IRWA
ORANGE COUNTY
CHAPTER 67

MONTHLY
Bundle of Writes
NEWS AND EVENTS FOR IRWA CHAPTER 67

November 2020

INSIDE THIS ISSUE

PRESIDENT'S MESSAGE

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Hello Chapter 67 Members!

It feels somewhat like a broken record, but I sincerely hope you and your family and friends are staying safe and healthy. Summer seems like a vague memory, even though it just barely ended. Although we didn't have the fun vacations originally planned, my husband and I were able to take a quick road-trip up to Mt. Rushmore for a few days.

I'd like to acknowledge and send a big THANK YOU to our Past-President Amanda Fitch. The last few months of her term were challenging, and she handled everything with a great level of professionalism and grace. All this while on the last few months of a pregnancy and giving birth. I'll never forget the email I got from her as she was literally driving to the hospital, as she is in labor apologizing for not bringing her laptop and wanting to make sure that the email reminder went out to the Chapter about our upcoming election. Talk about dedication and service. The Chapter thanks you as well. And I promise someday soon I will be able to give you your President Plaque.

PRESIDENT

Due to the stay-at-home orders, we held virtual luncheons in August and September and will continue to hold virtual luncheons for the near future. Our August and September luncheons were pretty successful with over 40 and 60 attendees, respectively. The presenters for both luncheons gave excellent presentations and we hope that you found them as informative as we did. Thank you again to our President-Elect, Ryan Hargrove, for his presentation. And a special Thank You to the County of Orange Land Development Team for their presentation on projects within Orange County.

It's been the most interesting past six months, with so many plans still up in the air. The Region 1 Fall Forum was changed from an actual meet-in-person event in the Inland Empire to a virtual event. The Region 1 Leadership has also decided to cancel the Spring 2021 Region Forum and have that virtual as well.

Many of you are probably also missing the valuable education courses normally offered throughout the year. IRWA HQ has expanded their online course catalogue and there are over 30 classes scheduled through the end of this year. These are live, instructor-led, interactive classes conducted via virtual classroom to make it the closest thing to an in-person course. Available courses can be found on the IRWA website under the Education Tab > Students > Virtual Education. From a recent Board of Directors meeting, these courses are something that IRWA is considering continuing, even as the pandemic subsides.

We have some great speakers lined up for our luncheons, which will continue to be virtual, second Tuesday of the month:

November 12, 2020 – Mr. Andrew Thompson with Southern California Gas Company

January 12, 2021 – Mr. John Ellis with Integra Realty Resources

If you have a topic or speaker you would enjoy seeing at one of our luncheons, please reach out to myself or President-Elect Ryan Hargrove. Finding speakers for luncheons has always proven to be one of the more difficult jobs for Board members, so we are always welcoming new suggestions.

Unfortunately, we have received notice from the Chapter 1 President that due to the current restrictions in Los Angeles County, the Tri-Chapter Luncheon has been postponed for 2020. Chapter 1 was scheduled to host the Tri-Chapter this year with our Chapter hosting in 2021. With the postponement of the 2020 Tri-Chapter Luncheon, Chapter 1 will host in 2021 and we will host in 2022.

I'm excited and nervous for the upcoming year and the challenges we have before us, but I know that I have a great Board working with me and supporting the Chapter, so I know we will get through anything that is thrown at us. I look forward to "seeing" you at our virtual luncheons and am hoping we can return to in-person luncheons very soon. All the best for a wonderful year.

As always, if you are interested in joining the Board, we'd love to have you. Feel free to reach out to any Board Member.

Stay Safe!

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Welcome back readers to the November edition of our newsletter. If you would like to contribute content to the newsletter, advertise, have questions or any ideas to improve the content, please contact us.

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UPCOMING EVENTS

November Monthly Luncheon

Tuesday November 10, 2020 12:00 p.m. - VIRTUAL - see info below.
Chapter 67 is pleased to welcome Andrew Thompson, SR/WA Land Services Manager at Southern California Gas Company.

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CH. 67 NOVEMBER VIRTUAL LUNCHEON

Tuesday, November 10, 2020
12pm - 1:00pm

Chapter 67 is pleased to welcome Andrew Thompson, SR/WA Land Services Manager at Southern California Gas Company Andrew will be presenting on the importance of involving the permitting stakeholder early on in project development.

The meeting and presentation is FREE!
We would love to "see" you!

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EDUCATION

EDUCATION

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For questions regarding IRWA education, whether it be information on a particular course, how to register, potential upcoming courses, or the credentialing program, please reach out to James.

Announcing IRWA's Virtual Classroom Program!

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CASE OF THE MONTH

NEPA Rules Rewrite: What's in a Name?

Edward V. A. Kussy, Esq., Partner
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Washington, DC

Changes in Definitions Section May Create Clarity for Agencies, Ammunition for Opponents

This is the first in a series of eAlerts on revisions to National Environmental Policy Act (NEPA) regulations *published in the Federal Register on July 16, 2020 by the Council on Environmental Quality (CEQ). CEQ's revised rules amend 40 C.F.R. Parts 1500-1508. Nossaman attorneys Ed Kussy, Rob Thornton, Svend Brandt-Erichsen, Rebecca Hays Barho, Brooke Marcus Wahlberg, David Miller, and Stephanie Clark are contributors for this series.*

We begin our series on the revised NEPA regulations by describing changes CEQ has made to the backbone of the regulations: the definitions section.

For many regulations, the "definitions" section is fairly innocuous. This has never been the case for the CEQ's NEPA regulations. In defining various critical terms, CEQ attempted to set the bounds on the scope and type of analyses contemplated by various elements of the NEPA process. The new CEQ rules are no different. Thus, a good deal of the early commentary of the new regulations has focused on how the definitions changed, what has been added, and what has been left out. Our commentary will focus on those changes likely to be most significant or controversial:

"Categorical Exclusion" – The new definition of a categorical exclusion (CE) is quite narrow, simply referring to those actions listed as CEs in agency implementing procedures. This definition must be read together with 40 C.F.R. §§1501.4 and 1507.3(e)(2)(ii), which establish boundaries for CEs that are much like the prior version of the regulations. The rule continues to require agencies to list CEs in their implementing procedures. Some agency procedures, like those of the federal surface transportation agencies, contemplate that a project that is not listed, but would otherwise qualify as a CE, could be treated as a CE with some additional documentation. Not all agencies have such a provision in their implementing rules, however, and the new rule does not provide them this additional level of flexibility. Agencies are allowed to use CEs from other agencies (40 C.F.R. §1506.3(d)), but the language of this provision does not seem to allow adoption of a process to effectively define a new, project- or program- specific CE.

"Effects" – The change to the definition of "effects" in the new rules may end up as a primary flashpoint in the litigation that is sure to come. Likely to receive the greatest attention are the things removed from the old regulation. For example, as described in greater detail below, CEQ has eliminated explicit references to "indirect" and "cumulative" effects. Although the new definition of "effects" contains language that seems quite broad, other provisions seem to constrain the scope of analysis. This creates internal ambiguities. Simply changing critical, well-established concepts could well lead to more litigation until the precise scope of the changes is defined by future court decisions.

The new definition first states that effects or impacts of the action are those that are: (1) reasonably foreseeable; and (2) have a reasonably close causal relationship to the proposed action or alternatives. While the new rule drops an explicit reference to "indirect effects," it explicitly includes the idea that effects could occur either at the same time and place as the proposed action or its alternatives or could occur later in time and be further removed in distance from the proposed action. While the definition and preamble may imply that an agency could still consider what used to be called indirect and even cumulative effects, opponents of the new rules will certainly argue otherwise.

The new rule expressly rejects a simple "but for" causal relationship in determining the scope of effects to be considered. Actions too far removed in time or distance, or at the end of lengthy causal chain need not be considered. The definition specifically excludes actions that the agency has no ability to prevent or that would occur regardless of the proposed action. This considerably narrows the effects that any agency must consider in preparing a NEPA document and may assist project proponents in limiting the breadth of NEPA reviews.

On the other hand, the causation standard may also set up an internal contradiction in the definition itself, as the scope of "effects" seems at once to be fairly broad and then is narrowed in a way that rejects the initial precept. This is exacerbated by 40 C.F.R. §1501.3(b), which instructs agencies on how to determine if an effect is significant. That section does not limit the analysis to those effects the agency has power to control. These and other internal inconsistencies may rear their heads in future litigation.

Of particular interest to those who closely watch NEPA practice is the elimination of CEQ's clear requirement that agencies examine "cumulative impacts." Cumulative impacts were designed in CEQ's original regulations to measure the impacts of the proposed action in context with other past, present, and future actions irrespective of who undertook them, thus measuring the incremental effect of the proposed action on the environment. Not only has the analysis of cumulative impacts been dropped, the new "effects" definition includes the further limitation that agencies need not consider impacts beyond their control. It must be said that the treatment of cumulative impacts in a NEPA document has often presented problems, as it was difficult to draw boundaries around the scope of this analysis. In many EISs, the cumulative impacts analysis was little more than a report of what else was going on or planned in the area, with only cursory analyses of any synergistic impacts with the proposed action. Thus, while there has been much handwringing and writing about ending the requirement to specifically address cumulative impacts, the real impact of this change is uncertain. Nevertheless, and as noted above, both the removal of cumulative effects and the ambiguity of the internal inconsistencies in the new rule are sure to be the subject of litigation.

Finally, we would be remiss not to mention CEQ's elimination of the term "significantly" from the definitions section. The preamble to the final rule states that the definition of "significantly" has been replaced by new section 40 C.F.R. § 1501.3(b), which describes the factors agencies should consider in determining whether effects are significant. While that provision does address when an impact should be considered "significant," it is far narrower than the old definition. Further complicating matters, the terms "significantly" and "significant" have many meanings in federal environmental law (for example, in some programs, it simply means "capable of being measured," essentially a scientific concept). That is clearly not the case in the NEPA context. A clear description as to what "significant" meant for NEPA purposes was useful. The old definition was closely allied to the types of impacts that might give rise to an EIS, which was at least informative to the public and courts reviewing NEPA documents. Like other aspects of the new "effects" definition, we fear that the lack of clarity of this central NEPA concept could create problems and litigation.

"Legislation" – The new definition of "legislation" is much shorter than its predecessor. Some provisions have been moved to other places in the new rule. The exclusion of actions proposed by the President fails to recognize how federal legislation is developed or how treaties are dealt with administratively. It is true that the Supreme Court has held that actions reserved to the President are beyond the scope of NEPA. But, in a sense, virtually all proposals for legislation come from the President. Thus, when legislation is developed by a department of the executive branch, it must be reviewed by the Office of Management and Budget (technically a part of the White House) for consistency with the President's policies and other government actions. Does this make the legislative proposal an action by the President? Similarly, requests for the ratification of treaties are no longer included in the definition. While treaties and other international agreements are approved by the President, they are often negotiated by the various federal departments and then sent to the White House, and, perhaps the State Department, for approval. Only a few treaties directly involve the President. How is this different from the way legislation is handled? The new rule provides no guidance with respect to these issues.

"Major Federal Action" – There are several important changes in the new definition. The old rule plainly stated that the term "major" does not have a meaning independent from the term "significantly." Thus, any action with significant environmental effects was a major action. The new rule rejects this premise. Actions which are not "major" federal actions, such as actions with minimal federal involvement or investment, are not subject to NEPA, whether or not they have a significant environmental impact. Thus, for example, where a state uses only a small amount of federal funds on a large project, NEPA may not apply. For transportation projects, this provision parallels a CE added pursuant to MAP-21 (the 2012 transportation reauthorization statute) for small projects or projects with limited federal assistance. See 23 C.F.R. §§771.117(c)(23) and 771.118(c)(18). This provision may similarly narrow the degree to which NEPA applies for non-federal projects requiring some level of federal permitting or other authorization, although it remains to be seen whether agencies will limit NEPA review in practice.

The style of the new provision is somewhat strange and departs from the previous provision. Rather than defining what constitutes a major federal action, the definition focuses on what is not a federal action, mirroring, in many ways, exclusions that have evolved over time in various court decisions. The actual definition appears almost as an afterthought.

Of particular interest are two exclusions from what will be viewed as "major federal action": activities that are non-discretionary and non-federal projects with minimal federal funding where an agency does not exercise sufficient control and responsibility over the outcome of the project at issue. Certain environmental permits issued by federal agencies such as the U.S. Fish and Wildlife Service are arguably non-discretionary in the sense that where certain criteria are met, the agency is required to issue the permit (see, e.g., "shall" language set forth in Endangered Species Act section 10). These same types of permits often do not dictate whether a project will or can proceed, though how a project proceeds can be affected by whether an agency does, in fact, issue the requested permit or approval. These issues have been argued and variably won and lost over time in various courts. Like so many of the other definitions, it remains to be seen whether and how agencies will change their approach to NEPA review and how courts will view such changes in the future.

"Mitigation" – The only change to this important definition is the note that NEPA requires that mitigation be considered and does not require the adoption of mitigation measures. This is well- established law and the new rule continues to contain the requirement that agencies identify the manner in which the provisions in the NEPA document will be met. However, the new rule may do nothing to limit NEPA challenges that focus on the failure of an agency to prove that mitigation provided by a project will, in fact, be implemented.

"Page" – This is an interesting new definition because of the greater emphasis on the page limitations for EAs and EISs. The number of words per page is specified (500), presumably to avoid attempts to go around the page limitation by reducing the font of the print, but excluded are maps, diagrams, graphs, tables, and other graphic material. This type of material usually takes up a fair amount of space in the typical EIS, providing considerable flexibility for staying within page limits.

"Notice of Intent" – This definition is substantially simplified. Other parts of the new rule make considerable change to the "NOI," most importantly not requiring its publication prior to starting the scoping process.

"Publish and Publication" – This is a new definition that provides greater flexibility by expressly allowing key NEPA documents, such as EISs, information, etc. to be published electronically. Many transportation agencies already follow this practice.

"Reasonable Alternatives" – This is a new definition that makes clear that the alternatives considered in the NEPA document must meet the agency's purpose and need, and, in the case of permit application "must meet the goals of the applicant." The preamble describing this definition states that this means that the goals of the applicant must be "considered." This is quite different from the explicit language of the new definition, and is bound to be a source of litigation. Transportation agencies are less likely to encounter this issue because projects are developed through a planning process, and a range of alternatives typically meet purpose and need. Non-federal project proponents working with federal agencies preparing NEPA documents may be able to use the new definition to minimize the number of alternatives carried forward for detailed analysis in a NEPA document, or may continue to experience resistance from agencies relying on the language in the preamble rather than the language in the definition itself.

"Reasonably Foreseeable" – This definition is new, but incorporates a standard that has been around for quite some time. That is, what would a person of ordinary prudence consider in reaching a decision. While this is a very fluid, fact dependent standard, its implications could be significant, particularly with respect to what effects are analyzed in the NEPA document. The issue of reasonable foreseeability likely will be a flashpoint in future litigation, particularly as it relates to climate change.

"Senior Agency Official" – This is a new concept in the regulations, explained more fully in the text of the rule. The official is of assistant secretary rank or higher, and has overall responsibility for the agency's NEPA compliance. An official of this rank is typically a political appointee.

"Tiering" – The new definition is shorter, but substantially similar. An important difference is that under the new rule, the first tier document need not be an EIS. The old regulation only references EISs for the first tier. Under the new rules, we may begin to see first tier EAs; however, this approach may create problems for later NEPA documents where impacts may be significant.

There are changes to other definitions. However, we do not believe they will have a significant impact. For example, the definition of scoping has been considerably shortened, but the changes to the scoping process are dealt with elsewhere in the regulation. As with the rest of the new rule, CEQ seeks to justify the changes with extensive citations to case law. However, the sheer number of NEPA decisions could justify alternative outcomes.

In sum, while many of the changes in definitions may not practically alter the legal landscape associated with NEPA review, codification of long-standing agency practice and some case law nevertheless may affect how certain agencies implement NEPA review in their planning and permitting processes, and will certainly provide ample opportunity for third parties to instigate facial and project-specific challenges to the new regulations. Because many of the regulatory changes are in line with the practices of transportation agencies, such agencies may not experience a significant shift in practice or uptick in litigation.

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CASE OF THE MONTH

NEPA Rules Rewrite: Initiation of the Environmental Impact Statement

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This is the second in a series of eAlerts on revisions to National Environmental Policy Act (NEPA) regulations published in the Federal Register on July 16, 2020, by the Council on Environmental Quality (CEQ). The CEQ's revised rules amend 40 CFR Parts 1500-1508. Nossaman attorneys Ed Kussy, Rob Thornton, Svend Brandt-Erichsen, Rebecca Hays Barho, Brooke Marcus Wahlberg, David Miller and Stephanie Clark are contributors for this series.

Previously, we provided an eAlert focused on changes the CEQ has made to the definitions section of the NEPA regulations. Today, we focus on changes the CEQ has made to the beginning of the NEPA process for an Environmental Impact Statement (EIS).

The beginning of the NEPA process comes once an agency or applicant determines to take an action that requires federal funding or a federal approval. The official NEPA process is preceded by **planning activities undertaken by the agency or applicant needed to formulate that action**. For example, federally funded highway or transit projects must come from a state or metropolitan transportation planning process specified by law. The federal agency that is to make the approval or funding decision may decide on its own, on the basis of early studies or after preliminary consultation with other agencies whether to handle the action with a categorical exclusion (CE), an environmental assessment (EA) or an EIS. This basic process is retained by the new regulations, but with some significant changes we examine below.

NEPA requires that federal agencies prepare a detailed statement for "major Federal actions significantly affecting the quality of the human environment." 42 USC § 4332(2)(C). As we described last week, under the old regulation, any federal action having significant environmental impacts was considered a major federal action. The new rule looks first at whether an action is a "major federal action" and then determines whether the impact is "significant." Thus, if an action is not a major federal action, or even a federal action, the magnitude of the environmental impact is not considered under NEPA.

Pulling the Trigger on NEPA Review: Is an Action a "Federal Action" or a "Major Federal Action"?

The term "major federal action" is now defined as "an activity or decision subject to [f]ederal control and responsibility" and specifically excludes seven categories of activities and decisions:

o Those whose effects are located entirely outside the jurisdiction of the United States;

o Those that are "non-discretionary" and made in accordance with the agency's statutory authority;

o Those that do not result in "final agency action" as that term is understood under the Administrative Procedures Act or other statute requiring finality;

o Judicial or administrative civil or criminal enforcement;

o Funding assistance limited to general revenue sharing with no federal control over subsequent use of the funds;

o Non-federal projects with "minimal" federal funding or involvement where "the agency does not exercise sufficient control and responsibility over the outcome of the project; and

o Financial assistance where the federal agency does not exercise sufficient control and responsibility over the effects of such assistance.

The new definition of "major federal action" also provides four categories of actions that tend to meet the definition. These include:

o Adoption of official policies;

o Adoption of formal plans upon which future agency actions will be based;

o Adoption of federal programs; and

o Approval of specific projects, including those approved by permit or other decision, and federally-assisted activities.

Of particular interest is the category of non-federal projects with minimal federal funding or involvement where the agency does not exercise sufficient control and responsibility over the outcome of the project to turn that project into a "major federal action." It is these types of projects–activities undertaken by non-federal actors that seek or obtain federal permitting or funding–that often are subject to challenge by third parties on the basis that the associated NEPA review was inadequate. The preamble to the final regulations provides some context for when these types of activities should not be subject to NEPA review: there is no "practical reason for an agency to conduct a NEPA analysis" where an agency cannot "influence the outcome of its action to address the effects of the project." The CEQ notes that agencies may further define what does not constitute a major federal action for purposes of triggering NEPA.

Although many of the listed exclusions have been held exempt from NEPA by various court decisions, excluding actions with minimal federal involvement marks a departure. For example, in 2012, the transportation reauthorization legislation provided that a CE should be developed for small projects ($30 million or less) or projects with limited federal funding ($5 million). However, a CE is not an exemption from NEPA review and, under extraordinary circumstances, could ultimately result in an EA or EIS. Similarly, where federal authority over an action is limited, particularly where the federal action represents a small portion of a larger undertaking, the new regulations appear to contemplate that the small federal action may not be enough to trigger NEPA review. Especially as agencies use this provision to limit the kinds of actions subject to NEPA, legal challenges seem likely.

NEPA Applies: Now What?

Where NEPA applies, the next step is to determine what level of NEPA review is required. Largely, this determination is based on whether a given "major federal action" will "significantly impact the human environment." To assist in this determination, the CEQ has provided a test, now set forth under 40 C.F.R. § 1501.3. Specifically, the decision as to whether effects are "significant" will be viewed against the factors set forth under § 1501.3(b).

Procedures for Preparing an EIS

Scoping

The new regulations make two important changes to the scoping process. Scoping is the early coordination with state and local agencies and the public that helps identify the project purpose and need, the range of alternatives and the issues that will have to be addressed in the EIS.

The old regulations specifically required that the scoping process begin after the "notice of intent" (NOI) to prepare an EIS. The NOI was to include a description of the proposed action and possible alternatives and the scoping process, including possible meetings. Thus, this presupposes that a good deal of project planning preceded the start of the scoping process. The new regulations deal with this by expressly allowing the scoping process to begin before the issuance of the NOI and requiring its issuance only after there is a determination that the proposal is sufficiently developed to allow meaningful public comment and that an EIS is required. At that point, the NOI requires more detailed information than previously necessary, including the purpose and need, a preliminary description of alternatives, expected impacts, anticipated permits, a schedule for decision-making, a description of the scoping process to be used and a request for comments.

We think that the revisions to the scoping process make sense and more closely reflect what actually occurs. In some ways, the revised scoping process mirrors the process applicable to transportation projects, which requires the identification of and comment on the proposed purpose and need of the project and the range of alternatives before publication of the draft EIS. The new scoping process also fits better with the "planning and environment linkage" (PEL) efforts of the Federal Highway and Federal Transit Administration. This initiative more closely aligns the NEPA and transportation planning processes and encourages grantees to make greater and more explicit use of transportation planning "products" (or studies and analyses) in the NEPA process.

The effect of the scoping process, however, takes on a new form under the revised regulations. The new regulations now explicitly tie the scoping process to the exhaustion of administrative remedies. The newly-specific exhaustion requirement is different, not in that it exists, but in that it is spelled out in greater detail by the new regulations. A forthcoming piece in this series will discuss the likely impacts of this change in terms of litigation and other collateral effects of the CEQ changes. For the purposes of the beginning of the NEPA process, it is significant that the exhaustion requirement is spelled out in such detail because it emphasizes the need for commenters to submit detailed and specific comments in a complete and timely fashion starting at the very beginning of the NEPA review process.

Early Integration of the NEPA Process

One interesting change the new regulations make to the beginning of the EIS process (and to NEPA review generally) is seemingly small–replacing a "shall" to a "should". (40 CFR § 1501.2). The previous CEQ regulations explained that "[a]gencies shall integrate the NEPA process with other planning at the earliest possible time…" (emphasis added). This language was often quoted in NEPA litigation by project opponents, who would argue that the lead agency failed to begin the NEPA process when it should have.

As revised, the NEPA regulations now explain that "[a]gencies should integrate the NEPA process with other planning and authorization processes at the earliest reasonable time…" (emphasis added). In essence, where federal agencies previously were unequivocally directed to integrate NEPA into the decision-making process at the earliest possible time, agencies now have been told that it is advisable, but not required, to do so. Instead, such early integration should occur when it is reasonable, but not necessarily at the "earliest possible" time. As a practical matter, the vast majority of agencies are likely to continue engaging in the NEPA process early in the decision-making process; however, this specific change may provide a more limited basis for potential challengers to argue that a lead agency failed to integrate the NEPA process as early as it should have.

Cooperating Agencies

The revised regulations expand upon the duties of cooperating agencies and clarify that a lead agency is to involve them at the earliest practicable (as opposed to possible) time. This generally reflects existing practice and underlines the intent of various NEPA regulatory revisions aimed at streamlining the NEPA process where multiple agency approvals are required. However, as with the prior regulations, this attempt to streamline approvals by multiple agencies retains the ability for a cooperating agency to assert that other program commitments prevent its involvement or involvement to the degree requested by the lead agency.

It is important to note that the involvement of cooperating agencies is critical for the successful achievement of the One Federal Decision initiative of Executive Order 13807. This is especially the case because of the more flexible adoption rules of the new regulations allowing a cooperating agency to adopt the completed EIS and simply issue its own Record of Decision (ROD).

Time Limits for Completion of an EIS

Finally, and as we will discuss in greater detail in future eAlerts, the revised regulations require that a ROD be signed no later than two years after the issuance of the NOI. This time limit may be extended at the discretion of the "Senior Agency Official" responsible for overseeing the NEPA process of the agency.

Final Thoughts

The new regulations improve the scoping process and make the commenting requirement more rigorous. Although not required, the new rules encourage agencies to integrate planning and NEPA processes, especially in light of the changes made to the scoping process and the timing of the NOI. The more rational adoption rules enhance the benefit cooperating agencies have from participating in the lead agency's NEPA process. The balance of the changes to the NEPA process reflect the intent of the CEQ to streamline NEPA review generally, including the EIS process. While the attempts to streamline the process may appear significant to the uninitiated, it is important to view these changes in context. For example, some of the revisions to the threshold determination as to whether NEPA applies remove specific considerations in favor of broad ones, seemingly with the intent to give agencies more discretion in their consideration of what does or does not warrant NEPA review or what does or does not warrant an EIS level of review. This lack of specificity could equally lend itself to ambiguity in a decision to either prepare or not prepare an EIS, and could similarly lend itself to litigation over whether an EIS should or should not have been prepared in the first place. Further complicating matters is the fact that there no longer will be thirty years of case law on the regulations to provide clarity for courts, agencies, project proponents or project opponents.

Stay tuned for the next installment in this series, which will cover changes to the use of Categorical Exclusions, Environmental Assessments and Findings of No Significant Impact.

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MEMBER SPOTLIGHT

E. Scott Burns, SR/WA Receives Recertification as a Senior Right of Way Professional

In June, Mr. E. Scott Burns was approved for recertification as a Senior Right of Way Professional (SR/WA) from IRWA. We want to commend and congratulate Scott for completing 72 hours of continuing education units/hours of IRWA approved courses and for his pursuit of further education and professionalism as an SR/WA.

Scott works as an Administrative Manager for the County of Orange. He is married, has children, 2 dogs and resides in Rancho Mission Viejo. Scott received his B.S. degree from the University of Southern California and his Master of Business Administration degree from Loyola Marymount University.

Scott enjoys spending time with his family and indulging in BBQ, pizza, Italian and Mexican cuisines. His favorite restaurants are “Beachwood BBQ”, “The Original Fish Company”, “Mahe” and “Coronado Brewing Company”. When vacationing, he likes to explore the outdoors and last went to Jackson Hole, Wyoming. For hobbies, Scott enjoys playing golf and hiking.

In terms of favorite tunes, Scott enjoys Rock & Roll, Alternative, and Hawai’ian music. The last book he read was “Havana Storm” by Clive Cussler and the last movie he saw was “Star Wars 9-Rise of Skywalker”. When Scott has time to sit down and watch some TV, he tunes into “Barry” on HBO.

Scott’s favorite quote is “that which does not kill us makes us stronger.” One of his pet peeves is showing up, but not willing to put in full effort to get a job done. When asked what Scott looks for in people, he said “a good heart and the willingness to be challenged.” He attributes the person he is today because of the influence from his parents.

Scott indicated his biggest challenge was negotiating with the State of California for an exchange of land at Bristol Street in Costa Mesa. When asked about his secret to success, he said “don’t be afraid to fail. If you don’t try, you won’t succeed. The journey is the most important part because you learn on the fly and make improvements as you go.” What great words of advice!

Scott feels that working in every division of right of way has given him great resources to solve problems and reach agreements. And when asked why he is involved in IRWA, Scott replied that the opportunity to work with experts in the industry and specialized knowledge of the right of way process has proven very beneficial.

Congratulations again to Scott!

CALL FOR SPEAKERS

IRWA's 67th Annual International Education Conference Call For Speakers

IRWA EDUCATION CONFERENCE SAN ANTONIO 2021

Now accepting proposals - 12/09/20 submission deadline!

The International Right of Way Association invites you to submit a proposal to speak at the upcoming Education Conference in San Antonio, Texas, USA on June 6 - 9, 2021.

Proposals can be submitted using the form in the link below and must be submitted by Wednesday, December 9, 2020.

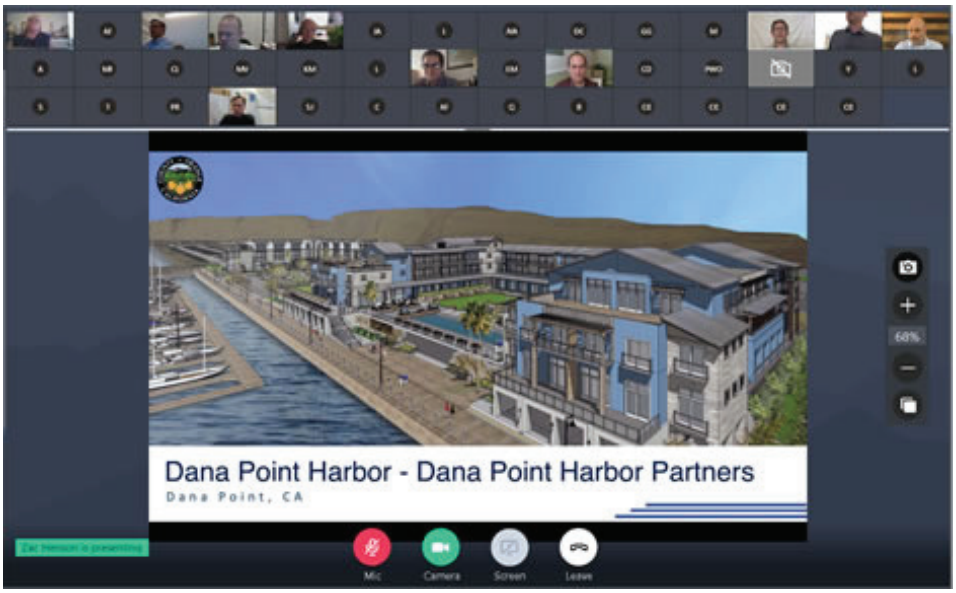
Click on the link below to create an account, access the speaker proposal form and find more information about the conference, submission criteria, and important proposal information.

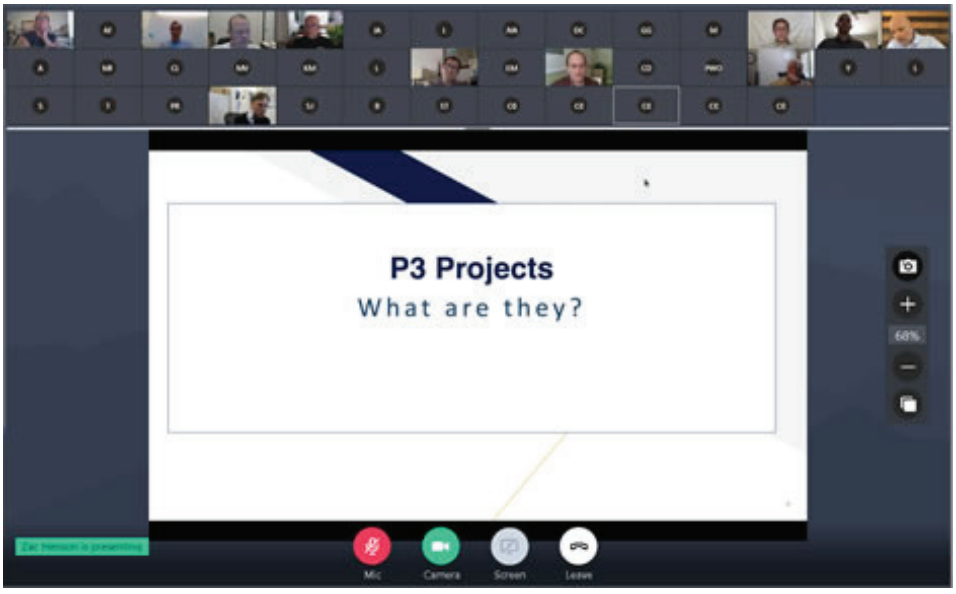
2021 Call for Speakers Proposal Form

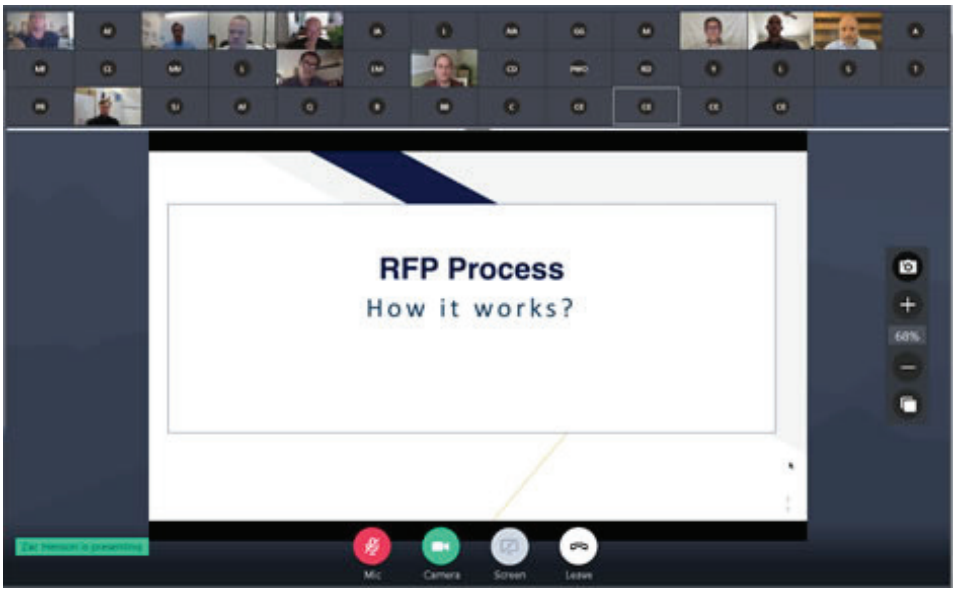
We understand that the future of in-person events is uncertain, but the IRWA is committed to bringing you a valuable educational conference (both virtual and/or in person) with many learning opportunities.

If you have any questions, please contact Jade Meador, Director of Events, at meador@irwaonline.org.

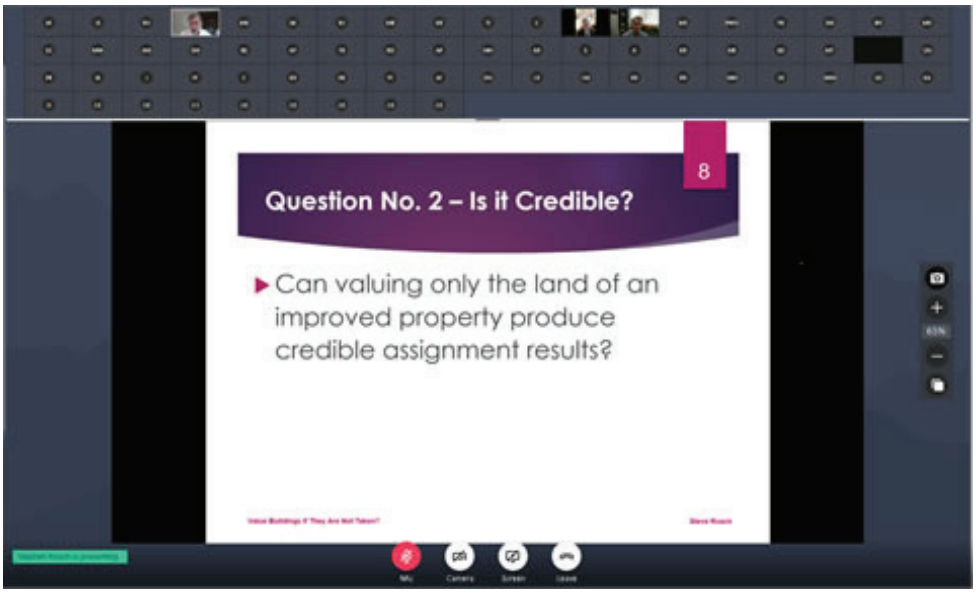
HIGHLIGHTS FROM THE AUGUST LUNCHEON

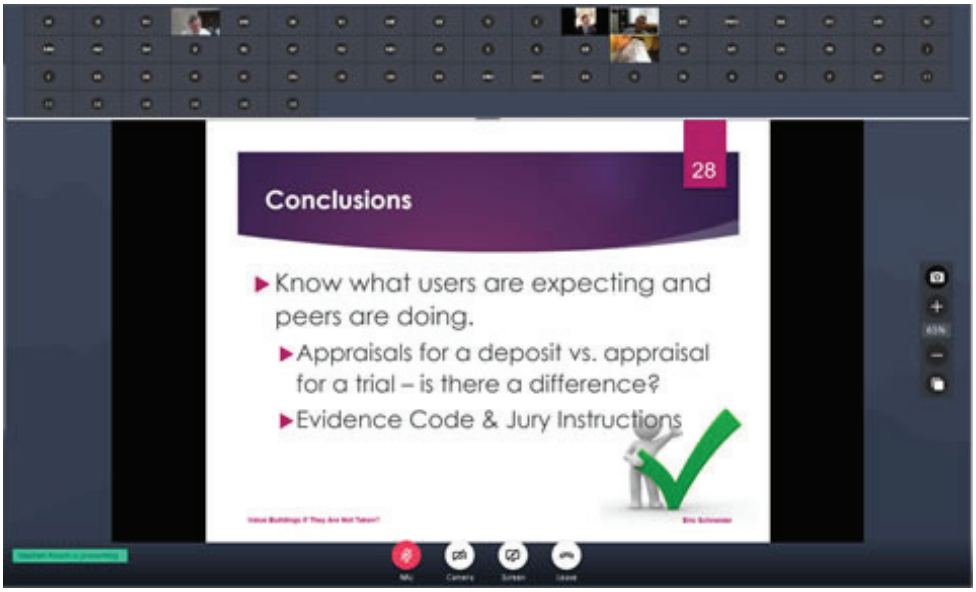


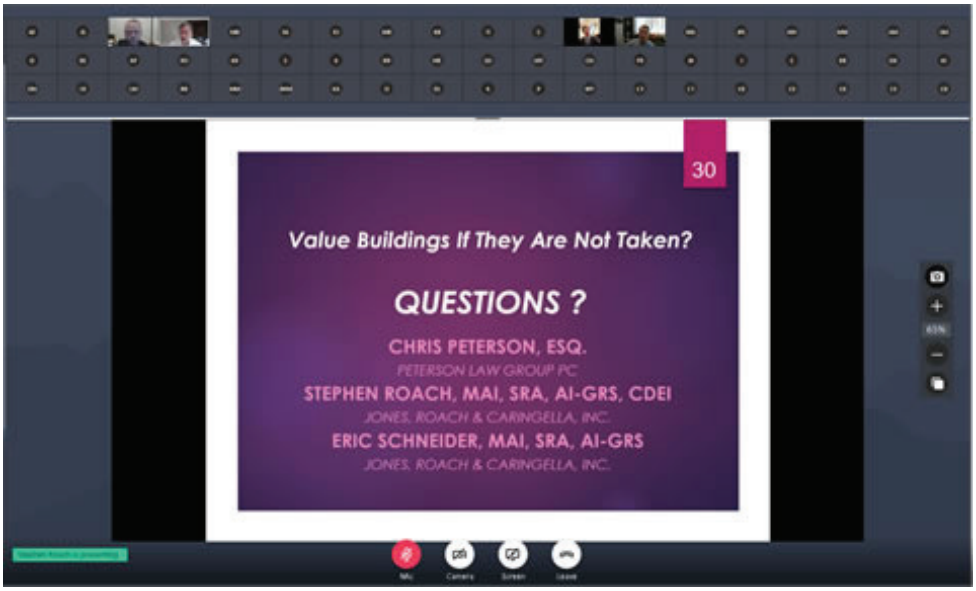




HIGHLIGHTS FROM THE SEPTEMBER LUNCHEON



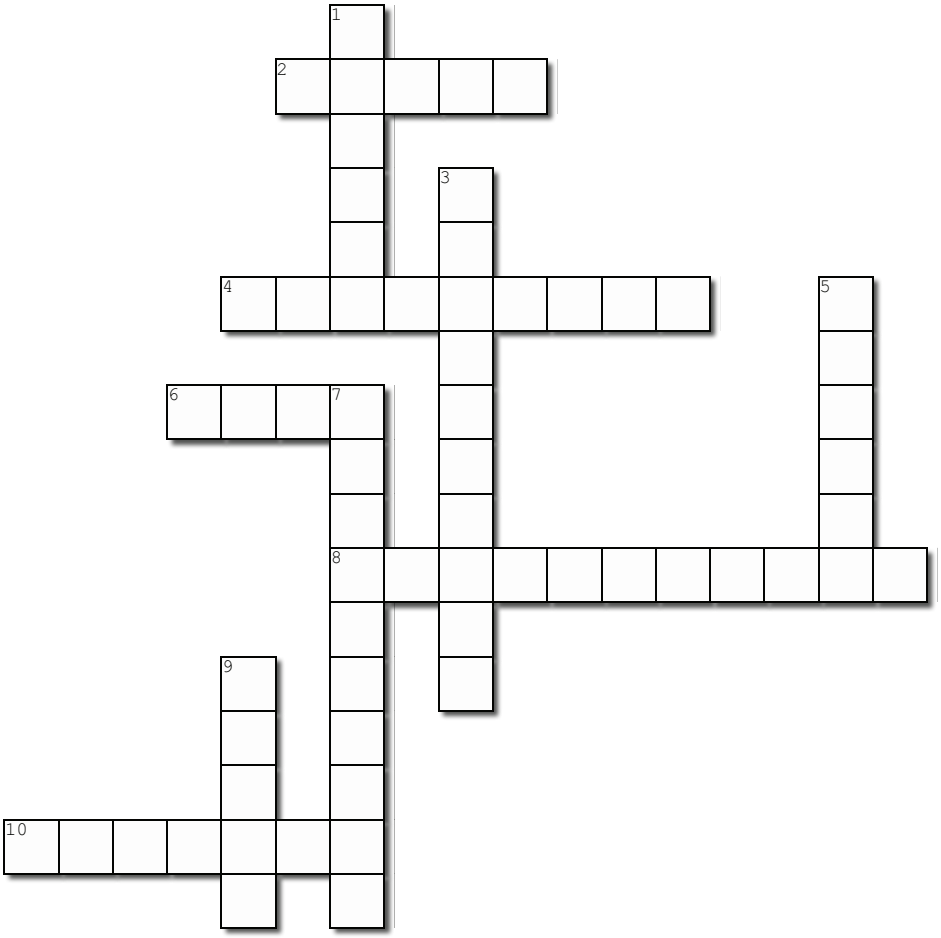




FOR FUN

Name:_____

Ch. 67 Crossword Puzzle



Created using the Crossword Maker on TheTeachersCorner.net

Across

2. What makes leaves change to either red or purple during the fall?
4. Approval for an agency to proceed with eminent domain: Resolution of _____
6. Just compensation is the ____market value of the property being acquired.
8. What celebration started because of a royal wedding in Munich, but is now celebrated every year?
10. Winner of the 2020 IRWA Award for Employer of the Year, Government.

Down

1. Eminent Domain is the power of the government to purchase private property for _____use.
3. Which state will harvest nearly 133 million boxes of apples this year?
5. IRWA Chief Executive Officer (last name)
7. Any person, business, or farm operation displaced as a result of property acquisition is entitled to _____benefits.
9. Which amendment requires just compensation when a government entity takes ownership of private property?