



**Washington State  
Department of Transportation**

**Douglas B. MacDonald**  
Secretary of Transportation

October 28, 2003

**Transportation Building**

310 Maple Park Avenue S.E.  
P.O. Box 47300  
Olympia, WA 98504-7300

360-705-7000  
TTY: 1-800-833-6388  
www.wsdot.wa.gov

Mr. Horst Greczmiel  
Associate Director for NEPA Oversight  
Council on Environmental Quality  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

SUBJECT: Our review of NEPA Task Force Recommendations

Dear Horst:

In preparation for the NEPA Roundtable tomorrow, I asked Carol Lee Roalkvam to compile a summary of our review of the NEPA Report -- including the recommendations that we at WSDOT think should rank among the highest priority for the Council on Environmental Quality, and the federal agencies tasked with implementing NEPA. Carol Lee and I will present some of these thoughts during the roundtable -- and we'd be happy to provide additional information in the future. Also attached is my two-page introduction to the department's response to the initial survey from CEQ's NEPA Task Force, September 2002.

**General Comments**

The NEPA Task Force Report, *Modernizing NEPA Implementation*, provides a concise and readable summary of public and agency accounts of current implementation problems and benefits, and presents a wide array of recommendations for improvement. The summary is very high clip -- and much can be read between the lines. However, the recommendations are fairly detailed and give a good sense of direction forward. Several of the issues raised in our detailed response to the survey are reflected in the report.

**Recommendations**

WSDOT strongly supports a number of recommendations proposed by the Task Force. These are presented below in order of priority.

1. **Initiate an adaptive management pilot study.** See Report, Page 49. The discussion about using adaptive management under NEPA is very thought provoking. Using an environmental management system (EMS) to integrate enforceable mitigation commitments and provide the structure to maintain those commitments through construction and operations may be the solution to a host of procedural problems presented by design changes, new information etc. If CEQ can iron out the details surrounding the move from NEPA into permitting and implementation via EMS the resulting guidance will fill a void between the intent of NEPA and the practice -- where too often the ROD is viewed as the culmination rather than the midpoint of environmental decision making and reporting. WSDOT supports this as a major

improvement and encourages CEQ to look at design/build transportation projects as excellent proving ground. A few words of caution:

- a. Federal agencies need to acknowledge that adaptive management and EMS benefits result from trust developed from good reporting in exchange for some flexibility in the level of detail required earlier in NEPA;
- b. the “sin and penance” focus of NEPA will need to be rethought, and resource and regulatory agency staffs will need to be retrained to consider performance-based environmental commitments rather than site specific, 100% design detail.

2. **Use a recognized EMS to serve as the mitigation implementation vehicle when a FONSI depends on adaptive management measures.** See Report, Pages 54, 55. WSDOT fully supports the Task Force’s brainstorm regarding EMS as an implementation tool. The tie to the FONSI could give us the clear hand-off from NEPA decision to construction and maintenance that we often lack. It also might make the WSDOT EMS effort much more powerful inside and outside the agency by specifying how we intend to follow through on commitments, how we’ll deal with changes, etc. Furthermore, it can give structure to the concept of adaptive management by outlining compliance assurance procedures (we could share with CEQ our March 2003, Instructional Letter). WSDOT and FHWA-WA division could assist CEQ by compiling examples where a FONSI references subsequent federal, state and/or local permits and conditions – which contain comparable adaptive management features (although using different terms). Here too, there are some issues similar to those above:
  - a. the resource and regulatory agencies will need to allow some flexibility in level of detail in exchange for commitments on performance/outcomes, monitoring and adapting;
  - b. Since there are many ways to design and implement an EMS for a public agency, CEQ should consider asking the key federal lead agencies to define what a “recognized EMS” would be for their EA/FONSIs. For example, USDOT-FHWA could use their own annual audit program to define key NEPA and post-NEPA compliance elements of an EMS for transportation projects; and
  - c. Monitoring is an expense that will need to be covered within project construction funds (operating funds are unlikely to cover much monitoring). Lead federal agencies will need to develop clear data collection standards so that information collected from multiple sources can be integrated into regional or national reports (apples-to-apples).
3. **Convene Federal Advisory Committee to provide guidance on the use of programmatic documents.** See pages 37-40. This recommendation acknowledges the lack of information about what should be in Tier One documents, what level of detail, what issues should be deferred to later NEPA project specific documents vs. what must be dealt with in first tier, how long are they good for, etc. Any clarification from CEQ will help. In addition, the benefit of tiering needs to be made clear. WSDOT had (is having) mixed success. True benefit would be realized if we could

successfully address cumulative effects at a regional or corridor level and incorporate by reference that point in all later decision documents.

4. **Clarify public involvement, alternatives and mitigation for EAs and the FONSI.** See pages 72, 73. The report contains several very good recommendations to improve the use of EAs and reduce the size and complexity of these documents. WSDOT project teams are working to create concise, comprehensive EA documents and inclusive public involvement programs to increase the value and durability of the environmental decisions contained in the FONSI. WSDOT supports the request that CEQ prepare a template to address some of the legal issues raised on page 67. For state funded projects, WSDOT uses the Washington State Environmental Policy Act (SEPA) checklist to prepare mitigated determinations of nonsignificance (DNS) which are similar to the checklist idea summarized (and dismissed) on page 67 – except that the SEPA checklist allows for narrative discussion of the issues.
5. **Encourage greater consistency across agencies in technology, information management, and security.** See pages 17-21. There are several recommendations regarding the need to clarify information dissemination and public access to information. Role of technology and the push to make more information readily available is a challenge; however, WSDOT sees *communication* as an even greater challenge. When pursuing recommendations that are geared to improve access to information, we advise the CEQ to stay focused on communicating information that is truly relevant to the decisions at hand. The public and agencies are overwhelmed by volumes of information that is not synthesized, not clearly presented, and too often not tied to the decision. If in the course of this effort CEQ could provide guidelines on how to create and convey objective information that meets the “hard look” test – that would be a huge help. There is also a need for national guidance on standard data sources that are sufficient for NEPA-level decisions to help limit data gathering.
6. **Develop guidance addressing successful collaborative agreements...** See pages 30-33. CEQ is asked to provide templates for MOAs, dispute resolution, etc. WSDOT has used several different approaches to get cooperating agencies, tribes, and the public to the table more effectively. While we are encouraged to initiate NEPA early and invite all agencies to the table at the conceptual stage; we are, at best, challenged and, at worst, unable to meet repeated demands for higher level of detail. We recommend that CEQ’s guidance recognize that information ages (becomes stale) and considers ways of tiering non-NEPA actions (those subsequent approvals that are most likely to be the primary concern of cooperating agencies)<sup>1</sup> to bring them closer to final design and permitting. For example: If we could tier the ESA review so that it is parallel to the level of detail needed to complete NEPA and so that it is revisited in permitting, we would have greater success. We could move on right of way acquisition, but not on final design of either the transportation facility or mitigation

---

<sup>1</sup> Examples of decisions include determining effects of a project on a listed fish species before it is known if in-water work will occur, and determining air quality conformity before a detailed traffic analysis can be completed for the project.

elements. This is similar to how Section 404 compliance works (NEPA = we identify the LEDPA; Permitting Stage = we complete design and apply for the 404 permit). We think there are several opportunities to create "tiered review" and successfully provide both the check and balance that the resource agencies need, and enable us to complete NEPA with less detail.

7. **Develop "citizens guide" (Improve communication with public during NEPA).** See page 29. The goal is to educate the public about NEPA and how to participate in decision making. WSDOT suggests turning this recommendation around and putting the responsibility on improved communication on the agencies charged with NEPA rather than on the public. Our goal at WSDOT is to change this direction by producing a readable document that is useful to both the public and decision makers. We also want to make the choices and any trade-offs clear to the public. We can share some materials that explain the genesis of this effort, and how we plan to test the new format on our next big EIS for a very interesting project in Seattle, Alaska Way Viaduct.
8. **Develop a handbook on social, cultural and economic analysis.** See page 83. This recommendation acknowledges that the difficulties in integrating these analyses into NEPA. Any clarification will be a help!

We look forward to a lively discussion tomorrow. If you would like to follow up on any of the materials discussed above, please feel free to contact me at 360-705-7054, [MacDonD@wsdot.wa.gov](mailto:MacDonD@wsdot.wa.gov); or Carol Lee Roalkvam, WSDOT Environmental Services Office at 360-705-7126, [roalkvc@wsdot.wa.gov](mailto:roalkvc@wsdot.wa.gov).

Sincerely,



Douglas B. MacDonald  
Secretary of Transportation

DBM:clr  
Enclosure