

Questions for NAEP on Resource Agency Streamlining (Engagement 101946)

11:00 AM EST July 7, 2017

Research objectives:

- What is known about the impact of streamlining provisions on the environmental permitting process?
- What actions has the Council on Environmental Quality taken to accelerate highway and transportation projects?
- What actions taken by resource agencies to streamline the permitting process could provide examples of “leading practices” for DOT, and what additional streamlining opportunities exist for the resource agencies to implement?

Questions:

Background on NAEP

- Please provide an overview of your organization’s mission and role, especially as they relate to environmental reviews and permits for transit and highway projects.

NAEP Mission Statement

Our mission is to be the interdisciplinary organization dedicated to developing the highest standards of ethics and proficiency in the environmental professions.

Our members are public and private sector professionals who promote excellence in decision-making in light of the environmental, social, and economic impacts and benefits of those decisions.

Our vision is to:

- Be the primary source of unbiased information on environmental practices
- Support the advancement of the environmental professions as a whole and our individual members in their careers
- Encourage better decision-making that thoughtfully considers the full implications of those decisions

The National Association of Environmental Professionals

The National Association of Environmental Professionals (NAEP) was founded in response to the passage of the National Environmental Policy Act (NEPA), as the peer group representing the "Environmental Professional."

When the White House Council on Environmental Quality (CEQ) held its formal hearings in 1978 on proposed revisions to its regulations for implementing the procedural provisions

of NEPA, NAEP was the only professional association officially invited to give testimony, thereby giving federal recognition to NAEP and its membership of environmental professionals.

By 1977, many of the early environmental project managers had become highly qualified and were in competition with other disciplines for senior positions; yet there was no mechanism for formal peer recognition analogous to the registration for engineers, certification for urban planners, foresters, architects, etc. NAEP again took action, and in the remarkably short time of two years from concept, NAEP had its Certified Environmental Professional program in place by 1979. In that same year, the first issue of *Environmental Practice*, the official quarterly journal of NAEP was launched, another big step for the new profession.

Over the years, the myriad of environmental laws, executive orders, and regulations that have come into being since NEPA have resulted in many new technical, scientific, and planning-oriented environmental professional specialties being developed that better fit within the environmental professional discipline than any other. As a result, NAEP programs have been continuously updated and refined to adjust to an expanding and diversifying membership base and to the professional needs of the environmental professional.

NAEP does not directly engage in the review of environmental documents or permits. However, environmental professionals engaged in transportation planning are well represented in NAEP, including 2 of the 3 most recent NAEP Presidents. NAEP includes a transportation planning track at the annual conference to facilitate lessons learned in relation to transportation projects, including all facets of transportation planning, highway, rail, transit, bicycle, and pedestrian. Case studies on lessons learned include a broad range of topics, public outreach and community involvement, environmental analysis and modelling, environmental justice, and mitigation planning.

A major focus of NAEP is on National Environmental Policy Act compliance. A large portion of the presentations at NAEP annual conferences are on NEPA topics, including case studies, best practices, new NEPA-related legislation and regulations, and NEPA litigation. NAEP's NEPA Practice group, consisting of over one hundred environmental professionals, representing both the private and public sectors, holds monthly discussions which often address NEPA compliance for transportation projects, including implementation of the provisions of Title 41 of the FAST Act (FAST-41). This group also prepares the Annual NEPA Report which presents statistics on EISs issued during the previous year, duration of preparation of draft and final EISs, summary of the major NEPA court decisions, and summary of recent NEPA legislation and guidance.

CEQ has worked directly with NAEP to provide information to environmental professionals engaged with federal agencies, local sponsors, private-public partnerships, and the consultants supporting these parties about the FAST-41 provisions:

- CEQ Presentation at 2016 Annual Conference
- CEQ Presentation on 2016 NAEP Nationally Broadcast Educational Webinar on 2015-2016 Legislative Update

- CEQ Presentation on 2016 NAEP Nationally Broadcast Educational Webinar on FAST ACT
- CEQ Keynote Address at 2017 Annual Conference
- CEQ Presentation at 2017 Annual Conference
- CEQ Presentation on 2017 NAEP Nationally Broadcast Educational Webinar on 2016-2017 Legislative Update

Environmental Consultations and Permitting

- Does your organization have a direct role in the federal environmental review process for highway and transit projects? If so, please describe the role your organization plays.
 - o No. NAEP does not participate directly in the federal environmental review process for highway and transit projects. NAEP is a not-for-profit professional organization. NAEP does review and comment on CEQ and federal agency proposed guidance related to the environmental process and practice through the NEPA Practice group.
 - o However, the NAEP membership is comprised of nearly 1,000 private and public sector environmental professionals, plus another 4000 professionals through its affiliated chapters, that are actively engaged in these activities.
- Has your organization been involved in federal efforts to streamline environmental consultations and permits? If so, please describe your role in streamlining initiatives.
 - o NAEP prepared a report on *Best Practice Principles (BPPs) for Environmental Assessments* in response to the CEQ's 2011 request for pilot projects on efficient and effective implementation of NEPA and to improve the quality and transparency of agency decision-making. The NAEP report identified seven BPPs as most important in advancing the quality, usefulness, and timeliness of EAs. The BPPs were based on CEQ regulations and guidance, practitioner responses to a survey questionnaire, a review of case law and peer-reviewed scholarship, comments by CEQ, and practitioner experience.
 - o An NAEP affiliated chapter, the California Association of Environmental Professionals, is working directly with the California Governor's Office of Planning and Research and the State legislature regarding efforts to streamline state regulations, particularly in relation to projects that require preparation of joint environmental documents to meet the requirements of both the NEPA and the California Environmental Quality Act (CEQA), including the preparation of *NEPA and CEQA: Integrating Federal and State Environmental Reviews*, prepared jointly by CEQ and the California Governor's Office of Planning and Research.
 - o Regarding "streamlining," it is important to emphasize that it means to efficiently work through the NEPA process--not to eliminate aspects of the law/regulations. Experienced NEPA practitioners can and do complete NEPA reviews quickly and

efficiently. For example, USMC recently completed a Supplemental EIS in about six months (NOI on 24 August 2016 with ROD on 24 February 2017).

- Have federal efforts to streamline the environmental consultation or permitting process for highway and transit projects had an adverse impact on the environment? Are there any studies that have looked at this issue?
 - NAEP is not aware of any studies that address this issue. NAEP recommends asking AASHTO's Center for Environmental Excellence. In general NAEP believes it is too early to be able to reach any solid conclusions, but there may be some initial indications on how these measures are working. NAEP supports streamlining of the process, while maintaining the environmental laws and protections enacted over the past 50-plus years.
- Are you aware of certain states or regions that are employing best practices for the environmental consultation and permitting process for transit and highway projects? If so, please describe those best practices.
 - The combined streamlining provisions of SAFE-TEA-LU and FAST-41 have been implemented by the five specified states in SAFE-TEA-LU. Additional streamlining, under FAST-41 is apparent in Pennsylvania.
 - SAFETEA-LU establishes a project delivery pilot program for 5 states (specified as Alaska, Ohio, Oklahoma, Texas, and California), allowing them to apply to USDOT to assume all USDOT environmental responsibilities under NEPA and other environmental laws (excluding the Clean Air Act and transportation planning requirements). This delegation authority is limited to highway projects, and it is being used effectively for specific projects within those states.
 - The State of California Department of Transportation (Caltrans) entered into a Programmatic Agreement (PA) with the Federal Highway Administration (FHWA), State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation in order to streamline cultural resource project review. The First Amended PA (2014) was revised to expand Native American consultation/coordination and to allow for co-review of resources under the Army Corps of Engineers jurisdiction. The First Amended PA provides guidance for public and Native American consultation, evaluating cultural resources, assessing adverse effects, and resolution of adverse effects. The appendices define the qualification requirements for archaeologists and architectural historians, procedures for screening undertakings and establishing Areas of Potential Effects, defining property types which can be exempted from review and procedures for establishing standard conditions such as environmentally sensitive areas (ESAs) and implementing the Secretary of the Interior's Standards for the Treatment of Historic Properties, data recovery plans, and the bridge seismic safety retrofit program. The intent of the First Amended PA is to provide clear guidance for cultural resource professionals for implementing Caltrans policies and procedures and to minimize review of resources which would not be eligible for listing in the National Register of Historic Places (e.g., isolates or substantially altered buildings).

- o In Pennsylvania, the FHWA/PENNDOT have started to automate both the National Historic Preservation Act Section 106 Consultation Process and the Endangered Species Act Section 7 screening for threatened and endangered species. They have also initiated an on-line Section 404 Corps of Engineers permitting system for highway projects. Unfortunately, neither the FTA or FRA, nor the Corps of Engineers, have taken advantage of these automated processes. PENNDOT'S automated Section 106 program could be used for all federal level reviews. So could the Section 7 and Section 404 permitting systems.
- o Pennsylvania SHPO'S on-line CR-GIS Screening program (<https://www.dot7.state.pa.us/crgis/>) is an example of how NEPA screening can be implemented. The FHWA/PENNDOT have also implemented an on-line Project Path system for Section 106 SHPO Consultations (<https://search.paprojectpath.org/>). The Pennsylvania DCNR's PNDI on-line Section 7 Screening process (<https://conservationexplorer.dcnr.pa.gov/>) and the PENNDOT/PADEP'S On-line Section 404 Permitting (<https://www.kees.pa.gov/>) systems are also examples. Unfortunately, the USFWS and National Marine Fisheries Service have not fully supported the State's T&E Screening program so secondary consultations are required by the Corps of Engineers.
- o The State of Washington has been aggressively implementing FHWA's Every Day Counts Program
- o In 1999, Arizona Department of Transportation (ADOT) and FHWA issued a ROD on a highly controversial EIS. At the time of the ROD, ADOT also received the Section 404 Individual Permit for the project. In other words, timing of permitting to align with NEPA intent regarding timely completion is possible under current law and policy. Granted this seems to be a survey about past recent actions but our point is that agencies could be taking better advantage of the numerous provisions in existing laws.
- o While not necessarily specific to a state or geographic region, there has been a shift towards development of programmatic EISs as a tool to streamline the permitting process, such as those recently reflected in the most recent update to *US Department of Transportation NEPA Implementing Procedures*. The Bureau of Land Management *Programmatic EIS for Solar Energy Development in Six Southwestern States* and the Fish and Wildlife Service *Programmatic EIS for Wind Energy Projects in the Upper Great Plains*, while not directly addressing transportation-related actions, are good examples the use of programmatic EISs to streamline permitting processes. This initiative could be expanded to include programmatic EAs for routine agency activities.
- What challenges, if any, have resulted from federal streamlining efforts for environmental consultations and permitting?
 - o NAEP and the environmental professionals who constitute the organization are committed to supporting Lead Agency responsibilities for fulfilling the requirements of NEPA, especially related to early agency coordination so that projects are designed with avoidance and mitigation options in place or to better integrate permitting requirements into NEPA through merger agreements.

- o The Cohen NEPA Summit held in December 2014, which several NAEP members participated in, and has since been continued and supported by NAEP at the 2016 and 2017 annual conferences. At these conferences, environmental professionals considered several aspects of streamlining NEPA. One conclusion is that a lack of training and experienced staff hindered streamlining and made NEPA reviews less efficient.
- o There is a misunderstanding that NEPA is delaying projects. The most common delays are project mismanagement, funding issues, and/or missed opportunities for Section 7 and Section 106 consultations.
- o Streamlining does not mean waiving or exempting projects from a complete review. It fosters better project management and creates a more defined project review process.
- o The ability to achieve the objectives of more timely delivery of environmental reviews necessitates the readily accessible exchange of data from comparable work efforts or similar studies in the same geographic area and adequate staffing with skilled and trained professionals who can implement the required “hard look” within the rigorous timelines, to ensure that environmental protection is not compromised.
- Are there any alternative steps that resource agencies could take to reduce permitting and/or consulting times while better protecting the environment?
 - o The Cohen Summit cited several successful programmatic NEPA efforts that allowed individual projects to proceed through reviews more quickly and with less uncertainty. This practice could be expanded and broadened to include programmatic EA-level analyses. The Summit also recommended establishing senior level (SES) positions in most agencies assigned to oversee NEPA and environmental compliance.
 - o NAEP would be glad to provide the Cohen NEPA summit reports as they seem relevant to this subject.
 - o Automation of the consultation process can greatly reduce review times, by integration of existing data with a “hard look” by qualified subject matter experts to determine how to best address data gaps. The problem is getting people to admit there are potential issues that have to be addressed very early in the project planning process. This can be enhanced by having GIS-based systems for identify the potential presence of cultural resources sites, wetlands, hazardous waste, socioeconomic communities, and T&E habitat. The quicker people can find out about such critical areas the faster they can plan avoidance routes and actions. The USEPA’s NEPAassist (<https://www.epa.gov/nepa/nepassist>) and related EJSCREEN (<https://www.epa.gov/ejscreen>) are very useful GIS-based screening tools based on various databases available to USEPA.

NAEP's Relationships with Other Entities

- Please describe your organization's relationship or past collaborations with other nongovernmental organizations to highlight any best practices or challenges with the environmental consultation and permitting process.
 - NAEP through its Education Committee routinely collaborates with a variety of organizations to present educational and instructional webinars on best practices related to environmental consultation and permitting:
 - Udall Foundation, U.S. Institute for Conflict Resolution
 - American Public University
 - Vermont Law School
 - Environmental Defense Fund
 - National Resources Defense Council
 - American Cultural Resources Association
 - American Water Resources Association
 - National Audubon Association
 - Trust for Public Lands
 - Tribal Historic Preservation Officers
- Please describe your organization's relationship, if any, with resource agencies (Army Corps of Engineers, Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration), particularly as it relates to streamlining initiatives on environmental review and permits for transit and highway projects.
 - NAEP through national conferences, webinars, and workshops invites resource agency representatives from agencies such as the U.S. Army Corps of Engineers and the National Oceanic and Atmospheric Administration to make presentations to environmental professionals regarding best practices for streamline environmental review and permits for infrastructure projects, including transit and highway projects:
 - US Army Corps of Engineers presentation on Nationwide Permit Process
 - US Environmental Protection Agency presentation on Waste Discharge Requirements and Water Quality Certification

- US Fish and Wildlife and National Oceanic and Atmospheric Administration presentation on streamlining Section 7 Consultation for federal infrastructure projects
- US Fish and Wildlife presentation on Bald and Golden Eagle Protection Act and preparation of Avian and Bat Protection Plans
- Please describe your organization's relationship, if any, with the White House Council on Environmental Quality and the Federal Permitting Improvement Steering Council (FPISC).
 - NAEP regularly coordinates with CEQ to provide input from NEPA practitioners regarding opportunities to advance the NEPA practice through guidance, such as the EA Best Practices guidance, described above. NAEP provides a forum for disseminating information through the national conferences, webinars, workshops, and publication in the peer-reviewed quarterly professional journal, the *Environmental Practice*, the *National Desk*, and the NAEP quarterly newsletter *News for the Environmental Professional*.

NAEP NEPA Data

- In a previous meeting, NAEP officials mentioned that the NAEP annual report includes data on the number and duration of EISs. Does NAEP also collect information on the length of time for individual portions of the NEPA review, specifically environmental consultations and permitting?
 - No. The information provided in the NEPA annual report on EIS preparation times is derived from the readily available Notices of Intent and Notices of Availability published in the Federal Register. NAEP is not aware of similar publicly accessible data sources on the time requirements for environmental consultations and permitting.

Additional Thoughts

Following are some additional thoughts on the issue of streamlining that are not directly addressed by the above questions. NAEP is concerned by the characterization of the environmental planning and permitting process by the Administration. Much of the intent of the procedural requirements of NEPA, as well as similar requirements in other environmental statutes, is to make agencies fully consider the environmental impacts of their proposed actions when making decisions. At the start of the planning process, environmental impacts should be given the same consideration as other issues. This concept is illustrated in the following figure.

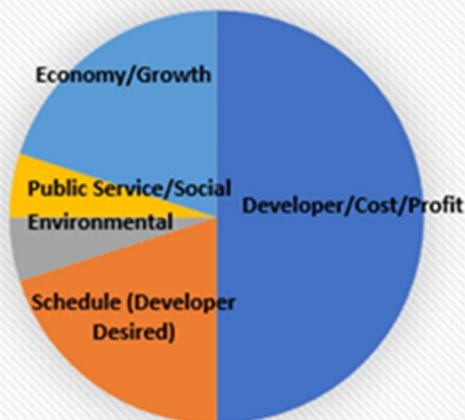
Classic NEPA Decision Making



This classic NEPA decision-making approach provides a balanced approach with full consideration of all issues. As the planning process proceeds, some issues emerge as more important and others become less important. The end result, however, is a process that has fully considered all issues and, ideally, the delivery of a successful project that meets the defined needs but equally values the elements of the surrounding environment. It is a matter of prioritization and, in today's world, has greater application and value.

Based on their public statements and actions, we believe the following figure is a fair representation of the Administration's values in project planning.

Trump Administration Decision Elements



This approach was widespread from early in America's industrial era leading up to the 1960s. Under this approach, the starting point in making project decisions is already prioritized towards profit, with human and environmental factors presumed to be of substantially lesser importance. This approach often resulted in unnecessary degradation of the standard of living and quality of life of many affected populations (e.g., lower income and minority), as well as the general human and natural environment.

We have strong concerns that a return to this approach will disregard the balanced, systematic, and interdisciplinary approach that has evolved over the last 50 years. While it may “streamline” decision-making, it will not result in better decisions.