



**Washington State  
Department of Transportation**

TESTIMONY OF

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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

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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.<sup>1</sup> These results are similar to 2012 findings from FHWA and the U.S. Government Accountability Office.<sup>2</sup> 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.<sup>3</sup>

### **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

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

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

<sup>3</sup> [http://www.leg.wa.gov/JTC/Documents/Studies/Transportation%20Efficiencies/WEB\\_FinalCombinedReport.pdf](http://www.leg.wa.gov/JTC/Documents/Studies/Transportation%20Efficiencies/WEB_FinalCombinedReport.pdf)

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 Replacement<sup>4</sup> – 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 East<sup>5</sup> – 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 process<sup>6</sup>:

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

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

<sup>6</sup> <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 Terminal**<sup>7</sup> – 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

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<sup>7</sup> <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)<sup>8</sup>. 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,

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<sup>8</sup> <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.

**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.