



FAA Seeks to Clarify NEPA's Applicability to Approval of Wildlife Hazard Management Plans

10.24.16

On October 19, 2016, the Federal Aviation Administration (FAA) published a Federal Register Notice regarding the National Environmental Policy Act's (NEPA) applicability to the FAA's review and approval of Wildlife Hazard Management Plans (WHMP). The Notice proposes to revise Program and Policy Guidance Letter 92 (May 17, 2006) to clarify that the FAA's approval of *all* initial or updated WHMPs is subject to NEPA and explain the process by which the FAA will determine the level of environmental review required.

Under the proposed policy, FAA's approval of all initial or updated WHMPs constitutes a federal action subject to NEPA, even if the implementation of the WHMP does not involve funding under the Airport Improvement Program (AIP) and/or changes to an Airport Layout Plan. The FAA anticipates that most WHMP approvals will comply with NEPA through the use of a Categorical Exclusion (CatEx) covering certificate and related actions under the Airport Certification Program. However, WHMPs involving "extraordinary circumstances" may require the preparation of an environmental assessment or environmental impact statement.

The proposed policy places principal responsibility on certificate holders to identify any protected environmental resources (e.g. threatened and endangered species, wetlands, and/or archeological sites) that may be implicated by a WHMP. The designated FAA Airport Certification Safety Inspector (ACSI) is required to formally consult with an FAA Environmental Protection Specialist (EPS) in their review of a WHMP, who will assess whether the presence of such resources require further documentation under NEPA or special purpose laws such as the Endangered Species Act. The EPS will also assess the "independent utility" of WHMP measures, and consider whether certain components are sufficiently connected to other activities that warrant additional environmental review. The ACSI will incorporate the EPS' findings in the FAA's approval of the WHMP, which will indicate which measures, if any, require further environmental review before they can be implemented.

The FAA will consider certificate holders compliant as long as they implement the approved provisions of the WHMPs, and work to obtain approval of and complete any environmental review or permitting requirements to implement remaining measures.

The Notice also signals several significant developments on related FAA initiatives. While the FAA did not provide a timeframe, the Notice states that FAA will soon issue a revision to Order 5050.4B, *National Environmental Policy Act (NEPA) Implementing Instructions for Airports*, and is currently coordinating with the U.S. Fish & Wildlife Service regarding possible changes to the FAA's consultation policy under Section 7 of the Endangered Species Act. Additionally, the Notice indicates that the FAA has abandoned its 2012 proposal to require all federally obligated airports to conduct Wildlife Hazard Site Visits or Assessments.

Comments on the FAA's proposal must be submitted by November 18, 2016.