

**FEDERAL AND STATE COORDINATION
OF ENVIRONMENTAL REVIEWS
FOR AIRPORT IMPROVEMENT PROJECTS**

Joint Review By

Federal Aviation Administration

and

National Association of State Aviation Officials

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FEDERAL AND STATE COORDINATION OF ENVIRONMENTAL REVIEWS FOR AIRPORT IMPROVEMENT PROJECTS

EXECUTIVE SUMMARY

In March 2001, the Federal Aviation Administration (FAA) and the National Association of State Aviation Officials (NASAO) agreed to conduct a joint review of federal and state environmental processes and coordination. This review is included in a broader five-year Memorandum of Understanding, signed on April 17, 2001, in which FAA and NASAO renewed their commitment to work cooperatively on a variety of aviation issues. The review, furthermore, is an environmental streamlining initiative that was referenced in the report on the Environmental Review of Airport Improvement Projects submitted to Congress by the Secretary of Transportation in May 2001.

The information produced by the study indicates that there are 3 broad causes of federal/state environmental coordination delays that may be encountered by airport projects:

- A state environmental review process that adds to the federal process and whose requirements differ in some respects from federal requirements.
- State environmental permitting processes.
- Federal environmental review requirements and permits in which states have a role.

At least one of the above three causes of environmental delays was identified in approximately half of the 50 states.

State Environmental Review Processes. With the aid of a survey supplemented by telephone discussions with FAA regional staff and state aviation officials, FAA and NASAO identified 15 states that have an environmental review process for airport projects that either mirrors or is somewhat similar to the federal process. With a few noted exceptions, federal and state environmental reviews are done concurrently as a normal practice. However, environmental review time lines are not always consistent. Compliance with both federal and state review processes may add time to the overall

process in 6 of the 15 states. Reports of the time that state environmental review processes add to the federal process vary by state and by project from a low of 2 additional months to a potential high of 12 months, with the exception of the state of California where a sequential state and federal review process can be much longer.

State Environmental Permits. State permitting requirements and processes that can affect airport project time lines were identified in 16 states. State permit review and approval processes can add anywhere from a few weeks to 1-2 years to the environmental approval of an airport project. The longest delays tend to occur when permit reviews do not begin until a federal Environmental Impact Statement (EIS) has been completed. There is a certain extent of duplication of state and federal permitting, e.g., for wetlands permits.

Federal/State Environmental Review and Permit Linkages. States have some role in a number of federal environmental laws and permits. Federal requirements that include the need for reviews and determinations at state level can result in delays that are state-driven in addition to federal delays that may occur. Delays of this type were reported in 18 states. They include state involvement in U.S. Army Corps of Engineers Section 404 permits for wetlands, in the Coastal Zone Management Act, in the Clean Air Act, in Section 106 reviews under the Historic Preservation Act, and in the Governor's Air and Water Quality Certification required by federal airports legislation.

Coordination Improvements and Good Practices. FAA and NASAO have identified a number of federal/state coordination issues for immediate attention. Selections were oriented towards issues that tend to affect major airport projects and can cause appreciable delays, issues that cover a broad spectrum of topics and geographically represent different areas of the U.S., and issues that may be amenable to near-term administrative improvements. While FAA and NASAO have not ruled out efforts targeted towards more extensive changes, either administratively or institutionally, the present intent is to take immediate forward steps to improve coordination on a workable

scale of effort. The study includes a brief report on the selected issues in 12 states, and the status of efforts to achieve improvements. FAA regional officials and state aviation officials are pursuing actions, extending beyond this study timeframe, to reduce environmental delays.

The study also identified a number of good practices in states that currently facilitate environmental coordination and reduce delays. Some practices make the environmental review process more efficient, while other practices expedite permits. The report showcases a variety of good practices in 17 states that may be of interest to and usable by other states. It is worth noting that the complexity and the many components of environmental review and permitting mean that both coordination issues subject to improvement and good practices can be present in the same state.

Conclusion. This report completes the year's study agreed to last March by FAA and NASAO. However, the joint working effort by FAA and NASAO to improve federal and state environmental coordination, adopt best practices, and streamline environmental reviews continues on past this report. State aviation organizations and FAA regional and district offices are commended for the serious attention they have given to this study, their honest and frank delineation of issues, their identification and description of good practices, and most of all their significant ongoing efforts to improve federal and state environmental coordination to reduce delays to airport projects.

FEDERAL AND STATE COORDINATION OF ENVIRONMENTAL REVIEWS FOR AIRPORT IMPROVEMENT PROJECTS

I. INTRODUCTION

A. Background and Task Statement

In 2000-2001, the Federal Aviation Administration (FAA) conducted a study of environmental requirements related to the planning and approval of airport improvement projects. Congress had specifically asked for an assessment of the current level of coordination among federal and state agencies. The FAA found that coordination varies from state to state because each state has different requirements. It was not possible to generalize about federal/state environmental coordination.

In March 2001, the FAA and the National Association of State Aviation Officials (NASAO) agreed to conduct a joint review of federal/state environmental processes and coordination, state by state. This Environmental Streamlining initiative was included in a broader five-year Memorandum of Understanding (MOU), signed on April 17, 2001, in which the FAA and NASAO renewed their commitment to work cooperatively on a variety of aviation issues. A copy of the initiative is in Appendix 1.

The objective of the Environmental Streamlining initiative is to expedite the environmental review of airport development projects nationwide through improved coordination and streamlining of federal/state environmental processes. More specifically, FAA and NASAO agreed to undertake a study to determine the extent to which federal and state environmental review requirements could be more effectively and efficiently coordinated and combined to streamline the environmental review of airport development projects. It was agreed that the study would include proposed coordination and process improvements and that the final result of the study should be a document that the FAA and state aviation agencies can use to support streamlining recommendations.

This report completes the year's study identified in the FAA/NASAO MOU. It also supports FAA's environmental streamlining initiative to improve interagency cooperation and coordination to achieve more consistent, effective, and timely environmental reviews of airport projects, including permitting reviews, identified in the May 2001 Report to Congress.

B. Action Goals

The study included three action goals that are repeated below, together with the dates of their completion as the study has progressed.

- To identify and describe the critical state environmental review processes and requirements (including state permits) for airport development projects, state by state.
..... End of August 2001
- To determine the extent to which the federal process and individual state processes extend the overall environmental review process because they are not consistent or coordinated.
..... November 15, 2001
- To recommend improvements in the interface of federal and state environmental review processes and coordination to streamline environmental reviews and reduce delays in reviews and state permits.
..... March 1, 2002

C. Process and Structure of the Study

The study was cooperatively designed and directed by the NASAO focal point, Lori Lehnerd, NASAO Vice President, and the FAA focal point, Lynne Pickard, Manager Community and Environmental Needs Division, Office of Airport Planning and Programming. During the summer of 2001, FAA and NASAO collected a lot of information through a survey of FAA environmental specialists in regional and district

offices and of state aviation organizations. During the fall, the information was jointly analyzed to identify issues in specific states to tackle, as well as good practices to serve as examples for others to follow. In December, reviews were held with FAA regions and state aeronautics staffs on the issues and good practices. In early January, FAA environmental specialists were asked to initiate dialogue with their state counterparts on developing effective and practical strategies to address the identified issues.

This report completes the year's study identified in the FAA/NASAO MOU. However, the joint working effort by FAA and NASAO to improve federal/state coordination, adopt best practices, and streamline environmental reviews continues on past this report. State aviation organizations and FAA regional and district offices are commended for the serious attention they have given to this study, their delineation of issues and good practices, and most of all their significant ongoing efforts to improve federal and state environmental coordination to reduce delays to airport projects.

II. SURVEY

A. Introduction

The survey was designed to gather specific information on each state's review process, environmental requirements, delay causing factors, and good practices. The ten questions comprising the survey are in Appendix 2.

The first series of questions in the survey (Questions 1, 2, 3, and 4) were asked to learn about the existence and description of an environmental review process in the state comparable to the federal EIS process, and the time frame for the state environmental process in addition to the federal process.

The next series of questions (Questions 5, 6, and 7) focused on the cause and extent of notable delays (if any) due to federal and state environmental review and permit requirements, and on the pros and cons of joint federal/state environmental documents.

The final questions (Questions 8, 9, and 10) asked whether there is state support for improving environmental coordination, including interest in any institutional changes in federal and state environmental procedures and requirements, and requested feedback on good examples of the effective meshing of federal and state environmental processes and/or permit requirements.

The 10-question survey was completed for each state by FAA environmental specialists in the regions and by state aviation organizations. Inconsistencies in some responses, which primarily resulted from different reactions to some questions by different respondents, were discussed among FAA headquarters and NASAO staff and the individuals who provided the responses. Once inconsistencies were resolved, the survey results were compiled, summarized, and analyzed. The survey responses provide valuable insights into federal and state environmental coordination practices and issues.

B. Survey Results and Analysis

Information collected through the survey is summarized below and further presented in tables in appendices to this report. The tables are organized first by FAA geographical regions, and then alphabetically by state under each region.

In general, the information produced by the survey indicated that there are three broad causes of federal/state environmental coordination delays that may be encountered by airport projects:

- A state environmental review process that adds to the federal process, and whose requirements differ in some respects from federal requirements.
- State environmental permitting processes.

- Federal environmental review requirements and permits in which states have some role.

Each of these causes of delay is discussed in greater detail below.

The survey also identified examples of “Good Practices” in a number of states that are worth showcasing. Some of these practices may be of interest and usable by other states.

1. State Environmental Review Processes. The results of the survey responses to questions regarding the state environmental review processes vis-à-vis the federal EIS process are summarized in a table in Appendix 3. The responses shown are only for the states that have an environmental review process that mirrors or is somewhat similar to the federal process.

Fifteen (15) states have an environmental review process for airport development projects that either mirrors or is somewhat similar to the federal EIS process. The states are Connecticut, Massachusetts, Maryland, New York, Virginia, Florida, Georgia, North Carolina, Michigan, Minnesota, Wisconsin, California, Hawaii, Montana, and Washington.

Survey responses from all of the above states, with the exception of California and Montana, indicate that federal and state environmental reviews are done concurrently as a normal practice. In the case of Montana, the FAA has no experience of preparing an EIS for major airport development and, therefore, no experience of combining federal and state processes. In California, FAA and airport sponsors strive to prepare concurrent joint federal/state environmental documents, but joint documents and concurrent processes have had a troubled history. The California Environmental Quality Act (CEQA) is sufficiently different from federal requirements and processes to make joint documents/processes complicated and difficult to maintain. Airport sponsors, who are responsible for CEQA compliance rather than a centralized state agency, at times decide to complete CEQA compliance for a project on their own and then tackle NEPA compliance with the FAA.

State environmental reviews were deemed not to add to the federal EIS time line in 8 states--Maryland, Massachusetts, Virginia, Georgia, North Carolina, Michigan, Wisconsin, and Washington. Several states, including Virginia, Michigan, and Wisconsin, use the federal NEPA process to comply with state requirements. This is the most efficient practice for meeting both federal and state obligations. Other states that do not apply a state environmental process to airport projects also rely on federal requirements for environmental review and protection.

Compliance with both federal and state environmental review processes may add time to the overall process in 6 states--Connecticut, New York, Florida, Minnesota, California, and Hawaii. Factors that tend to add time are differing federal and state analytical requirements and/or environmental protection standards, more extensive state review and public comment requirements, reconciliation of federal and state views concerning the purpose and need of an airport project and the type of reasonable alternatives to evaluate, more extensive state scoping requirements, and more agencies guiding and coordinating the environmental review.

Among the above states, reports of the time that the state process adds on top of the federal process vary by state and by project from a low of 2 additional months to a potential high of 12 months. California can be an exception. An additional 3 to 5 years (not counting delays due to state environmental litigation) can be added to an environmental review process if an airport sponsor decides to proceed with the state environmental process first followed sequentially by a federal environmental process.

2. State Environmental Permits. The survey responses that reported state permitting issues that may cause delays are summarized in a table in Appendix 4. State permitting requirements and processes that can affect airport development project time lines were identified in 16 states--Connecticut, Maine, Massachusetts, Rhode Island, Vermont, Maryland, New Jersey, New York, Florida, North Carolina, South Carolina, Minnesota, Wisconsin, Hawaii, Oregon, and Washington.

The survey results indicate that state permit review and approval processes can add anywhere from a few weeks to 1-2 years to the federal environmental review process. In a very few extreme cases, state permits are so difficult to obtain that airport projects may be abandoned. The most often cited permits that cause delays are water-related, i.e., state wetlands permits, coastal zone consistency reviews, water quality, stormwater. Some states have specialized permits that are not duplicated in other states, e.g., Maine's Site Location of Development Act permit, New Jersey's Pinelands Commission permit, Hawaii's Special Management Area permit.

State permitting delays are attributed to a variety of reasons. In some cases, permit reviews do not commence until federal EISs are completed, and state staff responsible for reviewing projects for permits do not participate in the EIS process. In some states, permitting reviews are institutionally structured to occur sequentially after an EIS; in other states, the delay of review until actual permit application following an EIS is related to state staffing limitations and priorities. Permit reviews that are not done, at least in part, concurrent with an EIS cause the greatest extent of reported delays in the process.

State permits can place stringent environmental protection standards on projects that exceed federal requirements, and that may additionally involve more agency and public review time. The preferred project alternative approved in an EIS may be revisited for state permitting purposes. Some states have complex and strict permitting requirements for development in areas designated to have special environmental value. Some states require separate public hearings for the approval of specific permits, e.g. water quality and wetlands permit. There is a certain extent of duplication of state and federal permitting, e.g., for wetlands permits.

3. Federal/State Environmental Review and Permit Linkages. States have some role in a number of federal environmental laws and permits. Federal requirements that include the need for reviews and determinations at state level can result in delays that are

state-driven in addition to federal delays that may occur. Delays of this type were reported in 18 states--Connecticut, Massachusetts, Maine, Rhode Island, Delaware, New York, Pennsylvania, North Carolina, Tennessee, Illinois, Michigan, Minnesota, Ohio, Iowa, Missouri, California, Washington, and Alaska. Responses to the survey question regarding delays related to Federal environment requirements and permits identified several key areas that tend to delay airport projects.

The U.S. Army Corps of Engineers (COE) Section 404 permits for wetlands are probably identified more often than any other requirement as causing delays ranging from weeks to years at both federal and state levels. The Coastal Zone Management Act, involving states in coastal zone consistency determinations, is another cited federal law that results in state-driven delays that can be quite extended.

General Conformity Determinations for airport projects are often complicated by a lack of adequate allowances for air emissions due to aviation growth in State Implementation Plans (SIPs) under the Clean Air Act. The Governor's Air and Water Quality Certification, required for certain Airport Improvement Projects (AIP), is withheld at times pending specially tailored state-required air or water quality analysis that differs from and exceeds federal requirements.

The Section 106 review of airport project effects on historic properties under the Historic Preservation Act involves a State Historic Preservation Officer (SHPO) in each state who has a substantial role in the pace and result of reviews. Some survey responses cited SHPO review as a prime source of delay. Some SHPOs have refused to recognize state responsibility for environmental reviews of projects under the State Block Grant Program for AIP, and insist on engaging FAA as well as the state in the 106 process.

In the survey, respondents also identified federal-level requirements and issues that cause delays. These include Section 404 permits (irrespective of state involvement), compliance with the Endangered Species Act, reviews of public parks and other

properties under Section 4(f) of the Department of Transportation Act, elongated reviews by federal resource agencies, and insufficient FAA staff resources. These types of issues were identified in the DOT/FAA May 2001 report to Congress. Improvements in these areas, to the extent they are subject to administrative remedies, are being addressed by FAA within other streamlining initiatives outlined in the report to Congress, and are not part of this particular study.

III. FEDERAL/STATE REVIEW AND COORDINATION IMPROVEMENTS

A. Introduction

At least one of the three categories of environmental delay described in the previous section of this report was identified in approximately half of the total 50 states. Support for improving the coordination of federal and state environmental reviews and permits to reduce airport project delays was indicated in the majority of states. (There were no responses to this survey question in a number of states where there were no identified delays.) Support for institutional changes in federal and state environmental requirements and processes was thought to be present in only about 18 states, and there is no identifiable consistency of opinion regarding the type of institutional changes that might be possible or widely acceptable.

The FAA and NASAO have selected a manageable number of federal/state coordination issues for immediate attention. Selections were oriented towards issues that tend to affect major airport projects and can cause appreciable project delays, issues that cover a broad spectrum of topics and geographically represent different areas of the U.S., and issues that may be amenable to near-term improvements. The intent is to take immediate forward steps to improve coordination on a workable scale of effort.

We have not ruled out subsequent efforts targeted towards more extensive changes, either administratively or institutionally. For example, delays at state level caused by the requirement in federal airports legislation for a Governor's air and water quality certification were particularly noted in the survey by FAA and state aviation organizations in Indiana, Michigan, Minnesota, Ohio, Missouri, and California. The duplicative nature and potential elimination of this requirement were discussed in the DOT/FAA May 2001 report to Congress as a possible next step that would require a change in federal airports legislation. NASAO would support working with FAA on any proposed change.

B. Addressing the Issues

Below is a brief report on the issues selected for immediate attention, by state from the east coast to the west. (These reflect a manageable set of issues and should not necessarily be regarded as the only states that have coordination issues or even as the only states that have these particular issues.) The FAA and state aviation organizations have begun efforts to achieve improved coordination. These efforts will continue on past this report.

Connecticut - State Coastal Zone Consistency Review

The Connecticut Department of Environmental Protection (DEP) does not initiate coastal zone reviews until a federal NEPA document has been completed. In addition, the DEP has long-standing concerns about airport development within the state's coastal zone, including current runway safety area projects at existing airports. Some projects are stalled for long periods of time. Similar to what occurs with federal resource agencies at times, the DEP's review includes questioning and revisiting FAA's data, aviation standards, and even safety determinations on runway safety area projects.

The Connecticut Department of Transportation (DOT) has agreed to join FAA in addressing this issue. The FAA will contact the National Oceanic and Atmospheric Administration (NOAA) to clarify federal coastal zone requirements administered by

states and to seek NOAA's assistance in resolving coordination difficulties. With the assistance of Connecticut DOT and NOAA, FAA will arrange another meeting with the DEP to reconcile differences.

Maine - Maine's Site Location of Development Act Permit

State permit review tends to begin after the federal NEPA process and can delay airport projects as much as a year. State reviewers generally do not participate in the EIS process for airport projects, and the FAA's preferred alternative is open to revision during the permit review.

The FAA Regional Administrator and environmental staff in FAA's New England Regional Office have met with Maine Department of Transportation (DOT) and Maine environmental resource agency heads and senior officials to explore how environmental coordination could be improved. At the meeting, state officials gained a better understanding of the NEPA process, and FAA reached a better understanding of state permit requirements. Recommendations include the need for Maine permitting officials to participate in the federal NEPA process and the need for airport consultants that prepare environmental documents to become more familiar with Maine environmental requirements. Maine DOT offered to help coordinate aviation projects more closely with the Maine Department of Environmental Protection.

New Jersey - Pinelands Commission Permit

A Pinelands Commission permit is required from the Pinelands Management District for projects in a National Ecological Reserve occupying about 22 percent of the state. For example, the Pinelands Commission has approval authority over all development at the Atlantic City International Airport. The review and approval process is more stringent than federal requirements. In many cases, airport projects are significantly delayed or denied due to the requirements of the Pinelands Commission Management Plan, which provides that actions may only be approved if complete mitigation can be provided for all environmental effects.

The FAA Regional Administrator will open a dialogue on this issue with New Jersey officials at a State Directors Conference on March 18, 2002.

New York - Environmental Process and State Coastal Zone Consistency Review

New York is a NEPA-like state; however, the State Environmental Quality Review Act (SEQRA) has elements that do not coincide with the federal NEPA process. These elements include different documentation requirements and differences in length and timing of public reviews. These differences result in some sequential state and federal steps, as well as in duplication of effort by the airport sponsor and consultant to ensure that both federal and state requirements are met. In addition, state coastal zone consistency reviews can add weeks to the environmental approval process.

The FAA will more actively encourage airport sponsors and consultants to coordinate with FAA and the state very early in the planning and environmental process so that a course of action can be developed to maintain concurrent federal and state environmental processes. The FAA Regional Administrator will discuss this issue with NY officials at a State Directors Conference on March 18, 2002.

With respect to the coastal zone issue, the FAA regional environmental specialist and the NY Department of State Coastal Consistency Review Office have agreed to work on a programmatic agreement to identify airport projects that will no longer require coastal zone consistency review and concurrence. This list of “presumed to be consistent” projects is under development.

Florida - Environmental Process

The environmental review of airport planning and development is subject to an extensive system of state oversight required by the state’s Development of Regional Impact (DRI) process. Airports are the only mode of transportation subject to the DRI process.

Legislation, with broad support from state agencies and airport sponsors, has been introduced in the last two session of the state legislature to delete airports from the DRI process, but such legislation has not been enacted to date. The FAA understands that it will be introduced again during the 2002 legislative session.

Pending possible state legislative change, the FAA supports concurrent federal NEPA and state DRI processes. However, this is one case in which FAA does not recommend joint federal/state documents because the two processes are so different that joint documents would actually introduce greater inefficiencies.

It has additionally been brought to FAA's attention that the Florida Water Management Ponds for State Environmental Resource permit has some conflict with FAA's policy for the prevention of wildlife attractants at airports. In addition to the substantive concern regarding potential aviation safety effects, such a conflict can stall the issuance of the permit. The FAA's Airports District Office in Florida is working with the Florida Department of Environmental Protection and the state Water Management Districts on an individual district basis to resolve this conflict.

North Carolina - Permits and Historic Property 106 Review

The state permitting process can cause airport project delays and can require separate public hearings for water quality, wetlands, and endangered species reviews/permits. An additional issue is that the State Historic Preservation Officer (SHPO) does not accept the state's review of effects on historic properties in accordance with the federal 106 process for airport projects administered by the state through a Block Grant Program. The SHPO maintains that only a federal agency, such as FAA, can perform this function. The engagement of both the state and FAA with the SHPO on state block grant projects is inefficient and time-consuming.

The NC Department of Transportation (DOT) has had discussions with the NC Department of Environmental Health and Natural Resources (DEHNR) on the permit issue. NC DOT submitted some streamlining suggestions, which NC DEHNR has under consideration.

The 106 review issue with the SHPO has occurred in other states, although not in all states that administer a Block Grant Program. The FAA is addressing this issue on a national level and may involve the Advisory Council on Historic Preservation.

Indiana - Governor's Air and Water Quality Certification

As previously discussed generically in this report, obtaining the federally-required Governor's Air and Water Quality Certification can cause project delays. This has been an issue in Indiana and other states.

Pending federal legislation that may eliminate this requirement, the FAA Great Lakes Regional Office has proposed a clearly defined, streamlined process for use in Indiana. Indiana Department of Transportation (DOT) representatives are actively exploring a streamlined certification process, potentially involving delegation of the Governor's certification authority to the Indiana DOT Commissioner, with provision for appropriate consultation with the Commissioner of the Indiana Department of Environmental Management. (Parallel streamlining efforts are ongoing in FAA's Great Lakes Region with the states of Michigan and Ohio.)

Michigan - Historic Property 106 Review and Governor's Air and Water Quality Certification

In Michigan, as in North Carolina, the historic review process can delay airport projects subject to state block grants because State Historic Preservation Officer (SHPO) reviews can take an extensive amount of time and may require intervention by the FAA. The SHPO does not allow a Memorandum of Understanding regarding effects and mitigation on historic properties to be approved without FAA signature.

Pending national resolution of the 106 review issue, the FAA Airports District Office in Michigan is proposing that FAA, the Michigan Bureau of Aeronautics (MBOA), and the SHPO develop and sign a master Programmatic Agreement that would allow the MBOA and SHPO to enter into a Memorandum of Agreement without FAA signature. The FAA office met with the MBOA on February 19, 2002, to discuss how to begin a productive dialogue with the SHPO on a Programmatic Agreement and on methods of expediting 106 reviews. The FAA, in cooperation with the MBOA, will draft a Programmatic Agreement to cover the Section 106 process for an airport project suggested by the MBOA and for similar airport projects. An MBOA, SHPO, and FAA meeting is planned in April 2002 to discuss and finalize the details of the Programmatic Agreement. If all goes well, agreement among the parties is possible this summer.

Minnesota - Wetlands Permits

State wetlands permits can cause delays to airport projects. In February 2002, the FAA Airports District Office in Minnesota attended a board meeting of the Minnesota Council of Airports (MCOA), an influential statewide aviation industry groups composed of Minnesota airport sponsors and other parties. The FAA's purpose in attending the meeting was to query board members on the extent of the problem and to encourage formation of a working group of MCOA members to develop solutions and implementation strategies. Solicitation of member input into this process is currently underway and will be formally discussed at the annual Minnesota Aviation Conference scheduled in April 2002.

Missouri - Historic Property 106 Review

Missouri performs environmental reviews for airports under the State Block Grant Program and is particularly concerned about needing to engage the FAA in Section 106 reviews for historic properties. This is the same problem noted in North Carolina, Indiana, and other states. The FAA is addressing this issue on a national level and may involve the Advisory Council on Historic Preservation.

California - Environmental Process, Clean Air Act State Implementation Plan, Governor's Air and Water Quality Certification

The California Environmental Quality Act (CEQA) is sufficiently different from the federal NEPA to make joint federal/state documents and processes complicated and difficult to maintain. There is no single state agency responsible for implementing the CEQA environmental process. Individual airport sponsors are responsible for CEQA compliance, including determinations of whether to pursue a joint NEPA/CEQA process with the FAA for airport projects or, alternatively, to complete CEQA compliance separate from (and usually before) the NEPA process.

Air quality is a major environmental concern in California. Airport projects that increase air emissions, even if increases are temporary in nature due to construction emissions, often encounter problems under the Clean Air Act, in part due to the lack of allowances

for aviation emissions in the State Implementation Plan (SIP). In addition, the federal requirement for a Governor's Air and Water Quality Certification tends to cause airport project delays when the state requires more extensive analysis than federal requirements as a condition for the certification. The certification is duplicative of air quality protection under the Clean Air Act.

Absent either federal or state requirements for concurrent environmental processes and joint documents, the FAA is working with each individual airport sponsor in California on major project proposals requiring an EIS to develop a Memorandum of Agreement to prepare a joint federal EIS and state Environmental Impact Report (EIR). In recent years, the FAA has assumed a stronger role in trying to dissuade airport sponsors from proceeding with separate, sequential processes.

With respect to air quality, the Executive Resource Staff in FAA's Western-Pacific Regional Office has been designated as a focal point for State Implementation Plan issues. The FAA is continuing a dialogue with the state Air Resource Board to present aviation interests.

A change in federal legislation is viewed as the only effective means of resolving state issues with respect to the Governor's Air and Water Quality Certification.

Hawaii - Environmental Process

The state owns and operates all public use airports in Hawaii. As a statewide airport sponsor, Hawaii works effectively and cooperatively with FAA to meet the requirements of NEPA for airport projects and to maintain concurrent federal/state environmental review processes. However, due to additional state-required assessments and review times, the state environmental process tends to add several months to the federal process. The FAA and state are working cooperatively to manage differences in the two processes, within the extent of administrative control, and to produce timely environmental documents.

IV. GOOD PRACTICES IN STATES

A. Introduction

The survey responses also reported a number of good practices by states that currently facilitate environmental coordination and reduce delays. Some practices make the environmental review process more efficient, while other practices expedite permits. A variety of practices on a broad geographic scope were selected to showcase below by state, east to west. FAA and NASAO hope that these practices will be of interest to and usable by other states.

This is by no means a complete listing of state good practices, so it should not be assumed that good practices are limited only to the practices and states highlighted in this report. It is also worth noting that the complexity and the many components of environmental review and permitting mean that both coordination issues subject to improvement and good practices can be present in the same state.

B. Describing Good Practices

New Hampshire - Environmental Coordination and Permit Review

New Hampshire does not have a NEPA-like state environmental review process. However, the state does exercise permit or similar authority in the areas of air quality, water quality, wetlands, endangered species, and historic property impacts. These have all been issues in two recent federal EISs. A close FAA/NH working relationship and pragmatic approaches to avoiding or mitigating environmental impacts (especially impacts to wetlands) have contributed to effective coordination and review. State wetlands permitting has been facilitated by FAA's participation in monthly NH Department of Transportation environmental reviews with federal and state officials.

Maryland - State Clearinghouse Process

The FAA sends multiple copies of federal environmental documents to the state, and the state clearinghouse distributes them to the appropriate state agencies. When agency reviews have been completed, the clearinghouse sends a detailed and consolidated response to FAA. This is an effective and efficient distribution and agency environmental review process.

Pennsylvania - Environmental Process and Section 404 Reviews

Pennsylvania's process was developed for and is geared primarily for highway projects, but can be applied to airport projects. Since 1996, the Pennsylvania Department of Transportation (Penn DOT) has used an Agency Coordination Meeting (ACM) mechanism with well-defined procedures for environmental review with a regional perspective. The purpose of the ACM process is to achieve consensus by federal and state environmental resource agencies for EISs and other projects that integrate NEPA and the Section 404 process in the preliminary engineering stage. This effort is responsive to the Pennsylvania Interagency Document (SOL 440-96-02) that formalizes the commitment among federal and state agencies to work in partnership to develop environmentally responsible transportation projects.

In addition, Penn DOT and U.S. EPA are participating in developing a Mid-Atlantic Regional Environmental Streamlining Process Framework. A guide has been developed to streamline the environmental review process and provide regional consistency in the way transportation (i.e., highway) projects are developed and reviewed. The critical task of a multi-disciplinary interagency team is to agree on the level of detail that should be provided for each stage of project development. The team is to identify existing environmental data, determine its adequacy, and identify additional information needs.

Virginia - State Clearinghouse Process, Permits, Coastal Zone Consistency Review

The state has an effective and efficient clearinghouse process similar to the state of Maryland. In addition, Virginia allows joint federal/state permits where feasible. The VA Marine Resource Commission is the clearinghouse for federal and state wetlands permits and coordinates this effort. With respect to coastal zone consistency reviews,

FAA and VA Department of Environmental Quality are pursuing a General Consistency Determination of Coastal Zone Program to expedite processing for certain types of projects. This is similar to the programmatic agreement being developed in New York.

Florida - State Clearinghouse Process and a Unified Permitting Process

The Florida State Clearinghouse efficiently coordinates all federal EISs and Environmental Assessments for airport projects for agency review and for Florida Coastal Management Program review.

More importantly, the Florida Department of Environmental Protection (DEP) is spearheading an effort to streamline the state process for environmental planning and permitting. The process, known as Ecosystem Team Permitting (ETP), is structured to bring all of the state regulatory agencies together to provide a unified state environmental planning and permitting process for significant projects. Since federal agencies are encouraged to participate in the process, it provides an opportunity for all environmental regulatory agencies to work with a project sponsor to develop a project that meets or exceeds all applicable standards. A particular benefit of the ETP process is that it focuses on a “net ecosystem benefit” approach to the planning and permitting of projects. The U.S. Army Corps of Engineers has successfully participated in this process for projects other than airports and believes that this can be an appropriate approach for airport projects of large magnitude. The FAA’s Airports District Office in Florida is exploring the use of the ETP process in conjunction with NEPA and with airport project permits.

North Carolina - State Clearinghouse Process

The state Department of Environmental Health and Natural Resources (DEHNR), which is responsible for the environment, also serves as the clearinghouse for coordinating all EISs, Environmental Assessments, and other proposed environmental actions with state agencies. The DEHNR is very effective in ensuring a coordinated effort and being diligent in its mission.

Michigan - Environmental Process

Michigan is a NEPA-like state with an environmental review requirement. The Michigan Department of Transportation, Bureau of Aeronautics (MBOA), has entered into an agreement with FAA under which FAA, rather than the state, manages the environmental process for major new commercial runways. Therefore, the federal NEPA process drives the time line, with no differing state process being applied.

Michigan, rather than FAA, performs environmental reviews for smaller airport projects that fall within the State Block Grant Program, as do other states that participate in this program.

Wisconsin - Environmental Process and Wetlands Permits

The Wisconsin Environmental Policy Act (WEPA) is equivalent to NEPA. The WI Department of Transportation (WisDOT) has created Code Rule Trans 400 that establishes procedures under WEPA for transportation projects. The aviation program is administered by the WI Bureau of Aeronautics (BOA), which follows FAA environmental procedures. This practice facilitates standardization between WEPA and NEPA, as well as joint federal/state environmental documents, for airport projects.

The WI Bureau of Environment (BOE) supports the BOA by providing assistance to the BOA program manager in completing environmental reviews of airport projects subject to NEPA/WEPA. The assigned BOE person understands aviation and airports, and is knowledgeable about the unique requirements and complexities of the federal environmental review process for airports. For states that are actively involved in the environmental process, the designation of this caliber of person at state level is a key component of successful, expeditious federal/state coordination. An additional good environmental process practice in Wisconsin is an Environmental Screening Worksheet to simplify the environmental review of routine projects that have insignificant impacts. With respect to wetlands permits, the WI Department of Natural Resources (WisDNR) is responsible for coordinating the permitting process. Due to the strength of their coordination effort, problems are resolved before a Section 404 permit is requested from the U.S. Army Corps of Engineers. This advance coordination process makes the Section 404 process relatively easy and straightforward.

A WisDNR/WisDOT Cooperative Agreement has been established by state statute that exempts WisDOT from the administrative requirements of WisDNR permits and establishes a liaison process between the two state agencies for securing environmental approvals for a project. This applies to waterways and floodplains, wetlands mitigation, erosion control, incidental take of endangered species, and stormwater discharges.

Nebraska - Historic Property 106 Review

A cooperative effort is underway to develop a Programmatic Agreement for establishing a priority-based review of historic (WWII) structures on airports in Nebraska.

Participating in this effort are the State Department of Aeronautics, FAA, State Historical Society, and former WWII Army Airfields. Airports would like to demolish old structures. Having an agreement in place will enable FAA to release airports from surplus property obligations and allow demolition of appropriate old structures without going through the 106 process each time.

Oregon - Wetlands Permits

The Oregon Division of State Lands coordinates with the U.S. Army Corps of Engineers for joint state and federal processing of Section 404 permits for wetlands. The two agencies concurrently review proposals and arrive at their decisions. Both agencies regard the joint process as a win-win situation.

Utah - Environmental Process and Clean Air Act State Implementation Plan

As is the common practice in many states, FAA and the state Division of Aeronautics meet on a regular basis to discuss the capital improvement program for airports. In these meetings, environmental status is also reported. Division of Aeronautics staff attend large airport project meetings, and as a general matter, the Division supports the federal environmental process as needed to encourage expeditious reviews.

The Salt Lake City Airport Authority works directly with the state air quality agency to provide aviation input to the State Implementation Plan (SIP). An adequate allowance

for aviation growth in a SIP is extremely helpful when federal air quality conformity determinations are required for airport projects under the Clean Air Act.

Alaska - Environmental Process and Permits

The federal NEPA process and all environmental permitting processes (federal, state, and local) run concurrently. This practice was put into effect with a one-year transition. It means that coordination with permitting agencies effectively begins at the start of the NEPA process. During scoping, the FAA and airport sponsor get a fairly clear indication from scoping comments of which permits will be required. Since resource agencies now concurrently conduct NEPA and permit reviews, their comments tend to be more focused earlier in the NEPA process when there is more opportunity to modify project planning and to address permitting agencies' concerns. (Prior to this practice, resource agencies would frequently wait until the permit stage to provide substantive comments, rather than during the NEPA review.) Draft permits are included in draft NEPA documents, whether EISs or Environmental Assessments, and final permits are included in final NEPA documents.

New Jersey, Pennsylvania, North Carolina, Tennessee, Illinois, Michigan, Wisconsin, Missouri, Texas, - Streamlining the Environmental Process under the State Block Grant Program

Nine states participate in the Airport Improvement Program's (AIP) State Block Grant Program. (Under this program, FAA provides AIP funds directly to participating states that, in turn, select and fund AIP projects at general aviation, reliever, and nonprimary commercial service airports.) The FAA's action to issue a block grant is simply a transfer of funds from the federal to the state level. As such, it has no potential for significant environmental impact and is categorically excluded from detailed environmental review. In block grant agreements, state aviation agencies commit to performing individual airport project environmental reviews as part of their project decision making responsibility. This is an effective and efficient way of managing the environmental process for airports within a State Block Grant Program. It protects the

environment, avoids cumbersome federal/state interaction on reviews, eliminates potentially duplicative federal/state reviews, and relieves FAA of environmental workload.

APPENDIX 1

MEMORANDUM OF UNDERSTANDING BETWEEN FAA AND NASAO ON ENVIRONMENTAL STREAMLINING

Task Statement: For FAA and state agencies to review the current relationship of federal and state environmental processes and coordination involved in the review of an airport development project, and determine the extent to which streamlining could occur.

Action Goals:

- To identify and describe the critical state environmental review process and requirements (including state permits) for airport construction projects, state by state.
- To determine the extent to which the federal process and individual state processes extend the overall environmental review process because they are not consistent or coordinated.
- To recommend improvements in the interface of federal and state environmental review processes and coordination to streamline environmental reviews and reduce delays in reviews and state permits.

Objective: To expedite the environmental review of airport construction projects nationwide through improved coordination and streamlining of federal/state environmental processes. This effort is targeted toward increasing capacity and decreasing airline and passenger delays with airport capacity development that is consistent with federal and state environmental protection requirements.

Process/Structure: A study by the FAA and the states will be undertaken to determine the extent to which federal and state environmental review requirements can be more effectively and efficiently combined and coordinated to streamline the overall process for the environmental review of airport development projects. The FAA will describe the federal environmental review process and provide the federal perspective on barriers to the effective and efficient coordination of environmental reviews with requirements and processes in each state, and NASAO will review individual state requirements, processes, and perspectives. The study will include proposed coordination and process improvements. The final result should be a document that the FAA and state aviation agencies can use together to support streamlining recommendations. The parties shall meet periodically to review progress toward this goal.

Completion Date: March 2002 (1year)

Progress Reports: Quarterly (June 30, September 30, December 30)

NASAO Focal Point: Lori Lehnerd, NASAO Vice President

FAA Focal Point: Lynne Pickard, Office of Airport Planning & Programming

APPENDIX 2

FAA/NASAO SURVEY OF FEDERAL/STATE COORDINATION OF AIRPORT PROJECT ENVIRONMENTAL REVIEWS

1. Does the State have an environmental review process for airport development projects that is somewhat similar to the Federal EIS process?
2. If so, briefly describe the State requirement and process and the key ways in which it differs from the Federal EIS process. (A flow chart of the State environmental process, with lengths of time attached to major steps, would be helpful.)
3. What is the average time line for the State's environmental process for a project like a new commercial service runway?
4. Is the State process run concurrently with the Federal environmental process. If not, why? If it is, does it add time to the Federal process? Why does it add time, and roughly how much time?
5. Has any specific Federal environmental review process notably delayed any recent airport development projects within the State? If so, briefly describe that delay, including problems and length of time.
6. The prevailing thinking is that Federal and State environmental processes should be complied with through joint documents. Are there circumstances in particular States where joint documents are not the faster way to complete environmental reviews?
7. Do any State environmental permits that must be obtained for airport development projects notably delay these projects? If so, briefly describe the State permits, why they delay airport projects, and by how much.
8. Is there State support for improving the coordination of Federal and State environmental reviews and permits to reduce airport project delays?
9. Are there particularly good examples of effective meshing of Federal and State environmental processes or permit requirements to reduce delays that may be helpful to other States?
10. Is there State support for more substantive institutional changes in Federal or State environmental requirements and processes that extend beyond coordination? If so, please describe as specifically as possible.

APPENDIX 3

STATES WITH ENVIRONMENTAL REVIEW PROCESSES

- **FAA Regions and States**

New England Region

Connecticut
Massachusetts

Eastern Region

Maryland
New York
Virginia

Southern Region

Florida
Georgia
North Carolina

Great Lakes Region

Michigan
Minnesota
Wisconsin

Western-Pacific Region

California
Hawaii

Northwest-Mountain Region

Montana
Washington

- **State Requirements and Major Differences**

New England Region

Connecticut - NEPA-like state requiring Environmental Impact Evaluation (EIE) for certain projects. EIS format and content typically suffice for EIE.

Massachusetts - NEPA-like state requiring Environmental Impact Report (EIR). Joint EIS/EIR. State determines EIR scope, sufficiency of Draft EIR, and analysis in Final EIR. State approves airport sponsor mitigation commitments.

Eastern Region

Maryland - NEPA-like state process.

New York - NEPA-like state. State Environmental Quality Review Act (SEQRA) is essentially same as NEPA. Key difference is more extensive public involvement.

Virginia - NEPA-like state using NEPA process to meet state requirements. Department of Environmental Quality coordinates all airport NEPA documents. Public Hearing is required, which may be jointly held with federal hearing.

Southern Region

Florida - Airports are subject to an extensive review under state's Development of Regional Impact (DRI) process. DRI process has quite specific procedures that differ from NEPA.

Georgia - State EA process is similar to federal EIS process.

North Carolina - State (SEPA-Chapter 113 A) process mirrors and in some instances exceeds NEPA process. Reviews are processed through an efficient Clearinghouse, which speeds up process.

Great Lakes Region

Michigan - The state Bureau of Aeronautics has entered into an agreement with FAA for FAA to manage the environmental process for major new commercial service runways.

Minnesota - NEPA-like state with requirements similar to federal. State scoping process is more extensive. Airport sponsors are responsible for satisfying state requirements.

Wisconsin - Wisconsin Environmental Policy Act (WEPA) is equivalent to NEPA. The Bureau of Aeronautics has an agreement with FAA, standardizing the processing of the environmental documents, using FAA procedures.

Western-Pacific Region

California - NEPA-like state. The California Environmental Quality Act (CEQA) process is more extensive and has more stringent environmental protection in some cases than NEPA. CEQA does not require scoping meetings, and does not require public hearings in all cases. CEQA documents are required for Airport Master Plans. Airport sponsors are responsible for CEQA compliance.

Hawaii - State environmental process is patterned after NEPA, but has additional assessment and review time requirements.

Northwest-Mountain Region

Montana - The state has the Montana Environmental Policy Act (MEPA), but there has not been occasion to work with it for an airport EIS.

Washington - NEPA-like state with State Environmental Policy Act (SEPA). Local counties, cities, or port authorities serve as lead agency in preparing SEPA documents. Efficient process.

• Review Process and Time

New England Region

Connecticut - Concurrent review. State review can add 6-12 months to EIS.

Massachusetts - Concurrent review. No appreciable time added to EIS.

Eastern Region

Maryland - Concurrent review. No indication of EIS delay.

New York - Concurrent review. State review may add 2 months to EIS due to review and public involvement requirements.

Virginia - Concurrent review. No EIS delay.

Southern Region

Florida - Can run concurrently with NEPA, but joint documents not efficient. Tends to add cost and time to process.

Georgia - Concurrent review. No EIS delay.

North Carolina - Concurrent review. No EIS delay.

Great Lakes Region

Michigan - Concurrent review. No EIS delay.

Minnesota - Concurrent review. Scoping process can add 2-4 months or more to EIS.

Wisconsin - Concurrent review. No EIS delay.

Western-Pacific Region

California - Both concurrent and sequential reviews occur, and both joint and separate documents. Airport sponsors, not state, control decisions on concurrent or separate reviews. Separate, sequential reviews can add 3-5 years to process, not including state litigation.

Hawaii - Concurrent review. Additional requirements can add 3-6 months.

Northwest-Mountain Region

Montana - Supposed to run concurrently, but there has been no experience.

Washington - Concurrent review. No EIS delay.

APPENDIX 4

STATE ENVIRONMENTAL PERMIT REVIEW

- **FAA Regions and States**

New England Region

Connecticut
Maine
Massachusetts
Rhode Island
Vermont

Eastern Region

Maryland
New Jersey
New York

Southern Region

Florida
North Carolina
South Carolina

Great Lakes Region

Minnesota
Wisconsin

Western-Pacific Region

Hawaii

Northwest Mountain Region

Oregon
Washington

- **State Permit Review Issues**

New England Region

Connecticut - Under Connecticut permitting procedures, permit reviews are not initiated until an EIS process is complete. State wetlands permits and coastal zone consistency reviews that follow an EIS can add 1-2 years to the total process. State permit reviewers question and revisit airport project basics, such as purpose, alternatives, FAA standards.

Maine - Maine Site Location of Development Act is complicated. Permit reviews begin after an EIS is complete, and permit reviewers do not participate in the EIS process (staff shortage). Preferred project alternative is open to revision at time of permitting. Permits can result in 1-year delay. State wetlands permit reviews also begin after an EIS.

Massachusetts - Wetlands permits under Massachusetts Wetlands Protection Act can take 1 year or more. Permit reviewers do not participate in EIS process. Preferred project alternative for permitting is frequently open to revision.

Rhode Island - State uses two-tier wetlands permit process in which airport sponsors must first obtain a local wetlands permit prior to state approval. This can cause not only delay, but also airport project abandonment in cases due to local opposition.

Vermont - Vermont Act 250 permit review has caused some airport project delay at times, although issues were worked out.

Eastern Region

Maryland - Maryland Forest Conservation Act, requiring a Forest Delineation and Conservation Plan for projects greater than 40,000 sq. ft., can cause delay.

New Jersey - Pinelands Commission permit has strict requirements and can cause serious delay. It is possible that very few proposed projects at Atlantic City Airport will receive Pinelands approval.

New York - State coastal zone consistency review can add weeks of delay.

Southern Region

Florida - Requirement for a Development of Regional Impacts (DRI) can delay a project. Water Management Ponds for State Environmental Resource Permit has some conflict with FAA's policy for prevention of wildlife attractants at airports.

North Carolina - State water quality, wetlands, and endangered species permits may require separate public hearings. Also, some state thresholds are more stringent than federal ones and can cause delays.

South Carolina - State environmental permits can delay projects.

Great Lakes Region

Minnesota - State wetlands permits can delay airport projects. State permit requirements must be met before Federal agencies such as EPA or DOI concur with a proposed project.

Wisconsin - There is duplication between state Department of Natural Resources (DNR) and U.S. Army Corps of Engineers requirements for wetlands permits. State is more demanding than federal, and delays of weeks to months may occur.

Western-Pacific Region

Hawaii - Hawaii has at least two permit requirements that delay airport projects--Special Management Area permits by counties and Land Use Designation Change approvals by the state Land use Commission. Both permits require project development documentation to be completed (e.g., completed EIS) and have lengthy agency and public review periods.

Northwest Mountain Region

Oregon - Wetlands permits can cause delays of up to 6 months.

Washington - State 401 certification in conjunction with the federal Section 404 permit can cause delays, as well as Hydraulic Permit approvals by the state Department of Fish and Wildlife--both primarily due to stormwater issues.