National Environmental Policy Act (NEPA) Reform

Answering the Streamlining Ask through Innovation

The Digital NEPA Renaissance

9 July 2020
This is NEPA - Why Should I Listen to This?

- NEPA done better, faster, more efficiently
- Easier to understand “documents”
- Better stakeholder engagement
- Post-COVID-19 “compliant”
- Clearer data from which to make informed Military decisions
- Achieve mission requirements - FASTER
- Better environmental outcomes

Win, win, & win.
Imagine the future of NEPA

Imagine saving time, money, and resources on your mission-critical projects.

Imagine simplifying and modernizing the way complex environmental data is documented and shared.

Imagine revolutionizing the National Environmental Policy Act (NEPA) process through digital delivery that better informs communities and decision-makers about alternatives, environmental impacts, and mitigation options.

We're working with the Department of Defense to streamline the NEPA process, integrating innovative tools that enable faster, better comprehension and decision-making. From drones that capture current site conditions to social media and interactive, highly visual web-based platforms that improve public engagement, together we are pioneering the next generation of NEPA compliance.

See innovation in action. Visit aecom.com/government

So who are we?
So Who Are We?

.....Moving the DoD’s NEPA needle
• 32 years of experience

• Nationally recognized subject matter expert in NEPA compliance

• Managed over 35 EISs and 500 EAs, led over 50 NEPA training courses nationally, developed NEPA compliance handbooks and tools for a variety of Federal agencies, and served as a mentor to multiple NEPA practitioners across the nation

• Worked in all 54 states and US territories

• Long-time member of the Society of American Military Engineers and the National Association of Environmental Professionals
Jennifer Warf, AECOM

Associate Vice President
National US DoD NEPA Leader

- Senior Environmental Planner / Natural Resources Specialist with over 19 years of NEPA experience
- Project manager, author, or technical reviewer on 10 EISs and more than 75 EAs pertaining to military training and testing, construction of new facilities, flood damage reduction, and natural resources management
- Notably experienced with natural resources surveys, management, regulations, and issues specifically on DoD installations
- Worked in 51 states and US territories
Passionate about performing effective, high-quality environmental impact analyses that foster robust public involvement and result in better, faster decision-making and improved environmental outcomes....
What will we cover today?
**Presentation Content**

- A Brief History of NEPA: 1970 - 2020
- So What is Changing Now?
  - What are Digital NEPA & Virtual Public Meetings, and *why* are they important to the DoD Mission?
- USACE Baltimore District’s Digital EIS
- USACE Savannah’s Virtual Public Comment Meeting (Draft EIS)
- Questions and Answers
03

A brief history of NEPA: 1970 – 2020
The Evolution of NEPA, in pictures

1970 Plymouth Hemi Superbird (>750k)
*state-of-the-art, 1970*
No air conditioning

Uh-oh *(and best photo we could find)*

Better & Faster *(??)*
*state-of-the-art, 2020*
Air conditioning
NEPA....A 4-Letter Word for the DoD (?)

- **NEPA.** Is a process – **not** an onerous, action-stopping litigation tool

- **Evolution.** Why did a simple, 3,188-word law written when *Apollo 11* landed on the moon evolve into this convoluted process?

- **Back to the 3 NEPA Basics.**
  1. Obtain and consider stakeholder (public) input
  2. Consider potential environmental impacts of DoD proposed actions and reasonable alternatives, as well as possible steps to mitigate any damage
  3. Document the process

- **NEPA.** Does *not* dictate a decision – it better informs it (*i.e.*, *Military DecMat*)
1. The National Environmental Policy Act Public Law 91-190, 42 USC 4321-4347, as amended (1 January 1970)

2. Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act
40 CFR Parts 1500-1508 (29 November 1978)

3. Agency-specific NEPA Implementing Regulations

...(and of course Case Law)
“Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.”

- 40 CFR Part 1500.1(c)

“...identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (40 CFR § 1506.3), narrowing the discussion of these issues in the statement [EIS] to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.”

- 40 CFR Part 1500.7(a)(3)
Inconsistencies between Federal agency NEPA implementing regulations

“Injunctophobic” processes and “bullet proof” NEPA documents

New & additional environmental laws and requirements

Lots of litigation

Onerous processes….and more processes

NEPA viewed as the “Achilles Heel” of Federal proposals
Which Resulted in…

- Significantly longer documents
- Significantly more time (longer reviews)
- Higher costs
- Evolution of strange, inconsistent, and often onerous agency-specific NEPA practices
- Movement away from NEPA fundamentals
- Not necessarily better stakeholder engagement, more informed decision-making, or better environmental outcomes
The American Recovery and Reinvestment Act of 2009

- **Section 1609(c)** required a report to Congress on the status and progress of NEPA reviews for Recovery Act-funded projects and activities. President Obama assigned reporting responsibility to CEQ

- **Wow!** There are big differences between agencies!
Some Attempted Course Corrections (2010-2014)

CEQ Memoranda for Heads of Federal Departments & Agencies:

- Emergencies and the National Environmental Policy Act, 12 May 2010
- Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act, 23 November 2010
- Appropriate Use of Mitigation and Monitoring and Appropriate Use of Mitigated Findings of No Significant Impact, 14 January 2011
- Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act, 6 March 2012
- CEQ & OMB Memorandum on Environmental Collaboration and Conflict Resolution, 7 September 2012
- Guidance on Effective Use of Programmatic NEPA Reviews, 18 December 2014
And Some More Course Corrections (2015-2018)

- **Fixing America’s Surface Transportation Act (FAST Act) of 2015/FAST-41** (4 December 2015)
- **Executive Order 13766** (24 January 2017) *Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects*
- **Executive Order 13807** (15 August 2017) *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*
- **DOI Order #3355** (31 August 2017) *Streamlining NEPA Reviews and Implementation of EO 13807*
- **White House Draft Streamlining Plan** (31 January 2018)
So What Is Current NEPA (or not so current)?

- National Environmental Policy Act of 1970
  1. Consider the environment in Federal decision-making and minimize impacts where possible
  2. Involve the public
  3. “Document” the process

- In the last 50 years, not much has changed for the better
  - Increasingly voluminous documents (inhibits understanding)
  - Newspaper ads to publish
  - In-person public meetings
  - Little use of internet, social media, modern technology (drones, GIS, computer-based analytical tools…)
  - Long agency review and approval periods due to long, cumbersome documents that few people read

- The result - increased cost, scope, and schedule; decreased understanding and value, deviating from NEPA fundamentals
And the results of “bad” behavior….

- **Average EIS today:**
  - $2.5M
  - **4.5 years** (NOI to ROD)
  - **1,600 pages** (the Bible is 1,200 pages)
  - Meaningful public involvement???
  - More informed decision-making???
  - Better environmental outcomes???
    - CEQ; December 14, 2018
Time for a Course Correction

Sometimes in the wind of change... we find our direction
Where We are Headed – A Better Tomorrow

1970 Plymouth Hemi Superbird (>750k)
state-of-the-art, 1970
No air conditioning

Uh-oh (and best photo we could find)

Better & Faster ($??)
state-of-the-art, 2020
Air conditioning
So what is changing now after 42 years?
So What Have We Seen in the Last Year or so?

- Updating CEQ NEPA Implementing Regulations (NPRM, 20 January 2020)
- Navy/USMC – Streamlining Guidance and 32 CFR 775 revisions
- Army – 32 CFR 651 streamlining revisions
- Other Federal agencies implementing similar
- Consistent Federal direction to achieve better environmental outcomes, faster
- COVID-19 pandemic limitations on public involvement
Top 15 Take-Aways from Proposed CEQ Revisions

1. Updates, reorganizes, and consolidates the regulation IAW streamlining
2. Reinforces agencies to reduce paperwork and delay
3. Encourages integration of other regulations into NEPA
4. Encourages NEPA documents focus on relevant, significant issues
5. Asks agencies to ensure sufficient NEPA staff and resources
6. Reinforces NEPA documents be written in plain language
7. Places presumptive limits on EISs (2-year, 300 pp.) and EAs (1-year, 75 pp.)
8. Allows for cost and technical criteria to narrow alternatives
9. Can use multiple CEs for a non-segmented Proposed Action
10. Allows agencies up to 1 year to update their implementing regulations
11. Directs agencies to have a website to post NEPA-related data
12. Withdraws all previous CEQ NEPA guidance and will issue new guidance
13. Requires the ability for electronic public comments that need to be specific to significant impacts and alternatives.

14. Specifies that no injunction is permitted unless the Proposed Action would result in significant impacts/irreparable harm or NEPA process is violated.

15. Allows for modern, innovative technologies to replace hard copies and to support public outreach (except in areas with no or limited broadband).
So What Does This Mean for the DoD?

1. Completion of NEPA documents more quickly with less paper
2. Need to expedite internal agency reviews
3. Must ensure available, sufficient NEPA staff and resources
4. Expected to conduct more focused NEPA analyses
5. Updates to your agency-specific NEPA regulations
6. Should expect a significant increase in the use of CEs vice EAs
7. Third-party EISs will rely more on the non-Federal agency proponent
8. Actions without substantial Federal agency involvement, NEPA may not be required
9. Need to substantially increase the amount of early “internal and external scoping” (e.g., pre-NOI)
10. Can rely more on “innovative technologies” to further streamline their NEPA process
Some “old school” methods that have worked
Streamlining 2018 - 2020

- **Reduce indecision and delay** – use better planning up front & build a strong DOPAA
- **Conduct strong internal and external scoping** – know the issues, upfront
- **Enforce accountability**, timelines, and strong planning/shepherding
- **Consolidate/reduce** steps
- **Adhere to page and time limits**
- **Prepare focused** NEPA documents
- **Address areas of controversy** – early and often
- **Include environmental considerations** early in the planning and decision process

**General consensus** – *shorter, clearer, more analytic documents are better*

*AECOM has used these techniques to complete NEPA documents IAW pending CEQ revisions, before the proposed revisions*
So what do we do to “Answer the Ask” for the DoD in FY20 and beyond?
Welcome to the Future…and the Future is Now
CEQ sets the stage for innovation (2020)

- CEQ NEPA Implementing Regs - 40 CFR 1507.4 (pending):
  - Agency NEPA program information. (a) …agencies shall provide for agency websites or other means to make available environmental documents, relevant notices, and other relevant information for use by agencies, applicants, and interested persons….
  - “Opportunities exist for agencies to combine existing geospatial data, including remotely sensed images, and analyses to streamline environmental review and better coordinate development of environmental documents…. One option involves creating a single NEPA application that facilitates consolidation of existing datasets and can run several relevant geographic information system (GIS) analyses to help standardize the production of robust analytical results. This application could have a public-facing component modeled along the lines of EPA’s NEPAssist….”
Published in the Society of American Military Engineer’s (SAME) *The Military Engineer* (https://samenews.org/tme-january-february-2020/)

- Integrating current technologies to re-invigorate the NEPA process, and get “Back to Basics”
- “Everything old is new again”
- *So what is it? (wait for it…..)*
Digital NEPA

- **Digital NEPA** streamlines the NEPA process, brings the practice into modern age, and comports with current NEPA streamlining initiatives.

- **Using modern technology to get back to NEPA’s core:**
  - Drone data-capture (video and still)
  - GIS-based data analysis
  - Internet-based document (interactive website)
  - Use of social media and virtual meetings for enhanced public involvement
  - Hyper-links to other relevant documents, data, websites
  - Short companion printed document (508/broadband)

- **Results:**
  - Better, faster, more efficient process
  - Improves stakeholder and decision-maker understanding and engagement
  - Increases potential to achieve better environmental outcomes
  - Meets Federal directives to shorten documents and timelines
Okay, so show me and prove it (and for the DoD)!
US’ First-Ever Digital EIS

US Department of the Treasury
Environmental Impact Statement
PRELIMINARY DRAFT
April 24, 2020

USACE Baltimore District

- US Department of the Treasury, Bureau of Engraving and Printing
- Construction and Operation of a Proposed Currency Production Facility at the Beltsville Agricultural Research Center
- Beltsville, Prince George’s County, Maryland

- Show 10-minute video
  https://vimeo.com/423596796
And the **Whipped Cream on Top...**

USACE Savannah District
Draft EIS Virtual Public Comment Meeting

https://vimeo.com/423597135

https://fortbenning.consultation.ai/
08

Let’s put a fine point on it
So to Review….  

- **Digital NEPA** – *better, faster, shorter, more efficient* – improving understanding, stakeholder engagement, and environmental outcomes

- **No more** 1,600-page documents that few people read (or understand)

- **Meets original spirit and intent of NEPA** at 40 CFR 1500.1(c):
  - “Ultimately, of course, it is not better documents but *better decisions* that count. NEPA’s purpose is not to generate paperwork…but to foster *excellent action*.”
The Future.... Today

I love this car!

But this is faster and better.
Questions & Answers
THANK YOU FOR LISTENING.