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February 6, 2006

NEPA Draft Report Comments  
C/O NEPA Task Force  
Committee on Resources  
1324 Longworth House Office Building  
New Jersey & Independence Ave SE  
Washington, DC 20515

To Whom It May Concern:

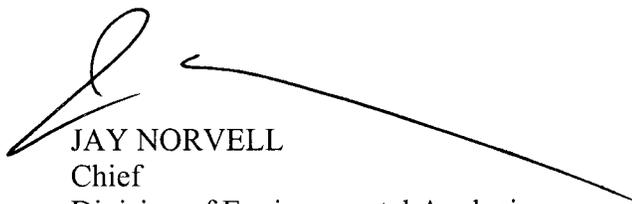
Attached please find the comments of the California Department of Transportation (Department), Division of Environmental Analysis, on the *Task Force on Improving the National Environmental Policy Act and Task Force on Updating the National Environmental Policy Act: Initial Findings and Draft Recommendations (December 21, 2005)*. These comments are a reflection of the views of the environmental technical staff within the Department and not necessarily those of the Department or the Administration.

We applaud the Task Force's effort to improve and update the National Environmental Policy Act (NEPA) and are supportive of almost all the recommendations. We would like to make the Task Force aware that we believe further efficiencies can be achieved by concentrating additional effort on the overlap between the NEPA and the Clean Water Act, particularly with respect to purpose and need. We are often tasked with reworking our projects' purpose and need statements to meet other federal agencies interpretations of what a purpose and need statement should contain under the Clean Water Act. Addressing this potential conflict at the national level would be most welcomed.

We also note that increased efficiency could be achieved by amending NEPA to require resource and regulatory agencies to consult on projects during the planning phase, including a provision that those early planning decisions are binding throughout the life of the project.

We look forward to the NEPA Task Force's final recommendations and we thank you for the opportunity to comment on these vital NEPA improvements.

Sincerely,



JAY NORVELL  
Chief  
Division of Environmental Analysis

**Group 1- Addressing Delays in the process**

**Recommendation 1.1: Amend NEPA to define “major federal action.”**

The National Environmental Policy Act (NEPA) would be enhanced to create a new definition of “major federal action” that would only include new and continuing projects that would require substantial planning, time, resources, or expenditures.

Comments:

The objective of this recommendation appears to be to reduce the number of projects that would be subject to the NEPA process. As currently worded, it is not narrow enough to achieve that objective. Projects that would “require substantial planning, time, resources, or expenditures” would exclude very few additional projects by our State Department of Transportation. This definition seems to exclude only those minor projects that are already technically excluded from the NEPA process (Categorical Exclusions). As a result, the amendment would not result in any real change from current practice. We might add that even a small project could require substantial planning, time, resources, and expenditures, so the size of an action is not a helpful metric. The language needs to be further refined in order to achieve the objective.

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

A provision would be added to NEPA that would limit to eighteen months the time for completing an Environmental Impact Statement (EIS). The time to complete an Environmental Assessment (EA) will be capped at nine months. Analyses not concluded by these timeframes will be considered completed. There will obviously be situations where the timeframes cannot be met, but those should be the exception and not the rule. Before the time expires, an agency would have to receive a written determination from CEQ that the timeframes will not be met. In this determination, CEQ may extend the time to complete the documents, but not longer than six and three months, respectively.

Comments:

Mandatory timelines treat the symptom (“NEPA takes a long time”) rather than the root causes. As NEPA practitioners implementing transportation projects for a State Department of Transportation, we find that the majority of delays are attributable to other factors. Chief among them are changes in project design, poor communication, and extended consultations with federal agencies to satisfy other substantive regulations.

Mandatory time lines would terminate the NEPA process by default, rather than through actual completion of the current process. We are concerned that this may create additional difficulty for us in obtaining subsequent permits and approvals from other agencies pursuant to other federal and state legislation.

The proposed time limits themselves are also problematic. For instance, our projects can require seasonal biology studies, which can only be initiated at certain times of the year; depending on when the mandatory timeline begins, there may not be enough time to conduct the study before the timeline elapses. Our projects may also involve the need to follow protocols of the U.S. Fish and Wildlife Service that may be two years long or longer; the proposed timelines would neither accommodate these protocols nor change them.

A stronger fix for this problem would be to commit resource and regulatory agencies to mandatory review times with the provision that if they do not comment within the mandatory review time they are precluded from commenting on those issues in the future. A provision limiting the scope of an agency’s review to its comments already made on the record would expedite project delivery as well—no “late hits” or “do-overs.”

**Recommendation 1.3: Amend NEPA to create unambiguous criteria for the use of Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statement (EIS).**

In order to encourage the appropriate use of CEs and EAs, the statute would be amended to provide a clear differentiation between the requirements for EAs and EISs. For example, in order to promote the use of the correct process, NEPA will be amended to state that temporary activities or other activities where the environmental impacts are clearly minimal are to be evaluated under a CE, unless the agency has compelling evidence to utilize another process.

Comments:

As a State Department of Transportation, we follow the implementing regulations of our federal partner for NEPA compliance, the Federal Highway Administration (FHWA). FHWA's regulations for implementing NEPA (23 CFR 771 et seq.) already clearly address the distinctions among the different levels of NEPA documentation. As a result, this recommendation does not offer any new improvements to our process. However, we recognize that FHWA's implementing regulations may be more detailed than those of some other federal agencies, so adding further clarity to NEPA may help to clarify the intent for these different levels of documentation for other project proponents.

As this recommendation is considered further, it needs to be worded more precisely. It opens by saying the intent is to encourage appropriate use of CEs and EAs, then it shifts to focus on EAs and EISs. This is confusing. It should also be pointed out that a CE is not an evaluation tool; rather, it is a determination that evaluation under NEPA is not necessary – hence, the action is said to be “excluded.” In addition, duration is not equivalent to minimal impacts: while a temporary action may have minimal impacts, this is not always the case. Finally, any desired clarifications could be made by directing CEQ to promulgate regulations; NEPA itself does not need to be amended.

We encourage the inclusion of language that discourages “document inflation,” i.e., inappropriate use of EISs for less than substantive reasons. The focus should be on significance.

Whatever changes this recommendation undergoes, the clarifications should still allow for flexibility in how the criteria are applied. This will benefit us as project proponent. We find that the current flexibility in NEPA and its implementing regulations is a strength.

**Recommendation 1.4: Amend NEPA to address supplemental NEPA documents.**

A provision would be added to NEPA to codify criteria for the use of supplemental NEPA documentation. The provision would limit the supplemental documentation unless there is a showing that: 1) an agency has made substantial changes in the proposed action that are relevant to environmental concerns; and 2) there are significant new circumstances or information relevant to environmental concerns with bearing on the proposed action or its impacts. This language is taken from 40 CFR 1502(9)(1)(i) and (ii).

Comments:

The Federal Highway Administration, our federal partner in implementing our State Department of Transportation's projects, has regulations that already address supplemental documents (see 23 CFR 771.29 and 23 CFR 771.30). The objective of this recommendation addresses something that is not currently a problem for us.

## **Group 2- Enhancing Public Participation**

### **Recommendation 2:1: Direct CEQ to prepare regulation giving weight to localized comments.**

When evaluating the environmental impacts of a particular major federal action, the issues and concerns raised by local interests should be weighted more than comments from outside groups and individuals who are not directly affected by that proposal.

#### Comments:

We applaud the intent of this recommendation, which is to give those most affected by a proposed action a stronger voice in the process. However, we are concerned with how this weighing of comments would actually occur in practice. Furthermore, this recommendation would need to define "local" and "localized," and also clarify how we as a project proponent would weight one local comment over another. For instance, should the comments of a local group that is very vocal override a local government's comments, or vice versa? As a result, we are concerned that this recommendation would politicize our transportation projects more than they already are, which would hamper our delivery of these projects.

Weighting local concerns more than regional concerns would also negatively affect the delivery of our interregional transportation projects, which are intended to serve interregional needs.

If a lead agency determines that a comment is not relevant, it already has the means to address that comment within the currently accepted practice of preparing NEPA documents. Whether a comment addresses substantive issues should remain the guiding criterion. Further, resources and impacts themselves are not necessarily "localized" but may have regional or statewide significance.

**Recommendation 2.2: Amend NEPA to codify the EIS page limits set forth in 40 CFR 1502.7.**

A provision would be added to NEPA to codify the concept that an EIS shall normally be less than 150 pages, with a maximum of 300 pages for complex projects.

Comments:

The objective of this recommendation appears to be to make NEPA documents shorter. The wording provides welcome flexibility by saying that an EIS shall *normally* (emphasis added) have a specified maximum length, and that for complex projects the maximum would be greater. That said, using a page limit simply treats the symptom (“documents are too long”) rather than the cause. We find that the process of documenting all the various stakeholders’ individual issues has increased our workload and the length of our documents. Document length reflects our need to meet resource and regulatory agencies’ expectations that we address their individual issues to the level of detail they require.

We also recognize that most stakeholders rely heavily on a document’s summary. Many will only read the summary. Many others will only read the summary and selected other sections of a document. A well-crafted summary is very important. We would be more accepting of a page limit for summaries.

One issue that prevents us from making our documents as short as we would like is the nature of comments we receive from resource and regulatory agencies. When they comment that certain kinds of detailed information must be included in our environmental documents, we currently have no basis for declining. If we could summarize the information instead of including it in its entirety, we could shorten our documents. This would be more in keeping with the way that NEPA characterizes these documents. One example of this is the 404(b)(1) analysis required under Section 404 of the Clean Water Act: we are typically expected to include the entire analysis in our environmental documents, and it can expand the length of a document by many pages. We would support language that would give us the standing to summarize this kind of information in order to keep our NEPA documents down to a more reasonable size. We are willing to make such information available to the public by some other means. For instance, in current practice we routinely make our technical studies available to those who are interested.

### **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.**

NEPA would be enhanced to require that any tribal, state, local, or other political subdivision that requests cooperating agency status will have that request granted, barring clear and convincing evidence that the request should be denied. Such status would neither enlarge nor diminish the decision making authority for either federal or non-federal entities. The definition would include the term “political subdivisions” to capture the large number of political subdivisions that provide vital services to the public but are generally ignored in the planning for NEPA.

#### Comments:

Section 6002 of SAFETEA-LU, which was signed into law last summer, includes provisions that increase public participation for transportation projects.

While CEQ has issued advisory memorandum encouraging the designation of state, local and tribal agencies as cooperating agencies, the current statute and regulations define cooperating agencies as federal agencies with discretionary authority, jurisdiction by law, or special expertise. The responsibilities of a cooperating agency include willingness to contribute information and staff support to EIS preparation; as such, cooperating agency status implies an affiliation with the project proponent that often does not characterize the relation of many agencies to our federal-aid transportation projects. In fact, agencies with permitting or approval authority often have missions that are not immediately aligned with ours.

With the enactment of SAFETEA-LU, a new category of stakeholders was created for federal transportation projects. “Any Federal agency that is invited to participate in the environmental review process for a (transportation) project shall be designated as a participating agency by the lead agency unless the invited agency informs the lead agency, in writing, by the deadline specified in the invitation that the invited agency – (A) has no jurisdiction or authority with respect to the project; (B) has no expertise of information relevant to the project; and (C) does not intend to submit comments on the project.” (Section 6002 of SAFETEA-LU, at 23 USC 139(d).) Participating agency designation does not imply support for the project, though participating agencies may also be designated as cooperating agencies. Under SAFETEA-LU, participating agencies and the public must be allowed to comment on a federal transportation project’s purpose and need and alternatives. This increases tribal, state, local and public participation for the most central issues concerning a transportation project. In most cases, we expect that participating agency status as described in SAFETEA-LU would better characterize the typical relation of tribal, state and local stakeholders to our projects.

This new category of participating agencies is only in SAFETEA-LU, so it currently applies only to transportation projects. We support seeing this new category extended to apply to all NEPA projects. It would achieve the objective of this recommendation more effectively. Extending this useful category to apply to all NEPA projects and also to tribal, state and local agencies would increase consistency of terminology and standing for agencies involved with various

federal actions. It would also increase flexibility in identifying the status that best reflects a stakeholder's relation to a federal action.

**Recommendation 3.2 Direct CEQ to prepare regulations that allow existing state environmental review process to satisfy NEPA requirements.**

CEQ would be directed to prepare regulations that would, in cases where state environmental reviews are functionally equivalent to NEPA requirements, allow these requirements to satisfy commensurate NEPA requirements.

Comments:

Our State has a “mini NEPA” statute (the California Environmental Quality Act, or CEQA, at California PRC §21000 et seq.). For projects that are must comply with it, there is general agreement that its environmental protection standards are more stringent than NEPA’s. Where both the state and the federal statutes apply, the current practice in our State Department of Transportation is to prepare a joint document that satisfies the requirements of both statutes. We would support the opportunity to meet a single set of requirements, rather than two. This would simplify our process and would likely save us some time in project delivery. However, it would still not remove our need to comply with other state and federal environmental laws. The total time reduction would not be cut in half; we would expect it to be incremental.

This recommendation may also provide an incentive for states without a “mini-NEPA” to develop one.

As this recommendation is further refined, we suggest that more precise terminology be developed in place of the term “mini-NEPA.”

## **Group 4 – Addressing Litigation Issues**

### **Recommendation 4.1: Amend NEPA to create a citizen suit provision.**

In order to address the multitude of issues associated with NEPA litigation in an orderly manner, the statute would be amended to create a citizen suit provision. This provision would clarify the standards and procedures for judicial review of NEPA actions. If implemented, the citizen suit provision would:

- Require appellants to demonstrate that the evaluation was not conducted using the best available information and science.
- Clarify that parties must be involved throughout the process in order to have standing in an appeal.
- Prohibit a federal agency – or the Department of Justice acting on its behalf – to enter into lawsuit settlement agreements that forbid or severely limit activities for businesses that were not part of the initial lawsuit. Additionally, any lawsuit settlement discussions involving NEPA review between a plaintiff and defendant federal agency should include the businesses and individuals that are affected by the settlement as sustained.
- Establish clear guidelines on who has standing to challenge an agency decision. These guidelines should take into account factors such as the challenger’s relationship to the proposed federal action, the extent to which the challenger is directly impacted by the action, and whether the challenger was engaged in the NEPA process prior to filing the challenge;
- Establish a reasonable time period for filing the challenge. Challenges should be allowed to be filed within 180 days of notice of a final decision on the federal action;

#### Comments:

We found it difficult to comment on this recommendation. It is addressing competing interests. On the one hand, it reflects a goal to enable business and industry to become legitimate stakeholders in NEPA lawsuits. On the other hand, it reflects a goal to limit the definition of who has standing to challenge an agency’s decision about a NEPA action. These two goals are in conflict. This conflict should be resolved as the recommendation is refined.

We support language to establish clear guidelines on who has legal standing. Limiting it to those challengers who are “directly impacted” would add certainty to the process and reduce the number of challengers to our projects. We also support language that requires parties to be engaged in the NEPA process before filing a challenge; it is hoped that this would require stakeholders to allow the NEPA process to work first, rather than turning to the courts as a first resort. “Involvement in the process” needs to be clearly defined; it should include parties who became involved in the process whenever their interests became known, even if that was after the process had begun.

The 180-day statute of limitations now applies to federal transportation projects pursuant to Section 6002 of SAFETEA-LU. We support extending it to all NEPA projects via this recommendation.

**Recommendation 4.2: Amend NEPA to add a requirement that agencies “pre clear” projects.**

CEQ would become a clearinghouse for monitoring court decisions that affect procedural aspects of preparing NEPA documents. If a judicial proceeding or agency administrative decision mandates certain requirements, CEQ should be charged with the responsibility of analyzing its effects and advising appropriate federal agencies of its applicability.

Comments:

We found the reference to “pre-clearing” projects in this recommendation’s title to be a bit confusing. We suggest that the wording be changed to reflect the explanatory text, e.g., “Amend NEPA to require CEQ to serve as a clearinghouse for NEPA case law.”

We support having CEQ serve as a clearinghouse for case law. This would provide a tangible service to all NEPA practitioners.

## 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.**

A provision would be created to state that an alternative would not have to be considered unless it was supported by feasibility and engineering studies, and be capable of being implemented after taking into account: a) cost, b) existing technologies, and c) socioeconomic consequences (e.g., loss of jobs and overall impact on a community).

#### Comments:

As a State Department of Transportation, we strongly support being required to study only those alternatives that are technically and economically feasible. We already work with similar language in the 404(b)(1) Clean Water Act Guidelines and in Section 4(f) of the Department of Transportation Act (49 U.S.C. 303). We are also directed by *CEQ NEPA's Forty Most Asked Questions* No. 2a that “reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.”

We support the proposed amendment but suggest clarifying the proposed language. As currently stated, the alternatives considered would need to be “supported by feasibility and engineering studies” (emphasis added). We would not want this to lead to a formal two-tiered analysis that creates a formal feasibility analysis that must be performed prior to our current analysis of environmental impacts. We want the flexibility to establish the alternatives’ economic and engineering feasibility in whatever way is most appropriate, whether this is through a formal feasibility study or through informal means.

Poor scoping contributes to problems in the proper identification of the alternatives that need to be considered. Our agency supports efforts to improve scoping practices and improve stakeholder participation and buy-in, early in the NEPA process and also during pre-NEPA planning phases. We support extending NEPA standing to early planning decisions and stakeholder buy-in during pre-NEPA phases. We see this as the best way to promote good planning and to legitimize “early involvement.”

**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.**

A provision would be created to require an extensive discussion of the “no action alternative,” as opposed the current directive in 40 CFR 1520.14, which suggests this alternative should merely be included in the list of alternatives. An agency would be required to reject this alternative if, on balance, the impacts of not undertaking a project or decision would outweigh the impacts of executing the project or decision.

Comments:

Our agency already does this routinely as part of our NEPA compliance process. FHWA Technical Advisory T6640.8A directs that all reasonable alternatives (including the no-build) need to be developed to a comparable level of detail so that their comparative merits may be evaluated.

**Recommendation 5.3: Direct CEQ to promulgate regulations to make mitigation proposal mandatory.**

CEQ would be directed to craft regulations that require agencies to include with any mitigation proposal a binding commitment to proceed with the mitigation. This guarantee would not be required if (1) the mitigation is made an integral part of the proposed action, (2) it is described in sufficient detail to permit reasonable assessment of future effectiveness, and (3) the agency formally commits to its implementation in the Record of Decision, and has dedicated sufficient resources to implement the mitigation. Where a private applicant is involved, the mitigation requirement should be made a legally enforceable condition of the license or permit.

Comments:

We currently view our mitigation proposals as binding commitments.

**Group 6 – Better Federal Agency Coordination**

**Recommendation 6.1: Direct CEQ to promulgate regulations to encourage more consultation with stakeholders.**

As pointed out in testimony, the existence of a constructive dialogue among the stakeholders in the NEPA process and ensuring the validity of data or to acquire new information is crucial to an improved NEPA process. To that end, CEQ will draft regulations that require agencies to periodically consult in a formal sense with interested parties throughout the NEPA process.

Comments:

Sections 6001 and 6002 of SAFETEA-LU, which apply to transportation projects, fulfill the intent of this recommendation. We support extending it to all NEPA projects, especially in concert with extending the applicability of participating agency status, as we described in our comments on recommendation 3.1 regarding standing under NEPA for tribal, state and local stakeholders.

**Recommendation 6.2: Amend NEPA to codify CEQ regulation 1501.5 regarding lead agencies.**

In regulation, the lead agency is given certain authorities. Legislation such as SAFETEA-LU and the Energy Policy Act of 2005 have spoken to the need for lead agencies in specific instances such as transportation construction or natural gas pipelines. In order to reap the maximum benefit of lead agencies, their authorities should be applied “horizontally” to cover all cases. To accomplish this, appropriate elements of 40 CFR 1501.5 would be codified in statute. Additional concepts would be added, such as charging the lead agency with the responsibility to develop a consolidated record for the NEPA reviews, EIS development, and other NEPA decisions. This codification would have to ensure consistency with lead agency provisions in other laws.

Comments:

We have no comment on this recommendation at this time. We would like to understand more about the intent of this recommendation in order to comment. The real issue underlying this recommendation is not clear, especially since there is language in the regulation already.

We support greater clarity about agencies’ roles. However, as a project proponent, we have concerns about changes that would increase lead agencies’ requirements under NEPA unless it would also increase our flexibility.

**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.**

This recommendation would direct the Council on Environmental Quality to create a NEPA Ombudsman with decision making authority to resolve conflicts within the NEPA process. The purpose of this position would be to offset the pressures put on agencies by stakeholders and allow the agency to focus on consideration of environmental impacts of the proposed action.

Comments:

Our conflicts usually tend to be about other environmental laws (especially Section 404 of the Clean Water Act and Section 7 of the Federal Endangered Species Act) rather than NEPA itself, so we would not expect that an Ombudsman’s authority to resolve NEPA conflicts would benefit us very much, unless their authority extended to the full NEPA umbrella. We do note, however, that increasingly, we are seeing federal agencies using NEPA to expand the scope of their reviews when their regulations do not cover certain issues. In that light, we do see advantages in having an arbiter that sister federal agencies could turn to when they reach an impasse, as we have experienced with some of our federal-aid transportation projects.

We notice that the Ombudsman’s authority to resolve disputes sounds like a quasi-judicial role rather than the role of an ombudsman as we typically understand it. Such a quasi-judicial function residing in the executive branch is unusual.

**Recommendation 7.2: Direct CEQ to control NEPA related costs.**

In this provision, CEQ would be charged with the obligation of assessing NEPA costs and bringing recommendations to Congress for some cost ceiling policies.

Comments:

We support the effort to assess NEPA costs and begin looking at cost-saving measures. For our projects, it may difficult to separate out the pure “NEPA costs.” With this in mind, we are assuming that the assessment will be based on the NEPA umbrella concept and include the costs of complying with all federal environmental requirements.

We note that improving scoping and early coordination to reduce surprises and reduce the amount of re-work are ways to reduce costs.

## **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.**

A provision would be added to NEPA that would establish that an agency’s assessment of existing environmental conditions will serve as the methodology to account for past actions.

#### Comments:

We had two different understandings of this recommendation, so we suggest that the meaning be clarified. We would support statutory or regulatory changes that would limit the scope of what we need to consider. Our varying interpretations key on the “serve as the methodology” language.

If “serve as the methodology” means that we would need to take our methods for assessing existing conditions and apply those same methods to the assessment of past conditions, we would see that as problematic. The kinds of tools and data that are available to assess existing conditions include many methods that simply cannot be applied to the past, for example, field surveys for endangered species.

If “serve as the methodology” means that the results of our assessment of existing conditions would in essence “serve to account for past actions,” then we support this. In fact, our State Department of Transportation currently has interagency guidance in place that takes a similar approach, by calling us to describe the current “health” and trends for each environmental resource considered. We believe this approach to be sound, reasonable and flexible. We would be concerned if further clarification in NEPA itself were to remove some of the reasonableness and flexibility that we now enjoy. We need that flexibility to accommodate the diversity of our project types, and in the case of past actions, to accommodate the variability of available information.

CEQ has recently issued guidance on past actions (see CEQ Memorandum dated June 24, 2005: *Guidance on the Consideration of Past Actions in Cumulative Effect Analysis*). This recommendation could be revised to direct CEQ to promulgate regulations incorporating language from that guidance. In relevant part, the guidance states “agencies can conduct an adequate cumulative effects analysis by focusing on the current aggregate effects of past actions without delving into the historical details of individual past actions.”

**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.**

CEQ would be instructed to prepare regulations that would modify the existing language in 40 CFR 1508.7 to focus analysis of future impacts on concrete proposed actions rather than actions that are “reasonably foreseeable.”

Comments:

We strongly support clearer definitions of what must be considered. Focusing on concrete proposals rather than “reasonably foreseeable” actions would reduce what we would need to consider. We suggest that “concrete proposals” be defined as those future actions that are planned and approved.

Definitions are paramount. The future actions to be considered must be very explicitly defined in order to reduce the uncertainties about what should be included in an analysis. The more explicit the language is, the easier it will be for us to include the appropriate actions in our initial analyses. This should substantially reduce the number of regulatory agency requests for us to redo our analyses. That alone would save us months of time in delivering our most complex projects.

**Group 9 – Studies**

**Recommendation 9.1: CEQ study of NEPA’s interaction with other Federal environmental laws.**

Within one year of the publication of the Task Force’s final recommendations, the CEQ will be directed to conduct a study and report to the House Committee on Resources that:

- a. Evaluates how and whether NEPA and the body of environmental laws passed since its enactment interact; and
- b. Determines the amount of duplication and overlap in the environmental evaluation process, and if so, how to eliminate or minimize this duplication.

Comments:

We support this recommendation. We especially encourage a study of the interaction between NEPA and the Clean Water Act.

**Recommendation 9.2: CEQ Study of current Federal agency NEPA staffing issues.**

Within one year of publication of the Task Force’s final recommendations, the CEQ (with necessary assistance and support from the Office of Management and Budget) will be directed to conduct a study and report to the House Committee on Resources that details the amount and experience of NEPA staff at key Federal agencies. The study will also recommend measures necessary to recruit and retain experienced staff.

Comments:

Under this recommendation, the scope of CEQ’s investigation should be made appropriately comprehensive. CEQ should investigate staffing issues for all the NEPA umbrella issues, and not limit its investigation to only those staff who deal specifically with NEPA.

Our agency often faces project delays as a result of staffing shortages at other agencies. We are currently funding many positions at other agencies as part of the cost of doing business. We consider NEPA staffing to refer to those staff who deal directly or primarily with the review of NEPA documents. We have found that staffing of these positions is not our greatest obstacle, though it is one of them. Resource and regulatory agencies are not staffed well enough to meet their own jurisdictional requirements, and that is where the delays affect us – when we seek their jurisdictional permits and approvals.

We would also encourage investigation into staffing to meet the new SAFETEA-LU requirements, since SAFETEA-LU now requires resource and regulatory agencies to contribute to early planning in transportation projects. We see early involvement as one of the keys to expedited projects and better decisionmaking, but it cannot be successful if the agencies do not have the staff for it.

A related issue is that there is currently no formal standing under NEPA for interagency coordination prior to the start of the NEPA process. We would encourage an amendment to NEPA that would give formal standing to such coordination, so that these decisions could be made binding and be carried forward through the NEPA process. In essence, this is a way to achieve early “conformity.” Demonstrating consistency with Habitat Conservation Plans (HCPs) is one such example of a way to engage in early “conformity.” We would like to see formal acceptance of more such measures for achieving early agreements on environmental matters, in lieu of seeking permits and approvals late in the NEPA process. This “front-loads” decisions affecting environmental resources and increases predictability in the NEPA process. As predictability increases, NEPA timeframes and costs decrease.

We strongly support staffing recruitment and retention efforts for resource and regulatory agencies to meet these needs. We suggest that CEQ investigate succession planning efforts in these agencies as well, as an additional factor contributing to the “starting over” phenomenon that can occur with any changes in staff.

**Recommendation 9.3: CEQ study of NEPA’s interaction with state “mini-NEPAs” and similar laws.**

Within one year of the publication of the Task Force’s final recommendations, the CEQ will be directed to conduct a study and report to the House Committee on Resources that at a minimum:

- a. Evaluates how and whether NEPA and the body of state mini-NEPAs and similar environmental laws passed since NEPA’s enactment interact; and
- b. Determines the amount of duplication and overlap in the environmental evaluation process, and if so, how to eliminate or minimize this duplication.

Comments:

As we noted in our comments on recommendation #3.2, our State has a “mini NEPA” statute that is generally regarded as more stringent than NEPA for projects subject to its provisions. Where both our State statute and NEPA apply to our projects, our current practice is to prepare a joint document that satisfies the requirements of both. We support having CEQ study the overlap between NEPA and State-level counterpart statutes. We support consideration of ways to reduce procedural duplication.