

ADDENDUM

ADDENDUM

Michelle Barnes et al., v. United States Department of Transportation et al.,
And Port of Portland

No. 10-70718

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49 U.S.C. § 47106.

Project grant application approval conditioned on satisfaction of project requirements

* * * *

(c) Environmental Requirements.—

(1) The Secretary may approve an application under this subchapter for an airport development project involving the location of an airport or runway or a major runway extension—

(A) only if the sponsor certifies to the Secretary that—

(i) an opportunity for a public hearing was given to consider the economic, social, and environmental effects of the location and the location's consistency with the objectives of any planning that the community has carried out;

(ii) the airport management board has voting representation from the communities in which the project is located or has advised the communities that they have the right to petition the Secretary about a proposed project; and

(iii) with respect to an airport development project involving the location of an airport, runway, or major runway extension at a medium or large hub airport, the airport sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted; and

(B) if the application is found to have a significant adverse effect on natural resources, including fish and wildlife, natural, scenic, and recreation assets, water and air quality, or another factor affecting the environment, only after finding that no possible and prudent alternative to the project exists and that every reasonable step has been taken to minimize the adverse effect.

(2) The Secretary may approve an application under this subchapter for an airport development project that does not involve the location of an airport or runway, or a major runway extension, at an existing airport without requiring an environmental impact statement related to noise for the project if—

(A) completing the project would allow operations at the airport involving aircraft complying with the noise standards prescribed for “stage 3” aircraft in section 36.1 of title 14, Code of Federal Regulations, to replace existing operations involving aircraft that do not comply with those standards; and

(B) the project meets the other requirements under this subchapter.

(3) At the Secretary's request, the sponsor shall give the Secretary a copy of the transcript of any hearing held under paragraph (1)(A) of this subsection.

(4) The Secretary may make a finding under paragraph (1)(B) of this subsection only after completely reviewing the matter. The review and finding must be a matter of public record.

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TITLE 40--PROTECTION OF ENVIRONMENT

CHAPTER V--COUNCIL ON ENVIRONMENTAL QUALITY

PART 1508_ TERMINOLOGY AND INDEX--Table of Contents

Sec. 1508.9 Environmental assessment.

Environmental assessment:

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

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CHAPTER 4. PUBLIC PARTICIPATION

400. PUBLIC PARTICIPATION. Like many infrastructure projects, most airport development triggers public interest, especially in those areas that would sustain development-related environmental impacts. It is through this public participation that Federal agencies disclose information about the proposed action, reasonable alternatives, and expected environmental effects. This participation also provides the Federal decision maker with information about issues most important to the public that the proposed action and its reasonable alternative(s) would affect.

401. FAA'S COMMUNITY INVOLVEMENT POLICY. FAA has a community involvement policy (FAA-EE-90-03, August 1990). That policy recognizes community involvement as an essential part of FAA programs and decisions. ARP, like each FAA office, must incorporate open, effective community involvement to achieve the following goals and tasks.

- a. Provide active, early, and continuous public involvement and reasonable public access to information that accurately describes a proposed project and its environmental effects.
- b. Ask for and consider public input on plans, proposals, alternatives, impacts, and mitigation.
- c. Use public involvement techniques designed to meet the needs of different interest groups and individuals.
- d. Promote an active public role to lessen potentially adverse community reaction to agency actions needed for safe, efficient aviation.

402. PUBLIC PARTICIPATION UNDER THE AIRPORT IMPROVEMENT PROGRAM (AIP). An airport sponsor submitting an application for AIP funding to build one of the airport projects listed in paragraphs 402.a – c must afford the public with an opportunity for a hearing under 49 USC 47106(c)(1)(A)(i). The sponsor must certify to the Secretary of Transportation that it has provided the public an opportunity for a public hearing to consider the economic, social and environmental effects of its actions (see paragraph 404.b). The responsible FAA official should ensure an environmental document prepared for the actions listed below discusses the airport sponsor's steps to comply with section 47106(c)(1)(A)(i).

- a. A new airport.
- b. A new runway. or
- c. A major runway extension.

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To streamline the public involvement activities, ARP uses its NEPA public involvement process as “framework” to comply with this requirement.

403. PUBLIC PARTICIPATION REQUIREMENTS UNDER NEPA AND SPECIAL PURPOSE LAWS. CEQ gives Federal agencies instructions on NEPA’s public involvement process at 40 CFR 1506.6. In addition, many special purpose laws applicable to airport projects (see paragraph 9.t of this Order) require notice and opportunity for public involvement. One way to effectively meet public participation requirements is to conduct a public hearing (see paragraph 404).

a. Factors to consider when deciding if a public hearing is warranted for NEPA purposes. A public hearing is a gathering under the direction of a designated hearing officer for the purpose of allowing interested parties to speak and hear about issues of concern to interested parties. Title 40 CFR 1506.6(c), states that public hearings should be held whenever appropriate or to meet statutory requirements applicable to an agency. To determine if a public hearing is warranted under NEPA, the responsible FAA official or airport sponsor should consider these following factors:

(1) Is there substantial environmental controversy concerning the proposed action or is there substantial interest in holding the hearing (CEQ 1506.6(c)(1))?

(2) Has another agency with jurisdiction over the action requested a public hearing, and has that agency supported its request with reasons a hearing would be helpful (CEQ 1506.6(c)(2))?

b. Public participation and hearings for special purpose laws. In addition to NEPA, airport projects may trigger other public participation requirements of various special purpose laws. For example, Executive Orders on Floodplains and Wetlands, 11988 and 11990, respectively, and regulations addressing National Register-listed or eligible historic properties at 36 CFR Part 800 require an opportunity for public review of actions that could affect those resources. Often, ARP uses its NEPA public involvement process as the “framework” to coordinate the various public involvement requirements of these special purpose laws. In addition, the sponsor or responsible FAA official may conduct a hearing during State, local, or Tribal review processes that paragraphs 302 and 303 discuss. If those processes occur before the hearing occurs, the airport sponsor or the responsible FAA official should make the comments they received from State or local agencies, or Tribes available at the hearing.

404. NOTICE OF OPPORTUNITY FOR A PUBLIC HEARING. When a sponsor provides an opportunity for a public hearing to comply with 49 USC 47106(c)(1)(A)(i) the following must occur:

a. Publish notice. The airport sponsor must publish a “Notice of Opportunity for a Public Hearing.” The notice must appear in an area-wide or local newspaper having general circulation. The notice should contain the following information:

(1) A statement of the sponsor's intent to undertake the proposed action.

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(2) A concise description of the proposed action.

(3) A concise statement that the hearing's purpose is to address the proposed actions, potential economic, social, and environmental and the project's consistency with the goals and objectives of each affected area's land use or planning strategy.

(4) The locations and times where the draft environmental assessment (EA) or draft environmental impact statement (DEIS) will be available for public review to allow the public to prepare for the public hearing. The draft documents must be available for review at least 30 days before the hearing occurs.

(a) **Environmental assessment (EA).** When an airport sponsor is preparing an (EA), the sponsor should file a draft EA with FAA for review before a public hearing occurs. After changing the EA to reflect FAA's concerns, the sponsor must make the draft available for public review before the public hearing occurs. This ensures that the EA the public will review accurately reflects FAA policy and concerns.

(b) **Environmental impact statement.** The responsible FAA official should ensure the DEIS FAA prepares for an action meets the requirements of this order and other applicable Federal environmental requirements. This ensures the EIS accurately reflects FAA policy and concerns. and

(5) A statement that anyone interested in the project has up to 15 days from the date the Notice of Opportunity for a Public Hearing is issued to request a hearing.

b. Hearing opportunity to meet NEPA or special purpose law public involvement requirements. The responsible FAA official or airport sponsor should follow the procedures in paragraph 404.a if a public hearing or meeting will be held to meet public involvement requirements. If the sponsor or the responsible FAA official provides an offer for public hearing for an action but no one requests a hearing the sponsor or FAA official should follow the instructions in paragraph 405.

405. WHEN THERE IS NO REQUEST FOR A HEARING. Sometimes, the airport sponsor or the responsible FAA official provides an opportunity for public hearing, but no one requests a hearing.

a. When the sponsor offers the meeting to comply with 49 USC 47106(c)(1)(A)(i). The sponsor must certify to the responsible FAA official in its grant application that it published a "Notice of Opportunity for a Public Hearing." The responsible FAA official should place the certification in the project's Administrative Record.

b. When the FAA or airport sponsor offered the opportunity for a public hearing to meet NEPA or special purpose law requirement. The responsible FAA

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official should include in the Administrative Record a copy of the hearing notice and the reasons the hearing was not held.

406. RESPONSIBILITIES WHEN A PUBLIC HEARING WILL OCCUR.

a. Benefits of public hearings. During a public hearing or meeting, agencies, the public, or Tribes having an interest in a proposed Federal action gather information about a proposed action and other issues related to the action. For example, a hearing or meeting provides those parties with a forum to discuss preliminary information concerning an action's potential economic, social, and environmental effects. Hearings or meetings also provide occasions to consult with a Metropolitan Planning Organization and discuss an action's reasonable consistency with the affected community's completed or proposed planning objectives.

b. Notice of Public Hearing. When, a public hearing is deemed appropriate, the deciding party should publish a "Notice of Public Hearing." This notice informs the public that a hearing will occur. This notice must appear in the same newspaper(s) that published the "Notice of Opportunity for a Public Hearing" and must appear at least 30 days before the date the hearing will occur. The "Notice of Public Hearing" must include all of the following:

(1) The information discussed in paragraphs 404.a(1) – (4).

(2) The hearing's date, time, and location. If, for some reason, the Notice of Public Hearing does not contain this information, the sponsor or FAA must publish this scheduling information at least 15 days before the date the hearing will occur.

(3) Based on information in the draft EA or EIS available for public review (see paragraph 404.a(4)), a list of potentially affected environmental resources.

(4) A statement that interested parties should send written comments to the sponsor or FAA within the 10-day period following the date the hearing occurs or by the end of the NEPA document comment period, whichever is later.

c. Hearing transcripts and comments. Decision makers need accurate information about major public concerns made during public hearings. Public hearing transcripts are ways to provide that information. Therefore, the airport sponsor must place a copy of the hearing transcript in the project record. The airport sponsor must provide FAA a copy of the transcript when asked to do so. If FAA conducts a public hearing, FAA will provide the sponsor a copy of the meeting transcript. The responsible FAA official should file the transcript in the project's Administrative Record.

d. Summarize issues. An appendix accompanying the final version of an EA or EIS should include a detailed summary of issues raised during the public hearing and responses to those issues. Neither document needs to contain a hearing transcript.

407. - 499. RESERVED.