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White Paper:

A New Design for the NEPA Public Involvement Process

During the Development of a Monument Management Plan

I.   SUMMARY

In this white paper, I examine the public involvement requirements as mandated by the National

Environmental Policy Act, or NEPA. I use works such as Arnstein's ladder of civic engagement to

assess the type and extent of the public engagement prescribed by NEPA. I then analyze the NEPA

process for the creation of new Monument Management Plans (MMPs) for Bears Ears National

Monument as a case study of the NEPA public involvement process in action. Finding room for

improvement in this case study, I propose a new design for federal agencies to employ in situations

similar to that of Bears Ears. This design builds upon the existing public involvement framework

mandated by NEPA, but incorporates increased opportunities for considered judgment, popular

control, transparency, and inclusiveness.

II.   INTRODUCTION

The National Environmental Policy Act, or NEPA, mandates and guides the process with which

large-scale or potentially environmentally impactful federal projects are undertaken by agencies. In

addition to creating a procedure for reviewing such projects, NEPA also created the Council of

Environmental Quality, which oversees the NEPA process.

Signed into law on January 1st 1970, NEPA kicked off the passage of a series of major federal environmental policies during the 1970s. These policies were enacted in response to growing public concern with the topic, sparked in part by extremely high levels of pollution. The first Earth Day (April 1970), creation of the Environmental Protection Agency (December 1970), Clean Water Act (1972), and Endangered Species Act (1973) are a few major benchmarks of public sentiment and resultant policy during this period.

Today, the Council on Environmental Quality describes NEPA's dominant function as "a framework for collaboration between federal agencies and those who will bear the environmental, social, and economic impacts of their decisions" (Council on Environmental Quality, 1997). By serving as a scaffolding for environmental review, the specifics of how federal agencies implement NEPA may vary, though the larger process remains the same.

METHODS

I will use Arnstein's "ladder of citizen participation" (1969) to analyze the public engagement features of NEPA. Arnstein describes a spectrum, or "ladder," with eight levels ("rungs") of public power in determining the end product, beginning with Manipulation at the bottom of the ladder and ending with Citizen Control at the ladder's highest rung. This framework is more relevant than the design guidelines detailed by Bryson, Quick, Slotterback & Crosby (2013) or Smith (2009). Bryson et al.'s guidelines frequently do not apply to NEPA regulations, largely because the NEPA requirements
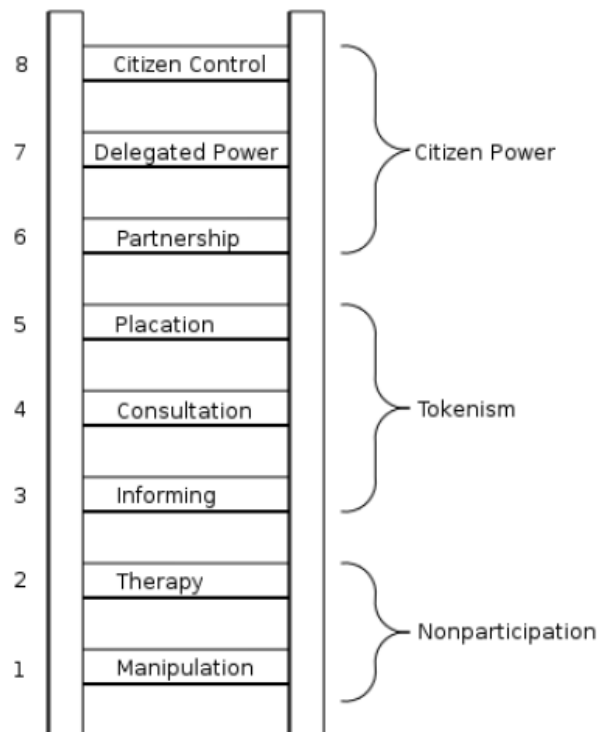
Arnstein's Ladder of Citizen Participation (1969)

for public engagement don't achieve the level of involvement assumed by this framework. Similarly, Smith's democratic goods so rarely apply to NEPA's guidelines that they aren't a valuable metric for this analysis. This is due to the excessive reliance on the "Informing" rung of Arnstein's ladder for the majority of the NEPA public involvement process. However, I will return to Smith and Bryson et al. at the end of this section to make recommendations for how the process could be improved.

Public involvement requirements of NEPA

A set of NEPA regulations were issued by CEQ in 1978 and guide the implementation of NEPA. Part 1506, entitled "Other requirements of NEPA," includes 40 C.F.R. 1506.6, "Public involvement." This section guides various iterations of the public involvement requirements throughout the NEPA process. The section states:

> *"Agencies shall:*
> a) *Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.*
> b) *Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.*
> c) *Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency.*
> d) *Solicit appropriate information from the public."*
>
> *-   40 C.F.R. 1506.6, Public involvement*

There are additional portions to this section, but the above quote provides an introduction to the overarching public involvement guidance for NEPA's implementation. A complete copy of the 1978 CEQ NEPA regulations is attached as a separate document.

Because the NEPA process is quite complex and has varying public engagement requirements interwoven throughout, this analysis will follow the flow of the NEPA process. Each stage will be briefly described and then reviewed using the Arnstein ladder of citizen participation.

POLICY ANALYSIS

NEPA lays out a procedure for review of federally managed environmental projects. The first step entails determining if the proposed action is subject to NEPA. If NEPA applies, the federal agency leading the environmental project must then decide whether to prepare an Environmental Impact Statement (EIS), through a series of assessments. If it is decided that an EIS is called for, the lead agency will begin the EIS process, which is described below.

Scoping process

First, the agency must publish a "notice of intent" in the Federal Register describing the proposed action and the scoping process. During the "scoping" process, the lead agency begins to identify "the significant issues related to a proposed action" (40 C.F.R. 1501.7). This process requires that the lead agency "invite the participation of … interested persons (including those who might not be in accord with the action on environmental grounds)," then references Public Involvement section 1506.6 for further requirements.

Analysis: Such a one-way flow of information, in which the Notice of Intent is provided to the public with no mandatory channels for public response, falls under Arnstein's definition for the third rung of the ladder, "Informing." In this rung, which falls under the broader designation of "Tokenism," members of the public have minimal "opportunity to influence the program designed for their benefit" (Arnstein, 1969, p. 5). We will see repeatedly in the following stages that reliance on Public Involvement section 1506.6 only mandates an "Informing" level of participation, because there is no prescribed avenue for public feedback.

Draft Environmental Impact Statement

After the scoping process is complete, the agency will publish the Draft EIS. According to 40 C.F.R.

1506.6, they must provide public notice of the availability of the Draft EIS through the Federal Register, and provide direct notice to anyone who has requested it. A public hearing to review the draft EIS may be held, but is typically not required. Special circumstances when public hearings are required include: when there is substantial controversy and/or interest in a public hearing, or when another federal agency with jurisdiction over the proposed action has requested a public hearing (40 C.F.R. 1506.6c). If the agency holds a public hearing, they must make the statement available to the public at least 15 days in advance of the hearing (40 C.F.R. 1506.6c2). The Draft EIS must be available for a public comment period of at least 45 days (40 C.F.R. 1506.10c), during which members of the public and other federal agencies may provide comments.

Analysis: It's only after several stages of the NEPA process and much work has been done by the lead agency that members of the public are first invited to give their input. Even still, the first half of this stage remains on the "Informing" rung, as the public continues to be a passive recipient of information flowing from government agencies. By incorporating the possibility of public hearings and a 45-day public comment period, this stage is eventually elevated to the Consultation rung of citizen participation. Arnstein explicitly describes public hearings as a form that Consultation typically takes. As described by Arnstein (1969), Consultation can be a step toward full citizen participation, but it must be combined with other modes to be more than "just a window-dressing ritual" (p. 6).

Final Environmental Impact Statement

Once the agency has received comments on the Draft EIS and the public comment period is closed, the agency must prepare the Final EIS. To do so, the agency must "assess and consider comments both individually and collectively" (40 C.F.R. 1503.4). Then, the Final EIS must respond to comments, by either altering the proposed action or explaining "why the comments do not warrant further agency response" (40 C.F.R. 1503.4). The comments received must also be attached to the final statement.

Analysis: By requiring that agencies assess, consider, and respond to public comments, the NEPA process has moved up the ladder to the next rung, Placation. At this level, citizens have some influence, but their participation still has elements of Tokenism. In this case, comments must be reviewed but the agency has no explicit accountability to the public or their comments. Agencies can easily dismiss comments if they can find sufficient sources or reasons to discount their arguments. The public lacks "the power to insure that their views will be heeded by the powerful" (Arnstein, 1969, p. 2).

Adopting the Final EIS

After the preparation of the final EIS, the lead agency must then circulate the EIS for at least 30 days prior to making a decision (40 C.F.R. 1506.10b2). This is done by publishing a notice in the Federal Register. After the 30 day period is complete, the agency may then adopt the EIS, and make a decision on the proposed action. To complete the process and finalize the decision, the agency must prepare the Record of Decision (ROD), which states the final decision and explains the reasoning behind it (40 C.F.R. 1505.2).

Analysis: During the 30 day review period, the agency "may request comments" on the final EIS but is not required to do so — inclusion of this step would qualify as Consultation. The rest of this stage qualifies as Informing.

DISCUSSION

For the most part, the NEPA process stays low on Arnstein's ladder of citizen participation, spending most of the stages on the Informing rung (the lowest rung of the Tokenism levels). The public comment period during the Draft EIS review is the only mandatory step in the NEPA process that moves above Informing to the Consultation rung. Then, the requirement that the lead agency address

the public comments when writing the Final EIS brings citizen participation levels to the next rung, Placation. After this, the NEPA process resumes its place on the Informing rung for the Final ROD.

Table depicting Arnstein's ladder of citizen participation according to NEPA's requirements

NEPA Stage	Arnstein Rung: NEPA
Scoping	Informing
Draft EIS	Informing, possibility of Consultation
Public Comment Period	Consultation
Final EIS	Placation
Final ROD	Informing, possibility of Consultation

As previously mentioned, the Smith (2009) and Bryson et al. (2013) frameworks weren't suitable for this analysis because the level of meaningful public involvement mandated by NEPA regulations is so minimal. However, they can be helpful sources of material to discover where NEPA's public involvement process is lacking. Smith describes four democratic goods that can be used to assess democratic innovations: inclusiveness, popular control, considered judgement, and transparency. The NEPA process could move to higher rungs of Arnstein's ladder by integrating these goods into its design — as it stands, each of these is virtually absent from NEPA. For example, to improve transparency, the lead agency of an EIS might be required to publish comments as they appear in real time, not after several weeks have passed and the Final EIS has been created. To improve popular control, perhaps there could be a voting process for the public, which would then be integrated into the final decision if the number of votes or percentage of agreement surpasses a minimum.

With regards to inclusiveness, the NEPA process could be improved by mandating more extensive and targeted outreach to underserved and underrepresented communities. Outreach can be an obvious (even lazy) solution to address inclusion and equity issues, but it is appropriate for NEPA because so many of the existing opportunities for public involvement are soliciting public comments.

And yet, the minimum required advertisement of NEPA's public comment periods is the Federal Register, which is not a widely read publication. As described by Bryson et al., better outreach can reduce the "usual suspects" problem, in which the voices of certain individuals or groups are heard more frequently than others (2013).

III. CASE STUDY

Having reviewed the public involvement requirements of NEPA, let's examine them through the lens of a relevant case study: the creation of new Monument Management Plans (MMPs) for Bears Ears National Monument. The need for new MMPs arose as a result of President Donald Trump's Proclamation 9681, issued on December 4, 2017, modifying the boundary of the Bears Ears National Monument. The proclamation reduced the size of Bears Ears NM by 83 percent, from 1.35 million acres to just under 230,000 acres (see Appendix 1, Figure 1). The Monument's reduction was subject to much public controversy, and the legality of Trump's proclamation is still under review. The Bureau of Land Management (BLM), the federal agency charged with the management of Bears Ears NM, complied with the proclamation and proceeded accordingly. The lands which were rescinded from the National Monument remain under federal management, as they were prior to President Obama's 2016 Executive Order creating Bears Ears National Monument, though they are no longer subject to the preservation-oriented protections that apply to National Monuments.

The NEPA process for the new MMPs began on January 12, 2018, when the BLM published a Notice of Intent in the Federal Register, announcing their intent to prepare the new MMPs for Bears Ears National Monument. In a BLM press release published the same day as the Notice of Intent, the planning efforts are explained as "an opportunity to enhance our relationships with the State of Utah and local communities," saying that the new plans will "provide clarity to the public on how they can enjoy Bears Ears National Monument" (BLM, 2018a). Based on this, it appears that the goal of the lead agency, the BLM, with the new MMPs is to create a vision for the management of the newly

redefined monument, and to bring stakeholders such as the State of Utah and local communities on board with this new vision.

The process of preparing the MMPs entails creation of an Environmental Impact Statement, which is guided by the NEPA process. Thus, the MMP process is subject to NEPA requirements. This case study will explore the design of the public participation process for the Bears Ears Monument Management Plan and its adherence to NEPA.

CASE STUDY ANALYSIS

In the preceding Introduction of this paper, I detailed the steps of the EIS public involvement process as prescribed by NEPA. For this case study, we will review the public involvement process of the Bears Ears Monument Management Plans (MMPs) for each of those same steps detailed previously. For a visual overview of the process for the case study, see Figure 2 in the Appendix.

Scoping process

In mid-January 2018, BLM began the scoping process by publishing a Notice of Intent in the Federal Register. On March 9, 2018, the BLM issued a press release notifying the public of two upcoming public meetings regarding the EIS process for Bears Ears National Monument on March 26 and 27. The release also encouraged the public to share their views and concerns by attending the meetings and by submitting written comments via website, email, or physical mail (BLM, 2018b).

The meetings were held in the nearby towns of Bluff and Blanding, with about 200 attendees at each meeting (BLM, 2018d). In addition, nine governmental organizations and 17 tribes were invited to be cooperating agencies during the NEPA process. By April 11 (the deadline for scoping comments), a total of 165,466 comments were received. From all of the letters, each unique comment was coded into various issue categories, such as biological resources, recreation and visitor services, air and

climate, and travel management, with letters that brought up multiple topics being counted multiple times. Interestingly, the more than 156,000 form letters that were received don't appear to be counted as unique comments — rather, the identical form letters appear to be counted as a single comment. In total, almost 9,000 unique comments were coded, and more than half of these (4,800) were deemed as "out of scope" and were not formally considered during the creation of the Draft EIS.

In addition to the public meetings, the BLM also hosted an "economic strategies workshop" on June 6 in Monticello. The workshop purpose was a discussion about "local economies and social conditions of the counties, towns, and cities in and around the Planning Area" (BLM, 2020a).

Analysis: By publishing a Notice of Intent in the Federal Register, hosting scoping meetings, and advertising the scoping meetings more than 15 days in advance, the BLM appears to uphold the requirements for this stage of the NEPA process. The scoping report says that "scoping notification letters sent to the BLM's interested party list" (BLM, 2018d) were among the outreach methods used, but it doesn't give any detail about who that list entails, making it difficult to verify that all appropriate parties received notice.

Draft Environmental Impact Statement

After the scoping process, the BLM formulated alternatives and prepared a Draft EIS. On August 17, 2018, a Notice of Availability was published for the Draft EIS (BLM, 2020a). After this, the BLM complied with the mandatory 90-day public comment period by closing public comments on November 15 (exactly 90 days later). In total, 250,484 comments were received during the comment period. The BLM also hosted three open house-style public meetings in Blanding, Bluff, and Montezuma Creek. The public meetings had a very similar format to the scoping meetings, with information stations for popular topics such as livestock grazing, cultural resources, and travel management. The information stations were further tailored to address each proposed alternative from the Draft EIS (BLM, 2018e).

The Draft EIS contains a list of the agencies and Tribes who were invited to "participate as cooperating agencies when drafting an EIS" (BLM, 2020a, p. 23). Of the 39 entities invited, nine accepted.

In addition, the Bears Ears National Monument Advisory Committee (BENM-MAC) was established with a notice in the Federal Register on August 30, 2018, per Trump's Proclamation 9681 (BENM-MAC Charter, 2018). The committee met June 5-6, 2019, with members representing developed recreation, the State of Utah, various cultural resource interests, private landowners, tribal interests, and the public at large. Based on the committee's webpage on the BLM website, it appears that this meeting was the only convening of this committee prior to the Final EIS (and since). After receiving public comments and discussing the Draft MMPs/Draft EIS, the committee selected 11 motions to carry forward as recommendations to the agency for the Final EIS (BENM-MAC, 2019).

Analysis: By providing a 90-day period between notice publication and end of public comment period, the BLM complied with NEPA. Additionally, public meetings are not required during this stage, but, again, the mandate from Section 1506.6 that public hearings be held if there is substantial controversy suggests that they may be appropriate in this case. The BLM held three, so they complied with this suggestion. They also appear to have complied with the requirement that interested parties be contacted.

Final Environmental Impact Statement

On July 26, 2019, the BLM published the Notice of Availability for the Final EIS and Monument Management Plans in the Federal Register (BLM, 2019a). The standard mandated time between Draft EIS and Final EIS is 90 days, so this amount of time was more than adequate.

According to 40 C.F.R. 1503.4, the agency must "assess and consider comments both individually and collectively," responding to them in some manner. In response to public comment, as well as input

from "cooperating agencies, American Indian Tribes, and the Monument Advisory Committee," the Final EIS contains a new alternative, Alternative E.

Analysis: The Final EIS appears to consider public comments, as well as including all of the comments and the BLM's responses as an appendix. Thus, it complies with NEPA.

Record of Decision

The final Record of Decision was published on February 6, 2020, almost six months after the Final EIS was published, and well beyond compliance of the minimum 30 days required by NEPA. NEPA's requirements for the Record of Decision are quite straightforward, with no specific requirements for public involvement. In Section 1503, Commenting, "an agency may request comments on a final environmental impact statement before the decision is finally made," but there is no mandate to solicit comments or reply to them. Yet, the BLM provided a 30-day protest period in its planning process (see Figure 2 in Appendix 1) and published all of the protest comments in a document, "Protest Resolution Report for Bears Ears National Monument Proposed MMPs/FEIS." The document includes excerpts of individual comments, as well as summaries and responses to comment themes (BLM, 2019b).

Analysis: For this stage, BLM exceeds the NEPA requirements by receiving comments on the Final EIS during an optional "protest period" and publishing them for public review.

CASE STUDY DISCUSSION

As detailed in the preceding policy analysis, NEPA largely prescribes a level of citizen participation that falls under Arnstein's "Informing" designation (1969), occasionally moving up to the next rung, "Consultation." This case expands on NEPA's requirements somewhat, vacillating between Informing and Consultation.

During the scoping process, project managers practiced both Informing (by publishing a notice in the Federal Register and issuing a press release) as well as Consultation (by soliciting public opinion via written comment and public meetings). The BLM did review, categorize, and consider the comments, but there existed no compact between decision-makers and the public that comments would influence the creation of the Draft EIS. Thus, "popular control," as defined by Smith (2009), was limited in the scoping process (and, as we will see, it will continue to be limited throughout the rest of the case study). However, the agency made good efforts in the realm of "considered judgement," defined by Smith as the public's ability to make informed suggestions for public policy issues (2009). The two scoping meetings hosted by the BLM were carefully designed to increase public knowledge, with "information stations" containing custom materials about popular topics such as recreation, cultural resources, and grazing. These materials were also posted on the public website for other interested parties to review. Additionally, they hosted a third public meeting: a workshop addressing questions of local economic impacts from the varying monument management approaches.

After the Draft EIS had been published, public participation moved up to Consultation, with occasional forays into the Placation rung of Arnstein's ladder. Receiving and reviewing public comments and hosting public meetings qualified as Consultation.

Table comparing Arnstein's ladder of citizen involvement from NEPA requirements to Case Study.

NEPA Stage	Arnstein Rung: NEPA	Arnstein Rung: Case Study
Scoping	Informing	Informing / Consultation
Draft EIS	Informing, possibility of Consultation	Informing
Public Comment Period	Consultation	Consultation, some Placation
Final EIS	Placation	Consultation
Final ROD	Informing, possibility of Consultation	Consultation

Tribal engagement has been a hot-button topic, both generally with regards to public land management, but more specifically, in the history of the establishment and management of Bears Ears National Monument. The Bears Ears Inter-Tribal Commission that was created by Obama's Proclamation 9558, intended to serve as an innovative tribal board to advise on the management of Bears Ears National Monument, was given a new name and narrower scope with Trump's Proclamation 9681 (BLM, 2018c). The Commission was renamed the Shash Jaa Commission, and directed to advise only on the management of the Shash Jaa Unit, one of the two units of Bears Ears National Monument that remained after Proclamation 9681 reduced the monument's size (see Figure 2 in the Appendix). The NEPA process itself didn't reduce the Commission's charge, but this history is context for the relationship between tribes and land managers during the development of the new monument's MMPs. Per federal mandate, more than 30 American Indian Tribes were also invited to participate in government-to-government consultation. In response, eleven Tribal members attended an initial Tribal consultation meeting. BLM and USFS managers developed an American Indian Tribal Collaboration Framework, which was attached to a letter sent to the Shash Jaa Commission and interested Tribes on July 13, 2018. Although the framework may have been an attempt to improve relations, it appears to be more Placation than Partnership (Arnstein 1969), because the guideline hadn't been developed with the tribes, nor did it give them any real decision-making power in the process. In this scenario, Smith's democratic goods inclusiveness and popular control are severely lacking (2009).

Some of the engagement around the Draft EIS was slightly more meaningful, though. The creation of the Monument Advisory Committee (BENM-MAC) is notable, though it may have been merely a weakened version of the original Bears Ears Inter-Tribal Commission. It's interesting that even the BENM-MAC's meeting notes mention the "lack of time allotted for this task and thorough discussion of issues" (BENM-MAC, 2019). Although the committee was created, it appears that they only met once, and their influence on the Final EIS is uncertain, qualifying this action as Placation. That is, citizens

appear "to have some degree of influence though tokenism is still apparent" (Arnstein, 1969, p. 7), and popular control is still low.

The Final EIS incorporates public comments and responds to them; therefore, it complies with NEPA and achieves "Consultation" on Arnstein's ladder (1969). Similarly, the Record of Decision also incorporates the protests made on the Final EIS and responds to them; therefore, it also complies with NEPA and achieves "Consultation" on the ladder of public participation (Arnstein, 1969).

CASE STUDY FINDINGS

The case study and the preceding policy analysis depict a public participation process which is woefully lacking in Smith's democratic goods, largely those of inclusiveness, popular control, and considered judgement, though transparency could be improved as well. This produces a design that remains in the lower-bottom rungs of Arnstein's ladder of public participation — namely Informing, Consultation, and Placation.

To design a better public participation process, power should be more authentically "redistributed through negotiation between citizens and powerholders" (Smith, 2009, p. 9). The Bears Ears Inter-Tribal Commission should have real decision-making power, through one of the top three rungs on Arnstein's ladder (Partnership, Delegated power, and Citizen control). Their interests shouldn't be marginalized to a few representatives on the BENM-MAC, an advisory committee that has very minimal popular control (and considered judgement, by their own admissions). Giving the tribal commission more say in the management of the monument will improve inclusiveness and popular control.

IV. PROPOSED DESIGN RECOMMENDATION

My proposed design is intended to be used for similar future scenarios as the Bears Ears National Monument case study — that is, this public involvement design could be used for the EIS process for a future Monument Management Plan (MMP) or similar types of environmental projects. For the purposes of the design, I will refer to the "Lead Agency," or "LA," which is a role designated by the NEPA process. It refers to the federal agency who is leading the EIS creation and the NEPA process for the environmental project in question. In the case study, the Bureau of Land Management (BLM) was the Lead Agency. My design is intended to be transferable for use by other agencies during their NEPA process.

The design seeks to address three key issues with the case study: lack of popular control, lack of representation of local Tribes (lack of inclusiveness), and lack of iteration through dialogue (among members of the public). I will review the design in detail, then speak to how the design addresses these targeted issues in Section V, *Effect of proposed design*.

Design focus	
Issue	**Solution**
Lack of popular control	Committees ● Committee composition is selected by public votes ● Committees create most of the EIS
Lack of local Tribal representation (lack of inclusiveness)	Tribal Committee ● Integrates Tribal input into the process
Lack of dialogue	Online forum format integrates public meetings with public comments Committees create a community of practice

As in the preceding policy analysis and case study, I will go through the steps of the NEPA process, describing the three planes of each step of the design proposal. For a visual overview of the design process and timeline, see Appendix 2.

Scoping process

<u>Plane 1: Process</u>

The design will begin with popular assemblies, in the style of "participatory budgeting," or PB, as described by Smith (2009). The PB approach will have a twist — the assemblies will take place online through an online discussion forum (see Appendix 3, Figure 1). This attempts to incorporate the dialogues that traditionally occur in-person at public meetings (as with the BENM model) and integrate them with the public comments that are received during the scoping process. During the BENM case study, the BLM identified several pertinent management topics, which they addressed at their public meetings via handouts and information stations. These stations will become the subjects of discussion forums, just as the PB process incorporates thematic popular assemblies (see Appendix 3, Figure 2). Interested members of the public can visit the website and submit their comments on any or all of the thematic topics.

The comment form will also contain a ballot on which commenters will select the five representatives that they would like to be on the committee for the topic (see Appendix 3, Figure 3). For example, a member of the public who submits a comment on the topic of "Cultural resources" may vote for the Cultural Resources Committee to contain one representative each from the BLM, Utah Professional Archeological Council, Utah School and Institutional Trust Lands Administration, and two representatives of the Utah Dine Bikeyah. In addition to the option to select multiple representatives from one organization, the ballot will contain blank write-in options.

This design takes the popular assembly concept employed in PB and applies it to an online format, since many of the comments that Lead Agencies (LA) receive are from interested parties who are not local to the immediate project area. It also streamlines the LA's process of analyzing and coding the public comments received during the scoping period. By making the comments public, it enhances transparency, compared to the standard model of waiting to publish the comments until after the

comment period has ended. To avoid affecting the outcome, the voting results would not be made public until after the scoping comment period has closed.

As mentioned in the previous discussion of the policy analysis, outreach is a viable option for improving inclusiveness with public involvement processes of this type, since the starting point is so rudimentary. Thus, the scoping process should include targeted outreach to local Tribes, to ensure their perspectives are captured in the comments and voting for Committees.

Plane 2: Bureaucracy

Scoping process	
Bureaucratic need	Function
Website design & hosting contractor	● Create and maintain the online discussion forum.
LA project lead	● Write project background page for the LA website. ● Compile initial list of organizations for each topic committee ballot.
Third party facilitator	● Write forum guidelines. ● Lead in-person public engagement. ● Gather topic background materials from interested parties. ● Compile the FAQ for the online forum with input from moderators, project lead, and website contractor. ● Collaborate with moderators and project lead to ensure site is accessible for ADA and other languages. ● Perform targeted outreach to Tribes. Gather email addresses to facilitate email verification for comments.
2 full-time forum moderators	● Review comments prior to publishing, tag with relevant Topics. ● Enter handwritten, mailed-in comments, or phone call comments into the online comment form. ● Count votes to determine the composition of the committees.
Translation services contractor	● Provide live translation services.

Plane 3: Learning Environment

See all three figures in Appendix 3 for the learning environment of the Scoping Process. One noteworthy feature of the learning environment: comments from local Tribal members will be highlighted in yellow to help Committees ensure to consider their input. This will be done through an email verification process led by the facilitator.

Because the online forum is intended to integrate the public meeting environment with the public comment process, commenters can "Like" and respond to public comments, as well. This feature is designed to encourage dialogue around the project topics.

Draft Environmental Impact Statement

Plane 1: Process

Following the voting from the online discussion forums, Topic Committees will be created. Each committee would focus on one aspect of the MMP and would consist of representatives who were elected from the online discussion forums. These committees are similar to the "Thematic Budget Forums" from the PB process (Smith 2009), but would not be called forums to avoid confusion. In addition to the Topic Committees, there will be another committee — a Tribal committee consisting solely of representatives from local American Indian Tribes.

For a real world example of a Tribal committee, I point to the Bears Ears Inter-Tribal Commission from the case study. As previously described, this commission was created by President Obama under the same proclamation that established the original Bears Ears National Monument. It consisted of elected officers from several local Tribal Nations and was intended as an innovative Tribal board to advise on the monument's management (a feature which is surprisingly absent from the management of most public lands). Rather than reducing the Tribal commission's power — as was done in the case study — this design incorporates Tribal feedback as an integral part of the MMP through the Tribal Committee. Note that Tribal representatives can also serve on the Topic Committees, as well.

Plane 2: Bureaucracy

Draft EIS	
Bureaucratic need	Function
Third party facilitator	- Recruit Tribal representatives to join Tribal Committee (following LA project lead's recommendation). - Serve as liaison for Tribal Committee.

	● Coordinate with LA project lead to arrange Committee presentations. ● Coordinate with LA project lead to advertise Committee meetings to the public.
LA project lead	● Create an initial list of Tribes to invite to join the Tribal Committee. ● Coordinate with facilitator to arrange Committee presentations. ● Coordinate with facilitator to advertise Committee meetings to the public.
Facilitators for Committees	● Attend Topic Committee and Tribal Committee meetings. ● Facilitate Committee discussions and public comments. ● Submit meeting minutes to forum moderators.
Stipends	● Compensate Committee members for their work.
Translation services contractor	● Provide live translation services.
Child care contractor	● Provide child care services during meetings
Forum moderators	● Format and submit final proposals from Committees. ● Post notices of upcoming Committee meetings on the online forum. ● Upload meeting minutes for public comment. ● Upload final proposals from Committees.

Plane 3: Learning environment

The formulation of the draft MMP (and draft EIS) will take place during several meetings of the Topic and Tribal Committees. The first meeting of all Topic and Tribal Committees will consist of review of public comments as received on the online discussion forum. The comments will have previously been compiled and coded by the online forum moderators and packaged for committee review. Committee members will also have access to the full content of public comments, as they will be publicly available throughout this process.

The Topic Committees will then receive training on technical issues related to their subject areas through the course of 2-4 meetings, to be scheduled over the course of 4 months, and to be open to public attendance. During these meetings, Committee members will receive presentations and discuss the implications on their recommendations. Each Committee will be led by their own Facilitator, who will facilitate discussions during the meetings and organize their work. Members of the public will be able to comment on the meetings during a section of the meeting as well as through a

section of the online discussion forum. The committees will draft recommendations incorporating their review of public comments and technical information. Each Committee's final meeting will consist of the presentation and discussion of the Committee's final proposals. The final proposals from all Topic and Tribal Committees will be posted on the online discussion forum.

Public Comment Period

Plane 1: Process

The public will be invited to comment on the Committees' proposals during a 120-day (minimum 90-day) public comment period. If the LA has alternate proposals that do not align with those of the Committees, they may post them on the online forum, and the public can express support for the alternatives proposed by the LA or the Committees via a voting mechanism. Per the NEPA process, the LA will then respond to the comments. They may make recommendations for how the Committees should or could revise their proposals accordingly.

Plane 2: Bureaucracy

Public Comment Period	
Bureaucratic need	Function
LA project lead	● Draft LA's alternate proposals for the EIS. ● Coordinate response to public comments. ● Create recommendations for Committees to adapt their proposals to public comments received.
Facilitators for Committees	● Monitor public comments received on their Committee's proposals. Keep Committee members informed when appropriate.
Forum moderators	● Review comments prior to publishing, tag with relevant Topics. ● Enter handwritten, mailed-in comments, or phone call comments into the online comment form. ● Count votes received on Committee and LA proposals.
Translation services contractor	● Provide live translation services for comments received (written or oral).

Final Environmental Impact Statement

<u>Plane 1: Process</u>

The Committees will use their proposals to draft the Final EIS/MMP. The LA will publish and there will be a 60-day (minimum 30 days) protest period. The Committee will resolve protests by responding to the comments. The Committees will prepare the final Records of Decision and Approved MMPs and the LA will publish.

<u>Plane 2: Bureaucracy</u>

Final EIS / ROD	
Bureaucratic need	Function
Third party facilitator	● Review all final proposals from Committees. Compile into a draft of the Final EIS and submit to the LA.
LA project lead	● Receive draft of Final EIS and create Final EIS. ● Coordinate response to public comments received during protest period. ● Publish Record of Decision (ROD).
Facilitators for Committees	● Assist Committees in creating their final proposals.
Forum moderators	● Review protest comments prior to publishing, tag with relevant Topics. ● Enter handwritten, mailed-in comments, or phone call comments into the online comment form.
Translation services contractor	● Provide live translation services for comments received (written or oral) in languages other than English.

DESIGN EVALUATION

This design incorporates elements of e-democracy and PB from Smith's democratic innovations. The design is evaluated by Arnstein's ladder and Smith's democratic goods, which are the metrics that have largely been used throughout the preceding policy analysis and case study. The design aims to

comply with NEPA's public involvement requirements while integrating public input in a meaningful way.

Table comparing Arnstein's ladder of citizen involvement from Case Study to Proposed Design.

NEPA Stage	Arnstein Rung: Case Study	Arnstein Rung: Proposed Design
Scoping	Informing / Consultation	Consultation
Draft EIS	Informing	Partnership / Delegated Power
Public Comment Period	Consultation, some Placation	Consultation / Partnership
Final EIS	Consultation	Partnership / Delegated Power
Final ROD	Consultation	Partnership / Delegated Power

The design of public involvement from the Bears Ears National Monument (BENM) case study largely relied on a select few types of public engagement approaches. Public meetings, in which information was disseminated to the public, and public comments, in which information was received from the public, were the sole channels for members of the public to be involved in the creation of the MMPs. Established institutions with existing authority were also involved as "consulting parties," per National Historic Preservation Act regulations, and American Indian Tribes were consulted, as required by federal law. There were two advisory committees, the Shash Jaa Commission (formerly called the Bears Ears Commission) and the Monument Advisory Committees. The power of these committees was quite limited, with minimal amounts of popular control and considered judgement. The role of the consulting parties (both Tribal and otherwise) was not transparent and, in the case of the Tribes, popular control was very limited. Public meetings and public comments had single directions of information flow with no integration between the two channels, reducing the possibility of design iterations that could produce beneficial recommendations if dialogue were permitted.

V.   EFFECT OF PROPOSED DESIGN

Per Bryson et al. (2013), public participation should be an iterative process, incorporating design and redesign. Thus I propose integrating elements of both participation and inclusion, as defined by Quick and Feldman (2011) -- that is, public input should be increased and enhanced (participation), and, as well, a community should be created to co-produce processes, policies, and programs (inclusion).

The proposed design changes have been explicitly designed to improve the democratic goods as described by Smith (2009). Inclusiveness, popular control, considered judgement, and transparency have all been increased with this model. The Topic and Tribal Committees, with representatives who have been selected by the public, and with much decision-making power in the creation of the MMP (and resulting EIS), aim to improve the process in regards to inclusiveness, popular control, and considered judgement. By publishing the comments immediately, and by making the work of the Committees in drafting alternatives and versions of the MMPs and EISs very public, my hope is that transparency has also been improved. The user-friendly website design, with information resources and publicly available comments for review, is intended to improve considered judgement.

Design focus	
Issue	Solution
Lack of popular control	Committees ● Committee composition is selected by public votes ● Committees create most of the EIS
Lack of local Tribal representation (lack of inclusiveness)	Tribal Committee ● Integrates Tribal input into the process
Lack of dialogue	Online forum format integrates public meetings with public comments Committees create a community of practice

Although all of Smith's (2009) democratic goods have been improved in this design, I have mostly focused my efforts on improving popular control and inclusiveness, the two elements that seemed to be most egregiously lacking in the NEPA requirements and in the Bears Ears case study.

With regards to popular control, the involvement of the Committees as the leaders and authors of the MMPs/EIS is a radical reimagining of decision-making during the NEPA process. To further enhance popular control, the representatives on the Committees are themselves selected by public votes. This takes much of the decision-making power of the lead agency and places it in the hands of the public.

Turning to the question of inclusiveness, the design seeks to redress some of the case study's major failings in regards to Tribal involvement. The key design element here is the integration of the Tribes as a second type of committee with extensive influence in the EIS process. The Tribal perspective is also elevated by spending additional time and resources on targeted outreach to ensure Tribal members are aware of the EIS process and their opportunities for involvement. In the "learning environment" plane, the online forum also (literally) highlights the voices of Tribal members by coloring their comments yellow, so that their input can be thoroughly considered by the Committees. The online forum also has features which improve accessibility for those with ADA requirements or translation needs (Appendix 3). Other elements enhance inclusiveness, such as the addition of individual Facilitators who work directly with each Committee, child care and translation services at Committee meetings, and Committee stipends.

Finally, the design aims to improve dialogue in two key ways. First, the integration of the public comment process with the public meetings is an innovative hybrid that creates a new kind of teaching-learning environment. According to Melendez and Parker (2018), learning environments are "places and processes where and whereby people learn" (p. 1). The online forum will serve as a kind of ongoing public meeting, where members of the public can freely share their thoughts, discuss with others, and learn from each other. By making this type of dialogue readily available and accessible,

design ideas can generate more quickly, resulting in that essential final piece of public participation, as described by Bryson et al. — iteration. Second, by engaging the Committees consistently throughout the NEPA process, a happy side effect may be the creation of a "community of practice" among Committee members. As defined by Quick and Feldman (2011), communities of practice are created by practices enacted by members of the community: "As long as people are engaged in practices, community is being created" (p. 273). Because the Committees are composed of representatives from different organizations, their membership will likely represent a broad diversity of interests. The shared understanding that may develop among community leaders with differing, even opposing, points of view, would likely filter out to the community at large. Thus, a future implication of this feature may be improved understanding and reduced tensions around land management topics and other controversial issues in the community.

V.   SUMMARY

The design improves upon the NEPA process and the case study with respect to Arnstein's ladder, Smith's democratic goods, and Bryson et al.'s design guidelines for public participation. Failing to go beyond the minimum requirements of NEPA guidelines results in a public involvement process without any meaningful public involvement — that is, a process which tokenizes the citizens that it is supposed to serve and engage. The symbolic inclusion of members of the public does more harm than good, by placing additional burden on members of the public with none of the popular control that should accompany increased responsibility. This is especially harmful for marginalized communities, such as American Indian Tribes, whose history and social position are beginning at a place of disadvantage. As Young says, "A democratic process is inclusive not simply by formally including all potentially affected individuals in the same way, but by attending to the social relations that differently position people" (p. 2). The proposed design seeks to explicitly include Tribes to redress the many decisions that have been made without their voices. As well, it aims to include all community voices in

a more powerful way, by improving the popular control offered to the public through the public involvement design. Finally, the inclusion of increased opportunity for dialogue via the online forum and the Committees' deliberations enhances design iterations, improving the outcome of the process (Bryson et al., 2013). Turning to Young again: "Not only does the explicit inclusion of different social groups in democratic discussion and decision-making increase the likelihood of promoting justice because the interests of all are taken into account. It also increases that likelihood by increasing the store of social knowledge available to participants" (p. 2).

Appendix 1. Case study background.

Figure 1.

Bears Ears National Monument Boundaries under Obama's Proclamation 9558 compared to Trump's Proclamation 9681.
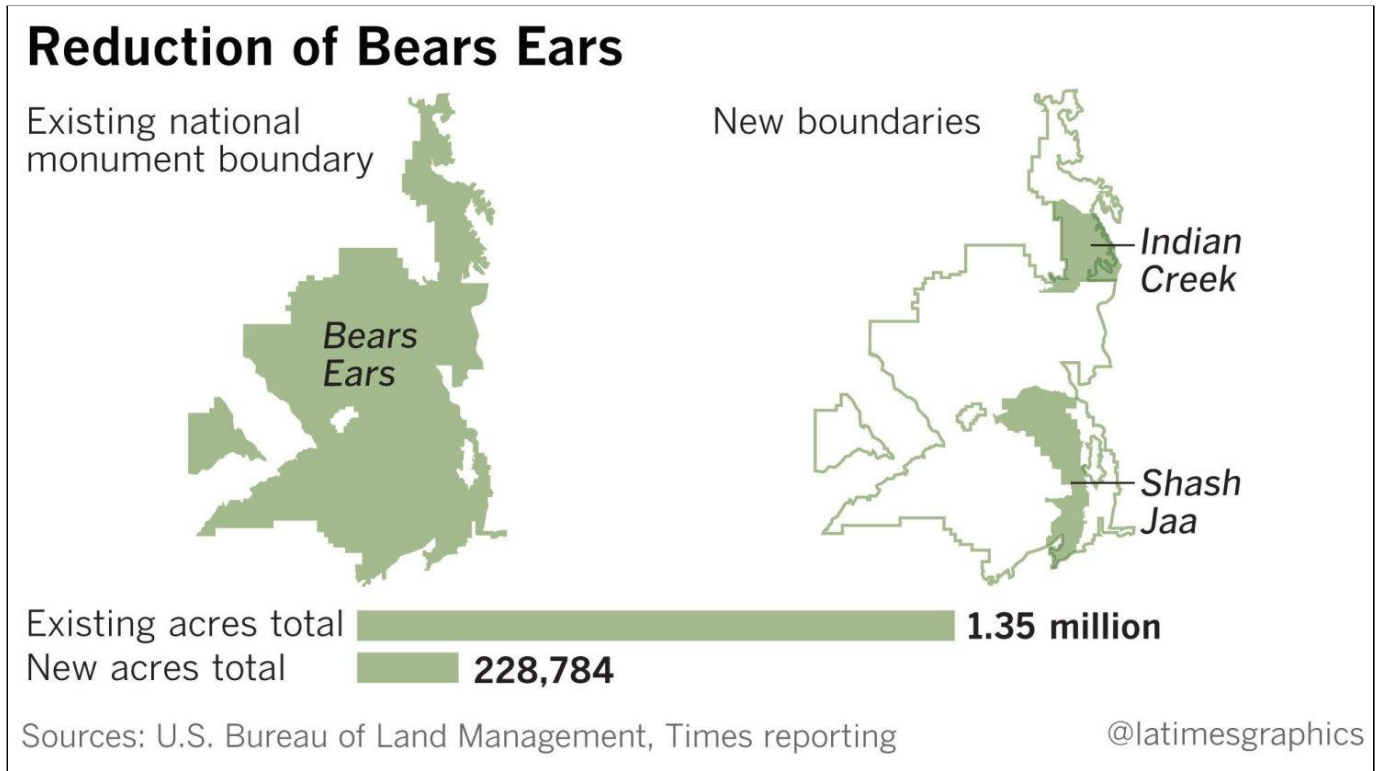
Source: Schneider, K. (2017). In an unprecedented action, Trump dramatically shrinks two national monuments in Utah. Los Angeles Times, 14.

Figure 2.
Planning process and public involvement for Bears Ears National Monument Management Plan EIS.
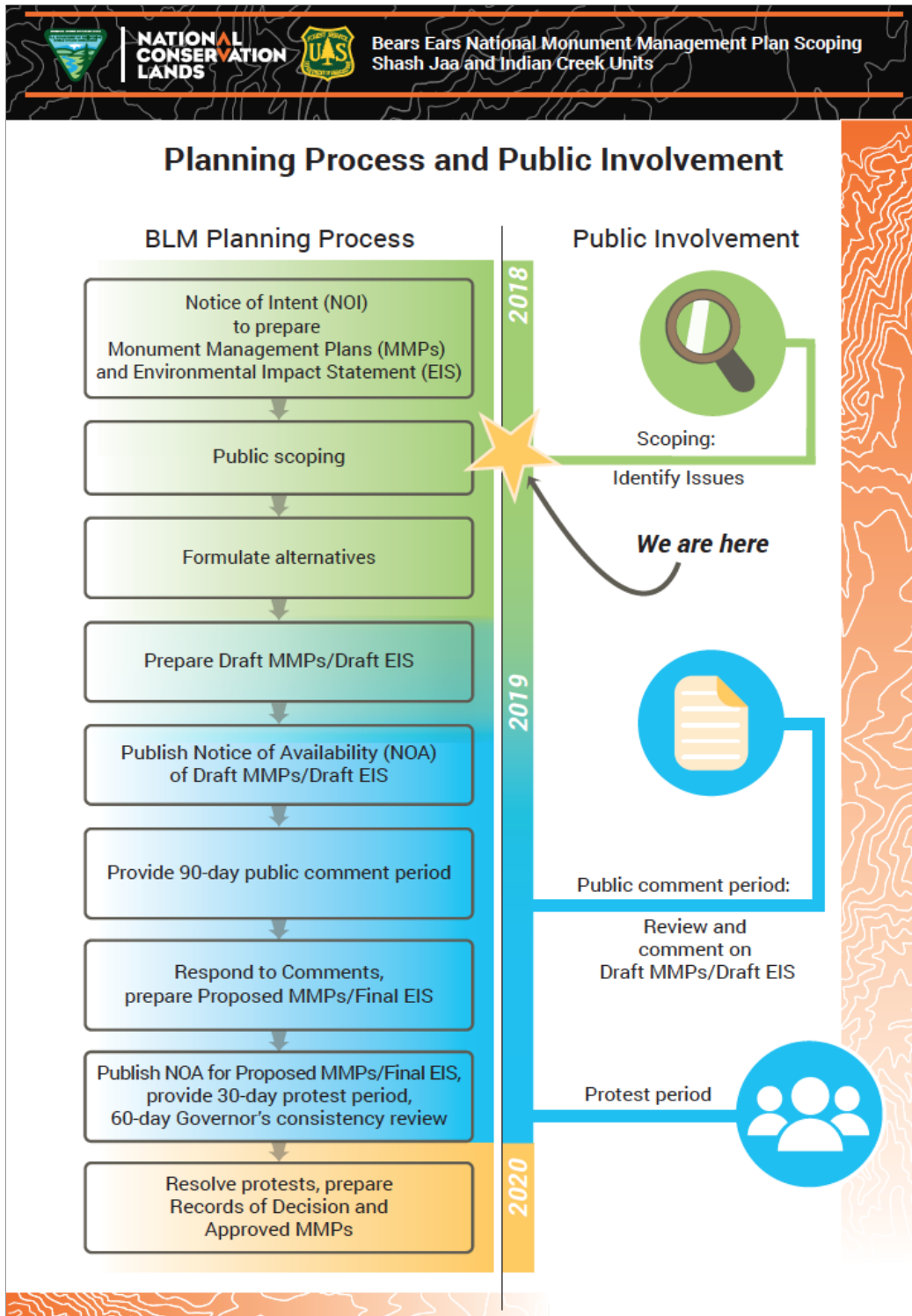
Source: Bureau of Land Management. (2018). Planning process and public involvement.

Appendix 2. Design proposal and timeline.

Design Proposal for NEPA Process

Mandatory NEPA process	Length of time	Design proposal
Scoping	4 months	Popular assembly via online discussion forum — voting / Commenting → Topic Committees, Public Comments
Formulate alternatives	4 months	3 - 5 meetings of Topic Committees and Tribal Committee • Review public comments (Meeting 1) • Learn technical information (Meetings 2-5) • Draft recommendations (Meetings 1-5) • Present final proposals (Meeting 6)
Prepare Draft EIS	1 month	Post proposals on online forum
Public comment period (90 day minimum)	4 months	Public comments (online forum) • BLM can post alternate proposals • Public can vote on Committee vs BLM proposals
Prepare Final EIS	2 months	LA respond to comments; Committees draft Final EIS • BLM may make recommendations for how the Committees should or could revise their proposals
Protest period (30 day minimum)	2 months	Public comments (online forum); LA publish
Final Record of Decision	1-2 months	Committees create Final ROD; LA publish

* LA = Lead Agency

Appendix 3. Online Discussion Forum samples

Figure 1. Sample Home Page.

Original design to demonstrate the learning environment of the online discussion forum.

Sample Home Page (Online Discussion Forum)

EIS Online Discussion Forum

Welcome to the EIS Online Discussion Forum! Select a topic below to submit your comment and vote for the representatives on the Topic Committee.

Topics
Cultural Resources (4,956 comments)
Livestock Grazing (1,112 comments)
Mineral Resources (3,121 comments)
Rangeland Management (1,566 comments)
Recreation (2,820 comments)
Travel Management (1,892 comments)
Woodcutting (578 comments)
Woodlands Management (783 comments)

Help
Project Background
Public Involvement Timeline
FAQ
Forum guidelines

Web help
Email a moderator
Live chat a moderator

Project questions
BLM Maple District Office
Call 555-432-4893
Visit 12 Elm St, Bridgeport, CA

Need help? **Click here** for assistance with ADA-compliance requests, translation services, and more.

Figure 2. Sample Topic Page.

Original design to demonstrate the learning environment of the online discussion forum.

Sample Topic Page (Online Discussion Forum)

< Back to Topic Home Page

EIS Project: Cultural Resources Comments   (4,956 comments)

See more background information on the topic at this link.

3 ways to get involved!
1. Submit your comment.
2. Vote for Topic Committee representative organizations.
3. Read previous public comments below. "Like" the ones that you agree with.

| Comment & Vote | Sort comments by: | Popular ↓ |

Web // TRIBAL MEMBER // 5 min ago   197 likes
I don't think these beautiful sacred places should be open to the public

Web // 1 min ago   5 likes
I agree!

Web // TRIBAL MEMBER // Just now
thumbs up

Written comment // Public meeting, Culver City // July 10, 2018   48 likes
I trust the BLM to do the right thing -- keep the lands open to locals who have been recreating there for years, generations. I've been riding my side-by-side there since I was a kid
Also filed in: Recreation, Travel Management

Web // July 12, 2018, 8:15 pm, PST   19 likes
No way. WRONG

Web // July 12, 2018, 8:47 pm, PST   12 likes
I agree but I think there need to be limits. They should manage timber but not artifacts

Phone call // BLM Dogwood Office // July 14, 2018   32 likes

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Live chat a moderator

Project questions
BLM Maple District Office
Call 555-432-4893
Visit 12 Elm St, Bridgeport, CA

Figure 3. Sample Comment & Vote Form.

Original design to demonstrate the learning environment of the online discussion forum.

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