

NEPA Task Force Comments

Submitted by:

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General Comments

Contra Costa County Public Works Department (Department) builds and maintains road, airport, and flood protection infrastructure throughout portions of Contra Costa County in the San Francisco Bay area. As a non-federal agency it does not comply directly with NEPA. Instead it frequently coordinates with federal agencies that must fulfill the NEPA mandate. Most of our federal interactions are through funding and directives from the Federal Aviation Administration (FAA), funding from the Federal Highways Administration (FHWA), funding through the Federal Emergency Management Agency (FEMA), regulatory permits from the Army Corps of Engineers (Corps), and consultations (usually through the Corps) with the National Marine Fisheries Service (National Marine Fisheries Service) and the US Fish and Wildlife Service (USFWS). Many of these interactions trigger the NEPA process. Frequently the federal agency with which we are coordinating requests assistance to comply with the NEPA requirements. Usually the assistance is in the form of special studies to facilitate an understanding of the potential impacts of the project the federal agency is funding, permitting, or regulating.

The format of the Public Notice is intended to have comments address specific questions regarding six issues. It appears the majority of the questions are targeted towards federal agencies and their staff, although some can be answered by non-federal agencies. Although the questions posed are pertinent to improving the NEPA process, they do not necessarily provide an optimum forum for our Department to fully provide comments. Instead Contra Costa County Public Works Department is choosing to discuss each issue in more general terms from the perspective of a "client" of the federal agencies that must comply with the NEPA process.

Issue A: Technology, Information Management, and Information Security

Improvements in technology have allowed greater information to be available to analyze the impacts of proposed projects. Obtaining access to it has become more critical than ever. Frequently local municipalities have information at a level of detail that federal agencies with their broad geographic reach cannot achieve. Because local municipalities consistently interact with its resources, they must develop detailed information about them. For example Contra Costa County is completing a countywide geographic information system (GIS). The GIS is at a

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level of detail to allow for specific analysis of a variety of environmental impacts. The California Department of Fish and Game has a list of all known sitings of red-legged frogs (a federally threatened species). The United States Fish and Wildlife Service maintains a database of known wetlands (in which the frogs may reside). But Contra Costa County currently has the best, field verified data on red-legged frog habitat within the County. The Department has developed this information in preparation for negotiating long-term maintenance agreements with a variety of regulatory agencies (both State and Federal). Federal agencies should not hesitate to coordinate with local agencies to tap into unique sources of information.

Issue B: Federal and Intergovernmental Collaboration

For complex projects involving aquatic, wetland, and/or listed species habitat coordination with federal agencies can be onerous. Federal agencies that require regulatory permits under the Clean Water Act or the Endangered Species Act may utilize a program informally called the "one stop shopping" process. This system allows federal applicants to obtain regulatory permits at the same time the NEPA process is being conducted. This program substantially shortens the overall environmental compliance process and is well received by all agencies that use it. Contra Costa County Public Works Department recommends that this program be extended to municipalities that participate in the "local assistance program" through FHWA.

Another issue of intergovernmental collaboration is the time it takes to review and approve the various special studies required under NEPA. For those municipalities that conduct several of these studies each year, the review period can greatly exceed the time it takes to produce the study. In the local assistance program in California, the state Department of Transportation (Caltrans) must review these studies prior to submittal to FHWA to ensure quality control. Contra Costa County Public Works Department has submitted dozens of special studies over the last several years and has never received any substantive comments from Caltrans. Allowing local agencies that consistently complete these technical environmental studies to submit them directly to the federal agency will reduce environmental processing time dramatically. If there are concerns over which agencies should be allowed to bypass the intermediate review, perhaps a certification program can be created and employed.

Issue D: Adaptive Management and Evaluation Plans

Adaptive management has become a popular term in the natural resource management field. Simply put it means to monitor a project after it is "completed" and address any problems that arise. The key to implementing this process is ensuring there are adequate funds available. All too often budgets fail to plan for post-project monitoring and implementing needed changes in the event the project fails to meet expectations. The end result is the agency scrambles to find the funds to solve the problem or, worse, the situation is not addressed. Many of these problems can be ameliorated if post-project

monitoring and contingency funding is required up front of the construction of the project. Funds need not be in cash, but some guarantee of ability to pay should be required. The Department requires this of private development as part of its process to ensure the public infrastructure meets engineering standards.

Integrating the concepts of adaptive management into NEPA can be accomplished through a mitigation and monitoring reporting plan (MMRP). The MMRP discusses potential impacts, what best management practices (BMPs) or mitigation measures can reduce those impacts, and who is responsible for implementing them. The MMRP is a fundamental tool in the California Environmental Quality Act (CEQA), California's equivalent to NEPA. Although not all potential problems and their possible solutions can be discussed, many of the more predictable issues can be addressed. By discussing potential post-project problems and their solutions within the NEPA document for the overall project, the timeframe for addressing these problems can be considerably reduced. The Council on Environmental Quality (Council) should consider employing a similar device.

Issue E: Categorical Exclusions

Categorical exclusions (CE) are a powerful streamlining tool. Those projects that will not individually or cumulatively adversely impact the environment should receive less scrutiny than those project that have a potential to significantly impact the environment. In developing new categorical exclusions, the Council should consider equivalent laws at the state level as a source. California, for example, has a number of categories that are "exempt" from CEQA.

For projects in states that have environmental laws equivalent to NEPA, a federal agency should be allowed to accept the State's version of the categorical exemption as fulfillment of the NEPA process. If a local agency writes a state level document that demonstrates the project will not adversely impact the environment, it is a duplication of effort to complete a similar document under NEPA that accomplishes the same public disclosure of impacts.

Thank you for the opportunity to provide comments in an effort to improve the NEPA process. As a local municipality that frequently interacts with federal agencies, Contra Costa County Public Works Department provides a different perspective on the efficiency and effectiveness of this important federal law. If you have any questions regarding these comments, please do not hesitate to contact Cece Sellgren, Environmental Planner at the above address, by e-mail at csellgre@pw.co.contra-costa.ca.us, or by telephone at (925) 313-2296.