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WETLANDS: COMMUNITY AND INDIVIDUAL RIGHTS V. UNCHECKED GOVERNMENT POWER

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

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CONTENTS

	Page
Hearing held on June 16, 1997	1
Statement of:	
Congleton, Doug, president, Protect West Cobb	104
Croy, Jim, director, Cobb County Department of Transportation; John Wiles, representative, Georgia House of Representatives; Chris McLean, resident, West Sandtown Community; and David Parr, resident, West Sandtown Community	4
Dabbs, Robert E., developer, Dabbs Construction Co.; Grady Brown, cattle rancher, accompanied by Steve Woodall; and Wayne Shackleford, commissioner, Georgia Department of Transportation	29
Groszmann, Glynn, Sierra Club	99
Lester, Laura, West Cobb Community Council	87
McCuskey, Dr. Sue, environmental consultant	97
Morgan, George	95
Smith, Colonel Grant M., District Commander, U.S. Army Corps of Engineers, accompanied by Bill Hough, district counsel; and Necholus Ogden, Chief of Regulatory, U.S. Army Corps of Engineers	59
Weismann, Dr. Jay	106
Letters, statements, etc., submitted for the record by:	
Dabbs, Robert E., developer, Dabbs Construction Co., prepared statement of	34
Groszmann, Glynn, Sierra Club, prepared statement of	101
Lester, Laura, West Cobb Community Council, prepared statement of	91
McIntosh, Hon. David M., a Representative in Congress from the State of Indiana:	
Letter from Mitch King	78
Prepared statement of	18
McLean, Chris, resident, West Sandtown Community, prepared statement of	9
Parr, David, resident, West Sandtown Community, prepared statement of	14
Shackleford, Wayne, commissioner, Georgia Department of Transportation, prepared statement of	42
Smith, Colonel Grant M., District Commander, U.S. Army Corps of Engineers, prepared statement of	63

WETLANDS: COMMUNITY AND INDIVIDUAL RIGHTS V. UNCHECKED GOVERNMENT POWER

MONDAY, JUNE 16, 1997

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Marietta, GA.

The subcommittee met, pursuant to notice, at 1:14 p.m., in the Cobb County Commission meeting room, Cobb County Government Center, 100 Cherokee Street, Marietta, GA, Hon. David McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh and Barr.

Staff present: Karen Barnes, professional staff member; and Cindi Stamm, clerk.

Mr. BARR [presiding]. I would like to welcome everybody here today to these hearings by the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs of the Committee on Government Reform and Oversight of the U.S. Congress.

The hearing will be Chaired by Representative Dave McIntosh from Indiana, who is the chairman of the subcommittee. I am honored to serve as a member of the committee and this particular subcommittee with Chairman McIntosh and other Members.

The genesis of this hearing has both a general reason and a specific reason. Generally what we are trying to do in this Congress is hold as many hearings as is feasible, given the time constraints and the expenses involved, around the country to allow our citizens from all walks of life to participate more freely and more easily in the oversight processes of the Congress.

When I spoke with Chairman McIntosh several months ago and he indicated that they were interested in holding hearings in districts around the country, I asked him if he would be able to schedule some hearings here. I think this is the first time that we have had hearings in the Seventh District by a congressional subcommittee or committee, and specifically also in Cobb County. Chairman McIntosh indicated that he would be very, very happy to do so and asked for input as to what an appropriate subject matter would be.

After talking with a number of constituents from local government, from the business community and private citizens, we determined that one of the most relevant topics, one of the most timely topics that we could do some work on and really provide to Chair-

man McIntosh and the rest of the committee some important insights, would be to focus on the wetlands regulatory affairs.

Wetlands affect virtually everybody in the country, whether you live on or near wetlands or not, because of the cost of the regulation, the sweep of the regulations and ultimately, the cost to the taxpayers of this country.

What we will be doing today is hearing from a number of individuals, private landowners and developers who are interested in building subdivisions and other developments in our communities in the Seventh District. We will be hearing from individuals concerned directly with the transportation needs of our citizens. The State Department of Transportation Commissioner Wayne Shackleford will be speaking. We have on our first panel Mr. Jim Croy from the Cobb County Department of Transportation. We will be hearing from State Representative John Wiles as well as representatives from the Corps of Engineers. It is the Corps of Engineers which has the primary jurisdictional responsibility for implementing and enforcing wetlands regulations, and they will be speaking with us today to answer any questions and provide information on those areas in which they have been active.

The purpose ultimately of these hearings is two-fold. One, to bring to the public's attention a better understanding of both the shortcomings as well as the benefits of the existing wetlands regulations programs, policies and regulations, to highlight those areas where there have been problems, either problems with miscommunications, problems with overly restrictive or overly confusing regulations, time delays, costs involved; and ultimately the purpose of that is to identify areas in our Federal regulations, and if necessary in our Federal wetlands related laws, that can be amended, so these work better.

When we talk about working better, what we mean, at least what I mean, is that all of the different interests are balanced properly so that no one side of the equation overshadows everything else. We want to make sure that true wetlands are properly protected as a resource for all of our citizens to continue to enjoy and so that we all benefit from the very positive results of having proper wetlands throughout our country and not diminishing those important natural resources. But we also want to be mindful of the fact that whenever we do have these Federal regulations, there are costs involved, and those costs are ultimately borne by the taxpayers of this country.

And we want to make sure that the regulations in this area, as well as other regulatory areas, in which the Government is involved—we want to make sure that the different interests are balanced; the interests of the taxpayers, the interests of our local governments which have to ultimately provide the services that sometimes are brought to a standstill by Federal regulations. We want to make sure that those business people in our communities who have a responsibility to their employees and to the consumers in our communities to provide the jobs and the amenities such as housing, transportation, and businesses that the citizens demand and have a right to expect. We also want to make sure that the environmental concerns are properly reflected and weighed in the equation.

So again, to recap, what we are trying to do here in these hearings and in others that we will be having throughout the country and some in Washington as well, is to look generally at these problems, to identify those areas where we can do a better job of either enforcing or drafting our regulations and our laws and using examples such as we will be seeing today and hearing about today, to highlight, again both those areas in which these regulations are working properly as well as those instances where we can be doing a better job.

We will have three different panels today. We will try and stay on a fairly rigorous timeframe because we do have a lot of witnesses and we do want to leave some time at the end of the hearing today for something that Chairman McIntosh believes is very important in all of our hearings whenever possible, and that is to provide a time period for public comment.

We will be swearing in each of our three panels at the beginning of each one of those panels. The written remarks for any of the members of the panels who wish to submit them, will in fact be printed in their entirety in the record, so even if you are not able to make it through your entire written presentation, please rest assured that all of the comments will appear fully in the record of these hearings and be available for other members of the public, for the interest groups, as well as the general public, when these hearings are published later on this year.

Each panelist will be given approximately 5 minutes in which to make their opening remarks. We will just proceed in the order. Then each member of the subcommittee; namely, myself and Mr. McIntosh, will have 5 minutes each to ask questions of each panel. And of course, these proceedings are being televised, so we would ask everybody kindly to speak up.

And with that in mind as preliminary thoughts, let me invite and ask each member of panel No. 1 to stand and be sworn in and then I will introduce the members of the panel and we will proceed with the remarks. If each panelist would stand and raise their right hands.

[Witnesses sworn.]

Mr. BARR. Thank you. Each witness has responded in the affirmative.

The first panel, we will be hearing from four individuals who have a very significant understanding of different aspects of wetlands regulation. I would like to introduce those members of this panel that we will be hearing from.

Appearing for Cobb County will be Jim Croy, our director, here in Cobb County, for the Cobb County Department of Transportation. Jim is appearing here in his capacity as director of the Department of Transportation in lieu of Chairman Bill Byrne. Jim, we are very happy to have you here today.

Also on this panel is the Honorable John Wiles, one of our State representatives who represents portions of Cobb County in the State House of Representatives, and has done a great deal of work, both in his private capacity as well as in his work as a State legislator, looking at the costs of regulations and again, doing—what we are trying to do at the Federal level, he is trying to do at the State level, and that is to bring a proper balance to these regulations.

Representative Wiles, we appreciate very much your appearing here today with us.

We also have two individuals—we have Chris McLean from the West Sandtown community and Mr. McLean is intimately familiar with certain aspects of Federal wetlands regulations. We appreciate your appearing here today to share your experiences and answer any questions as they might relate to problems that you have run into. Mr. McLean, we appreciate your being with us today.

And finally, we have Mr. David Parr, also with the West Sandtown community. He is a resident that in his capacity has also come into contact with Federal wetlands regulations and we appreciate your taking time to share your experiences with us here today, both you and Mr. McLean I think have interesting stories to tell that are relevant, both to us in the Government here, as well as to the population generally, and we appreciate your appearing.

With that as preliminary comments, what I would like to do is to begin the presentations with Mr. Jim Croy, the Cobb County Department of Transportation head.

STATEMENTS OF JIM CROY, DIRECTOR, COBB COUNTY DEPARTMENT OF TRANSPORTATION; JOHN WILES, REPRESENTATIVE, GEORGIA HOUSE OF REPRESENTATIVES; CHRIS MCLEAN, RESIDENT, WEST SANDTOWN COMMUNITY; AND DAVID PARR, RESIDENT, WEST SANDTOWN COMMUNITY

Mr. CROY. Good afternoon, Representative Barr.

I am Jim Croy, the director of the Cobb County Department of Transportation. I am here today on behalf of Chairman Byrne, our Board of Commissioners and our county manager, Mr. David Hankston, to provide a statement for Cobb County.

It is the responsibility of the Cobb County Department of Transportation to plan, manage and implement our transportation improvement program. In Cobb, that program since 1985, will total approximately $960 million worth of road improvements that will be invested in our county through local funds. This investment is comprised of over 540 scheduled projects, many of which will require and have required permitting under Section 404 of the Clean Water Act.

On reviewing our project history, I would just like to make the following observations.

1. In the event that the Corps of Engineers in reviewing an application denies the permit, we have seen there is no formal appeal process within the system for the further review and consideration of that project and a discussion of the issues as it relates to the denial of the permit.

2. The applicant assembles—in this case Cobb County—we assemble a team of professionals from the various different fields to prepare our technical area evaluations. These are evaluations such as traffic, transportation planning, environmental, constructability, hydrology, structures and just standard roadway design for the project. And typically these are reviewed by the Corps and many times we feel we have not been able to have that degree of discussion about some of these different expertise that certainly I am not a professional expert in all the issues and we need to have some degree of ability to discuss these at a technical level.

3. There are concerns regarding the coordination of the permitting process as it relates to the Corps of Engineers and the other regulatory agencies. I give—for example, we have one project which we have reached agreement on but it required 18 months to develop consensus between the Corps of Engineers and the Georgia State Historic Preservation Office over a Memorandum of Agreement over a historic structure on one of our projects, the Powder Springs Parkway. The same situation existed in time for another road project here in Marietta.

In looking at the review criteria, I would like to make a couple of comments as it relates to maybe some of the original direction of the NEPA 1969 directive.

It appears at times that the review process does not regard the definition or purpose in regard to the original direction of NEPA. Projects were brought forward that, in our mind, fulfill the socioeconomic and other requirements of present and future generations of Americans and we have every practical means and measures incorporated into the design of the project that is sensitive to the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man. And those are quotes out of NEPA.

I think our projects in Cobb County as we bring them forward, we have tried to look at that balance. I think sometimes in looking at the balance of environment, community and transportation, many times I think due to the current regulations, the scale is tipped toward environmental in many instances instead of balance.

It appears that at times the review process does not equally balance, as I said, impacts both positive and negative between environmental and human issues as these projects are developed, and to create and maintain conditions under which man and nature exist in productive harmony. Again, a quote from the 1969 NEPA documents.

Transportation improvements are identified to address in Cobb County our existing and future travel demands. We have a process of modeling and prediction and developing a system of transportation improvements throughout our whole county that is interconnected. Our region, the Atlanta region, with which Cobb is a portion of, has continued to grow and develop irrespective of road and other modal systems that are being put in place. The notion that no road equals no development has been historically incorrect. As there are no controls that have been incorporated, private development will still have the potential of impacts to our stream quality and wetlands even under the no-build scenario. I think this part of the no-build scenario certainly needs to be incorporated into the process.

And finally, it would appear at times, especially in the past, that the lack of consistency for approval of techniques used in the mitigation impacts our projects. At times it would appear that the methodology used for one project has been unacceptable in another project.

Also, the methodology used to get to the point of discussions of mitigation appears many times not consistent. For example, the discussion of traffic studies and corridor studies are very difficult to get past that point, to get to the actual discussions of the actual

alignment. Again, I think it gets back to the point of bringing each of the different studies together to reach consensus prior to the alignment issue.

On behalf of Cobb County, I would like to thank the committee for the opportunity to testify today and will be available for any questions you might have.

Mr. BARR. Thank you, Jim.

Representative Wiles, if you please now would make whatever opening remarks you would like to for 5 minutes and then as soon as we finish with the panel, we will have questions for all of you.

Mr. WILES. Thank you, Representative Barr.

It is indeed a pleasure to be before you and members of the committee to testify today about wetlands. I am a State representative, I represent the 34th District, which is west Cobb, Kennesaw and west Marietta. And importantly, I am also in private life a real estate attorney.

I appreciate the opportunity to come today and talk to you about the problems that face my constituents and by extension your constituents. As a result of the Corps' delay, delay and delay on the many road projects of west Cobb, our constituents sit daily in bumper to bumper traffic, which affects the quality of life, and to me, it is just—the belief if you do not build a road, there will be no development and you and I both know, and members of the committee know that development is here. Cobb County has addressed it by taxing themselves, the citizens have agreed to tax themselves to build these roads, but it appears the Federal Government through the Corps of Engineers has said no, we do not want to let you build these roads that the community wants.

In my opinion, there are three main issues with the wetlands legislation. I have talked to many of my constituents and many of my clients and one of the problems is trying to figure out what a wetland is. It depends where you are and it depends who is interpreting. One person's wetlands is another person's dry land. One of the things that was reported to me in one situation in Cobb County, there was a wet area, the Cobb County Department of Transportation went out and surveyed the water, checked the water, turns out the water was chlorinated. That means there was a water main leak. They found the water main leak. To this day, the Corps of Engineers considers that area that was wet because of a water main leak, wetlands. That is ridiculous. If it is chlorinated water, it is certainly not wetlands.

What I think is there needs to be some process available to identify what wetlands is so that if a person goes in to develop their land, to farm their land, that they can turn to a resource and say yes, this is wetlands and now the process is you develop the land and then, in essence the Corps of Engineers through the traffic cop comes out and says you were speeding and you say well I did not know I was speeding, I did not know it was wetlands. They say, oh, well, you should have known. You should have known by the flora or the content of the water or whatever the plant life is.

The other thing is what seems to me this arbitrariness of the Corps of Engineers—we are the Federal Government, we are right and you are wrong. And you are the constituents in Cobb County, my constituents, your constituents, and they choose to build the

road, tax themselves, do not seek Federal funds, have public hearings, come up with a road plan that everyone agrees to, the Federal Government through a bureaucrat down in Savannah says no, you cannot build this road. And then when we say well we want to build the road, the only recourse is to go to the Federal courts. And we have all heard about the backlog in the Federal courts and how long and of course how expensive. That is the tax on the constituents and the citizens of Cobb County because they have to hire a good law firm to go down in Federal court. Why is there not a procedure within the Corps of Engineers, an Administrative Procedures Act procedure, a short circuit so we do not have to go to Federal courts to resolve these disputes.

And the third thing is—and this to me is the most important—why are we talking about this as a Federal issue. I understand it is the Federal waters, I understand it is the environment. But we at the State level, me at the State House and my fellow members of the General Assembly, the local government. We are just as concerned about the environment, perhaps more concerned, than the Federal Government is. Why can this issue not be devolved to the States? Why are we regulating in Washington, DC, conduct in west Cobb County? That is the challenge I put to you as a Congressman and to the entire 105th Congress—return this back to us. Trust us at the State level. The 10th amendment says that the power should be reserved to the State. This should be our area, not the Federal Government's area, and I ask that you would consider and Members of the Congress would consider returning this back to the State level.

When I go to the people that live around Dowell Elementary and tell them that a Federal bureaucrat has said there is going to be a four-lane road right by their elementary school, it is really hard for me to explain that to them. When the county representative who has been elected to represent, where the citizens have decided on a road path, and instead a Federal bureaucrat tells them that they are going to put a four-lane by their school. There is just no justification for that. So I would urge the Congress to consider devolving this back to the States and let us handle it at the local level. At the State level, I would like to send it back down to the county level. I do not want to be a mini-Federal Government and I do not think we should be. I think we can handle this at the local level.

I thank you, Mr. Congressman. If you have any questions, I will gladly address them.

Mr. BARR. Thank you, Representative Wiles. We appreciate not only your testimony today but your work in behalf of the citizens in your district and indeed throughout the entire State of Georgia.

Mr. McLean, if you would provide us some insights in your opening testimony and then we will have questions for the entire panel.

Mr. MCLEAN. Thank you, Representative Barr. I appreciate the opportunity to speak here.

Ladies and gentlemen, my name is Chris McLean. I am a resident of west Cobb County and a businessman in the community. And the issue that I want to testify about is one that Representative Wiles spoke of, which is the four-lane highway going in front of Dowell Elementary, which is a route that completes a road called

the Cobb Loop, if you will. I choose, just in the essence of time, just to read my testimony which I printed out and provided copies.

The Loop project is one that will be completed. Common sense should direct anybody's thinking to the completion of the project. Any further delay will cause more people to be negatively affected, such as those at Pennington Subdivision. If no road is built, the increasing traffic will find its way down existing roads and cause injuries and fatalities.

The routing of the Loop has been focused on West Sandtown Road. Three years ago, it became obvious to the majority of west Cobb citizens that Noses Creek would be the correct routing for the Loop. Now after untold sums have been spent of citizens' money to ensure the proper routing of the Loop, West Sandtown Road in particular is now again in jeopardy.

If West Sandtown is utilized it adversely affects 2,100 residents and hundreds of school children at the Dowell Elementary School. They will be subjected to 40,000-plus vehicles traveling 50-plus miles an hour 24 hours a day.

The completion of the project should be the Noses Creek route, as it will deliver the least injury and fatalities for those who use and live near the route.

Delay of the project increases the amount of people it affects. There has been a subdivision built in the past 3 years that will be disturbed by the Noses Creek route. We have been told that the road cannot be developed along Noses Creek because of danger of disturbing the environment. Environment is a major concern for all of us. After reviewing the list that is used by the Corps of Engineers, it is obvious to me that there is a major environmental concern missing. That concern is the human environment in relation to all conditions and options. If you do not consider human environmental conditions as important as the balance of nature, how can you make moral and ethical decisions? The answer is you cannot.

We all need to understand that today each of us should set the only logical, moral and ethical decision in our minds. The decision that Noses Creek routing needs to be developed and acted upon. The health and well-being of thousands of innocent people depend on it. It is in our hands here today. The issue is prosperity or adversity. One of those will prevail.

I appreciate the time. Thank you very much.

Mr. BARR. Thank you, Mr. McLean.

Rounding out this first panel will be Mr. David Parr, like Mr. McLean, also a resident of the West Sandtown community which is impacted greatly by recent decisions and delays regarding the West Cobb Loop.

[The prepared statement of Mr. McLean follows:]

Testimony

U.S. Army Corps of Engineer's wetlands regulatory policies
Chris McLean June 16, 1997

The following is a list of issues referring to the West Cobb Loop project. I plan to present these issues at the Subcommittee hearings to be held in Cobb County Georgia on June 16, 1997. My presentation will be short and to the point.

1. The loop project is one that will be completed. Common sense should direct anybody's thinking to completion of the project. Any further delay will cause more people to be negatively effected such as those at Pennington subdivision. If no road is built, the increasing traffic will find it's way down existing roads and cause injury and fatalities.

2. The routing of the loop has been focused on West Sandtown road. Three years ago, it became obvious to the majority of West Cobb citizens that Noses Creek would be the correct routing for the loop. Now, after untold sums have been spent of citizens money to ensure the proper routing, West Sandtown road is in jeopardy again. If West Sandtown is utilized, it adversely effects 2100+ residents and 100's of children at Dowel Elementary school who will be subject to 40,000+ vehicles traveling 50+ mph 24 hours per day. The completion of the project should be the Noses Creek route as it will deliver the least injury and fatalities for those who use and live near the route. Delay of the project increases the amount of people it affects. There has been a subdivision built in the past three years that will be disturbed by the Noses Creek route.

3. We have been told the road can not be developed along Noses Creek because of danger of disturbing the environment. Environment is a major concern for all of us. After reviewing the list used by the Corp of Engineers, it is obvious that there is a major environmental concern missing. That concern is human environment in relation to all conditions and options. If you do not consider human environmental conditions as important as the balance of nature, how can you make moral and ethical decisions? The answer is you can't!

4. We all need to understand that today each of us should set the only logical , moral and ethical decision in our minds! The decision that Noses Creek routing needs to be developed and acted upon. The health and well being of thousands of innocent people depends on it. It is in our hands here today. Prosperity or adversity, one will prevail.

Memorandum

Date: June 12, 1997

Subject: Subcommittee June 16 1997

From:

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Typist's initials: cm

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Notes:

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Sandtown is utilized, it adversely effects 2100+ residents and 100's of children at Dowel Elementary school who will be subject to 40,000+ vehicles traveling 50+ mph 24 hours per day. The completion of the project should be the Noses Creek route as it will deliver the least injury and fatalities for those who use and live near the route. Delay of the project increases the amount of people it affects. There has been a subdivision built in the past three years that will be disturbed by the Noses Creek route.

3. We have been told the road can not be developed along Noses Creek because of danger of disturbing the environment. Environment is a major concern for all of us. After reviewing the list used by the Corp of Engineers, it is obvious that there is a major environmental Concern missing. That concern is human environment. If you do not consider human environment as important as the balance of nature, how can you make moral and ethical decisions? The answer is you can't!

4. We all need to understand that today each of us should set the only logical , moral and ethical decision in our minds! The decision that Noses Creek routing needs to be developed and acted upon. The health and well being of thousands of innocent people depends on it. It is in our hands here today. Prosperity or adversity, one will prevail.

Mr. PARR. Thank you very much. I would like to extend much thanks to Commissioner Cooper, who put my name in the hat, so to speak; Chairman McIntosh for inviting me here; and Congressman Barr.

My name is David Parr, I am a resident of the west Cobb community. I live in a subdivision located off of West Sandtown Road. I also want to make it clear that I do not represent any one group, I represent myself and my wife. However, I do feel my views are in line with a majority of the people in west Cobb.

First of all, let me make it very clear I do support the building of the West Cobb Loop and its eventual completion. The road is very much needed to accommodate the growth of west Cobb and that is something that the county definitely needs.

However, we should do the best to minimize any repercussions to our communities, the surrounding communities and as well as the environment, which is also very important. The question here is can we balance the needs of both the environment and our communities. I think we can. It is not impossible, but what it takes is team work and pulling together of all the parties involved.

As I have stated, the road is definitely needed to accommodate the growth and connect the eastern portion of the county with the western portion of the county, and to alleviate traffic congestion.

The Corps of Engineers earlier this year did reject the recommended route, which deeply concerns me, and the subsequent lack of cooperation between our political leadership, DOT and all the other parties. There does not seem to be any cooperation there and that bothers me.

You ask how will this impact our neighborhood, how will this four-lane road which may travel through several different communities, depending on which alternative route is selected, if that is the case? It would definitely impact the health and safety of our community and our children. Take, for example, the West Sandtown Road, as was eloquently stated earlier by Mr. McLean, involves several different homes on the road, 50-plus driveways on the road, schools, churches. They would be significantly impacted and I do not know that we want to do that. I do not think anybody here wants to do that. We do not want to endanger the lives of our community and our children. We do not want to reduce the quality of life in that area. Every day when I drive down West Sandtown Road, I see joggers, I see cyclists, I see children walking to and from school. And I do not think we want to impact or endanger their lives.

An additional point that I would like to state is my understanding of the east-west connector is we want it to be a transportation corridor between east and west. That means limited access. And the alternative routes defeat the whole purpose of that. They involve different communities, many different homes and so forth. So I do not see that being a limited access highway.

So I would strongly urge all parties involved to get together to search for a win/win solution, not only for the west Cobb communities, but also the environment. I think it is very important to keep the environment as natural as possible, with as little impact as possible, but we have to weigh the needs of the two, the communities and the environment, and somehow search for a win/win so-

lution. And I think we can do that. We have to pull together, and I would recommend or I would urge everyone to come together and revisit the original route recommendation which was denied earlier by the Corps, and ask five questions in a different light, a more enlightened approach, a more positive approach.

Let us ask ourselves what is already working well with the recommended route? What specifically makes it work? What are we trying to accomplish? What would be the benefits to the county, surrounding communities and the environment? What can we do more of better or differently to begin moving toward our objective?

I hope we can do that. If you use that approach, I think you will find a win/win solution for all.

I strongly urge everyone to come together, re-examine the original route and do whatever it takes to make that everyone's preferred route.

Thank you.

[The prepared statement of Mr. Parr follows:]

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Wednesday, June 11, 1997

Committee on Government Reform and Oversight
2157 Rayburn House Office Building
Washington, DC 20515-6143

Re: Written Testimony
US Corps of Engineer's Wetland Policies
East - West Connector, Cobb County, GA

It is an honor and privilege to be here. Much thanks to Commissioner Cooper, Congressman Barr, and Chairman McIntosh for inviting me here today. This very hearing is an example of what makes our Country great. All sides of an issue are examined: the facts presented, open debate and discussion, followed by a fair and equitable decision.

My name is David Parr, and I am here as a concerned resident impacted by the Corps of Engineer's rejection of the recommended route for the West Cobb Loop.

Please don't misunderstand my position. I am very much in favor building a transportation corridor - a limited access highway that moves traffic between the western and eastern portions of the county. However, we should do everything possible to minimize any lasting repercussions to our communities and environment. Balancing the needs between the two can be challenging, but not impossible.

The road is very much needed. The road would alleviate traffic congestion, accommodate county growth, and connect the eastern half of the county to the western half. The recommended route accomplishes this with a minimum impact to the surrounding communities. The proposed route also addresses some environmental concerns by building a bridge over the wetlands and creating ~85 acres of additional wetlands.

The Corps' rejection and subsequent emphasis on alternative routes deeply concerns me. The alternative routes plow through my community. How will a four lane highway with a median impact my community?

I don't know if it takes a village to raise a child, but I do know a four lane highway running thorough a village or community can certainly endanger the life of a child.

One of the alternative routes is West Sandtown Road, a picturesque road with a mixture of homes, neighborhoods, churches, pastures, and an elementary school. The health and safety of our community and children would be placed in harms' way . Everyday I see children walking to and from school, joggers, cyclist, and walkers making their way up and down West Sandtown Road. Should we risk endangering their lives and reducing their quality of life by running a four lane highway through their neighborhood? This leads me to an additional point. Building the road through our community defeats the purpose of a "limited access" highway. There are 50 plus driveways on West Sundown Road and six large neighborhood communities, and an elementary school. How can this meet our objective of building a limited access highway to quickly move traffic from point A to point B?

I strongly urge all parties to come together and search for a win/win solution for both the communities of West Cobb and the environment. Revisit the recommended route and look at it from a different light. Let's ask ourselves five questions:

1.) What is already working well with the recommended route?

2.) What, specifically, makes it work?

3.) What are we trying to accomplish?

4.) What would be the benefits to the county, surrounding communities, and the environment?

5.) What can we do more of, better or differently to begin moving toward our objective?

For the sake of our communities and our children, please reexamine this issue and search for solutions or ways to make the recommended route everyone's preferred choice.

Again thank you for allowing me participate in today's hearing.

David Parr

Mr. BARR. Thank you, Mr. Parr.

Before we move into the questioning of this first panel—and I would like to thank all of the panelists again for being here today—I would like to introduce the chairman of our subcommittee, who has arrived. Mr. Chairman, we usurped your power, but only temporarily and only for I hope the same purposes for which you would have exercised it.

Mr. MCINTOSH. I am sure it was good intent.

Mr. BARR. It is a tremendous pleasure for me to introduce to the Seventh District, to Cobb County and the rest of the citizens from across the Seventh District who have an interest in these hearings and have an interest in seeing that their Government at the Federal level remains more in contact and reaches out more to our communities, I would like to introduce the chairman, Dave McIntosh.

Mr. McIntosh was elected to the Congress at the same time that I was, in the 1994 election. He represents Indiana's Second District and chairs this subcommittee on the Government Reform and Oversight Committee. His prior work positions him uniquely to really play a major role in helping to formulate the policies, the programs, the regulations that bring us here today.

Mr. McIntosh served as Special Assistant to President Reagan for Domestic Affairs. He has also served with former Attorney General Ed Meese. But perhaps most importantly is the tremendous work that he did with former Vice President Dan Quayle working on the Council on Competitiveness. He did tremendous work over the years in looking at Federal regulations and trying to make them a little bit more rational, a little bit more reasonable, a little bit more understandable and a little bit fairer to all the interests in our communities.

Mr. Chairman, it is a pleasure to welcome you here to the Seventh District and to Cobb County today.

Mr. MCINTOSH. Thank you very much, Bob. [Applause.]

I have a long prepared statement which I will put into the record, but let me just say I appreciate you arranging for this hearing; thank you for getting it started, and I apologize, particularly to the first panel, and to everybody, for being delayed. My flight was late, which gave me plenty of time to read your testimony on the plane, and so I am familiar with the issues you wanted to bring before the subcommittee.

Let me say very briefly that I think this issue of how we enforce wetlands policy in this country is critical, for several reasons. First, it is critical for doing the right thing for the environment. Second, it is critical for doing the right thing for the people who are involved: in this case, the homeowners that Mr. Parr represents and others. But also, I think it is important that we look at this from the perspective of preserving our civil rights, because one of the rights that our Constitution guarantees is that the Federal Government will not take private property without paying just compensation, even if it is for the best public use.

And one of the things that I think we have seen over and over again in this whole area is that citizens, very innocent in their own regards, oftentimes are punished or appear to be punished because their land is designated as a wetland. And so part of this hearing

will be hearing from people about how this process works: does it protect property rights, does it serve the citizens well, and does it end up doing the best job possible for the environment in preserving important natural habitat?

And again, Bob, let me say thank you to you and particularly your staff here in the district for arranging this hearing. Our subcommittee has a tradition now of going outside of Washington and listening to people who are engaged in everyday lives and do not have time to come to Washington to petition us for relief from the Government, and taking that information back with us. And I can tell you folks in Cobb County that Bob has been a great member of this subcommittee and is an active voice for the people here in Georgia every time we get together.

So thank you and let us proceed now with the rest of the panel. I have had a chance to read your written testimony and look forward to talking with you as we move into question and answer.

[The prepared statement of Hon. David M. McIntosh follows:]

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OPENING STATEMENT
Chairman David M. McIntosh
Marietta, Georgia, Field Hearing
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
June 16, 1996, 1:00 p.m.

Welcome to today's hearing of the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs. Thank you for coming today to discuss an extraordinarily important issue that many in Washington are only now beginning to waken to -- the tangled web of red tape that costs jobs, harms citizens and often times is bad for health, safety and the environment. Particularly today we will look into the regulations implemented by the Army Corps of Engineers to enforce the federal wetlands program.

It's great to be here in Marietta. I want to thank Bob Barr for inviting the Subcommittee to his district to hold this hearing. It has been a pleasure working with Bob, who is a real leader in our sophomore class and on the Subcommittee. He is a leader for, among other things, easing the burden of regulations on the American people and better protecting private property rights.

Since coming to Congress in 1995, I have learned that if you want to change the status quo in Washington, you better be ready for a big fight. On the Subcommittee we have been fighting on behalf of the American taxpayers to bring about real relief and restore common sense to our government. We still have a long way to go, but we have made some great strides over the past two years. Today's hearing will support the Subcommittee's work to reform the federal regulatory system. Last year we made historic progress with the first major regulatory relief bill to pass since 1980. This Congressional Review bill, which President Clinton signed, gives Congress the ability to veto new regulations once they are issued. Now we have the opportunity to help bring regulations into line with common sense. And from what I know about the federal wetlands regulations, they could use a good dose of common sense.

Even more fundamentally, the federal wetlands regulations need to be reworked until they conform with an important bulwark of freedom: the protection of private property rights. The framers of our Constitution understood better than current regulators the relationship between a free society and the right of the people to own and control their private property. That is why the Takings Clause of the Fifth Amendment provides that no "private property [shall] be taken for

public use without just compensation." The modern regulators tell us that private property owners must not be allowed to build a house on their own land. They cite the "common good" of preserving wetlands. But the Fifth Amendment requires the government to compensate citizens for property that they must sacrifice for the common good.

In the 104th Congress, the House passed a modest private property measure to better protect citizens' civil rights to enjoy their property. This bill, which unfortunately never made it out of the Senate, provided that if government action under the Endangered Species Act or the federal wetlands program diminished the fair market value of any property by 20 percent or more, then the federal government would have to negotiate to buy the property or to pay for the diminished value. Some of us thought the threshold should be even lower, but this bill provided a good example of how we should legislate in the property rights area. I believe it is required by the Constitution. We will keep working in Congress to promote property rights protections and to extend the same kinds of protections against other types of uncompensated regulatory takings.

I know we need to pass a property rights protection law, because when I am at home in Indiana, and talk to my constituents about their problems with the federal government, wetlands rules and other federal regulations come up time and time again. The consensus is: It's time we get government off our backs and back on our side. One of the most telling stories about the red tape surrounding wetlands comes from one of my constituents in Muncie, Indiana: Bob Floyd, who is 80 years old, and his family, have farmed mostly corn and soybeans in Muncie since FDR was giving fireside chats. But when a neighbor built a commercial building next to the Floyd farm, it caused a drainage system nearby to rupture in 1989, and it turned a small portion of his property into a muddy slick. Although crops had been harvested there for generations, a government official declared four acres of the farm a federally protected "wetland." That designation prohibited Mr. Floyd from farming those acres, costing $8,000 in lost revenue. After years of haggling, a federal official redesignated the four acres as a "farming wetland" and allowed Mr. Floyd to continue planting his crops. Happy ending? Hardly. That new "farming wetland" designation slashed $50,000 from the property's value.

As in Mr. Floyd's case, the unintended consequences of federal regulations have a human cost. The bureaucrats in Washington who write the rules need to listen to Americans outside the beltway who have had experiences similar to Mr. Floyd's and to the citizens who have come to this hearing. It has been one of our Subcommittee's priorities to get outside of Washington, D.C. and hear what citizens have to say about regulatory red tape. Over the past two years, our Subcommittee has held 17 field hearings around the country. This is our first field hearing of the 105th Congress. We have had the opportunity to hear from business people, farmers, local officials, public servants, and others who have been hurt by government regulations. With every hearing we hold, we learn more about the problems in the federal regulatory system, and we get more good ideas about how to fix them.

Today we will hear from some local residents who have, unfortunately, been forced to battle with the federal bureaucracy. Some of our witnesses have been working to keep the Army Corps of Engineers from routing a new road through their neighborhood, disturbing 700 homes, one school, and two churches, and relocating 39 homes. You would think the government would

prefer an alternative that only disturbed a few people, and would create more wetlands in exchange. One witness has been driven to the brink of financial ruin because the Corps has delayed approving his development project for so long. Another witness has lost his right to develop his *own* property because the state inadvertently flooded some of his property, creating a wetland in the eyes of the Corps. Finally, we will hear from Colonel Grant Smith, the head of the Savannah district of the Army Corps of Engineers, who is responsible for implementing the Corps' wetlands regulations in this area.

Let me say, as we open this hearing, we all want a cleaner environment, a safer workplace, and a healthier life -- without the burden of red tape that costs jobs. But our regulatory system is broken and undermines constitutional rights. It fails to protect Americans and it imposes huge costs. I believe that we can do both: protect public health and safety and create more jobs and higher wages for American workers. But not without real reform that restores common sense to government regulations and protects private property rights.

When the American people reelected this Congress, they sent us back with a mandate to do just that. The 105th Congress, and particularly our Subcommittee, takes that mandate seriously. Today we are here to take you and your testimony just as seriously.

Mr. BARR. Thank you, Mr. Chairman. With your permission then, I will begin the questioning and then turn it over to you.

Mr. Croy, as the transportation director for Cobb County, could you provide a little bit of background to the subcommittee on how the West Cobb Loop project has been and will be paid for?

Mr. CROY. The West Cobb Loop project, which is a project in west Cobb County that connects Dallas area to the Powder Springs Road area through west Cobb, is a project that was first initiated in our 1985 Transportation Improvement Program.

Mr. BARR. I am sorry, that was 1985 or 1995?

Mr. CROY. 1985.

Mr. BARR. Thank you.

Mr. CROY. It was set aside by the voters in 1985 as one of the projects in that TIP. Now our Transportation Improvement Programs here in Cobb are funded through a local option 1 percent sales tax. That tax has been voted on by the voters of Cobb County in 1985, again in 1990, and again in 1994. So we have had three TIPs. Moneys for the West Cobb Loop were set aside in both the 1985 and the 1990 program. And this is all local funds, there are no State or Federal dollars in the project.

Mr. BARR. Thank you. And can you give us just a ball park figure of the current estimates of the cost of the project and whether or not those have increased or decreased over the years that the project has been delayed?

Mr. CROY. Well, the current estimates as they stand today is on the approximately $35 million range. This is a project that certainly costs in construction has increased, especially structural work. So although I am not in a position to give an exact dollar figure, I would predict that projects where we have structures—this particular project has one bridge that is approximately 3,000 foot in length—those projects would have escalated over the past 12 months.

Mr. BARR. Representative Wiles, you talked a little bit in your remarks about the lack of an effective appeal process for the rejection of wetlands permits, section 404 permits.

Are there some specific ideas that you would want to bring to the subcommittee's attention with regard to how we can implement an effective appeal procedure?

Mr. WILES. Well, in my mind, the courts, the Federal courts, should be the last resort, not your first step, if you are dissatisfied with a decision of a Federal bureaucrat.

Mr. BARR. And you say that as an attorney.

Mr. WILES. I do, because my constituents are the ones that pay the bills for the county's attorneys to go litigate these cases. And delay, because of the litigation, we know in dealing with the Federal courts, not in particular this case but it is always a delay period, it always takes time. Traditionally in dealing with the Government, there is the Administrative Procedures Act which provides an independent judicial, but not really, a procedural appeal process, where someone can hear it quickly. Generally they are in that area, whatever area you are appealing through the Administrative Procedures Act, they are familiar with the issues and they can evaluate the issue. Where here, you get a Federal judge who perhaps has never heard a case such as this. With an Administra-

tive Procedures Act appeal you will get someone that is technically up to speed and perhaps get a quicker decision. Importantly, I think you will get a much more cost-effective solution. Instead of burdening the Federal courts with litigation, you can perhaps resolve this case.

And the other point would be perhaps there needs to be mediation or a process after the appeal or before the appeal, where you get the people in a room and you try to work it out, as opposed to having where you are now; you get a Federal court suit and then the judge says can you all not work it out.

So that is my ideas—mediation or perhaps an Administrative Procedures Act appeal.

Mr. BARR. Thank you.

Mr. Croy, I know you are very familiar with this project, both you, Commission Chairman Byrne, Chairman Wysong, Commissioner Cooper, the entire Commission has been working and devoting a great deal of attention to this project. We have heard today from two citizens from the community directly impacted, who have indicated their support for the project moving forward. You have heard from Representative Wiles who represents citizens who are directly impacted and favor the project moving forward.

In your view, does the project as the Commission has proposed it, have the backing of the community in general?

Mr. CROY. Prior to the Board adopting what is known as the Noses Creek alignment, there were several public meetings. One public meeting I know was attended by in excess of 600 folks. It is my opinion that as this process has evolved since 1993, when the Board adopted the Noses Creek alignment, that that alignment has the general approval of the majority of the folks in west Cobb, as well as the technical staff that has reviewed this project on behalf of Cobb County.

Mr. BARR. When did the county first approach the Corps of Engineers for a permit?

Mr. CROY. The individual permit, I believe—let me check my notes—application was made in February 1993.

Mr. BARR. Four and a half years ago, approximately.

Mr. CROY. Yes, sir.

Mr. BARR. I, of course like you, read local media from this area and I have noticed in recent days there have been some articles that seem to reflect some movement with regard to possibly resolving this impasse. Is there anything that you can share with us today publicly with regard to whether or not there are some positive developments? Because one of the things we want to do here is not simply to highlight the problems, we want to identify if there are problems in the procedures, in the regulations, in the laws that need correcting. But we also want to be very mindful of the fact that if there are things that are working, that we highlight those as well, and perhaps do something to make sure that these things that are working happen quicker and in a less costly way.

Mr. CROY. Our Board of Commissioners has directed the Department to submit a new application to the Corps of Engineers for the West Cobb Loop. We have had preliminary discussions at a staff level with members of the Corps, which I think have been very

positive. We have a meeting scheduled for the first week of July to go over the pre-application process for this new alignment.

So I think we have had very positive discussions that are leading, at least from the county's perspective, so we can submit an alignment very similar to the Noses Creek alignment, but then again, it would be a new alignment, certainly in the Corps' eye.

Now I cannot speak for the Corps, other than that in our discussions with staff—and I know there is a process we have to go through—but I think the very positive process that we have worked well with the Corps over the past 2 or 3 weeks is the exact appeal process that we wish we had, that we could go back and take a second look at a decision and get answers and communication and maybe bring about better views of certain documentation.

As I said in my testimony, I think the traffic considerations, there has always been some miscommunication I feel as it relates to traffic, and we have had the ability I think now in the past few weeks to sit down and address that issue.

So I think what we are doing is very positive, it has worked—it is working at this point in time and I think that is the very thing we need in an appeal process.

Mr. BARR. Thank you, Mr. Croy. Mr. Chairman.

Mr. MCINTOSH. Thank you, Bob, I appreciate it.

I have got a couple of questions for Mr. Croy and the staff is checking whether there are maps available that we could show to help me understand this. But while that is being arranged if it is possible, let me ask Mr. Parr and Mr. McLean, do you have any general suggestions that we could take back for improving the regulatory process, either with relationship to the Corps and the wetlands permit and EPA's involvement, or any other insights there?

Mr. MCLEAN. Yes, I believe there are some ideas that should be implemented and I believe the appeal process should be amended so that somebody can go in and mediate and talk about the issue that was selected and the decision that was made.

It seems to be that the information I have, all parties did what they were commissioned to do, but on the other hand, there is more information that comes up after the fact that needs to be reviewed.

If we had a process where that information could have been reviewed, we may not be talking about this at this point. So that would be my suggestion.

Mr. MCINTOSH. OK, thank you. Mr. Parr.

Mr. PARR. I would concur with several statements made earlier that there certainly should be some type of appeal measure in place other than having to go to court. I do not think that speeds up the process at all and all it does is get a few lawyers a little more richer.

Also, just looking at some of the material here. I do not have access to that application but I was just reading the denial or the reason for the denial, and a lot of it seems to stem from maybe some misunderstanding from our side in completing that application. It looks like the Corps was looking for other alternatives to weigh the benefits of any alternative.

Just based on my background, any time you put forth a proposal, you weigh the benefits of all proposals. You do not want to just put up one proposal, you want to put up three or four options and

weigh the cost/benefits of all those options and you choose the best one within the scope of whatever you are dealing with, whatever your resources are, and the concerns of the parties involved.

I would recommend that we make sure that the original application is submitted correctly, and if there is not any means in place to make sure that the parties involved, whether it be the DOT or the Corps or whatever, are talking and everybody understands both sides of the issues. We should make sure it is done right the first time rather than have to go through all this.

Mr. MCINTOSH. Thank you. Actually that keys up my next series of questions for Mr. Croy.

And if you could put up for us, Mr. Croy, a map that shows—and I have got it labeled on mine "Alternative 1–A, Nose Creek," which I think was the original county proposal. I do not know if there is a staff person that could help them with that.

Let us talk about the costs and the benefits of that particular proposal, I guess in particular with relationship to the concerns the county had with residential areas as well as the concerns about wetlands that may be in the route. What is the impact in terms of residences in the area and what is the impact on wetlands and what was the county's proposal to either mitigate that or build additional wetlands in other areas?

Mr. CROY. OK. And I apologize to the audience for blocking their view a little bit here, but it is very hard for you all to see up on the screen.

The alignment that you see before you is the preferred alignment, known as the Noses Creek alignment. This is—just to orient you—this is Dallas Highway at Villa Rica, Villa Rica Road and it leads onto the new alignment. What you see marked in blue are the wetland areas along the route and what you see in red are proposed bridges. To orient you a little more, this is Macklin Road in west Cobb, terminating at Powder Springs Road here. North is to your right.

The proposal as submitted originally to the Corps has—the impacts to wetlands, was approximately 11 acres. Of that 11 acres, three of it was in this area of bridging, primarily in the area here. That reduced it to just under seven acres, which I believe was in—as you can see, again from memory, approximately 13 different areas, the greatest impact is in this area near Macklin.

What we proposed as mitigation sites along the area is a combination of mitigation which totaled up to just over 80 acres of mitigation. That had areas of restoring, areas of wetlands, had areas of creation. This area in pink is a wetland that would be created. The areas in green are what we consider upland buffering, these are areas we would acquire, this piece of property, as county property, and we would require as you see in the green as upland buffering. Again, another area in here of the upland buffering. And restoration, which is shown in the yellow.

So by the 8 acres of impact or 11, 3 of them we mitigated with a bridge, the other 8 we came up with a mitigation plan of about 80—I think it was 85 acres in round numbers—between the green area, which is again, just to review, upland buffering. The yellow area which is restoration and the blue area—I guess that purple/pink is creation.

Mr. MCINTOSH. So let me summarize for my own understanding. You would have an impact, particularly with the bridge over a total of 11 acres, 3 with the bridge—those wetlands would continue to exist but there would be some impact because the highway would be built with a bridge over it. And then in exchange for that, if you will, you are proposing to upgrade or create a total of 86 acres that would be environmentally protected areas, to preserve other wetlands in the area.

I guess that is the environmental benefit. The economic benefit for the road I am familiar with in connecting the two parts of the county. What is the cost in terms of people having to be relocated or other concerns that you would have with the community there?

Mr. CROY. We had several relocations along this project. Let me pick up my notes if I might.

Mr. MCINTOSH. Sure.

Mr. CROY. As the project was set on the original alignment, there was only three residences that would be impacted as far as relocations, with this alignment along Noses Creek.

Mr. MCINTOSH. And your usual procedure with that is to condemn the property and pay the property owner the value so they can choose to relocate in another area?

Mr. CROY. Right. Our normal procedure in all right-of-way negotiations is to make that property owner whole. We would have an independent appraisal and offer that property owner that appraised value for their property. If it is a relocation, then on top of that we offer them relocation assistance if they need that.

Mr. MCINTOSH. So you attempt to make them economically whole and obviously there is an intangible value if that is their dream home and they really wanted to live there, there is not much you can do about that. OK.

Now anything else in terms of the costs or benefits in this particular alternative?

Mr. CROY. The only thing I might mention, that since you are on new location, the areas from where the new location takes over, which is basically this area here just off Villa Rica, all the way to the end of the project, which is the majority of the project, since you are on new location, you can control the curb cut and the access point, and our Board of Commissioners had designated this area to be limited access. So there was to be—with the exception of land-locked properties—there would be no access points along that section of roadway, which is—in the design process, those type roadways you can do on new locations; it is very difficult to do limited access on widening off the center line on existing locations because you can see the many property owners along like this section of Villa Rica that would certainly need curb cuts.

Mr. MCINTOSH. And if I remember correctly from some of the projects that we have looked at in my State, that allows you to have a higher rate of traffic back and forth and greater safety than when you have the access, because you have got fewer people coming on and off, it is a speedier way of transporting east to west.

Mr. CROY. That is correct, you provide a more safe road, you also provide a better flow of traffic because you do not have conflicting turning movements along the roadway with the curb cut.

Mr. MCINTOSH. OK. Now if you have got some charts there—and it was not clear to me, and having missed your testimony—there was an alternative three, which the staff had reported to me was the one the Corps preferred, when you had submitted your proposal for the Noses Creek, and I guess that is called the West Sandtown Road?

Mr. CROY. Yes. I think the one that has been discussed primarily, certainly today, is an alternative of West Sandtown. Let us rearrange here just a little bit and set this one down.

[Pause.]

Mr. CROY. Again, to orient you on where we are at, Dallas Highway, this is, in this line here, is the preferred alternative. This alignment is the proposed alignment. What you see above here in this red is what has been called the West Sandtown alignment, which is one of the other alternatives, one of four alternatives, actually five, there was that variation of one, that were examined in this corridor.

As you can see, the one difference between the Noses Creek and the Villa Rica West Sandtown is that the West Sandtown stays along an existing road pattern, either Villa Rica or West Sandtown until you get south of Macklin Road. Then the two projects are very similar, along the same alignment.

Mr. MCINTOSH. And so for that portion of it, you would be required to have additional or many more access cuts into it?

Mr. CROY. Due to the amounts of property, you would have to look at one or two alternatives. You would have additional curb cuts for the properties along the roadway, or you would have to buy the access rights along that section of roadway, at least all the properties that front the roadway, and have a greater number of relocations. You would have to look at one of the two alternatives.

Mr. MCINTOSH. And how many relocations, I guess with each alternative, would you anticipate?

Mr. CROY. If we purchased the access rights along the alternate, the West Sandtown-Villa Rica alternate, as you recall, I think we had approximately three on the Noses Creek. If we buy the access rights along West Sandtown, it would exceed 40.

Mr. MCINTOSH. And if you do not buy the access rights, how many relocations would there be?

Mr. CROY. It would be I think approximately a dozen, but then you would have 30 or something, close to 30 curb cuts you would have to deal with.

Mr. MCINTOSH. And is that the entire route? So it is three compared to either a dozen plus the curb cuts or 40?

Mr. CROY. That is correct.

Mr. MCINTOSH. And then what is the impact on wetlands in that area?

Mr. CROY. Well, the impact on the alignment along West Sandtown is relatively minor in regard to impacts. You do not get into any of the areas that we were bridging in here. Basically this green outlines the stream areas. Again, from memory, I think we have looked back at this alignment and could possibly have the wetland impact of the West Sandtown well under two acres.

Mr. MCINTOSH. Was there any proposed mitigation with that alternative?

Mr. CROY. No, we have not examined it other than that we know we have this same mitigation site in here would be available for the West Sandtown also.

Mr. MCINTOSH. OK.

Mr. CROY. This mitigation site is common to both alignments.

Mr. MCINTOSH. And about how many acres is that, do you know?

Mr. CROY. This particular area is probably—about half of the 80-something acre mitigation is in this, so approximately 40 acres.

Mr. MCINTOSH. OK. Thank you, I appreciate it, and my time has very much run out for questioning. But let me just say those judgments and tradeoffs are ones I very much believe we should not be making in Washington and that you all should be making here in Cobb County and in Georgia. But it helps me to eliminate some of the questions that you have had to ask and answer in that. And I will have some more questions later on.

Bob, did you have anything else?

Mr. BARR. Just two very quick followup questions.

One, Jim, if you could for folks that are not familiar with some of the technical language, when you say mitigation, what do you mean?

Mr. CROY. Well, basically when we have a transportation project and we have any issue, whether it is wetlands, historic structures, community; we basically have three approaches. The first is avoidance, try to miss them. If you cannot avoid them, then you try to minimize whatever that impact is. In other words, you do something to reduce the impact. The third is what we call mitigation, which means if you know you are going to have an impact like an embankment or a fill area in a wetland, then you do something to replace that impact, like you create a wetland somewhere else, you improve wetland that certainly may be improved by additional plantings or along those lines or you maybe do some upland protective buffering, so you do not have encroachment into other wetlands. So basically those are the three areas that we look at and mitigation being just one of the three.

Mr. BARR. And you were just talking with the chairman about an area of mitigation there, you are not talking about a one to one. What sort of ratio are you talking about?

Mr. CROY. Well, normally we do not have—at least we do not have a set standard here in Cobb, we look at each project a little individually and see what is available. We have had some projects where we have had, you know, four and five to one. This particular project, certainly we have three different types of mitigation, that being restoration, creation and upland buffering. And if you weighed them all together, it would be about a 10 to 1. Now obviously all three of those in the environmentalist's eyes carry different weights because they provide different issues. One creates a wetland out of an area where there is not one or it had been one in the past and it has probably through agriculture been destroyed. Two, the restoration is basically you are making improvements to an existing wetland that may have been damaged primarily during agriculture. Or third is upland buffering which we feel is very important because it protects—it is the actual protection of a wetland area and does not allow any encroachment.

Mr. BARR. But the bottom line is when you are talking in this particular proposal in terms of mitigation, basically the county here has proposed a ratio of about 10 to 1 in terms of mitigation.

Mr. CROY. That is correct.

Mr. BARR. For those areas of wetlands identified by the Corps.

Mr. CROY. That is correct, sir.

Mr. BARR. And that was rejected, so far.

Mr. CROY. The permit application was rejected. Now in reviewing the permit application, the reason for rejection was not the mitigation plan.

Mr. BARR. I understand. Thank you. Thank you, Mr. Chairman.

Mr. MCINTOSH [presiding]. Thank you.

Just let me close this session by saying I want to commend you and the county for doing a good job in working on these different alternatives, and Bob has impressed upon me the urgency of creating this transportation corridor for all sorts of reasons here in the county. And to my way of thinking when you can get a tradeoff where you have affected only three families instead of potentially 40 and also seem to be doing a good thing for the environment, where you create 10 additional acres of wetland for every 1 that is impacted; that is a good deal. We see a lot of plans coming through where it is one for one in terms of what people are willing to do on the environmental side.

So I want to commend you for the good work. We will hear from the Corps later on some of their thinking and I would hope that in the coming months that we could get a good resolution to this.

Mr. CROY. Thank you.

Mr. MCINTOSH. Bob, did you have any further questions for this panel?

Mr. BARR. No, thank you, Mr. Chairman.

Mr. MCINTOSH. OK. Let me say thank you to all the participants on this panel. I appreciate you coming today, and your input. We may have some additional questions and I will ask unanimous consent, if Bob will agree, to keep our record open for the next 10 days and give you a chance to answer any of those that we may have for you at a later time.

Thank you very much for coming.

Mr. WILES. Thank you, Mr. Chairman.

Mr. MCINTOSH. I will now call forward our second panel. And I would ask that each of you please rise.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you very much. Let the record show that each of the witnesses answered in the affirmative.

Our first member of this panel is Mr. Robert Dabbs, who is a local developer and owner of Dabbs Construction Co. Mr. Dabbs, thank you for coming, and if you would please share with us a summary of your testimony.

STATEMENTS OF ROBERT E. DABBS, DEVELOPER, DABBS CONSTRUCTION CO.; GRADY BROWN, CATTLE RANCHER, ACCOMPANIED BY STEVE WOODALL; AND WAYNE SHACKLEFORD, COMMISSIONER, GEORGIA DEPARTMENT OF TRANSPORTATION

Mr. DABBS. First, I would like to thank the committee, Mr. McIntosh, Mr. Barr, for giving me the opportunity to present my problem to somebody that I feel like can help us, and especially to Karen Barnes, who has been a big help since I finally got the number of somebody I could call that I could talk to about my problem.

I am a small real estate developer from Cartersville, GA, which is in Bartow County. I have been in the development business for 25 years and have never before been in violation of a wetlands regulation. I, with two partners, have employed approximately 165 workers that were going to build approximately 20 something homes once we start our subdivision. This is a small residential subdivision called Ivy Chase on Shinall-Gaines Road in Bartow County.

Because of disturbing 0.63 of an acre of wetlands in a development of a 111-acre residential subdivision, the Army Corps of Engineers has shut down our project for approximately 3 months, which forced us to lay off approximately 165 people that would be building homes on our property, that has either had to go somewhere else or had a delay of time without work. We have spent thousands of dollars providing information to the Corps of Engineers and as you see, we have had no response. As a result, my partners and I are on the brink of financial ruin if we do not get something done. In fact, one of my partners, was a working partner in this project, and his wife had quit her job as a sales agent because she was going to be handling all our sales. He was doing the grading and once this stopped, she had lined up approximately 20 buyers that was lined up for a builders draw the following week that they shut us down. It has totally put her out of work with no income at all. It has put Mr. Hansard out of work, he is down now to only having one piece of equipment left. Fortunately, Mr. Temples and myself did have—we have got some other income that has kept us going, but with a project of this size, it is going to be a financial disaster for all three of us.

Let me tell you how all this began. After retaining a soil scientist and a civil engineer to conduct development feasibility studies and reports, we purchased the property for this development project on April 19, 1996. The property consists of 111 acres.

After purchasing the property, we complied with all local and State regulations to plan for the development, including State and local permits. We did not realize that any of the property consisted of wetlands within the jurisdiction of the U.S. Army Corps of Engineers. We did not realize this because there was no standing water on the property and because the National Wetlands map provided by the U.S. Government to display wetlands showed no wetlands on our property. Furthermore, we were not advised by our soil scientist, who we had hired, or the civil engineer or any of the local government people that we had to go through to get all of our land disturbance permits and especially the Bartow County Health Department.

Like I say, I have been developing 25 years. We did not file a nationwide permit because I had never heard of it. None of the people that we hired to do our professional work told us about it. I have talked with them since this come up and they say they did not know we was supposed to either. At this time, I still do not know if we are actually supposed to. The law is very confusing to me even after I got involved in it, that we went from 10 acres to 3 acres and to 0.3 of an acre as to where they have jurisdiction. We are showing now that we have less than 2 acres. So I am not even sure today if we are supposed to. The 0.3 of an acre supposedly took effect in February of this year.

But after receiving all local approvals to do so, we graded and paved streets, constructed drainage ditches and culverts. We enlarged a pond on the property from about one-half acre to about 2½ acres.

The soil scientist had identified certain soil types and showed that on the western tip of this property that there could possibly be some wetlands area. Due to that, we did not do any part of our development as being on that piece of property.

After the subdivision lots were developed and all was done, we went to get our last permit that we had to have from the Bartow County Health Department, which had visited this property numerous times, had us to dig holes on approximately every lot in the subdivision and then when we were getting our last approval or disapproval on certain lots, they had at the end of the letter that they had—in additional, they had asked the Corps of Engineers to come inspect this property. For some reason, we are the only ones that they have ever called the Corps to come inspect and up to now, are still the only ones.

I asked them at the time did they think we had any wetlands or did they know that we were supposed to file a nationwide permit and the employee of the Bartow County Health Department told me that he did not even know we were supposed to. So I have a real problem as to why they waited until we had completed the project, but they did.

Upon being advised of the requested site inspection by the Corps of Engineers on March 17, my partners and I immediately and voluntarily ceased all development of the subdivision and awaited the site inspection results.

During the site inspection, representatives of the Corps of Engineers verbally advised that the property could contain wetlands that had been disturbed and that we were in violation for failure to obtain a required permit from the Corps of Engineers. We were told that we were required to continue our voluntary cessation of the development and that we would receive a written Cease and Desist Order from the Corps of Engineers advising us of further requirements, proceedings and dispositions.

On April 3, 1997, the Cease and Desist Order was issued and mailed to us. We had, immediately upon realizing that we were possibly in violation of Federal regulations, retained another engineering firm with the expertise that specialized in wetlands regulations. We were required to continue the cessation of development and provide the requested information to the Corps. The new engi-

neering firm began the necessary site investigations to determine what, if any, wetlands had been disturbed.

As required, our first response to the Corps of Engineers was submitted on April 11, 1997. We responded that we had voluntarily ceased all development work and intend to cooperate with the Corps of Engineers and comply with all applicable Federal regulations.

Our second required response was filed by May 3, 1997 and consisted of the following information.

A wetland delineation of the project showing areas of impact and areas to be impacted including detailed drawings.

A topographical map of the area showing elevations as they existed prior to the placement of any fill material.

Written explanation of the necessity of placing fill material in a wetland area in lieu of a high ground location.

Information on when development work began.

Indication of the source, type and quantity in cubic yards of fill material used to date, the date any work was last done, the type of equipment being used and the purpose of the work.

Copies of all approvals received from any other Federal, State or local agency for this work.

Copies of deeds for the property, names and addresses of all property owners and developers involved in this project.

Explanation as to why notification of the proposed activity was not sent to the Corps of Engineers.

The wetland delineation of the project showing areas of impact and areas to be impacted prepared by our new engineers and submitted to the Corps of Engineers on May 3, 1997, concluded that 0.63 of an acre of wetlands was impacted.

Even as I speak, I am not sure, since this work was done during 1996, if disturbing 0.63 acre of wetlands required a permit from the Corps of Engineers. Here is what is most frustrating in dealing with the Corps—our engineer advised me that he has made repeated telephone calls to staff members of the Corps, but can acquire no information as to when the Corps will make any determination as to our project. Corps staff has told our engineer that they are so overworked that they do not know when they can even look at the information we have provided them.

Our engineer even urged the Corps staff to release the Cease and Desist Order on the other 110 acres which are not wetlands, but to no avail. Again, I understand the response was they do not have time to even look at this information.

In an attempt to get a response, our engineer, on May 22, 1997, wrote the Corps staff member assigned to this project that since less than 1 acre of the 111-acre project had been disturbed, based upon the submitted delineation, "we have advised our clients to resume work except in areas within 50 feet of the wetland defined in our delineation."

Again, to date, we have had no response from the Corps of Engineers. Despite the advice of our engineers, we have not resumed work on this project outside the wetland areas. The reason that we have not is that the Cease and Desist Order still is in effect, which threatens civil fines of up to $10,000 per day of violation, criminal

fines up to $50,000 per day of violation and imprisonment along with the injunctive relief, including restoration of the area.

We are not that brave or foolish, whichever the case may be.

But in the meantime, because of disturbing 0.63 of an acre of wetlands that may or may not be a violation to Federal regulations, the development of our entire 111-acre residential subdivision has been shut down for approximately 3 months while our expense continues. We have spent thousands of dollars providing information to the Corps of Engineers. Our development and interest expense has continued to mount up. As I speak, we have spent approximately $25,000 out of our own pockets for interest on an approximately $850,000 that we have put into this project, plus the work that the Corps has asked us to do which we have submitted to them. And there is no end in sight because we could absolutely get no answer. Apparently the Corps of Engineers has no requirements establishing time limits within which they have to respond to us. We had a 10-day requirement to respond to them and a 30 day, which we met.

I do not dispute that wetlands need to be protected, but at what cost or what kind? The land that we are talking about is land that never held any water, to my knowledge, but it only had a green plant that is called a wetland plant. We actually made more water, we made a half acre lake into a 2½ acre lake, we built a dam around it. We have used this for our retention pond, which is required by the Bartow County Land Disturbance Permit. We have graded the property where the entire water runs into this pond or lake and will only go out where we have pipes that go out of it that is made where the only amount of water that can go through that pipe is the same amount that had went off the property before. This is a piece that will keep water in it all the time because we dug it 10 foot deep and used the dirt to make a dam around it. So we provided more water in that area for birds and ducks and stuff that is on the pond now.

In closing, I would like to say that I do not think the Corps of Engineers staff members are not caring, diligent, hard-working people. Maybe they have too much to do and too little to do it with. I am asking that during this deliberations, you consider these things. When new and existing regulations are being enacted and enforced, some consideration be given to not just impact on wetlands, but to impact on those who are enforcing the regulations and those upon whom they are being enforced.

To me, I have run a construction company. If all of a sudden my number of houses to build or develop would go up hundreds of permits, I could not get to it. From what I see, the Corps is facing is you have gone from 10 acres to 3 acres to 0.3 of an acre, so you have given these people thousands more projects that is going to be called on for them to inspect and evidently from the numbers that I see that work on this in Georgia, they do not have the staff to even do it when we do have a problem.

Again, I would like to say that I appreciate this opportunity to express to the subcommittee and feel like that maybe through this that we can get some help to do what we have to do to make right of the land we disturbed. We have a theory of taking some area there and planting some wet weather plants back to make up for

what we destroyed there, or we can fill the lake back in to a certain degree to make it to where it would be just a very small amount of water where the weeds can grow, where now we have a nice looking lake there. But whatever it is, we want to know. And we do not know.

Thank you.

Mr. MCINTOSH. Thank you, Mr. Dabbs. Maybe we will find out later today.

The next witness is Mr. Grady Brown and his son, Steve Woodall, will be reading his statement. Thank you Mr. Brown and Mr. Woodall for coming.

[The prepared statement of Mr. Dabbs follows:]

ORAL TESTIMONY OF ROBERT E. DABBS
BEFORE CONGRESSIONAL SUBCOMMITTEE ON
NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES,
AND REGULATORY AFFAIRS HEARING ON JUNE 16 1997

My name is Robert E. Dabbs. I am a small, real estate developer from Cartersville, Bartow County, Georgia. I have been in the development business for 25 years, and I have never before been in violation of wetlands regulations. I, with two partners, employed 165 workers in developing a small residential subdivision called Ivy Chase on Shinall-Gaines Road in Bartow County, Georgia.

Because of disturbing .63 of an acre of wetlands in a development of a 110- acre residential subdivision, the Army Corps of Engineers has shut down our project for approximately three months, forcing me to lay off 165 workers with families. We have spent thousands of dollars providing information to the Corps of Engineers, and, as you will see, we have had little or no cooperation in response. As a result, my partners and I are on the brink of financial ruin. In fact, one of my partners has already folded.

Let me tell you how this all began. After retaining a soil scientist and civil engineer to conduct development feasibility studies and reports, we purchased the property for this development project on April 19, 1996. The property consists of 111 acres.

After purchase of the property, we complied with all local and state regulations to plan for the development, including obtaining state and local permits. We did not realize that any of the property consisted of wetlands within the jurisdiction of the U.S. Army Corps of Engineers. We did not realize this because there was no standing water on the property and because the National Wetlands map provided by the U.S. government to display wetlands showed no wetlands on our property. Furthermore, we were not advised by the soil scientist or the engineer that we needed a permit from the Corps of Engineers prior to development.

After receiving local approval to do so, we graded and paved streets, constructed drainage ditches and culverts. We enlarged a pond on the property from about one-half acre to about two and one half acres.

The soil scientist had identified soil types as wetlands on the western tip of the property, therefore lots were not developed in that area.

After the subdivision lots were developed and streets graded, curbed and paved, the Bartow County Health Department contacted the Corps of Engineers to conduct a site inspection of the subdivision during the week of March 24, 1997.

Upon being advised of the requested site inspection by the Corps of Engineers on March 17, 1997, my partners and I immediately and voluntarily ceased all

development of the subdivision and awaited the site inspection results.

During the site inspections, representatives of the Corps of Engineers verbally advised us that the property may contain wetlands that had been disturbed; and, that we were in violation for failure to obtain required permits from the Corps of Engineers. We were told that we were required to continue our voluntary cessation of development and that we would receive a written Cease and Desist Order from the Corps of Engineers advising us of further requirements, proceedings, and dispositions.

On April 3, 1997, the Cease and Desist Order was issued and mailed to us. We had, immediately upon realizing that we were possibly in violation of federal regulations, retained another engineering firm with expertise in wetlands regulations. The new engineering firm began the necessary site investigations to determine what, if any, wetlands we had disturbed.

As required, our first response to the Corps of Engineers was submitted on April 11, 1997. We responded that we had:

> "voluntarily ceased all development work and intend to cooperate with the Corps of Engineers and comply with all applicable federal regulations."

Our second required response was filed by May 3, 1997. The Corps required we provide the following information:

(a) A wetland delineation of the project showing areas of impact and areas to be impacted including detailed drawings;
(b) A topographical map of the area;
(c) Written explanation of the necessity of placing fill material in a wetland area, in lieu of a high ground location;
(d) Information on when development work began;
(e) Indication of the source, type and quantity (in cubic yards) of fill material used to date, the date any work was last done, they type of equipment being used and the purpose of the work;
(f) Copies of all approvals received from any other federal, state, or local agencies for this work;
(g) Copies of deeds for the property; and, names and addresses of all property owners and developers involved in the project;
(h) Explanation as to why notification of the proposed activity was not sent to the Corps of Engineers.

The wetlands delineation of the project showing areas of impact and areas to be impacted prepared by our new engineers and submitted to the Corps of Engineers on May 3, 1997, concluded that .63 of an acre of wetlands was impacted.

[Even as I speak, I am not sure since this work was done during 1996 if

disturbing .63 of an acre of wetlands required a permit from the Corps.] Here is what is most frustrating about dealing with the Corps: Our engineer advises me that he has made repeated telephone calls to staff members of the Corps, but can acquire no information as to when the Corps will make any determinations as to our project. Corps staff has told our engineer that they are so overworked that they do not know when they can even look at the information we have provided them.

Our engineer even urged the Corps staff to release the Cease and Desist Order on the other 110 acres which are not wetlands, but to no avail. Again, I understand the response was they do not have time to even look at this information.

In an attempt to get a response, our engineer on May 22, 1997, wrote the Corps staff member assigned to this project that since less than one acre of this 111-acre project had been disturbed based upon the submitted delineation: "We have advised our clients to resume work except in the areas within the wetland defined in our delineation."

Again, to date we have had no response from the Corps of Engineers. Despite the advice of our engineers, we have not resumed work on the project outside the wetlands area. The reason that we have not is that the Cease and Desist Order still in effect threatens:

> "Civil fines of up to $10,000 per day of violation, criminal fines of up to $50,000 per day of violation, and imprisonment . . ."

We are not that brave or foolish, whichever the case may be.

But in the meantime, because of disturbing .63 of an acre of wetlands in the development of a 111-acre residential development, the Corps has shut down our project for approximately three months, while our expenses continue. We have spent thousands of dollars providing information to the Corps of Engineers. Our development interest expense has continued to mount up. We have been financially devastated and approximately 165 construction jobs have been eliminated during these three months. And there is no end in sight because apparently the Corps of Engineers has no requirements establishing time limits within which they have to respond to us.

I do not dispute that wetlands need to be protected, but at what cost?

In closing, I would like to say that I do not think that the Corps of Engineers staff members are not caring, diligent, hard-working people. Maybe they have too much to do and too little to do it with. I ask that during your deliberations you consider these things. When new and existing regulations are being enacted and enforced, some consideration should be given to not just impact on wetlands, but to impact on those who are enforcing the regulations and those upon whom they are being enforced.

Mr. BROWN. We do want to thank you for inviting us, Bob, committee. We feel like we have got a chance now to tell our side of it, which we have not had a chance before, and we appreciate it, we want you to know. And this is my son-in-law, Steve Woodall. I am going to let him read it for me.

Mr. WOODALL. I am his son-in-law and I have been in his family for almost 30 years.

The property we are dealing with is property we used to cut hay and bush hog on, so we have a long history of knowing what this property was before these problems were artificially developed.

I am going to read his statement. His statement begins with:

My name is H. Grady Brown and I am a resident of Carroll County, Georgia. I am a retired president of a Villa Rica, Georgia hosiery mill and am a landowner and cattle rancher. I worked my way up from the floor of the hosiery mill to become owner and president of my own company. I spent my weekend and evenings building my cattle farm.

Today, I want to tell you about a tough situation I have been forced into, stuck between the Georgia Department of Transportation and the U.S. Army Corps of Engineers. Essentially, the Georgia Department of Transportation in advertently flooded some of my farmland, creating a wetland in the eyes of the Corps. Now the Corps will not allow the Department of Transportation to fix the problem they have created. I am stuck with useless, swampy land because the Corps insists it is a protected wetland even though it was created by accident.

My farm is located in Villa Rica, Georgia, a once rural area of Georgia which is quickly developing as Atlanta expands. It has been hard, but I have worked to keep my land agricultural and undeveloped. A portion of my farm, which is located behind my house, lies alongside Highway 78, just west of the city of Villa Rica. The rear portion of this property has a creek running through it which provides water for my cows and my farming operation. I have owned this land since the mid-1940's and have cut hay and kept cows along the banks of the creek since that time.

In approximately 1959, the Soil Conservation Service came through and dredged and cleared the creek running along and through my property in order to better develop the watershed for a water reservoir that was built in Temple, Georgia. This lake, Lake Buckhorn, was fed in part by the creek running through my land.

When the Service did this, any wetland along the creek was drained. During the mid-1980's, the city of Villa Rica and the Georgia Department of Transportation built a road off of Highway 78 to open up an industrial park for the city. That road cut across my property and crossed the creek. The City and the Department built a bridge over the creek so that my cattle could pass under it and they could continue to graze on the western portion of my farm cutoff by the new road. The continued use of this portion of my property was essential to my agreement to sell the right-of-way for this road.

Unfortunately, this work diverted the path of a small north-south feeder creek or drainage ditch which ran into the larger east-west creek running across my property. The Department actually put a dog-leg turn in this small creek. This diversion caused a buildup of water and silt on my property and began to cause a swampy area on the 10-acre field which was left on the western side of the new road across from my home. This swampy area was further enlarged as industrial development began in the new industrial park. A large distribution facility was built on the property adjoining mine. The driveways going into the property further diverted and blocked the small feeder creek where it ran into the larger creek crossing my property and added more water and silt to the problem. By the late 1980's, the 10-acre field had become a wet, grown up swampy area. I could no longer cut hay or keep cattle on the property.

Around 1990, I began to contact the Georgia DOT and the city of Villa Rica to discuss the problem which their development had caused. After many complaints and the threat of legal action against the Department and the City, the Georgia Department of Transportation admitted it was their fault and agreed to dig out the channel of the small feeder north-south creek to drain the area which had become swampy, to try to alleviate the damages caused. They did this in approximately 1995 and after they did this, the area started to get better, to drain and go back to the farmland it had previously been. However, soon after the work was done to alleviate the blocked feeder creek the Georgia Department of Transportation was contacted by the U.S. Army Corps of Engineers. Apparently someone had complained that the Department and I were trying to drain wetlands.

The U.S. Army Corps of Engineers threatened the Georgia Department of Transportation with stiff fines and penalties if they did not reblock the now cleared feeder creek. In response to this, the Department came back in and built dams all along the path of the feeder creek. I think there are approximately 12 of them that they have built. Now the water from the adjoining property does not have a path to get into the larger east-west creek which runs along my property. It simply spreads out over my land, causing a swamp in an area which was once open fescue pasture. It has made my land useless and has created an ugly eyesore since it has basically been condemned as wetlands. No one can see my land as the trees and grasses continue to grow.

My only desire is to return the property to the way it was so that I can use it for my cattle and to cut hay. Additionally, this land is located now in an industrial park in the growing city of Villa Rica. It has been my desire to leave this property to my children and grandchildren, expecting one day that they could develop it. Property adjoining this field is selling for in excess of $25,000 an acre. The property is now useless and I do not understand how the actions of the City, the Department of Transportation and the adjoining landowners to develop property around my land can be allowed to create a situation which takes the value of my land.

I do not want to sue the Department, the City and my neighbors. I simply want my land returned the way it was. The simple way of doing this is to clear the feeder creek and allow me to drain the property. I do not want to change the land from how it was when I bought it, I simply want it returned to pasture land running along the banks of a creek.

Thank you.

Mr. BROWN. Thank you for your time.

Mr. MCINTOSH. Thank you both, we appreciate that and we will have some additional questions for you at the end of the panel.

Our final witness on this panel is Mr. Wayne Shackleford, who is the commissioner of the Georgia Department of Transportation. Mr. Shackleford, welcome, thank you for coming.

Yes, Mr. Barr?

Mr. BARR. Excuse me, Mr. Chairman, I would just like, for your further background, to state that during the time that I have had the honor of representing the Seventh District in the Congress—the same length of time as you have had that pleasure and honor with the Indiana Second District, we have worked very closely with Mr. Shackleford, with the State DOT, with Mr. Max Golden, who is our representative from the Seventh District, with Chairman Johnny Gresham, who is from this county, and have found Mr. Shackleford, the folks that work in his office and the Board extremely responsive to working with us to try and identify and work through problems and it is a particular honor to have Mr. Shackleford here today from his very busy duties on behalf of the people of Georgia.

Mr. MCINTOSH. Thank you. Thank you very much, Mr. Shackleford, for joining us.

Mr. SHACKLEFORD. Mr. Chairman, Congressman Barr, I want to thank you for the opportunity to meet with you today and share with you our deep concerns about a process that needs re-engineering, a process that has lost its customer focus. I refer to the process of managing and regulating our Nation's water resources.

The Georgia Department of Transportation makes every effort to comply with our Nation's wetland policies. We believe in these goals. However well intended these goals are, these policies are, the administration has become an impediment in meeting our State transportation and our economic needs of our State. What we need is a renewed Federal and State partnership which recognizes the

value of all our resources, both natural and manmade, that are essential to sustaining our quality of life.

The Clean Water Act was intended to protect this Nation's water resources. However, the Corps of Engineers and the Environmental Protection Agency have greatly expanded their jurisdiction and created a bureaucratic maze through Memorandums of Agreement with other Federal agencies. Thus, in effect, the Federal agencies have extended the extent of congressional law.

For example, one Memorandum of Agreement between the Corps of Engineers and the Fish and Wildlife Service allows the Fish and Wildlife Service to request denial of the permit based on the premise that the wetlands are of national importance. Mr. Chairman, Congressman Barr, there is no definition of national importance in the law. Please note that in the Memorandum of Agreement between the Corps and the Fish and Wildlife Service, which was provided to you, the purpose is to minimize, to the extent practical, duplication, needless paperwork and delays in the issuance of permits. This Memorandum of Agreement has the exact opposite effect.

Furthermore, the Fish and Wildlife Service is able to control the Corps of Engineers' actions because of a process that we are required to follow. Our Department provides an extensive information package to the Federal agencies that provides the Department's best alternative and a purely wetland minimization alternative. The wetland minimization alternative which we are required to do by this process values wetlands above homes, businesses, churches, schools, historic resources and other environmental considerations.

The Department meets onsite with the Federal agencies to answer questions concerning the proposed alignment and impacts. Unfortunately some representatives show up unprepared and thus in turn adversely affects the service that is our responsibility to provide to our customers and theirs as well.

After the field visit, the Federal agencies are supposed to submit timely comments. However, our Department is currently waiting on comments from the Fish and Wildlife Service on over 15 projects for which the field visits were held as long as 15 months ago. The reason given to us for the lengthy delays have been lack of personnel and time. We believe that the real reasons are lack of ability to make decisions and a refusal to accept validity of our analyses.

Mr. Chairman, Congressman Barr, this process has created a bureaucratic nightmare resulting in enormous delays and since 1989, we estimate an additional cost of over $100 million in our State alone. For example, Riverside Parkway widening in Rome, GA. We have been attempting to obtain a permit for over 6 years. The current roadway is a dangerous two-lane facility which has experienced numerous accidents. As recently as 1995, this stretch of road, which is a mere 1½ mile long project, has experienced 35 accidents resulting in 10 injuries to people.

Our desire would be to fill only seven-tenths of an acre of wetlands which we have offered to mitigate with 4.1 acres of created wetlands on the site, which will result in a 25 percent net increase to the stream basin. We have shown no industrial pollution to occur in the project impact area. Yet we have been asked by the

Federal agencies over and over for additional information. Due to the regulation process that allows Federal agencies to never come to closure, we cannot construct this most needed project.

The Homer bypass in Banks County, GA. The alignment for this project had been developed over a 12 year period in consideration of a reservoir proposed by local government and right-of-way was subsequently purchased at a cost of $1.6 million. However, the permit was denied by the Corps. An alternate to avoid wetlands would have displaced 2 businesses and 10 homes at an additional cost of $3 million.

Mr. Chairman, Congressman Barr, all of this additional cost to avoid only 7½ acres of wetlands which we offer to replace with 56.9 acres of wetlands.

You have heard the Villa Rica, GA case from Mr. Brown. He is a victim, caught between our responsibilities to maintain a roadway and a Corps of Engineers who will not allow us to do so. Yes, we have in fact put the check dams back in place. Yes, we have continued to divert water from its natural flow along that road to the main tributary to that stream he described, to a minor tributary.

Mr. Chairman, Congressman Barr, we have had numerous problems with the Corps wetland regulatory policies. However, we have had the opportunity to work together on some successes as well.

To date, our department owns approximately 6,700 acres of wetland mitigation throughout our State scattered on about 60 locations. For each acre we fill, we are currently replacing it with approximately 5 acres. Still, some of the Federal agencies cry that we do not do enough.

Mr. Chairman, Congressman Barr, there are not enough success stories, but we believe that can be changed. Congress has been struggling with reauthorization of the Clean Water Act for several years. This reauthorization should address the division of the Corps and the U.S. Environmental Protection Agency. Unnecessary Memorandums of Agreement should be eliminated. Let the law stand on its own merits.

The timing of this hearing could not be more appropriate. Please note the letter we provided that we were just advised in May 1997 that the Fish and Wildlife is withdrawing from participating in our field reviews. These field reviews are the actual cornerstone for resolving our differences on projects. Could it be that some Federal agencies do not want to resolve disputes in a timely manner and to partner with their customers?

The Clean Water Act should be amended to require the Federal agencies to meet us halfway and to provide practical alternatives instead of asking us as applicants over and over and over for additional and unnecessary studies. This could eliminate the lengthy string of requests by Federal agencies, substantially shorten the time to resolve issues.

In closing, Mr. Chairman, Congressman Barr, we believe that our Department and the Corps of Engineers can work together to provide a transportation system and better protect wetlands. But only if the regulatory procedures and policies can be streamlined.

I want to share with them in some of the successes that we have. Preservation such as you have seen today—Phinzy Swamp in Augusta; Bowen's Mill Pond on U.S. 84—and I would like them to share with pride in our transportation successes.

And I thank you for the privilege of appearing.

[The prepared statement of Mr. Shackleford follows:]

STATEMENT OF
THE HONORABLE WAYNE SHACKELFORD
COMMISSIONER
GEORGIA DEPARTMENT OF TRANSPORTATION

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS

JUNE 16, 1997

Mr. Chairman and Members of the Committee, my name is Wayne Shackelford, Commissioner of the Georgia Department of Transportation. Thank you for the opportunity to meet with you today and share with you our deep concerns about a process which we believe has lost its customer focus and is in severe need of reengineering. I refer to the process of managing and regulating our nations water resources. The Georgia Department of Transportation makes every effort to comply with our Nation's wetland policies. We believe in these goals. However well intended these policies are, the administration has become an impediment in meeting our state transportation and economic needs. What we need is a renewed federal and state partnership which recognizes the values of all our resources, both natural and manmade that are essential to sustaining our quality of life.

The Clean Water Act was intended to protect this Nation's water resources. However, the Corps of Engineers and the Environmental Protection Agency, by developing additional cumbersome regulatory policies, have greatly expanded their jurisdiction and created a bureaucratic maze. Thus in effect, the Federal Agencies have extended the intent of Congressional Law.

To complicate the process even more, various Memorandums of Agreement have been instituted in the past between the Corps of Engineers and various other Federal Resource Agencies such as the U.S. Fish and Wildlife Service and Environmental Protection Agency just to name a couple.

The original intent of these Memorandums of Agreement was to insure that the requirements of the Clean Water Act were properly administered through interagency consultation and cooperation. However, these Memorandums of Agreement have not streamlined the process. The Memorandums of Agreement actually have tied the hands of the Corps of Engineers preventing the quick movement of projects through the regulatory process and the expeditious issuance of permits.

For example, one Memorandum of Agreement between the Corps of Engineers and the Fish and Wildlife Service allows the Fish and Wildlife Service to request denial of the permit based on the premise that the wetlands are of national importance. Mr. Chairman and Members of the Committee, there is no definition of national importance except in the opinion of Fish and Wildlife Service. Through this Memorandum of Agreement the Fish and Wildlife Service threatens the Corps of Engineers with elevation procedures on much needed transportation projects. This obviously creates delays.

In a sense the Fish and Wildlife Service is able to control the Corps of Engineers actions. We do not believe this is the intent of the Clean Water Act, but the Memorandums of Agreement between the Corps and Federal Agencies have allowed those other than the Corps to determine direction.

Please note that in the Memorandum of Agreement between the Corps and the Fish and Wildlife Service which has just been handed to you, the purpose is to "minimize, to the maximum extent practicable, duplication, needless paperwork and delays in the issuance of permits."

Mr. Chairman and Members of the Committee, this Memorandum of Agreement has had the exact opposite effect.

Briefly the current process is as follows:

- The Department participates in a Local Coordination Procedure with the Corps, Fish and Wildlife Service and Federal Agencies to incorporate their comments in the development of a project. The goal is to narrow alternatives for later use in an environmental document.

- The Department provides an EXTENSIVE information package to the Federal Agencies which contains project layouts, need and purpose information, tables of acres of wetland impacts, cultural, and economic impacts. This information provides the Department's best alternative AND a purely wetland minimization alternative. The wetland minimization alternative which we are REQUIRED to do by the process values wetlands above homes, businesses, churches, schools, historic resources and other environmental considerations. As you can see on the display, the wetland minimization alternative impacts a school and a church. It makes no effort to balance these concerns as our alternative does.

- The Department meets on-site with the Federal Agencies to answer any questions concerning the proposed alignment and impacts. The field visit which could last up to a two days is

conducted to explain the project and answer ANY questions the Federal Agencies may have. Unfortunately some representatives show up unprepared. This is simply not good customer service which in turn adversely affects the service we have to provide to our customers.

- After the field visit the Federal Agencies are suppose to submit comments timely and the Department complies with their requests when possible to minimize impacts to the wetlands.

- The Department is currently waiting on comments from the Fish and Wildlife Service on over fifteen projects for which the field visits were held as long as fifteen months ago. The reasons given to us by the Fish and Wildlife Service for their lengthy delays has been lack of man power and time. We believe that the real reasons are a lack of ability to make decisions, a refusal to comply with their own timelines and a refusal to accept the validity of our analysis. The Fish and Wildlife Service does not seem capable, by inspection of photos and written material, of identifying alternatives which obviously should be selected for project. (PLEASE NOTE OUR DISPLAY.) Obviously there is enough room to widen toward the railroad which is obviously the better alternative as it is put the transportation facilities in a more condensed corridor which obviously would be the most practicable alternative. However, the Fish and Wildlife Service feels it must make a field check of wetlands on BOTH sides of a roadway before agreeing that widening toward the railroad should be included as part of the alternatives and studied in the environmental document. Obviously this additional work is just an exercise in delay.

However, Mr. Chairman and Members of the Committee, this process has created a bureaucratic nightmare resulting in

enormous delays and additional costs. Since 1989, we estimate the Department has incurred a cost increase of over **one hundred million dollars** as a result of inflation and changes in project scopes due to their delays.

- Homer Bypass in Banks County Georgia - The alignment for the Homer Bypass had been developed over **twelve years** ago in consideration of a proposed reservoir by the local government, and the right-of-way was subsequently purchased at a cost of $1.6 million. However the permit was denied by the Corps. An alternative to avoid wetlands would have impacted 2 businesses and 10 homes, thus resulting in the relocation of 10 families at an additional cost of **$3 million.** Mr. Chairman and Members of the Committee, all of this additional cost was to avoid only 7.5 acres of wetlands which we offered to replace with 56.9 acres of wetlands.

- Thomson Bypass, McDuffie County, Georgia - The Thomson Bypass alignment was developed over 10 years ago. It was developed after many lengthy consultations with the local government as to where it should be located to best suit their needs and provide economic growth to their community. During this time, approximately **$750,000** was spent on the preparation of the plans. We applied for the Corps of Engineers permit over 3 years ago. We have been in consultation with the Federal Agencies several times and have provided a tremendous amount of information as to why our alternate would best serve the public need. This project would impact 20 acres of wetlands distributed over 16 sites rather than one intact wetland area. We have studied another alignment to avoid the wetlands, but the additional cost would be approximately $11 million with 16 houses and 8 businesses

affected. Due to the complexity of the Federal Regulatory Policies, we were notified only a few weeks ago by the Corps that more studies and alternatives will be required. Mr. Chairman and Members of the Committee, again this further delays a needed project.

- Villa Rica, Carroll County, Georgia - We were conducting a normal maintenance activity by improving our roadside ditches. This caused a slight modification of only 3.8 acres of wetlands which was located both on and off of our right-of-way. We were notified by the Corps to return the roadside area to its previous state, which they considered a wetland, or face civil and/or criminal prosecution. This area is adjacent to our roadway fill, and we were concerned that the wetness could cause additional maintenance problems and flooding of adjacent property. We conducted numerous discussions with the Corps and property owners over a span of nearly **two years** to justify the need for our activity. However in the end, to be in compliance with the Federal regulations we had to fill in the area that had been ditched.

- Riverside Parkway Widening, Rome, Georgia - We have been attempting to obtain a permit for over 6 years. The current roadway is only a two lane facility and has experienced numerous accidents. As recently as 1995 this stretch of road which is a mere one and a half miles long has experienced 35 accidents resulting in 10 injuries to people. Mr. Chairman, we only want to fill seven tenths of an acre of wetlands which represents less than 6% of the total wetlands at this site. However we offered to mitigate this with 4.1 acres of created wetlands at this site which will result in a 25% net increase to this wetland site. We certainly admit that the roadway is located in an area where businesses in the past could have

possibly contaminated THEIR property. We have been asked by the Federal Agencies over and over for additional information. We have complied and even obtained independent analysis by private companies. The area that our project impacts WOULD NOT disturb any contamination. Due to the regulatory process that allows Federal Agencies to never come to closure, we do not have a permit to fill only seven tenths of an acre of wetlands to widen the road and help stop the accidents.

Mr. Chairman and Members of the Committee, we have had numerous problems with the Corps' wetland regulatory policies. However, we have had the opportunity to work together on some successes also.

- Phinzy Swamp, Augusta, Georgia - Phinzy Swamp is a 1,619 acre swamp that the Department purchased for wetland mitigation. In a partnering agreement, the Georgia Department of Natural Resources is managing this site for fish and wildlife habitat.

- Bowen's Mill Pond, Brooks County, Georgia - This site is a 444 acre Carolina Bay located in south Georgia which was purchased for wetland mitigation. The Department is developing a management plan for the site. In the future with proper management the site could provide foraging habitat for the Federally Endangered Woodstork.

- In Long County, Georgia we purchased 1,300 acres along the Altamaha River for wetland mitigation much of which is pristine bottomland hardwoods.

To date the Georgia Department of Transportation owns approximately 6,700 acres of wetland mitigation throughout the State scattered over approximately 60 sites. Mr. Chairman and Members of the Committee, for each acre that we fill in, we are currently replacing it with approximately 5 ACRES. Still some of the Federal Agencies cry that we do not do enough.

Mr. Chairman and Members of the Committee, there are not enough success stories, but we believe that can be changed. Congress has been struggling with reauthorization of the Clean Water Act for several years. The reauthorization should address the division of the Corps and the U.S. Environmental Protection Agency. Unnecessary Memorandum's of Agreement should be eliminated. Let the law stand on it's own merits.

Mr. Chairman, the timing of this hearing could not be more appropriate. Please look at a letter that you've just been handed. We were just advised in May, 1997 that the Fish and Wildlife Service is withdrawing from participating in our field reviews. These field reviews are the actual cornerstone for resolving our differences on projects. This obviously indicates some Federal Agencies **do not** want to resolve disputes in a timely manner and partner with their customers.

The Clean Water Act should be amended to REQUIRE the FEDERAL AGENCIES to PROVIDE PRACTICABLE alternatives instead of asking the applicants over and over for additional and unnecessary studies. This certainly would eliminate the lengthy strings of requests and denials by Federal Agencies and could SUBSTANTIALLY shorten the time to resolve issues.

In closing Mr. Chairman and Committee Members, we believe that the Georgia Department of Transportation and the U.S. Army

Corps of Engineers can work together to provide a transportation system and better protect wetlands but only if the regulatory procedures and policies can be streamlined.

Thank you.

Mr. MCINTOSH. Thank you very much, Mr. Shackleford, that is enormously helpful in terms of understanding. I have got several questions that your testimony raises.

I appreciate all the members of the panel, and now we will go and alternate off on questions. Actually let me start right away, Mr. Shackleford, with you.

You mention the Fish and Wildlife Service has indicated in a letter to you, and I think we have got a copy here that I will submit into the record, that they no longer will participate in the field reviews. Is that—and I have not had a chance to see the letter—but is that a new national policy of theirs? And their absence in those field reviews, will that mean that the other agencies will be able to go ahead and make decisions without them?

Mr. SHACKLEFORD. It probably means that the decisions will not be made without them. They could be. I think you know that U.S. Fish and Wildlife can ask the Corps to elevate to a higher level any decision the Corps is about to make that they do not concur in. So very honestly, I do not see that as an opportunity to speed the process up.

Mr. MCINTOSH. Do you think it will inevitably slow it down?

Mr. SHACKLEFORD. Yes, sir.

Mr. MCINTOSH. And is that a final decision or is that something they are putting on the agenda at your next coordinating meeting in July?

Mr. SHACKLEFORD. The letter to the Corps says that we will not be back. It is addressed to Necholus Ogden; "Therefore, I am going to withdraw the Service from the upcoming May 28–29 PAR, the Preferred Alternatives Report, and future PARs until we can agree on what they are intended to accomplish. I will utilize this saved time to address some of our PAR backlog."

Mr. MCINTOSH. We will put that on our agenda to find out what is going on.

What would you say the major reforms are that could be made in this process to make it much more streamlined from your perspective?

Mr. SHACKLEFORD. Well, I think if we are going to make wetlands preservation reach the potential that it deserves, that true partnering is going to have to exist; that we have got to recognize that in addition to the preservation of wetlands, we have the responsibilities to preserve historic resources and to share impact on our people, their homes, their churches, their schools and businesses. Wetlands banking, mitigation banking—you heard the discussion earlier about how one compensates someone whose right-of-way is taken, pay them for the value of what you are taking, pay them for the consequential damages on the remainder, mitigate the impacts on their lives as best you can.

Mitigation is a clear and viable or practical alternative to the wetlands issues. When we are mitigating at the ratios we are mitigating, it should not be months and years while decisions are made.

Mr. MCINTOSH. And to speed up the process so everyone can get their answer. And do you think a banking approach would work where there would be already mitigated areas that could then be offset against future projects?

Mr. SHACKLEFORD. I very much do.

Mr. MCINTOSH. Mr. Dabbs, let me ask you, you mentioned that you and your engineer had not even received a telephone call back from the Corps of Engineers. In the written testimony, does that remain the case?

Mr. DABBS. Our engineer, who is David Bleetman with Blue Ridge Engineering, he has made repeated calls to the Corps of Engineers and has asked them when would they be able to come by, visit the property as they stated they would need to do, and review it with him and then tell us what was necessary to do to resolve the problem. And the answer that he gets from them is that they are so overworked or so far behind, they have got other projects that are ahead of us and that they cannot give him any date as to when they might be able to come back or even be able to review the material, which this is one of the books that we were required to send to the Corps.

Mr. MCINTOSH. And his conclusion is that you are not even under the jurisdiction of the Corps because you would be covered by the national permit for small areas?

Mr. DABBS. No, I made the statement that I am not sure that we are. But due to the fact that at one time it was 10 acres, it was reduced to 3 acres and now it is reduced to 0.3 of an acre; we started this project in April 1996. I am not sure and have not been able to find out as to when the acres were reduced. We have continuously, through our engineer making phone calls to the Corps, the local Corps here in Atlanta, he has asked them would they release the 100 acres. Everything, as I stated awhile ago, that he has determined to be in the wetlands, to where we could go on with our development, and has been refused, that they could not release any of it until they had time to study the material and to visit the property.

We have a nice entrance that we have built going into the subdivision. We have landscaped it with nice plants. We were in the process—we had got our irrigation system set in that bed of plants, we lacked 10 feet of pipe of tying it into our sales trailer and the water meter that is adjacent to it. I even asked him to ask them could we, about a month ago, for the first time since last fall, we had some weather where the land got dry and these plants were hurting for water, I said ask them can we just connect our pipe, we have got to run 10 feet to where we can water these plants. We have got $1,000 or whatever in them and we hate to see the plants die. And he has even refused that, that any work being done there was subject to the $10,000 a day fine or $50,000, which you know, that would even ruin a rich man, let alone somebody like us.

Mr. MCINTOSH. In your estimation, why are they refusing even to make common sense determinations like that? Is it an effort to increase the monetary punishment?

Mr. DABBS. They said they could not do it until they had time to come back and visit the property or review the property.

Another problem that I have got is we have available to us in Bartow County, it is a national wetlands map, which shows property that could potentially be wetlands. And of course I was told by the people that visited the property when I showed them this wetlands map which had our property on it, which showed no wet-

lands on it, that this did not mean anything, that this was just a guideline. So, why print them?

Mr. MCINTOSH. By the way, what was the plant on the location that they decided was a hydrophilic plant?

Mr. DABBS. Where were they located?

Mr. MCINTOSH. No, what type of plant was it?

Mr. DABBS. All I know is I was told that this was a spreadly type weed that was considered on the endangered species. As far as knowing the name, I have no idea.

Mr. MCINTOSH. That is interesting. The reason I asked is that when I was working with Vice President Quayle, we went into great detail about the manual and it became very clear to me then that the scientists do not even agree as to what areas are sensitive environmental areas to be protected as wetlands. And sometimes they go on the existence of plants where there is not necessarily water because the plants can live in dry areas as well. And so that leads to occasionally bizarre results where there is no water but they still call it a wetland. And I know that those problems continue to exist.

My time has elapsed on this session. Mr. Barr, do you have any questions for this panel?

Mr. BARR. Yes, thank you, Mr. Chairman.

Mr. Dabbs, let me just make perfectly clear that I understand the situation here. Your engineers have told you that you can resume work on the project outside of the wetlands area, but you have not done so. Have you actually been threatened with criminal prosecution if you move forward?

Mr. DABBS. Oh, yes, I have, with the letter that I got from the Corps of Engineers. He advised me to go ahead back to work. He felt like—I think his feeling was that this would maybe enact the Corps to respond to us and try to get ours finished up. But he has advised me that since he wrote that letter, he has had no information come from them, I have had none and neither one of my partners. But there is no way that we can take a chance to go in there and do anything now without being subject to a $60,000 a day fine or being put in prison.

Mr. BARR. Mr. Brown, has there been any threat of throwing you or State DOT in jail as part of your efforts to just get your property back the way it was?

Mr. BROWN. I did not take it that way, but they did tell the DOT if you do not put—plug these ditches up, we are going to fine you $125,000 a day and of course the DOT did not want to have to pay $125,000—they made them come up there by telling them they were going to charge $125,000 a day.

Mr. BARR. Thank you.

Commissioner Shackleford, I think I have the amount right here. I think in your presented testimony you indicated that since 1989, you estimate just that your Department alone has incurred a cost increase of over $100 million as a result of inflation and changes in project scopes due directly to the delays that you all have experienced. Where does that $100 million come from? Do you all just make that up out of thin air? How is that going to be paid? Is it the taxpayers of Georgia that are having to foot that bill?

Mr. SHACKLEFORD. Yes, sir. Mr. Congressman, there are only two sources of motor fuel tax funds in our budget, the Federal Highway Trust Fund and the Surface Transportation Act, the Intermodal Surface Transportation Efficiency Act of 1991 and Georgia's Motor Fuel tax. There is a third source of revenue in the Governor's Road Improvement Program and those are general obligation bonds since 1991, about $125 million a year. Each year that the delay drags on on a permit carries with it the increased right-of-way costs, the increased construction costs, a very severe impact on lives. People who are waiting for a decision cannot plan the rest of their lives. That is something that bothers me greatly, sir.

Mr. BARR. Is $100 million important to the people of the State of Georgia or is that an insignificant amount?

Mr. SHACKLEFORD. It is a very substantially important amount to the people of the State of Georgia, sir.

Mr. BARR. Mr. Shackleford, in focusing—I know you have expended a great deal of time in trying to work with Mr. Brown and resolve the situation as he described it. In your view, do you believe that the wetlands created on Mr. Brown's property were the result of State DOT's normal maintenance activity on roadside ditches?

Mr. SHACKLEFORD. Those wetlands were created when a driveway was installed without a side drain. The water that normally traveled down that road to the lower stream then was diverted down his driveway across the properties and created the new area of wetlands. There is no question but what they were created by the Department of Transportation and the lack of a side drain at that driveway, sir. And it was the correction of that issue that led to the actions against my Department.

Mr. BARR. We sometimes have a tendency to focus on sort of the big picture and sums of money, but you touched on something else that I think, and I want to make sure on this, is important to your work and the work of your commissioners. And that is the public safety. You spoke specifically I think about that with regard to a project that is also in the Seventh District and that is the Riverside Parkway widening in Rome, GA.

Could you just clarify, is the primary reason why you all have sought to correct that situation there simply for the public safety, the safety of people to travel on that relatively short stretch of highway?

Mr. SHACKLEFORD. Yes, sir, it is a mile and a half in length and would provide a divided roadway, substantially reducing danger to lives. You know the numbers, Congressman, our interstates, our limited access highways, are five times as safe as county and city roads and streets on the national average. Our other State routes are twice as safe. We have a need. You heard my testimony on the number of wrecks and the number of injuries. It is that simple.

Mr. BARR. Is the—let me also clarify with regard to your testimony exactly what you are saying here. I do not read your testimony or interpret your testimony as saying that the issues that are raised in trying to protect as part of the overall equation here wetlands in our country are to be ignored.

Mr. SHACKLEFORD. Oh, I very much—I began my testimony by saying we totally subscribe to the fundamentals, we very much be-

lieve in it, we are very proud of what we have done at Phinzy Swamp, we are very proud of a 1,300 acre mitigationsite on the Altamaha in Long County mitigating 129 acres on U.S. 341. We are very proud of 443 acres in Bowen's Mill Pond. We totally have that responsibility. We want to be a part of the solution, we want to share with the environmental agencies in pride in the protection of those resources. We would like them to share in the transportation solutions that make this great State and this great Nation competitive in a global environment.

Mr. BARR. So your position is that the notion and the philosophy underlying the Federal law that does protect wetlands is good and it is sound, but the process that brings us to this situation today where we have these delays, the threats of our citizens being put in jail, has really become an impediment to the effective use of the wetlands law itself.

Mr. SHACKLEFORD. You can be assured putting those check dams back in that road made more sense to me than becoming the victim of a civil fine or criminal penalties.

Mr. BARR. Well, we much prefer to have you here as a free citizen instead of in shackles as well, Mr. Commissioner.

Mr. MCINTOSH. Who is Bill Phillips, by the way? He is the man who received the letter.

Mr. SHACKLEFORD. Yes, and he is one of my staff people.

Mr. MCINTOSH. One of your staff people.

Mr. BARR. Just one other thing briefly to followup on a question the chairman had. With regard to these Memorandums of Agreement or Memorandums of Understanding that seem to now, as you have indicated, be interjected into this process and really have led to further delays, is this a new phenomenon that you are seeing or is this a problem that you have witnessed for quite some time?

Mr. SHACKLEFORD. Mr. Congressman, the Corps of Engineers is a victim of the process. They are prisoners of the process. They have the legal responsibility but they have the clear knowledge that EPA can veto Corps of Engineers and the other Federal agencies can require it to be elevated. They need the clear powers to make decisions and take actions.

Mr. BARR. Thank you.

Mr. MCINTOSH. Let me followup on that question. So by implication, one way in which the Corps would be able to act more responsibly would be if we removed the EPA veto of their decisions on wetlands permits?

Mr. SHACKLEFORD. My testimony was that they should be split out and let the law stand on its own merits. That is correct, sir.

Mr. MCINTOSH. Let me followup on a slightly different train of thought rising from some of the questions Bob asked. You indicated some statistical analysis of the safety of interstate and limited access highways.

Mr. SHACKLEFORD. Yes, sir.

Mr. MCINTOSH. And State roads compared to local street traffic. Could you, for the different projects that we have discussed and that you have in your testimony and perhaps the east-west highway that we were talking about in the first panel, do a statistical analysis for us to determine how many anticipated lives would be saved by upgrading those?

Mr. SHACKLEFORD. There is research that has been done under the guidance of the Transportation Research Board, the Federal Highway Administration that clearly spells out the data. In our own State, in the last year's data, we have on the State system, 1.68 fatalities per 100 million miles traveled. We have a much lower number on the interstate system, a substantially higher number on the county and city nondivided median roads. The number for my entire State during 1995 was 1.75, it is 1.68 on the State system. It is substantially lower than that on limited access highways. And you heard Jim testify in behalf of the alternative that is a limited access and the fact that the more driveways that are injected into the system, the greater the numbers.

That statistical data can be analyzed. Cobb County is very capable of having their consultants do it, we are available to help them, sir.

Mr. MCINTOSH. I would appreciate that and then you had mentioned a couple of other projects in your testimony. If you could provide that analysis for us. And we will keep the record open——

Mr. SHACKLEFORD. We can, sir.

Mr. MCINTOSH [continuing]. For you to do that.

Mr. SHACKLEFORD. Yes, sir.

Mr. MCINTOSH. It is an aspect that sometimes is overlooked, although it is interesting, in other areas of regulation. In health and safety, we worry about concerns of increased statistical probability of say somebody who eats dirt next to a utility having cancer develop, and the 1 out of 10 million, 10 to the minus 7 is the statistical way of expressing it, and that triggers concern for us in the regulatory process. So it would be interesting to see what possible increased health risks are being caused in pursuit of this wetlands policy.

Mr. SHACKLEFORD. And in your great State of Indiana, the numbers are the same, across this Nation. Limited access highways are the safest. Other well laid out roads, State roads are generally sounder than county and city roads. An operation like Cobb County as fundamentally adequate as their staff is, a Commission that is willing to make the hard decisions, to hire the proper consultants, their limited access roads have the same numbers that we have on ours on the State system, sir.

Mr. MCINTOSH. Thank you very much. I appreciate it. I have no further questions. Mr. Barr, do you have questions for this panel?

Mr. BARR. Just one followup. Mr. Dabbs, you talked about the construction jobs and I think you used the figure of 165 construction jobs. Are those folks unemployed at this time, that would be normally working and anticipated to be working on your project?

Mr. DABBS. Some would probably be or they have had lost hours. The 165 I am referring to is we had lined up on April 3, the day we got the Cease and Desist letter from the Corps of Engineers, we would at this time be building 20 to 25 homes that we would have approximately two-thirds completed. The subdivision above us had none started, were not as far along as we were and as of today, they have probably got 15 homes built in there. It is according to which of our customers went somewhere else, found lots—which I know they had a period of time that they lost work. Some of them still may not have. So the 165 is an estimate from knowing how

many numbers of people would be working on that project today, including plumbers, electricians, carpenters, painters and that type. Unless they found work other places, then they are out of work.

Mr. BARR. But these are real people, men and women who are trying to be productive and work and need to support family and provide for the health and needs of their families, that are no longer able to do that, at least based on the work that your project would have offered to them.

Mr. DABBS. That is correct. And like I say, I have living testimony, standing in the rear is Mary Hansard who is the wife of one of the partners that I said awhile ago was one of the working partners. She quit her job and had been working for months sending letters to builders to sell the lots to, that were going to build the homes. She had everything set up for the second week in April and when this came—she had to call all of them and tell them what had happened. Those buyers have gone other places. She has been totally—to my knowledge, has been totally out of income since that date because this is all she had lined up. Of course, we really felt like that we would get this resolved in 30 to no more than 45 days. But like I say, the last information or correspondence that has come to us as the developers is this Cease and Desist letter that the Corps mailed us on April 3. The only other information we get is where our engineer has made telephone calls to the local Corps office here in Atlanta.

To answer the question that you asked me awhile ago more clearly, this is what it says in our Cease and Desist order: "We are required by Federal regulation 33 CFR 326.3 to issue a Cease and Desist Order to all persons responsible for or being involved in the performance of unauthorized work." We come under that because we did not file a nationwide permit that we were not familiar that you had to, and still I am told you do not have to on certain lands unless you think you have got wetlands on it. If you do not, then it is a violation, to my understanding. Which we did not think we had any, if I had known about it. But we did it without knowing anything about it or any of our people that we had hired, the soil scientist, the Department of Health, the civil engineer, none of them told us this.

But when you get a letter that says this, any work performed within our jurisdiction as of this date does not assure forthcoming authorization. In addition, any unauthorized work which you may perform may subject you to civil and/or criminal prosecution, civil fines of up to $10,000 per day of violation, criminal fines of up to $50,000 per day of violation and imprisonment are provided along with the injunctive relief including restoration of the area.

To me, this is strong. There is just no way we could take a chance to violate this. It has just been a nightmare to us. What really scares me is when we talk to other people that have friends or somebody that something similar to this and they say you will be lucky if you hear from them in 12 months.

I heard Mr. Shackleford make a statement awhile ago they have had a project they have been working on, have not had anything done in 15 months. That is what I understand.

So, we are subject to be the same thing. Right now, we do not know, it might be 2 years before we hear a thing. We were in process of getting our final plats stamped by Bartow County. They have had to hold up that because of this, that they cannot—until we get relief by the Corps of Engineers. They do not know what they are going to make us do, so they have had to hold our final permit until we get relief from them. And we are just at a standstill. I mean my opinion, I always looked to the Corps of Engineers as being the people that help build lakes, that help to the needs of the people, boating, building camp sites, helping the American people. But what we are subject to here is just absolutely a nightmare and by taking the land like they have took our land for this period of time and not knowing when it will be released or if they will take it without compensation, as Mr. McIntosh said awhile ago. I mean this is something that the American people would only think that this could happen in another country, not in the free United States of America.

Mr. BARR. Thank you, Mr. Dabbs.

Mr. MCINTOSH. Thank you very much. Bob, did you have any further questions of this panel?

Mr. BARR. No, Mr. Chairman.

Mr. MCINTOSH. Thank you all for coming, I greatly appreciate your participation. And as I said, we will keep the record open and may have some additional followup questions for each of the panelists and particularly for Mr. Shackleford in following up on that one area of analysis.

Let me now call forward our third panel, which consists of Colonel Grant Smith, who is the District Commander of the U.S. Army Corps of Engineers for the Savannah District. And Col. Smith, I understand that you also wanted to have two of your staff members testify as well.

Col. SMITH. Well, they are only here to help assist in details if I need it.

Mr. MCINTOSH. OK. Why do I not ask all three of you if you will please rise.

[Witnesses sworn.]

Mr. MCINTOSH. Let the record show each of them answered in the affirmative. And by the way, that is something that the full committee has asked us to do with all the panels, whether we are here on a field hearing or back in Washington.

Col. Smith, obviously I appreciate very much your willingness to come, and particularly to sit through the earlier portions of the hearing where your agency and some of your own staff members' work has been called into question. I appreciate your willingness to come and talk with us about that. Frankly, I have heard some very disturbing things, but I want to give you a chance to talk about those, to talk with us about where you see things going and some of the things that have happened in the past. And then Bob and I will both have questions for you and perhaps you can refer to your staff members if you wish to. And we welcome their participation really at any time they feel they can add to the discussion.

But I do appreciate greatly your coming today and participating in this hearing. If you could give us a summary. We have been asking witnesses to take 5 minutes, but you have got a lot to say, I

would imagine, so go ahead and take longer than that. And also, if you get a chance to, address some of the issues that were raised in those two earlier panels.

STATEMENTS OF COLONEL GRANT M. SMITH, DISTRICT COMMANDER, U.S. ARMY CORPS OF ENGINEERS, ACCOMPANIED BY BILL HOUGH, DISTRICT COUNSEL; AND NECHOLUS OGDEN, CHIEF OF REGULATORY, U.S. ARMY CORPS OF ENGINEERS

Col. SMITH. Thank you, Mr. Chairman and also Mr. Barr.

As a matter of introduction, I am Col. Grant Smith, Commander and District Engineer of Savannah District, U.S. Army Corps of Engineers, headquartered in Savannah, GA.

Savannah District is one of five districts in the South Atlantic Division of the Corps of Engineers and we already had introductions—accompanying me, I have my District Counsel, Mr. Bill Hough and our Chief of Regulatory, Mr. Nick Ogden.

At this point, I would like to address several of the issues that have been brought by previous witnesses. I may miss some of these and certainly we can discuss this during question and answers.

One of the items that was brought up earlier in testimony had to do with the Corps' preference for the West Sandtown alternative on the county proposal for West Cobb Loop. I want to correct, at least from our view, that fact, in that the Corps has no preferred alternative with regard to the West Cobb Loop permit application.

I would also like to address the issue of appeals. The Corps has recognized the need to have an appeal process associated with our regulatory work and we have established this process, it is currently awaiting resourcing. So the process would allow an appeal, administrative appeal, of a Corps of Engineers decision on a permit application. It would also allow for an appeal on the delineation of the wetlands.

I would also like to address Mr. Dabbs. I must say that as the District Engineer, I was unaware of Mr. Dabbs' predicament until we prepared for this hearing, and in fact, several of my senior staff were also unaware of his predicament. So I certainly apologize if Mr. Dabbs feels that he has not been satisfied as a customer. It is our policy to satisfy all of our customers.

It also appears that Mr. Dabbs was not aware of a scheduled meeting that is scheduled this week. My staff informs me it is on the 18th, to meet onsite and clarify the issue of the wetlands delineation on his property. I will say that my staff has indicated that the initial indications from our folks looking at the property is that it was more than the 0.63 acres of wetlands, it could be upwards of 5 acres of wetlands. But our jurisdiction only does cover that area of wetlands. So if Mr. Dabbs has property clearly in the uplands that is not potentially a wetland, he can continue work on that right now. And I apologize for any kind of miscommunications that may have occurred to lead him to believe that he could not continue work on uplands areas where there was absolutely no possibility of there being wetlands involved.

Mr. MCINTOSH. Great. I appreciate that and I am sure Mr. Dabbs will as well. And that would narrow it down to those smaller number of acres, 5 or 0.63——

Col. SMITH. That might be in contention as to whether or not they are wetlands or not.

Mr. MCINTOSH. That is imminently sensible and I appreciate you——

Mr. DABBS. May I have that in writing, sir? [Laughter.]

Col. SMITH. We will certainly provide that in writing, yes.

Mr. DABBS. Thank you.

Mr. BARR. Maybe even better, today you have it under oath, right now.

Mr. MCINTOSH. Thank you, Col. Smith, I appreciate that.

Col. SMITH. OK, I would like to go ahead and proceed.

The Corps is responsible for managing and administering a regulatory program under three authorities. These authorities are Section 10 of the River and Harbors Act of 1899, which regulates structures or work in or affecting navigable waters of the United States; Section 103 of the Marine Protection Research and Sanctuaries Act, which regulates the transportation of dredge material for the purpose of ocean disposal; and principally what we are discussing today is Section 404 of the Clean Water Act, which regulates discharges of dredged or fill material into waters of the United States.

Savannah District administers this program in the State of Georgia. In administering its regulatory program, the Corps utilizes a number of different kinds of permits, including nationwide general permits, regional general permits and individual permits. Nationwide permits issued by the Chief of Engineers allows certain activities deemed to have minimal impact on the environment. Typical nationwide permits include installing aids to navigation and the construction of minor road crossings.

Savannah District has also issued several regional general permits for certain repetitive minor activities within its geographic jurisdiction, such as the construction of boat docks and the creation of artificial reefs.

Nationwide and regional general permits are designed to expedite the permitting process for those projects that have no more than minimal adverse environmental effects. In 1996, Savannah District authorized 1,235 projects under nationwide or regional permits. The average processing time for these nationwide permits was 15 days and for the regional general permits, 8 days.

Projects of major scope and which have potentially large environmental impacts require individual permits. Some of these projects include piers, bulkheads, large dams and projects that require filling large areas of wetlands. Major road projects, such as may being constructed throughout the metropolitan Atlanta region and in Cobb County are another example. Savannah District issued 88 individual permits in 1996 with an average processing time of 75 days. We denied three applications during that same period with an average processing time of 72 days.

I am aware the subcommittee is particularly interested in my recent denial of the road project known as the West Cobb Loop. As you are aware, suburban Atlanta, including Cobb County, is growing at a very rapid pace. Since 1990, Savannah District has processed and approved 218 permits in Cobb County alone. The average processing time for these permits was 27 days.

The Savannah District received a completed permit application from Cobb County Department of Transportation in February 1994 for the West Cobb Loop project. As required by our regulations, the Corps issued a joint public notice regarding the project shortly after receipt of the application. It was mailed to 935 addressees. We received comments, information and requests for additional information from four Federal agencies, six State of Georgia departments, 127 citizens of Cobb County and concerned environmental and historic preservation groups. We also responded to 12 congressional letters requesting information on the project and the status of the application.

This application took longer than average, almost 3 years, to fully determine whether the project complied with all the applicable laws and determine that a full and complete public interest review process had taken place.

On January 14, 1997, I denied Cobb County's permit application for the West Cobb Loop road project. The reason for the denial was that of the four alternative corridors presented in the application, only the preferred alternative corridor was described in any detail by the applicant. Requests for environmental analysis of the three other alternatives did not result in sufficient information to judge the practicability of other potentially less damaging alternatives.

On February 13, 1997, Cobb County filed an action in the Federal District Court for the northern district of Georgia seeking to challenge the denial of the permit. The matter is now in litigation before the Honorable Robert L. Vining, Jr., a senior Federal judge in the northern district of Georgia.

The parties have had several productive meetings to discuss areas of mutual concern and recently signed a joint motion to remand and stay the litigation. This motion was submitted to Judge Vining and the Judge signed the order on June 3, 1997. The Department of Justice has requested that questions regarding the litigation be directed to Robin Richardson, the Department of Justice attorney handling the litigation. The purpose of the remand is to allow Cobb County an opportunity to submit a new modified application to the Corps. Pre-application meetings will be held next month to discuss this matter and to review the purpose and need for the new road project. Following these meetings, we anticipate that a new application will be submitted. I do not have any additional information at this time regarding the road project that will be submitted by Cobb County in its new application.

In conclusion, the Corps of Engineers is dedicated to protection of our Nation's aquatic resources, including wetlands, while also ensuring that responsible development which is in the public interest and meets criteria established under the Clean Water Act is not unduly hindered.

As Commander of Savannah District, I must ensure that projects subject to my jurisdiction are carried out with due regard for potential environmental impacts and with appropriate protection and mitigation of our valuable aquatic resources. I am committed to making the application process a fair, open and responsive one.

Mr. Chairman and other members of this subcommittee, this concludes my statement. Thank you for this opportunity to discuss the role of Savannah District in carrying out the Corps' responsibility under Section 404 of the Clean Water Act and I will be pleased to answer questions you may have.

[The prepared statement of Col. Smith follows:]

DEPARTMENT O F THE ARMY

COMPLETE STATEMENT
OF

COLONEL GRANT M. SMITH
DISTRICT COMMANDER
SAVANNAH DISTRICT
U.S. ARMY CORPS OF ENGINEERS

BEFORE THE SUBCOMMITTEE ON ECONOMIC GROWTH, NATURAL RESOURCES,
AND REGULATORY AFFAIRS
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES

ON

REGULATORY ISSUES

MARIETTA, GEORGIA
JUNE 16, 1997

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I am Colonel Grant M. Smith, Commander and District Engineer of the Savannah District, US Army Corps of Engineers, headquartered in Savannah, Georgia. Savannah District is one of five districts in the South Atlantic Division of the Corps of Engineers.

Savannah District is responsible for managing and administering the Corps regulatory program in the State of Georgia. The authorities we work under include Section 10 of the Rivers and Harbors Act of 1899; which regulates structures or work in or affecting navigable waters of the United States; Section 103 of the Marine Protection, Research, and Sanctuaries Act, which regulates the transportation of dredged material for the purpose of ocean disposal; and Section

404 of the Clean Water Act, which regulates discharges of dredged or fill material into waters of the United States.

The Savannah District Regulatory Branch is staffed by 31 people in two offices - one at our headquarters in Savannah, and one in the Atlanta area. These offices evaluated 1326 permit actions in calendar year 1996.

In administering its Regulatory Program, the Corps utilizes a number of different kinds of permits, including nationwide general permits, regional general permits, and individual permits. Nationwide permits, issued by the Chief of Engineers, allow certain activities deemed to have minimal impact on the environment. Some typical nationwide permits allow the dredging of no more than 10 cubic yards from navigable waters, installing aids to navigation, survey activities and construction of minor road crossings. The Savannah District has authorized many activities under several regional general permits for certain repetitive minor activities within specific geographic regions. These activities include the construction of boat docks, creation of artificial reefs, and power line crossings. Nationwide and regional general permits are designed to expedite the permitting process, and allow citizens to quickly proceed with those projects that have no more than minimal adverse environmental effects. In 1996, Savannah District authorized 1235 projects under nationwide or regional permits. The average processing time for nationwide permits was 15 days and for regional general permits, 8 days.

Projects of major scope and which have potentially large environmental impacts require individual permits. Some of these projects include piers and bulkheads, large dams, and projects that require filling large areas of wetlands. Major road projects, such as the ones being constructed throughout the metropolitan Atlanta region and in Cobb County, are another

example. The Savannah District issued 88 individual permits in 1996, with an average processing time of 75 days. Three applications were denied during that same period.

In summary, the Savannah District processed 1326 permit applications, approving 1323 and denying 3 in 1996. Ninety five percent of all permit actions were completed in less than 60 days with the vast majority resolved in less than 18 days.

I am aware that the Subcommittee is particularly interested in the impact of the Corps regulatory program in this area and, more specifically, your concerns regarding my recent denial of the road project known as the West Cobb Loop. As you are aware, this part of Georgia is growing at a rapid pace. Since 1990, Savannah District has processed and approved 218 permits in Cobb County alone. Average processing time for these permits was 27 days.

The Savannah District received a completed permit application from Cobb County in February, 1994. As required by our regulations, the Corps issued a Joint Public Notice regarding the project shortly after receipt of the application. It was mailed to 935 addressees.

We received comments, information, and requests for additional information from four Federal agencies, six State departments, 127 citizens of Cobb County and concerned environmental and historic preservation groups. During the application process, we also responded to 12 Congressional letters requesting information on the West Cobb Loop project and the status of the application.

We are required by law to coordinate with a number of Federal and State agencies. Therefore, the Corps coordinated with the Georgia Department of Natural Resources' Environmental Protection Division and State Historic Preservation Officer. The Corps also coordinated with the Environmental Protection Agency regarding their concerns as to compliance

of this project with the Clean Water Act and the National Environmental Policy Act (NEPA), and with the United States Fish & Wildlife Service's regional and field offices regarding compliance with the Endangered Species Act, and other laws addressing wildlife and wildlife habitat.

In processing applications, we are required to assess a variety of public interest factors. In this instance we assessed some thirty issues, including land use, flood plains, flood hazards, wetlands, wildlife, economics, historic areas and soil conservation. Additionally, my staff, along with staff from other Federal agencies, made field visits to proposed alternative sites and areas being proposed as wetland mitigation sites.

It is important to note that, at the same time the permit application for the West Cobb Loop was being processed, the Savannah District processed and permitted the Barrett Parkway Extension and the East-West Connector, Phase IV road projects in Cobb County.

Our decision to issue a permit for the East-West Connector was challenged immediately in Federal District Court by a group of Cobb County homeowners who live near the proposed route and who were concerned with preserving the historic nature of the area. The litigation took two years to complete. The Federal District Court and the Eleventh Circuit Court of Appeals found that the Corps had complied with all the laws and upheld our decision to issue the permit.

Based on all these factors, it should not be considered unusual for this process to take much longer than average to fully determine whether the application for the West Cobb Loop complied with all applicable laws and to determine that a full and complete public interest review process had taken place.

On January 14, 1997, I denied Cobb County's permit application for a Section 404 permit for the West Cobb Loop road project. The reason for the denial was that, of the four alternative

corridors presented in the application, only the preferred alternative was described in any detail. Requests for environmental analysis of the three other alternatives did not result in sufficient information to judge the practicability of other potentially less damaging alternatives.

On February 13, 1997, Cobb County filed an action in the Federal District Court for the Northern District of Georgia seeking to challenge the denial of the permit. The matter is now in litigation before the Honorable Robert L. Vining, Jr., a senior Federal Judge in the Northern District of Georgia.

The parties have had several productive meetings to discuss areas of mutual concern, and recently signed a Joint Motion to Remand and Stay the litigation. This Motion was submitted to Judge Vining. The Judge signed the Order on June 3, 1997. The Department of Justice (DOJ) has requested that questions regarding the litigation be directed to Robin Richardson, the DOJ attorney handling the litigation.

The purpose of the Remand is to allow Cobb County an opportunity to submit a new modified application to the Corps for a permit under Section 404. My Regulatory staff and the Cobb County City Manager, Cobb County Attorney, and Cobb County Director of Transportation have agreed to hold pre-application meetings next month to discuss this matter and to determine the purpose and need for the new road project. Following these meetings, we anticipate that Cobb County will submit a new application to the Savannah District. I do not have any additional information at this time regarding the road project that will be submitted by Cobb County in its new application.

Should Cobb County decide to build the West Cobb Loop Road project in an area that does not contain any wetlands or jurisdictional waters of the United States, no application for a

Section 404 permit would be required. Should Cobb County, however, find that the road project will impact wetlands or waters of the United States, then the parties will go forward with the new application under Section 404 of the Clean Water Act.

In conclusion, let me state that the Corps of Engineers and the Savannah District are dedicated to the protection of our Nation's wetlands aquatic resources, including wetlands, while also ensuring that responsible development which is in the public interest and meets the criteria established under the Clean Water Act is not unduly hindered.

Large and complicated projects sometimes require more than the usual amount of time to evaluate. Additional coordination is often required to fully assess the need for the proposed project and for its potential impacts. As Commander of the Savannah District, I must ensure that projects subject to my jurisdiction are carried out in the public interest, with due regard for the potential environmental impacts and with appropriate protection and mitigation of our valuable aquatic resources. I am committed to making the application process a fair, open and responsive one.

Mr. Chairman, and other members of the subcommittee, this concludes my statement. Thank you for this opportunity to discuss the role of the Savannah District in carrying out the Corps responsibility under Section 404 of the Clean Water Act. I will be pleased to answer any questions you may have.

Mr. MCINTOSH. Thank you very much, Col. Smith.

Let me start with a general question, if I may, and it has to do with a problem that we have had in putting together this type of hearing in other parts of the country chiefly, where witnesses are reluctant to come forward because they are worried that in future work that they need to do with a Government agency, that they will be penalized for that. And we set a very vigorous and clear policy of pursuing any subsequent activity of that, and we have had a couple of instances where I have had to intervene on behalf of the committee with the agencies at higher levels.

So let me just ask you now to join me in giving those witnesses who appeared today an assurance that you will not hold that against them and that you will work aggressively to make sure that your staff does not do that.

Col. SMITH. Certainly, Mr. Chairman, I am pleased to sign up to that commitment and I can assure you that we are interested in solving problems and not creating them.

Mr. MCINTOSH. I appreciate that, and you can understand how that fear would come up, but I wanted to reassure each of them and others who might testify at the open mic, that that was our joint position on that.

Let me ask you a question on the West Cobb Loop project. You indicated there was no preferred alternative. In essence, and not speaking legally but more practically, the Corps' role in this in having to sign off on it means that they have to be involved in a real practical way as the county moves forward, otherwise they make a proposal and it kind of goes into a black box and they hope they get a favorable answer.

First, what were the concerns you had with the proposal that was rejected and what are some of the guidelines that the county should keep in mind as they are preparing a second proposal pursuant to the Corps' remand?

Col. SMITH. I guess if I could summarize what the Corps' issue principally was and led to the denial of the permit, it had to do with the purpose of the project, in a general sense, which is to move traffic from south to north in west Cobb County. As proposed to us, there were four corridors in the application that were possible corridors to move that traffic from south to north. We felt that we were never able to get enough information to make a decision about alternatives in three of those corridors, and in essence what we were left with was a detailed presentation of alternatives in only one of the four corridors, and as a result, we could not make a determination that we had the least damaging—environmentally damaging practical alternative.

Mr. MCINTOSH. And what type of additional information would you need for the other three alternatives?

Col. SMITH. What we asked for was alternative analysis similar to what we got for the alternative that was presented to us, where there were detailed variations of how the traffic could be moved from south to north.

Mr. MCINTOSH. I am not following you.

Col. SMITH. In essence, the application submitted to us included a traffic analysis that was used to limit the looking of specific alternatives to a single corridor. We had some great difficulties with

that traffic analysis and as a result could not make—could not agree, applying the regulations as we are aware of them, we could not agree to limiting the look for this project into that single corridor.

Mr. MCINTOSH. Now I am somewhat confused, because is it not the Corps' responsibility to make a judgment about the impact of the project on the waters of the United States, or wetlands under the 404, rather than to conduct a traffic feasibility study? I mean, is that not what DOT or Georgia Department of Transportation is supposed to do—aren't they charged with that expertise?

Col. SMITH. Yes, it is, but we are charged with ensuring that what we have in the final project is the least damaging environmental practical alternative for the stated purpose of the project. And in this case, since we had very little analysis looking at what alternatives were available in the other three corridors, we could not make that determination.

Mr. MCINTOSH. Now by alternatives, you mean in terms of impacts on the wetlands?

Col. SMITH. Alternative routes that include not just impacts on the wetlands, but in various other——

Mr. MCINTOSH. You see, I am concerned that you have defined your mission too broadly, because I think the Corps is supposed to look at the impact on wetlands and that part of the environment, among all the alternatives and not judge the practicability as to traffic flow. And so my question would be did you have sufficient information on the impact on wetlands for the other three alternatives?

Col. SMITH. No, that is why we could not make a determination on what was the least damaging to the environment.

Mr. MCINTOSH. OK, so they need to provide you with information about the other alternatives. And I take from the testimony earlier today, they are going to work on reconfiguring their preferred proposal.

Col. SMITH. Either that or in some way redefine the purpose of the project so that it is not as encompassing as the original permit application.

Mr. MCINTOSH. See, that is where once again I see the Corps going beyond its mandate. Why are you concerned about the purpose of their project?

Col. SMITH. That is what we have to—we have to deal with the application as it is submitted to us, Mr. Chairman. We cannot interpret the application, the application states a project purpose and the purpose of the project as stated to us, as we understood it, was to move traffic along one of four corridors in Cobb County.

Mr. MCINTOSH. Right. And I would be greatly concerned if the Corps takes on itself a broader mission than analyzing the impacts on wetlands and the waters of the United States in determining, say for example, the need or the scope of the traffic problem. And I think that is what leads to the problem in this particular case, that you have got to end up deferring to the local government on those issues and then analyze whether their proposal in this case to mitigate is sufficient. And I guess the question I would have for you is if you have got a mitigation proposal that is 8 to 1 or 10 to 1 on the ratio, that is pretty good, is it not?

Col. SMITH. The mitigation is very important, but the regulations require us to sequentially look at the impact on the environment, and the sequence is avoidance first, so that the ideal situation is to avoid any impact on the environment. And that involves alternate routes, looking at alternate routes, which kind of led us to this issue of how can we make a proper determination on whether we have the least damaging environmental—least environmentally damaging practical alternative when we do not have an analysis that might say there is a route available in the fourth corridor which does not impact the environment at all, and still satisfies or still meets the purpose of the project, which is to move traffic north-south adequately.

Mr. MCINTOSH. But if the county commissioners come back to you and say our goal is to have a restricted access freeway and we have analyzed the different routes and we have determined that this is the route that accomplishes that goal, all the others do not accomplish that goal because we are going to have to create more access cuts. Then they have come back with the one that has the least impact on the environment and they have identified that there are not any others in which you can avoid impact on the wetlands, and still accomplish their goal; which is to have limited access transportation and, presumably, have a minimum impact on people's lives.

Col. SMITH. I guess the best way I can address that is to say that—and I probably have not articulated it very well, I obviously have not—is that we, based on the project application, the permit application, that was presented to us, we felt very strongly that in order to be able to make a determination about the least environmentally damaging route, we had to see a comparison of alternatives that included alternatives in the other corridors. And we never got that analysis, even though that was made clear at the beginning of the application process, and we also have other issues that enter into this as far as agreements made prior to the application process as to how we would approach the permit applications for what is known as the Cobb Loop Road.

In fact, I mention in my written testimony, but not in the oral testimony, that while we were processing this application for West Cobb Loop, we were also processing two other permit applications for the east-west connector and there is also another road to the north. And those were approved. And the agreement was made at that point that these three applications would stand absolutely alone. And that is another reason why we obviously feel a need——

Mr. MCINTOSH. Let me make sure I understand—each of them would stand by itself?

Col. SMITH. Separate utility.

Mr. MCINTOSH. And you felt that that was not being adequately pursued in this application, those prior agreements?

Col. SMITH. Yes, sir.

Mr. MCINTOSH. Do you have adequate assurances now as the county is preparing their new submittal, that those will be followed?

Col. SMITH. We will not know until we receive their application.

Mr. MCINTOSH. Have you asked your staff to work with the county as they prepare this new application?

Col. SMITH. Absolutely.

Mr. MCINTOSH. So that they can understand the concerns?

Col. SMITH. On almost all of these projects, we hold extensive pre-application meetings to resolve these kind of problems ahead of time.

Mr. MCINTOSH. What is your estimate as to the time it will take to finish the application and reach a decision by the Corps?

Col. SMITH. I do not know. I would probably be guessing, maybe I could ask for some help on that one.

Mr. OGDEN. Typically we look at about 4 months, but in a project of this magnitude with the "concerns that it has," I would not be surprised if the timeframe does not extend beyond that.

Mr. MCINTOSH. But are you not aided in this by the fact that you have already seen one application on it?

Mr. OGDEN. Yes, sir, we have significant information in here. The first thing we plan to do, and we discussed this with Georgia DOT—excuse me, Cobb DOT—is to discuss the project purpose again. As the Colonel stated, the project purpose was very broad on this particular portion of the road. When I refer to portion of the road, I am talking about the Loop Road, as it has become known. In the new application, hopefully we can focus on a more defined project purpose so that we can focus more clearly on what Cobb County actually wants.

When we started pre-application consultation back in 1992 and 1993 on this project—on not this project but on the loop road, period, we asked Cobb County up front, do you want to approach this as a single project. Cobb County says no, we want to approach it as portions of a road that would satisfy a particular need. And when that happened, of course, they told us that at no time—and we assured them that at no time, if this is your approach, all of these points may or may not connect, if that is your purpose. And now the purpose is to connect it, which is fine, if this is the way it can be worked out.

Mr. MCINTOSH. And let me repeat, I would find significant problems if the Corps defines its mission to second guess them on that purpose. I agree with you, you should get a very clear statement from them on what the county's purpose is, but let me strongly urge you not to second guess them in that because I think they can make that best determination for the local community.

Let me also request, Col. Smith, if you could update the committee at the end of 4 months as to what the status of the discussions have been and the review process, and if it takes longer than that, then we will ask you for continued updates after that.

Let me end my session of questioning for this round—I have got some more on some other subjects—and turn now to Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

I guess in many respect, Colonel, what our decisionmaking boils down to, whether it is Mr. McIntosh, as chairman of this subcommittee, whether it is the head of a Federal agency, whether it is yourself, whether it is myself in my previous role as a Federal prosecutor—it comes down to prioritizing the use of scarce resources. And I think one of the primary jobs that the citizens and taxpayers of this country expect of us and have a right to demand is that we use those limited resources and prioritize so that the

most important work gets done and that we do not spend a lot of their money worrying about chasing after gnats when there are life threatening animals out there, as it were.

Is there some justification that you can provide through this forum today, or some explanation as to why among all of the projects with which your agency is working or may not be able to because of scarce resources, what great public harm, how many lives would have been at stake, had Mr. Grady Brown, who you heard from earlier, been allowed to keep his land in the way that it was before it had been messed up inadvertently? Why was that so all fired important to—as you have seen, you heard from Mr. Shackleford here, who has indicated I think very sincerely that he is interested in working more as a partnership and working in major projects around the State, and we have projects because apparently lack of resources you are not able to move forward quickly—what was your decisionmaking that felt this burning need to worry about Mr. Grady Brown's property?

Col. SMITH. Well, I guess I do not know the specific answer to how we became aware of the particular problem with the wetlands. I guess I could only state that as the laws are crafted at this point, and I will certainly acknowledge that Mr. Brown's situation is probably a unique one in many ways, but as the laws are crafted at this point, once a wetlands is created, the resource—I have very little recourse in making a determination of whether these wetlands should or should not be protected by investigating how they came to be.

Mr. BARR. I understand that and I understand and I certainly presume that any project in which you are involved meets the definition of your jurisdiction, falls within your jurisdiction and a justification can be found for it. I am not talking about that. I am saying among—say you walk into the office tomorrow and you have 100 different matters with which to deal, some involving thousands of acres, some involving, as Mr. Shackleford has said, a project where lives and public safety is at stake, and then you have a project where you have land such as Mr. Grady Brown's here, where it is not hurting anybody; as a matter of fact, it would have been better to leave the land in the State that it was originally. I mean is there any decisionmaking process that you can relate to us that leads you to the conclusion that to the top of the pile goes a case like Mr. Brown's? I just have a hard time among all of the different projects on which you all could be working and the very limited resources, why those sorts of projects are so important that you take time away and resources away from thousand acre projects and public safety projects.

Col. SMITH. Well, I do not know that we—go ahead.

Mr. OGDEN. If I may, I would like to attempt to answer that. In our world, with the resources that we have, we set priorities on permit applications, first priority. Violations fall somewhere down at the lower end of the spectrum. Now with regard to a project that would have an impact on human life, that is taken under consideration during the review process. So we do prioritize that with the resources and the persons that we have to do that.

Mr. BARR. OK, how many lives were at stake in Mr. Brown's project.

Mr. OGDEN. There were none, to my knowledge.

Mr. BARR. Well, see, that is my point.

Another thing, and I must admit that, Colonel, your answers to Mr. McIntosh's questions leave me a little bit mystified, especially when I weigh them against your written words here. You state, for example, on page 5 of your written testimony, in talking about the remand to Cobb County to allow an opportunity to submit a new modified application—and I commend you for that and I do appreciate what I read and what I have heard today about the Corps working with the county. But the language that I find extremely troubling is where you say that you will be holding meetings, "to determine the purpose and need for the new road project."

Where in Federal regulation and the laws of this land is it the job of the Corps of Engineers to determine the purpose and needs for road projects in our communities? I am not talking about the CFR, I am not talking about Memorandums of Understanding or Agreement. I am talking about in the laws of this land.

Col. SMITH. Well, I am trying to find the exact words here.

Mr. BARR. It is about three quarters of the way down on page 5.

Col. SMITH. I only have four pages in my version here.

Mr. BARR. This is very strange, because I have your written testimony here—would somebody show this to the Colonel—it is talking about the remand to Cobb County.

Col. SMITH. OK. Well, I guess I can—as interpreted by you, I can certainly see why you might interpret it to say as you have interpreted it, but I must just say that the reason that is written like that is just so that we can meet with the county and discuss this very important issue as relates to our determination about the denial of the permit to begin with is exactly what the purpose of this project is, has a key factor in what areas we must consider under the regulations as to what might be the least environmentally damaging alternative to meet the purpose of the project.

I will certainly acknowledge that the need for the project is not something that the Corps of Engineers necessarily has a role in. But in having a pre-application meeting, the whole purpose of it is to prevent any kind of miscommunications in stating what—in putting it in the actual application, because once we receive the application, we must deal with what we have received. And in this particular case, for the West Cobb Loop Road, we had to, under the purpose of the project, had to consider other alternatives beyond which the county considered to be alternatives in the specific corridor they selected to——

Mr. BARR. I think the feeling that a lot of the governments with which you deal—a lot of the governmental entities and certainly myself and I think judging from the chairman's questions as well, I think the discomfort that we have with that is that you are taking something, section 404 authority, and the way you have just interpreted it and the way it is written out here, there is virtually no limit to your power, once you determine that, in your view, there may be a wetland. You are saying that you then have the power to decide and to look at what the purpose of the project is, whether there is a need for it, and I just do not think that that was the intent of the Congress or the previous administrations in

this country to give that power to the Corps. For the life of me, with all the things you all have to do, I do not know why you would want to subsume that, for heavens sake, but it may very well be and this may be something that would be helpful to the Corps, that we ought to go back, and maybe this is a benefit from having these hearings, look at these laws, look at this huge body of Code of Federal Regulations and these memorandums and so forth, and just get back to some basics and clarify exactly what the jurisdiction of the Corps is in this area, which I think is what our State and local officials are saying, we do not mind working on these things, we recognize that there is a problem, but there have to be some limits to it.

Col. SMITH. Mr. Barr, let me—I know Mr. Ogden wants to try to respond, but let me take one last shot at trying to articulate the issue of the corridors and the purpose of the project.

Mr. BARR. Sure.

Col. SMITH. As an example, if the project—permit application had stated specifically that the purpose of this project was to connect two specific end points along a route, that has—that allows significantly different review and analysis by the Corps of Engineers in reviewing that permit application than if the permit application says the purpose of this application or project is to move traffic from some southern area to some northern area, in a broad range. I am trying to articulate why it is important what the purpose says of the project. The application that we received, that we denied the application for, was not specific about the purpose of the project. It did not say the purpose of this project is to connect two different specific points with a route that connects those two points. And as a result, we were limited in what we had to consider in our analysis.

I do not know if that helps, I feel like I'm failing to articulate——

Mr. BARR. Well, and I am not convinced that the problem is yours. I think we may have put our finger on a fundamental problem with the way this whole wetlands issue has developed and it may very well be time now to go back and try and clarify exactly what your jurisdiction is so that you have better tools with which to work and to prioritize your programs.

Mr. Chairman, if I could just ask one other followup question. I know you have some as well.

Mr. MCINTOSH. Certainly.

Mr. BARR. Again, Colonel, hopefully you will have this—I do not know how I wound up with more of your testimony than you have, but on page 2, the very last paragraph of your testimony, you say "Projects of major scope and which have potentially large environmental impacts require individual permits." It is my understanding just from having reviewed a lot of material here over some period of time, not just today, that the Cobb County project, the loop project, that there was no single large environmental impact, that there were a lot of potentially small impacts, as it were. Does the Corps interpret, here again, their jurisdiction that even if there is no single potentially large environmental impact in a road project, if there are a certain number of small impacts, that you sort of aggregate all those and say bingo, we have got a major impact here, even though there is no one little thing that we can point to?

Col. SMITH. Yes, there are—in our regulations and guidelines, we must consider——

Mr. BARR. Not in the law, but in—here again, we go back to your guidelines.

Col. SMITH [continuing]. Cumulative impacts. And so in a situation where there are numerous minor impacts to the environment for the analysis when taken in conjunction with one another in a cumulative manner, that can be determined to be a major significant impact.

Mr. BARR. Do you assign a numeric value to each of these? I mean, if you have a roadway that is 20 miles long and there are 10 little minor impacts, how does that all of a sudden become a major one? What is the threshold?

Col. SMITH. Can you address that?

Mr. OGDEN. Let me attempt to address that, sir.

The way we would look at that is that you may have 10 minor impacts to wetlands, there might be wildlife corridors dissected as a result of that, there might be historic properties along the way that would be impacted as a result of that, there might be problems with water quality as a result of the project—and I am just giving hypotheticals now. When we begin to add up all of those "impacts" then they could come out to be a significant impact.

Mr. BARR. It is not really scientific.

Mr. OGDEN. That is right.

Mr. BARR. I did not think so.

Mr. OGDEN. It is based on professional judgment.

Mr. BARR. I understand. Thank you, and I appreciate the time, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Barr.

Col. Smith, I have several somewhat unrelated questions, but let me start with the testimony we heard earlier about the Fish and Wildlife Service sending a letter to Mr. Ogden indicating they would no longer participate in the field meetings. What is the Corps' position on whether that is helpful or not. One of the things that we worked with in the Bush administration, and I understand that President Clinton has continued this in the wetlands area, is an attempt to maximize coordination among the different agencies involved and try to make sure that there is a process in place so that you do not have one agency waiting outside that coordination process and then saying, well, everybody else agreed to your project, but we did not, so you have to start over again.

Could you comment on that development? It is news to me, and I think the subcommittee which also has jurisdiction over the Interior Department may be looking into that.

Col. SMITH. I think it is a relatively new development and I guess I would say in a general sense that the Corps' position is that in every case where we can improve communication and dialog and learn about problems earlier rather than later, we support that kind of process. I just was quickly updated on this particular issue and I certainly cannot and do not want to even try to speak for the Fish and Wildlife Service, but I understand that their issue with regard to attending the meetings is that they were not going to be able to accomplish—or they had some issue with what the stated purpose of the meetings were and that they could not accomplish—

we were not going to be able to accomplish in those meetings what we said we were going to do. So they saw their time better spent on working off the backlog. And I am probably speaking out of line, like I said, I do not want to talk about what their position might be, but that is my brief understanding.

Mr. MCINTOSH. And the letter mentioned something about saving time and working on the practical alternatives report backlog, which I was unfamiliar with as well. But in general, what was their concern with the stated purpose of the meeting?

Mr. OGDEN. The specifics of that is the Fish and Wildlife Service did not feel by visiting the site they would come away with the sense that the preferred alternative would be determined in the field. They felt that even though we would go out there and look at it, suggestions and recommendations would be made and then the applicant, in this case, Georgia DOT, would come back with that same particular application or alternative.

Now——

Mr. MCINTOSH. So they are concerned that by attending that meeting, it might imply that something discussed there is being agreed to and they wanted to reserve the ability to think about other alternatives, I guess?

Mr. OGDEN. I guess that is a fairly good overview of it.

Mr. MCINTOSH. OK. And I do not mean to ask you to respond on their behalf. We are going to pursue that with them. I guess the question I would like to ask, maybe Mr. Ogden and all of you could tell me, in your opinion is it helpful to have everybody at that field meeting?

Mr. OGDEN. We find that they are very helpful in that we can resolve many issues on the site at one time rather than keeping the maze of letter writing campaign going back and forth. The system has worked fairly well, obviously not as good as many would like, but it is an attempt to communicate. We are mandated by law to have the resource agencies involved in these processes. If we issue a permit with impacts to their laws, then of course that would be elevated, or it would be denied up front, to be honest with you. So we have to get their input.

Mr. MCINTOSH. OK. Mr. Ogden, do you concur with that?

Mr. OGDEN. I am Ogden.

Mr. MCINTOSH. Oh, I am sorry, they told me the other way around.

Col. SMITH. He is Mr. Hough.

Mr. MCINTOSH. Excuse me. OK, Mr. Ogden.

And Mitch King had written you the letter. I am going to ask that that be included in the record today and we will pursue that with the Fish and Wildlife Service to find out what is going on.

[The material referred to follows:]

Mitch King

U.S. FISH AND WILDLIFE SERVICE

STATEMENT

on

GEORGIA WETLAND REGULATORY ISSUES
SPECIFICALLY ON GEORGIA DEPARTMENT OF TRANSPORTATION PROJECTS
in response to the hearing of the
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES

MARIETTA, GEORGIA
JUNE 16, 1997

The Fish and Wildlife Service (Service) has a Congressionally mandated responsibility to protect and restore certain nationally recognized fish and wildlife resources and habitats. Specific to this hearing is our responsibility to work with the Corps of Engineers (Corps) through the Fish and Wildlife Coordination Act, the National Environmental Policy Act (NEPA), and Section 404 of the Clean Water Act to assure that fish and wildlife and wetland resources are given full consideration during the various permitting activities.

Wetlands are being lost at alarming rates from a variety of activities, including urban and suburban sprawl, and highway projects. Nearly half (47 percent) of the wetlands in the conterminous United States are in the Southeast, however, wetland losses within the region have accounted for 89 percent of the entire national wetland loss. Georgia's wetland losses are estimated at approximately 78,000 acres as shown in a recent study by EPA and the Service, covering a period of the mid-1970's to mid-1980's. Georgia follows Florida and Louisiana in acreage with the total wetland area covering 20 percent of the State's landscape.

Wetlands are national resources that are very valuable to both the natural and human ecosystems. Not only do they provide important habitat to a variety of sensitive plants, animals, and fish, they are also important to humans as natural water filters, and natural flood-water storage sites. According to a 1970 study, a single 2,300 acre Georgia floodplain wetland naturally provides pollution control benefits worth an estimated $1 million each year. The impact of uncontrolled wetland drainage and levee projects were noticeable on a large scale during the 1994 flood in Georgia. Urban flooding in Atlanta and other Georgia cities can often be attributed partly to channelizing streams and paving floodplain wetlands. Agriculture and timber losses or reduced yields due to high water can often be attributed to upstream wetland drainage, or improperly

designed floodplain crossings that restrict natural flood flows and pond water unnaturally. The exact cost to individuals, communities, and society of historic and ongoing wetland losses will never be known, however, it is safe to estimate that it would be in the billions of dollars.

While the Service takes our Congressional charge of wetlands protection very seriously, we are also acutely aware of the impact of this charge on local, state, and national economies. Therefore, we are continually looking for opportunities to work with individuals, developers, and local, State, and Federal governments and agencies to assure that projects are designed to avoid and minimize impacts to wetlands, and to compensate for unavoidable impacts. In Georgia, the wetlands regulatory community of State and Federal agencies (led by the Corps) has established procedures whereby over 1,300 applications were processed in 1996, with 95 percent completed in less than 60 days. Furthermore, only three of those applications were denied. The Service reviews these permit applications, but only comments on a small percentage that have the greatest impacts on wetlands and their associated fish and wildlife resources.

Streamlining the process by getting permit review agencies involved in early project planning and design have been the recent focus of several Administrative and Legislative actions. In 1992, the Administration put in place the latest Memorandum of Agreement between the Corps and the Service, which clearly stated the need for early coordination and communication among the agencies during the Section 404 review process. Additionally, Congress passed the Intermodal Surface Transportation Efficiency Act of 1991 which implements the merger of NEPA and the Clean Water Act, during the environmental review process. These Federal actions relate to GADOT, not only because their projects will impact wetlands and require a Clean Water Act permit, but also because GADOT projects receive nearly half a billion dollars annually in Federal support.

In response to these Administrative and Congressional mandates, the Corps and the Federal Highway Administration have developed the Local Coordination Procedures. The Georgia procedures were finalized in September of 1995. It was decided to make the new procedures applicable to all new Section 404 applications. Because GADOT had been planning highway projects without early coordination prior to this time, there were a considerable number of projects that were in the planning phase (some very late in planning) that had not applied for a Section 404 permit. Therefore, there was a considerable backlog of projects that required the application of the new Local Coordination Procedures. This temporary situation has led to a significant increase in workload for GADOT, the Corps, and the review agencies. We are all working very hard to overcome the backlog. The agencies have coordinated a list of priority projects with GADOT and we are focusing our attention on their highest priority projects. Consequently, some projects that were looked at in the field some time ago, but are low on GADOT's priority list, have been set aside to address higher priority projects. From the Service's perspective, we expect to eliminate our backlog of projects by the end of the summer.

The Service takes our participation in the Local Coordination Procedures very seriously. We are attempting to assure that all concerns of the Service that may result in a recommendation of

permit modification or denial, are fully considered prior to the time that GADOT applies for a Section 404 permit. Our goal is to work with GADOT in such a way that, for all future 404 permit applications, the Service can submit a letter of full support to the Corps following the early coordination process on these projects. However, to get there requires a serious look at the project and the preliminary application of various guidelines and procedures that will be applied during the permit review process. Most notable of these are the Section 404(b)(1) Guidelines for alternative analysis and the Corps' Standard Operating Procedures for mitigation determination.

The Section 404(b)(1) Guidelines are the substantive environmental standards by which all Section 404 permit applications are evaluated. The Guidelines, which are binding regulations, were published by the Environmental Protection Agency in 1980. All applicants are required in every case to evaluate opportunities for use of non-aquatic areas and other aquatic sites that would result in less adverse impact on the aquatic ecosystem. The Service participates in the early coordination site reviews to assure ourselves that these guidelines are being genuinely applied, and specifically to see if reasonable and feasible alternatives have been explored on GADOT projects. These guidelines have been in place long enough for GADOT to know with certainty what is expected of them in the wetlands protection arena. It is a GADOT management decision to carefully choose alternatives that sincerely address the expectations of the guidelines and that are practicable. No one benefits developing and reviewing impracticable alternatives.

Once the alternatives have been evaluated, it is the responsibility of GADOT to mitigate for unavoidable wetland losses. As an expedient way to evaluate wetlands in the field, the Savannah District of the Corps has adopted Standard Operating Procedures. These procedures allow the review agencies and GADOT to quantify the value of the wetlands to be impacted, compare that value to other alternatives, and calculate the necessary mitigation. In an effort to avoid duplicate field trips and to assure that issues related to required mitigation are addressed prior to the permit phase, the Service has proposed to use the early coordination site reviews to apply these procedures and reach agreement with the participating agencies, including GADOT, on the value of the wetlands being lost and the amount of mitigation required.

The GADOT has taken issue with the suggestion that early coordination site visits should be used to quantify the wetland impacts of the proposed project, noting that it is a waste of the agencies' time. The Corps agreed with GADOT and suggested that the issue be discussed at the regularly scheduled quarterly review meeting (planned for mid-July). The Service looks forward to resolving this issue. In the interim, we have decided to forgo participation on early coordination site reviews and focus our attention on eliminating the backlog of GADOT projects. The projects we are not visiting will be reviewed at a later date when the agencies arrange a second visit to the sites to discuss mitigation needs.

The Service letter of May 21, 1997, should not be interpreted as backing away from the Local Coordination Procedures. We are simply interested in making the most of our field time and assuring that all potential problems with a project are addressed before the application phase.

Thank you for this opportunity to discuss our part in the wetland's regulatory process. We believe great strides have been made in the past 2 years among the Service, the Savannah District, and the GADOT in the wetland's regulatory program. However, we also look forward to working with all interested parties to seek out opportunities for improving the permit review process.

Mr. MCINTOSH. A second area that came up—occurred to me in listening to some of the testimony of people who had had problems in dealing with the Cease and Desist Order. They mentioned that their consultants and engineers were unaware of some of the changes in the standards and that the local government, I guess particularly Bartow County Health Department was telling, I think it was Mr. Dabbs, that they did not realize that there might be a process that they had to go through with you. Does the Corps have an effort in, I guess, information dissemination, either to practitioners in this area, people who are working in construction in the engineering side, or to the local governments who also issue permits, to try to keep them up to date as changes are made, like on the changes in the nationwide permit?

Mr. OGDEN. If I may, when the new nationwide permits came out in February 1997, each Corps district including Savannah District, had the requirement to send out through our public mailing list these changes. And our mail-out is something in excess of 1,500 on our mailing list. So practically every community, every conservation group, every citizen on that list—and every citizen in the State is not on that list, it is by choice—does get that information. There are certain workshops held around the State that we have had and we invite people in the business community to come so that they can sit in and participate in this information process. That has been done throughout the State of Georgia since these new regulations went into effect. I do not know what else we can do to get that information out to the public.

Mr. MCINTOSH. Are some of the engineering firms also on your list?

Mr. OGDEN. Yes, sir, many of them are.

Col. SMITH. I would also add that there was a public hearing conducted by the Division Commander of South Atlantic Division here in the Atlanta area with regard to the nationwide permit changes. Again, we can apologize for folks not getting that word, but we made very clear, conscious efforts to try to get the information out there.

Mr. MCINTOSH. And I think that makes sense. I guess in this particular case, there has been a change from when the project started and that presents some particular problems.

Let me ask you Col. Smith, to address another question. The cost of delays are enormous, and we heard testimony earlier. I think everybody would understand that, because when you are developing a site, you are often doing it on borrowed money, so you have got time value of money to deal with. Is there a process in place where the Corps has switched from an approval process to an enforcement process, issued a Cease and Desist letter or whatever the step is, where you try to expedite resolution of that, at least as to areas where the Corps may not have jurisdiction or there is a question of jurisdiction that needs to be resolved?

Col. SMITH. Well, I would refer again to what Mr. Ogden said earlier as far as our overall priorities, is our——

Mr. MCINTOSH. It sounded like enforcement was lower down on the totem pole.

Col. SMITH. Enforcement is lower on the totem pole. Priorities are for—permit applications are the highest priority, but within all

of that, obviously we can work to do better and minimize impacts. And if these particular issues with major impacts are brought to our concerns, we will try to respond wherever we can in as rapid manner as we can. It is an issue that every agency has in trying to maximize its output responsiveness with a limited staff.

Mr. MCINTOSH. Let me urge you to think about—and in particular on that Cease and Desist Order and others that bring things to a standstill in development whether there might be a way to expedite that. And I do not know if that means reordering your priorities or focusing in on a management of the time that elapses on those, because there is a particular cost involved once somebody has started a project, that means they have signed the loans, they are not waiting for permit approvals in order to get the money flowing and so there are some very serious costs that can be incurred, and you might want to take all that into consideration. Just kind of real world effects, in establishing that priority within your office. And I understand the difficulty when you have got limited resources and you have got a lot of different things that staff has to review and sign off on. But that struck me earlier as something that could be particularly taken into account.

And in that line, I ask you to respond to the other criticism that was leveled was by Mr. Shackleford, who said there is a lack of ability to make decisions.

Col. SMITH. Well, I would have to disagree. I think we have the ability to make decisions wherever possible and I guess what we are charged in the field here as executing the program, we balance trying to make sure all the concerns per our guidelines and the regulations and law that exist are taken into account, so that we can in fact approve permits. Our goal is to approve permits, not deny permits. And I think our record shows that statistically, we do a pretty good job of that, and very seldom, in fact, wind up denying a permit. So I guess all I can say in response is I feel we are fully capable of making decisions and we make them wherever we—in as timely manner as we can and in a balanced manner with regard to our responsibilities under the Clean Water Act.

Mr. HOUGH. Mr. Chairman, if I might?

Mr. MCINTOSH. Yes.

Mr. HOUGH. I do not recall Mr. Shackleford's comment being directed at the Corps of Engineers.

Mr. MCINTOSH. It was a general comment about the process, I think that is right.

Mr. HOUGH. We might ask him. I do not recall that being directed at the Corps, it was directed at someone else.

Mr. MCINTOSH. Mr. Shackleford, do you want to elaborate?

Mr. SHACKLEFORD. Simply to the point, the Corps issues the permit, the Corps has the responsibility to take into consideration input from the other agencies, but ultimately the Corps has to make the decision, so they have got to be able to work through the process, they have got to be able to deal with 15 month delays on PARs. So you heard me say that they are a prisoner of the system. They need to be able to deal with the system and so some of the blame has to rest with the Corps. Primarily it rests with the agencies that have review process.

I want to give you one example. I talked about the situation up at Homer. U.S. Fish and Wildlife tried to blackmail us—the purchase of 2,900 acres between that bypass road and the core center of that town, to mitigate 7½ acres of wetlands—2,900 acres of upland. Col. Smith's predecessor, Col. Boy, ultimately turned that permit down because it was determined there was a viable alternative that essentially dismantles the town.

Mr. MCINTOSH. That is pretty strong language, Mr. Shackleford.

Let me tell you this, I do think you are correct and there are problems in both the way the system is designed where you get the Fish and Wildlife Service and EPA having effectively a veto over Corps decisionmaking, but then I think there is some valid concern there that the Corps needs to, within the system that is flawed in its design, needs to work to reach those decisions in a way that is good for the public.

And believe me, this is coming from someone who tried for a long time to say EPA should stay out of it and we should allow the Corps to make these decisions on their own, because in fact from my perspective, back when I was in the Bush administration and today as a Member of Congress, the Corps does have the ability to do that and your perspective of trying to grant permits rather than deny them is one that was appreciated. So I think there is an equal measure of concern on all sides there.

I have no further questions on this. Mr. Barr, do you have further questions of Col. Smith?

Mr. BARR. Thank you, Mr. Chairman, just two quick things.

To go back, Colonel, to Mr. Grady Brown's situation, would you be prepared to tell him today that in the great scheme of things and the great list of priorities that you all deal with, would you be prepared to tell him today that he can simply restore his land to the condition in which he found it when he purchased it?

Col. SMITH. No, sir.

Mr. BARR. I have this nasty habit of always going back and trying to find things in writing and let me just mention one other of your documents, and it is not really a question, Mr. Chairman, although if you would like to respond, Colonel, I certainly would want it. It simply follows on to my earlier questioning with regard to your written testimony and I think this is again an illustration of the problems that counties and other governmental agencies are having dealing with the Corps.

This is part of the document package dated January 14, 1997 to Mr. Jim Croy, and it has to do with the Cobb County project that has consumed a great deal of our time today. And in your part one introduction of the background materials that accompany your letter to Mr. Croy, under paragraph (h) it talks about the basic project purpose. And this is what we kind of come back to. It says, "We have considered the applicant's reported project purpose and need." However, then it goes on in the next sentence to say, "The basic project purpose as determined by the U.S. Army Corps of Engineers," and then it goes on. This is, I think, the confusion and this is, I think, the root of at least some of the problems that we are seeing here, in that the Corps is, for some reason, feeling the need to make independent determinations of the needs in our communities for these projects, notwithstanding the fact that the State

agencies, the local governmental agencies' may have already determined that in their view, based on the needs of their citizens in the community, they need a road project. And then they come to the Corps and the Corps conducts an independent study and analysis to itself determine whether there is a need for the project or what the purpose is to then determine if it fits within what the Corps views as its jurisdiction.

Again, all of us may be wrong in this, I do not know, but this is really the genesis for a lot of the confusion and perhaps even a great deal of wasted time and money, and is something that I know I want to look into further and perhaps highlighting some of this. And again, in fairness to you all, it may be a problem for you all too in trying to determine and decipher exactly what your jurisdiction is. But I think it is much broader in practice than it was intended by our Government and the Congress in passing these laws to be.

And I appreciate you being with us today, and again, if you would like to respond to that, that is fine—you do not have to.

And I appreciate—before we move into the general public comment period—very much your bringing these hearings to the Seventh District of Georgia, Mr. Chairman, and giving us the opportunity to let you and our colleagues know some of the real problems out here in the real community that we have to deal with.

Mr. MCINTOSH. I appreciate that. Col. Smith, did you want to make a comment?

Col. SMITH. Well, I think in response, the only thing I would say is that clearly it is not my intent, as a district engineer, to try to determine what the needs of a local community are with regard to road projects. I do not believe that that is in my purview and if that is the way the language is written there, then probably we are not articulating it well. I see my mission as one of regulating within my jurisdiction the law under the Clean Water Act to find a way for a local community to find a way to have a project that can damage the environment in the least manner and get the project constructed, and balance those different and competing—in many cases, competing requirements of the Clean Water Act and the requirements for development in the local community.

Mr. MCINTOSH. Let me followup on one thing and then I will be done. With regard to Mr. Brown's situation, you indicated when Mr. Barr asked if you could allow him to go back and restore his land to the way it was—what can he do to have the ability when another entity of the Government has come in and changed the nature of his land, to have it restored back to the way it was?

Col. SMITH. I think that what has happened as in the case of Mr. Brown, which is a very clearly unique case and I think probably we can all relate to Mr. Brown and say it is a very unfortunate case, but it is a case where wetlands have been created, and wetlands are protected under the law and therefore, his avenue to have the wetlands removed would be to get permission to do that, a permit.

Mr. MCINTOSH. And it is the legal position of the Corps that wetlands that are artificially created are protected the same as naturally occurring one?

Mr. OGDEN. May I answer that?

Col. SMITH. Go ahead.

Mr. OGDEN. In the law, it does not differentiate between naturally occurring wetlands or wetlands that might be created as a result of manmade activities, it does not differentiate.

Mr. BARR. Can you all not use something called common sense here? [Laughter.]

I mean that as a very serious question. [Applause.]

I mean we have the situation, and apparently you all do not disagree with anything that Mr. Brown has testified to in terms of his basics as just related by Mr. McIntosh, and you are saying notwithstanding that, simply because the law does not differentiate, we in the exercise of independent common sense cannot do so.

Mr. OGDEN. He can apply for a permit and we can go through the process. I do not know how we can circumvent the law. [Applause.]

Mr. BARR. OK. I do not think you are circumventing the law, you are saying that the law does not say exactly—does not force you to do exactly what you have done here. We are saying is not common sense, in addition to, as you indicated earlier, your professional judgment, should that not be part of the equation too? A common sense interpretation of the law.

Mr. MCINTOSH. I think you could make an argument that at the time the law was passed and even extended by regulation to his property, it was not a wetland and the Government owes him the obligation to restore it to the way it was at that point in time. And I think that would give you ample authority to make the decision that yes, if we need to now issue a permit to do that, we can do it.

Mr. BROWN. Let me ask you something. Could I ask a question of this engineer? Now that might not be lawful or might be out of order, but I would like to ask him something.

Mr. MCINTOSH. Sure, Mr. Brown.

Mr. BROWN. I would like to know how you found out, the Corps of Engineers found out that was wetland? Do you know?

Col. SMITH. I do not know the answer to that.

Mr. BROWN. Either one of you know? Do you know what they told me? The Corps of Engineers came out there and said at first he came out there and saw wet land there. Well, whenever he came out there, the ditch was already dug and it was not wet land, I mean the water was running down in the stream. I asked him, I said, you said you came out there and saw it. You did not see any wet land, did you? I said who—what did you do, what happened? He said I got an anonymous call. That is the way you all got it, through an anonymous call.

Have you all got plenty of time that every time somebody calls you to run out and see about somebody? There in Villa Rica where it is hurting nothing. It is my land and I bought it in 1943, around in the early 1940's. I have paid taxes on it for all that amount of years and here it is, an anonymous call can come down there and get my land—I mean put water all over my ground, plug up ditches. It does not make sense, it does not make common sense. It is a bunch of people that are taking this country over and people are getting tired of it. [Applause.]

VOICE. Why do you not go after the State, they are the ones that caused the problem?

Mr. BROWN. The State did not have anything to do with it. The DOT had to go out there and fill up that ditch after they dug it. That does not make sense.

VOICE. May I speak?

Mr. MCINTOSH. Let me now—actually we are going to move on to the open microphone where people will be able to speak.

Mr. Ogden, did you have any comment with respect to that? I will give you the final word.

Mr. OGDEN. About the only thing I could say about that, I personally was not involved in that site visit, but wetlands are determined based on a three-parameter approach. We look at hydrology, vegetation and soil conditions, and even though you might pull the hydrology away by putting a ditch in, the soils are not going to change overnight and there will be remnant vegetation there for sometime. So to this specific case, I could not say who made the determination on my staff or how it was made, but I would assume that there were wetlands there and the ditch was dug and it removed the hydrology and as far as we are concerned you still have a remnant wetland there.

Mr. MCINTOSH. Well, I would urge you, if Mr. Brown puts in a permit, to study this and determine whether there is a flexibility in the law to allow him to restore his land to the way it was. And I am pleased to hear you say that this is a relatively unique problem that comes up.

Let me close out this portion of the hearing and once again thank you, Col. Smith. I know it is not always pleasant, but I appreciate your willingness to listen to people.

And now we are going to move on to the open microphone portion of the hearing. We were, I think, scheduled to close out at 4 but this has taken longer than we thought, so we will go until 5 and get as many people as possible.

I will call forward names based on the sign-up sheet that was out there with the staff and we will ask everybody to please keep your comments to 3 minutes and Bob and I may have a question or two for you after that.

The first person who had signed up is Ms. Laura Lester, if she is available. And please, if you could come forward to this front podium, so we can record it for the record. And then perhaps Karen Barnes, who is the staff assistant there in the powder blue suit, if folks could identify themselves to her and line up so we could rapidly go through the list of people, that will allow as many people as possible to participate. Thank you, Ms. Lester, if you could share your remarks, and I would ask you to keep it to 3 minutes, if you could.

STATEMENT OF LAURA LESTER, WEST COBB COMMUNITY COUNCIL

Ms. LESTER. I hope it will be 3 minutes. I do have a title for my paper and although I did not have time—I was so busy putting up green signs everywhere letting everybody know that the meeting was held today—that it is not proofed, but I certainly want you to have a copy of it and will certainly forward one that is proofread.

Mr. MCINTOSH. We will put the whole paper in the record for you also.

Ms. LESTER. Thanks. "Checks and Balances versus Unchecked Government Power" is the title of my brief remarks. The subtitle is "Local, State and National Governments Use the Road of Power and Wealth in Search of Economic Development While Citizens Rely on their Rights to Assemble, to Speak Freely and to Petition the Government in Search of Quality Living."

Welcome to Georgia, Chairman McIntosh. We are the largest State east of the Mississippi and home of more trees than any other State in that region. The beauteous pastoral character of western Cobb County and the peace and tranquility of its citizenry are the subject of my brief address today.

Chairman McIntosh, Karen Barnes of your staff asked me what my position was when I called your office to request being included as a witness. Was I against the West Sandtown route chosen by the Corps of Engineers? I responded that my organization, West Cobb Community Council, had organized a steering committee, held community meetings and I wished for the entire range of views to be presented. Ms. Barnes said the list was unfortunately already filled. However, I could wait until the end for the open mic panel.

The staff member at the office of Representative Bob Barr said the list of witnesses was being done in Washington, and only residents along West Sandtown Road were invited. I responded that I lived along West Sandtown. Then I was told that potential names of residents were from Commissioner Bill Cooper.

The staff member at the office of Chairman Byrne said they had no involvement in the witness list and had not received it. The staff at the office of Commissioner Cooper said she was not involved in the witness list, but she would have the commissioner call me.

Ms. Barnes from Chairman McIntosh's office faxed my office a tentative list of witnesses 2 days after our initial talk. I carried copies to the Atlanta Journal Constitution and the Marietta Daily Journal, who had received none as well.

Neither John Wiles nor Bill Byrne, neither the Government witnesses for Cobb County nor the State of Georgia have met with the organization that we formed or with the remnants of Protect West Cobb or with any of the affected subdivisions or with the school parents or with the church members along West Sandtown Road or with those on nearby Irwin Street or John Ward Road. Commissioner Cooper did attend one of our meetings on February 20, 1997, held at Cheatham Hill Baptist Church. Some of the residents who opposed the Noses Creek route were present and spoke, as did a large group of people living directly adjacent to or off West Sandtown Road. I oppose efforts to divide and conquer between neighbors. I oppose efforts to present one side only of a many-sided issue. I oppose posturing of a political nature.

I have three points to make. The first is to question the traffic study done by Moreland Altobelli Associates, Inc., in January 1994 in cooperation with the Cobb Department of Transportation. Cobb DOT used this document almost exclusively as the basis for their decision to build a stand-alone four-lane highway. This study forms

the heart of the West Cobb Loop Permit Application Support Document. I was told that copies of this document were probably not available because of litigation. I filed under the Freedom of Information Act and made copies of portions. I find the study irretrievably flawed.

The study does not look at traffic patterns in a connected pattern for the region, but specifically centered and limited the study to an area on either side of West Sandtown Road. Traffic counts were judged superficial by eye witnesses. These witnesses report that the West Sandtown Road traffic count was done only at the dropoff in the morning for students attending Dowell Elementary School, with over 700 students arriving for school. Computer projections filled out the numbers used in volume/capacity ratios. The centering and the counts were major factors in the results.

The Army Corps of Engineers did not say this today, but they are much more critical of the study. The denial states "There are problems with data interpretation related to improvements shown in the volume/capacity ratios. It appears that invalid data which prevails in the Permit Application Support Document was used by the applicant to support the preferred corridor alternate."

This harshly critical statement means that the routes presented were all based on improper and inaccurate information. Neither Noses Creek nor West Sandtown were properly studied, presented and evaluated.

The second point is that I find the intended road to be essentially a developmental highway, not a transportation corridor. This is a segment of a huge road proposal designed to link the interstates and the shopping mall areas, Town Center and Cumberland. Others beside me have stated the viewpoint that an environmental impact statement was required. In 1994, Protect West Cobb wrote in their response to Joint Public Notice required by the application that this was "an improper segmentation of a larger road construction project." They state that due to the magnitude, the project constitutes a major Federal action significantly affecting the human environment such that an environmental impact statement is required pursuant to the law.

Now most of these segments have been built. Denial of the whole scope of the road project is limited to what segments remain.

In the 1980's, Wayne Shackleford characterized roads as links to malls.

Mr. MCINTOSH. Ms. Lester, I am going to have to ask you to summarize the rest of your points.

Ms. LESTER. I certainly will, it is very short.

I find this a transparent effort to support commercialization of existing residential land. I call for an environmental impact statement at this juncture.

The third point is a critical look at the stand-alone nature of the road as a Cobb taxpayer. It is unfair to expect Cobb residents to bear alone the cost of relieving traffic congestion of our Paulding County neighbors. A new traffic study will in all likelihood indicate the need for a corridor and these commuters do account for a tremendous amount of consumer purchases in our malls. But the designation as a stand-alone did disguise the pattern and the purpose.

In summary, I find three errors in the process of planning and building these roadways through west Cobb. There is intentionality in the error of the West Cobb Traffic Study and its subsequent use. There is intentionality in the error of segmenting the project artificially to avoid the study of environmental impact. There is error in the assignment of county taxes to a regional road plan.

I recommend that the new application for a permit be based on a regional traffic study.

I recommend a study of the impact of a new permit application on the human environment.

I recommend that the State of Georgia become a planning and funding partner.

It is unjust to tax the citizens of Cobb for roads that have a State purpose.

In conclusion, I cast no stones and I blame no persons or institutions. It is fortuitous and providential that we citizens are able to make use of the checks and balances of power between local, State and national governments. My neighbors and I choose to live out here on West Sandtown Road to enjoy the countryside, the natural beauty and the quiet. We want the most to say about our pursuit of happiness. [Applause.]

[The prepared statement of Ms. Lester follows:]

Welcome to Georgia

Representative McIntosh, welcome to Georgia, the largest state east of the Mississippi, and the home of more trees than any state in that region. The beauteous pastoral character of western Cobb County and the peace and tranquillity of its citizenry are the subjects of my brief address today.

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Ward Road. Commissioner Bill Cooper attended one of our meetings on February 20, 1997, held at Cheatham Hill Baptist Church. Some of the residents who opposed the Noses Creek route were present and spoke, as did as a large group of people living directly adjacent to or off of West Sandtown Road. I oppose efforts to divide and conquer between neighbors. I oppose efforts to present one side of a many-sided issue. I oppose posturing of a political nature.

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This harshly critical statement means that the routes presented were all based on improper and inaccurate information. Neither Noses Creek nor West Sandtown were properly studied, presented, or evaluated.

II. The second point is that I find the intended road to be essentially a developmental highway, not a transportation corridor. This is a segment of a huge road proposal designed to link the interstates and the shopping mall areas, Town Center and Cumberland. Others beside me have stated the viewpoint that an Environmental Impact Statement was required. In 1994, Protect West Cobb wrote in their response to Joint Public Notice required by the application that this was "an improper segmentation of a larger road construction project."

> "...due to the magnitude of the overall project, the extent of the federal permitting process, and the cumulative direct and indirect effects on the human environment, including jurisdictional wetlands, the project constitutes a major federal action significantly affecting the human environment such that an environmental impact statement is required pursuant to 42 U.S.C. 4332(2)(C)."

Now most of the segments have been built. Denial of the whole scope of the road project is limited to what segments remain.

In the 1980's Commissioner Wayne Shackelford characterized roads as links to malls. Land use planning theory now finds this a flawed and harmful approach to development. I find this a transparent effort to support commercialization of existing residential land. The City of Marietta moved swiftly to annex the adjoining segment, Ridgeway Road, and developer plans called for new shopping centers. This literally followed within days of the road's completion. I call for the Environmental Impact Statement at this juncture.

III. The third point is a critical look at the stand alone nature of the road as a Cobb taxpayer. It is unfair to expect Cobb residents to bear alone the cost of relieving traffic congestion of our Paulding County neighbors. A new traffic study will in all likelihood indicate the need for a corridor to assist Paulding County residents to access routes to the south. These commuters account for the congestion radiating out from Dallas Highway. The designation as a stand-alone instead of as a segment disguises this pattern, and, although these commuters shop at our malls, and bring wealth to our County, it is fairer to expect this transportation network to be a state project, paid for by more than Cobb citizens.

Summary

In summary, I find three errors in the process of planning and building these roadways through west Cobb. There is intentionality in the error of the West Cobb Traffic Study and its subsequent use. There is intentionality in the error of segmenting the project artificially to avoid the study of environmental impact. There is error in the assignment of county taxes to a regional road plan.

Recommendations

I recommend that the new application for a permit be based on a regional traffic study. Transportation and land use must move to a new dimension, where no man and no county is seen as an island, separate from each other.

I recommend a study of the impact of a new permit application on the human environment. An end to characterizing this road as a stand alone project is in order. A federal Environmental Impact Statement is better late than never.

I recommend that the State of Georgia become a planning and funding partner. Cobb soon will end the on percent sales tax for transportation. It is unjust to tax the citizens of Cobb for roads that have a state purpose.

In conclusion, I cast no stones and I blame no persons or institutions. It is fortuitous and providential that we citizens are able to make use of the checks and balances of power between local, state, and national governments. ~~governments.~~ I speak as a native Georgian and a Georgia schoolteacher. My mother's people farmed the land in west Georgia and my father's people farmed the land in east Atlanta. Georgia clay, red and yellow, Georgia trees, cedar, oak, and pine, are what I love. My neighbors and I chose to live out here off West Sandtown Road to enjoy the countryside, the natural beauty and the quiet. We want the most to say about decisions which deny us our lawful pursuit of happiness.

Mr. MCINTOSH. Thank you, Ms. Lester, we appreciate that. Represent Barr, did you have any questions?

Mr. BARR. No.

Mr. MCINTOSH. Thank you. The next citizen witness on the list was Erin Bout-heilier. And let me mention a couple of the other people so you can be on deck, as it were. George Morgan will be third and Dr. Sue McCuskey is fourth. Is Erin here?

[No response.]

Mr. MCINTOSH. OK, let us move on to George Morgan. Mr. Morgan. And then it will be Dr. McCuskey.

STATEMENT OF GEORGE MORGAN

Mr. MORGAN. Good afternoon, Mr. Chairman, Congressman Barr. I am George Morgan, I am a general partner in SMG Development Associates and president of George S. Morgan Development Co.

One of our most recent projects, after 25 years of development in north Atlanta, is Hamilton Mill in northeast Gwinnett County. Hamilton Mill is a 1,400-acre planned community with approximately 2,500 homesites, a true home town. We also have two golf courses, a town center shopping center and other amenities that make Hamilton Mill a self-contained residential community.

In June 1995, my engineer secured a nationwide wetland permit from the U.S. Army Corps of Engineers for Hamilton Mill under the nationwide permit regulations. The nationwide permit delineates existing wetlands in the total site consisting of 17.6 acres and allowed disturbance of 4.1 acres of the existing wetland, authorized creation of a 4.4 mitigation area and placed over 15 acres of additional land in perpetual restricted covenant. I was told by the Corps of Engineers staff at the time that my compliance with the national wetland permit satisfied their requirements. While I philosophically do not agree with the taking of private land without just compensation, I accept the conditions of the national wetland permit.

The problem I am now having is that certain inherent changes must occur in developing a large project such as Hamilton Mill, over a 6 to 8 year period. I am told by my consultants and engineers that the Corps of Engineers now has changed their wetland permitting regulations by reducing the maximum allowable impacted areas for a single project from 10 acres to 3 acres. My consultants say that under the revised regulations, I must reapply to the Corps of Engineers for an individual permit for any disturbed areas. According to my consultant, any other developer who has been through this process, the individual permit can take from 6 months to a year to finalize, not to mention the extra cost. I just might point out it took me 2 years.

The revised nationwide permit regulations are patently unfair, unacceptable to those of us who earn our living in the marketplace. I am very appreciative of the House Government Reform and Oversight Committee's interest in this important matter and I am asking for review and reform of the wetlands permitting process.

Reforms that would be most beneficial to a large project such as Hamilton Mill are:

(1) A permitting system that is flexible and lends itself to easy and fast revisions for impacted areas.

Recognition by the regulators that large projects that have larger wetland areas should be allowed proportionately larger disturbed areas under the national wetland permit. For example, a 1,400 acre is subject to the same maximum allowable disturbable area of 3 acres as a 10 acre tract.

These two changes in the process would be of great value to developers such as myself and I believe would greatly help to preserve the wetlands. Keep in mind that I am a residential developer, I develop a place for people to live. We consider wetlands, we consider any area that preserves the natural beauty of a property to be a great asset. So therefore, we do everything in our power to work within the confines of the law to preserve those things and to make great access to those things. And I will point out that we have had numerous good working process with the Corps on other projects and we have turned these areas into some of the highlights of our development.

But this particular project, I do not intend to resubmit this project to the Corps of Engineers for a chance to review this again, since we have made a deal to mitigate approximately four to one ratio. In other words, we set aside approximately 20 acres to their 4.5 acres. The wetlands that exist on my property, which were minimal at best, this is an extraordinary cost for me and it is an extraordinary cost of the public taking of private property, which no compensation has been given to anyone, not to mention the process took, as I mentioned, almost 2 years and several hundred thousand dollars in both time, interest, engineering fees to accomplish, due to the bureaucratic indecision of the Corps.

It would be most unfair to allow the Corps another bite at the apple. We are all sensitive to protecting our environment, but at the same time, the cost is ultimately passed on to the consumers, the people who live at Hamilton Mill.

I just want to point out that I think that what Mr. Shackleford said is really the issue here. We play by the rules, we apply, we do everything as we are told, we set aside land, we covenant that land for eternity, never to be done anything with, we strike a deal and the end result is there is no closure, it is not over, it keeps going. If the rules change, they get the chance to redo it.

I say a deal is a deal and let us stick to it and then I think that everyone could play by the same rules and there would not be near the indecision that takes place now within the Corps. I am not sure if this indecision comes through the EPA or comes from the Corps itself, but I can tell you on many personal instances they have told me that they interpret those rules as they see fit and if they see that there is a change, whether it be political or whether it be from a written thing, they will make those changes on their own accord. So, I feel that the rules just keep changing and I am asking you in any way, shape or form to establish a set of rules so we all know how to play this and do it correct.

Thank you for your time.

Mr. MCINTOSH. Thank you very much, Mr. Morgan.

Our next witness is Dr. McCuskey and on deck would be Glynn Groszmann and Doug Congleton.

STATEMENT OF DR. SUE MCCUSKEY, ENVIRONMENTAL CONSULTANT

Dr. MCCUSKEY. Thank you. My name is Sue McCuskey, I am with an environmental consulting firm here in Atlanta and I have been in environmental consulting for 19 years. I was asked to come today and speak by the National Association of Industrial and Office Properties.

And essentially I have a lot of experience with the wetland permitting process. I know the wetland folks down in Savannah, I have been out in the mud and the dirt with those guys and also the folks in the Atlanta office. I have been involved with a lot of the resolution really of wetland violation projects with both the Corps and the EPA folks. I have a lot of respect for the individuals involved in this process. And I think it is clear from what we have heard from everyone today here that no one is opposed to wetlands, no one wants to destroy wetlands, to endanger our water quality. That is not the purpose. On the other hand, we do have the Clean Water Act and the purpose of that Act is to define and direct protection of what is required under the law.

In the case of the Clean Water Act, there are lots of different guidances that have come out in addition to the law. These include the section 404(b)(1) guidelines, regulatory guidance letters, a number of different even internal memos that help define some of the terminology in the wetland identification. So there are a number of other things that the Corps lives with and the EPA lives with, and as a consultant, I live with as well.

One of the problems that we have all discussed together, and I think we would all agree with is that there is no distinction between a low quality wetland and a high quality wetland. The people who do not deal with wetlands on a daily basis expect a wetland to look like the Okefenokee Swamp and it does not look like that. There are many times when a wet place in the back of a shopping mall is a jurisdictional wetland according to the law, and you look at the three parameters and yes, it is legally protected. But there seems to be—as you mentioned, Representative Barr, there ought to be an element of common sense. And I think that we are probably all in agreement with that.

When we talk about destruction of wetlands or, for example, on the West Cobb Loop road project, potential impacts to 8 acres of wetlands, we are not looking at an 8 acre forested swamp with lots of wildlife habitat. We are looking at 13 small pieces of the edges of wetlands and tremendous cost and effort that has gone into protecting as much of those wetlands as possible. If the Corps' sole avenue of resolution is to look at no impacts to wetlands, then yes, you would have to ignore displacement of citizens on West Sandtown Road. But if you were to look at the bigger picture, then you would look at human impacts as well as wetland and wildlife impacts.

So we need to have a way to look at the value of different wetlands in order to interpret the amount of impact, regardless of the total acres.

I think another thing is that a lot of people do not understand the different kinds of permits. There are two major kinds—the nationwide permits, which are specifically designed for what is legiti-

mately recognized as minor impacts. And they were designed just in order to keep the Corps from being totally tied up in impacting small areas when people wanted to extend their driveway or some minor issue. And then there are the larger permits which are the individual 404 permits.

Keep in mind that with the change in the nationwide permits, most people focus in on the nationwide 26, which was the most commonly used nationwide permit, and it used to allow impacts up to 10 acres if you had a body of water that had less than 5 cubic feet per second flow. Most people do not know a 5 cubic feet per second flow if they ran into one in the mall. And I usually define it as something that I could jump over. So if your creek is bigger than that, bigger than something I could jump and it has greater than 5 cfs flow, then the nationwide 26 would not apply. Unfortunately, that makes it much more difficult to conceptualize where your permit might be a problem. So any impacts to a wetland associated with a larger body of water is going to require an individual permit, even if it is 0.06 or whatever it is.

There have been permits filed on individual basis for wetlands the size of a tennis table.

I am out of time.

Mr. MCINTOSH. Go ahead and summarize your comments.

Dr. MCCUSKEY. OK. Because of the change in the allowable impacts, allowable acres of impact on the nationwide 26, a lot more parties are going to be involved in that and the Corps will need more staff in order to evaluate and process those impacts—excuse me, those permits. Also, you can no longer combine several nationwide permits, even though they may have been individually assumed to be of minor impact, when they are combined in the 26, you have to combine the acres.

In addition, there are more permits required of pre-CN, that is a pre-construction notification, or restoration plans, and 18 of the 39 new nationwide permits require something called a compliance certificate even if you have not had to ask for a permit in advance.

The second kind of major permit is the individual permit and I have heard people call for an environmental impact statement. Actually an individual permit is an environmental assessment, it is the same as a NEPA EA. An EIS is distinguished only from an EA in that an EIS requires public participation notification. On the West Cobb Loop project, there was already public notification. That aspect of a NEPA process was already satisfied.

As was mentioned earlier, on an individual permit, there are many, many issues beyond wetlands that are addressed, including the need and purpose of the project, traffic counts and so forth. I am not qualified to evaluate traffic. I am not qualified to evaluate the species of fish. I know wetlands, I know a lot about wetlands but I could not work for the Corps and give my full hearted evaluation of a permit that discussed seven or eight different major topics. No one person writes an EA or an EIS or an individual permit. It takes the working together of a number of skilled professionals and that is why it makes it very difficult for them to then come up with a few people from the Corps who are very well intentioned and very good at recognizing wetlands, but may not have the skills and background to do the rest of it.

So let me just say that I think that in the permitting process there are many, many shadings to it that make it very difficult and particularly for linear projects where you have roads or sewer lines because you cannot define a single and complete project if you are building a road from here to Tennessee unless you happen to have funding for the entire length, and in most cases that does not happen.

Thank you very much.

Mr. MCINTOSH. Thank you very much, Doctor, we appreciate you coming by and testifying. Next would be Glynn Groszmann and on deck would be Doug Congleton and Jay Weismann testifying for Sam Collier.

STATEMENT OF GLYNN GROSZMANN, SIERRA CLUB

Mr. GROSZMANN. Good afternoon. My name is Glynn Groszmann, I am the water issue leader for the Georgia Chapter of the Sierra Club. I am also the conservation leader for the local group of the Sierra Club. These are volunteer positions. My occupation is a self-employed environmental consultant, I am a certified profession in erosion sediment control. I address a number of issues affecting aquatic resources, including wetlands delineation and permitting. I am speaking representing the Sierra Club.

The Georgia Chapter of the Sierra Club supports the provisions of the Clean Water Act which require the protection and conservation of wetlands and we support the U.S. Army Corps of Engineers' efforts to administer the act's provisions for regulating and permitting activities that affect wetlands.

Wetlands are vital natural resources that provide crucial benefits to the community, including flood control, filtering and conversion of toxic chemicals, trapping of sediments and natural areas for fish, wildlife, recreation, greenspace and biodiversity. When wetlands are destroyed, it is the people of the community who pay the price for their loss, while those who cause the destruction reap the profits. It is the people who have their properties damaged by the increased flooding who pay for flood controls and higher insurance rates, who pay the higher costs of drinking water treatment, who pay to have sediment removed from their lakes and reservoirs and who lose the temperature control, oxygen generation, natural environments and recreation benefits that wetlands provide.

The Sierra Club has a slogan that says, "Not blind opposition to progress, just opposition to blind progress." For many years, mankind viewed wetlands as undesirable wet areas filled with mud, insects and reptiles that were no good to anyone unless they were drained or filled. However, as scientists learned more about not only the plant and animal communities that occupy wetlands, but also the processes and functions that occur there, it became apparent that wetlands provide many benefits to mankind that more than justify their preservation. This is especially true here in the north Georgia piedmont, where wetlands tend to be smaller and more isolated, scattered along streams and around lakes. The rapid pace of development caused by the sprawl of urban and suburban areas in north Georgia creates an even greater need for the benefits that wetlands provide, with increased development and adjacent flood plains, high levels of nonpoint source pollution runoff

from roads and landscaped properties, the huge levels of sediment discharged from constructionsites and ever-increasing needs for water reservoirs and treated drinking water. It would be blind of us to ignore these needs and the benefits wetlands provide and allow the destruction of wetlands in the name of progress.

Relaxation or removal of wetlands protections will only benefit owners of large tracts of land and will, in fact, cost other members of the community either directly by increased flooding and polluted water supplies, or indirectly, by higher taxes, water bills and insurance rates. In the case of the publicly financed West Cobb Loop road project, it seems fiscally irresponsible, if not unAmerican, to spend the people's tax dollars to destroy natural resources that benefit the community, only to have to spend more of the public's money in the future to replace the benefits that were destroyed. In fact, the West Cobb Loop project is an excellent example of how the U.S. Army Corps of Engineers works with developers to help them achieve successful projects while preserving and protecting wetlands and other aquatic resources.

We have found the Corps of Engineers to be reasonable and competent in enforcing wetlands regulations and that they are willing to work with developers who are willing to work with them. The West Cobb Loop is an example of a developer, Cobb County, who failed to address any of the provisions for wetlands protections and now that the Corps has forced them to address the wetlands, the county is working with the Corps to find a solution that provides a road and preserves the wetlands for the community.

In summary, the Georgia Chapter of the Sierra Club feels that the community, developers and the American Congress should support the U.S. Army Corps of Engineers in their efforts to protect wetlands and other vital natural resources for the benefit of all current and future Americans.

Thank you. [Applause.]

[The prepared statement of Mr. Groszmann follows:]

Sierra Club
Georgia Chapter

June 16, 1997

Glynn Groszmann
Sierra Club - Georgia Chapter Water Issues Leader
Centennial Group (Cobb County) Conservation Chair

POSITION PAPER ON FEDERAL WETLANDS REGULATIONS ISSUES

The Georgia Chapter of the Sierra Club supports the provisions of the Clean Water Act which require the protection and conservation of wetlands, and we support the U. S. Army Corps of Engineers' efforts to administer the Act's provisions for regulating and permitting activities that affect wetlands. Wetlands are vital natural resources that provide crucial benefits to the community, including flood control, filtering and conversion of toxic chemicals, trapping of sediments, and natural areas for wildlife, recreation, greenspace and biodiversity. When wetlands are destroyed it is the people of the community who pay the price for their loss, while those who cause the destruction reap the profits. It is the people who have their properties damaged by the increased flooding, who pay for flood controls and higher insurance rates, who pay the higher costs of drinking water treatment, who pay to have sediment removed from their lakes and reservoirs, and who lose the temperature control, oxygen generation, natural environments and recreation benefits that wetlands provide. When wetlands are destroyed, the developer wins and the community loses.

The Sierra Club has a slogan that says, "Not blind opposition to progress, just opposition to blind progress." For years mankind viewed wetlands as undesirable wet areas filled with mud, insects and reptiles, that were no good to anyone unless they were drained or filled. However, as scientists learned more about not only the plant and animal communities that occupy wetlands, but also the processes and functions that occur there, it became apparent that wetlands provide many benefits to mankind that more than justify their preservation. This is especially true here in the north Georgia piedmont, where wetlands tend to be smaller and more isolated, scattered along streams and around lakes. The rapid pace of development caused by the sprawl of urban and suburban areas in north Georgia creates an even greater need for the benefits that wetlands provide, with increased development in and adjacent to floodplains, high levels of non-point source pollution runoff from roads and landscaped properties, huge levels of sediment discharged from construction sites, and ever-increasing needs for water reservoirs and treated drinking water. It would be blind of us to ignore these needs and the benefits wetlands provide and allow the destruction of wetlands in the name of "progress"

Relaxation or removal of wetlands protections will only benefit owners of large tracts of land, and will, in fact, cost other members of the community either directly (by increased flooding or polluted water supplies) or indirectly (by higher taxes, water bills and insurance rates). In the case of the publicly-financed West Cobb Loop road project, it seems fiscally irresponsible, if not un-American, to spend the people's tax dollars to destroy natural resources that benefit the community, only to have to spend more of the people's money in the future to replace the benefits that were destroyed. In fact, the West Cobb Loop project is an excellent example of how the U. S. Army Corps of Engineers works with developers to help them achieve successful projects while preserving and protecting wetlands and other aquatic resources. We have found the Corps of Engineers to be reasonable and competent in enforcing wetlands regulations, and that they are willing to work with developers who are willing to work with them. The West Cobb Loop is an example of a developer (Cobb County) who failed to address any of the provisions for wetlands protection, and now that the Corps has forced them to address the wetlands the County is working with the Corps to find a solution that provides a road and preserves wetlands for the community

The Georgia Chapter of the Sierra Club feels that the community, developers, and the American Congress should support the U. S. Army Corps of Engineers in their efforts to protect wetlands and other vital natural resources for the benefit of all current and future Americans.

Glynn Groszmann

Sierra Club Goals: *"To explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these ends."*

Mr. MCINTOSH. Thanks, Mr. Groszmann. Mr. Barr had a question for you, and I may have one as well.

Mr. BARR. Thank you. Mr. Groszmann, focusing not on the West Cobb Loop, because I understand your position on that and respect it. I think you have done a great deal of work on it.

Focusing though on Mr. Brown's situation here that I think you have heard, we have discussed a great deal about. What are the benefits to wetlands that you enumerated—the filtration, the cleansing, the wildlife—which one of those would be present in a situation like Mr. Brown's that would provide the basis on which to prevent him from taking his land and putting it back the way it was naturally?

Mr. GROSZMANN. I am sorry, I was not here to hear Mr. Brown's case, but I did hear enough about it to realize that it is the kind of case I think we all hate to hear. And from my experiences, I would expect that the Corps would work with him if he would work with the Corps. This seems like a very difficult situation when things change, I think that might be where the Corps has a tough time. As the gentlemen a few people ahead of me pointed out how some of the regulations have changed since he got his permit. That may be an area that they have a hard time deciding for themselves how best to handle these situations. I have not ever experienced any maliciousness from the Army Corps of Engineers and I do not think they have malicious intent. But I certainly do sympathize with Mr. Brown and his need to have his property.

Mr. BARR. If you carry any weight with the Corps, I am sure he would appreciate it if you would communicate that to them. Thank you very much and I appreciate your thoughts, Mr. Groszmann.

Mr. MCINTOSH. Mr. Groszmann, let me just ask you to clarify one thing you said, and coming in from outside I have learned about this preparing for the hearing and obviously have not been working on the West Loop situation as much as you and the local officials and the Corps have. But you indicated you thought Cobb County had failed to address any of the wetlands concerns, and it strikes me that you might disagree with them about their proposal and maybe they did not go far enough in addressing those, but when they came up with a mitigation proposal that did try to provide 8 to 1 acres of wetlands for the ones that are impacted by this, that they did at least think about the problem of wetlands in putting together their proposal.

Mr. GROSZMANN. I have to disagree with that. The Corps has very specific criteria for the order that things have to be followed. Mr. Croy, with Cobb County Department of Transportation stated those. No. 1 is avoidance, you are supposed to show that you tried to avoid impacting wetlands. Step No. 2 is minimization of any impacts that are unavoidable. Step No. 3 is mitigation and the Corps specifically stated that mitigation cannot be the only consideration, that the other two have to be given full due consideration first and you cannot ignore them and jump straight to mitigation. Cobb County knew this when they submitted their plan. Cobb County knows how the Corps of Engineers works and I believe they intentionally set this up for a failure.

Mr. MCINTOSH. OK. So your quarrel is not that they did not do any wetlands analysis, it is that they did not do the first two correctly and went right to the third.

Mr. GROSZMANN. Yes, basically they skipped step No. 1. And you cannot go any further without starting at step No. 1.

Mr. MCINTOSH. And the other thing that came out in the testimony earlier was that there were, I guess, some differences on the purpose of the project and that that needs to be cleared up first, then you can determine if there are other feasible alternatives or if this is the only one and therefore, we cannot avoid it altogether. And so I think like two ships passing each other in the night not realizing it, if you do not agree on that purpose, then the county may have said we have a purpose for a limited access freeway and minimizing the impacts on families, and there might be as many as 40 disturbed under one of the alternatives that had fewer impacts, although it still had some impact on wetlands, based on the testimony earlier today. And that that limited access highway may not be for the same purpose that the Corps recognized in the proposal, and so they were questioning it because you have not told us whether you can do something that has no impact. So I think it is going to be key that even before they start the wetlands analysis, they reach this understanding about what the county is trying to do with the project, and then I think you are right, the Corps has a hierarchy that they ask them to follow and they need to go through and say OK, we have looked to see whether there is a way of avoiding wetlands impact altogether. Then the second step of minimizing the impact and then the third on mitigation.

But from what came out today, it looked to me like that first precursor to even the wetlands analysis was causing different interpretations further down the line.

Mr. GROSZMANN. Well, I think it was very important for the Corps to understand what are you trying to do here. I do not think the Corps can offer suggestions as to if they are not happy with alternative No. 1, they cannot suggest what might be a viable alternative, if they do not know what the goal of the project is. So I agree that it is important that right up front it be understood what are we trying to achieve here. Then the Corps can come in and say well, you have got three other alternatives and it looks like at least one or two of them might still meet your goals and meet our goals of minimizing impacts to the environment. So you are right, I agree that it is crucial that they understand what is the goal. I do not believe—I never got the impression that the Corps was ever going to reject the permit because they disagreed with the purpose. My understanding was they simply needed to understand the purpose to be able to work in a cooperative manner.

Mr. MCINTOSH. To be honest, it sounds like they had different understandings of the purpose.

Mr. GROSZMANN. Maybe so.

Mr. MCINTOSH. And that was leading to the decision. Let me ask you a philosophical question because you seem to be a very thoughtful advocate for the environment, and I have run into some people who are not so thoughtful, as you are, who also disagree with some of the decisions that the government makes.

How would you in the area of wetlands say that we should structure a policy, and let us step way back and say if we could start over again, to balance out the needs of a community and the families involved in projects. You mentioned some of the costs for not considering wetlands, which I think are a very valid perspective. But, I guess, would you agree with me that we should also consider the costs of not going forward with the project, and try to get an understanding of all the different impacts on people and the environment and then try to make a judgment that maximizes it from the perspective of the human population as well as preserving sensitive environmental areas?

Mr. GROSZMANN. I would have to agree, of course, to looking at all the alternatives, including a no-build alternative, have to get due consideration. I thought we heard from several citizens that live along East Sandtown Road and they were talking about how their community was going to be impacted. But that community was being impacted, not by wetlands, but by a road project. And it seemed somewhat out of place here in a wetlands hearing to be complaining about a road project, which by and large we found that in Cobb County, the problems that currently exist and need for the road, has been created by poor planning, by allowing over development, by a lack of searching for transportation alternatives, which Sierra Club has tried to promote to the county for years and years and years and yet the citizens find themselves locked up in traffic jams. We have got to have more roads. They are finding that the more roads they build, the more congestion they have and it is a vicious cycle that is going the wrong way.

Mr. MCINTOSH. The other thing that we have discovered in other areas is if you do not have adequate transportation facilities, then you have other clean air effects and other—I mean a lot of different ramifications.

Mr. GROSZMANN. Yes.

Mr. MCINTOSH. Thank you. I appreciate your coming today and your joining in on this process and making your views known to us.

Mr. GROSZMANN. Well, thank you. I have got something for you and the other Congressman. I know you both were very envious of my name tag which says "Be Conservative, Conserve Wetlands" and I would like to give one to each of you. [Laughter.]

Mr. MCINTOSH. Well, thank you, I appreciate it. [Applause.]

I think we have time—I had asked Doug Congleton to come forward as the next one and Jay Weismann and then we will have to just say that is it, but anybody else who had something in writing that they would like us to consider as part of the record, if you could submit that to Karen—and I apologize, we have just run out of time for the rest of the open mic period. Mr. Congleton.

STATEMENT OF DOUG CONGLETON, PRESIDENT, PROTECT WEST COBB

Mr. CONGLETON. I will be as brief as I can.

Mr. MCINTOSH. Thank you.

Mr. CONGLETON. Thank you very much.

I am a concerned citizen and a resident of west Cobb and president of Protect West Cobb, which Laura Lester mentioned earlier,

a group composed of people, residents, from 12 different neighborhoods along the Noses Creek alignment. I also ran into some of the same problems that Laura ran into in trying to testify at this meeting. I just wanted to bring that up.

One problem we have with what is going on is what Glynn just talked about. In planning roads, we think the county is doing a poor job of planning, and especially in this West Cobb Loop situation. This is obviously a much bigger project than the 5 miles we are talking about from Dallas Highway to Powder Springs Road. It goes all the way from Cumberland Mall to Town Center Mall and the county knew that when they started and they should have thought about that when they were looking at alignments before building the sections of the road outside of the West Cobb Loop and now saying that the West Cobb Loop has to terminate at Ridgeway Road and at east-west connector.

They have also allowed some neighborhoods to go in along the alignment of the West Cobb Loop that were not there when the road was planned. We also think the traffic just does not justify or the local traffic does not justify the road between Dallas Highway and Powder Springs. If you build the road the traffic is going to be there.

We also are concerned about not only the immediate impact to the wetlands along the alignment that has been chosen by the county, but we are also very concerned about secondary impacts, is what we call them. In my case, I live along the wetlands and I am very concerned about when runoff from this road happens and during construction of the road when wetlands are being filled and backed up, that my home is going to be flooded and I know that there are a lot of people along this alignment that are very, very concerned about that. As a matter of fact, I think the Corps of Engineers had a videotape of a home that was along the wetlands that is already being flooded.

Mr. Croy earlier said the people think no road equals no development. And I would tend to agree with him in that that is not true. The development is going to come, and I guarantee you if the road comes, a four-lane highway, there is going to be development and it is going to be major. Just look at either end of this road, the east-west connector or up at the mall, the development is huge and will take over wetlands in immediate impacts and in secondary impacts.

As far as the mitigation, we have a real question about the one purple area that Mr. Croy showed on the map, where they are going to create wetlands. If you look at the map closely, this is at the intersection of where the West Cobb Loop, a four-lane highway, at Macklin Road just now widened to a four-lane highway, meet. This is right at the corner of that and if somebody can tell me that there is not going to be development at a major intersection like that, then I would like to see that in writing.

Mr. MCINTOSH. Let me interrupt you for just 1 second on that.

Mr. CONGLETON. OK.

Mr. MCINTOSH. If they did put that into a covenant and the county bought up the property and put it into the title that they could not develop it, does that in your view kind of make it a more positive result at the end of the day?

Mr. CONGLETON. Well, call me skeptical, but how long would that last? And what are the other three corners, the impact on those corners, what are they going to do with that area as far as runoff from parking lots and other things.

Mr. MCINTOSH. OK. Yes, they would need to do the analysis for all of it. But OK, thank you, I appreciate it.

Mr. CONGLETON. I am concerned that Mr. Brown's problem may become my problem when they go back in these wetlands and disturb them and then all of a sudden I am going to have a wetland in my yard from everything getting backed up and my house is going to be flooded and then the Corps is going to say you cannot go out and cut your grass. I am worried about his problem, I can sympathize with him and I am very concerned about that.

And in conclusion, I would just ask you, Representative Barr and Chairman McIntosh, if you want to come on out to my house I will take you on a tour of the area, we will have breakfast or dinner, we can go look at the traffic and just see exactly what this area looks like and what the impacts are going to be.

Thank you.

Mr. MCINTOSH. Thank you, I appreciate it. I will have to rely on Bob to do that.

Mr. BARR. The record will reflect that I do live in West Cobb, Mr. Chairman, I am very familiar with the specifics of what we have been talking about here today and very sensitive to both sides.

Mr. MCINTOSH. And our last witness is—and I have a note that it is Sam Collier, but Jay Weismann will speak in his place. Is that correct? Is that how you wanted to do it? Are you Dr. Weismann?

Dr. WEISMANN. Yes.

Mr. MCINTOSH. Welcome and thank you for participating.

STATEMENT OF DR. JAY WEISMANN

Dr. WEISMANN. Thank you, Chairman McIntosh, Congressman Barr. I will be very brief.

The Atlanta Journal Constitution has spent a good part of the past week detailing and comparing metropolitan development in Atlanta to other cities, including Toronto, Portland and just on the southern end. It clarified that there are right and wrong ways to develop. Some of these wrong ways we have been engaged in for 30–40 years, an unfortunate result for very well-intended policies that in some way positively influence many of us. It is easy to go wrong.

I live in east Cobb, really perhaps one of the most polluted areas in the all of Georgia, perhaps the most polluted. I do not have children breathing this air. I do have children, they are grown and they have moved on. I just bid us all to carefully review the excellent studies that have been done and with the thought to our future generations, the next generation and that following; that we take that into consideration in reviewing our development policies.

Thank you.

Mr. MCINTOSH. Thank you very much, Dr. Weismann. [Applause.]

That concludes the testimony for our hearing and let me reiterate my thanks to Congressman Barr's staff and Congressman Barr for setting up this field hearing. This has been enormously

helpful to us in the subcommittee and we will take all this testimony back with us.

Bob, did you have any closing remarks that you wanted to make? And then we will stand adjourned.

Mr. BARR. Thank you, Mr. Chairman. I would like to reiterate what I told the audience both present here as well as listening in the media before your arrival today, and that is that we very much appreciate what you have done in bringing these hearings out into the real world outside of Washington. I know that that is something that you are very committed to, I know it is something that Speaker Gingrich is very committed to, in the prior Congress and this Congress, to allow citizens more direct and easier input into the decisionmaking.

I think the hearing today was very valuable. I certainly learned a lot even though I live in this very community that we are talking about with some of these projects, Mr. Chairman, I learned a great deal today about what is going on. I have some very specific things that I know you and I and others on the committee will be looking into.

I did want to recognize one of our State representatives, though she did not testify today, I notice she has sat through the hearings, because she is likewise very concerned about this and that is State Representative Judy Manning. We very much appreciate Representative Manning being here. [Applause.]

And again, we hope that on your next visit, you will have a little bit more time so that we can go out and see actually a little bit more of the community and what it represents. It is a great community we have here in the Seventh District and we appreciate you honoring us with your presence in these hearings.

Mr. MCINTOSH. My pleasure. Thank you very, very much. And by the way, I was remiss in not saying that the ranking minority member, Bernie Sanders, indicated that they very much appreciated this hearing and one of their Members, Mr. Kucinich of Ohio, had endeavored to change a lot of travel plans in order to try to be here today and they felt very badly they were not able to be part of it, but were looking forward to seeing the record and participating in the deliberations of the subcommittee.

With that, the subcommittee is adjourned.

[Whereupon, at 5:15 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

Statement for the
June 16, 1997, Hearing
of the
U. S. Congressional Subcommittee
on
National Economic Growth, Natural Resources and Regulatory Affairs

I am Richard T. Huber, Sr. and I presently reside in Cobb County at 3881 Macedonia Road, Powder Springs, Georgia. I was born and raised in Sioux City, Iowa, where I graduated from Central High School in June of 1950, and subsequently served on Active Military Service in the U. S. Navy during the Korean Conflict from 1951 to 1953. In 1955, I married and moved to North Carolina where I attended North Carolina State University, receiving a Bachelor of Science Degree in Fish and Wildlife Management in 1960 and a Master of Science Degree in Environmental Sciences in 1965. I was employed by the U. S. Fish and Wildlife Service (FWS) in 1960 to 1988 when I retired after completing nearly 30 years of practical biological field biological experience in a number of FWS Field Offices, two FWS Regional Offices and the FWS Washington Office. During the latter portion of my career, I served as an Assistant Regional Director - Environment and was responsible for the Programmatic Management and overview of the FWS Ecological Services Field Offices in the Southeast Region.

I have evaluated numerous Congressionally authorized water development projects proposed for construction by the COE and the Soil Conservation Service (SCS) of the U. S. Department of Agriculture, in addition to a wide variety of private water dependent or related projects to be to be permitted by the COE or licensed by the Federal Energy Regulatory Commission (FERC), and a number of State and Federal highway projects proposed by the Federal Highway Commission or various State Departments of Transportation (DOT). In addition, I authored the FWS's Navigable Waters Handbook, a field guide - approved by the U. S. Department of the Interior - for the evaluating the environmental impacts of water developmental and/or related projects to be permitted by the COE; the FWS's Guidelines for evaluating proposed oil and gas operations in coastal wetland areas; and, a Followup Study of the environmental impacts of channelized streams in North Carolina by the SCS. As a result of my formal education and varied practical field experience, I also am knowledgeable of the various fish and wildlife habitat values of the Mountain and Piedmont uplands, inland lacustrine, riverine and freshwater wetland areas of most of the States east of the Mississippi River including the Great Lakes area; and, the Coastal wetlands along the Atlantic Coast from New Hampshire south through Florida, along the Gulf Coast from Florida west to Texas, and the Commonwealth of Puerto Rico.

As a result of my extensive knowledge and past fish, wildlife and biological field experiences, as well of the close proximity in which I live to the"West Cobb Loop" proposed to be built by the Cobb County DOT, I would like to offer the following comments with regard to the environmental impacts associated with the construction of this proposed highway segment.

The proposed "West Cobb Loop" in 1994 would have impacted approximately 81 acres of land and water comprised of the following fish and wildlife habitat types.

16 acres of commercial and residential developed lands
46 acres of pine and mixed hardwood pine forest
16 acres of pasture lands and open fields
8 acres of peripheral bottomland hardwoods
5 acres of open stream waters and sparse wetland areas

Since that time, a number of the areas adjacent to Noses and Mud Creeks have either

undergone considerable residential development in the past three years or are presently experiencing rapid residential growth, and will probably undergo extensive commercial and residential developmental growth in the next 5 to 10 years. It should be noted that this is one the faster if not the fastest growing area of Cobb County.

After reviewing the Savannah District Corps Of Engineers (COE) Letter of Denial and supporting documentation, which included the comments and findings of the Brunswick FWS Field Office and the Atlanta Regional Office of the U. S. Environmental Protection Agency (EPA), discussing the anticipated environmental impacts of the proposed project with representatives of the Cobb County DOT and the Brunswick FWS, and visiting the proposed project area, I would like to offer the following comments with regard to the environment consequences of constructing the proposed "West Cobb Loop" as presently planned.

The presently planned project would still adversely impact approximately 91 acres of low quality fish and wildlife habitat as a result of highway construction. The fish and wildlife habitat values of the entire project area, including the 8 acres of bottomland hardwoods and other sparse wetlands that currently exist in the area, have already undergone substantial adverse environment impacts as a result of prior stream channelization activities, adjacent land farming practices, commercial and residential development activities and past logging practices. The quality of water in both Noses and Mud Creeks, in all probability, has been further degraded by surface water runoff associated with the recent rapid housing development and growth in the area. Furthermore, it is doubtful if the resulting water quality changes that would occur as a result of the loss of the existing 8 acres of wetlands in a 31,000-acre drainage area could be perceptibly measured at the confluence of Noses and Sweetwater Creeks let alone at the downstream confluence of Sweetwater Creek and the Chattahoochee River. As a result of past stream channelization activities in Noses Creek coupled with the findings of the study I conducted in North Carolina on the impacts of stream channelization, one would have to draw the conclusion that the water table in the area has already been lowered as a result of past channelization activities. To my knowledge, there are no pristine fish and wildlife habitats in the proposed project area, and contrary to the comments made by the Brunswick FWS and Atlanta EPA, there are no aquatic resources of National importance in the area.

Noses and Mud Creeks are shallow streams with sparsely limited pool areas. These streams are bordered with marginal bottomland hardwoods intermixed with upland hardwoods species. Fishery resources, as a result of the stream configuration, in all probability, consist of small populations of minnows and sunfish. Wildlife inhabiting the area would include low populations of muskrat, mink, opossum, raccoon, squirrel and rabbit; and, low to moderate resident and migrant song bird populations. It also is noted that there are no listed Federal or State endangered, rare or threatened fish and wildlife species in the project area

As a result of my on site visit of the proposed project area, a review of generalized project plans, discussions with representatives of the FWS and the Cobb County DOT, and a review of the Savannah District COE's Letter of Denial and supporting documentation, I would like to offer the following specific comments.

1. The present proposal by the Cobb County DOT, which includes a realistic and sound approach for the wise use and management of fish and resource values balanced properly against the needs of man, would appear to be the most proper and acceptable environmental approach to the construction of the "West Cobb Loop". Furthermore, that plan proposes a 10-fold wetland acreage replacement of wetland losses, a truly commendable plan to mitigate incurred losses of fish and wildlife resources.

2. The comments and recommendations made by the COE, FWS and EPA do not appear to be in the best public interest. The COE's recommended alternative route would result in the unnecessary uprooting and movement of many families and homes and result in substantially more far reaching adverse environmental consequences when you properly weigh and balance all of the fish, wildlife and resource factors against the pressing human needs in the area.

3. The District Engineer of the Savannah COE be advised to reconsider his decision to deny issuance of the permit to the Cobb DOT, as the "West Cobb Loop" plan was originally proposed. The original Cobb DOT plan, in my opinion, took all environmental and human factors and needs into full and proper consideration, correctly balanced these factors and needs, and proposed the most logical and least environmentally damaging route for the "West Cobb Loop" for consideration and approval.

I would like to thank the Subcommittee for the opportunity to offer these comments for their consideration.