

PURPOSE AND NEED WORK GROUP

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The identification and documentation of the purpose and need for a proposed transportation infrastructure project are important components of environmental review under the National Environmental Policy Act (NEPA) and under certain other environmental laws and regulations. While the great majority of transportation projects do not experience problems related to purpose and need, there have been sufficient instances of problems and project delays attributed to purpose and need to frustrate applicants and agencies, and to warrant further examination and action.

Laws, executive orders and regulations do not appear to conflict or call for different approaches to the formulation or content of purpose and need statements. The 404(b)(1) Guidelines issued under Section 404 of the Clean Water Act, for permits by the U.S. Army Corps of Engineers for discharges of dredged or fill material into waters of the United States, including wetlands, is the only requirement outside of NEPA that specifically calls for the development of a purpose statement. While impediments to purpose and need statements and the disagreements that sometimes arise among Federal agencies do not appear to stem from conflicts written into the underlying laws, multiple laws do assign to different Federal agencies environmental review and permitting responsibilities that either explicitly or implicitly include purpose and need considerations. In turn, these multiple agency responsibilities sometimes result in different agency interpretations of how a purpose and need statement should be scoped and written to meet statutory requirements, what the statement should include, and whether the statement for a particular project is justified and described appropriately.

The Work Group identified three areas for further examination: 1) crafting a purpose and need statement, 2) purpose and need integration/coordination with other laws, and 3) economic development as part of the transportation purpose and need.

Crafting a Purpose and Need Statement

Issues that sometimes arise relate to the appropriate complexity and length of a purpose and need statement, the proper scope of purpose and need (e.g., a narrow statement versus a broad need statement), and the justification supporting purpose and need. There is fertile ground for improved interagency guidance on the proper scoping of purpose and need, including when statements are too narrow and when broader statements are unreasonable.

Purpose and Need Integration/Coordination with Other Laws

Interagency disagreements over purpose and need can occur as agencies view projects through the lens of their particular interests and strive to comply with multiple laws as individually interpreted by the different agencies. Questions arise about the appropriate level of discretion for a lead agency, the underlying need for a proposed action and the appropriate level of review by and authority of resource agencies. The most common disagreements are between DOT agencies and the resource agencies that have jurisdiction over a potentially affected resource. Interagency guidance offering more practical details on deference, dispute resolution and other issues, perhaps using case study examples, would be useful.

Economic Development as part of the Transportation Purpose and Need

Although not a common occurrence, the inclusion of economic development as a sole purpose and need can be controversial and raise uncertainties for both the transportation agency and resource agencies. In these cases, the primary issue is the question of whether or not economic development is an appropriate justification for transportation projects. It is not a primary or sole justification used for airport or transit infrastructure projects. Other issues involve the range of alternatives (especially non-transportation), and the degree of examination of indirect impacts associated with secondary development. Conflicts may also arise when economic development is considered as part of a project purpose and need and further examination of these cases is warranted.

Recommendations

Based on the information compiled in this baseline report and building upon the existing guidance issued by CEQ in 2003 and Vision 100 legislation as appropriate, the Purpose and Need Work Group recommends additional work in order of priority that should be endorsed and promoted by the Task Force agencies.

1) Additional investigation should focus on the extent to which Federal agency interpretations and applications of laws and other requirements within their jurisdiction are causing purpose and need conflicts, the key drivers of the conflicts (e.g., different approaches to purpose and need under NEPA and Section 404) and options for avoiding or resolving conflicts. Case studies of previous projects that experienced substantial problems may be used to identify areas that need particular attention. Case studies of complex or controversial projects where the process worked well should also be collected.

- 2) Additional guidance should be developed to clarify the roles of lead transportation agencies and other engaged agencies in achieving purpose and need statements for transportation projects that give appropriate deference to transportation agencies so that projects are not subjected to long delays as agencies grapple with differences. When dealing with deference, it is important to maintain the integrity of other agencies' responsibilities and to comply with all applicable environmental requirements. Case studies may also be useful for this task.
- 3) The Work Group begins to develop interagency guidance addressing the need for responsibly scoped, concise and clearly written purpose and need statements. The guidance should include examples of appropriate and well-crafted purpose and need statements. The guidance should also provide advice on what special considerations apply, if any, in two circumstances:
 - If economic development is the sole purpose and need for a project; and
 - When economic development is considered as part of the purpose and need for a project.

Read the Baseline Report online at:

<http://www.fhwa.dot.gov/stewardshipecol/index.htm>.

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