projects.

All of the POP group members interviewed felt that taking their position into the political arena was ultimately the only way to achieve their goals, which were to stop the overpass/underpass and ultimately to stay in business. Although they did not preclude their continued participation in the process, thus maintaining all avenues of potential influence. They were successful in the political arena because the citizens of Missoula overwhelmingly came out in support of POP. This is evident in the 10,000 plus signatures collected on petitions, the money collected, and the attendance at the third public meeting. More than twice as many people were present at the final meeting compared to the two previous public meetings.

Ultimately, moving outside of NEPA into Conflict resulted in a significant amount of political pressure, enough to convince City decision-makers to drop the overpass/underpass and look for other solutions to Malfunction Junction.

It is possible that POP could still have been successful had they gone directly to Mayor Kemmis to pressure him into stopping the overpass/underpass plans from proceeding. However, it seems clear that the political pressure that POP actually did put on the Mayor was reinforced by community-wide sentiment. POP may not have been an influential enough force on their own without the public outcry supporting their position. In addition, they may not have felt that they could have pressured the Mayor without that support.

Whether the CAC's and Bike Missoula's goals were met is more difficult to characterize. Both the CAC and Bike Missoula supported the end result, that the overpass and underpass were dropped from further consideration by the City. Yet, their project goals of better air quality, more efficient transportation systems, and bike lanes were not met with the success of the POP. However, the story does not end with the January 1995 announcement that the Overpass was dead. The City is continuing to evaluate alternative routes, which may result in meeting the goals of the CAC and Bike Missoula in the long run.

Summary

The Brooks project is a case study that illustrates the range of public participation activity that can occur with NEPA projects. Some of that activity took place within the NEPA process, as intended by the law and corresponding regulations; other activities were clearly outside the intent of the law. When members of the public stepped outside of the NEPA process and into the political arena they were successful in influencing the project to their satisfaction.

The interviews conducted for this study show several things regarding public participation in NEPA projects. The public is willing to provide their insight and opinion on community projects and often go into this process with an interest in cooperation. Also, the public agrees that they

should be involved in agency decisions that impact their community and their environment.

The public expects that their opinions and suggestions will be listened to sincerely by the agency and followed. In addition, the public is not necessarily willing to limit the scope of their input only to the technical questions being considered in the NEPA process. They are also interested in using this forum to discuss larger policy issues, which is not the intent of the law.

Moreover, when the public's input regarding these larger questions of policy (e.g., whether a project should actually be developed or not) are not followed, they are likely to move into the political arena to influence the outcome of the project. While moving into the political arena to discuss these larger issues is probably the most appropriate action, the NEPA process suffers. Since the agency has no mechanism with NEPA to respond to these larger issues, the process itself becomes discredited because it is perceived as being unresponsive and ineffective. This occurs despite the fact that the process is not designed to be the forum for discussion of these issues. One could argue that even such a discredited process is useful since the public does have a mechanism for receiving information and determining if their concerns are being addressed. However, the discrediting of the NEPA process feeds a larger mistrust of government. Whether on substantive grounds that distrust is justified or not, it seems inconsistent with the intent of NEPA that the *process* stymies public-agency relations.

In the Brooks project, participants became frustrated with the *process* because they were unable to stop the project. They were responding to the agency's request for input, yet that input (stop the overpass/underpass) was ignored by the agency and the project threatened to go on with those alternatives.

By moving into the political arena, the public is no longer participating in the NEPA process as provided by the law. The public has had to develop their own "stop-order" mechanisms,

since Congress rejected the inclusion of this provision in the law. In the Brooks project, the stop-order mechanism was political pressure on the decision-maker. If this had not achieved the desired results, other mechanisms would likely have been employed by the public to reach their objective.

The Continuum of Community Relations had several failings as a useful tool in evaluating public participation. One, it turned out not to be a continuum after all, as members of the public did not always move directly from one phase to another, but in some cases, skipped a phases in their movement. As such, the model may be more useful if seen as a collection of independent phases that characterize participation, without the assumption of adjacent movement, as indicated by the word "continuum."

Second, the model fails to consider types of activity that may be more passive, rather than active. For example, there seemed to be no real place for reluctant participation, or continued involvement despite a sense of futility about one's effectiveness.

Third, the author questions the overall value of the continuum in allowing a researcher to understand how and why the public participates in NEPA projects. The model was borrowed from the field of Conflict Resolution, as there were no existing models to evaluate public participation. It was adapted specifically to the NEPA process and at the end of the study those adaptations seemed forced. Also, in future research, it should be determined what the value of interviewee self-evaluation (Table 3) is to the analysis. There may be a better method for evaluating participation other than asking the participants to place themselves in a model.

In addition, the continuum proved to be a difficult field tool. Due to its complexity, the five phases and their interaction with the NEPA process were not easily understood by the interviewees.

VI. A CITIZEN'S GUIDE TO PARTICIPATING IN NEPA

And the Lord spake unto Moses, "There is both good news and bad news. The good news is that plagues shall smite your Egyptian oppressors. The Nile shall be turned to blood. Frogs and locusts shall cover the fields, and gnats and flies shall infest the Pharaoh's people. Their cattle shall die and rot in the pastures, and hail and darkness shall visit punishment upon the land of Egypt. Then will I lead the children of Israel forth, parting the waters of the Red Sea so that they may cross, and thereafter strewing the desert with manna so that they may eat."

And Moses said, "O Lord, that's wonderful; but tell me, what's the bad news?"

And the Lord God replied, "It will be up to you, Moses, to write the environmental impact statement." (Russell Peterson, Chairman, CEQ, 1975)

This chapter is intended to provide some helpful hints on participating in NEPA projects, as well as some insight on when to bypass NEPA to achieve your goals. Most of this information is based on the things I have learned as a third-party consultant responsible for writing and editing categorical exclusions, EAs and EISs, as well as my current work with a state agency on MEPA compliance. I include MEPA¹² (the State of Montana's "little NEPA") in this part of the discussion because in Montana there are times when both laws are applicable (this was the case in the Brooks project) and also given that the state owns considerable amounts of land that is subject to MEPA analysis.

I have included my observations, most of which have been confirmed through reading twenty-five years of research on NEPA (see Bibliography). I have also added what I call

¹² For readability, in the context of this chapter, I will only use the term NEPA, with the understanding that this also implicitly includes MEPA.

"reality checks," where I think it is important to point out that even though this game has rules, there are also predictable components.

Working within NEPA

Expectations

Some activists may argue that this is buying into the system and it's the system itself that is corrupt. I agree. Yet, while efforts are underway to change the system and the dominant social paradigm that says "more is better," I think that NEPA is what we have to work with, so let's use it to its full potential.

The most important part of participating in a NEPA project is to make sure that your expectations are realistic. Remember that if a project has reached the point where it is undergoing NEPA review, which is usually the point where the public first hears about it, then the agency is probably committed to its completion. In other words, since the agency has decided to go through with the project, your primary impact will be in the project's design and mitigation.

When to participate

If you aren't opposed to the project altogether, but want to be sure it is done with all best attention paid to environmental impacts and mitigation, I think it is possible to make a difference.

If you are wholeheartedly opposed to the project, then you may consider not participating in the public input process set up by the agency. However, my advice is to participate. Here's why. It is important to establish a history of involvement. This may not be written anywhere in statute or regulation, but I have seen that you are more likely to garner legitimacy and respect for your position if you have been active in the public participation process set up by the agency. Then, if after participating, your goals still have not been met,

and you choose to pressure the decision-maker(s) politically or judicially to stop the project, there is a proven interest in the case (which may prove beneficial to establishing standing for litigation purposes).

Be aware of the limitations of NEPA, and this will make for more effective advocacy. This may sound pedestrian, but in my own progression of thinking on environmental advocacy, I needed to come to this point of understanding to get beyond my own frustrations with the lack of responsiveness of the system to my values. And since I had never really taken the time to read the Act, I was basing my expectation on what I wanted NEPA to be, rather than what it was intended to be.

NEPA was a fairly remarkable law, even for the Congress of twenty-five years ago. Yet, consider that NEPA has attempted, and at some level, succeeded in interjecting environmental values into the progress-development-oriented value system. Granted, it hasn't caused a revolution, but it has been part of a slow evolution in precautionary agency decision-making.

How to participate

The first step of course, is education.

If you haven't already, read NEPA, the original legislation, amendments, CEQ guidelines and agency guidelines. One of the provisions of NEPA was the creation of the CEQ, the Council on Environmental Quality, which was charged with establishing guidelines for the implementation of the law. The CEQ has developed guidelines for implementing NEPA; in addition, each federal agency has developed its own internal implementation guidelines, which usually include specific requirements for public input. Knowing the agency's guidelines will better prepare you for finding inadequacies in the process.¹³

¹³ A note about process. When NEPA was passed by Congress, it did not include any provision for enforcement. There was some initial indication that this would be a function of the Bureau of the Budget (now the Office of

Request that you be put on the agency's mailing list for the project. Generally, the agency will already have a list of concerned parties that will be notified about most projects. For small, localized projects, this list will generally include adjacent landowners, other agencies with an issue or geographic interest, and public interest groups or individuals who have shown interest in projects in the past. Don't assume you are on the list. Contact the agency, preferably in writing so the information has less chance of getting lost, and request to be put on the mailing list.

Participate in public scoping. Public scoping was an idea incorporated into NEPA by the Carter administration. It was an attempt to formalize the public input process, to give the agency an opportunity to know from the beginning what the issues are for the project, and have those issues considered throughout the project. (Taylor 1984) Technically, it only takes one person to identify an issue through scoping, however, it is also the case that having a number of people voicing the same concern will help in stressing its importance to the agency. Don't assume that since something is obvious to you as an issue, that it has already been considered by the agency or that someone else will raise it. Granted, the agency still has the discretion to determine that the issue is not significant.

[Reality check: Keep in mind that the concept of agency discretion - i.e., we know our job better than anyone else - while not necessarily in writing, clearly underlies much of the administrative authority of federal and state agencies and can be upheld in court.]

Management and Budget, OMB), but the Bureau bounced it back to CEQ, who basically did nothing (Anderson 1973). Enforcement then, has come from the judicial system. Environmental groups began taking agencies to court the same year the Act was passed, and initially the courts responded quite favorably on substantive issues. However, in the 1980s that changed as the Supreme Court began reversing decisions made by lower courts, stating that the lower courts were incorrect in trying to override the substantive authority of agencies. Since then, the courts have come to rule primarily on procedural issues rather than substantive issues (Vig and Kraft 1990).

Encourage others to participate. In this process, numbers do count. An agency can be pressured by sheer numbers of people who are interested in their project. If an agency doesn't hear back from the public when they request input, they'll assume people aren't interested.

[Reality check: It is difficult for one person to make an impact in this process, unless the person has name recognition, political power, or represents an influential organization. Of course, name recognition can be a liability too, depending on the person's reputation and/or history of involvement with the agency.]

Read the document. An obvious statement, yet an important one that relates to commenting. Oftentimes, especially with EISs, the documents are cumbersome and highly technical. Some tips:

- The first thing to do is check the document's table of contents. NEPA specifically lists the required contents of the document. If any of these are missing, the agency can be taken to court for inadequate process.

[Reality check: Of course, all this may do is delay the process, and end up costing the litigants a lot of money. However, there have been instances where the delays caused by lawsuits and ruling from the courts of an inadequate document, have led the agency to drop the project. It is also true that the threat (and actuality) of a lawsuit that forces an agency to prepare a NEPA document for a proposed action, has also been sufficient for an agency to drop a project from further consideration. (Deeble 1995)]

- When reading the discussion of the proposed action, jot down the questions about its design and the impacts that come to mind, and then check the document to see if those concerns have been addressed.
- If you don't have the technical expertise to evaluate the agency's environmental analysis, try to find someone who does and request, even purchase, their input.

- Make note of the mitigations that have been proposed to address environmental impacts. Are they adequate? Are there other measures that are required by law or would help protect the resource under consideration?

Respond to the document in writing. Again, numbers count here. Some agencies use the number of responses as a tally for support or rejection of alternatives. Some agencies welcome the public's input, while others may not be that keen about the public telling them how to do their jobs. Nonetheless, the law does require the solicitation of public input, so take advantage of this fact. A few tips:

- Contact the authors of the document and discuss your concerns with them. They may be willing to provide some insight as to the strengths and weaknesses of the document.
- Provide two levels of comments: A) The first part of your comment should give your perspective of the overall project. Do you agree or disagree? Why? I personally believe that this is an important part of your overall comment, however, if you stop here, then the effectiveness of your input has been seriously reduced. B) The second part should include specific criticisms of the document, the design of the proposed project, the analysis, the conclusions, and the proposed mitigation.
- In part one, although it is important to express your opinion, try to minimize the emotional nature of your appeal.

[Reality check: I personally believe that emotional response is as germane to the discussion as the impact of, for example, hazardous materials on water quality resulting from a project. However, the reality is that the agency probably doesn't care how you "feel" because they don't have any mechanism for responding to that within the context of their NEPA requirements, and will usually end up giving less credibility to your statements if they are infused with emotion. Their document is technical, precise and dispassionate. Your

comments may be more effective if they follow the same format.]

- NEPA directs agencies to respond to substantive comments. Be as precise as possible in your technical arguments. If you are questioning the validity of the analysis, be sure to include precise reasons why. Give the agency something to think about, make them either defend the validity of their work, or convincing reasons to change their positions. If your criticisms are vague, or are solely your opinion, then don't expect much of a response other than "comment noted."
- If you make an assertion, base it on fact, and when possible, provide a reference. Make your argument easy to understand and supportable by available sources.
- Organize your comments logically. Discuss each point thoroughly, yet not ad nauseam.
- Don't use inflammatory language. At this point in the process, remember that you are participating in a mutually-respectful environment, and your ideas will be given much more merit if they are presented respectfully, instead of rudely. Don't turn the reader of the comment against you personally; chances are this will reduce your credibility and then you will have achieved nothing, not only in this project, but also perhaps in future projects with this agency - most likely they'll remember you as a troublemaker. This is fine if your goal is to create an adversarial relationship with the agency; but may work against you if you are simply trying to voice your opinion.
- Another simple point, yet one that is frequently ignored is turn your comments in by the deadline specified by the agency. Often, an agency has an internal deadline and budget for analyzing and responding to comments, and late comments can be disregarded or cause resentment in later processing.

Attend public forums. In addition to public scoping, agencies will also hold public forums on proposed projects. Sometimes they take the form of public information sessions (in which the public is mainly provided information on the

project), public meetings (where there is exchange between the agency and the public), and public hearings (official meetings in which spoken testimony is recorded). It is usually within the discretion of the agency to set how many meetings, how often, and meeting format to use in public forums.

Depending on the controversy surrounding the project, sometimes public information sessions can be ineffective because the public feels that they are being "sold" on the project, without being given any real opportunity to speak their minds. In other cases, meetings are set up so that you can give your opinion, but you don't receive any feedback from the agency.

[Reality check: Both of these formats are used specifically by agencies to reduce conflict and sometimes to "divide and conquer." For example, in the Brooks project, the public relations firm specifically set up the third public meeting with multiple information stations each attended by a representative consultant. This format was chosen specifically to reduce any potential conflict that could be focused centrally on the City or consultants. The public response was defused by dispersing the public through the meeting, rather than having a concentration of people in a give-and-take with the agency.]

Obviously, the agency would like their project to go through with the least amount of public distress, but don't let this dissuade you if you think they are holding an inappropriate forum. Make noise; challenge the agency directly before meetings (again, numbers count here) or at the meeting itself.

[Reality check: One note of caution. Although I agree there comes a point when making noise is the most effective course of action, just be aware that depending on the agency, loud public noise can sometimes cause an agency to feel like a rat caught in a corner. Instead of responding to public pressure by changing, they may entrench and try to discredit the source of the disruption. It happens.]

- When attending public forums, talk to as many agency people as possible about your views.
- Ask questions. Be specific.
- Leave comments (if a medium has been provided) or send in written comments after the meeting (in addition to any written comments you may have in response to the document).
- In public hearings, be precise in your testimony, as it will be analyzed in the same context as written comments. Focus your attention on agency personnel and speak directly to them.
- Avoid getting into a debate with fellow members of the audience.
- Don't proselytize. Don't criticize anyone personally; this reduces your credibility. Remember that these are just people, working under a specific set of legislative and legal constraints particular to their agency; they may agree with your point of view, or they may not. Their choice to work for an agency may be that they buy into the system, but it also may be that they are trying to do their part to effect change from within.

[Reality check: In my own experience, I have seen otherwise legitimate comments discounted behind closed doors because of the behavior of the individual; no one likes to be bullied. I suppose one could argue here that this is all playing into the system, and sometimes you have to yell to be heard. I agree. And I'm getting to that.]

Try to keep up-to-date on the project. The NEPA process can extend over a long period of time. If the proposed project is important to you, stay involved. Even if nothing is specifically organized in terms of public input, call the agency contact for an update on the project. Be proactive in your interest. Once you enter the process, it can make an impact if you follow it to fruition. It shows your seriousness about the project, and also can help legitimate your standing later on if it ends up in court.

Influencing the Decision-Maker

Okay, you were opposed to this project all along, but you participated; you went to meetings, you wrote comments, and the bottom line is that the project is still going ahead. We've all been there. And you may have reached your point of frustration long before the final decision was made; often it is not hard to see if the agency is being responsive. Where you step out of NEPA is really project-dependent. I think that it will largely hinge on what it will take to get the project stopped and who the decision-maker is for the project. The higher up the political ladder the decision-maker is, and the further insulated that person is from political pressure (e.g., a governor is much more insulated than a mayor - this was evident in the pressure put on Missoula's Mayor Kemmis by the business community to stop the "Malfunction Junction" project in 1995), the more it's going to take to get the project stopped.

What's your interest and how far are you willing to go to pursue that interest?

At this point, it is obvious that it's time to take stock and figure out what your level of commitment is to stopping the project. Some people may feel that they did their best during the NEPA process, and that's as far as they want to go. Others may feel that they need to do more.

The options at this point are varied, and really are largely dependent on time, resources and creativity. The first step is to figure out who needs to be convinced to drop the project, and what can be done to influence this decision-maker. Sometimes that can be a project manager within an agency, an agency director, a mayor, city council, governor, etc.

Then its time to evaluate what will effectively pressure this decision-maker. Mass public response against the project? Public demonstrations? Threats to re-election? Threats of lawsuits? All of these are very real constraints in the world of decision-makers.

Next, given those two factors, who and how, can you do it?

[Reality check: A one-person campaign will be tough, but numerous individuals have done it, so its not impossible.]

Other considerations? It may be the case that the decision-maker, or the courts, are reluctant to stop the project before knowing the results of the final NEPA document. However, this time can certainly be used to garner large and diverse public support for stopping the project as well as developing a long-term strategy.

Do you have enough time to organize before the project gets underway? If time is short, a hard and fast media blitz may be necessary to put effective pressure on the decision-maker. In which case, it may be best to focus on events that will grab the media's attention - after all, the best publicity is free.

The main point is that the most effective pressure will be that which is shown to be broad-based in the community. It will be easier for a decision-maker to justify to the agency that they are stopping the project because no one wants it, rather than being pressured by special interests. Just remember that ultimately it all comes down to the public at this stage, and in politics, perception is often more important than reality.

APPENDIX
INTERVIEW QUESTIONS

NEPA Questions

1. Are you familiar with the National Environmental Policy Act, otherwise known as NEPA?
2. Are you aware that the Brooks project was required to undertake a NEPA process, which in addition to looking at the environmental impacts of the project, also required public input? When did you become aware of this?
3. Did you agree with the NEPA process when you started? Did you feel you understood it?
4. Did you challenge the process at any point? When?
5. Did you ever perceive that the process was unfair? When?

Project Questions

6. How did you first learn about the Brooks project?
7. When did you decide to become actively involved?
8. Why did you decide to become actively involved? Was there a particular issue that motivated you?
9. What were your goals, or your positions, when you first decided to participate?
10. Did your goals/positions change over time? When? How? Based on what motivation?
11. In what ways did you participate? Be specific. Provide time frames, if possible.
12. (IF APPLICABLE) What was your purpose in attending public meetings?

13. Did you feel the process/system was responsive to your concerns about the project?
 14. Did this responsiveness change (more/less) over time? When? Explain.
 15. Do you feel that your goals were met? Did you achieve your intended outcome? If yes, when? If no, why not?
 16. Did you consider different ways to participate? Be specific. List alternatives. Why did you reject or accept?
 17. How did you choose your method(s) of participation (e.g., on opportunities provided by the process)?
 18. Did you feel that any of the methods you considered would be outside the boundaries of the process? Did you accept or reject any methods of participation based on that?
- Show the continuum of community relations graphic.
Explanation of my research questions.
19. Do you think you fit any place along this continuum at any point in your involvement? Where did you start?
 20. Did you move around the continuum? When? What prompted that movement?
 21. Did you ever get to Conflict or Crisis? If yes, what motivated you? Were you satisfied with the results of your actions in this phase?
 22. If you answered no to #3, did you identify with any of the tenets under Conflict and/or Crisis, but choose not to act? Why? Did you consider legal action to meet your goals?

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