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# HIGHWAY BATTLES - HOW THEY ARE WON

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Highways provide many obvious and important social benefits. But poorly conceived roads have caused tremendous damage to neighborhoods and the environment. Fortunately, there are a number of tools available for meeting transportation needs with few adverse effects. Unfortunately, far too many roads are built without fully utilizing these tools. As a result, thousands of our neighbors are exposed to needless health risks while countless wetlands, streams, forests and farms are destroyed. Many of these same concerns apply to smaller roads, even residential streets. Following is an introduction to a proven approach for ensuring that new roads are only built once every reasonable measure has been taken to resolve impacts.

## THE EASY SOLUTION

You may be surprised to learn that many people resolve their concerns about highway impacts after doing a bit of research then meeting with the applicant or government officials. Following are the steps involved in this relatively easy solution. On our website ([www.ceds.org](http://www.ceds.org)) you will find a 130-page book, *How To Win Land Development Issues*, which explains how to carry out all the steps described below.

1. Identify how the project will adversely affect your quality of life and that of your neighbors.
2. For those impacts you find significant, determine whether every reasonable measure was taken to resolve the impact. In other words, how can the project be modified to reduce or eliminate negative effects? Would a shift in the proposed alignment avoid your neighborhood or some highly regarded natural feature? Could improved bus or rail service meet the transportation need? Other possible impact reduction measures are described in the two fact sheets cited above and in other documents on our website ([www.ceds.org](http://www.ceds.org)). The following organizations also have extremely valuable information on their websites: the Sierra Club, the Surface Transportation Policy Project, and the

Environmental Defense Fund, just to name a few.

3. Request a meeting with the person, company, or agency proposing the project. Present your perception of project impacts and why you believe these impacts are likely. With an open mind, listen to any reasons they may have for why the impacts will not occur.

If you both agree that an impact is likely, then offer the solutions you've identified. Again, listen with an open mind to any alternative solutions they offer. Remember, the goal is to resolve the impact, not to implement a particular solution.

4. If your discussions with the applicant fail to resolve your concerns, then meet with the government officials responsible for ensuring that the project does not cause undue harm. Frequently these officials include staff with local or state agencies such as planning, zoning, environmental protection, or public works. Have the same conversation with these officials that you had with the applicant.
5. If you reach agreement then seek a way to ensure that the solution will be fully implemented. For example, ask the applicant to revise project plans to shift a road away from your neighborhood. Or ask government officials to make the use of highly-effective environmental protection measures a condition of permits granted for the project.

If the easy solution doesn't produce the results you were looking for, then escalate to a full campaign.

## THE FULL CAMPAIGN

The goal here is to put sufficient pressure on a key decision-maker so they are forced to do the right thing. Two examples of a key decision-maker are: a regulatory official responsible for issuing one of the many permits required to build a new highway or an elected official with veto power over project funding.

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## COMMUNITY & ENVIRONMENTAL DEFENSE SERVICES

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There are four arenas in which a campaign is waged: the initial organizing arena, the technical arena, the legal arena, and the political arena. All campaigns are waged in the first two arenas where victories over smaller projects are frequently won. Campaigns targeting larger highway projects are fought in all four arenas, though victory usually results from tactics waged in the political arena. In most campaigns the principle benefit of legal tactics is to buy more time.

Following is a very brief overview of each arena. Further detail is provided in the CEDS publication [\*How To Win Land Development Issues\*](#).

### **The Initial Organizing Arena**

In this arena you begin marshaling the volunteers, dollars, expertise and political clout needed to win. The goal here is to generate support. So your focus is on your natural allies - not your adversaries. You already met with them without success.

Natural allies are folks who share your concerns. If a project will impact your neighborhood, then all other neighborhood residents are your natural allies. If you fear how a road will affect your favorite trout stream, then your natural allies include all others who fish the stream as well as streamside property owners.

To gain the support of your natural allies, you must craft a message addressing three key points.

1. How will the project harm your ally's interests? The more direct the impact, the better. Avoid the temptation to either overstate or understate the impact.
2. How will you prevent the impact? In other words, what is your strategy and why is it likely to succeed? Include an honest description of what it will take to implement the strategy. Build confidence by explaining how a similar strategy prevailed in other campaigns targeting similar projects.
3. Ask for what you need: people to attend an organizing meeting, folks who will make a \$100 contribution to a neighborhood defense fund, volunteers to conduct a traffic count, an attorney willing to donate their services, etc.

If you articulate all three things well, then you will likely garner enthusiastic support from your natural allies. In fact, you should consider calling a citizens' public hearing on the issue. CEDS has helped many activists to organize these meetings. If done well, they can be a great way to raise funds, recruit volunteers, and show decision-makers that many people (voters) share your concerns.

Typically, a citizen public hearing will raise \$3,000 - \$25,000 in one night. On several occasions decision-makers have conceded to citizen wishes after seeing a large turnout at one of these hearings. For further detail see the CEDS factsheet *How To Demonstrate Widespread Public Support for Your Effort & Raise \$10,000 in One Night*. Also, give us a call at 800-773-4571 and we can help you draft a three-point message for your campaign.

### **The Technical Arena**

The goal here is to amass the factual data needed to prove that your concerns are valid and reasonable alternatives are available. Avoid the trap of attempting to find just the right information which will convince your adversary that you are right and they are wrong. This is a waste of limited resources. Instead, build a case that will convince an unbiased decision-maker. Following are some of the many possible areas of highway project technical research:

- has the applicant accurately estimated existing and future traffic volumes;
- will the project produce the benefits touted by the applicant;
- are cost-estimates accurate (especially for projects built with tax-dollars);
- have all reasonable alternatives (transit, rideshare, alternate alignments, etc.) been fairly evaluated for achieving the transportation benefits;
- will the project induce sprawl;
- will the project take funds away from other, more beneficial, public uses (schools, transit, maintenance of existing roads, etc.);
- have all potential human health and safety impacts been evaluated and resolved;
- have all sensitive environmental features within the project impact zone been identified;
- has an accurate assessment been made of potential impacts to these sensitive features;
- have all alternatives been considered for avoiding or

- minimizing environmental impacts;
- how will the project affect noise levels and property values in neighborhoods located near the proposed alignment;
- will the project impact historic or archaeological resources;
- and on and on the list could go.

Obviously you should focus on those areas of research most directly related to your concerns and those of your allies. Further detail on how to research technical issues can be found in the CEDS publication [How To Win Land Development Issues](#). You will also find examples of highway project technical analyses on the CEDS website ([www.ceds.org](http://www.ceds.org)).

Begin your technical research by contacting all the government agencies reviewing the project. These agencies may include: local planning, zoning, public works and environmental agencies; state and federal environmental agencies; and state and federal highway agencies. Request an opportunity to review the project file compiled by each agency. After reviewing the file meet with the agency staff to discuss:

- what permits or other approvals the agency must grant for the project to proceed;
- what criteria, policies, rules, regulations or other laws govern whether the permit-approval is granted;
- has the applicant met these conditions;
- does the agency have the authority to resolve your concerns;
- what is the deadline for submitting your comments on the project;
- what is your right to appeal if a permit-approval is granted before your concerns are resolved;
- what is the form and time-period for filing an appeal; and
- what other agencies may be reviewing the project.

After completing this research you should have a clearer understanding of which permit-approval offers the best opportunity to resolve your concerns. Meet with the responsible staff and ask that they withhold the permit-approval until your concerns are resolved. If this does not produce a satisfactory outcome then consider working up the chain of command in hopes of finding a more receptive decision-maker. Simultaneously, move onto the legal and political arenas.

## **The Legal Arena**

Like the technical arena, work here begins with research. The purpose is to identify a permit-approval which, through legal action, can be blocked or conditioned in a way that resolves your concerns. The research needs to accomplish several objectives quickly:

- first and foremost, ensure that you do not miss any opportunities to preserve your right to appeal an unfavorable decision;
- next, determine how likely it is that you can resolve your concerns through litigation;
- review all your options for legal action and focus on those most likely to produce victory;
- determine if you have the resources (dollars, mostly) to win a protracted legal battle; and
- interview several attorneys in hopes of finding one with the right experience who inspires confidence and can operate within your budget constraints.

Generally, the applicant is in a better position to fight and win a protracted legal battle, especially if the project meets all minimum regulatory requirements. But, a number of citizen victories have occurred in the legal arena, though most result from effective political action. Following are the permits-approvals which tend to be the focus of highway project litigation:

- state or federal wetland permits;
- for projects with federal funding, the environmental impact statement process required by NEPA (*National Environmental Policy Act*); and
- for roads built by private parties, inclusion of the road in the local master plan, site rezoning, site plan or subdivision approval, erosion and sediment control plan approval, stormwater management plan approval, and compliance with historic preservation requirements.

## **The Political Arena**

The goal of action in this arena is to convince one key decision-maker to use their authority to resolve your concerns. Usually the best decision-maker to begin with is your elected representative. For example, if you feel a town or county permit should be withheld then contact your representative on the town or county council. There is a good chance the decision-maker will act as you wish if you can demonstrate:

- project impacts are excessive;
- the representative has the authority to resolve the impacts; and
- that a large number of the representative's constituents support your position.

However, if project proponents got to the representative first, then victory may not come so easy. In this case you may need to increase pressure on the decision-maker. Ideally this pressure should come from people the decision-maker views as crucial to their political future such as campaign contributors, leaders of groups with large membership in the representative's district, leaders of groups who endorsed the representative during their last election campaign, and a host of others. But if you have reason to believe the decision-maker is firmly on the applicant's side and unlikely to waiver, then search for other targets. For most projects there are several decision-makers who each have the authority to resolve your concerns.

For further information on this topic see the CEDS publication [\*How To Win Land Development Issues\*](#). This and many other documents can be downloaded from the CEDS website ([www.ceds.org](http://www.ceds.org)).

#### **FOR FURTHER ASSISTANCE**

Fighting a highway project can be overwhelming at first. After reading this factsheet please give CEDS a call at 800-773-4571. We can chat about the project and get you started on the easy solution. If the easy approach doesn't work then we can do a strategy session by phone to begin fleshing out a full campaign. There will not be any charge for this assistance. Our advice is always available free of charge to citizen groups.

If you wish we can also travel to your area to do a half-day or all-day strategy session. Generally, there is no charge for these sessions, though we usually ask the sponsoring group to cover our travel and lodging expenses. See our website also for the phone number and link to groups in your state who may lend a hand.