



**Committee on Transportation and Infrastructure  
U.S. House of Representatives**

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Washington, DC 20515

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Ranking Member

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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”

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**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).<sup>1</sup>

- **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.

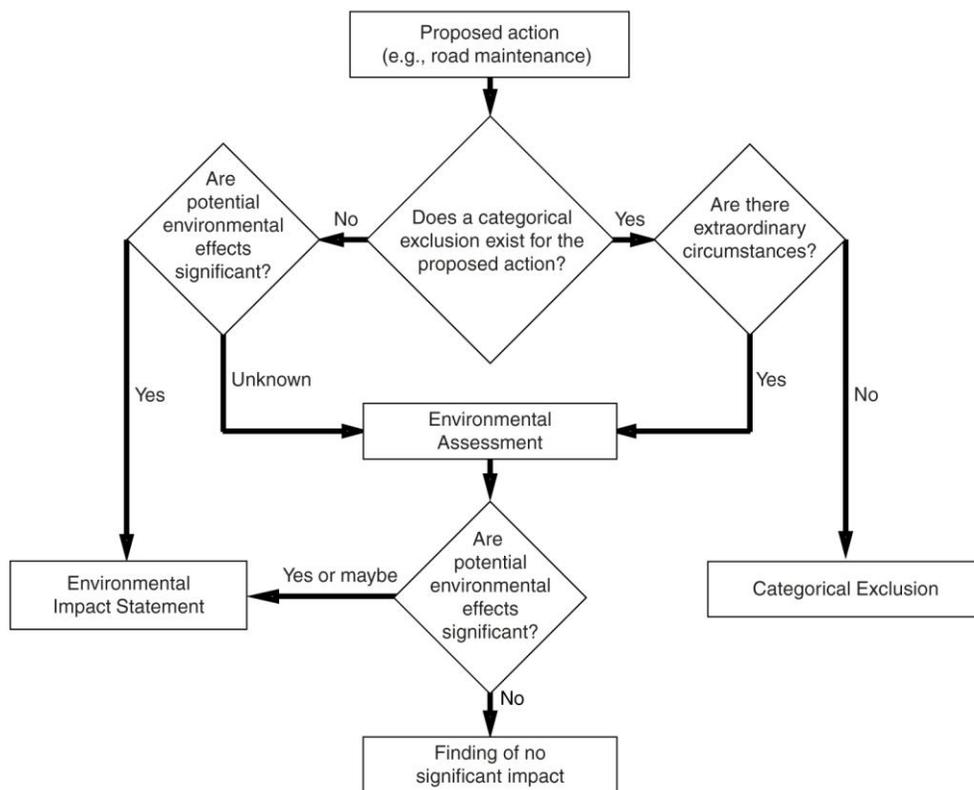
According to reports from the Government Accountability Office (GAO), there is little information on the cost or timeline for each type. There are no mechanisms within government

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<sup>1</sup> 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.<sup>2</sup>

**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

<sup>2</sup> 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 21<sup>st</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

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

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

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

<sup>5</sup> [http://www.fhwa.dot.gov/ipd/project\\_profiles/wa\\_alaskan\\_way.aspx](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.<sup>6</sup>

### 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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup>

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

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

<sup>8</sup> 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-112hhr65450/pdf/CHRG-112hhr65450.pdf>.

<sup>9</sup> [https://www.thetollroads.com/whats happening/projectsandinitiatives/tesoro\\_extension.php](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