



February 6, 2006

NEPA Draft Report Comments
c/o NEPA Task Force
Committee on Resources
1324 Longworth House Office Building
Washington, DC 20515
Via email to nepataskforce@mail.house.gov

RE: Initial Findings and Draft Recommendations of the U.S. House of Representatives Committee on Resources Task Force on Improving the National Environmental Policy Act and Task Force on Updating the National Environmental Policy Act

Dear Members of the NEPA Task Force:

The Airports Council International – North America (ACI-NA) appreciates this opportunity to comment on the National Environmental Policy Act (NEPA) Task Force’s draft report. ACI-NA is a membership organization representing approximately 150 state, regional, and local governing bodies that own and operate the principal airports served by scheduled air carriers in the United States and Canada. ACI-NA member airports handle approximately 95 percent of the domestic, and virtually all of the international, air passenger and cargo traffic in North America. On behalf of its U.S. members affected by the NEPA process, ACI-NA submits these comments.

ACI-NA applauds the Task Force for its work to identify ways to improve the NEPA process. The airport community supports NEPA’s intent to provide understanding and disclosure of the potential environmental effects of a proposed federal action. We agree with the conclusion of the Task Force that with a few modest changes, the NEPA process could be greatly improved. These improvements can be made by taking advantage of lessons learned concerning unnecessary requirements and lengthy document processing.

Overall, ACI-NA supports many of the Task Force’s recommendations, including addressing delays in the NEPA process, enhancing public participation, addressing litigation issues, clarifying the alternatives analysis, and clarifying the meaning of “cumulative impacts.” Our comments on specific recommendations are below:

Group 1 - Addressing Delays in the Process

Importantly, the delays that have been incurred in preparing NEPA documents have, at times, hindered the maintenance and enhancement of the efficiency of our nation's air transportation system. ACI-NA appreciates the work the Federal Aviation Administration has done to improve the NEPA process, but further improvements can be made, particularly in streamlining the process by reducing burdens and ensuring consistent application of NEPA regulations.

Recommendation 1.1: Amend NEPA to define “major federal action.” ACI-NA supports this recommendation if the definition of an action relates more to the need for and the level of environmental processing. The term “major federal action” is defined under Part 1508 of the CEQ Guidelines. The definition as provided in the draft recommendation still leaves a lot open to interpretation. For example, what is “substantial”? NEPA Environmental Assessments and Impact Statements should be applied to federal actions that have the potential to significantly impact the environment; more abundant provisions should be supplied for actions that would alter environmental conditions, but only to levels that are significant. A federal action may not be considered major, but could still have a significant environmental impact. If the intent of this recommendation is to identify projects that need to be analyzed in an EIS (and those that do not), the focus should be on identifying what qualifies as a significant environmental impact (Recommendation 1.3). Virtually all federal actions that occur at an airport are subject to the Federal Aviation Administration's guidance for the application of NEPA, which is documented in FAA Order 1050.1E *Environmental Impacts: Policies and Procedures*. Allowing each federal agency to identify the actions that rise to the level of being “major” is preferable to a blanket definition of “major federal action” in the law.

Recommendation 1.2: Amend NEPA to add mandatory timelines for the completion of NEPA documents.

ACI-NA supports measures that will streamline the environmental process and help contain costs. However, based on our experience, the recommended timelines are unrealistic considering the amount of information necessary to complete NEPA documents, the required levels of analysis, and the due process each document requires.

The biggest delay in completing environmental documentation is usually gathering the necessary information to assess the environmental impacts. Often, the project is not well defined or disagreement exists concerning the need for the project. Mandating timelimits would force the federal agency to either delay “starting the clock” until the federal agency has agreed on the need and the project sponsor has submitted all required information or issue negative opinions in the Record of Decision, forcing the project sponsor to start the process over. This would negate one of the primary benefits of NEPA – the development of a collaborative process where issues concerning project need and potential impacts can be resolved together.

Furthermore, the suggestion that documents “not concluded by these timeframes will be considered completed” further defeats the purpose of the process. Nothing will then mandate the actual, real completion of any environmental document if the document is arbitrarily considered to be complete once the timeline has run its course. Mandating review times for reviewing agencies and responsiveness to working in cooperation with the lead agency would seem to be more productive.

Recommendation 1.3: Amend NEPA to create unambiguous criteria for the use of Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS). Clear definitions would be greatly beneficial to clarifying this constant source of discussion and confusion. However, the definitions must not be so narrow that federal agencies cannot define criteria that are appropriate to the types of activities and development that they are responsible for reviewing and approving through the various types of documents.

Recommendation 1.4: Amend NEPA to address supplemental NEPA documents. This recommendation is not necessary or warranted. As stated in the draft recommendation text, the suggested language is taken from Part 1502 of the CEQ regulations. This kind of defining language is better suited to the regulation, not the statute.

Group 2 - Enhancing Public Participation

ACI-NA recognizes that public participation is at the heart of the NEPA process. Most airports are meeting, or exceeding, public participation requirements. Also, many state environmental policy acts already enhance the public participation requirements under NEPA. Because that may not be the case nationwide, we would support recommendations that enhance public participation through NEPA.

Recommendation 2.1: Direct CEQ to prepare regulations giving weight to localized comments. We do not support this recommendation. Each lead agency must consider the comments received on draft documents, from the general public, agencies, and interest groups, and respond accordingly. As part of the process the lead agency must use its own judgment to determine the merit of each comment to the particular project and respond and act accordingly. It would not be appropriate to provide a means by which comments could be “artificially” passed over, because of the location of the commenter.

Recommendation 2.2: Amend NEPA to codify the EIS page limits set forth in 40 CFR 1502.7. Codification of page limits would force preparers to be more succinct and place more detailed technical analyses in appendices or separate reports. This would allow the main document to be more readable and understandable by the general public. However, setting a page limit seems rather arbitrary, and the limits recommended seem unrealistic. The page length of EIS documents reflects the complexity both of projects being evaluated and the technical analyses necessary to address potential environmental concerns.

Because of the litigious nature of major airport development, NEPA documents have strayed from their original purpose of being written for public understanding and have become

documents written (at the direction of FAA and legal counsel) for the legal community with a goal of defending projects. Aside from the exorbitant costs associated with developing these documents, the resulting product cannot be properly read and understood by a layperson within the allotted time period for streamlined agency/public review. Clearer guidance on the material to be in the EA/EIS versus what should appear in appendices may achieve the same purpose.

Group 3 – Better Involvement for State, Local, and Tribal Stakeholders

Recommendation 3.1: Amend NEPA to grant tribal, state, and local stakeholders cooperating agency status. ACI-NA supports better involvement for all stakeholders. However, although cooperation of this kind between local and federal agencies can ensure that stakeholders are given an active voice throughout the entire process and help prevent potential litigation, the definition of cooperating agency in this recommendation seems too broad and has the potential to encumber the process. Criteria should be placed on entities in order for them to qualify for cooperating agency status, such as regulatory jurisdiction over resources potentially impacted by the proposed action.

Recommendation 3.2: Direct CEO to prepare regulations that allow existing state environmental review process to satisfy NEPA requirements. Many ACI-NA member airports attempt to do this already. However, this would only be warranted for states whose environmental laws meet or exceed NEPA requirements.

Group 4 – Addressing Litigation Issues

Recommendation 4.1: Amend NEPA to create a citizen suit provision. If a citizen suit provision is considered, it is imperative that it have associated enforceable time limits. Establishing a time period within which such a suit must be filed and requiring a demonstration that the evaluation did not rely on the best available industry accepted methods, information, and science would be valid aspects of a citizen suit provision. Some of the other suggested aspects of the provision seem superfluous in light of current case law or are overly restrictive.

Recommendation 4.2: Amend NEPA to add a requirement that agencies “pre clear” projects. ACI-NA supports this recommendation for projects that can be shown to not generate significant environmental effects.

Group 5 - Clarifying Alternatives Analysis

Recommendation 5.1: Amend NEPA to require that “reasonable alternatives” analyzed in NEPA documents be limited to those which are economically and technically feasible. ACI-NA strongly supports this recommendation, which is already reflected in FAA NEPA guidance.

Recommendation 5.2: Amend NEPA to clarify that the alternative analysis must include consideration of the environmental impact of not taking an action on any proposed project. ACI-NA supports this recommendation, as is already reflected in FAA’s NEPA guidance.

Recommendation 5.3: Direct CEQ to promulgate regulations to make mitigation proposals mandatory. ACI-NA supports this recommendation, as this mitigation reflected in EAs and EISs for airport development projects are already mandatory. Some states currently have similar requirements.

Group 6 – Better Federal Agency Coordination

Federal agencies do not have the resources to adequately participate in the NEPA process. This has been a hindrance to some airport projects because jurisdictional agencies do not attend meetings, requiring the NEPA team to build extra work scope into their efforts to force feed/coordinate with some of the key agencies. In other cases, the airport sponsors are funding staff at these agencies to ensure that their projects get the attention that is required, particularly in the permitting stage.

Recommendation 6.1: Direct CEQ to promulgate regulations to encourage more consultation with stakeholders. Although ACI-NA supports consultation with stakeholders, this recommendation seems somewhat superfluous when considering due process guarantees that already exist, but overall increased consultation with relevant stakeholders should improve the process. Coordination, however, should be commensurate with the complexity of the project and the significance of the potential impact. Further, it is important that if amendments occur, the term “stakeholders” and the roles of various stakeholder be clearly defined. ACI-NA believes it is essential that formal agency coordination occur, and we believe that this is done appropriately in most cases. We are concerned that a liberal definition of stakeholder could slow the coordination and review processes. Further, projects with little potential impact should not require more formal consultation – that would have the effect of delaying the process.

Recommendation 6.2: Amend NEPA to codify CEQ regulation 1501.5 regarding lead agencies. Overall, it seems unnecessary to codify this language, as most of it is already contained in the CEQ regulations.

Group 7 - Additional Authority for the Council on Environmental Quality

Recommendation 7.1: Amend NEPA to create a “NEPA Ombudsman” within the Council on Environmental Quality. ACI-NA supports the ombudsman concept to resolve differences between agencies. However, in a wider context, perhaps one for each agency that would work with other ombudsmen to resolve differences would be preferable.

Recommendation 7.2: Direct CEQ to control NEPA related costs. ACI-NA supports the concept of controlling NEPA-related costs. However this provision would be more appropriately delegated to an independent party such as the General Accounting Office.

Group 8 - Clarify meaning of “cumulative impacts”

Recommendation 8.1: Amend NEPA to clarify how agencies would evaluate the effect of past actions for assessing cumulative impacts. This is a very important recommendation which ACI-NA supports, again, as long as the meaning does not become so narrow that federal agencies cannot appropriately apply the meanings to the types of activities and projects that they are responsible for reviewing and approving. While CEQ has published guidance concerning the assessment of cumulative effects, the approach actually undertaken varies from agency to agency. We support the preparation of additional guidance that clarifies the breadth of a cumulative effects analysis.

Recommendation 8.2: Direct CEQ to promulgate regulations to make clear which types of future actions are appropriate for consideration under the cumulative impact analysis. ACI-NA supports this recommendation.

Group 9 – Studies

Recommendation 9.1: CEQ study of NEPA’s interaction with other Federal environmental laws. ACI-NA sees potential merit in this recommendation. The purpose of NEPA is to inform decision-makers of the potential environmental impacts of their actions, which includes impacts to all potential social and environmental resources. Other special purpose environmental laws address specific environmental resources, which also need to be considered under NEPA in the context of the overall project. While the body of environmental laws has its own requirements (such as permitting), these are typically not duplicated in the NEPA process, but compliance with these laws are identified as a condition of project approval. However, any identifiable duplication that could be eliminated and therefore improve the overall approval process should be eliminated.

Recommendation 9.2: CEQ study of current Federal agency NEPA staffing issues. ACI-NA supports this recommendation.

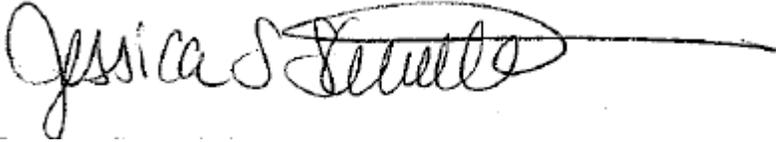
Recommendation 9.3: CEQ study of NEPA’s interaction with state “mini-NEPAs” and similar laws. ACI-NA supports sub-recommendation (a). ACI-NA supports sub-recommendation (b) partially, as it relates to state environmental review processes (as stated in our response to Draft Recommendation 3.2), but does not support this recommendation when it concerns other federal environmental laws (as stated in our response to Draft Recommendation 9.1).

Other Recommendations

On page 22, the report states that “when stakeholders, including project proponents may be excluded from deliberations during the NEPA process, the result is inevitably more appeals and litigation.” However, no corresponding recommendation is put forth to address this issue.

Again, thank you for the opportunity to comment on the Task Force's report. Should you have any questions regarding our comments, do not hesitate to contact me at (202) 293-8500,

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica S. Steinhilber". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jessica S. Steinhilber
Senior Manager, Environmental Affairs
Airports Council International – North America

cc: Ralph Thompson, FAA