NEPA 101 Objectives

- Background and Basics
- When does NEPA apply?
- FHWA Project Development Process
- How is it working?
- Recent developments
Where Did NEPA Come From?

- Post WW II prosperity and growth was not occurring without some cost
- High profile & highly publicized disasters
- Growing public awareness and concern
- Eventual overwhelming sentiment for Federal government to take leadership
Effects of DDT on food supply; Rachel Carson founder of modern environmental movement (1962)

Widely publicized Santa Barbara CA oil well blowout (1969)

Worsening air pollution leads to passage of Clean Air Acts of 1963 and 1970
Cleveland’s Cuyahoga River catches fire (1969)
National Environmental Policy Act

NEPA of 1969 (signed January 1, 1970)
Established Nat’l environmental policy & goals
Required agency disclosure of impacts of proposed actions & possible mitigation
Created basis for environmental impact statements (EIS) for major Federal actions
Created Council on Environmental Quality (CEQ – monitors Federal actions, provides overall guidance, tracks trends and resources)
NEPA – Section 101

- “Spirit” of the law
- Basic National policy to create conditions under which humans and nature can exist in productive harmony
- Promotes sustainability – balance between population growth & resources
- Fulfill social, economic, and other requirements of present and future generations
Environmental protection policy established in Section 101 is supported by a set of "action forcing" provisions in Section 102 that form the basic framework for Federal decision making and the NEPA process, or ...

... the environmental process basics
Environmental Process Basics

- Interdisciplinary evaluations
- Inter-agency coordination & public involvement
- Consideration of alternatives
- Integration with other laws, regulations, etc.
- Classification of actions (CE, EA, EIS)
- Mitigation and enhancement
- Better decisions, not better documents
- Reducing paperwork and delay
Differing Legal Standards

**Procedural** … establishes process that must be followed
- Examples: NEPA & Section 106 (historic preservation)

**Substantive** … process-based, but also imposes legal obligation to make a finding or determination
- Examples: Section 4(f) (parks/historic), Clean Air Act, Endangered Species Act
What Must be Considered

- SEE – Social, Economic, Environmental
- Natural and “built” environments
- Differing legal standards does not mean one resource is more valuable than another
- Agencies must take a “hard look” at consequences of actions and keep public informed
- NEPA goal: prevent uninformed decisions versus unwise ones
When Does NEPA Apply?

- Broadly, when a Federal agency intends to carry out, fund, or approve a proposed action

- Some actions are excluded from NEPA

- Must determine if others will cause significant impacts
When Does NEPA Apply? (cont’d)

- For FHWA, basically when a project is proposed for Federal-aid Highway Funding
- **Action** – highway or transit project proposed for FHWA funding, but ...
- … actions also include activities such as multiple use permits or changes in access control that *may or may not involve commitment of funds*
Classes of Actions

- Categorical Exclusion (CE) – actions which do not individually or cumulatively have a significant effect on the human environment
- Environmental Impact Statement (EIS) – detailed written statement on major Federal actions significantly affecting the human environment
- Environmental Assessment (EA) – significance of environmental impacts is not clearly established; to determine the appropriate environmental document required
The BIG Three

- NEPA ... barely five pages long
- CEQ regulations (40 CFR 1500-1508)
- FHWA regulations (23 CFR 771)

- Tons of supplemental guidance, policy papers, technical memos, initiatives, research, cutting edge technologies; lawsuits also influential
FHWA Project Development Process

Transportation decision making

Environmental Streamlining & Stewardship

Public Involvement & Interagency Coordination

Compliance & Documentation

National Environmental Policy Act
Section 4(f) (Parks/Historic Sites)
Section 106 of the NHPA (Historic)
Wetlands - 404(b)(1) (Clean Water Act)
Endangered Species Act
Title VI (CRA), Environmental Justice
Other laws, regulations, and EOs ...
Where the Umbrella Comes In

“To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental document required by this regulation.”

23 CFR 771.105(a)
Input from Planning Process
Linking Planning and NEPA

- Regional traffic forecasting & demand
- Project-level traffic analysis (and updates)
- Land use assumptions and scenarios
- Public, political, interest-based input
- Air quality conformity analysis
- Financial viability
- MPO as partner and contributor during NEPA
Types of NEPA Decisions Made

- Project purpose and need
- Range of alternatives to evaluate
- Mode choice, scale (# lanes), type (bridge vs. tunnel), level of service, safety
- Design concept and scope
- Preferred (and ultimately selected) alternative
- Mitigation and enhancement measures
Doing the “Right Thing”

Shared Decisionmaking

• Open, cooperative, & collaborative process with public & stakeholders
• Balances transportation service w/ safety w/ environmental protection/enhancement w/ economic vitality & quality of life
• Results in best overall public interest decision

23 CFR 771 105(b)
How long does NEPA take?
FHWA Projects by Classes of Actions

- CE: 91.5%
- EA: 6.1%
- EIS: 2.4%
FHWA Average Length to Process

- CE: 6 Months
- EA: 16 Months
- EIS: 48 - 72 months
Is NEPA Working?

🔹 Most important and far reaching environmental law

  - Federal agencies more likely to consider views of stakeholders & be informed
  - Consultation sometimes an afterthought
  - Too much emphasis on project-level analysis vs. program-wide planning
  - Tendency for litigation-proofing of projects
  - NEPA is not broken, but implementation is uneven
CEQ NEPA Task Force

- Established by CEQ to review current NEPA implementing practices and procedures:
  - technology and information management and security
  - federal and intergovernmental collaboration
  - programmatic analyses
  - modernization to make the NEPA process more effective, efficient, and timely

- Coordinate sharing of NEPA information systems & technological advances
- Focus on better collaboration among agencies, engagement of stakeholders
- Share lessons learned; develop training
- Validate programmatic approaches; promote environmental management systems
- Guidance on categorical exclusions and environmental assessments

Other Developments

- House of Representatives NEPA Task Force (July 2006)
  - Litigation concerns
  - Time & cost to complete process
  - Public participation

- Emphasis on “User Friendly” Documents

- FHWA Vital Few Goal of Environmental Stewardship and Streamlining
SAFETEA-LU, what did you do?

- 6002 – Efficient Environmental Reviews for Project Decision Making
- 6003 – State Assumption of Responsibility for Recreational trails & Transportation Enhancement Programs
- 6004 – State Assumption of Responsibility for Categorical Exclusions
- 6005 – Surface Transportation Project Delivery Pilot Program
- 6007 & 6009 – Section 4(f) Provisions
“Thanks to the visionary act of Congress ..., our Federal government and the American public today have the benefit of a wealth of information on the state of the environment and on the potential environmental impacts of major Federal actions. NEPA is at its core, a mandate for informed, democratic decision making and its contribution to environmental protection is incalculable.”

1997 CEQ Annual Report on Environmental Quality