



"Aldridge, Jo"
<AldridJ@WSDOT.WA.GOV>

09/24/02 08:53 AM

To: "ceq_nepa@fs.fed.us" <ceq_nepa@fs.fed.us>
cc: "Roalkvam, Carol Lee" <RoalkvC@WSDOT.WA.GOV>, "Schafflein, Shari" <SSchaft@WSDOT.WA.GOV>
Subject: FW: DELIVERY FAILURE: User nepa (nepa@notes-r1.fs.fed.us) not listed in public Name & Address Book (USDA Forest Service email info: <http://www.fs.fed.us/fs/directories>)

For some reason this was not able to be transmitted late yesterday afternoon . . .let's try this again!

-----Original Message-----

From: Postmaster@r1.fs.fed.us [mailto:Postmaster@r1.fs.fed.us]
Sent: Monday, September 23, 2002 5:46 PM
To: Aldridge, Jo
Subject: DELIVERY FAILURE: User nepa (nepa@notes-r1.fs.fed.us) not listed in public Name & Address Book (USDA Forest Service email info: <http://www.fs.fed.us/fs/directories>)

Your message

Subject: FW: CEQ NEPA comments from WSDOT
was not delivered to:

nepa@notes-r1.fs.fed.us

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ATT37342.TXT

----- Message from "Aldridge, Jo" <AldridJ@WSDOT.WA.GOV> on Mon, 23 Sep 2002 17:45:42 -0700 -----

To: 'ceq' <nepa@fs.fed.us>

Subject: FW: CEQ NEPA comments from
WSDOT

Here are the comments from WSDOT regarding WSDOT CEQ - NEPA

- > <<WSDOT CEQ.doc>>
- > Thank you.
- >
- >
- >



WSDOT CEQ.doc

September 23, 2002

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

Sent via electronic mail to http://ceq_nepa@fs.fed.us

To the Honorable Chairman Connaughton:

The Washington State Department of Transportation is pleased to provide comments as requested by the Council on Environmental Quality (CEQ). Before we address specific questions, we offer our preliminary concerns.

In CEQ's review of NEPA, WSDOT believes that the following general issues should be considered.

1. *NEPA has evolved far away from its original purpose.* NEPA was enacted in order to assure that environmental consequences of proposed activities should be assessed and presented to decision-makers. NEPA's promise was that adverse environmental effects would be recognized, minimized and mitigated. The original intention was also that NEPA would bring the *public* effectively into the assessment process and support strong and informed public engagement in ultimate governmental decision-making.

It is hard to recognize NEPA today. In large part, the NEPA process is now a forum for the technical work-ups to "permitting" processes. Some aspects of the activity in that forum are constructive; some amount merely to jousting, diversion and distraction. The rules and conventions of the forum have become enormously complicated. This not only reflects the ever-increasing sophistication of environmental assessment. It also results from the welter of federal environmental legislation and regulation and the attempt to contrive coherence within NEPA for a crazy-quilt legal context of piecemeal and inconsistent legislative and administrative direction.

2. *NEPA has betrayed the ideals of public involvement.* Despite the large investment in NEPA "public involvement" activities, many believe that NEPA has come to represent the antithesis of true public engagement in either assessment or decision-making. NEPA documents today are largely written (in

unreadable language) for two constituencies: federal district court judges and federal agency permit-writers. Analysis is expert-ized to the point of complete opaqueness. Summarization and explication are eschewed for fear of undermining “legal sufficiency.” Issues for and of the real world environment are neglected in the quest to address sub-headings in an artificial legal environment, consisting of the Code of Federal Regulations and its voluminous and very prescriptive agency guidance. Public involvement activities frequently become exercises in packaging strategies that actually distance and alienate rather than incorporate meaningful public discussion. Perhaps neither the expert consultants who now write the documents nor the permit writers who grade and debate them actually trust or value public viewpoints on issues so complicated, or obscure!

3. *NEPA’s culture polarizes decision-making and fails to support the development of good projects.* Much of today’s concerns for streamlining of environmental permitting focuses on the complexity of project permits and the tangled course of meeting their substantive and procedural preconditions. These are important problems. But we believe another issue deserves more attention than it has received. This is the question of whether “alternatives analysis,” in the shape it now takes in NEPA, creates a context for discussion and problem-solving that maximizes the polarization of opinion, the staking out of positions, and the exclusion of iteration and compromise in problem-solving. Is it possible that part of the frustration at delay and gridlock that now animates NEPA’s critics grows from the analytic mechanism of “alternatives” in which project examination now finds itself mired? We think CEQ should at least broach to behavioral scientists and students of decision-making the question whether the terms of engagement for NEPA “alternatives” analysis inherently frustrates the process of reaching decisions on project undertakings.

4. *NEPA’s emergence as an overall umbrella for project planning has unintentionally created an unsound planning paradigm.* The notion, “That issue will be considered and worked out in the NEPA process,” is incanted day after day across the land. NEPA was created to support decision-making, not to subsume it. How and when NEPA became, in effect, a *de facto* national planning statute, would be a very interesting question. If indeed it has now become something like that, one could suggest that it is grossly deficient in that role. “Scoping the EIS” should not be the crucial act for laying the decisional framework for actions, investments and choices in holistic pursuit of social and ecological needs, risks and opportunities. If that be the aim, NEPA’s ambit must be considerably broadened. Whether Congress would be prepared to do is unclear. But if the aim be to achieve a comprehensive holistic planning model, then a paradigm must be established or reestablished that integrates NEPA with other political, social and analytic frameworks.

If you would like to discuss these concerns, please contact Douglas MacDonald, Secretary of Transportation, 360-705-7054, MacDonD@wsdot.wa.gov.

A. Technology, Information Management, and Information Security

“Where do you find data and guidance for preparing or reviewing NEPA analyses?” and “Do you maintain databases and other sources of environmental information for environmental analysis?” (Questions A(1), A(3))

1. The WSDOT Environmental Information Management/**GIS Workbench** is a GIS interface available for internal WSDOT use only. It has over 100 environmental and natural resource management data themes largely acquired from environmental resource management organizations. WSDOT works with federal, state, and local agencies to maintain this data for use in statewide environmental analysis during NEPA, corridor planning, project development and project permitting. WSDOT is working with a joint USDOT/NASA research program to include remotely sensed data into this collection in order to provide imagery. Whenever possible, WSDOT supports enhancement of data quality and availability through interagency cooperation (such as digitizing floodzone and floodway maps maintained by local governments). Any improved information in the data layers is shared among other agencies. Access to sensitive environmental data (location of nesting pairs of spotted owls) or cultural information (precise archeological site location) and certain infrastructure layers (pipelines, etc.) is restricted. For more information, please contact Elizabeth Lanzer, Environmental Information Program Manager, 360-705-7476, lanzere@wsdot.wa.gov.

2. WSDOT also uses federal agencies' websites, particularly EPA and CEQ internet websites. These are good sources of information and it is important to WSDOT that the sites continue to be well maintained.

3. WSDOT also produces an **Environmental Procedures Manual (EPM)** on CD-ROM and on the internet via the WSDOT home page at <http://www.wsdot.wa.gov/fasc/EngineeringPublications>. The EPM, revised twice a year, compiles environmental procedures and guidance on compliance with federal and state environmental laws and regulations for all phases of transportation projects. The online and CD versions feature live links to relevant federal and state electronic documents. NEPA and State Environmental Policy Act (SEPA) compliance guidance, process flowcharts, interagency forms and checklists make up the bulk of the EPM. For more information, please contact Alix Berg, Training and Manuals Specialist, 360-705-7485, berga@wsdot.wa.gov.

4. Finally, WSDOT finds the periodic training courses sponsored by the National Highway Institute, FHWA, and EPA to be a valuable source of information on NEPA and related topics.

B. Federal and Inter-Governmental Collaboration

“What are the characteristics of effective joint-lead and cooperating agency relationships/process? (Question B(1))

The Federal Highway Administration and WSDOT recently lead the revision of a 1996 “NEPA/404 merger” agreement among federal and state resource and regulatory agencies. The new revision is titled: *Signatory Agency Committee Agreement to Integrate Aquatic Resources Permit Requirements into the National Environmental Policy Act and State Environmental Policy Act Processes in the State of Washington*, SAC Agreement. The agreement has recently been signed by all agencies.

The revised agreement contains Washington State’s approach to improving resource agency involvement in development of EISs. It defines how agencies will participate in EIS projects and clarifies the use of NEPA as the umbrella for resource and regulatory agency concerns and approvals for compliance with the Endangered Species Act, Section 404 and other laws and regulations. Its goal is a clear, consistent, and efficient process to improve the ability to achieve EIS documents acceptable to all parties. Improvements over previous procedures have been made in the following areas:

- More predictable timelines
- More frequent meetings
- Clearer concurrence points
- Clearer issue resolution process with specific timelines and elevation procedures
- Standard language for agencies’ roles
- Commitment to education, participation, performance evaluations and continuing improvement.

Opportunities to improve interagency cooperation could include building trust among project proponents and resource agencies and better use of neutral third party professional facilitation resources to help resolve issues raised in the environmental documentation process. In addition, we believe there is a need for clarification at the federal level of the responsibilities of the lead agency vis a vis other federal cooperating agencies. For example, if FHWA is designated the lead on a project, FHWA should define the scope of the NEPA compliance in order to circumscribe other federal agencies’ push to expand the EIS study to non-project issues (such as global warming or local land use policies).

Finally, the revised agreement embraces the concept that resource agencies should be able to “concur” at three milestones within the EIS. Many states, however, are moving away from seeking concurrence toward a more traditional NEPA approach of consideration of comments.

For more information, please contact Phil KauzLoric, NEPA Section Lead, 360-705-7486, KauzLop@wsdot.wa.gov.

“What are the barriers and challenges to interagency collaboration?” (Question B(2))

Washington State’s Environmental Permit Streamlining Act enacted in 2001, structures WSDOT’s efforts with federal, state, Tribal and local agencies to develop streamlining processes for transportation projects in the NEPA and the permitting stages. Several subcommittees are actively exploring topics such as:

- Creating “one-stop permitting” rather than sequential permit approvals,

- Coordinating requirements for environmental information and defining level of detail needed at various phases of project development,
- Expedited dispute resolution and increased capacity and expertise among staff,
- Developing and tracking environmental metrics to accurately report and analyze results,
- Creating processes to achieve watershed-based environmental mitigation and cooperative enhancement of natural and cultural resources.

For more information on permit streamlining, please contact Peter Downey at 360-705-7432, downeyp@wsdot.wa.gov.

C. Programmatic Analysis and Tiering

“What types of issues best lend themselves to programmatic review and tiered (NEPA) analysis?” (Question C(1))

Transportation projects provide useful tests of programmatic NEPA analysis. In summary, our experience in Washington state shows:

- The relationship between NEPA and ESA must be clarified. The lack of synchronization of information requirements at logical project steps is a particular problem. WSDOT has several cases in which NEPA documents cannot be finalized due to requests for permit-level project design to complete ESA Section 7 consultation.
- How NEPA land use and cumulative impact analysis should be scoped and conducted where state and local laws establish growth management requirements is an important, difficult topic.

WSDOT’s experience with the use of tiering of environmental impact statements has met with mixed success. A critical issue for WSDOT is that NEPA and ESA are not integrated so as to facilitate the use of NEPA as the “umbrella” for making a determination of effect to an ESA listed species. The level of detail required for ESA consultation with USFWS and NMFS is at a higher level than can be provided in a “tier one” or “programmatic” EIS.

WSDOT transportation projects include highway construction in urbanized areas, such as the 30-mile corridor of I-405 through Seattle Metropolitan Area. WSDOT, FHWA and other joint lead agencies chose a programmatic, tiered EIS to evaluate improvements to that heavily traveled corridor over a 10- to 20-year timeframe. Bull trout (managed by USFWS) and steelhead and other salmon species (managed by NMFS) may be affected. NMFS and USFWS actively participated with the technical advisory team consulting on the EIS. However, because the level of complexity for ESA analysis was so much higher than required by FHWA or other federal and state agencies, NMFS and USFWS agreed not to formally consult under ESA Section 7 until subsequent “project-level” NEPA documents are prepared.

The root issue is that ESA does not provide an “incremental” or “tiered” approach to mirror NEPA. Many large scale environmental issues such as cumulative impacts, secondary and indirect impacts (under NEPA) and interdependent/interrelated actions (under ESA) are best explored at the programmatic or first tier for major, long-term projects. FHWA encourages the use of tiering, and also requires that ESA compliance be integrated within NEPA approvals. This tends to require costly detailed design during the conceptual stage in order to satisfy the ESA compliance. Then during second tier, project-level NEPA and ESA compliance, redesign and re-consultation must be performed. This presents high risks for design costs and project delay.

We suggest that the CEQ provide guidance to improve the integration of ESA with programmatic analysis under NEPA. In order to expedite programmatic and project-level NEPA documents, we support the AASHTO recommendation for increased flexibility to develop the preferred alternative to a higher level of detail in the Final EIS. By coordinating the preparation of NEPA and ESA documentation in this fashion would facilitate project permitting and expedite project delivery.

Cumulative impacts to land use represent another difficult issue encountered by transportation projects during NEPA. Washington State has a strong, locally-driven growth management planning framework. A tiered NEPA document can sometimes be an appropriate mechanism to address issues such as land use changes and cumulative impacts. However, not all transportation projects are of sufficient magnitude to warrant a tiered approach. When a tiered approach is not appropriate, WSDOT struggles to meet requests from resource and regulatory agencies to address cumulative impacts and land use issues. Our state law vests decisions on these issues in local government land use planning. Transportation projects cannot oust the judgment of local policy-makers. A method to resolve this source of conflict is not clear. We would welcome efforts by the Task Force to develop and offer potential solutions to this dilemma.

WSDOT can provide the NEPA Task Force with more information about our experiences with the “Reinvent NEPA” process, which was applied to three pilot projects. The Task Force may wish to examine a recent synopsis of the SR 104 highway project, a “Reinvent NEPA” pilot project, that illustrates the significant challenges in seeking early agency involvement for a corridor level EIS. For more information, contact Carol Lee Roalkvam, Regulatory Compliance Program Manager, 360-705-7126, Roalkvc@wsdot.wa.gov.

“Please provide examples of how an environmental management system (EMS) can facilitate and strengthen NEPA analysis.” (QUESTION C(2))

WSDOT is developing an EMS for its programs and operations. Ways that the EMS will facilitate and strengthen NEPA analysis include:

- Better integration of WSDOT’s environmental compliance efforts with the planning and design activities for new transportation projects. This will improve

the flow of information into NEPA documents and lessen needs for environmentally-driven re-scopes and redesigns in the course of project development.

- Improved compliance monitoring and reporting that will facilitate transparency for other agencies and the public about WSDOT’s performance on environmental obligations and responsibilities. This will strengthen the atmosphere of trust and collaboration in which the NEPA process is performed.
- More effective information management and document control on environmental matters. This will allow less expensive and more consistent preparation of NEPA documentation across the state, facilitate independent review of technical reports, and support the expedited review of draft documents.

For more information about WSDOT’s EMS, please contact Tony Warfield at 360-705-7492, warfiea@wsdot.wa.gov.

D. Adaptive Management/Monitoring and Evaluation Plans

“What factors are considered when using an adaptive management approach? How can environmental analysis be structured to consider adaptive management?” (Questions D(1), (2))

We support the CEQ’s efforts addressing adaptive management in NEPA documents. Natural Resource Agencies in the Pacific Northwest are making significant commitments related to adaptive management for forest and watershed management related to endangered species recovery. The intersection of that adaptive management in the context of major public works projects is a significant challenge.

WSDOT shares AASHTO’s cautions about the application of adaptive management to highway projects. We encourage CEQ to consider that there is a threshold of practicality where changes in scientific information cannot be applied to a project, but they can be addressed through programs. We can offer some practical case studies where interdisciplinary teams are reaching agreements on best available information and seeking to balance issues like flood control, natural process of river channel movement, and bridge location (SR 24). When the specific project does not reach a threshold that significantly precludes achieving a community value (like salmon recovery), the NEPA action should continue. The community value can further addressed through programmatic contributions. WSDOT has several programs that provide environmental benefits, such as the removal of barriers to fish passage, retrofit of stormwater outfalls, repair of chronic flood sites. These programs can be capitalized so that project decisions are not revisited but the environmental outcomes are achieved through a mix of project investments and program investments. This will balance the burden of adaptive management so that it will not land on the back of a project.

CQ551

For more information, please contact Shari Schaftlein, 360-705-7446,
sschaft@wsdot.wa.gov.

Thank you for the opportunity to submit these comments.

Sincerely,

Douglas B. MacDonald
Secretary of Transportation
Washington State Department of Transportation
P. O. Box 47316
Olympia, WA 98504-7316