

**SURFACE TRANSPORTATION INFRASTRUCTURE
PROJECTS: CASE STUDIES OF THE FEDERAL
ENVIRONMENTAL REVIEW AND PERMITTING
PROCESS**

(113-81)

HEARING
BEFORE THE
SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT
OF THE
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS
SECOND SESSION

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September 5, 2014

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SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Highways and Transit
FROM: Staff, Subcommittee on Highways and Transit
RE: Subcommittee Hearing on “Surface Transportation Infrastructure Projects: Case Studies of the Federal Environmental Review and Permitting Process”

PURPOSE

The Subcommittee on Highways and Transit will meet on Tuesday, September 9, 2014, at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony related to the federal environmental review and permitting processes for surface transportation infrastructure projects. At this hearing, the subcommittee will receive testimony from project sponsors regarding their experiences with the federal environmental review and permitting processes. By learning what worked well and what worked poorly, the Committee will gain valuable insight that will inform key policy reforms in the surface transportation reauthorization bill. The Subcommittee will hear from the Honorable Carlos Braceras, Executive Director, Utah Department of Transportation; the Honorable Lynn Peterson, Secretary, Washington State Department of Transportation; Mr. Carlos Swonke, Director of the Environmental Affairs Division, Texas Department of Transportation; and Mr. Michael Kraman, Acting Chief Executive Officer, the Transportation Corridor Agencies.

BACKGROUND

Introduction

As state and local project sponsors deliver federal surface transportation infrastructure projects, they must meet complex legal, technical, and analytical requirements at the federal and state levels during every stage of the project development process. The environmental review and permitting processes are major components of surface transportation project delivery. At the federal level, the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and its accompanying regulations establish national environmental policy and provide a framework for environmental planning and decision-making. NEPA requires the consideration of potential impacts of a project on the social and natural environment, and, if necessary, includes steps to limit or mitigate those impacts. The NEPA process may provide the only formal

opportunity for the public—including impacted communities and businesses—to learn about and comment on proposed projects.

The NEPA process consists of a set of fundamental objectives that include interagency coordination and cooperation and public participation in planning and project development. NEPA is only applicable to major federal actions, including projects and programs entirely or partially funded by federal agencies and projects that require a federal permit or other regulatory decision. NEPA does not apply when states, localities, or private entities use non-federal resources to carry out projects that do not require other major federal action.

The Council on Environmental Quality (CEQ) has primary responsibility for NEPA implementation government-wide. The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) serve as lead federal agencies overseeing the NEPA process for projects receiving funding under the programs administered by these agencies.

Classes of Actions Under the NEPA Process

For surface transportation infrastructure projects, NEPA requires the federal agency overseeing the project to consider potential impacts of the project to the social and natural environment. Project reviews required under NEPA fall into three categories: Environmental Impact Statements (EIS), Environmental Assessments (EA), and Categorical Exclusions (CE).¹

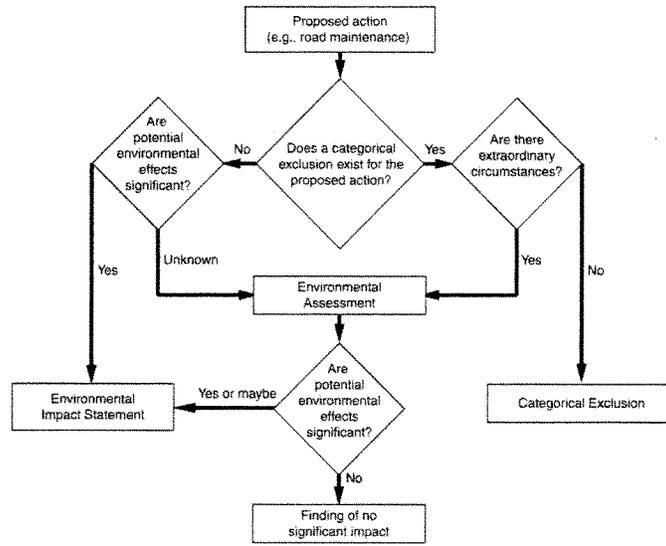
- **EIS** – If a federally-funded project significantly impacts the quality of the social and natural environment, the agency must prepare an EIS. Approximately 1–5 percent of all reviews go through an EIS at the FHWA. These reviews tend to be the ones that elicit the most public dialogue, as they can be quite lengthy. Projects that require an EIS tend to be large, complex, and significant in nature.
- **EA** - If the significance of the impact of a proposed project is unclear, the agency must prepare an EA in order to make that determination. These account for about 5-6 percent of all environmental reviews at the FHWA. EAs are necessary when a project does not automatically fall into one of the other two categories. Not surprisingly, projects that require an EA are usually of moderate size and complexity.
- **CE** - The agency processes as Categorical Exclusions (CE) projects that the FHWA or the FTA has determined through regulation to have no significant impact. These make up about 90-96 percent of all environmental reviews at the FHWA. These types of projects tend to be smaller and fall within a category of project that the agency has already deemed to have a minimal impact on the environment. Examples of these include installing fencing, signage, or performing routine maintenance.

According to reports from the Government Accountability Office (GAO), there is little information on the cost or timeline for each type. There are no mechanisms within government

¹ Government Accountability Office, National Environmental Policy Act: Little Information Exists on NEPA Analyses, 2014; Congressional Research Service, Linda Luther, The Role of the Environmental Review Process in Federally Funded Highway Projects: Background Issues for Congress, 2012. Each source provides slightly different percentages based on the time periods measured.

agencies to track the official time that each review takes, nor are there mechanisms to measure accurately the costs of such review.²

The process for determining which type of NEPA review is necessary:



Source: GAO.

Another obligation generally carried out within the context of the NEPA process is compliance with Section 4(f) of the Department of Transportation Act of 1966. Section 4(f) requirements apply to the use of publicly-owned parks and recreation areas, wildlife and waterfowl refuges, and publicly- or privately-owned historic sites of national, state, or local significance. Section 4(f) prohibits the use of federal funding for surface transportation infrastructure projects in such areas unless there is no “prudent and feasible” alternative, and requires all possible planning to minimize harm to the resource. When a proposed federally-funded project involves such areas, a separate Section 4(f) evaluation must be prepared and included with the appropriate NEPA documentation.

Environmental Permitting Process

While the purpose of the NEPA process is to identify the impacts of a project to human and natural environments, the process may also identify issues that are governed by substantive environmental laws, such as the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), Section 106 of the National Historic Preservation Act (16 U.S.C. 460 et seq.) and Section 404 of

² Government Accountability Office, National Environmental Policy Act: Little Information Exists on NEPA Analyses, 2014.

the Clean Water Act (33 U.S.C. 1251 et seq.). When a project falls within the jurisdiction of one of these laws, the sponsor must secure a permit before proceeding with the project. When such permits are required, other federal agencies, aside from the federal lead agency, must participate in the NEPA process, further adding to the complexity of the project delivery process.

MAP-21 Streamlining Provisions

The Moving Ahead for Progress in the 21st Century Act (MAP-21; P.L. 112-141) reformed the project approval and delivery process for surface transportation infrastructure projects. MAP-21 streamlined this process by: allowing federal agencies to carry out their obligations for a project concurrently with the NEPA environmental review for that project; instituting a financial penalty to each federal agency that misses a deadline as part of the NEPA process; and providing categorical exclusions for repair or reconstruction of an existing facility damaged by an emergency, for projects within the right-of-way, and for projects that receive limited federal funding (\$5 million or less). MAP-21 also requires that all environmental reviews for a project be completed within four years.

CASE STUDIES

Provo Westside Connector, Utah

The Provo Westside Connector is a three-mile alignment connecting I-15 with the Provo Airport in the suburbs of Salt Lake City, Utah. Provo City and the Utah Department of Transportation (UDOT) prepared an EIS to evaluate this roadway connection, and FHWA issued a Record of Decision on the EIS in January of 2012.³ This project was selected to participate in the Federal Infrastructure Projects Permitting Dashboard, which resulted in the issuance of a necessary Clean Water Act permit within six months of the Record of Decision being issued.⁴

Provo City and UDOT are now in the project's design phase, where engineers are expanding upon work completed during the EIS. The design includes two travel lanes and a multi-use trail south of the roadway. When additional funding becomes available, UDOT plans to add two more travel lanes and a center turn lane to the roadway.

Alaskan Way Viaduct Replacement Project, Washington State

The Alaskan Way Viaduct is an elevated section of State Highway SR 99, one of two major North-South corridors in the City of Seattle. In 2001, the viaduct was damaged by the Nisqually Earthquake. Immediate repairs allowed the facility to reopen, but it became apparent that the viaduct, which was constructed in the 1950's, was nearing the end of its useful life and needed to be replaced.⁵

The project is led by Washington State DOT in partnership with the FHWA, King County, the City of Seattle, and the Port of Seattle. The initial Draft Environmental Impact Statement was issued in 2004, and a Record of Decision was issued by the FHWA in August of

³ <http://www.provowestsideconnector.com/overview/default.aspx>.

⁴ <http://www.permits.performance.gov/projects/12711/details>.

⁵ http://www.fhwa.dot.gov/ipd/project_profiles/wa_alaskan_way.aspx.

2011. Construction on the estimated \$3.1 billion tunnel through downtown Seattle began in the summer of 2013.⁶

SR 241 Toll Road, California

Southern California has a population of 24 million people today and is expected to grow to 30 million by the year 2050. Traffic in the Orange County area has worsened and a growing number of residents are looking for an alternative to I-5. By completing just 16 more miles of the State Route 241, residents would have an alternative that would ease traffic congestion in the area.

In 1981, the original plan to complete the toll road from Rancho Santa Margarita to I-5, just south of the San Diego and Orange County border got underway. Studies have shown that without the toll road by year 2025, motorists' commute along I-5 will take more than one hour. However, with the alternative toll road, the commute would take 16 to 25 minutes. The new toll road would carry about 58,000 vehicles per day.⁷

The 16-mile Foothills-South Toll Road is the last remaining segment of the SR 241 corridor. The route selected for this segment of the corridor was certified by the Transportation Corridor Agency (TCA) in 2006 in an Environmental Impact Report (EIR) under the California Environmental Quality Act. The route chosen in the EIR was selected after six years of collaboration with the FHWA, the Environmental Protection Agency, the Fish & Wildlife Service, the Army Corps of Engineers, and the California Department of Transportation. Despite this collaboration, the California Coastal Commission rejected the southern segment in 2008. TCA appealed the Commission's decision to the U.S. Department of Commerce. In December of 2008, the U.S. Secretary of Commerce sustained the Commission's decision that the extension was inconsistent with the Coastal Zone Management Act.⁸

In October 2011, the TCA began engineering and environmental work on a five-mile segment of the southern section of SR 241, known as the Tesoro Extension. The TCA is currently finalizing environmental studies for this proposed extension.⁹

⁶ <http://www.wsdot.wa.gov/Projects/Viaduct/>.

⁷ Toll Road News, Peter Samuel, Strong public support for completing 241 TR in S California, September 20, 2008.

⁸ Testimony of TCA Chief Executive Officer Thomas Margro before the Subcommittee on Highways and Transit, February 15, 2011, available at <http://www.gpo.gov/fdsys/pkg/CHRG-112hrg65450/pdf/CHRG-112hrg65450.pdf>.

⁹ https://www.thetollroads.com/whats happening/projectsandinitiatives/tesoro_extension.php.

WITNESS LIST

The Honorable Carlos Braceras
Executive Director
Utah Department of Transportation

The Honorable Lynn Peterson
Secretary
Washington State Department of Transportation

Mr. Carlos Swonke
Director, Environmental Affairs Division
Texas Department of Transportation

Mr. Michael Kraman
Acting Chief Executive Officer
The Transportation Corridor Agencies

SURFACE TRANSPORTATION INFRASTRUCTURE PROJECTS: CASE STUDIES OF THE FEDERAL ENVIRONMENTAL REVIEW AND PERMITTING PROCESS

TUESDAY, SEPTEMBER 9, 2014

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:04 a.m., in Room 2167, Rayburn House Office Building, Hon. Thomas E. Petri (Chairman of the subcommittee) presiding.

Mr. PETRI. The subcommittee will come to order.

Good morning. And welcome to this hearing before the Subcommittee on Highways and Transit.

We spent the summer working on the surface transportation reauthorization bill and the HTF Act, which provides funding certainty and extends MAP-21 through the end of next May.

However, as we continue working on the surface transportation reauthorization bill, it is important that we hear from practitioners and project sponsors in order to gain their wisdom and insight.

Today's hearing focuses on the Federal environmental review and permitting processes for transportation projects. As project sponsors deliver Federal surface transportation projects, they must meet complex requirements at the Federal and State levels during every stage of the process. The environmental review and permitting processes are major components of project delivery.

The Federal level, the National Environmental Policy Act of 1969, or NEPA, provides a framework for environmental planning and decisionmaking.

NEPA requires the consideration of potential impacts of a project on the social and natural environment and, if necessary, includes steps to limit or mitigate those impacts. NEPA also identifies any Federal environmental permits that the project must secure in order to proceed.

While a necessary and important part of the project delivery process, the environmental review and permitting may involve significant time, money and staff resources, especially for complex projects. MAP-21 made significant reforms to the project delivery process which maintained our strong environmental protections while improving the efficiency and effectiveness of the process.

I know that many of our witnesses today plan to discuss these reforms and how they have benefited from them. Staff informed me

this morning that the U.S. Department of Transportation plans to publish a notice in the Federal Register tomorrow on the MAP-21 provision that links planning activities to the environmental review process. I welcome this effort and look forward to the continued implementation of all of the MAP-21 provisions.

Yet, the complexity of this issue necessitates our continued examination of the environmental review and permitting process. As the committee continues its work on drafting the next surface transportation reauthorization bill, we want to consider how the process is working well and what ways it can work better.

We have an excellent panel of witnesses before us today, and I am confident that they will be able to help us understand the important issues by discussing how the process has worked for specific projects in their State.

And before I introduce—or I will introduce the witnesses.

Our first witness is Carlos Braceras. He is executive director of the Utah Department of Transportation.

Welcome, sir.

And next we will hear from Lynn Peterson, secretary of the Washington State Department of Transportation, who is developing the Cascadia Project and a whole variety of other things out in the northwest part of the United States and southwest part of Canada.

And we also have Carlos Swonke, who is director of the Environmental Affairs Division of the Texas Department of Transportation.

Finally, we have Michael Kraman, acting CEO of the Transportation Corridor Agencies in southern California.

I thank you for being here. I thank you and those in your organizations who worked on your testimony. And we invite you to summarize that as best you can in approximately 5 minutes.

And my partner, Eleanor Holmes Norton, is on her way and we may interrupt when she arrives. I am sure she will have an opening statement.

And we will begin with Mr. Braceras.

TESTIMONY OF HON. CARLOS M. BRACERAS, P.E., EXECUTIVE DIRECTOR, UTAH DEPARTMENT OF TRANSPORTATION; HON. LYNN PETERSON, SECRETARY, WASHINGTON STATE DEPARTMENT OF TRANSPORTATION; CARLOS SWONKE, DIRECTOR, ENVIRONMENTAL AFFAIRS DIVISION, TEXAS DEPARTMENT OF TRANSPORTATION; AND MICHAEL KRAMAN, ACTING CHIEF EXECUTIVE OFFICER, TRANSPORTATION CORRIDOR AGENCIES

Mr. BRACERAS. Thank you very much. Good morning.

Mr. PETRI. Turn your microphone on.

Mr. BRACERAS. Thank you. And good morning.

Chairman Petri, Ranking Member Norton and members of the subcommittee, thank you for the opportunity to provide input on the Federal environmental review and permitting process.

My name is Carlos Braceras. I am the executive director of the Utah Department of Transportation. As a registered professional engineer and a geologist, I have been with the Utah DOT since 1986, including service as the deputy director, chief geotechnical engineer and chief value engineer.

I also served as the team leader through the environmental review and permitting process for the Legacy Parkway Project, a new freeway north of Salt Lake City that created a shared solution that addressed multimodal transportation, community and environmental needs. In addition, I am currently chair of the AASHTO Center for Environmental Excellence.

For more than 15 years, the Utah DOT has actively institutionalized context-sensitive solutions in all phases of our work. As the executive director, I have established integrated transportation as a Department emphasis area to ensure we provide Utahns with balanced transportation options by actively considering how best to meet the transportation needs of transit users, bicyclists, pedestrians, in addition to automobile users and freight shippers.

At the Utah DOT, all aspects of decisionmaking are driven by a set of strategic goals and strong performance management. We know this approach yields better outcomes for the public's investment. We were pleased that, as part of MAP-21, Congress embraced the Federal transition to a performance- and outcome-based program.

To meet the Nation's transportation goals, we need to remove the obstacles that inhibit our ability to deliver projects that achieve these goals, including obstacles to project delivery.

While the Utah DOT continues to assertively innovate and streamline project delivery, we do not seek to truncate environmental review. We need to stop thinking of NEPA as an inconvenient process to get through, but think of it as a decision tool that brings interested citizens to actively participate in the process. A properly administered process yields better results.

However, too often the silo mentality interferes with that process. Each agency has its own goals and missions which fosters exclusive focus on that agency's goals. Instead, Federal agencies need to understand and support their sister agency missions and goals. We can meet the Corps of Engineers' goal to protect the environment while still meeting the Federal Highway Administration's goal to improve mobility.

The Provo Westside Connector Project in Utah was, in my view, a victim of silo mentality. The project provides a new direct link to the Provo Airport and supports local land use planning. However, the project became stuck in the permitting and environmental review process.

Eventually, the project was selected by the White House as one of the 14 projects included in the Federal Infrastructure Projects Permitting Dashboard. While a need for increased coordination is often cited as the reason for inclusion on the Dashboard, in reality, a fundamental disagreement with Federal resource agencies on the need for the project was the cause for the impasse.

Resource agencies were dug in, protecting agency goals. The Dashboard process provided the link needed to nudge participants to find a solution. But it did come with a price: A permitting requirement for increased mitigation associated with indirect impacts and an unfortunate erosion of relationships with local regulatory agencies.

Despite that price, the larger goal with the Dashboard was achieved. The project secured the needed permits and environ-

mental clearances and proceeded to construction funded primarily with State dollars.

The success of our Nation is measured when progress is made towards all agency goals, not just individual agency goals. When that expectation becomes the norm, I am confident we will see better outcomes for transportation, communities and the environment.

The Dashboard process provided a framework for agencies to find a systemic solution that met a variety of agency goals, enabling the project to move forward. I encourage the subcommittee to ensure we continue making progress towards our Nation's transportation goals, including more efficient project delivery.

Thank you.

Mr. PETRI. Thank you.

Secretary Peterson.

Ms. PETERSON. Good morning. Thank you, Chairman Petri, and thank you, Ranking Member Norton, for inviting me to participate in this morning's meeting.

I came to WSDOT about 18 months ago with a diverse transportation experience, having now worked at two State DOTs, for an MPO, a transit agency in the private sector and as a local city- and county-elected official.

I have three points to make today.

One, NEPA is not broken. Small changes to NEPA have been extremely helpful, but the single most important thing to take away today is that NEPA is not broken. It allows us to get better outcomes by looking at all potential solutions in an open, public arena.

Washington State legislative audits have revealed that NEPA and our State equivalent, SEPA, are not the most common project factors for delay. A January 2014 State legislative report, in fact, found that environmental review increases public acceptance and leads to improved efficiency in overall project design and is not a significant driver of project cost.

Two, NEPA allows for complex conversations in a complex world. All DOTs are weaving our way around and through complex urban and rural environments. Each specific context has a unique problem and needs unique solutions. There is no way around having these difficult conversations, and best practices for planning techniques used by different States should be shared so that all of the NEPA conversations that we have are well worth everyone's time and resources.

When we look further into these complex problems, they are usually not fully defined prior to starting NEPA. And the necessary consensus building does take time. NEPA requires a commitment to real collaboration.

States should be held accountable to conducting their business and making decisions that benefit a diverse set of users and markets, which means we have a responsibility to make sure that all voices are heard as we go through these very complex decision-making processes. And the design should reflect those who are in the room and those who are not in the room in the end.

Other techniques applied prior to NEPA can help, including alternative analysis using multimodal scenario planning, including land use and transportation system level of analysis; least-cost

planning, similar to what the utilities have used; and practical design.

Using these approaches, WSDOT has engaged local stakeholders at the earliest stages to ensure their input is included at the right stage of the design. It also focuses our efforts on more cost-effective solutions.

Lastly, FHWA has really made good changes to be able to allow for flexibility. Please keep in mind that the vast majority of WSDOT's work—94 percent, in fact—is excluded from NEPA through categorical exclusions. Only 2 or 3 percent of our projects require an environmental impact statement.

We have had programmatic agreements in place since the 1990s that allow WSDOT to sign off in very simple categorical exclusions on behalf of FHWA. We appreciate the expanded list of activities for programmatic agreements that Congress authorized in MAP-21.

In February of last year, WSDOT and FHWA signed an updated agreement and we became one of the first States to be able to comply completely with the MAP-21 requirements. With this insight, we hope to find quick improvements we can do today while establishing clear purposes and need and alternatives for NEPA analysis.

In conclusion, I would be remiss if I didn't take this opportunity to thank you for your recent efforts to pass a short-term patch for the Highway Trust Fund. We encourage you to act before the May 2015 deadline to provide stable funding, and we believe that there is a Federal role in transportation funding in the future.

Thank you for the opportunity to share Washington's experience with the Federal environmental review process.

Mr. PETRI. Thank you.

Director Swonke.

Mr. SWONKE. Thank you. And good morning. Again, my name is Carlos Swonke. I am director of TXDOT's Environmental Affairs Division.

The Texas Department of Transportation appreciates the opportunity to provide testimony to the subcommittee meeting here today and to share our experiences with the Federal environmental review and permitting process.

To begin with, TXDOT would like to thank the committee and staff for its work on MAP-21. Since its passage, TXDOT has worked diligently to implement many of the streamlining provisions of MAP-21 and looks forward to the provisions still undergoing rulemaking by FHWA.

Streamlining opportunities, even small ones, can have far-reaching benefits to TXDOT. As you can imagine, TXDOT's environmental program is a large one. Total dollar amount of construction projects that TXDOT awarded last year approached \$6 billion.

Another measure of the program volume is the number of TXDOT actions that underwent environmental review and approval. Last year, there were 1,796 environmental approvals for TXDOT projects. To put that in perspective, the Bureau of Land Management nationwide had 1,091 NEPA approvals last year.

Of the TXDOT environmental approvals, 98 percent were with categorical exclusion determinations. As I am sure you are aware,

the categorical exclusion is the NEPA tool intended to provide expedited review and approval for minor routine projects.

The benefits of the categorical exclusion have not always materialized for TXDOT. Up until recently, a certain number of TXDOT categorical exclusions—about 40 to 60 a year—were prepared as documents that would include a full NEPA analysis. These documents could reach a length of 100 pages or more. Of particular concern was that it would take, on average, over a year to get these documents reviewed and approved.

We have since addressed this issue with meaningful results, and it is here where I would like to jump to our implementation of the MAP-21 streamlining provisions.

Although it was conceived in earlier legislation, the provision in MAP-21 relating to States assuming the responsibility of categorical exclusion determinations prompted TXDOT to pursue this opportunity. TXDOT received this authority last December. Having responsibility for categorical exclusions allows TXDOT to not only expedite the decisionmaking, but also retool our program.

In this transition, we have realized efficiencies in two areas.

First, TXDOT eliminated categorical exclusion documents that looked like a full NEPA analysis by going to checklists. Today we no longer produce 100-plus-page categorical exclusion documents and, instead, have a 2-page checklist, sometimes supplemented by technical reports. Our review time for these documents has been reduced from over a year to less than 45 days.

The second efficiency has been by eliminating the Federal review of the categorical exclusions because TXDOT now has this authority. One measure of this efficiency is that we have saved a minimum of 30 days of certain types of reviews—CE reviews.

Here is an example of the savings: About 1,000 projects on the TXDOT 4-year plan are a type of categorical exclusion that would have had 30 days of minimum review by FHWA. Doing the math here, this would have amounted to 82 years of cumulative waiting time. Today, under NEPA assignment for CEs, TXDOT is now required to wait the minimum 30 days.

Another streamlining provision of MAP-21 being utilized by TXDOT is the new categorical exclusion for projects within the operational right-of-way. Since this new categorical exclusion was issued through rulemaking earlier this year, TXDOT has used it on 627 project approvals. It has been a timesaver and a moneysaver.

Here is an example: A few years ago, there was a project in Houston to widen an existing four-lane road to a six-lane road. No additional right-of-way was needed for the widening. At the time, a full NEPA analysis was needed and an environmental assessment was prepared. There were no unusual circumstances about the project. There was no public opposition to the project.

The environmental assessment took 3 years for review and approval. The cost to prepare the environmental assessment was \$100,000, and that was borne by the city of Houston. Today that project could be approved with a categorical exclusion in a fraction of that time and at a fraction of that cost.

TXDOT is currently pursuing full NEPA assignment beyond categorical exclusions, to include environmental assessments and environmental impact statements. We have spent a year preparing our

program for the responsibility and preparing the required application to FHWA. We submitted the application this past April. It was approved.

Now we are working on the required memorandum of understanding between TXDOT and FHWA. We began negotiating this MOU at the end of last year. The status of the MOU today is that we are still in discussion on two remaining points of contention, but as of late yesterday, we have gotten positive news on these issues. It is possible that we may be able to work out these issues in the next few days.

Beyond NEPA, we still run into delays related to other regulatory procedures. Among these issues, there are the Clean Water Act, Endangered Species Act, Clean Air Act, and environmental justice issues. We understand that sometimes projects are just complicated, but the added procedures of other regulations can require substantial time and effort to meet compliance requirements.

I would like to conclude by saying that TXDOT is very appreciative of the NEPA tools that have been provided by Congress, FHWA, and the Council on Environmental Quality. These tools, combined with proper planning, good judgment and sufficient resources, will allow us to be more effective as we guide our projects through the environmental review process.

Thank you. And I look forward to answering any questions.

Mr. PETRI. Thank you.

Mr. KRAMAN.

Mr. KRAMAN. Good morning, Mr. Chairman, members of the committee. Again, my name is Mike Kraman, acting chief executive officer of the Transportation Corridor Agencies.

In 1986, the California State Legislature formed the TCA as a joint powers authority to plan, design, finance and construct a toll road network as part of the State highway system in Orange County, California.

Construction of these roads is being accomplished without the use of taxpayer dollars. TCA collects tolls for the purpose of repaying the bonds issued to finance the roads. With more than 250,000 customers per day, the toll roads generate over \$220 million in annual toll revenue.

Additionally, TCA has investigated nearly \$225 million in environmental programs to restore and preserve over 2,000 acres of open-space habitat.

Now fast-forward to where we are today. We successfully constructed 51 miles during our initial 12 years, but we have spent the last 20 years trying to complete the final 16 miles.

During this period, TCA embraced policies introduced under ISTEA and TEA-21, including the major investment study process and the NEPA/404 collaborative process.

The need to complete the toll road network was reaffirmed in the South Orange County major investment study.

For the project's NEPA process, TCA formed a NEPA/404 collaborative. The collaborative brought together State and Federal agencies to address issues regarding environmental impacts in a coordinated fashion. The collaborative spent nearly 10 years reviewing alternatives and unanimously agreed on a preferred alternative.

The next step was for TCA to obtain a consistency determination under the Coastal Zone Management Act. When TCA applied for this consistency determination, project opponents objected to the project.

At this first hint of controversy, Federal agency members of the collaborative, with the exception of the Federal Highway Administration, abandoned the unanimous selection of the project's preferred alternative, asserting the need for additional environmental studies.

The Corps of Engineers, EPA, National Marine Fisheries and Fish and Wildlife all submitted comments that criticized the preferred alternative previously agreed to by these same agencies.

The California Coastal Commission sided with project opponents and denied TCA's request for consistency determination. U.S. Department of Commerce affirmed the decision. At that point, TCA reevaluated options for the road.

After 3 years of public outreach, TCA proceeded with a shorter 5.5-mile project that is wholly outside of the coastal zone, but still serves a critical role in providing congestion relief.

Despite the fact that this project, which we call the Tesoro Extension, has negligible impacts, Federal and State agencies are delaying their approvals because of pressure from the same group of opponents who objected to the original project.

As an example, to comply with section 7 of the Endangered Species Act, Fish and Wildlife was tasked with completing a biological opinion. Since they had issued an opinion for the original project, they should have been able to prepare a new opinion within the 135-day regulated timeframe.

In December 2012, the Federal Highway Administration initiated formal consultation with Fish and Wildlife. In 2013, the draft opinion was circulated for internal review. TCA was then notified by Fish and Wildlife that they did not have sufficient staff resources to continue their work. TCA agreed to fund \$75,000 for staff in order to restart the work.

In 2014, well beyond the 135 days, Fish and Wildlife notified the Federal Highway Administration that, due to project opposition, it would not issue the opinion unless the Federal Highway Administration confirmed in writing that the project had independent utility. This setback is yet another example of subjectivity impacting the process, since this is not required to issue a biological opinion.

In conclusion, I would like to highlight a few key recommendations for improving the environmental review and permit approval processes:

First, allow projects in States with stringent environmental review laws, such as California, to meet Federal environmental review requirements through compliance with State laws.

Second, require that all Federal agencies responsible for funding, permitting or approving a project collaborate on, adopt and use a single NEPA process. The process should be integrated and occur in a coordinated parallel workflow.

Third, prohibit an agency from changing its position without the discovery of critical new information.

Fourth, limit resource agency comments to issues within the jurisdiction and expertise of that agency.

And, finally, speed up and enforce strict deadlines for the NEPA review and permit approval process.

Thank you for the opportunity.

Mr. PETRI. Thank you.

Chairman Shuster.

Mr. SHUSTER. Well, thank you, Mr. Chairman.

And thank our witnesses for being here.

I want to take a point of personal privilege. I became aware that this most likely will be Chairman Petri's last hearing, since he has decided to retire from Congress, and I just wanted to take this opportunity to thank him for his 36 years of service in the United States Congress.

He has had quite a distinguished career, starting off in the Wisconsin State Senate, doing a stint at the Peace Corps and the USAID. So he has really served the Nation in a number of ways.

But on this committee, where he served ably for 36 years, he has been in a leadership role in almost every subcommittee. I think railroads is the only one you haven't—economic development, building public works.

He was in a leadership role, water resources, this committee a number of times. He helped shepherd through TEA-21 and SAFETEA-LU as the chairman of this subcommittee. He was chairman of the Subcommittee on Aviation when we did the reauthorization in 2012. So, again, he has served the people of the Sixth District very well, Wisconsin, served the Nation.

We thank you for that service and thank you for a job well done, although I do have one question. And my family history—as most people know, I have been around here—not in Congress, but I have been around this building for a while. I have known him for over 30 years, and I have never asked anybody the question.

Why do they call you “Tim”? How did you get the nickname “Tim”?

Mr. PETRI. Well, I am a “junior,” and they sat around and decided they were going to call me “Junior” or “Buddy” or “Tom II” or this or that. Finally, my grandmother said I was very small, like Tiny Tim. So they called me—

Mr. SHUSTER. OK. Well, finally—after 30-some years, I finally know the answer to that. My father called you “Tim” and I never—I kept saying—“His name is Tom,” I kept thinking to myself. But, you know, I don't know.

But, again, I just want to take this opportunity again to thank you, congratulate you. We wish you well in whatever your endeavor is. You have really been one of the great leaders in Transportation and certainly someone that I have looked to for advice over the years. So thanks for a job well done.

Mr. PETRI. Thank you.

Ms. Norton.

Ms. NORTON. Mr. Chairman, I have never called you “Tim.” I called you “Tom.” And I really appreciated the opportunity to call you “Mr. Chairman.”

When I learned that Tom Petri was going to leave us, I could only think what a sad day for this subcommittee and committee, what a sad day for Wisconsin. And, surely, it is a sad day for the Congress of the United States.

In Tom Petri, we have a Member who has a fountain of knowledge that takes many years to accumulate. And with that knowledge, Chairman Petri has accumulated great wisdom, wisdom about the many varied modes of transportation and infrastructure in our committee, wisdom which is not easily replaced. It is not just somebody else moves up and, therefore, you will just fill in. It is knowledge and wisdom and a great model of stability and collegiality that this Congress needs.

When you put all of that together, Mr. Chairman, I can only say: Why in the world did you do that to us? We will miss all that you have offered us. We will look to you, I know, as we continue down this road. I have enjoyed working with you not only in my role as ranking member, I have enjoyed working with you as a man, as a human being.

I worked with Chairman Petri, who told me about his work with British parliamentarians and asked me if I would like to join him, and I did. It was a wonderful experience. I remember we went through—to Great Britain and everybody went except Tom Petri because he had something he had to do in his district. That is just like Chairman Petri.

So, Chairman Petri, if I could just speak from this side of the aisle, I hope you understand, as you leave the Congress, you are going with the deepest respect and admiration not only from your own side, but especially from this side of the aisle. Thank you very much.

Mr. PETRI. Thank you.

And let's return to regular order. That is a little embarrassing. And you exceeded your 5 minutes. I didn't have the heart to interrupt.

I have a couple questions for the panel, and some of you have touched on this in your testimony. And we were wrestling with this idea of interagency coordination. And it works—if everyone wants to cooperate, the objectives can be met and the thing can be telescoped and it works great. And if it is not a top priority, there can be lots of problems and delays for a variety of different reasons.

And so we are trying to wrestle with figuring out how to do incentives or reasonable ways of avoiding unnecessary abuse of the process, basically, making it more efficient for everyone.

So I am curious to know if—and we have seen examples of huge projects done very quickly because there was a public focus on it. The Olympics in Utah were a mess, and people came in and focused on it and rescued the situation. We had the earthquakes in Los Angeles. Things had to be fixed up and people got together and went through the process and met the public's need.

But most projects don't have that level of public focus, and the result ends up being an opportunity for people who have other agendas to use the process to delay things.

And it is frustrating because we want to be good stewards of the environment and recognize legitimate—raise legitimate concerns. But to have that sort of abuse of the process is an impediment to achieving those good objectives and raises a lot of objections to legislation that does try to do that.

So I was curious if you could tell us what—the top two or three policy priorities that you have for the reauthorization bill and how

we could improve the Federal environmental review or permitting process.

I know some of you touched on this in your testimony already, but if you would just repeat the top things that we should be focusing on as we draft this legislation with our colleagues in the Senate, we would much appreciate it, starting with Mr. Braceras.

Mr. BRACERAS. Thank you, Mr. Chairman.

From a policy perspective regarding the reauthorization, there is the components that I think we are talking about here today in this committee regarding the environmental process and how to move that forward in a way to get better outcomes.

And I think everyone—all my partners and CEOs of the DOTs all want to see outcomes that both benefit the transportation system, but also benefit the environment and the community. These are our homes. These are the communities that we live in. And we can find a way to get to yes.

When we look at the Federal agencies, I think sometimes it is easy to criticize the Federal agencies if they are not going along with the way we want them to go along.

When I look at the Federal agencies—I used the term “silos.” I think it may be more appropriate to use the term “cylinders of excellence.” They are all excellent agencies with people trying to do the right thing, but they are very focused on trying to achieve their mission.

And there is very little recognition or reward given to those agencies if they step out a little bit and try to help another sister agency to be successful. It is almost a demerit against that agency.

I believe there are as many ways within the rules, regulations and the spirit of what Congress has intended for Federal agencies to find a way to say yes as there is to say no. It is sometimes more difficult to say yes because you have to go out and extend yourself.

If you find Federal agencies working in a way that is cooperative, trying to help another agency be successful, it is almost like they have to defend themselves within their agency. Even though other resource agencies are environmental peers.

So I would suggest that Congress look for ways to provide not only motivation and accountability to these agencies, not just ask “How are you doing with your mission?”, also ask, “What are you doing to help the other agencies be successful?” and see what comes out of that type of accountability. I believe there are very good opportunities here for us to improve the environment.

And when I use the word “mitigate,” I am not necessarily saying let’s try to make the mitigation equal the impacts. Let’s try to do the right thing by the environment. Let’s try to do the right thing by our communities and to try to help move transportation forward. The economy of this country is dependent on a well-functioning Federal Government and a well-functioning transportation system.

So provide incentives that help Federal agencies work with other agencies to help them be successful. And I think, if we can bring to the attention of communities and Congress, what agencies are doing to help other agencies be successful, it would be a step in the right direction, Mr. Chairman.

Mr. PETRI. Secretary Peterson.

Ms. PETERSON. Well, thank you, Chairman. Born in the Sixth District of Wisconsin, I appreciate your leadership as well.

The Skagit Bridge collapsed after it was struck by a truck about a year and a half ago, 6 weeks after I joined WSDOT. That would be a good example of the MAP-21 provisions that allowed for the emergency categorical exclusions. And so that really worked well.

But to your specific question on what could be done differently, we have a good example within the State of Washington on the Point Defiance Bypass. It is a rail bypass project where we had received Federal—FHWA money to begin the project. FHWA required us to complete a Documented CE for our environmental review process work.

And when we got the Federal Rail Administration money a couple years later, FRA required us to complete new environmental work and required an environmental assessment, even though FHWA had already approved the Documented CE for the exact same project.

So it would be nice if a one DOT approach would be followed, that if you already have a categorical exclusion or an approval, that another modal administration within USDOT could accept that environmental work for the same project. So that would be my first thing.

The second one would be, to follow on the comments, the type of training for those at the local level in the regions on how to work within and out of those silos.

You know, one of the things I learned when I went from engineering into planning is that we have multiple vague and conflicting goals that we all have to work within.

And being allowed the flexibility within the workplace of these agencies to do problem solving alongside is probably something—that kind of conversation and that value needs to be imposed on this process so that we are not working at odds on our missions of excellence, but we are actually working to come to compromise on those multiple vague and conflicting goals.

Mr. PETRI. Mr. Swonke.

Mr. SWONKE. Thank you.

First off, I wanted to echo the sentiments that my peers have said. I think those are good suggestions. And something that—was mentioned earlier about the NEPA process working. And so I think the tools available to us today with the NEPA process allows us to do some pretty substantial things.

It takes a lot of other commitments and a lot of things to come together and a lot of people to pull in the right direction, but the tools we do have today are able to allow us to do our work fairly well.

But looking forward, I think there are some areas where we can make improvements. And one of the things—one of the issues came up in MAP-21, and that is combining the planning and NEPA processes together and get some advantages out of the planning process.

I think MAP-21 took a good cut at that, but it did leave us with—I think it is about ten conditions that need to be met before some planning decisions can be brought forward into the NEPA process. That is not exactly a facilitation step.

I think the idea that we should have more flexibility in bringing forward planning decisions and to allow those to account for NEPA decisions or some part of NEPA process moving forward would be extremely advantageous.

In our case in Texas, we have got a few congested corridors today that we are performing planning studies on, and we see some opportunities there to—when we get to the NEPA step of those corridors, that we could and should be able to use some of those planning decisions in the NEPA process to help facilitate the review and approval of the NEPA documents when we get to that step.

Another issue that comes up fairly often is mitigation. And MAP-21 spoke towards programmatic mitigation. That is certainly great in concept, but getting it to the ground—getting it on the ground and having agencies make efforts in that area, providing incentives to go forward on that—and I am talking about mitigation in all areas. We are talking about Clean Water Act mitigation, Endangered Species Act mitigation, even environmental justice mitigation right now.

We have got a project right now that is going on where we are really trying to find out where the threshold is for mitigating for environmental justice impacts and how far do you have to go. It is really—there is no good indication about when we have done enough on that subject.

And I don't know how programmatic applies to environmental justice, but programmatic can certainly help us with Clean Water Act 404 issues. We spend quite a bit of time and money on wetland mitigation, stream impact mitigation, and it consumes a lot of our resources.

And, thirdly, conformity, Clean Air Act, in general. There are a lot of aspects to the Clean Air Act that are affecting transportation projects these days, and it seems to be happening more and more.

One in particular that I think we would suggest looking into further would be the effectiveness of regional conformity. Is that really working towards cleaning up air quality? How effective is regional conformity?

Because, again, we spend a lot of effort and time in particular that, if we get changes later on in the project that has already been through conformity, we have to go back to conformity. It is getting to be a pretty constant aspect of our work. Is it in conformity? Was it approved in conformity? Has it changed since conformity was made? And having to go back and revisit that issue.

So those are our three items that we would suggest.

Mr. PETRI. Mr. Kraman.

Mr. KRAMAN. Thank you.

We certainly support the goals of the NEPA process, but it is too easy to take the process in different agency directions. There needs to be protection to the project sponsor in following the lead agency process, and the process should be integrated.

And when we are talking about the EIS document and the permitting, it should be a single process that is integrated and in a parallel workflow, not starting all over again each time you are dealing with a different agency.

The other part would be to limit the resource agency comments and involvement to the issues that are within the jurisdiction and expertise of that agency.

Thank you.

Mr. PETRI. Thank you. To the point and specific. Thank you. Appreciate your comments.

Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman.

I have reason, given a recent experience, to particularly value the public participation aspect of the NEPA process. The CSX railroad is engaged in work in my district involving a tunnel along Virginia Avenue.

Now, this project was very controversial, in large part because it runs through not only a residential neighborhood, but a brand-new residential neighborhood.

Now, there may be other jurisdictions like my own who reclaimed parts of their city that used to be for railroads or for industrial uses. This meant that the NEPA process and all that it entailed was important to my constituents.

Now, the prevailing wisdom is that the reason for the length of these projects is frivolous lawsuits and the like, but the Congressional Research Service has found that more often the delays come precisely because of the reason the delays are coming in my own district, because of local or State or project-specific factors.

For example, in my own case, when my communities came and asked for delays, I recognized that that would have an effect on the project, but I really didn't think—especially when the proposed record came out, and it was very thick—that I could say they didn't need more time. They were very assiduous, very well educated in going at it. So I asked for an extension. I asked for 90 days. I think I was given 60. I asked for another public meeting.

Now, you know, the constituents may lose their struggle, but I hardly think—the process would be better if they hadn't had that opportunity. It would have been quicker. We would have saved a little money, a little time. This is the reason for most of these delays. I have just experienced them.

Less than 1 percent of the projects have been subject, according to the CRS, to litigation. So we ought to face who you are talking about. You are talking about your own constituents. You are talking about your own local and State governments. They are holding things up, they think, for good reasons.

That is why I have a question for Mr. Swonke. He speaks about the environmental process in the State of Texas and the reduction from a 100-page document to a 2-page document. Actually, that intrigues me. And if it works, I am very much for it.

If you are for an environmental process that has meaning and you think that the American people are better off for an environmental process, you want to take all the encumbrances that people object to out of it and just get down to the raw meat.

But, Mr. Swonke, has your public participation process in the project been reduced also by 98 percent? This reduction from a 100-page document to 2 pages, I can understand that in pages. But what about the public participation? The public is going to have to live with the highway or the aftermath of the particular project.

Mr. SWONKE. Yes, ma'am. Thank you for allowing me to clarify that.

Definitely not. The public participation process and our public participation obligations are the same for before and after that transition of how we document our decision.

And so the times when we go out for a public meeting and times we reach out to stakeholders, the occasions through the process when we have had those discussions with the locals, it is still the same. And so the idea that we have whittled down our documentation did not affect the amount and the frequency at which we reach out to the public.

And, also, again, just to clarify as well that it also did not affect or does not affect the other regulatory standards that we have to meet as well.

It is just that the NEPA documentation does not have to go into depth on all of the statutory requirements that are necessary, just the only ones that are in effect on this particular project, so we can focus our attention on to the important issues.

But definitely, to go back to your question, no, the public participation process was not reduced in that transition.

Ms. NORTON. And I do not think you can find any State or local official that is not going to stand with his constituents in making sure there is a robust public process, and we have to understand that is where the delay is.

One more question. You raised an issue regarding the involvement of DOJ and the Federal Highway Administration because of your delegation.

Now, I think it is important to note that, in delegating to a State, essentially, you become the proxy for the Federal Government. It is not as if, you know, it is all yours and there is no more Federal jurisdiction.

But you seem to object to the Federal Government being involved, in the case of DOJ, in the settlement—in determinations whether to settle a lawsuit or to appeal an adverse judgment. You seem to imply that that ought to be left solely to the State of Texas and not to DOJ.

Does your MOU, which assigns responsibility for categorical exclusion and determinations, contain similar provisions regarding settlements and appeals? Are settlements and appeals taken out of what your responsibilities are?

Mr. SWONKE. On that particular issue, I don't recall. But I have got someone behind me I could ask quickly for a yes or no, if that is OK.

Ms. NORTON. Well, I just want to make sure that you don't regard Texas as being treated any differently from any other jurisdiction or, for that matter, any other Federal agency. A Federal agency, if it wants to appeal—and it may feel strongly—it has to go to DOJ. DOJ makes that determination for the Federal Government.

And I would think that the same thing would be understood by the State of Texas, that, essentially, all the Federal Government has done is to say, "We are essentially allowing you to be our proxy. We are delegating to you. But we delegate to you responsibilities and we also delegate to you all the rules that encumber us who are the Federal agency."

Do you understand that as well, Mr. Swonke?

Mr. SWONKE. Yes, ma'am. The idea that we are working on the MOU for the full assignment, the full delegation, is that, in the program, the way it is being set up, that the Federal Highway Administration has the ability to intervene at any time on any of the cases so that, if they feel like—if we are going in the wrong direction, they have the ability to take over and be the lead. And so that—that is, I think, the safety valve that we are looking at that covers your concern, covers the concern of DOJ and Federal Highway Administration.

And so they are allowed to intervene at any time and to take over the case, and we are fine with that. It is just those times when they don't intervene, if they choose not to intervene on the case. Then we feel like, well, that gives us the ability that we are in charge of our own decisionmaking at that point if they do not intervene.

So those are the time cycles. If you don't intervene, then we should be allowed to move forward. When you do intervene, it is all on the DOJ or Federal Highway Administration.

Ms. NORTON. Now, Mr. Swonke, they will know when to intervene. So be assured of that.

Thank you very much, Mr. Chairman.

Mr. PETRI. Thank you.

Mr. Farenthold.

Mr. FARENTHOLD. Thank you, Mr. Chairman.

And in response to what—Ms. Holmes Norton, I wanted to add just a little piece.

When I was first elected to Congress in 2010, I represented from Brownsville to Corpus Christi. I now have the privilege to represent from Corpus Christi north to Wharton, which covers about probably a third of the route of Interstate 69 that is being improved along Texas.

And I can tell you, since the day I was elected until last month, there is probably a public hearing every couple of weeks on I-69, and I will tell you that there is no lack of opportunity for public input.

And I really am proud to be here as a Texan as we are looking at the Texas model for improvements and efficiencies. And I wanted to talk to Mr. Swonke about some of the Texas experience.

It is my understanding that Texas has decided to petition the Federal Highway Administration for full NEPA delegation like California did under SAFETEA-LU.

Why did you all decide to do that?

Mr. SWONKE. Well, we have got a couple of incentives to move in that direction.

The first one is that it is really a discussion about resources and availability. Across TXDOT, we have about 150 folks who practice in the environmental area of getting the projects environmentally cleared.

When we talk about our FHWA division office, you are talking about five or six or seven environmental folks who are in charge of processing these documents.

So when—you are talking about having the resources to carry out the program, to review the program, and oftentimes we—you

know, we change our priorities with FHWA and the discussion goes towards, "OK. Well, what is the priority you want us to review? Because we only have so many folks to put on this assignment."

Secondly, we think our program is robust. It is mature enough to handle this decisionmaking, given the fact that we have got, as I mentioned, the folks available and the resources available to carry out the program. We have got experienced people available as well and—

Mr. FARENTHOLD. So—

Mr. SWONKE [continuing]. Again, just ability and responsibility to do that.

Mr. FARENTHOLD. So how is the process going?

Mr. SWONKE. So as I mentioned earlier, that—we are discussing the MOU, which is the final document that would allow us to move forward. And working with our FHWA division office in Austin, it has been very productive, and we are appreciative of the response we have gotten from them.

And given the news that we received yesterday on the last two points of our MOU, I think that is very positive as well. And so today we see it working very well.

Mr. FARENTHOLD. And so we have also in Texas gone through and gotten delegation for categorical exclusions.

Do you have any improvements that you would recommend for the process either for full or categorical exclusion delegation? Is there anything we need to do to improve that process?

Mr. SWONKE. We feel like going through the process for the categorical exclusion delegation was fairly simple. And we got there pretty quickly, and we were very happy with the way that was set up.

For the full assignment, I think, given that we moved forward fairly well up until the point where we reached somewhat of an impasse on those two remaining issues—which, again, I think we may be able to move forward on it here recently—that has moved fairly smoothly as well.

The one point on the implementation of the full delegation was the steps and public notice of the application. There are as many as three steps for public notice of the application, and we weren't sure if that was intended or not.

But in applying for full NEPA assignment, there is a step for the State to put out its draft application on public notice. And there is—the request from the Federal Highway Administration was then, once they received that application, that they would put out that application on public notice and then, once the MOU was in place, that the MOU would be public notice as well.

Mr. FARENTHOLD. So that is the web designer's full employment act. Right?

Mr. SWONKE. Yeah.

Mr. FARENTHOLD. I assume most of that goes on the Internet.

Mr. SWONKE. Yes. Yep.

Mr. FARENTHOLD. And one of the issues, I know, in these negotiations—and I think you talked about it some—was the relationship with the DOJ and the Federal Government.

Can you talk a little bit about—I don't think under the—if I am correct—and correct me if I am wrong—under the CE delegation,

the Federal Government wasn't looking for access to your attorney-client-privileged information, and it was different under the full—I mean, can you talk a little bit about that.

It seems—I understand the need for the Federal Government to be involved in the process, but you still need to be able to talk to your attorneys. I mean, you don't want to deal with the Federal Government without involving the attorneys at some point, I would think.

Mr. SWONKE. Yes. One of the points of contention that I had mentioned had to do with the request from the Federal Highway Administration about TXDOT turning over client privileged information as part of our obligation.

And so we were a little concerned with that, the idea that we would have to be able to turn over attorney-client-privileged documents that we had, you know, internal discussions about decision-making in the audit process.

And, you know, there would be times that that would be, you know, I think, OK with us. But just requesting that across the board and us being obligated to turn that over any and all the time that they asked was a concern.

It could have a bit of a chilling effect on our ability to have our own confidential internal discussions, realizing that this could be made, you know, available to the Federal Highway Administration and then, once it is disclosed there, where it might else would be disclosed.

And so that was a big concern with us. And so—but, again, as I mentioned that—as of just yesterday, I think we have got some language in our MOU that addresses the concern on both sides.

And then the other point you mentioned, the DOJ's concern, we fully understand that, even when TXDOT receives NEPA assignment, that this is still a Federal program.

And so the idea that decisions made in the Federal program could have implications beyond Texas are understandable to us and that the Federal Highway Administration's concerns are valid, DOJ's concerns are valid, and we want to honor those concerns.

Mr. FARENTHOLD. All right. I see my time has expired. Appreciate your being here to testify.

Mr. Chairman, thank you.

Mr. PETRI. Thank you.

Representative Johnson.

Ms. JOHNSON. Thank you very much, Mr. Chairman. And I am going to preface my questions and remarks by saying I am very emotional about your departure. My entire 22 years on this committee has been served with you. I have served on a number of the subcommittees. And I can't think of anyone that I respect more. I appreciate the service you have given. I am certain your constituents do. And I will miss you greatly. Thank you for being a great role model.

Now, on to Texas. Nobody handed me any questions to ask, and if they did, they know it wouldn't make any difference anyway. I am a native, and I have served with every one of these pictures on the wall as chairman, and not a single one of them has ever given me any trouble trying to represent Texas on this committee. And

I am serving now with the son of one of those pictures up there, and he has not as well.

But you know I am a native of Texas and I know how resistant Texas is to rules. And I am a nurse, and I know about the environment, I know about the effects of environment with children, old people, and middle-aged people, too. And I am concerned about whether TXDOT is really working with Fish and Wildlife, the Corps of Engineers, the EPA to try to make sure that we are not hiding, we are transparent in following the rules.

We don't have a good track record. Are we improving it?

Mr. SWONKE. Yes, ma'am, I would definitely say that we are improving it over the past few years, our relationships with EPA and Fish and Wildlife Service and the Corps of Engineers. Actually, I would say with the Corps of Engineers and the Fish and Wildlife Service, we have established a very good working relationship very recently. One of the things we have done with the Fish and Wildlife Service and Endangered Species Act issues is designate and fund a liaison at that agency, and he now is almost an extension of one of our own employees in that he is very aware of the issues that go on, and he communicates that to the Fish and Wildlife Services offices in our State.

The Corps of Engineers, I think we have always had a fairly good relationship with. We have been open with them, they understand our program.

EPA, it has run hot and cold, honestly. And so there are times when we are able to engage EPA and they are able to attend a lot of our early scoping meetings and communications, and other times when they are not able to, it sometimes leads to problems later. So we see that sometimes their limitation of resources limits their ability to engage, and then they also have the disparity amongst their various offices that get involved in our programs. If and when they don't communicate to folks within their side, it leads to communication problems down the road. But I think even that relationship with EPA is getting better as we get to know them and the folks we are dealing with over there.

Ms. JOHNSON. Sometimes I wonder if Texas understands that EPA actually is there to protect people and not necessarily to protect agencies. But our EPA in Texas have mostly protected industry, not people, and that is my major concern with the streamlining. I want to see streamlining, but I also want to make sure that we don't ignore the almost 30 million people that breathe that air every day in Texas, and that is a major concern.

We cannot compare ourselves to California, who had made an effort to try to comply. I haven't seen as much effort in Texas, and I think the record speaks for itself. You know, I don't want to sit here and tell you all about the various complaints, but the record speaks for itself. So I am concerned about that, and I am concerned about transparency, and I just want you to know that.

Thank you, Mr. Chairman. I yield back.

Mr. PETRI. Thank you.

Mr. Hanna.

Mr. HANNA. Thank you. Thank you very much.

As cochair of the Subcommittee on Railroads, Pipelines, and Hazardous Materials, I would just like to remind everyone of some-

thing that most of us are aware of. Even though the railroad projects are largely financed with private money, they can still be subject to Federal environmental review. Long delays can be burdensome, expensive, ultimately discouraging private investment, which we need for our growing economy and to grow our economy. So we do put at risk long-term job creation that enhances service to our constituencies by creating some barriers.

Ms. Peterson, one of the things we have heard from you in your opening statement is that NEPA is not broken. What we have heard from Mr. Kraman and Mr. Swonke is that things don't have to be broken to have wide opportunities for improvement. So I don't find your statement inconsistent with those necessarily, I doubt if you do, but clearly there is always room to look and improve.

I want to ask you, Mr. Kraman, you mentioned something that I will just use the term mission creep. You talked about agencies not minding their own business, to be less than polite. Can you give me an example of how that would happen, and why it could happen, and if you believe there is some philosophical drive behind that? Go ahead.

Mr. KRAMAN. The process as designed in the collaborative process was to involve all of the agencies, because they each do have slightly different agendas, if you will, as they approach these complex projects, the Federal Highway Administration being the lead on our particular project.

Once we got through that process and had unanimous agreement on the preferred alternative, the wheels came off pretty quickly after there were challenges to the project, and the way that took place was around agency issues. For example, EPA or the Corps of Engineers, while we had a very robust public outreach process for the constituents that live around the project, there is the whole level of professional organizations that work with EPA on their agenda or work with the Corps of Engineers on their agenda. So it very quickly unravels despite a 10-year process of collaboration.

Mr. HANNA. So what you are suggesting is that there is a war of attrition that can be fought from a number of different angles that ultimately—go ahead.

Mr. KRAMAN. And I think the biggest weapon that is used is to delay. So it is not necessarily that easy to stop a project, but in the current process it is very easy to delay a project. And I think the major weapon we see is to use each of the agencies in the slightly different way they would each look at that in order to throw in delays to the process.

Mr. HANNA. So that you welcome the input, but it is hard to bring to conclusion because of all these other dynamics.

Mr. KRAMAN. Right. And perhaps what is lacking is a more robust appeal process, if you will, or some sort of an administrative process to raise the level of disputes in order to keep the projects moving forward.

Mr. HANNA. So how would you suggest you cap input? Ms. Peterson is suggesting it is a wonderful thing. We all agree that it is part of the process, you need it. But how do you end something like that?

Mr. KRAMAN. We agree that it is an important part of the process and the process allows for that input. However, having followed the procedures outlined in the process, we need to move ahead.

Mr. HANNA. So you had a 16-mile agreement. That didn't work out. You went to a 5.5-mile agreement, and you thought that was—because everybody had already signed out, and then they jumped back in because ultimately what they are really saying is, we don't want this to happen.

Mr. KRAMAN. Correct.

Mr. HANNA. And you think we could find a way around that?

Mr. KRAMAN. Yes. It depends on who it is we are talking about when they say they, we don't want this to happen. Certainly the people of Orange County and the people who are sitting on the 5 freeway in San Clemente and San Juan Capistrano, where we are spewing all sorts of air pollution into the air while they sit there, would rather have a free-flowing alternative route where our vehicle hours traveled decreases, and where as a transportation control measure, it supports the air quality conformity for the entire L.A. Basin, we want to be able to move towards that as opposed to having people stuck in traffic, because we have an alternative. By the way, the main thing that typically stops a project is they can't fund them. We are paying for this project without using taxpayer dollars to build this facility.

Mr. HANNA. So you would like to see these agencies have this input. I don't know how to end this, because this is bureaucratic, it is the way bureaucracies go.

But then my times has expired. Thank you very much.

Mr. PETRI. All right. Let's see. We have Mr. Rice.

Mr. RICE. Thank you, Mr. Chairman.

Mr. KRAMAN, Mrs. Peterson earlier said that NEPA is not broken. With respect to your toll road projects, how much time have you spent trying to get this final part permitted?

Mr. KRAMAN. Close to 20 years.

Mr. RICE. Do you think NEPA is broken?

Mr. KRAMAN. I think NEPA is a process that can lead to a solution. I think there are components of it, particularly when it involves the coordination between the other agencies not being the lead agency, that can easily delay a project. I think the element of delay, which leads to more costly projects, which leads to that benefit not being available to the users and the beneficiaries of that project, I think that part of it is broken.

Mr. RICE. All right. Would you agree with me that transportation and infrastructure are important to our economy and jobs?

Mr. KRAMAN. Yes, sir, I would.

Mr. RICE. Do you think that delaying critical transportation and infrastructure projects helps America's competitiveness in the world?

Mr. KRAMAN. It does not.

Mr. RICE. And do you think that that results in jobs going overseas?

Mr. KRAMAN. Well, certainly out of certain States to other States, and I would agree overseas as well.

Mr. RICE. Thank you, sir.

Mr. Swonke, with respect to Texas, so does NEPA or MAP-21 specifically allow for States to be delegated this authority to oversee the NEPA process?

Mr. SWONKE. Yes, it does.

Mr. RICE. How many other States have been granted this authority?

Mr. SWONKE. California has been working under this authority for the full assignment, that includes EISs, environmental impact statements, and environmental assessments, for I think going on 7 years.

Mr. RICE. So they received the delegation or they are trying to get the delegation?

Mr. SWONKE. They received it just over 7 years ago, and they have been working under that authority for that time.

Mr. RICE. How long has Texas been trying to get that delegation?

Mr. SWONKE. Oh, about a year, just about a year when we decided, we got the State legislation passed and moved forward spring of last year.

Mr. RICE. How many other States have gotten it?

Mr. SWONKE. And then for the limited assignment that is just for categorical exclusions, there is Utah and Alaska who have been operating under that authority for some time.

Mr. RICE. Do you know of any other States that are trying to get it?

Mr. SWONKE. I have talked to some of my peers, and they are interested. I don't know that they are actively today pursuing it, but they are interested and somewhat preparing for it.

Mr. RICE. Mr. Kraman, do you know how much money has been spent on complying with the NEPA process with respect to the, what did you call it, TCA project?

Mr. KRAMAN. I don't have that number. I can get that for you.

Mr. RICE. Mr. Swonke, do you all have any breakdown on that, on what it costs? You said earlier that—I am trying to remember the exact phraseology—but I am trying to get from the Federal Government a breakdown on a project that doesn't get a categorical exclusion, what the percentage cost of complying with the NEPA process was versus the cost of actually putting pavement on the dirt.

How much money are we spending of our very limited resources, when we don't even have enough money to take care of what we have already got, much less build any roads? How much money of that are we diverting to this NEPA process and not putting pavement on the ground?

Mr. SWONKE. Of course, I don't have those numbers available, and it would be very project specific. But we could come back with some examples, I am sure.

Mr. RICE. OK. You could come back with what you are spending, but you can't tell me what the EPA is spending and what all these other—the Federal Highway Administration and all these other various—the Army Corps of Engineers—you can't tell me what they are spending, right?

Mr. SWONKE. Correct. I wouldn't be able to.

Mr. RICE. Do you think it would be helpful if we required some breakdown on a cross-agency basis so we could at least understand

how much, in addition to the time and the lost productivity and all, the lost benefits, delay of benefits, do you think it would be helpful to know what it has cost us in hard dollars across all these agencies?

Mr. SWONKE. Yes, sir. I think cost-benefit is always helpful.

Mr. RICE. Can you, I know I am putting you on the spot with this, because I don't know that I could even come close, but can you give me any kind of an approximate breakdown, 10 percent, 20 percent? You can't do that, can you?

Mr. SWONKE. No, sir, I can't, off the top of my head.

Mr. RICE. All right.

Mr. Braceras, do you think that NEPA process is broken?

Mr. BRACERAS. Mr. Congressman, I do not believe the process is broken. I think there are improvements that we could make in the administration of the process. The process is actually very good and can yield excellent outcomes if people come to the table with a willingness to have honest, open discussions and they reach a point at which they are willing to make a decision. And I believe the process works if it is administered appropriately. But that really comes down to people.

Mr. RICE. You know, I want to thank every one of you for being here. And I have the utmost respect for every single one of you. And thank you for your work and thank you for trying to help your individual States and push these projects through.

I think when it takes 20 years to get a much-needed road in California, 24 million people in southern California moved around, when it takes 10 years to get a permit for a road we have been working on in South Carolina, I-73, I think the process is horribly broken, I think it costs millions of jobs, and I think it affects American competitiveness, and we can do much, much better. Thank you very much.

Mr. PETRI. Thank you.

Mr. DeFazio.

Mr. DEFazio. Thank you, Mr. Chairman.

I think the summary of the testimony is the expansion of the CEs, which I have advocated for, for a number of years, has worked quite well in Texas and Washington and elsewhere. We do have before us an issue, which actually when I chaired the subcommittee, was the subject of a hearing, which is the unbelievably controversial SR 241 road to the coast. I have just got a couple of questions on that, Mr. Kraman. Do you want the Federal Government to preempt your State's laws, yes or no?

Mr. KRAMAN. No.

Mr. DEFazio. OK. So it is my understanding that actually this road was the most controversial issue ever heard by the Coastal Commission, they had more comments than on anything or perhaps all their other proposals in history, and yet you are proposing—and that is what brought it to a halt—but you are proposing changes to Federal law, giving a long litany of interactions with the Federal Government, for something that was ultimately blocked by the State. Isn't that correct?

Mr. KRAMAN. Well, what I testified—

Mr. DEFazio. Well, I mean, isn't that true? At this point, you are blocked by the State.

Mr. KRAMAN. What I testified today to is how we have reevaluated the project and the difficulties we are having with a 5.5-mile project, which doesn't impact the coastal zone.

Mr. DEFAZIO. OK. But generally the lengthy litany of things that we are talking about here and the changes you want relate mostly to the problems you have had with 241, which relate to the State California Coastal Commission, which of course is not the jurisdiction of this committee, and you haven't recommended that it should be, so I appreciate that.

Ms. PETERSON. Let's go back to people who are a little more successful in working through the process. You know, we have talked before about appropriate design. I mean, if one has appropriate design and adequate public input, do you see the need for further streamlining beyond what we have already delegated through the last, whatever they called it, MAP-21?

Ms. PETERSON. Chairman and Congressman, the specifics on streamlining, I think we have had great success in Washington State on continuous improvement on streamlining and permitting, so I would hesitate to say no, we don't ever need to continue moving forward on streamlining. I think there are always ways in which we can improve the process, but public participation would not be one that I would want to streamline out.

Mr. DEFAZIO. Well, the most notable failure in the Northwest, of course, is the Columbia River Crossing, which didn't have anything to do with a failure brought about by Federal agencies.

Ms. PETERSON. No. That was a project for the committee that went through extensive environmental impact statement, had a record of decision, and then due to the fact that the Washington State Legislature considered but did not move on a transportation package to fund projects across the State, that is not moving forward at this time.

Mr. DEFAZIO. So we had proposed and went through and were able to work with the various Federal stakeholders before the streamlining process and get approval to go ahead from the Feds, but it was a failure of the region, much like 241 in California is a failure because of California State law.

Ms. PETERSON. It was certainly a long process to get to a conclusion. And having been somebody who worked on both sides of the river—

Mr. DEFAZIO. Both sides of the border.

Ms. PETERSON [continuing]. On this project, and also as a person who was—

Mr. DEFAZIO. I am not trying put you on the spot here.

Ms. PETERSON. No.

Mr. DEFAZIO. I am just making an observation. You can just say yes.

Ms. PETERSON. As somebody who just has a perspective from inside and outside, the process worked.

Mr. DEFAZIO. OK. But you do say at the end, "subcommittee's support encouraging Federal resource and regulatory agencies." You list "examine their review processes, look for ways to expedite programmatic agreements." Could you expand on that, because I don't know what that means.

Ms. PETERSON. Where are you?

Mr. DEFAZIO. At the end of your testimony.

Ms. PETERSON. OK. Could you read it?

Mr. DEFAZIO. It says, "We seek the subcommittee's support in encouraging Federal resource and regulatory agencies (Fish and Wildlife, NMFS, Corps) to examine their review processes and look for ways to expedite programmatic agreements."

What is the problem we are trying to get at there? There is a problem you are pointing to.

Ms. PETERSON. That is to reduce the time that it takes for the review.

Mr. DEFAZIO. OK. So it is a lack of coordination still among the agencies?

Ms. PETERSON. I think that we have done a good job at Washington State doing that for our folks that we work with, reducing from 90-day review to 3 days. We would essentially say that should happen across the country.

Mr. DEFAZIO. So the Feds aren't able, even with the CE process, to meet the kind of expedited process that you can put forward?

Ms. PETERSON. I think we should be used as the best practices.

Mr. DEFAZIO. Yes. OK. So they need direction, or what changes do you—

Ms. PETERSON. I think many of our programmatic MOU's and MOE's should be looked at in terms of how they could be used in other States.

Mr. DEFAZIO. OK. All right. Well, we need to follow up on that, because I am looking to whatever we can do for continuing problems. I have struggled with this lead agency, agencies wandering in later and saying, gee, wait a minute, oh, we should have been here and we haven't been and now we have a concern at the end. I mean, there has got to be—

Ms. PETERSON. Correct.

Mr. DEFAZIO. And it seems like there are still some vestiges of that problem.

Ms. PETERSON. Yes.

Mr. DEFAZIO. OK. Thank you.

Thank you, Mr. Chairman.

Mr. PETRI. Thank you.

Mr. Duncan.

Mr. DUNCAN. Well, thank you, Mr. Chairman.

And, Mr. Braceras, you mentioned in your testimony that the Interstate 15 construction project in Utah was completed in an unprecedented 35 months, making it the fastest billion-dollar project ever built. Maybe you have testified about this, but I have had to be in and out. Would you tell me a little bit more about how you did this, and are there lessons that you learned that could be helpful to other States?

Mr. BRACERAS. Thank you, Congressman, for the question. The timeframe that we referred to in the project was in relation to the fact that Utah DOT has been very progressive in streamlining project delivery. The environmental process and approval preceded the 35 months to construct the project.

Now, the environmental document, I believe, was unique in the sense that when we began the document we began it as a multimodal document and we carried forward into the draft EIS as

both a transit component and a highway component. But as was testified earlier, one of the improvements that could be made as we move forward is to be able to complete a decision on both modes of transportation within the same document.

What happens, and it is what happened to us on the I-15 project in Salt Lake County in 1995 where both the light rail solution and a highway solution came out of the environmental process, is when we get to the draft EIS you have to split the documents apart because there are different formatting requirements required from Federal Transit Administration versus Federal Highway Administration.

So that does not really, I believe, send the right message. Our agencies want to be truly multimodal, and so you would have to split the documents apart. That is an inefficiency. But in terms of the timeframe mentioned in my testimony, it was in reference of supporting the fact that we are doing everything within our powers to try to move projects forward quickly.

That was a design-build project. Utah is the first DOT in the country to utilize design-build back in the 1990s. We continue to use it probably more so than most States. That process allowed us to achieve incredible outcomes for the public at a very, very short timeframe with very little impacts to the traveling public. We kept all the traffic lanes open during construction when we did it. That total project was a \$1.725 billion project in terms of program costs.

Mr. DUNCAN. Well, thank you very much. I have not been here as long as Chairman Petri, but this is my 26th year on this committee. And I chaired the Subcommittee on Aviation for 6 years and the Subcommittee on Water Resources and Environment for 6 years and for 2 years this subcommittee when we were writing MAP-21. And all through all those years we would hear all these officials come on all the different types of projects, aviation projects, water projects, highway projects, and they would tell us it was taking three times as long on average as any other developed nation to do these different projects, and of course that made it three or four times as much in cost. And so we have tried real hard, we tried real hard in MAP-21 to put in these environmental streamlining provisions and do more than just lip service.

I was pleased, Mr. Swonke, to hear some of the examples you gave. You talked about the thousand projects, that you saved 82 years of accumulated waiting time. I mean, it is not just in Texas. It is all over the country that these delays were taken.

And, Secretary Peterson, I noticed in your testimony you said that programmatic negotiations have received very low priority in the Federal agencies' workload. You started to get into this just a minute ago, and I was interested. You said you could cut 90 days down to 3 days. Would you tell me a little bit more specifically what you were talking about or how you were able to do that?

Ms. PETERSON. In general terms, basically between the different agencies that play a role around how we do different things, like stormwater management, which is a very, very important issue within the Puget Sound area of Washington State—

Mr. DUNCAN. It is all over.

Ms. PETERSON [continuing]. In certain projects we have, which is the majority, we have reduced the time from 90 days to 3 days for

complete review of those projects, because we have agreed that if it is a project of such and such type, then this is the type of solution and the type of work that we will do in response.

Mr. DUNCAN. Well, my time is up, but I do want to say, Mr. Swonke, I appreciate your example on the right-of-way, the use of the right-of-way provisions that we had in MAP-21, because in this one where you say that you would have had to spend \$100,000 on a very unnecessary environmental assessment. So thank you very much for the work you are doing in that regard.

Thank you. Thank you, Mr. Chairman.

Mr. PETRI. Thank you.

Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman, and thank you to the panelists.

I am from Illinois, and obviously I think when you look at this committee, we want to work together. And the T&I Committee is an example of bipartisanship when it comes to making reforms that are going to actually lead to more infrastructure investment and making those Federal dollars that we are able to spend go further. And that was the goal in MAP-21.

I wasn't here nearly as long as Jimmy Duncan. Heck, I have only been here a year and a half. So my experience is listening to you tell us how those changes in the policies that the people that have served here longer than I have and how they are actually being implemented.

And, Mr. Kraman, you mentioned something earlier about a robust appeal process, and that got me thinking, because when you get to me on freshman row here, most of the questions are asked, so I want to turn it back over to you. You have seen some of the policy changes that we have made. If you look at WRRDA, another example of bipartisanship coming out of this committee, I was excited as a freshman to even be able to serve on that conference committee, but changing policies in WRRDA is projected to reduce what I call the paperwork process that the Corps of Engineers uses, which is design engineering, and we all know, and the environmental reviews and the different studies, is projected to change it from an average of 15 years right now to 3 years. Which I think we all agree that saves taxpayers billions, because you are getting to the infrastructure investment sooner and you are not spending precious Federal dollars on studies that can be run concurrently.

So looking now at MAP-21 and what has been done, can each of you tell me a recommendation you would have, a policy change that could make the process even better as we move into this discussion on a complete reauthorization for highways and transit. So we will start with you, Mr. Kraman, because you did mention the robust appeal process.

Mr. KRAMAN. OK. Well, the first suggestion I would have is that it needs to be a single NEPA process that we go through that includes the development of the environmental document and is then utilized in the Federal permits that are needed for each project. So often we get through a NEPA document, and yet when we get into the permitting process, like, for example, a biological opinion from Fish and Wildlife Service, that really grinds over old ground again

and eats up a lot of time in the process despite the 135-day regulated timeframe that they have to act within.

I think the appeal process is important, but I would preface it by saying, if each of the agencies were confined to their area of expertise as opposed to drifting all over the map, it may be less necessary, but certainly the lead agency, which for our project would be the Federal Highway Administration, when we get disagreements from other agencies, whether it would be the Corps of Engineers or EPA, there should be an appeal process that is within the confines of that lead agency who has the expertise in the type of facility we are looking at.

It gets gray. I mean, EPA obviously is very interested in air quality, which is related to traffic, but the Federal Highway Administration is the expert on traffic. So having the ability when there is a dispute over traffic that we could appeal through the Federal Highway Administration in order to get to resolution.

All of my suggestions are related to putting more of a timeframe to the process. We do have a great process, public input being the best part of that process, but we get bogged down in the time. And from our perspective, a lot of the time that gets eaten up and added to the process are the different Federal agencies weighing in from a different point of view where they would not normally be the lead agency.

Mr. DAVIS. OK. And that would be your number one priority in changing some policies, right, in the future?

Mr. KRAMAN. Yes.

Mr. DAVIS. OK. I don't have lot of time left, so if you could just tell me what your number one policy change would be to make the process even better, that would be great. Go ahead, Mr. Swonke.

Mr. SWONKE. Yeah. Very quickly. I think it goes back to what I mentioned earlier about the allowance to combine the planning decisions in the NEPA process. It is conditional now. It should be more flexible to bring in more decisionmaking from the planning process into the NEPA process.

Mr. DAVIS. Thank you.

Ms. Peterson.

Ms. PETERSON. Preplanning is essential and bringing everybody to the table. But the one thing that needs to be changed is the ability for modal administrations at USDOT to accept environmental documents approved by other USDOT modal administrations.

The one thing I would be remiss in not stating is Governor Inslee, Washington Governor Inslee, serves on the Presidential task force for climate change, and they are looking at recommendations for climate and GHG guidance within the next reauthorization and work on NEPA. So what should we be doing as States? And that is probably a longer conversation that will need to be had, but how does that apply to planning and projects?

Mr. DAVIS. OK.

Mr. BRACERAS. Yes. I think we all agree that we want better outcomes for the public's investment, both from the environmental, the community, and the transportation perspective. I think that one of the things we can continue to do is continue down the path of an outcome-based performance management process for all of our

processes that we do within the administration of the Federal Highway Program and the NEPA process as well.

We really need to increase the transparency and the accountability of how these decisions are being made. Too many times I see things hiding behind the term of predecisional. It is difficult for the public to know what is going on behind the screen, as well as it is difficult maybe for the project sponsor.

Mr. DAVIS. Thank you, each of you.

Mr. PETRI. Mr. Williams.

Mr. WILLIAMS. Thank you, Mr. Chairman. Also, thank you for your leadership. Appreciate you.

I want to thank all of you for being here today. And, Mr. Swonke, thank you for being here. Thank you for your leadership in working through some difficult times.

I am a business guy. My district goes through Texas, goes from Fort Worth through Austin, a lot of highways, a lot of action going on. And I wish that the Federal Government would treat the States more like customers rather than adversaries.

The first question to you is, as we hold this hearing, examining the impact of environmental reviews on transportation projects, the House Natural Resources Committee is meeting as we speak to mark up legislation on the Endangered Species Act. Would you tell us how the Endangered Species Act and its requirements impact transportation projects?

Mr. SWONKE. Certainly. I think we have got quite a few listed species in the State of Texas that we deal with when it comes to transportation projects, and we often run into the impacts of these species and have to go through Fish and Wildlife Service for the ability to move forward on these projects. And so on a case-by-case basis when we run into the problem of a listed endangered species. Right now we are working on a project in south Texas that has to do with the endangered ocelot and the idea that that ocelot is being hit by passing cars crossing the roadway and what kind of a mitigation we can do. And we have been having discussions on this issue for over a year now. And certainly something needs to be done, we are moving forward with some mitigation options, but it is just the course of the discussions having been in place for well over a year.

We have got instances of that around the State, that you enter into this coordination process, and we have to follow that path to completion. As I mentioned earlier, we are getting better at that with the liaison we are working with. I know other States probably have a similar success story with working with the Fish and Wildlife Service liaison on this, and we have seen similar improvements in that process.

Mr. WILLIAMS. Thank you. My second question would be to explain how regulations beyond NEPA, like the Clean Air Act, Clean Water Act, National Historic Preservation Act, and so forth, are impacting transportation projects. And do you have any recommendations on how to streamline the approval process under these laws?

Mr. SWONKE. Starting with the Clean Air Act, there are a number of aspects of the Clean Air Act that affect our work. And without being able to go into the details right now, that I think one of

the top ones is the idea of regional conformity and how and when that applies, and then also the effectiveness of regional conformity, are we seeing real improvements in air quality when it comes to the compliance with regional conformity. Also compare that to the improvements in air quality you are talking about when you are talking about cleaner fuels, more efficient engines, and things like that. And so what is the relative improvements that we are getting out of conformity. And then there are upcoming Clean Air Act rule-making that we are expecting, and those could have some pretty big implications on our work as well.

The second regulatory issue is the section 404 of the Clean Water Act and working with the Corps of Engineers on that. The working relationship is fine, but it is just the steps necessary for compliance and the time taken for discussions regarding alternatives, which we usually address in the NEPA process and going all the way through mitigation, which is an iterative process as well and can take 2, 3, 4 years to get through an individual permit, for a 404 permit.

Mr. WILLIAMS. Well, thank you for what you are doing. You have got a great team down there. I enjoy working with you. And you would agree with me when I said, God bless Texas, wouldn't you?

Mr. SWONKE. Yes, sir.

Mr. WILLIAMS. Thank you.

I yield back. Thank you, Mr. Chairman.

Mr. PETRI. Thank you.

Mayor Barletta.

Mr. BARLETTA. Thank you. Looks like I am the last man standing here today. I would like to congratulate the chairman on his retirement and thank you for your service and great work.

Many of the streamlining reforms in MAP-21 were optional, and you as State officials have the choice to take on new environmental authorities. I am going to ask all of to touch on this. Are there any optional MAP-21 reforms that as a State you are choosing not to use, and if so, why not?

Mr. BRACERAS. There are none that we are choosing not to use. Some of them are taking a little bit to progress through our State legislative process, honestly. As was mentioned earlier, we have had a delegation for categorical exclusions for quite some time. It has been very successful.

We made a conscious decision at that time to work with the State legislature to waive sovereign immunity. It sounds scary. In fact, it is not. At the end of day it won't result in any change in the way we operate, so we only went forward with the CATEX. So now we are trying to obtain sponsors and work with our legislature to get the full delegation authority for EAs and EISs as well.

So we applaud the Congress for providing flexibility to the States, but also holding us accountable for administering and adhering to the laws of this country. So I believe application and decisionmaking closest to the customer usually yields the best results.

Mr. BARLETTA. Ms. Peterson.

Ms. PETERSON. The portion that we are not pursuing, the only portion we are not pursuing is complete delegation, while other States may want to do that. We find that FTA and FHWA as partners at the table with us is the most appropriate way for us to

move forward. And we also have worked with our attorney general's office on the cost and benefits of taking on that risk and liability. So we choose to prefer to go the programmatic categorical exclusion way, but not pursue full delegation.

Mr. BARLETTA. Mr. Swonke.

Mr. SWONKE. Yes. I don't think there are any that we are choosing not to pursue, although the conditional requirements for the combining of planning and NEPA documents is something that we can move forward with the planning document and get some NEPA-like decisions out of that planning document before we get the NEPA document to where we don't use the MAP-21 provision because of the conditions, but we try to achieve the same effect going somewhat around that and getting some early decision-making.

So it is not that we don't choose to use it, it is just that it is not as applicable as we would like for it to be. Thank you.

Mr. BARLETTA. Mr. Kraman.

Mr. KRAMAN. Well, certainly as a local agency I can't speak for the State, but already having the pleasure of delegation, the staffing levels for that and keeping up with the workload is something that is very important within the State, and we look forward to continuing improvements in each version of the bill, as it helps us work through this process.

Mr. BARLETTA. Mr. Kraman, when I read that the Fish and Wildlife Service took eight times longer than the deadline in the Endangered Species Act, I couldn't help but remember my days as mayor. I was running for office in 1999, and the main street in downtown Hazleton was getting a total reconstruction, and I thought how lucky was I. You know, I am running for office, I am going to get elected mayor and people are going to think that I actually had something to do with this new downtown.

Well, I won one term and served, I won my second term and served, I won my third term, and the project still wasn't done. Because of the delays, that \$10 million project ended up being a \$26 million project and the scope of the project was drastically cut down because of all those delays.

We all know that we need to be investing in infrastructure now. As we delay projects, whether it is due to insufficient funds or burdensome studies and reviews, the project becomes more expensive. Can you tell me about the cost overruns of your project?

Mr. KRAMAN. The construction costs that we are looking at now after this is probably \$700 million to \$1.4 billion higher in order to finish a 16-mile project.

Mr. BARLETTA. Again, I want to thank you all for what you do. It is not easy work, right? I certainly appreciate it. Thank you.

Thank you, Mr. Chairman.

Mr. PETRI. Thank you.

Before we wrap things up, I just thought I would ask Mr. Braceras, who is here also as chair of the National Center for Environmental Excellence, if there is anything that you had to add to the discussion that we haven't discussed at this point?

Mr. BRACERAS. Mr. Chairman, I appreciate the question. Nothing specific comes to mind. The AASHTO Center is very focused on trying to help States and other partners just do a better job in the

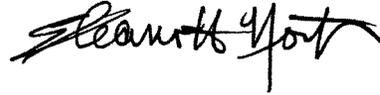
NEPA process. That is the complete focus that we have. I know we have seen the benefits of the center, and we appreciate the Federal Highway Administration being a partner in helping fund that center.

Mr. PETRI. Thank you. Thank all for your testimony.

I would like to ask unanimous consent the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing, and unanimous consent that the record remain open for 15 days for additional comments and information submitted by Members or witnesses to be included in the record of today's hearing. And without objection, I guess we can proceed.

If no other Member has anything to add, this subcommittee stands adjourned.

[Whereupon, at 11:46 p.m., the subcommittee was adjourned.]



THE HONORABLE ELEANOR HOLMES NORTON
RANKING MEMBER
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
HEARING ON "SURFACE TRANSPORTATION INFRASTRUCTURE PROJECTS: CASE STUDIES OF
THE FEDERAL ENVIRONMENTAL REVIEW AND PERMITTING PROCESS"
September 9, 2014

Chairman Petri, thank you for holding this hearing. I look forward to hearing the witness' testimony.

Delivering a major surface transportation project is a major undertaking. Project sponsors must comply with a range of complex legal, technical, and analytical requirements at the federal and state levels, including completing the environmental review process and securing the necessary permits.

The National Environmental Policy Act (NEPA) provides a framework under which all applicable environmental laws, executive orders, and regulations are considered and addressed. The NEPA process requires project sponsors to balance engineering and transportation needs with social, economic, and natural environmental factors in order to reach a decision that is in the best overall public interest.

NEPA's primary function is as a public disclosure and public participation

law. It provides a means of protecting the public's right to know about and have the ability to participate in the decision-making process for infrastructure projects that will impact their communities. Ultimately, NEPA is supposed to be about collaboration for finding solutions and achieving better outcomes for communities and the environment.

In my district, there is a rail project to expand the Virginia Avenue tunnel. This project is not without controversy, and will impact the lives of my constituents who will have to live with disruptive, and possibly hazardous, construction during this project. The environmental review process has afforded an invaluable opportunity for communities to engage in this project.

I am sure that many members of this Subcommittee can share stories from their state DOTs or transit agencies regarding difficulties or delays that have come up in advancing a surface transportation project in their district. Clearly, there are steps that can be taken to improve project delivery, and provide for a faster, more predictable process. But these steps must not come at the expense of public participation and input.

I believe, however, it is important to note that the primary causes of these delays are factors outside of NEPA. According to the Congressional Research Service, more often local, state, and/or project-specific factors are the cause of delays. These include: projects being a low priority for state and local officials, lack of funding to advance the project, an inability to achieve community consensus, project complexity, and changes in project scope.

It should also be noted that “frivolous” lawsuits are not a major cause of delays in the NEPA process, as some would have you believe. Of the nearly 50,000 federal actions subject to NEPA every year, less than half of 1 percent are subject to litigation. In 2011, the most recent full year for which the Council on Environmental Quality has published data, only 94 NEPA cases were filed. I recognize that individual projects have been delayed due to litigation, but those are the exception and not the rule.

Mr. Chairman, I look forward to working towards bipartisan solutions to speed project delivery. I am hopeful this hearing can dispel some of the myths surrounding the NEPA and permitting processes, because I do not think we should legislate based on anecdotal stories and half-truths.

I again thank the witnesses for being here today. I look forward to their testimony.

**Testimony of
The Honorable Carlos M. Braceras, P.E.
Executive Director
Utah Department of Transportation**

**Regarding
Surface Transportation Infrastructure Projects: Case Studies of the Federal
Environmental Review and Permitting Process**

**Before the
Subcommittee on Highways and Transit**

**Of the
Committee on Transportation and Infrastructure**

**On
September 9, 2014**

INTRODUCTION

Chairman Petri, Ranking Member Norton, and Members of the Subcommittee, thank you for the opportunity to provide input on the federal environmental review and permitting process. My name is Carlos Braceras, I am the Executive Director of the Utah Department of Transportation (UDOT). As a registered professional engineer and a geologist I joined UDOT in 1986. Prior to my appointment last year as the Executive Director, I served as the Deputy Director for 12 years with previous experience as the chief geotechnical engineer and chief value engineer. In addition, I served four years as the team leader on Utah's Legacy Parkway project, which is nationally recognized as a new model for how government agencies can work with the public to provide balanced transportation needs while protecting quality of life and the environment. The Legacy Parkway project created a "shared solution" to address burgeoning traffic congestion while joining mass transit, unprecedented environmental mitigation, a community-based trail system and innovative aesthetics and landscaping to meet transportation, community and environmental needs. The implemented project achieved the goal of addressing the transportation need, but also improved both the community and the environment. I am also the Chair of the AASHTO Center for Environmental Excellence, which is dedicated to promote environmental stewardship and encourage innovative ways to streamline the transportation delivery process.

For more than 15 years, the State of Utah and UDOT continue to actively institutionalize context sensitive solutions into all phases of transportation planning, design, construction and maintenance. Our philosophy is to balance safety, mobility and transportation needs while

preserving and enhancing scenic, aesthetic, historic, cultural, environmental and community values. In addition, Integrated Transportation is a UDOT Emphasis Area to ensure we actively consider how to best meet the transportation needs of automobile users, mass transit riders, bicyclists, pedestrians, and freight shippers to ensure we provide Utahns with balanced transportation options while planning for the future economic needs and quality of life for our citizens. This, after all, is the purpose of our nation's transportation system.

A PERFORMANCE-BASED FEDERAL PROGRAM

The UDOT is driven in all it does by a set of strategic goals and has instilled a culture of strong performance management throughout our organization. As part of that effort, we have developed a very extensive system of metrics and tools to guide our decision making process to ensure effective use of resources and to track our progress toward achievement of our strategic goals. We know that this approach yields better outcomes for the public's investment in transportation. As such, we were pleased that as part of MAP-21 Congress embraced the federal transition to a performance and outcome-based program that tracks progress toward achieving national performance goals for federal transportation programs. Goals established by Congress to improve safety, improve infrastructure condition, reduce congestion, improve system reliability, and improve freight movement and economic vitality while protecting and enhancing the natural environment can only be achieved when we remove obstacles that inhibit our ability to deliver transportation projects that achieve those goals. Congress recognized the importance of reducing project delivery delays by including it as a national goal.

Today the subcommittee is focused on case studies of the environmental review and permitting process, providing insight on whether sufficient progress is being made toward achieving project delivery goals. From Utah's experience, certain improvements have been made but challenges continue to exist. I'll discuss how participation in the Federal Infrastructure Project Permitting Dashboard helped produce results for a local project.

MEETING TRANSPORTATION GOALS

In Utah we recognize that transportation is key to our quality of life and continued economic growth. However, as one of the fastest growing states in the nation and despite sizable state and local investment for all modes of transportation, Utah's transportation needs continue to outpace available resources. At UDOT we continue to focus on innovative project design and delivery to optimize the public dollar and minimize traveler impact by delivering projects faster, smarter and more cost effectively. That means doing things differently than we have done in the past. We explore new project designs that meet current and future transportation needs in an innovative and cost effective way, such as Diverging Diamond Interchanges and Continuous Flow Intersections. We construct projects with the goal of minimizing traveler delay, such as extensive use of Accelerated Bridge Construction. We employ innovative contracting methods to deliver projects in record time, such as the Interstate 15 reconstruction project in Utah County completed in an unprecedented 35 months, making it the fastest billion dollar project ever built in the United States.

As part of our effort to speed project delivery, UDOT secured delegation of Categorical Exclusion projects, streamlining the process to as little as 10 days for simple projects and up to 6

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months for complex projects. Additionally, we are currently in discussions with the Federal Highway Administration to secure full National Environmental Policy Act (NEPA) delegation.

However, while UDOT continues to assertively innovate and streamline project delivery, we do not seek to truncate environmental review. As transportation providers, we must avoid thinking of NEPA as an inconvenient process to get through, but instead think of it as a decision-making tool that brings interested, concerned, and potentially impacted citizens to actively participate in the process. A properly administered process yields better results. At the same time, we need our federal partners to recognize that NEPA shouldn't be wielded as an instrument to block infrastructure improvements necessary to meet national, state and local needs. Streamlining federal environmental review and permitting processes for infrastructure projects means that we need to approach challenges creatively and implement solutions that don't create negative consequences elsewhere.

SILO MENTALITY

A significant challenge associated with the current process is the propensity to work in silos. In the business world, a Silo Mentality is a mindset when sectors do not share information within the same company, reducing efficiency and undermining company goals. The Silo Mentality also exists within government. At the federal level, each agency has its own mission and goals. Success within each agency is measured by achieving the goals of that individual agency, which fosters exclusive focus on an agency's internal mission. Instead, federal agencies need to understand and support the goals and mission of their sister agencies, thereby engendering action to benefit the whole. In other words, the Corp of Engineers can support their mission to protect and manage the natural environment while, at the same time, support the mission of the Federal Highway Administration to improve mobility on our Nation's highways. Consideration of the mission and goals of sister agencies requires systemic thinking to ensure the success of all agencies and the nation as a whole.

To think systemically, we need agencies to work together for a win-win outcome, not a win-lose. Often, this requires agencies to move out of their comfort zone. It's easier to say "no" and maintain the status quo, whereas getting to "yes" requires a paradigm shift in agency thinking and decision making. As a state agency, we face similar challenges. However, I can attest that within the framework of rules and regulations it is possible to solve challenges and create solutions. It is possible to get to "yes".

CASE STUDY: PROVO WESTSIDE CONNECTOR

An example of getting to "yes" within existing rules and regulations is demonstrated by a study of the Provo Westside Connector project (Project). The Project is sponsored by City of Provo with a population of approximately 120,000 and located about 45 miles south of Salt Lake City. The Project sought to provide a new, direct link between the Provo Airport and Interstate 15 to support recent and planned development at the airport and supporting commercial and industrial development, and also provide a connection to the existing arterial network and freeway system for planned residential and commercial development and land use changes. A transportation system that supports local, regional and state growth is crucial to our fast-growing state. It took Utah 150 years to reach a population of 3 million. It will take only another 36 years for us to

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almost double that population, with most of that growth occurring within existing urban populations including the Provo region.

Throughout the Project environmental process, significant effort was made to communicate and coordinate with federal, state and local partners. However, environmental reviews and permitting became mired down, creating an impassable obstruction to meaningful action on the Project. Eventually, the Project was selected as one of 14 infrastructure projects nationwide that would be expedited through permitting and environmental review processes with inclusion on the Federal Infrastructure Project Permitting Dashboard (Dashboard). While a need for increased coordination among federal and state agencies was cited as the reason for including the Project on the Dashboard, in reality, a fundamental disagreement with federal resource agencies on the need for the roadway was the cause of the impasse.

The heightened commitment by the Obama Administration to improve efficiency of environmental reviews needed to help job-creating infrastructure projects move quickly from the drawing board to completion provided the impetus to overcome the impasse. With encouragement from the Dashboard process, our federal partners were able to get to “yes” within the framework of federal rules and regulations allowing the project to secure the required permits and environmental reviews needed to move to construction. Importantly, multiple local, state and federal goals were met, including improvement to local and regional transportation systems necessary to support land use planning, economic growth and jobs while still protecting the natural environmental. Today, the Project is under construction funded primarily with state funds.

While the Dashboard process provided the critical link needed to nudge the project past an impasse and create the framework to find a solution, it came with a price: a permitting requirement for increased mitigation for indirect impacts caused by the preferred alternative, which set a concerning precedent, and an unfortunate erosion of relationships with local regulatory agencies.

LESSONS LEARNED

Regardless of the challenges associated with the Dashboard process and outcome, the larger goal was achieved to ensure agencies are actively engaged in the decision making process and focused on finding solutions. I believe the Provo Westside Connector would not have progressed to construction without a Dashboard process.

To ensure our Nation can continue to succeed in the global economy, we must have the infrastructure that allows people and goods to move freely and reliably. I’m confident that federal, state and local entities can work together to find solutions that help us individually and collectively achieve our missions and goals. The success of our Nation is measured when progress is made toward all agency goals, not just individual agency goals. When that expectation becomes the norm, then I am confident we would see better outcomes for transportation, communities and the environment. Congress and the Highways and Transit Subcommittee can help ensure that we continue to make progress toward more efficient project delivery while ensuring resources are properly considered and impacts minimized.

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Executive Director
Utah Department of Transportation



**Washington State
Department of Transportation**

TESTIMONY OF

Lynn Peterson

Secretary of Transportation, Washington State

REGARDING Surface Transportation Infrastructure
Projects: Case Studies of the Federal
Environmental Review and Permitting Process

BEFORE THE

**Subcommittee on Highways and Transit
of the U.S. House of Representatives**

ON

September 9, 2014

Washington State Department of Transportation
310 Maple Park Avenue SE
Olympia, WA 98501
(360) 705-7000
www.wsdot.wa.gov

Thank you, Chairman Petri and Ranking Member Norton, for inviting me to participate in this hearing. I'm pleased to be here to share Washington's experience with the federal environmental review process, particularly around public engagement.

I came to WSDOT 18 months ago, with a long history of transportation planning and project delivery experience. I have worked in transportation in Washington, Oregon and Wisconsin as a practicing civil engineer and planner at a state DOT, an MPO, a transit agency and in the private sector. I have also been a local elected official. I'll focus my comments today on how WSDOT reaches better project solutions through the public engagement process offered by the National Environmental Policy Act (NEPA).

While many people think NEPA is only about disclosing environmental impacts; it's also about considering input and allowing for active engagement. Public involvement is one of the most important and valuable aspects of NEPA. The NEPA process provides an open public engagement process that allows project sponsors like state DOTs to fully understand problems before landing on a specific solution. It allows us to get to better outcomes by looking at all potential solutions in an open public arena.

NEPA compliance for routine projects works well

Most of WSDOT's work does not require an Environmental Impact Statement. NEPA allows for scale-ability with less process and fewer check points for routine, low-impact projects. Federal agencies can define categories of actions that do not individually or cumulatively have a significant effect on the quality of the human environment – Categorical Exclusions (CEs). The vast majority of WSDOT's work is excluded from NEPA through these CEs. In recent years, 94 percent of our projects were CEs, while only two to three percent required an Environmental Impact Statement (EIS).

There is a scale within the CE process too – some CEs are quickly determined, while some are more complex and require detailed study. The Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) can allow a state DOT to sign-off on the very simple CEs through a programmatic agreement.

Section 1318(d)(2) of MAP-21 authorizes the use of CE programmatic agreements to administratively assign to a state the authority to make determinations on behalf of FHWA. While this authority was not new (WSDOT has had agreements in place since 1990 that have allowed WSDOT to sign for FHWA under limited circumstances), Congress provided more legal certainty and expanded the list of activities that can be included in a programmatic CE.

In February 2013, WSDOT and the FHWA Washington Division signed an update that became the first CE agreement to comply with all MAP-21 requirements. Our new programmatic agreement expands WSDOT's signature authority to include projects that involve:

- wetland fill, unless it requires an Individual 404 permit;
- sites with known hazardous materials;
- ESA Section 7 analysis that result in a "no effect" determination;

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- minor advanced right-of-way (ROW) and post NEPA property acquisitions, as long as ROW does not involve property owned by another federal agency; and
- a Coastal Zone Management consistency determination.

The new programmatic agreement also includes State Performance Requirements that were not in the prior agreement.

While some states are pursuing full delegation of NEPA and that is the right choice for them, WSDOT finds great value in having FHWA and FTA as partners in the environmental review process. In our experience, it's not NEPA by itself that slows a project down. State legislative audits have revealed that NEPA and our state equivalent, SEPA, are not the most common project delay factors. A 2005 audit found common delay factors are lack of funding, environmental permitting/regulatory changes, and third party lawsuits.¹ These results are similar to 2012 findings from FHWA and the U.S. Government Accountability Office.² Additionally, a January 2014 state legislative report found that environmental review increases public acceptance and leads to improved efficiencies in overall project design, and is not a significant driver of project cost.³

More robust conversations improve outcomes

NEPA requires a robust collaboration with a diverse group of stakeholders, which allows project owners to make informed decisions and reach the best outcome. It's not just the technical experts like resource agencies and consulting tribes that need to be included in the engagement process; it's everyone who has a stake in the outcome. We are deeply committed to environmental justice, which means we have a responsibility to make sure all voices are heard. WSDOT and other state DOTs are finding new ways to get to those voices that aren't traditionally heard. We and our partners are using social media to reach out and tap into a broader and more diverse audience. Going beyond simply holding public meetings, it's important we also think about when the meeting is held and how people might get there. Is there transit access? What times and locations reach the most people? WSDOT is also finding that we need to gather information differently than we have in the past; for example, working with service providers to better understand the potential impacts of a project on the homeless, the transit-dependent, non-English speaking communities, etc.

Active listening is essential to successful projects. This is true for large and small fixes alike. For example, instead of simply announcing the installation of a roundabout as the solution to a mobility problem, we've engaged the trucking community on its design. They've helped us decide where we can use rumble strips or signage instead of widening shoulders. We recently started looking at our project list to see where we can find less costly solutions. A safety-related project originally called for significantly widening the shoulder to reduce speeding and collisions. Instead of a large project we don't have the funding for, we're now looking at other options like reduced speeds and traffic calming to solve the root problem in a more cost-effective way. We'll need feedback from the user groups and neighbors, but we think we may be able to meet the need in a way that reduces cost and environmental impacts. Additionally, in the

¹ <http://www.leg.wa.gov/JLARC/AUDITANDSTUDYREPORTS/2005/Pages/05-14.aspx>

² <http://www.gao.gov/products/GAO-12-593>

³ http://www.leg.wa.gov/ITC/Documents/Studies/Transportation%20Efficiencies/WEB_FinalCombinedReport.pdf

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Spokane area our engineers were working on a new roundabout to address congestion and safety at a problematic intersection. Our engineers spoke with the community about our proposed solution, and the community pointed out the real problem was at a different nearby intersection. We looked into it, realized they were right, and we're now able to do a lower-cost solution that gets to the root of the problem without building a more expensive roundabout.

NEPA process helps deliver complex projects that meet community and user needs

Every transportation project is unique. The more complex proposals are usually not fully defined prior to starting NEPA and the consensus building necessary to reach a positive outcome does take time and a lot of study. As we look at our large projects that are in construction today, we can see how the NEPA process informed decisions and helped create the support that is needed to fund significant investments. WSDOT has many project-level examples where the community outreach component of the environmental review process resulted in better outcomes. I will highlight three projects:

- **SR 99 Alaskan Way Viaduct Replacement⁴** – After the February 2001 Nisqually Earthquake, there was little doubt about the vulnerability of the Alaskan Way Viaduct in downtown Seattle and the need for its replacement. However, for ten years there was a very public debate over how to replace it, with 76 concepts originally considered and 8 alternatives analyzed through the EIS process. WSDOT's implementation of NEPA for this project won national awards, but more importantly it brought the public into the effort to find a solution that worked for the city, for the nearby port, for the region and the state. WSDOT used plain talk and graphics to efficiently and effectively explain the technical considerations analyzed under the NEPA umbrella. Reflecting on the extensive public, agency, and tribal engagement that went into the project, it is a huge success. WSDOT's commitment to open engagement continues through construction.
- **I-90 Snoqualmie Pass East⁵** – The NEPA record for this 15-mile safety and capacity improvement project along Interstate 90 demonstrates how engagement and information shape final decisions. The project was the first in Washington to include ecological connectivity in the purpose and need statement. That choice was made at the outset of NEPA in consultation with the US Forest Service and other consulting agencies. From that moment through to the decision document, WSDOT and FHWA collaborated and negotiated through an open public process – all of which is well-documented. The lead agencies chartered advisory groups to look at how to connect the habitat on federal lands and reduce vehicle collisions with elk and other wildlife. We also worked with freight haulers, conservation organizations and with wilderness user groups to explore the best mix for a wide variety of interests (from snowmobilers to freight haulers, real estate developers to wilderness conservationists).

This quote from the I-90 Wildlife Bridges Coalition website demonstrates the broad support that was achieved through the NEPA engagement process⁶:

⁴ <http://www.wsdot.wa.gov/projects/viaduct>

⁵ <http://www.wsdot.wa.gov/Projects/I90/SnoqualmiePassEast/>

⁶ <http://i90wildlifebridges.org/>

“This stretch of freeway cuts across several north-south wildlife corridors that must be protected and restored to preserve healthy wildlife populations. State citizens and the US Congress have spent tens of millions of dollars over the last few years to acquire and protect habitat within these corridors. The freeway expansion, known as I-90 Snoqualmie Pass East, can actually improve the situation for wildlife with new structures that allow wildlife to safely travel over or under the freeway. The I-90 Wildlife Bridges Coalition is working with a diverse set of organizations and agencies to support the high quality final design for the I-90 project that will be making our roadway safer for motorists and wildlife in Washington.”

- **Mukilteo Multimodal Ferry Terminal⁷** – Located on the Puget Sound shoreline north of Seattle, this project will improve the operations, safety, and security of a combined ferry terminal, transit center and commuter rail station complex at one of the nation’s busiest ferry terminals. The FTA’s signing of the Record of Decision last month was the culmination of decades of planning by many entities to solve congestion, reliability and safety problems at the aging but heavily used ferry terminal. The NEPA process took two and a half years to go from alternatives selection (January 2011) to the Final EIS. WSDOT and FTA used the NEPA process to continuously refine and improve alternatives; one result was broad public and agency consensus supporting the Preferred Alternative. The EIS won an award from FTA, which commended the EIS for communicating a complex project in a visually attractive and plain-language manner.

WSDOT’s project teams prepared high-quality environmental documents for these projects, which helped contribute to their success. Our reader-friendly approach to NEPA helps the public and other agencies understand the problem and engage in the discussion of trade-offs associated with possible solutions. We are very encouraged that this approach to make complex environmental documents more user-friendly is supported by FHWA and FTA. Improving the quality of environmental documents is part of FHWA’s Every Day Counts Initiative. Additionally, FHWA and the American Association of State Highway and Transportation Officials (AASHTO) partnered on new guidance to help state DOTs and other transportation project proponents create high-quality environmental documents. The new guidance document incorporates lessons learned in these WSDOT projects as well as from projects across the nation.

Changing the way we think about our transportation plans, projects and services

In MAP-21, Congress clarified that planning decisions can be used in NEPA. As stated in the background section of the recent NPRM for Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning, Docket No. FHWA-2013-0037:

“For 40 years, the Congress has directed that federally-funded highway and transit projects must flow from metropolitan and statewide transportation planning processes (pursuant to 23 U.S.C. 134-135 and 49 U.S.C. 5303-5306). Over the years, the Congress has refined and strengthened the transportation planning process as the foundation for project decisions, emphasizing public involvement, consideration of environmental and

⁷ <http://www.wsdot.wa.gov/projects/ferries/mukilteoterminal/multimodal/>

other factors, and a Federal role that oversees the transportation planning process but does not second-guess the content of transportation plans and programs...When the NEPA and transportation planning processes are not well coordinated, the NEPA process may lead to the development of information that is more appropriately developed in the planning process, resulting in duplication of work and delays in transportation improvements.”

WSDOT is very pleased with the emphasis on linking planning and NEPA. Nationally, state DOTs, WSDOT included, can get more value out of our planning efforts.

Our approach at WSDOT involves Least Cost Planning and Practical Design. Least cost planning is an approach to making planning decisions that considers a variety of conceptual solutions to achieve the desired system performance targets for the least cost. Central to least cost planning is a process that engages the public, applies methods to evaluate planning options, and how to select options. The outcome of least cost planning is a recommended set of multimodal strategies that are cost effective and still meet the goals and objectives set early in the planning process. Recommended capital investment concepts carry forward to the project development stage. Practical design is an approach to making project decisions that focuses on the need for the project and looks for the most cost-effective solutions. It engages local stakeholders at the earliest stages of defining scope to ensure their input is included at the right stage of project design. We're applying practical design to our current projects in our search for less costly solutions.

I am personally very excited to see how these two concepts help WSDOT staff think differently about planning and project delivery. We want to make the right decisions at the right time with the right information.

In Washington, we have underway a real world example of linking transportation planning to NEPA involving Interstate 5 through Joint Base Lewis McCord (JBLM)⁸. The current planning phase is designed to feed into a project-level NEPA phase. The project team is educating all stakeholders about how the planning effort fits in with environmental review and the required approvals. People are seeing how vital it is that we examine the natural landscape, land use patterns, local and thru-freight requirements, military personnel daily travel needs – and more. The study is really delving into the key factors that affect the current volumes and travel patterns. The JBLM Base Commander is very supportive of our approach. He and his staff are actively collaborating with our team in evaluating options for improvement on base that may relieve pressure on I-5. We've had great participation from the locals as well to look at local street and transit options. With this insight, we hope to find quick improvements we can do today, while establishing a clear purpose and need and alternatives for NEPA analysis (a silver buckshot, not a silver bullet).

We are pleased to see the new Council on Environmental Quality (CEQ) Draft Guidance on Effective Use of Programmatic NEPA Reviews 79 Fed. Reg. 50578 (Aug. 25, 2014) In general,

⁸ <http://www.wsdot.wa.gov/Projects/I5/JBLMImprovements/FuturePlans.htm>

the new guidance clarifies the use of phase, or tiered, NEPA. Without going into too much detail, we want to note that CEQ's draft guidance reinforces linking planning and NEPA and will help us right-size our studies.

We are also anxiously awaiting the notice of upcoming joint FTA and FHWA guidance on linking planning and NEPA. We encourage the federal agencies to provide training on how to use phased NEPA and tools – like scenario planning and design visualization – to open the conversations with our communities and users of the system. Bringing planning closer into the NEPA process opens up doors to find new solutions, but our planners and designers need to be trained in how to best use it.

MAP-21 has improved project delivery

MAP-21 built upon project delivery improvements in SAFETEA-LU, and WSDOT has been pleased to take advantage of those improvements. We've updated our environmental procedures and guidance to put these changes into practice. Below are a few highlights of our early adoption of the new provisions:

- We used the new Emergency CE (Section 1315) after the I-5 Skagit River Bridge collapse in May 2013 (the new CE was only 3 months old when a truck with an oversized load hit the bridge);
- We've updated and expanded our programmatic CE agreement with FHWA (Section 1318); and
- We used the new combined Final EIS and Record of Decision (ROD) provision (Section 1319) when we published the Final EIS for the I-90 Snoqualmie Pass East project.

Challenge – Negotiating Programmatic Approaches with Federal Resource Agencies

MAP-21 (Section 1311) envisions the development of programmatic mitigation plans as a part of the statewide or metropolitan transportation planning process. WSDOT has not yet pursued this option. However, we have some concerns to share regarding whether or not the federal resource agencies are able to support the work needed on their end. We have firsthand knowledge from ten years of work on negotiated programmatic permits and approvals for the Endangered Species Act, Historic Preservation, Clean Water Act and state laws. This is significant because these agreements get us away from project-by-project negotiations and ensure that we build in conservation measures and best management practice from the start. The struggle we have today is that programmatic permit negotiations often receive a low priority in the federal resource agencies' workload. And while we may be funding some of the federal agency staff review work, WSDOT is not able to fund the higher-level executive or policy expert reviews. In order to expedite either programmatic mitigation plans or programmatic permits, upper-level managers must support these efforts and place a high priority on their completion.

We seek the Subcommittee's support in encouraging federal resource and regulatory agencies (e.g. USFWS, NMFS, and the Army Corps of Engineers) to examine their review processes and look for ways to expedite programmatic agreements.

Testimony of **Lynn Peterson**
Secretary of Transportation, Washington State

Another challenge – Multimodal Project Delivery

Finally, as this Subcommittee works on MAP-21 reauthorization legislation, we encourage you to provide the different USDOT modal administrations the ability to rely on another modal agency's decision for the same federal action, particularly in relation to NEPA documents. If FHWA or FTA has already adopted a NEPA document, the Federal Railroad Administration (FRA) should be able to rely upon that work and accept the document for the same project, without requiring the state to redo environmental work unnecessarily. As an example, WSDOT has had that experience with our Point Defiance Bypass Project, where FHWA approved a Documented CE in 2008 and when we were later awarded High-Speed and Intercity Passenger Rail funds in 2010, FRA notified us that it could not accept the Documented CE and that we must instead prepare an Environmental Assessment. If FRA had the ability to rely on another USDOT agency's decision for the same federal action, we believe the project would have been completed in tandem with the other corridor improvements that have come on-line in the last couple of years.

In closing, I would be remiss if I didn't take this opportunity to thank you for your recent efforts to pass a short-term patch for the Highway Trust Fund (HTF). We encourage you to act before the May 2015 deadline to provide stable funding for the Trust Fund and to pass a multi-year surface transportation authorization bill. As you know, the uncertain future of the HTF adversely affects long-term planning by WSDOT and other state DOTs. Because we cannot be certain of how much funding we might receive in the coming federal fiscal years, we must hold back on programming projects for construction until we have certainty about the funding we will receive. WSDOT firmly believes the federal government should continue to play a strong funding role in meeting the growing needs of our nation's surface transportation system.

Thank you for the opportunity to share Washington's experience with the federal environmental review process. NEPA doesn't always work well in all situations, but it's not broken. It's about understanding the root cause of a transportation problem and applying NEPA appropriately to find a solution or multiple solutions. States simply need to be trained in how to use it well.

I am happy to take questions.

Testimony of **Lynn Peterson**
Secretary of Transportation, Washington State



Surface Transportation
Infrastructure Projects: Case
Studies of the Federal
Environmental Review and
Permitting Process

Testimony before the House Transportation and
Infrastructure Committee's Highways and
Transit Subcommittee

September 9, 2014 10 a.m.
2167 Rayburn House Office Building

The Texas Department of Transportation (TxDOT) appreciates the opportunity to provide testimony to the subcommittee meeting here today, and to share our experiences with the federal environmental review and permitting process. To begin with, TxDOT would like to thank the Committee and staff for its work on MAP-21. Since its passage, Texas has worked diligently to implement many of the streamlining provisions of MAP-21 and looks forward to the provisions still undergoing rulemaking by FHWA.

Streamlining opportunities, even small ones, can have far-reaching benefits to TxDOT. As you can imagine, TxDOT's environmental program is a large one. Total dollar amount of construction projects that TxDOT awarded last year approached \$6 billion. Another measure of the program volume is the number of TxDOT actions that underwent environmental review and approval. Last year there were 1,796 environmental approvals made for TxDOT projects. To put that in perspective, the Bureau of Land Management, nationwide, had 1,091 NEPA approvals last year.

Of the TxDOT environmental approvals, 98 percent were approved with Categorical Exclusion NEPA determinations, otherwise known as CE's. As I'm sure you are aware, the Categorical Exclusion is the NEPA tool intended to provide an expedited approval for minor, routine projects. A CE could be used for something like a repaving project or a bridge replacement and is intended to minimize time and paperwork.

The benefits of the Categorical Exclusion have not always materialized for TxDOT. Up until recently, a certain number of TxDOT CEs, about 40 to 60 a year, were prepared as documents that would include a full NEPA analysis. These documents could reach a length of 100 pages or more. Of particular concern was that it would take, on average, over a year to get these documents reviewed and approved. We have since addressed this issue with meaningful results. And it is here where I'd like to jump to our implementation of the MAP-21 streamlining provisions.

Although it was conceived in earlier legislation, the provision in MAP-21 relating to states assuming the responsibility for Categorical Exclusion determinations prompted TxDOT to pursue this opportunity. TxDOT received this authority last December. Having responsibility for Categorical Exclusions allowed TxDOT to not only expedite the decision making but also to retool our program. In this transition we've realized efficiencies in two areas.

- First, TxDOT eliminated Categorical Exclusion documents that look like a full NEPA analysis by going to checklists. Today, we no longer produce 100-plus page Categorical Exclusion documents and instead have a two page checklist, sometimes supplemented by technical reports. Our review time for these documents has been reduced from over a year, to less than 45 days.

- The second efficiency has been by eliminating the federal review of Categorical Exclusions because this authority now lies with TxDOT. One measure of this efficiency is that we have saved a minimum of 30 days on a certain type of CE review. Here is an example of the savings:
 - About 1,000 projects on the TxDOT 4-year plan are a type of Categorical Exclusion that would have had 30 days minimum review by FHWA. Doing the math here, this would have amounted to 82 years of cumulative waiting time. Today, under NEPA assignment for CEs, TxDOT is not required to wait the minimum 30 days.

Another streamlining provision from MAP-21 being utilized by TxDOT is the new Categorical Exclusion for projects within operational right-of-way. Since this new Categorical Exclusion was issued through rulemaking earlier this year, TxDOT has used it on 627 project approvals. It has been a time saver and a money saver. Here is an example.

- A few years ago there was a project in Houston to widen an existing 4 lane road to a six-lane road. No additional right-of-way was needed for the widening. At the time, a full NEPA analysis was needed and an Environmental Assessment was prepared. There were no unusual environmental circumstances about the project. There was no public opposition to the project. The Environmental Assessment took three years for review and approval. The cost to prepare the Environmental Assessment was \$100,000. Today that project could be approved with a Categorical Exclusion in a fraction of that time and at a fraction of that cost.

TxDOT is currently pursuing full NEPA assignment, beyond Categorical Exclusions to include Environmental Assessments and Environmental Impact Statements. We spent a year preparing our program for the responsibility and in preparing the required application to FHWA. We submitted the application this past April. It was approved. Now we are working on the required Memorandum of Understanding between TxDOT and FHWA. We began negotiating this MOU at end of last year. The status of the MOU today is that we are still in discussion on two remaining points of contention. The two issues are:

- First - As a condition of NEPA assignment, FHWA wants to have access to TxDOT's internal attorney-client privileged communications.
- Second - As another condition, FHWA and DOJ want control over TxDOT's decisions to settle a lawsuit or appeal an adverse judgment, even when FHWA is not a party and chooses not to intervene.

Beyond NEPA, we still run into delays related to other regulatory procedures. Among these issues there are the Clean Water Act, Endangered Species Act, Clean Air Act and environmental justice issues. We understand that sometimes projects are just complicated, but the added procedures of other regulations can require substantial time and effort to meet compliance requirements.

I would like to conclude by saying that TxDOT is very appreciative of the NEPA tools that have been provided by Congress, FHWA and the Council on Environmental Quality. These tools, combined with proper planning, good judgment and sufficient resources, will allow us to be more effective as we guide our projects through the environmental review process.

Thank you. And I look forward to answering any questions you may have.

*San Joaquin Hills
Transportation
Corridor Agency*

*Chairman:
Scott Schaeffel
Dana Point*



Transportation Corridor Agencies™

*Foothill/Eastern
Transportation
Corridor Agency*

*Chairwoman:
Rhonda Reardon
Mission Viejo*

**Written Statement of
Michael Kraman
Acting Chief Executive Office
Transportation Corridor Agencies
Before the
House Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
United States Congress
“Surface Transportation Infrastructure Projects: Case Studies
of the Federal Environmental Review and Permitting Process”**

September 9, 2014

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Mister Chairman, Members of the Committee. My name is Michael Kraman and I am the Acting Chief Executive Officer for the Transportation Corridor Agencies, or TCA. TCA consists of two joint power authorities, the San Joaquin Hills Transportation Corridor Agency and the Foothill/Eastern Transportation Corridor Agency, formed by the California legislature to plan, design, finance, construct, and operate a toll road network as part of the state highway system in Southern California through Orange County and a portion of northern San Diego County, California. Thank you for the opportunity to speak before the House Committee on Transportation and Infrastructure's Subcommittee on Highways and Transit about our Agencies' on-going challenges with securing the federal approvals necessary to complete our toll road network.

Background

In 1986, at a time when federal and state resources were no longer adequate to fund the construction of planned state highways in Orange County, California, the Transportation Corridor Agencies, or TCA, were formed by the state legislature as joint powers authorities. TCA's role is to plan, design, finance and build the roads. Authority to collect tolls to pay for the construction of the roads was given by the state legislature in 1987. It was a time that called for imagination and innovation to deliver critical transportation infrastructure.

- Since these were new roads and new agencies, TCA had no credit upon which to base its financings. FHWA provided a loan guarantee in the form of a federal line of credit which enabled TCA to obtain a credit rating sufficient to sell the initial toll revenue bonds for construction of The Toll Roads. Although TCA never had to draw on that federal line of credit, the concept continued to evolve into today's TIFIA program.
- To provide non-stop, open road tolling, TCA developed the FasTrak brand for electronic toll collection – FasTrak is now the interoperable standard used throughout California and a partner in the discussion for national interoperability.
- The Toll Roads are a state-local partnership. As portions of the road are constructed and opened to traffic, ownership is transferred to the California Department of Transportation (Caltrans). Caltrans maintains the roadways.

Because of this unique public-private partnership, TCA has constructed fifty-one miles of new highways within the State of California. These highways include State Routes (SR) 73, 133, 241 and 261. With more than 250,000 customers per day, The Toll Roads generate over \$220 million in annual toll revenue.

In addition to its toll roads, TCA has invested \$224.6M in environmental programs which include over 2,000 acres of restored, revegetated and preserved habitat, as well as wildlife safety and movement protection.

As joint power authorities, elected officials from surrounding cities and county supervisorial districts are appointed to serve on each agency's board of directors. Public oversight ensures that the interests of local communities and drivers are served and that TCA continues to meet its mission to enhance mobility in Orange County and Southern California by developing and operating publicly-owned toll facilities as part of the regional transportation system.

Project Conception and Planning

Orange County first recognized the need for an alternative to Interstate-5 in the 1970s as it began planning for expansion of the state highway network to address planned residential and commercial development. Because of federal and state funding constraints, the County and surrounding local governments decided to pay for the construction of the road network with revenues generated from tolls.

TCA financed the construction of 51 miles of new regional toll highways -- The San Joaquin Hills (SR-73), Foothill (SR-241), and Eastern (SR-241/261/133) by issuing non-recourse bonds – backed solely by toll revenues and development impact fees collected from new development in the area of the projects. No federal highway dollars were used to construct the projects. Since the bonds are not backed by the government, taxpayers are not responsible for repaying the debt if future toll revenues fall short. Instead, toll and development impact fee revenue go toward retiring the construction debt. Over a 12 year time period (1987 to 1999), TCA was able to construct 51 miles of toll roads.

Recent Chronology

While TCA completed the first 51 miles of the system in 12 years, we have spent the last 25 years trying to complete the final portion of the toll road network. As part of this path, TCA has exhaustively followed the evolving federal and state regulatory processes to deliver complex transportation projects.

TCA fully embraced the new policies introduced under ISTEA and TEA-21 including the NEPA/CWA Section 404 collaborative process and the Major Investment Study (MIS) process.

The NEPA/CWA Section 404 collaborative process was intended to be a model for streamlining the complex environmental review process by integrating reviews under the National Environmental Policy Act (NEPA), the Clean Water Act (CWA), the Endangered Species Act (ESA) and other federal environmental laws. The state and federal agencies formed a “Collaborative” under a Memorandum of Understanding (NEPA/404 MOU) between the California Department of Transportation, Federal Highway Administration (FHWA), Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (Corps), and the U.S. Fish and Wildlife Service (USFWS). The Collaborative was a voluntary process and as such, the National Marine Fisheries Service (NMFS) declined to participate because of what they cited as de minimis impacts of the project to the coastal zone. The invitation was also extended to the California Coastal Commission, but they too declined to participate.

The intent of the Collaborative was to bring together the participating agencies, including the state agencies, so that we could address any issues regarding environmental impacts in a coordinated fashion.

The parties spent nearly 10 years reviewing alternatives before agreeing preliminarily on an alignment, only to have certain MOU signatory agencies retract their prior concurrence after opponents objected to the project when it was before the California Coastal Commission in 2008. The NEPA/404 memorandum of understanding (NEPA/404 MOU) was agreed to in 1993.

The Collaborative carefully followed the process agreed to in the NEPA/404 MOU. The Collaborative members 1) reached concurrence on the project's purpose and need (1996-1999); 2) agreed on alternatives to be evaluated (1999-2000); 2) refined the alternatives for detailed evaluation (2000-2004); 3) agreed on criteria to use for identification of the Preliminary Least Environmentally Damaging Practicable Alternative or Preliminary LEDPA (2004); and 4) agreed on the Preliminary LEDPA that would be identified in the Final EIS as the project's preferred alternative (2005).

The NEPA/404 MOU contemplated that, concurrently with the identification of the Preliminary LEDPA, USFWS would complete a biological opinion under the ESA and determine whether the Preliminary LEDPA is not likely to jeopardize the continued existence of federally listed species or adversely modify critical habitat. Since USFWS had been at the table throughout the Collaborative process, the NEPA/404 MOU contemplated that the Service would be able to prepare a biological opinion within the 135-day deadline established by the ESA. While USFWS eventually did produce a biological opinion, it did so nearly THREE YEARS AFTER the Collaborative agencies had identified the Preliminary LEDPA/preferred alternative (2005-2008).

Concurrently, from 2006 to 2008 a major investment study was conducted by the Orange County Transportation Authority (OCTA) as the county's primary transportation planning agency and designated metropolitan planning organization (MPO). The South Orange County MIS (SOCMIS) assessed various alternatives for improving north-south travel from SR-55 south to the Orange/San Diego County border, and east west from the Cleveland National Forest to the Pacific coastline. The SOCMIS identified eight key objectives for the study:

- Freeway Congestion
- Arterial (street) Roadway Congestion
- Weekend Congestion
- Lack of Transit choices (need more/better options)
- Rail Corridor Constraints (need to double track or re-route Metrolink rail lines)
- Economic Growth and Quality of Life
- Maximize Utilization of Existing Infrastructure (do better with what we have)
- System Gaps (complete unfinished road extensions, etc.)

The SOCMIS process included comprehensive public participation. The study resulted in the development of a locally preferred strategy (LPS) that was approved by the OCTA Board of Directors in November 2008. The approved LPS reaffirmed the completion of the 241 Toll Road as a key transportation feature of the South Orange County transportation system.

The next step in the project development process was for TCA to obtain a consistency certification for the LEDPA/preferred alternative under the Coastal Zone Management Act.

When TCA applied for the consistency certification, certain project opponents, including environmental groups, objected to the project despite the fact that they offered no credible evidence that the project would impact the coastal zone. At the first hint of controversy, federal agency members of the Collaborative (with the exception of FHWA), abandoned the unanimous selection of the project's Preliminary LEDPA/preferred alternative, asserting the need for additional environmental studies and reopening the debate concerning other alternatives.

The U.S. Army Corps of Engineers, the U.S. EPA, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service all submitted comments in the Coastal Zone Management Act process that criticized the Preliminary LEDPA/preferred alternative previously identified by these very same agencies.

The California Coastal Commission sided with project opponents and denied TCA's request for a consistency certification under the California Coastal Management Act in February 2008. The U.S. Department of Commerce affirmed that decision in December 2008.

While a draft CEQA and NEPA environmental document was prepared and circulated in 2004, and the CEQA document finalized in 2006, all work was stopped after the 2008 Coastal Commission and Department of Commerce denials regarding the southernmost portion of the 16-mile project that comes within one-half mile of the California coastal zone.

The 2008 Department of Commerce decision states that "This decision, however in no way prevents TCA from adopting the alternative discussed in this decision, or other alternatives determined to be consistent with California's program. In addition, the parties are free to agree to other alternatives, including alternatives not yet identified or modifications to the project that are acceptable to the parties."

Citing the Department of Commerce decision, TCA decided to proceed with a 5.5 mile extension of SR-241. The pursuit of this shorter 5.5 mile extension is critical to providing congestion relief for the growing economy, especially as Southern California continues to recover from the Great Recession. Despite the fact that this project, which we call the Tesoro Extension, has negligible environmental impacts, federal and state agencies are delaying their review and approval of the project because of pressure from project opponents, including environmental groups who were opposed to the original 16-mile project.

The Tesoro Extension Project has independent utility, a logical termini, provides economic benefit and does not preclude other future alternatives; factors which will be confirmed in the ongoing NEPA process for the project. To alleviate the potential confusion between the original 16-mile project and the shorter 5 ½-mile Tesoro Extension, FHWA, in cooperation with TCA, rescinded the 2001 Federal Notices of Intent (NOIs) for the original 16-mile project. This rescission informs the public that FHWA and TCA are no longer preparing an Environmental Impact Statement under NEPA for the original project and that any project beyond the 5 ½-mile Tesoro Extension will need to go through new and

complete CEQA and NEPA environmental processes and permitting. Also, with the rescission of the NOIs for the original project, FHWA has assigned NEPA responsibility for the Tesoro Extension project to Caltrans.

USFWS was again tasked with completing a biological opinion (BO) for the Tesoro Extension project under Section 7 of the ESA. In November of 2012, the requisite biological assessment that provides the biological data and potential project impacts was prepared and submitted by FHWA to USFWS for their review and use in preparing the project BO. Since USFWS had previously issued a biological opinion for the original 16-mile project, which lies within the same vicinity and contains the same biological resources, USFWS should have been able to prepare a biological opinion for the shorter 5 ½-mile Tesoro Extension within the 135-day deadline established by the ESA.

In 2013, USFWS notified TCA that they did not have sufficient resources to work on FHWA's and TCA's request; therefore, TCA provided \$75,000 in funding to aid in this effort. After several months and review, USFWS staff notified FHWA and TCA that they would be unable to issue the BO unless FHWA could provide written documentation that the project had independent utility from the larger 16-mile project. With the rescission of the NOIs and the NEPA assignment from FHWA to Caltrans, Caltrans requested USFWS to not issue the BO while they reevaluate the type of environmental document that should be prepared for the 5 ½-mile project.

In addition to the above-mentioned challenges, TCA has also had difficulties with state resource agencies, which, while not directly relevant to Congress, further demonstrate the ability of project opponents, including environmental groups to influence what should be a legal and factual review process. TCA is in the appeal process with the State Water Resources Control Board over the denial by the San Diego Regional Water Quality Control Board for a Waste Discharge Requirements permit. The denial was not due to any concerns related to the project's water quality impacts, but rather over confusing speculation that the Tesoro Project should somehow represent future discharges associated with the original 16-mile project. While still in process, the draft order from the State Water Board recommends remanding the matter back to the San Diego Regional Water Board because the State Water Board is unable to find any factual and legal basis for the decision of the regional board.

As TCA continues to expend resources to advance a critical transportation project, we are struggling with navigating through an ill-defined and cumbersome environmental review process at both the federal and state level.

TCA has committed to working with stakeholders, including the environmental groups that oppose the extension of SR-241 into the California coastal zone. The result of this commitment is to find a viable solution for SR-241, but one that still meets the region's need for traffic relief. Any project south of the Tesoro Extension will be a result of this outreach and be required to complete new state and federal environmental documents.

We recognize that Congress made reforms to the environmental review process in MAP-21, but believe that further changes are needed to ensure that there are procedures for resource agencies to efficiently and cost effectively evaluate and permit transportation projects.

Recommendations for Improving the Environmental Review and Project Approval Process

TCA has the following proposals for improving the environmental review process in light of its experiences with extending State Route 241. Many of these recommendations were included in the House 2009 surface transportation bill, but were not included in MAP-21.

1. Allow projects in states with stringent environmental review laws, including “mini-NEPA’s” as they are sometimes called, such as California, to meet federal environmental review requirements through compliance with state laws; in those instances, allow the state law process to provide compliance with NEPA and other federal laws such as the Clean Water Act, Endangered Species Act and National Historic Preservation Act. While this provision was in the House bill in 2009, it was relegated to a study in MAP-21.
2. Require that all federal agencies responsible for funding, permitting or approving a project collaborate on, use and adopt a single NEPA document for that project.
3. Require each federal agency to carry out obligations under applicable laws concurrently and in conjunction with the NEPA review unless doing so would impair the ability of the federal agency to carry out those obligations.
4. Deem participating agency concurrence in lead agency determinations where that participating agency fails to object in writing within 30 days following a lead agency’s determination or request for concurrence. Upon concurrence or failure to object within a defined period, require that a participating agency adopt the lead agency’s determination in all subsequent project reviews, approvals or other participating agency actions.
5. Prohibit an agency from changing its position where that agency concurred or made a finding as part of a coordinated review process absent new developments or the discovery of critical and relevant new information.
6. Authorize federal agencies to eliminate an alternative from detailed consideration in an EIS regarding a project if (1) the federal lead agency furnished guidance to the state or local transportation agency regarding analysis of alternatives; (2) the applicable metropolitan planning process or a state or local transportation agency environmental review process included an opportunity for public review and comment; (3) the state or local transportation agency rejected the alternative after considering public comment; and (4) the federal agency independently reviewed the alternatives evaluation approved by the state or local agency.
7. Establish NEPA Safe-Harbor Rules. NEPA and the (Council on Environmental Quality) CEQ regulations authorize FHWA to adopt NEPA implementing regulations. Congress should direct FHWA to implement “safe harbor” rules that provide a safe harbor for environmental documents that incorporate

FHWA-approved approaches to environmental review (e.g., growth-inducement, cumulative effects, alternatives, project purpose and need). Alternatives analysis could be deemed adequate if it includes two alternatives that minimize significant effects of the project. Project growth-inducement analyses could be deemed adequate if they utilize the growth projections approved by the metropolitan planning organization.

8. **Adopt Tiering Regulations.** Tiering of NEPA documents provides an opportunity to expedite environmental review by avoiding duplication of the analyses of regional and programmatic issues (e.g., mode alternatives, growth-inducement) during preparation of subsequent tiers. Currently, tiering often does not expedite environmental review (and may result in delays) because NEPA regulations do not provide assurances to project sponsors that FHWA and the resource agencies will not revisit tier 1 issues during subsequent environmental review tiers. Congress should direct the CEQ and FHWA to revise their NEPA regulations to provide that subsequent tiered NEPA documents shall not reconsider issues addressed in prior NEPA documents concerning the project or action.

9. **Impose Limitations on Scope of Resource Agency Review.** Many delays occur as a result of disputes between FHWA and the resource agencies. Often, these disputes involve issues that are outside of the jurisdiction of the resource agencies (e.g., scope of traffic analysis; construction cost estimates; engineering feasibility). Legislation could limit resource agency comments to issues within the jurisdiction and expertise of the resource agency and could require resource agencies to accept the evaluation of the FHWA on traffic, engineering and cost issues.

10. **Speed up deadlines.** Amend NEPA to speed up deadlines for the NEPA review process and add requirements to render timely decisions including technical studies, environmental impact statements and permits. Include administrative procedures that allow project sponsors to escalate disputes between federal agencies for timely adjudication of issues.

11. **Combat bogus challenges and delaying tactics.** Environmental opponents want to be able to indefinitely stall projects subject to NEPA reviews and federal permits. NEPA should be amended to require challengers to prove an agency did not use the best available information and science; require that opponents exhaust their administrative remedies; and require new rules for standing and impose a 180-day statute of limitations.

TCA also recommends the following change to the Coastal Zone Management Act, recognizing that it is outside the jurisdiction of the House Transportation and Infrastructure Committee:

1. **Restrict the applicability of the Coastal Zone Management Act** to projects that have a direct impact on resources within the coastal zone. The law and implementing regulations require a CZMA consistency determination for projects that affect land or water uses of a coastal zone even if the project is not in the coastal zone if the project has any foreseeable effect on the coastal zone or coastal resources, including direct, indirect, or cumulative effects. This standard allows the coastal agency to deny a consistency permit based on unsubstantiated and amorphous claims.

2. Require that the state coastal agency, in certifying consistency with the Coastal Zone Management Act, consider as a reasonable alternative only those alternatives which: (a) meet the project purpose and need, (b) the project sponsor is authorized to carry out, and (c) there are funds available for the project, or, there is a reasonable expectation that funds can be obtained (such as through public-private partnerships or bonds).

3. In evaluating consistency certifications, the Department of Commerce should be required to defer to the determinations of reasonableness of alternatives made by departments of transportation or by federal transportation agencies. The regulations state that Commerce "should" defer to those agencies' determinations, but such deferral should be mandated.

We thank you for the opportunity to provide testimony and look forward to answering your questions.

Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
U.S. House of Representatives

**Hearing on Surface Transportation Infrastructure Projects: Case Studies of the
Federal Environmental Review and Permitting Process**

Written Testimony of Lee G. Gibson, AICP
Executive Director of the Regional Transportation Commission of Washoe County, Nevada

September 9, 2014

Chairman Petri and Ranking Member Norton, I appreciate the opportunity to submit testimony on two of the Regional Transportation Commission's infrastructure projects that have undergone Federal environmental review and permitting, and to share some thoughts on possible improvements that could help to streamline and enhance the transparency and predictability of those Federal regulatory processes for stakeholders.

The RTC is the entity responsible for the region's street and highway projects, serves as the public transit agency, and also is the Metropolitan Planning Organization (MPO). The RTC is moving forward with the development of the SouthEast Connector Project which is a major high capacity roadway designed to connect the rapidly growing Double Diamond and Damonte Ranch area with the City of Sparks, and traverses all three jurisdictions of the RTC Board. This arterial will provide a necessary north-south connection for vehicular traffic in this area, reducing congestion on surface roads and I-580, which is plagued with significant trucking volume and commuters. This project is entirely locally funded with fuel tax revenues. In 2008, the citizens of Washoe County approved RTC-5, which was a ballot initiative that called for the Nevada State Legislature to index fuel taxes with the goal of being able to fund and advance roadway projects in Washoe County and to act as an economic incentive to create jobs during the recession. The revenue from the indexing measure has enabled the RTC to complete a number of significant projects, including a widening of I-580, widening Moana Lane through a dense commercial area, as well as funding the reconstruction and preventive maintenance of our regional roads. A total of close to \$500 million has been invested in these activities since 2009.

The SouthEast Connector is a \$270 million project and is being constructed in two phases. The SouthEast Connector was the subject of an extensive and lengthy local planning process extending over 50 years, culminating in a project design that crossed the Truckee River

and extended 5.5 miles, connecting regionally significant commercial, retail, and residential areas. Phase 1 of the Project, costing \$80 million, was constructed using a Construction Manager at Risk (CMAR) delivery methodology. Pursuant to state enabling legislation, the RTC used the CMAR process, completing the Phase 1 construction six (6) months early and under budget. Phase 2 of the Project crosses wetlands and requires a Clean Water Act section 404 permit to be issued by the U.S. Army Corps of Engineers. A permit application was submitted to the Corps in July 2013 and the RTC is awaiting final action by the Corps. In addition, a section 401 Water Quality permit application was submitted with the State of Nevada's Division of Environmental Protection (NDEP), as well as a section 402 National Pollutant Discharge Elimination System (NPDES) permit application for potential point source discharges associated with construction activities.

The RTC's approach to this entire project has been to make every effort to not only mitigate but to improve the environmental condition of this corridor by adding higher quality wetlands to the overall wetland acreage, providing for flood plain protection, restoring and providing for re-vegetation of the area, improving wildlife habitat, reducing bank instability that impacts water quality, and building safe pathways for biking and walking for residents. The project's design ensures both regulatory compliance and long term environmental stewardship of the area.

Under the section 404 process, the Corps conducts an environmental review based on the National Environmental Policy Act (NEPA) and addresses wetlands issues for the dredge and fill permit. This has been a lengthy process but a collaborative one in working with the Corps. The process unfortunately does not have definitive regulatory time frames for final action by the Corps, making the RTC's planning for the construction of Phase 2 particularly challenging. One

issue that has been problematic is historic mercury in the area that was generated by preexisting mining operations upstream of the project's location. The RTC has proposed sequestering and containing 22,000 pounds of the mercury in the roadbed, removing it from the environment and preventing it from leaching into the wetlands and Steamboat Creek. This approach has been found by the Superfund Branch of the Nevada DEP to be protective of human health and the environment, and consistent with how similarly mercury contaminated materials have been managed in the area.

Despite this State determination, the Corps struggled with finding sufficient resources to address the mercury issues and assess the RTC's approach. Added to this is an EPA layer under which EPA comments on the 402 permit to be granted by Nevada DEP, but the EPA also can potentially veto a permitting decision by the State. If EPA delegates this permitting authority to the State, as it has done with Nevada, a commenting role for EPA on the permit is appropriate but a veto role is not. Having multiple agencies with jurisdiction over these issues -- on both a State and Federal level -- creates a regulatory morass, causing delays, expense and uncertainty. Particularly when projects are locally funded, there should be more deference given to the local planning process, and to the jurisdiction and authority of the State regulatory agencies. Greater predictability by establishing timelines, streamlining the process, and reducing regulatory overlap is critical in order to be able to develop firm construction schedules, create and maintain jobs, and deliver infrastructure projects to the community.

Turning to the RTC's Small Starts project, the environmental review and Federal Transit Administration's (FTA) New Starts process has been transparent and timely. The RTC's 4th and Prater Bus Rapid Transit (BRT) project is a Small Start in FTA's New Start program. The project cost is estimated to be \$52.6 million of which the RTC has committed to pay over 57% of

the project costs. This project was environmentally cleared as a categorical exclusion by the Federal Highway Administration (FHWA) in November 2013 and by FTA in February 2014. The project runs 3.6 miles connecting downtown Reno and downtown Sparks with the RTC's BRT RAPID transit service, and provides for accessible sidewalks and bicycle lanes. The project corridor will provide improved access to education and employment centers for and moderate low income residents, the service will utilize energy and cost efficient electric buses, and the project will provide multimodal connectivity in the corridor.

The RTC applied for this project to enter into FTA's project development phase in December 2013 and was approved by FTA just a few short months later in February 2014. FTA's project development process has been very clearly articulated, with delineated required submittals needed for entry into the Small Starts pipeline. Pursuant to the streamlined process for Small Starts projects enacted by Congress in MAP-21, the RTC's 4th and Prater project will be evaluated by FTA in the upcoming FY 2016 New Starts Report and, if adequate funding is made available by Congress, could be granted a project construction grant agreement in the [spring of 2015]. FTA has worked collaboratively with the RTC in this process and has just approved a second RTC BRT Small Starts project into the project development phase. FTA's administration of the Small Starts process is a testament to Congress' efforts to reduce regulatory barriers to the planning and development of these projects, and delivery of these infrastructure improvements to strengthen opportunities for our communities.