NEPA and the FAA

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Overview

• NEPA Basics

• NEPA Process

• Key Players and Their Roles in the NEPA Process
Why NEPA?

During the 1960’s environmental damage from human activities was becoming apparent:

• Rachel Carson’s Silent Spring in 1962
• NY Times Editorial, 1969:

By land, sea, and air, the enemies of man’s survival relentlessly press their attack. The most dangerous of all these enemies is man’s own undirected technology. The radioactive poisons from nuclear tests, the runoff into rivers of nitrogen fertilizers, the smog from automobiles, the pesticides in the food chains, and the destruction of top soil from strip mining are examples of the failure to foresee and control the untoward consequences of modern technology
Why NEPA?

- The burning of Cuyahoga River in Ohio
- Santa Barbara Oil Spill
- Lake Erie declared dead
- Congress and the President witnessed the damage and took action
As a Result....

- National Environmental Policy Act - 1969
- Clean Air Act - 1970
- First Earth Day - 1970
- EPA established - 1971
- Clean Water Act amended - 1972
National Environmental Policy Act

"To declare 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..."
National Environmental Policy Act

- Procedural law requiring a prescribed process that applies to Federal agencies

- Objective: Informed decision making

- Ensures consideration of environmental factors in final decision

- Requires:
  - Documentation - full disclosure
  - Public & agency involvement
  - Consideration of analysis & feedback prior to decision
Airway Improvement Act
Aviation Safety & Noise Abatement Act
Clean Air Act
Clean Water Act
Coastal Barrier Resources Act
Coastal Zone Management Act
Consultation & Coordination with Indian Tribal Governments
Department of Transportation Section 4(f)
Endangered Species Act
Environmental Justice
Farmland Protection Policy Act
Federal Aviation Act
Numerous FAA Advisory Circulars
FAA Order 1050.1E
FAA Order 5050.4B
Federal Water Pollution Control Act
Fish & Wildlife Conservation Act
Floodplain Management
Hazardous Wildlife Attractants
Migratory Bird Treaty Act
National Historic Preservation Act
Pollution Prevention Act
Protection of Wetlands
Safe Drinking Water Act
Uniform Relocation Assistance & Real Property Acquisition Policies Act
Wetlands
Wild & Scenic Rivers Act

And Many, Many More
What NEPA Does Not Do

- NEPA is not a tool to support decisions already made or a sponsor’s desired action

- NEPA does not:
  - Require a Federal agency to:
    - Place environmental concerns above all other factors critical to a decision
    - Select the environmentally preferable alternative
  - Prohibit adverse environmental effects
  - Stop needed projects
  - Generate mountains of useless paperwork
NEPA Does...

- Require Federal agencies to:
  - Document their analysis
  - Disclose the effects of their actions on human & natural environments to the public & other resource agencies
  - Consider analysis & feedback prior to making a decision

- Encourages Federal agencies to approve projects in ways that are harmonious with human & natural environments
NEPA Triggers

• Compliance required for major Federal actions

• Major Federal actions have potential to significantly impact the environment

• What is a major Federal action?
  – A project completed by a Federal agency
  – Partially/entirely Federal funded project
  – Activities that require Federal approval (permit) or are regulated by a Federal agency
  – New/revised rules, regulations, plans or procedures
FAA Federal Actions

1) Use of Federal Grant Funds (AIP) or PFC Funding
2) Acquisition/Release of Land
3) Part 150 Measures
4) Air Traffic Control Procedures
5) Airport Layout Plan Updates
How FAA Complies with NEPA

• Considers environmental effects before making decisions on projects

• Included NEPA’s intent in Vision Statement:
  – We strive to reach the next level of safety, efficiency, *environmental responsibility* and global leadership.

• Developed orders and guidance
Environmental Policies & Guidance

- National Environmental Policy Act (42 USC §4332)
- CEQ Regulations Implementing NEPA (40 CFR 1500)
- DOT Order 5610.1C, Procedures for Considering Environmental Impacts
- FAA Order 1050.1E, Environmental Impacts: Policies and Procedures
- FAA Order 5050.4B, National Environmental Policy Act (NEPA)
  Implementing Instructions for Airport Actions
- Airports Environmental Desk Reference
- 14 CFR part 150, Airport Noise Compatibility Planning
- FAA Advisory Circulars
- Regional Policy and Procedure Memorandums
FAA Environmental Orders

Why Do We Have TWO Orders?

Order 1050.1E

Environmental Impacts: Policies and Procedures

FAA Agency–Wide Policies & Procedures for Compliance with NEPA & CEQ

All Lines of Business – General Instructions

Effective June 8, 2004

Order 5050.4B

NEPA Implementing Procedures for Airport Projects

Airport Development Actions

Office of Airport Use

Effective April 28, 2006
Three Levels of Environmental Review

• Categorical Exclusion (CATEX)

• Environmental Assessment (EA)
  – Finding of No Significant Impact (FONSI)

• Environmental Impact Statement (EIS)
  – Record of Decision (ROD)

NEPA process timelines VARY and relate directly to project SCOPE and RISK.
Categorical Exclusions

• Actions that do not individually or cumulatively impact the natural/human environment

• Only Applies to projects:
  – Listed in paragraphs 307 – 312 in 1050.1E
  – Do not involve Extraordinary Circumstances

• May still require public & agency coordination

• Requirements for various special purpose laws still need to be met regardless of document type
Environmental Assessment

• Purpose of an EA is to determine if a project has the potential to significantly affect the environment

• Appropriate for projects that:
  – Do not qualify as a CATEX
  – Qualifies as a CATEX but includes Extraordinary Circumstances
  – Normally requires an EA (1050.1E, Chapter 4)
Environmental Impact Statements

• An EIS is required if:
  – An EA identifies a significant environmental impact and mitigation would not reduce impact below applicable thresholds
  – Significant impacts are anticipated

• Formal process that requires intensive interaction with interested & affected parties
How Planning & NEPA Relate

Conventional Master Planning Process

- Inventory
- Forecasts and Requirements
- Alternatives
- Evaluation
- Preferred Alternative

NEPA Process

- Purpose and Need
- Alternatives
- Affected Environment
- Environmental Impacts
- Preferred Alternative
- Permits & Approvals

- Both require supporting information/data
- Both encourage early coordination
How Planning & NEPA Differ

Planning

• Desired solution explained in need statement
• Current & future projects
• Requires alternative analysis but only the sponsor’s recommended alternative is carried forward
• Big picture review of potential environmental issues

NEPA

• Does not include the solution in the Purpose & Need
• Ready for decision making
• Requires all reasonable alternatives, including No Build, to be carried forward
• Detailed review of potential impacts and mitigation
NEPA Process

• Basic NEPA process includes:
  – Complete planning & verify project is justified
  – Determine level of review based on preliminary information
  – Define purpose & need and range of alternatives
  – Complete necessary early coordination & studies
  – Document findings in appropriate format
  – Complete necessary public/agency coordination
  – Submit documentation for final approval

• Coordinate with the FAA throughout the process
Parties in FAA’s NEPA Process

- FAA
- Sponsor
- Consultant
- Resource Agencies
- Public
FAA’s Role in NEPA Process

• Assists Sponsor in determining level of NEPA analysis - FAA makes final determination

• Approval of justification and/or purpose & need

• Assures documentation is an adequate assessment of potential environmental impacts

• Responsible for tribal and SHPO coordination

• May be responsible for compliance with special purpose laws
FAA’s Role in NEPA Process Cont.

• For an EIS:
  – FAA is responsible for completing the EIS
  – Selects & directs consultant
  – Develops scope & content in consultation with the Airport Sponsor

• For an EA or CATEX:
  – Evaluates documents to ensure accuracy and compliance with various laws and orders
  – Makes final determination of significance
  – Approves document
Sponsor’s Role in NEPA Process

• Initiates NEPA process by identifying need/problem

• Consults the FAA *early & often* to determine appropriate documentation & to complete NEPA process
Sponsor’s Role in NEPA Process Cont.

• For an EIS:
  – Identifies need for project
  – Assists FAA in scoping and completing NEPA process
  – Provides information on airport

• For an EA or CATEX:
  – Responsible for:
    • Completing documentation
    • Collecting appropriate information to comply with special purpose laws
  – Submits the document to FAA for review & approval
Consultants Role in NEPA Process

• For an EIS:
  – Contracts with the Airport Sponsor but receives direction from the FAA
  – Works as an extension of FAA staff to complete EIS

• For an EA or CATEX:
  – Contracts and works for the Airport Sponsor
  – Supports FAA with tribal or special purpose law coordination
  – Leads agency and public coordination
  – Prepares document
Resource Agencies Role in NEPA

• Resource agencies can:
  – Provide information about site-specific issues
  – Identify potential adverse impacts

• Coordination with resource agencies is essential
  – Opportunity to resolve issues before permit process
  – Improves the likelihood that a single environmental document would adequately meet needs for permits
Who to Coordinate With?

- **Resource/Regulatory Agencies**
  - US EPA
  - US FWS
  - US Army Corps of Engineers
  - BLM
  - FHWA
  - USDA – NRCS
  - US Forest Service
  - Tribal Groups

- **State Agencies**
  - State DOT
  - State Environmental Agencies

- **FAA Lines of Business**
  - ADO
  - Regional/HQ Legal Counsel
  - Regional Office
  - HQ Environmental Staff
Public Involvement

• Complete, open, & effective public participation is essential part of NEPA

• At the earliest appropriate stage of the NEPA process, pertinent information must be provided to affected communities & agencies

• Comments received must be considered and reflected in the environmental document.

• The Draft EA/EIS must be available for public review at least 30 days before the public hearing, meeting or workshop.

http://www.driftwood141.com/
Public Involvement

• For projects that qualify as a CATEX:
  – Public notice is not required
  – However, public notice is required for Section 106 findings & other resource impacts, such as wetland impacts
  – Include a copy of the legal notice with the CATEX

• EA:
  – At the very minimum, an opportunity for a hearing is offered
  – Include Section 106 finding & other required notices (wetland, 4(f), etc impacts) with legal notice
  – Include a copy of the legal notice in appendix of final EA

• EIS:
  – The public must be provided an opportunity to review & comment on draft EIS’s
  – Final EIS should address all comments received
Conditions of NEPA Approval

- Approval **MUST** be Issued *Before* a Grant is Issued & Any Construction can Begin

- Environmental Approval **DOES NOT** = Final Project Approval or Funding Availability

- Finding valid for **3 YEARS**, then re-evaluation may be required
Common NEPA Pitfalls

- Not completing planning before starting
- Not allowing enough time for the NEPA process
- Not adequately describing the project
- Narrowly defining the purpose & need
- Not defining how alternatives were developed, evaluated and eliminated
- Not identifying the correct stakeholders
- Not coordinating with FAA/agencies early
- Changing project scope during/after NEPA
Recap

• NEPA is a _____ statute
• Required for projects receiving ______
• Three levels of analysis
  - __________
  - __________
  - __________
• Differences between NEPA & Planning
• Parties in NEPA process include:
  - __________
  - __________
  - __________
  - __________
New & Upcoming

Available Documents
- Zero Emission Vehicle Guidance
- Noise Program Guidance Letter

To Be Released Shortly
- CATEX Standard Operating Procedure
- 1050.1F (out for public comment)
- Solar Guidance

To Be Released in the Near (?) Future
- Recycling Plan Guidance
- Energy Efficiency Guidance
- Wildlife ACs
- Lead Guidance
- Mitigation Monitoring
- GHG Guidance from CEQ
Questions?

“Mr. Osborne, may I be excused? My brain is full.”