

CQ470

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

September 23, 2002

Council on Environmental Quality
NEPA Task Force
P.O. Box 221150
Salt Lake City, UT 84122

Re: Comments on NEPA Implementation Practices

The American Council of Engineering Companies (ACEC) is the business association of America's engineering industry, representing approximately 6,000 independent engineering companies with 250,000 employees throughout the United States engaged in the development of America's transportation, environmental, industrial, and other infrastructure. Founded in 1910 and headquartered in Washington, D.C., ACEC is a national federation of 51 state and regional organizations.

ACEC's member companies perform important services encompassing the full range of engineering disciplines and land surveying, for clients large and small. We represent small businesses, large international firms, minority, disadvantaged and women owned professional engineering and surveying firms. We are an important and integral component in the delivery of the nation's infrastructure facilities.

ACEC-member firms work closely with state departments of transportation, metropolitan planning organizations, transit agencies, cities and counties across the country, helping to design and deliver the much needed infrastructure improvements that TEA-21 has made possible. Our combination of technical experience and program knowledge provides sound credibility from which to comment on the current state of NEPA and the need for reform.

As a matter of good public policy the concept of NEPA, which underscores the need to take into account the environmental implications of major federal actions, is important to the quality of life of all Americans. Many problems that are laid at the doorpost of NEPA have less to do with NEPA itself and more to do with problematic interpretations through regulatory actions and administrative procedures.

The federal environmental review process has become much too cumbersome and arduous. ACEC has been a long-time supporter of simplifying and improving the efficiency and effectiveness of processes for conducting environmental reviews, particularly for transportation projects. ACEC was a key advocate for Section 1309 of the Transportation Equity Act for the 21st Century, which attempted to streamline the environmental review and planning process.

To date, Section 1309 has failed to produce the kind of results that were expected, largely because the basic processes, attitudes, and behaviors have not materially changed. Achieving results in this area means changing long-standing cultures, and this is normally a slow process.

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The Council of Environmental Quality can play a key role in changing this situation. We are encouraged that a Task Force has been established to examine the coordination of NEPA processes and we appreciate the opportunity to provide comments.

Comments:

ACEC has defined two overarching goals with regard to expediting environmental reviews:

- 1) Reduce delays to projects while improving the environmental process through better stewardship; and,
- 2) Preserve the integrity and fulfill the intent of environmental statutes.

We have identified three basic components for accomplishing these objectives: (These components were included in our recent testimony to the Senate Environmental and Public Works Committee, and are the basis of our comments to CEQ.)

- (1) Clarify expectations of both transportation and environmental agencies;
- (2) Transform specific processes; and
- (3) Hold both transportation and environmental agencies accountable for achieving positive results.

1. Clarify Expectations

Transforming the culture is not easy, but it must be done. How can this be accomplished? In providing leadership and policy direction with respect to federal agencies' environmental oversight and regulatory activities, the CEQ can have an enormous impact in defining the key roles, responsibilities and perhaps most importantly, what is expected of the agencies involved in the process.

CEQ should clearly define its expectations for expediting project delivery by articulating in clear and unmistakable language a balanced array of basic policy principles. Such clearly defined expectations will be of great value in guiding the actions of participants in the process. Shown below is our draft of 20 such policy principles in the form of expectations - 10 that would apply to transportation agencies and 10 to environmental resource agencies.

Expectations of Transportation Agencies in Expediting Project Delivery

- Advance projects that reflect environmental sensitivity
- Ensure that the purpose and need are well established and compelling
- Consider alternatives that reflect environmental concerns
- Treat environmental concerns on a par with transportation issues
- Foster an open and interactive project development process
- Encourage early involvement by environmental resource agencies
- Keep unavoidable environmental impacts to a bare minimum
- Develop context sensitive solutions with environmental agency as well as public involvement
- Provide effective mitigation and reasonable enhancements to temper unavoidable impacts
- Adhere rigorously to environmental commitments and monitor effectiveness

Expectations of Environmental Agencies in Expediting Project Delivery

- Uphold and implement environmental laws and regulations

- Recognize the need for environmentally sensitive transportation projects
- Participate early and effectively in transportation project development
- Demonstrate a spirit of cooperation
- Offer constructive and problem-solving ideas that address purpose and need
- Reflect a sense of urgency about meeting schedules
- Implement concurrent processing and a performance approach to permitting
- Apply clear and consistent interpretations of legal and regulatory requirements
- Consider common sense, balance and proportionality consistent with legal and regulatory requirements
- Avoid unnecessary duplication by sharing responsibilities with capable and willing state counterparts

We are certain that these principles can be broadened to apply to other areas besides transportation.

Transform Processes

Transformations of certain processes are essential if significant improvements in expediting project delivery are to be achieved. They include the following:

- Lead Agency Responsibilities: The CEQ should take steps to better define the roles of the lead agency. For example, ACEC maintains that the US DOT must play a stronger lead agency role in advancing process improvements and in advocating responsible transportation projects. This can be achieved by clarifying DOT responsibilities in defining the purpose and need for transportation projects, in determining the legitimate range of transportation alternatives to be considered, in approving transportation related technical methodologies, in establishing and enforcing reasonable project schedules, including review and comment periods, and in orchestrating the involvement of appropriate agencies.
- Streamlined Planning and Environmental Regulations: Federal resource agencies should be directed to transform their planning and environmental regulatory approach from an overly complex and prescriptive framework to a more concise, flexible, performance-based combination of rulemaking and guidance that focuses on outcomes. On the transportation side, opportunities to integrate planning and environmental requirements should be offered, but not prescribed, and should be predicated on the notion that guidance derived from duly certified and valid long range transportation planning processes bearing upon such issues as transportation corridor purpose and need, mode selection, and range of alternatives will be acknowledged and have standing in subsequent environmental stages. Duplicative corridor studies that have no standing under NEPA should clearly be eliminated as a requirement.
- Decision/dispute Resolution Process: CEQ should require Federal resource agencies to implement a simplified, responsive and effective decision and dispute resolution process to be invoked at the request of a Governor and led by a Secretary or his designee.
- Time Limits to Legal Challenges: A reasonable time limit should apply to the filing of legal actions that challenge the environmental process (90 days seems reasonable).
- Delegation of Authority: CEQ should encourage the delegation of authority to state environmental agencies for actions on environmentally benign projects as a key component of a long-term strategy to improve the process. For example, ACEC believes that US DOT and federal environmental resource agencies should be required to implement programs to delegate authority to willing and able state counterpart agencies for EA/FONSI and Categorical Exclusion projects, using a post-audit quality assurance process to ensure adherence to federal requirements. Environmental agencies should conserve their limited resources to focus attention upon the relatively small number of projects that involve significant environmental issues. Various models exist for implementing the delegation

process, such as Section 404 wetland permitting in New Jersey and Michigan, and Section 106 historic preservation procedures in Vermont. These have been described in a recently completed AASHTO requested study funded under the NCHRP.

(3) Hold Agencies Accountable

- Annual Report: CEQ, along with Congress, should require annual reports on the progress that the administration agencies have achieved in streamlining environmental review and approval process that does not weaken environmental protections. The reports should include discussion of process changes and results. Results should be measured in two ways.
 - Milestone Durations: A monitoring and reporting framework should be established to determine trends for time required in achieving key milestones, classified by type of project and type of environmental document
 - Interagency Cooperation: Building upon a prototype process being developed by the Gallup Organization under contract to FHWA, a peer review "report card" should be implemented to gauge the degree to which Congressionally endorsed expectations are, in fact, being fulfilled by individual transportation and environmental agencies. If done well, this approach can foster working relationships in which environmental stewardship as well as environmental streamlining will flourish. We encourage CEQ to examine this approach.
- Project Reports: Reports on a project basis should be filed by federal agencies with Congress when certain milestone criteria have not been achieved (by a wide margin) and also in connection with designated transportation projects of national significance.

Transportation professionals by and large support NEPA and its intent. It is not NEPA, but the way in which, in the name of NEPA, the process has been carried out that is the source of the problem. Responsible transportation organizations are not seeking a weakening of NEPA or a rollback in critically important environmental protection measures. What is being sought is a more rational and effective process under which NEPA will flourish because its noble intent is matched by sensible and sensitive processes which improve rather than impede the decision making process.

Sincerely,

T.J. Schulz
Director of Transportation Programs

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ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

1015 FIFTEENTH STREET NW, SUITE 802, WASHINGTON, DC 20005

TEL: 202-347-7474 ♦ FAX: 202-898-0068 ♦ WEB SITE: WWW.ACEC.ORG ♦ E-MAIL: CKIM@ACEC.ORG

FAX TRANSMISSION

DATE: Sept 23, 2002

TO: NEPA Task Force

FAX: 801-517-1021

FROM: T.J. Schulz

RE: Comments

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