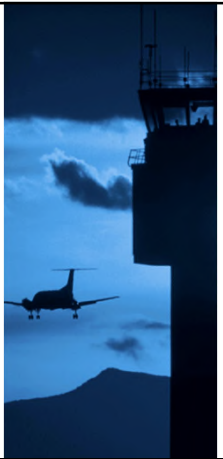


## The National Environmental Policy Act (NEPA): A Sponsor's Perspective



By: Josh Fitzpatrick, FAA  
Dakota-Minnesota ADO  
November 5, 2014



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### Overview



- What is NEPA?
- When is NEPA triggered?
- How do you comply with NEPA?
- What resources are considered under NEPA?

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### National Environmental Policy Act

- Procedural law that applies to Federal agencies
- Objective: Informed decision making
- Requires:
  - Documentation - full disclosure
  - Public & agency involvement
  - Consideration of analysis & feedback prior to making decision
- Compliance required for all major federal actions
- Ensures consideration of environmental factors
- NEPA is not a tool to support decisions already made or a sponsor's desired action



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NEPA

- Airport & Airway Improvement Act
- Aviation Safety & Noise Abatement Act
- Clean Air Act
- Clean Water Act
- Coastal Barrier Resources Act
- Coastal Zone Management Act
- Consultation & Coordination with Indian Tribal Governments
- Department of Transportation Section 4(f)
- Endangered Species Act
- Environmental Justice
- Farmland Protection Policy Act
- Federal Aviation Act
- Numerous FAA Advisory Circulars
- FAA Order 1050.1E
- FAA Order 5050.4B
- Federal Water Pollution Control Act
- Fish & Wildlife Conservation Act
- Floodplain Management
- Hazardous Wildlife Attractants
- Migratory Bird Treaty Act
- National Historic Preservation Act
- Pollution Prevention Act
- Protection of Wetlands
- Safe Drinking Water Act
- Uniform Relocation Assistance & Real Property Acquisition Policies Act
- Wetlands
- Wild & Scenic Rivers Act

**And Many, Many More**

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When is NEPA triggered?

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### NEPA Triggers

- Compliance required for major Federal actions
- Major Federal actions have potential to significantly impact the environment
- What is a major FAA Federal action?
  - Projects either partially or entirely funded with Federal money

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## Triggering Airport Projects

### Federal Actions

- 1) New Airport Development Project
- 2) Receive Federal Grant (AIP)
- 3) Use of PFC Funding
- 4) Acquire Land or Land Release
- 5) Some Part 150 Measures
- 6) Aeronautical Flight Procedures
- 7) Airport Layout Plan Updates



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What guidance is available?

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## FAA Environmental Orders

### **Order 1050.1E**

*Environmental Impacts:  
Policies and Procedures*

FAA Agency-Wide Policies & Procedures  
for Compliance with NEPA & CEQ

All Lines of Business – General  
Instructions

Effective June 8, 2004

### **Order 5050.4B**

*NEPA Implementing Procedures  
for Airport Projects*

Airport Development Actions

Office of Airport Use

Effective April 28, 2006

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What are the types of NEPA review?

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### Levels of Environmental Review

- Categorical Exclusion (CATEX)
- Environmental Assessment (EA)
  - Finding of No Significant Impact (FONSI)
- Environmental Assessment Worksheet (EAW)
  - State Environmental Determination
- Environmental Impact Statement (EIS)
  - Record of Decision (ROD)

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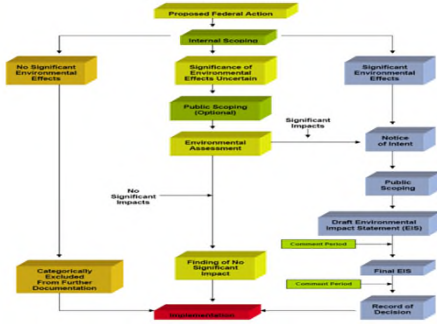
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### NEPA DECISION MAKING



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## Categorical Exclusions

- Actions that do not individually or cumulatively impact the natural/human environment
- Only Applies to projects:
  - Listed in paragraphs 307 – 312 in 1050.1E
  - Do not involve **Extraordinary Circumstances**:
    - Adversely effect an historic property or a Section 4(f) property
    - Impact natural, ecological, or scenic resources of significance
    - Noise, air quality, or water quality impacts
    - Disrupt an established community
    - Result in controversial or cumulative impacts
- May still require public & agency coordination

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## Environmental Assessment

- Purpose of an EA is to determine if a project has the potential to significantly affect the environment
- Appropriate for projects that:
  - Do not qualify as a CATEX
  - Qualifies as a CATEX but includes extraordinary circumstances
  - Normally requires an EA (1050.1E, Chapter 4)
  - Projects impacting >.5 acre of wetlands (Individual Section 404 Clean Water Act permit)



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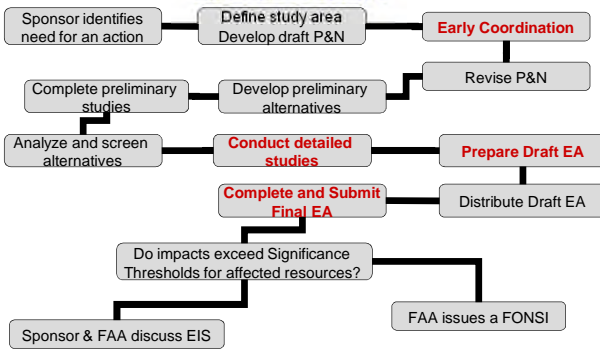
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### EA Flowchart




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## EA -- EAW

Similar Documents with a Few Differences

### Federal Action - NEPA

#### Environmental Assessment

- Draft and final documents are published for public review
- Finding of No Significant Impact (FONSI) signed by the Federal Aviation Administration (FAA)

### State Action - MEPA

#### Environmental Assessment Worksheet

- Draft and final documents are published in the Environmental Quality Board (EQB) Monitor
- Provides a list of agency recipients and local governmental repositories where documents must be available for viewing
- Negative Declaration Order and Findings of Fact and Conclusion signed by the Responsible Governmental Unit (RGU)

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## Environmental Impact Statements

- An EIS is required if:
  - An EA identifies a significant environmental impact and mitigation would not reduce impact below applicable thresholds
  - Significant impacts are anticipated
- Formal process that requires intensive interaction with interested & affected parties



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What is the difference between Planning & NEPA?

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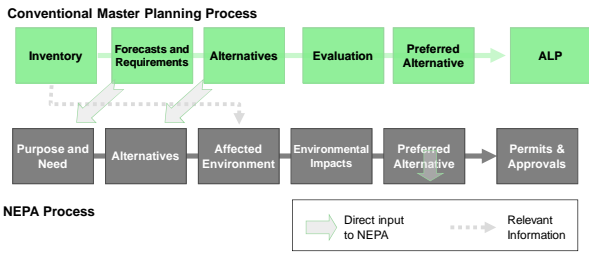
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## How Planning & NEPA Relate



- Both require supporting information/data
- Both encourage early coordination

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## How Planning & NEPA Differ

- | Planning  | NEPA   |
|---|--|
| <ul style="list-style-type: none"> <li>• Desired solution explained in need statement</li> <li>• Forecast</li> <li>• Requires alternative analysis but only the sponsor's recommended alternative is carried forward</li> <li>• Big picture review of potential environmental issues</li> </ul> | <ul style="list-style-type: none"> <li>• Does not include the solution in the Purpose &amp; Need</li> <li>• Ready for decision making</li> <li>• Requires all reasonable alternatives, including No Build, to be carried forward</li> <li>• Detailed review of potential impacts and mitigation</li> </ul> |



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What are the airport sponsor responsibilities for complying with NEPA?

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### Responsibilities

Sponsors are required to provide detailed information on:

- the activities to be conducted,
- locations, sites, species and habitat to be affected,
- possible construction activities,
- and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species).

Sponsor will provide the FAA with information so they can analyze the potential environmental impacts for the projects for which they are seeking FAA federal funding opportunities.

FAA issues environmental determination.

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### How do you comply with NEPA?

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### NEPA Process

- Basic NEPA process includes:
  - Determine level of review based on preliminary information
  - Complete necessary early coordination & studies to determine potential impacts
  - Document findings in appropriate format
  - Complete necessary public/agency/tribal coordination
  - Submit documentation for approval
- This all has to be done & the document approved before starting land acquisition and design/construction.

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### Early Coordination



- Request to tribal/resource agencies to provide information concerning anticipated impacts of proposed projects
- Goal is to identify potential pitfalls or fatal flaws early in the project
- Include copies of coordination letters & all responses received in appendices

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### Agencies a sponsor may coordinate with:

• Resource/Regulatory Agencies

- US EPA
- US FWS
- US Army Corps of Engineers
- BLM
- FHWA
- USDA
  - NRCS
  - Wildlife Services
- US Forest Service
- Tribal Groups



• FAA Lines of Business

- ADO
- Regional and HQ Legal Counsel
- Air Traffic Organization - Airway Facilities, Flight Standards, Flight Procedures, Air Traffic Control Tower
- Regional Office
- HQ Environmental Staff

• State Agencies

- State DOT
- State Environmental Agencies

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### Format of an EA/EIS



Basic chapters of an EA/EIS:

- Purpose and Need
- Alternative Analysis
- Preferred Alternative
- Affected Environment
- Environmental Consequences and Mitigation
- Cumulative Impact Analysis
- Consultation and Distribution
- Appendix

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### Purpose and Need (P&N)

- Purpose:
  - Goals & objectives of the project supported by identified “needs”
  - **Not the scope of work** (proposed project)
- Need:
  - Detailed explanation of specific problems or deficiencies
  - Each need provides measurable objectives
- Answers three basic questions:
  - Why?
  - Why here?
  - Why now?
- Demonstrates problems that will result if no-build alternative selected

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### Purpose and Need Continued

- Common pitfalls:
  - Narrowly defining P&N
  - Project goals that are too vague or broad
  - Not providing adequate justification for the project
  - Failing to disclose the aeronautical necessity for the project
- Sample structure:
  - Background – brief discussion of the existing facility
  - Need – an explanation of the problems
  - Purpose – a clear, concise description of the primary goals



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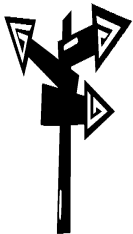
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### Alternative Analysis



- Identification, consideration & analysis of alternatives
- Vital to the NEPA process
- Goal is alternative that satisfies the P&N while protecting environmental & community resources
- Carry forward any reasonable alternatives & the No Build alternative

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### Alternative Analysis Continued

- An effective alternative analysis includes:
  - Description & evaluation of each alternative
  - Explanation of process used to develop range of alternatives & how preferred alternative was selected
  - Table for easy comparison
  - ~30% Design
  - Wetland impacts.....Least Environmentally Damaging Practicable Alternative (LEDPA)-Section 404 CWA
- Include any maps or aerial photographs of the alternatives in the appendix
- If a project has the potential to impact certain resources, such as wetlands, parks, historic/cultural, etc., then avoidance & minimization alternatives are required

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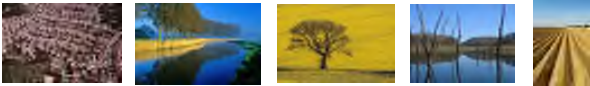
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### Affected Environment

- Description of current airport environment & surrounding area
- Establishes baseline conditions
- Detail required depends on the project
  - If the resource is not present, simply state so
- Include maps, aerial photos, or other graphics to help readers understand location & surrounding environment of proposed project



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### Environmental Consequences

- Description of potential direct/indirect impacts if No Build, preferred alternative, or reasonable alternative is implemented
- Amount of detail required depends on project type, location & impact



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## Environmental Impact Categories



Air Quality	<b>Biotic Resources</b>	Coastal Areas
Compatible Land Use	<b>Wildlife Hazards</b>	Construction Impacts
Energy	Environmental Justice	<b>Farmlands</b>
Floodplains	Hazardous Materials • EDDA	Light and Visual
<b>Noise</b>	<b>Section 4f (Parks, Historic)</b>	Section 6f (LWCF)
Social Impacts • Induced socio-impacts	Solid Waste	Wild and Scenic Rivers

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## Section 106 – Cultural Resources

- Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account effect of Federal undertakings on cultural resources/historic properties
- NHPA established:
  - National Register of Historic Places
  - Advisory Council on Historic Preservation
- Important to start early - process can take between 70 days to over a year to complete
  - Initial conversations with Tribes/SHPO in planning phase
- The FAA is responsible for:
  - Determining the APE
  - Issuing the finding
  - Tribal Coordination




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## Area of Potential Effect (APE)



Geographic area where an undertaking may directly/indirectly cause changes in the character or use of historic properties

- The APE may not be the same as a project area
- The APE should include:
  - All areas of potential direct/indirect effects
  - All locations which may result in ground disturbance
  - All locations where the project may be visible or audible
  - All areas where the activity may result in changes in traffic patterns, land use, public access, etc.
- APE is delineated in consultation with the FAA & SHPO

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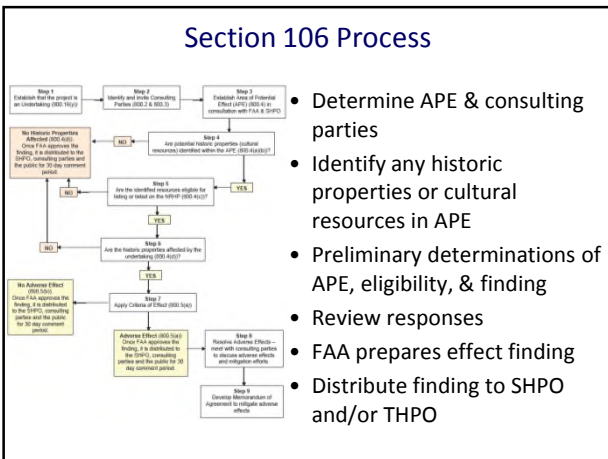
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## Section 106 Process




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## Tribal Consultation

- **Who** should be contacted?
  - FAA initiates consultation with the interested tribes.
    - FAA will contact the Tribal Chair and THPO.
    - THPI (Monitor)
- **When** to contact?
  - Planning/Environmental




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## Threatened and Endangered Species

- The Endangered Species Act of 1973 requires Federal agencies to ensure that their actions do not:
  - Jeopardize threatened or endangered species (T&E)
  - Destroy or adversely modify critical habitat.
- Canada Lynx/Topeka Shiner Critical Habitat Designation
- Northern Long Eared Bat, Dakota Skipper, Poweshiek Skipperling, other species
- Informal consultation timeline: ~30 days
- Formal consultation (Section 7): ~135 days




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## T&E Species Process

1. Identify any T&E species or critical habitat located in the project area
  1. Coordination with FWS
  2. Database check
2. Determine if identified T&E species or habitat will be impacted by project
3. If no species or impact:
  1. State in document
  2. No further work required
4. If impacts are identified:
  1. Additional consultation
  2. Biological assessment



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## Wetlands

- Lowlands covered with shallow & sometimes temporary water
- US DOT Order 5660.1A requires protection, preservation, & enhancement of wetlands to fullest extent possible during planning, construction & operation of transportation facilities
- Mitigation is required for impacts that cannot be avoided or minimized
- Work with USACE and FAA to avoid and minimize
- No statutory timelines for permitting review under CWA. (Plan accordingly)



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## Wetlands Continued

- An airport action affects a wetland if it:
  - Requires building a structure, facility, or other development in a wetland
  - Requires dredging, filling, draining, channelizing, diking, impounding, or other direct effects in a wetland
  - Requires disturbing the water table of an area in which a wetland is located
  - Indirectly affects a wetland through impacts to areas upstream/downstream or encourages secondary development that will impact the wetland
- If the project has potential to impact a wetland, include an analysis of all practicable alternatives that avoid and/or minimize wetland impacts

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### In the Environmental Document

- Delineate all wetlands located in or adjacent to the project area
- Summarize results of wetland delineations, including size, location, quality & jurisdiction for each wetland
- Quantify direct & indirect wetland impacts
- Describe
  - potential impacts
  - efforts made to avoid, minimize, & mitigate those impacts
  - Conceptual mitigation
- Document all coordination



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### Public Involvement



- Complete, open, & effective public participation is essential part of NEPA
  - Don't assume that public involvement covers tribal involvement
- At the earliest appropriate stage of the NEPA process, pertinent information must be provided to affected communities & agencies
- The comments received must be considered. This should be reflected in the environmental document.
- The Draft EA/EIS must be available for public review at least 30 days before the public hearing, meeting or workshop.

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### Public Involvement

- For projects that qualify as a CATEX:
  - Public notice is not required
- EA:
  - Provide opportunity for public comment
  - At the very minimum, an opportunity for a hearing is offered
  - Include a copy of the legal notice in appendix of final EA
- EIS:
  - The public must be provided an opportunity to review & comment on draft EIS's
  - Final EIS should address all comments received

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## Cumulative Impact Analysis



- Description of any past, present or future activities in the project area, including non-airport activities, & impacts associated with these activities
- Determine if any significant impacts occur when the impacts of the proposed action are added to the impacts identified from past, present & future activities.

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## Mitigation

- Thorough description of conceptual measures proposed to mitigate identified impacts
- Indicate how the measure would avoid or reduce adverse impacts
- Initiate permitting through Section 404



<http://www.twinline.org/images/goose.JPG>

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## Recap



- NEPA is a procedural statute
- Required for projects receiving Federal approval or funding
- Three levels of analysis
  - CATEX
    - Projects listed in Chapter 3 of 1050.1E with no extraordinary circumstances
  - EA
    - Projects that are:
      - Listed in Chapter 4 of 1050.1E, or
      - Do not qualify for CATEX, or
      - Qualifies as CATEX but has extraordinary circumstances
  - EIS
    - For projects with significant impacts

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