



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.