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Maryland Department of Transportation

February 2, 2006

NEPA Draft Report Comments
 c/o NEPA Task Force
 Committee on Resources
 1324 Longworth House Office Building
 Washington DC 20515

To Whom It May Concern:

The Maryland State Highway Administration (SHA) and the Maryland Transportation Authority (MTA) have reviewed the Initial Findings and Draft Recommendations of the United State House of Representatives Task Forces on Improving and Updating the National Environmental Policy Act, dated December 21, 2005, and wish to provide the following comments on the Draft Recommendations:

Recommendation No.	Joint Comment
1.2	The idea of limiting the time to prepare and complete EAs and EISs is good, but in our experience, the time frames suggested would not be a reasonable amount of time for our projects to proceed through our streamlined project development process. We are not sure what the time frames should be, but the steps necessary for scoping, public involvement, alternatives development, impact analyses, documentation, and a myriad of other tasks could not be reasonably completed in the cited timeframes, even for expedited projects.
1.3	Clarifying when to use a CE, EA or EIS would be helpful to the states since that judgment is now made by the lead federal agency for the project with no real concrete guidance in place as to what level of impact triggers the use of what document.
1.4	We support the clarification of the points at which a supplemental EIS is necessary and this will help in reducing the potential for the preparation of unnecessary documentation.
2.1	Localized comments should be given the same weight as those from outside groups and federal/state environmental and resource agencies. Giving more weight to localized interests' concerns and issues may unduly skew project-related decisions.

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2.2	The idea of page limits for an EIS is a noble idea and has always been included in the CEQ guidance, but in reality, in this day and age, page limits could lead to the preparation of inadequate or insufficient information being included in the EIS which in turn could increase the risk of lawsuits.
3.1	Giving cooperating agency status to a local, state or other political subdivision that requests such will only result in project delays and lengthen the process to reach project decisions. The comments and views of such parties are fully considered by the lead agency in the project decision making process.
3.2	Maryland’s counterpart to NEPA, the Maryland Environmental Policy Act, is not functionally equivalent to NEPA requirements. However, allowing state environmental reviews to satisfy NEPA requirements may reduce NEPA time frames and redundancies in work efforts.
4.1	It is unclear if the recommendation would reduce or increase the number of NEPA related lawsuits. SAFETEA-LU already limits the filing of lawsuits to within 180 days of agency decisions if appropriate notices are filed in the Federal Register.
4.2	This recommendation could help federal agencies ensure that they are using the most appropriate methods, procedures, analyses, etc. and thus help ensure that environmental documents can better withstand legal challenges.
5.1	The economic reasonability of alternatives has become a major issue in project development—this recommendation could help the states in the ability to discard economically unreasonable alternatives
5.2	States are already evaluating the impacts of the no build alternative, both positive and negative. The discussion of such an alternative should be commiserating with the nature, type and level of impact associated with doing nothing. Extensive discussions should not be required if such discussion is not warranted.
5.3	Mitigation commitments are included in environmental documents prepared in Maryland if adverse, unavoidable impacts result from a project. A reevaluation process is in place to ensure that mitigation commitments are followed through in the design and construction phases of a project. Our word is our bond and the commitments are explicitly stated in the environmental document and any project related memorandum of agreement or understanding. Mitigation commitments are also included in a project’s record of decision, thus not requiring a regulated guarantee.
6.1	Consultation with stakeholders is a positive action, but prescriptive regulations may not be the answer. The streamlined project development process used in Maryland includes numerous opportunities for public and agency involvement, as well as opportunities for state, federal and local agencies to provide concurrence or comments at specific key points in the process.

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6.2	The recommendation of codifying the lead agency responsibilities is a positive step, although SAFETEA-LU has already codified this with respect to the definition of a project's purpose and need and the range of alternatives to be considered.
7.1	This recommendation would help to resolve conflicts that could occur on the broader, national or policy level. Maryland already has a conflict resolution process in place at the project level.
7.2	Controlling NEPA related costs is certainly a worthwhile goal and should be further investigated.
8.1	Maryland supports the recommendation that an agency's assessment of existing environmental conditions would serve as the methodology to account for past action—this could help streamline the SCEA analyses being done in Maryland
8.2	Maryland also supports language that would focus analyses of future impacts on concrete proposed actions rather than actions which are reasonably foreseeable—this could help streamline the SCEA analyses being done in Maryland
9.1	This recommendation could help eliminate redundancies and duplicate efforts under existing laws and regulations. SAFETEA-LU includes provisions to eliminate duplicative efforts under Section 106 of the National Historic Preservation Act and Section 4(f) of the US DOT Act.
9.2	Federal agency staffing and experience are major issues that should be studied. While SAFETEA-LU allows federal funding for positions in federal agencies to assist in the review of a state's federal aid projects, many agencies suffer from staffing problems that impede a state's efforts to expedite, let alone process, project development. States are spending enormous amounts of time and resources to develop funding agreements with federal agencies just to get the basic level of customer service that is expected in the review and approval of state federal aid projects.
9.3	This recommendation could help eliminate redundancies and duplicate efforts under existing laws and regulations; however, in Maryland, the state's environmental review law is similar, but not functionally the same as NEPA.

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Thank you for the opportunity to provide comments. If you need further information or have questions, please contact Mr. Dennis Simpson, Deputy Director of the Division of Capital Planning, MTA at 410-537-5650 or Mr. Donald Sparklin, Deputy Division Chief, Project Planning Division, SHA at 410-545-8564.

Sincerely,

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by:



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cc: Mr. Bruce M. Grey
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