

Planning Nuts and Bolts: Scoping Process

As we talked about, FLPMA and NEPA both require that there is a scoping process done. We talked about how agencies need to be involved in the plan process and we talked about how NEPA requires both the input from agencies and also reaching out to the public to get their input.

All of these elements combine to be basically the scoping process. So, in the segment we're going to be talking about what scoping is and considerations as you're moving forward through the process.

As we move through this section, we'll talk about legal requirements of scoping, we'll talk about how the scoping process should consider different elements. There are different ways to do scoping. At the end of the scoping process, typically you summarize this through a scoping report and we'll talk a little bit about that also.

So first, talking about the definition of scoping. You have on your slide a definition from CEQ. It's important that the federal agency, as the lead agency for preparing an EIS in general, but of course for BLM in doing the resource management plan, it's important that they're thinking about issues and considerations from all different sectors. They're thinking about it in terms of internal scoping from BLM standpoint, they're thinking about it in terms of external scoping through other agencies, federal, state, local, tribes, as well as input from the public. And it's all of these elements that come into the process as the federal agency, BLM, through planning as they're planning the EIS.

You initiate scoping right at the prep plan stage. So you're doing the prep plan, you're thinking about scoping; really internally, talking to your team members, trying to figure out what kind of issues do we need to address in this plan process.

In the scoping, you're trying to reach out to figure out what kind of studies are necessary, what kind of experts you need, who are the important players that are going to give you information, whether it be, again, internal or whether you know there are external participants that need to be involved in the process. It's reaching out then to those external sources of information and also reaching out to the public in order to better understand, well, what needs to go in this plan.

As part of that then, you typically develop a scoping report where you're going to craft issue statements that should be addressed as you develop the plan and as you develop the EIS. This scoping plan will literally help you develop the final scope of work, if you will, for your plan and your EIS. So you do your prep plan, you continue scoping and you make changes along the way, alterations on where the most resources should be spent for doing an analysis of one kind or another. The right staffing, you might not think you need contractors, but you do need them or vice versa. You thought you needed them, but you don't. So, it's all of these elements that the scoping process really can help.

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You have a lot of guidance on scoping. We're not going to run through each one of these elements, but it is important to understand it starts right with FLPMA, it starts with NEPA, as we've already talked about and you at home already read your guidelines and your law, so you've got that under your belt. And then from that, you also understand the planning regulations go into a lot of detail; the planning handbook has a very important discussion on how you do scoping that should all be a part of that process.

When you talk about the legal requirements for scoping, again, you don't forget it's not just about planning, it's also about the NEPA process, it's about CEQ's regulations and also they have a very recent handbook that was published, Collaboration in NEPA, which gives some additional information on how to do scoping and the ways to do scoping. Again, from a NEPA standpoint, NEPA is looking at it in terms of the human environment, all the different impacts on the human environment. What better way to get input on all of these different issues but then to reach out to these other entities that might have special expertise or an opinion that needs to be at least addressed related to all of these issues.

There are special outreach requirements related to some of the laws that we talked about in the other segment related to compliance with the executive order on environmental justice, we'll see another slide on that in just a little bit, as well as outreach to tribes. There might be, you know, different kinds of outreach that you do particular to different tribes. All of those elements should be considered as you're going through the scoping process.

For instance, environmental justice, you're trying to identify the different populations, target groups if you will, that need to possibly get special communication whether it be translations of a different sources of information, it might be special meetings necessary to reach out to these different groups. If there are disproportionate populations, they, of course, need special attention related to the effects that could happen to that particular population. So, it's all of these issues that are important as you're developing, basically, a scoping protocol on the process that you want to include. You might be identifying resources necessary for translations. You may have special interpreters at meetings. You may have a particular facilitator that the local group is familiar with. It's all of these different measures that are part of the environmental justice requirement. And remember, environmental justice isn't about documenting the disproportionate effect; it's also acknowledging that you reached out to those populations to get information to communicate with them. It's all of those things that are very important.

And, Ken, before we move on, you might want to mention that the BLM planning handbook itself has guidance in Appendix D on environmental justice and special outreach.

Thanks. You might say that scoping starts at the Notice of Intent and it ends at the time of the record of decision, which is not exactly true. It's not necessarily one

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event or one particular time. You may have gotten information prior to issuance of the NOI that is very important in understanding how you're going to frame the planning process in the EIS. So it's not a particular event. It's not a particular time. It's on going process. You may get input after the plan has been approved, the ROD is signed, and you may get great input on implementation issues that may go into your next planning process. So again, it's all of these things. Scoping isn't just one thing, start and stop. It's input throughout your plan process, which you should be considering, recognizing. It's input from all different entities.

One of the important parts in the beginning of the NEPA scoping process is the Notice of Intent, though. So, from a NEPA standpoint, there's a requirement that federal agencies, when they decide to prepare an Environmental Impact Statement, they are required to publish a Notice of Intent or, as we like to acronym in the environmental world, NOI.

Planning regulations will require that the NOI is going to go out to the public and a mailing list that includes different governments, different tribes, anybody who has actually asked to be on the mailing list. It is typically published in the federal register, so you'll see that publication done that way also.

You have a number of references on how to do a Notice of Intent. Not just the CEQ NEPA regulations and the planning handbook, there's actually a format you can follow in the NEPA handbook in one of the appendices of it, as well as a couple of other sections going through some of the detail of what should be included in a NOI. And some of those things that need to be included in a NOI, of course, start with the purpose and need. And we're going to talk more about that when we talk about the planning goals and objectives in a later section. So you'll hear more about how to define the purpose and need. But first just recognize that's an important component in the Notice of Intent to start out to communicate to the public, here's our plan process. You're going to put the preliminary issues and planning criteria that you're considering; you're going to pull that from the prep plan, put that in your NOI so the public understands, okay, well these are the general considerations for this planning process that's going to begin.

You're going to have a general description of what you think the action is from development of a plan and the possible alternatives. Again, this doesn't have to be explicit or detailed. You just want to give the public the understanding, hey, we're going to be considering how to define this plan and also alternatives to the plan that are going to be part of the Environmental Impact Statement, part of the comparison of environmental impacts, the alternative comparison related to environmental effects.

Scoping process information should be in there as far as information regarding meetings, location of the meetings, time, if you have that information. Sometimes the NOI doesn't have that specific detail because the NOI is published earlier than the meetings have been planned. But if you have them, you put them in there or you can do a separate notice for the particular meetings. And also you, of course, should put

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the BLM contact person, their name in lights, if you will, and that's the person that's going to be receiving the comments on what is eventually, from the public standpoint or those answering the NOI, what they think should be included in the considerations of the plan process and the EIS.

And, Ken, some examples of the not knowing the time and date or the location of the meetings, some of the plans in the past have actually known the locations, but they didn't actually know the time and the date, so they actually put that the planning meetings, scoping meetings would occur in these locations, but they didn't have the specific time or date which they then published in the local or the regional newspapers to notify the public.

Very good. So some of the considerations, and we've talked about this a little for the NOI. And again, what's the NOI? It's the announcement to the public to other agencies, we are intending to prepare a plan with an Environment Impact Statement, please give us your comments on what we should consider as far as the environmental impacts are concerned, as far as alternative uses, those kind of things.

So you want to use clear language, neutral language, language that doesn't imply you've already made a decision. It's important you want this to be an open process. We talked about all these laws that require BLM to have an open process. You want that to be an open process.

If there are particular agency directives, national monument designation, whatever; sure, that should be in the NOI also. You want to make sure the public understands there may be particular agency requirements or considerations that need to be a part of the planning process. If you have that in succinct detail, that's good to put in.

If there's certain detail on any of the elements of the planning process that you don't know, just explaining why you don't know it, when that information's expected and how it might affect the plan process is important. You may have your NOI be in draft form and go to the Washington office for review. You need to check with current policy on that with the state office and with Washington D.C. to figure out what NOIs need to be reviewed prior to being published. And make sure you're aware that if things change along the way, there may be a requirement to republish the NOI. Basically publish a revised Notice of Intent if there are substantial changes to the plan process to alternatives that you first talked about. There may be a requirement to re-do the NOI.

And I might note that be sure to include the state office and potentially the Washington office review of your NOI in your planning schedule.

When you publish the NOI, it is required to be published in the federal register and I'm sure you all pour through the federal register like you do your daily newspaper. The federal register is the official publication for federal agencies to do all their noticing.

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So you'll see Notice of Intents for EISs for our federal agencies; have to be in the federal register. So you'll see them all there, of course including BLM's.

Typically BLM will have other ways of issuing the Notice of Intent. Typically through website, through a separate mailing list, possibly a targeted mailing list like those that haven't asked to be involved but you want to make sure start in that process, and of course your local daily newspaper could be another method of publication.

So one of the things as you're sitting in your group, if you're sitting in your group watching this presentation, you might talk to some of the folks that have gone through the scoping process and actually either run or attended scoping meetings, if they have any experiences on what they found to be most successful, what they found to be least successful, how did they adjust to accommodate certain issues.

Are you asking people out there? Okay. Bobby, have you had any experiences related to scoping meetings?

Well, the BLM often uses just the open house, open meeting. They have, in the past, shied away from the speaking and requesting oral comments at their public meetings. If the public attends, they often have an open house with BLM staff or contractor staff around the room at display boards and basically asking the public for a comment and jotting those down and making notes of those. While this is the traditional approach to public meetings and scoping, it may not be the best approach for your particular plan area and your particular stake holders.

Yeah, I find that with scoping meetings you sometimes have the challenge of folks wanting a forum to discuss their issues and have an interaction with the federal agency. From the Notice of Intent perspective, you want to be receiving information because you haven't decided how you're going to be interpreting that information and how you're going to respond to it. So from a NEPA standpoint, from a planning standpoint, the best policy as Bobby has mentioned from his example, is to have an open forum. Folks submit the comments, but not necessarily create that dialogue. I have been involved in scoping meetings where there was feedback afterwards saying we wanted a little bit more of that communication. So, the BLM should think about being flexible and do some sleuthing ahead of time, sometimes, to get a better understanding of the audience and you may be adjusting slightly how you're going to do your scoping meetings per those different groups. It's important to have them, it's important to make sure that you create a forum for folks to give that input in different methods whether it be electronic or verbal or hand-written. But that it one of the things that you sometimes you might vary. You might also vary the time of day that you're having it; during the daytime works well for agency staff, nighttime works well for those folks that are busy in their jobs, other jobs during the day and they need to go at night somewhere else. Neutral territory, not having it at the federal agency office; having it at a local community center, things like that. So there are all different ways to vary the method of scoping to make people feel comfortable, to make people feel like that's a good place to give input, because that's ultimately what you want to do.

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I might recommend that if you do take oral comments and do provide information that you consider using a trained facilitator to help manage those comments in the crowds.

So once you get those comments, what the heck do you do with them? No, you don't trash them, right? No, you are going to consider them as part of your plan process. Of course, you need to be thinking about this in terms of the administrative record, because all of this information is basically "FOIA-able." It's things that you've received that are final, if you will. So you need to make sure you're tracking that, making sure you're keeping your originals somewhere, a good location and if you're requested, you might have to turn those things or copies of those over.

So what you're doing is you're trying to figure out how does this affect what we already thought we'd need to do in the plan process. You created the prep plan, and you've got the different issues lined up and you might see how that correlates with the comments that you've received through the scoping process. You may, also, find that there are other issues that came up through the scoping process that you either need to add as part of your plan and as part of your preparation of the EIS or that you might want to alter slightly and expand. So, you're going to be basically trying to categorize, fit these things into the components that you've tried to already outline for the plan and the EIS.

It's eventually going to come into a scoping report where you're taking the comments, you're taking all of the information that you got and you're basically going to create a report that says to the public, those that were participating in the scoping process, we heard you. So, you're going to try and do that up front by summarizing the issues, making sure you get a listing of all the different participants in the process, somewhere in the document. Basically so people can track, I came to this meeting at this date, these issues are summarized up front in this way. You want to make sure that you're not summarizing to too great an extent where it's basically folks feel like you're dismissing their comments or their suggestions.

Again, there are different ways to group the organizations, agencies; you might do federal, state, local, tribes, NGOs, you might group them in different ways. You might group them by topic; there are all different ways to write a scoping report that has that information.

One of the things you also should make sure that you do is, again, think about this in terms of, if a judge were to look at this and they were to see this comment made and then we didn't really address it in the plan process or in the EIS at all, does the judge know why? Because that issue, as it's raised, we need to create a record that shows if we didn't address it, was that reasonable to not address it? So usually the scoping report has a section saying issues that will not be analyzed in further detail and then a small discussion of why; it was outside the plan area, this is related to Forest Service not BLM Resource Management Planning. It's outside the scope of the federal

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agency jurisdiction. There are a whole bunch of reasons of why you might not address certain issues. Make sure you include that in your scoping report. And again, that's part of your road map to show the judge, we heard them and here's why it isn't part of our plan process. And as you go through this, you know, you look at the planning handbook, make sure you're following what's recommended in the planning handbook, both in the appendix, that's required or the appendix that's outlining what should be in a scoping report as well as any other information that you may have related to scoping.

Bobby, you have any other thoughts? You've done some scoping reports for BLM.

Well, I might just touch on the issues won't further be addressed. So, if you get scoping comments that on the surface look to not be pertinent to your plan or something within the BLM legal framework, I would definitely take a closer second look at that. There's been many an issue brought up during the public scoping that when it got to the state office or even the Washington office, they pitched it back to the field office and said you might want to think about this a little bit harder. A lot of those come into play because other field offices adjacent to your plan area have had similar comments and they actually addressed them in the RMP, in the EIS. So you might want to coordinate that with your state office, your issues and any of those that you decide that no longer need to be further analyzed as part of the plan.

So, you're taking that scoping report, taking these issues that are raised, making sure you've thought about how you're going to address them and now what. What's the next step? So, just to conclude, what will you do with that scoping report? Well, it's going to feed into the subsequent steps in the planning process by, as we talked about in the beginning. Think about what team members need to be involved. If you got a lot of input from a certain community where English isn't their first language, for instance, well, you might have a team member that you want on board that is bi-lingual and can help communicate. You may have gotten input from a certain group or agency that's concerned about a species issue that you hadn't thought about. So again, you might want to think about, well, what kind of team member to we need on here, what kind of expert do we need related to that particular issue.

Some of your technical studies, you might have gotten information saying the state was doing an analysis on this particular issue; it can feed in well into your plan process so you can literally help supplement your technical analyses related to that.

And of course, within the EIS itself you might be thinking about new alternatives, new ways to approach alternatives, organize your alternatives. You might be thinking about additional environmental effects that need to be studied or need to be considered and offset related to how you're developing your alternatives. So all of these things, really, are part of the scoping process and how the scoping report and the scoping information can help you form what goes into the plan, what goes into the EIS.