Today’s Presentation

• Introduction to NEPA and Environmental Review
• Introduction to On-Airport Planning and Development Issues
  – Master Plans
  – Airport Layout Plans
  – Forecasts
• Why do these go hand in hand?
National Environmental Policy Act (NEPA) Overview

• Establishes environmental policies and goals for the country
• When the federal government takes an action that may have environmental impacts, it must:
  – Take a hard look at the impacts
  – Provide information about environmental effects to decision-makers and the public
• Intent is to improve decision making
NEPA Overview, cont.

- The NEPA process is often how the public learns about airport improvement projects.
- NEPA imposes *procedural*, not substantive requirements.
  - NEPA is an information and planning statute.
  - Unlike substantive environmental standards (Clean Air Act, Clean Water Act) that impose pollution control requirements.
NEPA Overview

• Section 102(2)(C)
  – Federal agencies must prepare a “detailed statement” when they propose to take a “major federal action significantly affecting the quality of the human environment”
NEPA in the Airport Context

- Based on projects and actions, not day-to-day operations
  - Runways, airspace redesign, terminal redevelopment, access projects
- Triggered when there is a federal action
  - ALP approval
  - AIP/PFC funding decisions
  - Airspace decisions
NEPA: Three Forms

Categorical Exclusion (CATEX)

Environmental Assessment (EA)

EIS
Categorical Exclusions (CATEXs)

• Actions that do not individually or cumulatively have a significant effect on the human environment, and for which, neither an EA nor an EIS is required.

• Practice Tips:
  – A CATEX is not an exemption or waiver of NEPA review; it is a level of NEPA review.
  – FAA Order 1050.1F provides a list of actions typically categorically excluded from NEPA Review
  – If responsible FAA official determines that extraordinary circumstances exist, an EA or EIS must be prepared.
Environmental Assessments (EAs)

- Concise public document that briefly provides sufficient evidence and analysis for determining whether to prepare an EIS.
- Prepared when initial review of the proposed action indicates that:
  - Action is not categorically excluded;
  - Action is normally categorically excluded but there are extraordinary circumstances that may have significant impacts; or
  - Action is not one known to normally require an EIS and is not categorically excluded
- An EA may facilitate the preparation of an EIS, when one is necessary.
Finding of No Significant Impact (FONSI)

- If no expected significant impacts, FAA prepares a FONSI to document that finding.
- Legal Significance:
  - FAA has completed the NEPA process.
- Practice Tips:
  - Unlike an EA, the FONSI is an FAA document and is not prepared by the airport sponsor.
  - FAA Order 1050.1F provides a list of actions normally requiring an EA.
Environmental Impact Statement (EIS)

• An EIS is a detailed written statement required under Section 102(2)(C) of NEPA when one or more environmental impacts would be significant and mitigation measures cannot reduce the impact(s) below significant levels.

• Practice Tips:
  – FAA, not the sponsor, prepares an EIS.
  – FAA Order 1050.1F provides a list of actions normally requiring an EIS
Content of an EA/EIS

• Major elements:
  – Purpose and need of the proposed action
  – Explanation of alternatives
  – Description of the affected environment
  – Analysis of the environmental consequences of the alternatives (including the no action alternative)
  – Mitigation
Content of an EA/EIS, cont.

- Information must be scientifically-based
- No guesses, assumptions, or conclusions without an articulated, rational basis
- Effects/Impacts Analysis:
  - Direct impacts are caused by the action and occur at the same time and place
  - Indirect impacts are caused by the action and are later in time or farther removed in distance but are still reasonably foreseeable
  - Cumulative impacts result from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions
NEPA Process

1. Sponsor Planning
2. Notice of Intent
3. Scoping
4. Draft EIS/EA
5. Final EIS/EA and Record of Decision
Sources of NEPA Law for Airports

- FAA Order 5050.4B and 1050.1F
- FAA 1050.1F Desk Reference
- Caselaw
- Federal NEPA regulations and Statute
Sponsor Lawyer’s Role

- Coordinate with state and local processes
- Watch for other environmental requirements – especially state law
- Contracting with consultant preparing the EA/EIS
- Pre-NEPA strategy
- Scrutinize purpose and need
- Protect sponsor’s objectives
- Coordinate environmental review with planning
Airport Planning and the NEPA Process

Presented to: AAAE Basics of Airport Law Workshop
By: Gail Orendorff
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Why Integrate Planning and NEPA?

Incomplete planning and/or the need to prepare additional planning during the environmental process are primary obstacles to making quick and cost-effective environmental determinations.
Planning Basics

• Master Plans or another comprehensive planning effort
• Airport Layout Plans
• Forecasts of Aviation Activity
• Identified need for facilities
What are Master Plans?

- Master Plans are planning efforts designed to identify the need for modernization of an airport, expansion of an airport, or, in some cases, construction of a new airport.
- Master Plans are long-range planning tools.
- Master Plans can be prepared to help an airport respond to ever-changing conditions (economic ebbs and flows, market response, forecast adjustments).
Master Plans, continued

• Master plans are *not* required, but are encouraged, particularly for large scale planning and development efforts

• Smaller changes at airports can often be accomplished without preparation of a full master plan
What Should a Planning Effort Include?

- Forethought – it should be an organized, systematic effort (pre-planning)
- Substantiated aeronautical demand – passenger and cargo forecasts
- Current FAA approved forecasts vs. Sponsor’s forecast…how do they compare?
- Identification of facilities needed, minimum parameters to meet needs
- Comprehensive alternatives analysis including “do nothing”
  - Tell the complete story (includes examining what can’t be done)
- Finances
What Should a Planning Effort Include (cont’d)?

• Environmental Inventory depicting environmentally sensitive areas
• Environmental Analysis of Proposed Project(s) (recommended, not required)
• No unresolved planning or implementation issues with other FAA Lines of Business (this is an internal FAA function but often involves input from the airport sponsor)
• Community involvement
• Flexibility – Master Plan concepts don’t always come to life exactly as envisioned
Airport Layout Plans

- Airport Layout Plan: A scaled drawing of existing and proposed land and facilities necessary for the operation and development of the airport.
- ALPs are required by law to be maintained in accordance with FAA requirements.
- ALPs may be conditionally or unconditionally approved by the FAA. The distinction between these approvals is important for project implementation.
- FAA funding of projects and approval for implementation first require unconditional ALP approval.
Forecasts of Aviation Activity

• What purpose do forecasts serve?

• Forecasts “rule of thumb” (applies when using a sponsor prepared forecast in lieu of the FAA’s Terminal Area Forecast (TAF))
  – Local forecasts that differ more than 10% (5-year) or 15% (10-year) from the FAA TAF must be approved by FAA for use

• FAA expertise / deference from Court / importance of “telling the story of forecast development”

• What if forecasts change during project development process?
Connecting Planning and Environmental Processes

**Major Planning Components**

- Facility Requirements
- Airport Plans and CIP
- Purpose and Need
- Alternatives
- Forecasts
- Inventory (when environmental included)
- Forecasts
- Airport Plans (when environmental included)
- Affected Environment
- Environmental Consequences

**Major NEPA Environmental Components**
Poor Planning and its Effect on the NEPA Process

• NEPA Relying on Incomplete / Stale Planning
• Poorly Justified Projects
• Project Drift
  – concept changes/inconsistencies
  – Inability to fully define what the project is
• Sponsor Expectations Can’t Be Met
• Time Passage
• Changing Project Variables (Economics/Industry Dynamics)
• Changes in FAA Staffing and/or Project Oversight
Lessons Learned

• An EA or EIS is not a good place to be doing fundamental planning

• Alternatives need to be defined (and eliminated) in the planning process (to consider cost, for example)

• Use planning to set limits for the EIS (to identify what you cannot do)
Strategies for Smooth Planning/NEPA Integration

• Not starting the NEPA process with unanswered planning questions

• Overlapping the NEPA and Planning Process
  – Developing a supportable purpose and need during the planning process
  – Complete alternatives analysis during the planning process
  – Integrating environmental issues in the planning process
Questions?

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