



**TESTIMONY OF**

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**SECRETARY**

**KANSAS DEPARTMENT OF TRANSPORTATION**

**ON BEHALF OF**

**THE AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION  
OFFICIALS**

**REGARDING**

***Accelerating the Project Delivery Process:  
Eliminating Bureaucratic Red Tape and Making Every  
Dollar Count***

**BEFORE THE**

**SUBCOMMITTEE ON HIGHWAYS AND TRANSIT  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
UNITED STATES HOUSE OF REPRESENTATIVES**

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Chairman Duncan and Members of the Committee, thank you for the opportunity to testify on accelerating the transportation project delivery process. My name is Debra Miller. I am Secretary of the Kansas Department of Transportation, and am speaking today on behalf of the American Association of Highway and Transportation Officials (AASHTO) which represents the state departments of transportation (DOTs) of all 50 states, Washington, D.C. and Puerto Rico.

First, on behalf of AASHTO, I want to express our gratitude to you and to Chairman Mica for your commitment to expediting project delivery – the “437 Day Plan” – and for your willingness to consider potential statutory changes to achieve that goal. We thank you and offer our support and any technical assistance you may want from the state DOTs.

In my testimony I want to cover the following points:

- The environmental review process has been – and continues to be – a major contributor to the delay in moving projects from conception to completion. We have made progress in a number of areas because of reforms in SAFETEA-LU, but there is much more progress to be made.
- Any effort to expedite project delivery should focus on making the process more efficient, without compromising environmental protection or opportunities for public participation. The success of several reforms in SAFETEA-LU shows that it is possible to do both – we can speed up the process, while still preserving and enhancing the environment;
- The environmental streamlining provisions of SAFETEA LU are working. I will discuss several of the key provisions, as well as some recent reports highlighting their effectiveness. I will also offer some suggestions for extension and refinement of these SAFETEA-LU initiatives.
- Lastly, I will describe several new ideas that could help further streamline the environmental review process and other elements of the overall project delivery process. These changes would build on the progress in SAFETEA-LU, setting the stage for further improvements in project delivery.

## **I. The Need to Streamline the Environmental Review Process**

Environmental reviews for transportation projects take far too long. The Federal Highway Administration estimated the average time required to complete Environmental Impact Statements (EIS) between 1999 and 2010 as ranging between 63 and 83 months; approximately 5 to 7 years.<sup>1</sup> Such delay has very real consequences for the American public. Inadequate and congested highways cost drivers thousands of hours of lost time, and cost businesses millions of dollars in productivity. Delayed highway safety improvements literally cost lives in crashes that could have been avoided. Getting projects on the ground more quickly reduces congestion by

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<sup>1</sup> <http://www.environment.fhwa.dot.gov/strmlng/nepatime.asp>. Appendix A provides annual information on the time to complete the NEPA process from 1999 to 2010.

adding capacity to the system, increases safety to the users by improving the facilities earlier, and saves costs attributable to inflation, particularly related to construction materials.

The environmental review process is enormously complex. The process has grown incrementally over the last 40 years. New requirements are added through laws, regulations, and policies, and old requirements are rarely scaled back or eliminated. As State DOTs work to deliver Federal-aid transportation projects, they must negotiate this maze of legal, technical, and analytical requirements at the national and state level during every stage of the project development process. The overall complexity of this process is not only burdensome to the states, but has become a barrier to the public in understanding the process and participating effectively. The NEPA process has become so complex, document-intensive, and slow-moving that stakeholders often stop paying attention – or, worse, they lose confidence in the fairness and usefulness of the process. Reform is needed not only to save money and time, but also to restore the public’s confidence in the process that is used to make decisions of great consequences in their communities.

Although SAFETEA-LU made progress in reducing project delivery times, there is much more that can be done. It is time to refocus the environmental review process on meaningful outcomes, rather than rigid processes. We need to revisit the purpose and intent of NEPA and other environmental laws and develop a new framework that results in improved environmental and transportation outcomes, while reducing the costs and time associated with traditional environmental reviews.

As stewards of the environment and civil servants responsible for the largest public works projects in the country, state DOTs must protect the natural and human environment for future generations while delivering needed transportation solutions. The States are committed to developing new ways of doing business to find the most efficient and effective methods for reducing congestion, improving safety, increasing mobility, and protecting the environment. However, leadership is needed at the federal level to get the job done.

## **II. Streamlining Initiatives in SAFETEA-LU**

SAFETEA-LU provided some of the most significant changes to environmental provisions affecting transportation in decades. This legislation addressed several of the underlying causes of project delay; it required better coordination among agencies, set new deadlines for agency comments, simplified the requirements for projects with minor impacts to parklands and historic sites, created time limits for lawsuits, and authorized greater delegation of federal responsibilities to States. These streamlining measures are explained in more detail below.

### Streamlined Environmental Review Process for Projects

SAFETEA-LU Section 6002 created a streamlined environmental review process that is required for all environmental impact statements (EIS). The goal of this process is to develop EISs in a timelier manner without diminishing the quality of project decision making. The core of this new process is a higher-profile role for transportation agencies as the “lead agencies” in the NEPA process. The new process focuses on improving coordination and review timeframes and enhancing agency and public participation. The process also establishes new time limits on

agency and public review and comment periods and specifies a process for resolving interagency disagreements.

#### Section 4(f) “de minimis” Determinations

SAFETEA-LU created a simpler process for approving projects that have minor (“de minimis”) impacts to parklands and historic sites, which are protected under Section 4(f) of the USDOT Act. The law essentially provides an exemption from Section 4(f) for projects that have a de minimis impact on the area in question.

#### Statute of Limitations

SAFETEA-LU created a 180-day statute of limitations for challenges to federal approvals of highway and transit projects. Claims made after this time limit are barred. This time period is initiated by the filing of a notice in the Federal Register. The purpose of the statute of limitations is to expedite the resolution of any issues that may affect transportation projects. Issuing the notice in the Federal Register is discretionary. If a notice is not issued, the NEPA approval or decision remains subject to the general six-year statute of limitations for civil actions against federal agencies.

#### Delegation of USDOT Responsibilities to State DOTs

SAFETEA-LU created two programs that authorize USDOT to delegate its responsibilities in the environmental review process to State DOTs. The delegation programs were developed to provide information regarding any efficiencies in environmental reviews that may be gained by the states implementing environmental reviews rather than FHWA. The first program authorized delegation of FHWA’s authority for projects that qualify for categorical exclusions (CEs) under NEPA. This is a permanent program that is open to all the States. The second program is a pilot program, which authorizes delegation of FHWA’s environmental authority to State DOTs for all project types, including those that require EISs. This program is open only to five designated States.

#### Integrated Planning

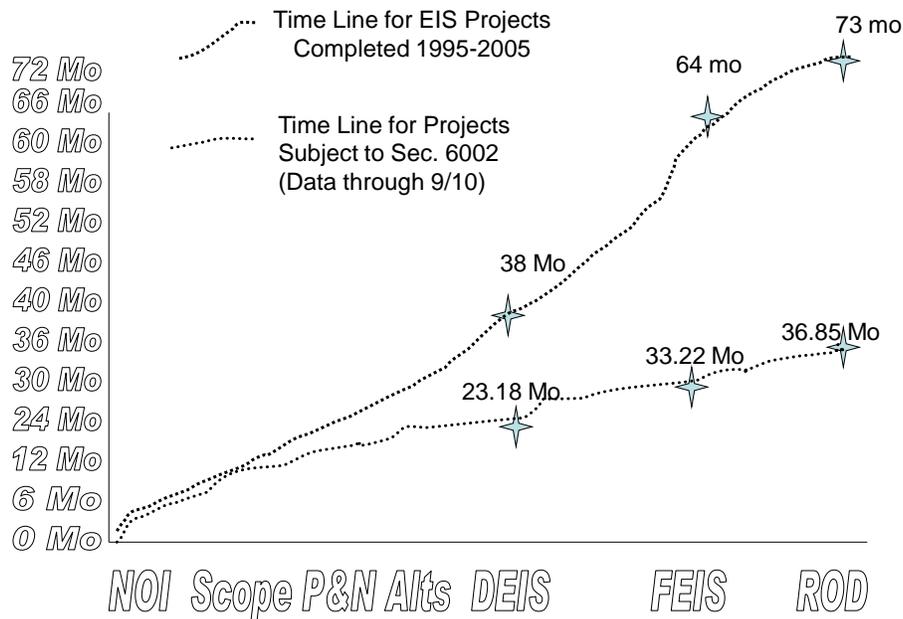
SAFETEA-LU includes numerous changes related to transportation planning, including significant new opportunities for consideration of environmental issues in the statewide and metropolitan transportation planning processes. Statewide or metropolitan long-range plans must include a “discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.” In addition, as part of the planning process, states and MPOs “shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.” They also must consider, if available, conservation plans and maps and inventories of natural or historic resources.

### **III. SAFETEA-LU Streamlining Implementation**

The changes in SAFETEA-LU were focused primarily on making the existing environmental review process work more efficiently. The changes focused on carrying out project-by-project

reviews with tighter deadlines, better coordination, and simpler documentation. The streamlining initiatives in SAFETEA-LU have been implemented effectively and are showing results. In September, 2010, the Federal Highway Administration conducted an analysis of all EISs that were initiated under the SAFETEA-LU environmental review process and reached various stages of completion. The assessment revealed that thirty-eight projects reached the Draft EIS milestone with an average time frame of 23.18 months (approximately 1.9 years); twenty-two projects reached the Final EIS milestone with an average time of 33.2 months (approximately 2.8 years); and twenty projects issued a Record of Decision with an average timeframe of 36.85 months (approximately 3.1 years).<sup>2</sup> The following chart from this report compares average milestones for projects initiated and developed under the SAFETEA-LU environmental process to EIS projects completed between 1995 and 2005. It is important to note that the SAFETEA-LU environmental streamlining provisions have been in place for approximately 5 years. By definition, any ROD issued during this period will have been one that was issued relatively quickly. Projects that are taking longer will still be in the pipeline, and would not show up in this data.

**Figure 1: Timing in Achieving Section 6002 Milestones On Average**



The following is more specific information on implementation of the SAFETEA-LU streamlining provisions.

<sup>2</sup> Biannual Assessment of SAFETEA-LU Section 6002 Implementation Effectiveness, September, 2010, Federal Highway Administration.

### Streamlined Environmental Review Process

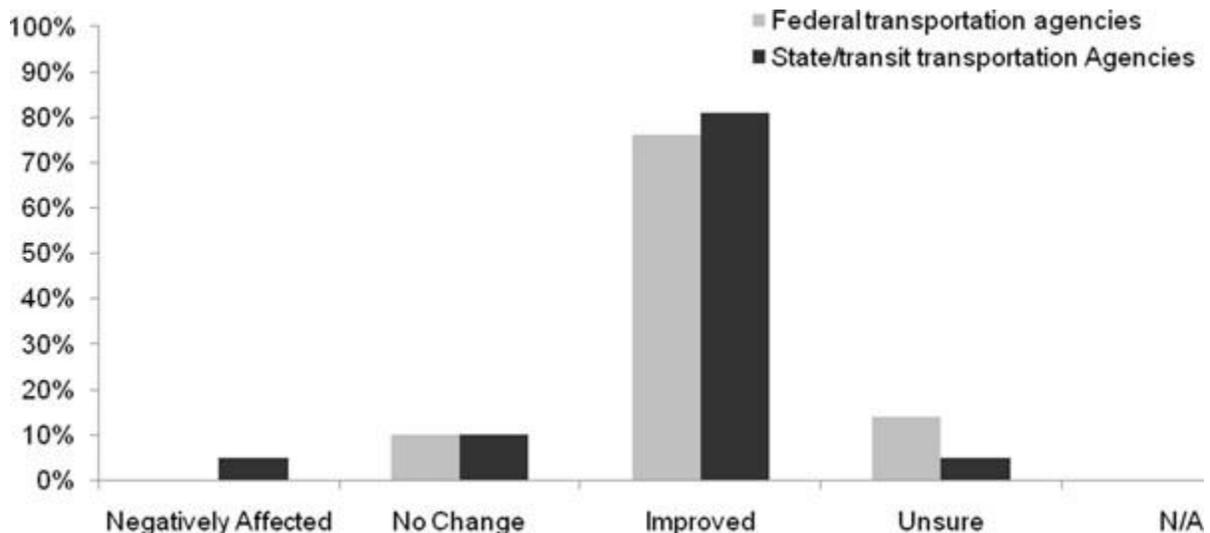
All projects initiated after August 11, 2005 are required to follow the new SAFETEA-LU Section 6002 environmental review process. This process contains numerous streamlining initiatives, but also contains new procedural requirements that have created additional burdens without providing a measurable improvement in the environmental review process. Generally, this process has been implemented effectively, but has not yielded measurable reductions.

In December 2010, the National Cooperative Highway Research Program (NCHRP) studied federal and state implementation of SAFETEA-LU environmental provisions. Their report highlights the potential benefits as well as the reservations expressed by some States.<sup>3</sup> Specifically, most states indicated a positive response to implementing the SAFETEA-LU environmental provisions and have revised their practices in response to SAFETEA-LU. However, only a few states indicated that the SAFETEA-LU environmental review process has been effective at preventing or reducing delays.

### Section 4(f) de minimis Interpretations

The section 4(f) de minimis authority was implemented quickly by FHWA, first through guidance and then through regulations. Now in widespread use, hundreds of 4(f) de minimis findings have been made since 2005. Implementation of the 4(f) de minimis authority has been studied by National Academies of Sciences, and their most recent report included results of a survey which found widespread agreement that this change had significantly reduced the time needed to comply with Section 4(f) while maintaining protection of 4 (f) resources.<sup>4</sup>

**Figure 5. Effect of the *De Minimis* Impact Provision on the Timeliness of Completing the Section 4(f) Requirements**



<sup>3</sup> [http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp\\_lrd\\_54.pdf](http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_lrd_54.pdf)

<sup>4</sup> [http://www.environment.fhwa.dot.gov/4f/Section\\_6009Study/index.asp#fig5](http://www.environment.fhwa.dot.gov/4f/Section_6009Study/index.asp#fig5)

### Statute of Limitations

The statute of limitations (SOL) provision was implemented promptly through FHWA guidance, and since 2005, FHWA has issued more than 200 SOL notices. The notices have been issued primarily for EISs and for some environmental assessments (EAs); FHWA generally does not issue notices for CEs. In addition, FTA has issued many SOL notices for transit projects. The recent NCHRP report, “Practice Under the Environmental Provisions of SAFETEA-LU,” found that State DOTs consider this a valuable streamlining tool because it provides certainty after the environmental process has been completed.<sup>5</sup>

### Delegation

The delegation programs have been implemented by USDOT in a way that makes many States highly reluctant to seek delegation. Further changes in the law are needed to make the delegation programs effective. There is one major factor that discourages States from seeking delegation under the existing programs. FHWA has determined that States can only assume USDOT’s responsibilities if the State gives up the ability to undertake design and right-of-way activities during the NEPA process on an at-risk basis (i.e., with their own funds). For many States, the flexibility to advance these activities in parallel with NEPA is a critical project-delivery tool; because they are unwilling to give up that flexibility, they do not pursue delegation. As a result, only three States (Alaska, Utah and California) have been delegated CE authority and only one State (California) has been delegated full NEPA authority.

The adoption of the delegation program is also hindered by the “pilot” status of the full delegation program, which authorized States to assume responsibility for the full range of transportation projects. As a pilot, this program is limited to five designated States, and the authorization for this program was scheduled to expire in 2011. By limiting the program to only a few States, and leaving major uncertainty about the program’s future, the program discouraged States from making the substantial investment that is needed to obtain a delegation of USDOT’s responsibilities.

Additionally, the program is hindered by the requirement for States to waive sovereign immunity (generally, by an act of the State legislature or the State Attorney General) before assuming USDOT responsibilities. This waiver is required because, by law, one of the conditions of delegation is that the State must agree to stand in USDOT’s shoes for purposes of any lawsuits challenging the outcome of the environmental review process. Obtaining a waiver of sovereign immunity has proven to be quite difficult.

Lastly, through programmatic CEs with FHWA, state DOTs have obtained vastly increased CE responsibilities. Due to the authority the states have obtained under these programmatic CEs, many states have not seen value in undertaking the significant investment that is needed to obtain the small additional decision-making that would be afforded to them through the CE delegation.

Regardless of these barriers, the limited experience to date suggests that delegation is effective at delivering performance as well as faster environmental reviews. The results in California in particular are very encouraging. In 2007, the California Department of Transportation (Caltrans)

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<sup>5</sup> [http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp\\_lrd\\_54.pdf](http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_lrd_54.pdf)

assumed delegation of FHWA responsibilities for CEs first, and later assumed FHWA responsibilities for the full delegation encompassing a full range of project types. After the first three years of the pilot program, Caltrans found average time savings of 17 months, with a median time savings of 24 months, for state highway system projects requiring an EA. This data and other data on time savings from delegation in California can be found in Caltrans' report to its legislature in January, 2011.<sup>6</sup>

Although Caltrans does not have direct timeframe comparisons for CE's, they estimate that for the 10% of CE's that were not already delegated to Caltrans under the programmatic CE with FHWA, they are saving approximately ten days in processing. In addition, Caltrans indicated that when a CE has required consultation with a resource agency, the time savings are much greater. For example, Section 7 consultations are, on median, completed more than 5 months faster under the pilot program.

SAFETEA-LU requires that FHWA audit Caltrans' performance under the pilot program. The audit reports are posted in the Federal Register. Five audits have been conducted thus far and the audits have generally indicated that Caltrans is meeting expectations, continues to improve its processes and procedures, and has benefited from participation in the pilot program.

Utah DOT assumed CE delegation in 2008. Prior to this assumption, Utah DOT had a programmatic CE agreement with FHWA, which gave the DOT only limited authority to approve CEs. Utah DOT estimates that they are saving between 20 and 30 days in processing larger CEs under the delegation program. In addition, Utah DOT feels that the overall quality of the CE documents has notably improved as a result of the CE delegation and the quality control efforts put in place. Utah DOT sees the delegation as a catalyst to assume more responsibility and further streamline the process, while not sacrificing quality or thoroughness.

Alaska DOT assumed CE delegation in 2009. The programmatic CE agreement Alaska DOT had with FHWA prior to obtaining CE delegation covered 90% of their CEs. Alaska reports, however, that the 10% of CE's that were not already delegated to Alaska pursuant to the programmatic CE agreement were the larger more complex CEs that generally took more review time. Now that Alaska is handling these more complex CEs, they are being processed more quickly and FHWA is focusing their review on progressing EAs and EISs.

### Integrated Planning

The SAFETEA LU environmental review process language provides a general foundation for using the transportation planning decisions in the NEPA process. However, due the uncertainty associated with applying these decisions in the NEPA process, this provision has largely been disregarded by the state DOTs. To provide the states with certainty regarding the application of this provision, specific legislative authority needs to be adopted to allow FHWA to adopt in the NEPA process, decisions made in the transportation planning process.

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<sup>6</sup> [http://www.dot.ca.gov/hq/env/nepa\\_pilot/pdf/AB2650\\_jan2011.pdf](http://www.dot.ca.gov/hq/env/nepa_pilot/pdf/AB2650_jan2011.pdf)

#### **IV. SAFETEA-LU Lessons Learned**

SAFETEA-LU laid the foundation for reform by addressing several of the underlying causes of delay. The SAFETEA-LU provisions focused on specific “problem areas” (e.g., 4(f) de minimis, 180-day statute of limitations) have been effective and are in widespread use. However, the reforms in SAFETEA-LU were focused primarily on making the existing environmental review process work more efficiently. The reforms focused on carrying out project-by-project reviews with tighter deadlines, better coordination, and simpler documentation. Major advances in project delivery will require more substantial improvements. To significantly reduce project delivery time, it will be necessary to reinvent the environmental review process, while still maintaining a high level of protection for the environment and communities. Building upon what we learned from SAFETEA-LU, the following general recommendations provide a framework for the project delivery recommendations for the next reauthorization.

##### Eliminating Unnecessary Process Steps

To date, efforts to streamline the process have consisted largely of directing federal agencies to do a better job of managing the interactions among dozens of different agencies, procedures, and requirements. True reform requires a willingness to recognize that some steps in the existing process are unnecessary and/or duplicative and can be removed without compromising the quality of decision-making.

##### Reducing Federal Involvement in Project-Level Decisions

Much of the delay in the current process results from the ‘logjam effect’ in which too many projects are being pushed through too narrow of a pipeline of USDOT staff. The USDOT simply does not have the staff to manage the environmental review process for every project that receives federal funding. But that is what current law generally requires: the USDOT is legally bound to oversee the environmental review process and render the final decision on every federally assisted transportation project, from a recreational trail to construction of a new Interstate. To prevent this long jam, USDOT’s project-level responsibilities should be delegated to State DOTs, and USDOT should shift into an oversight role. SAFETEA-LU enabled this type of delegation to occur. Although initial implementation has been slower than expected, with a few adjustments, this program could be expanded nationally with enormous streamlining benefits. The next authorization should greatly accelerate delegation to the states as the program has a huge potential to streamline reviews.

##### Reducing Project-by-Project Review

The environmental review process is not just a single process: it involves compliance with an array of federal statutes and regulations, each with separate procedures, which must be woven together for each project into a single coordinated process. Each of these laws and regulations sets forth a process for approving an “action,” which is typically defined as a specific project. Current law assumes that each project will receive separate environmental documentation, consultation, and approval. This project-by-project approach is not only inefficient; it also hinders strategic decision making by impeding efforts to consider alternatives, impacts, and mitigation on an ecosystem level. There is a solution: addressing environmental concerns programmatically, through integrated planning. This concept has been embraced by a broad

range of environmental and transportation agencies. But little progress has been made in the real world, because most agencies' regulations are geared toward project-by-project reviews, not programmatic decision-making. New legislation is needed to empower and direct agencies to embrace programmatic approaches as the norm – not the exception.

#### Environmental Protections Remain Intact

Throughout the development of the SAFETEA-LU streamlining language, several environmental stakeholders expressed concern regarding the potential of the streamlining measures to undermine environmental protections. Not only have these concerns not been borne out, but the SAFETEA-LU environmental streamlining measures have been implemented largely without controversy.

### **V. Actions Needed to Achieve Further Reductions in Project Delivery Times**

In preparation for this authorization cycle, AASHTO convened a group of State DOTs, working through the AASHTO Standing Committee on Environment, to assess environmental streamlining progress under SAFETEA-LU and recommend further changes to streamline project delivery. The group recommended the following legislative streamlining steps, to build upon SAFETEA-LU streamlining provisions.

#### Increase Delegation of USDOT Decision-Making Responsibilities to State DOTs.

- Remove the Barriers to Delegation  
Remove the barriers that made States reluctant to take on delegation by expanding and refining the programs under which state transportation agencies can assume USDOT responsibilities under NEPA and related environmental laws. Delegation should be made standard practice by first, making the 5-state pilot program a permanent program and allowing all States the option to participate. Second, clarify that the States can assume USDOT responsibilities without reducing flexibility to acquire right-of-way and perform design work prior to the completion of the NEPA process. Finally, clarify that a State can assume USDOT's responsibility for making project-level conformity determinations under the Clean Air Act, along with all other project-level environmental review responsibilities.
- Create an Alternative to Full Delegation  
Establish a new pilot program, as an alternative to the full delegation program that would allow a State DOT to assume expanded responsibilities for EAs and EISs without waiving sovereign immunity. This “delegation-lite” program would give State DOTs the opportunity to take on an increased role in document preparation and agency consultation, but FHWA would retain ultimate approval authority and sign the decision documents. Because authority would remain with FHWA, the States would not be required to waive sovereign immunity. This program would give States an opportunity to build up the capabilities that would eventually enable them to assume full delegation and help states to overcome their reluctance to take on the responsibilities involved in full delegation.

### Simplify the Section 6002 Environmental Review Process

Remove unnecessary paperwork steps and clarify and/or strengthen provisions that will provide additional streamlining benefits. Unnecessary procedural requirements in Section 6002 include:

- Project Initiation Notice. The environmental review process is required under the CEQ regulations to begin with a Notice of Intent published in the Federal Register. Section 6002 creates an additional requirement for a project initiation notice, which is submitted by the project sponsor to the USDOT. This initiation notice is superfluous and does not contribute to streamlining the process. To remedy this duplication in effort, the requirement for the project sponsor to submit a project initiation notice should be eliminated.
- Consultation on Methodology and Level of Detail. Section 6002 provides that "the lead agency also shall determine, in collaboration with participating agencies at appropriate times during the study process, the methodologies to be used and the level of detail required in the analysis of each alternative for a project." Many FHWA division offices interpret this provision to mean that State DOTs must conduct additional agency coordination for almost any change in the project's methodology. This requirement increases time and cost with little added value or benefit to the environmental review process. As such, the requirement for agency consultation on issues of "methodology and level of detail" should be revised so that such consultation is conducted during the scoping phase of the project, when methodologies are being developed.
- Coordination Plan and Schedule. Section 6002 requires the lead agency to establish a "coordination plan" for a project, and provides that the plan "may" include a schedule. FHWA has effectively required inclusion of a schedule in all coordination plans. While agency coordination clearly is an important aspect of streamlining, the "coordination plans" themselves have become more of a paperwork exercise than an effective tool for improving coordination. In addition, many states have adopted plans and procedures for inter-agency coordination prior to the implementation of SAFETEA-LU. Preparing an additional project-specific coordination plan often adds little value, and becomes just another paperwork burden, when effective program-wide coordination procedures are already in place. The coordination plan requirement should be amended to allow a State DOT to meet this requirement by adopting program-wide coordination procedures, rather than developing a separate coordination plan each time an EIS is prepared.

There are also ways that the SAFETEA LU environmental review process could be modified to better achieve the underlying goals of the original statute.

- Preferred Alternative to Higher Level of Detail. Section 6002 allows the preferred alternative, once it has been identified, to be developed to a higher level of detail. In concept, this is an important streamlining tool. However, the use of this flexibility has been limited by FHWA and FTA in their Section 6002 guidance, which requires a State to obtain FHWA or FTA authorization on a project-by-project basis to advance the preferred alternative to a higher level of detail. As a result, the streamlining potential of this provision is still largely untapped. States should be able to develop the preferred alternative to a higher level of detail without requiring FHWA's individual, project-by-project approval. The requirements for developing the preferred to a higher level of detail

should be defined in standard procedures so that individual project-level approval is not needed.

- Reliance on Transportation Planning-Level Decisions. The existing SAFETEA LU language provides a basis for using the transportation planning process to establish the purpose and need for a project. However, there are currently no strong assurances or mechanisms in place to allow state DOTs to use these planning efforts to streamline the NEPA and permitting processes. As such, this provision has largely been disregarded. There is a need for more specific legislative authority allowing FHWA to adopt in the NEPA process, decisions made in the transportation planning process, with regard to both purpose and need and the range of alternatives.

### **New Initiatives**

In addition to the above legislative recommendations that further build upon SAFETEA-LU successes, AASHTO also developed the following new legislative recommendations related to environmental streamlining.

#### Increase Authority for States and USDOT to use Programmatic Approaches and Integrated Planning to Comply with NEPA and other Environmental Requirements

To begin using programmatic approaches on a broad scale, agencies will need a new mandate and new flexibility. Legislation is needed to make programmatic approaches a part of every agency's mission – not just something they can do, but something they are *expected* to do as a normal practice. Clear statutory authorization and encouragement should be provided that focus USDOT and federal resource agencies on programmatic approaches and strategies that focus on integrated planning, resource banking, and flexibility in environmental mitigation. In addition, federal funding should be available for appropriate advanced mitigation.

#### Create an “Integrated Planning Pilot Program”

Legislation also is needed to *empower* agencies to experiment with programmatic approaches in a manner that does not compromise environmental protections. Empowering innovation means giving agencies the authority, on a pilot basis, to waive existing procedural requirements for projects that are being developed through an integrated planning process that considers environmental resources and transportation needs on a broad scale.

A model for this approach is the Special Experiment Program (SEP) authority that FHWA has used in recent years to waive regulatory requirements to encourage innovation in contracting and other aspects of the federal highway program. For example, "SEP-15" played a critical role in encouraging greater use of public-private partnerships by providing FHWA with a basis for granting limited exceptions to regulatory requirements established in Title 23 of the Code of Federal Regulations.

The SEP-15 model should be used to authorize USDOT to establish a special experimental program for integrated planning (SEP-IP), in which federal transportation and environmental agencies would be authorized to waive regulatory requirements for projects that are developed through an integrated planning process at an ecosystem scale. As part of this pilot program, individual federal agencies could only waive their own requirements, subject to appropriate

safeguards to ensure that environmental outcomes are not compromised. This program would empower individual agencies to develop truly innovative practices that achieve better environmental and transportation outcomes in less time.

#### Simplify the Steps in the NEPA Process for EIS Projects

In the 1970s, when the CEQ environmental process regulations were written, the preparation of an EIS was a largely internal agency process, with minimal opportunities for the public to provide input until after a Draft EIS was published. Aside from submitting written comments, the public had few other opportunities, except for those who could spare the time to attend an informational meeting in person. Today, the process of public engagement starts earlier and provides many more opportunities for involvement. States conduct public outreach through multiple channels – using social networks, blogs, websites, community meetings, and door-to-door contacts, as well as traditional means such as newsletters and public hearings. By the time a Draft EIS (DEIS) is published, the community has often been engaged for many years. The DEIS is viewed as nearly the culmination, not the beginning, of the process

As early coordination has increased, it is often possible for an agency to identify a preferred alternative in the DEIS. In these situations, there is little additional benefit in publishing a separate Final EIS (FEIS) before issuing the ROD. The environmental review process could be greatly expedited by allowing the preparation of a single EIS rather than the current process of publishing of a DEIS followed by the FEIS prior to issuance of the ROD. If a single EIS is prepared, the ROD itself would include responses to comments on the EIS. This process would closely parallel the process that is used for an EA/FONSI today, where a single EA is issued and the FONSI includes responses to comments on the EA. Also, if significant new issues are raised in the comments on the EIS, the federal agency would have the flexibility to address them in a Supplemental EIS. The proposed two-step rather than three-step process could greatly expedite the environmental review process.

#### Federal Funding for Corridor Preservation Prior to the Completion of NEPA

Over the next 50 years, the U.S. is expected to grow by 140 million people, and will likely grow by a similar amount in the last half of this century. A majority of this growth is anticipated to occur in and around urban areas, which are already congested and have few opportunities for developing transportation solutions without major cost and disruption. The goal of corridor preservation is to minimize development in areas that are likely to be required to meet future transportation needs. Corridors must be preserved to limit the cost of future projects, as well as community and environmental impacts.

Due to fiscal constraints, most states are limited in their ability to preserve needed transportation corridors. In addition, the ability to use Federal funds for corridor preservation is severely restricted. Until the NEPA process is completed for a transportation project, Federal funds can only be used to acquire individual parcels that meet the definition of “hardship” or “protective” acquisitions. Because these exceptions are relatively narrow, it is difficult to protect a continuous corridor – or even to simply acquire strategic parcels from willing sellers – until after the NEPA process is completed. This constraint has unnecessarily constrained the amount of parallel project development work that can be completed during the NEPA process.

To accommodate parallel project activities and expedite project delivery, States should be able to use federal funds for right-of-way acquisition, prior to completion of the NEPA process, where necessary or desirable to protect existing or future transportation corridors from development.

#### Designating One Lead USDOT Agency

Transportation projects are becoming increasingly multimodal. These projects serve an important public need by ensuring that travel demand needs are met by the appropriate transportation mode. However, US DOT's modal administrations have varying priorities, processes and timelines for completing projects. These variations lead to unnecessary project delay. Under this structure, State DOTs must go through multiple review, approval and revision processes for each project document and decision.

Requiring that one USDOT agency be designated as lead agency to approve plans, studies and/or projects with multiple agency involvement would greatly streamline the project development and delivery process. Other impacted USDOT administrations would then participate as cooperating agencies.

### **V. Time and Cost Savings**

Our experience with SAFETEA-LU's environmental streamlining provisions clearly demonstrates that progress is possible. Just to take two examples -- the Section 6002 process has cut average EIS timeframes by about 3 years, and the delegation program has cut nearly 2 years from the average timeframe for preparing an EA in California. These reforms were met with some skepticism and even opposition when they were first proposed, but we now see that they have yielded significant time savings, without compromising environmental protection. By saving time, these reforms have saved money as well. While it is not easy to quantify the total cost savings, we know that shaving years off the project delivery schedule reduces the cost of environmental reviews and also reduces total project costs, by reducing the effects of inflation on construction costs.

We have made real progress since SAFETEA-LU, but there is still much to be done. We have developed a series of proposals that can yield substantial additional reductions -- by making the SAFETEA-LU reforms even more effective, and by introducing new reforms that can yield even greater reductions. While it is difficult to project time savings associated with each of our recommendations, we are confident that our proposals have the potential to yield time and cost savings comparable to -- or even greater than -- those achieved with the SAFETEA-LU provisions.

### **VI. Summary**

Thank you for the opportunity to testify. The environmental streamlining provisions in SAFETEA-LU have been effective in helping to expedite project delivery but we can do more to improve on those provisions and we can implement new innovations to further accelerate project delivery. We look forward to working with the committee and USDOT to develop and implement further measures to streamline the environmental review process, so that we can achieve our overall goal of reducing project delivery times.

## APPENDIX A

[HTTP://WWW.ENVIRONMENT.FHWA.DOT.GOV/STRMLNG/NEPATIME.ASP](http://www.environment.fhwa.dot.gov/strmlng/NEPATIME.ASP).

### ESTIMATED TIME REQUIRED TO COMPLETE THE NEPA PROCESS

Environmental Impact Statement (EIS) projects for which FHWA signed a Record of Decision (ROD) in each of the following fiscal years (FY) (October 1-September 30) — FY99, FY00, FY01, FY02, FY03, FY04, FY05, FY06, FY07, FY08, FY09 and FY10 were used to provide the following baseline information. The time reported is the time period from the signing of the Notice of Intent (NOI) to the signing of the ROD.

For the **29 projects in FY99**, the **average** amount of time from the NOI to the ROD is **72.4 months**. The **median value** is **79 months**.

For the **35 projects in FY00**, the **average** amount of time from the NOI to the ROD is **67.2 months**. The **median value** is **60 months**.

For the **31 projects in FY01**, the **average** amount of time from the NOI to the ROD is **63.5 months**. The **median value** is **54 months**.

For the **43 projects in FY02**, the **average** amount of time from the NOI to the ROD is **78.7 months**. The **median value** is **80.1 months**.

For the **41 projects in FY03**, the **average** amount of time from the NOI to the ROD is **73 months**. The **median value** is **66 months**.

For the **35 projects in FY04**, the **average** amount of time from the NOI to the ROD is **78 months**. The **median value** is **55 months**.

For the **39 projects in FY05**, the **average** amount of time from the NOI to the ROD is **77 months**. The **median value** is **61 months**.

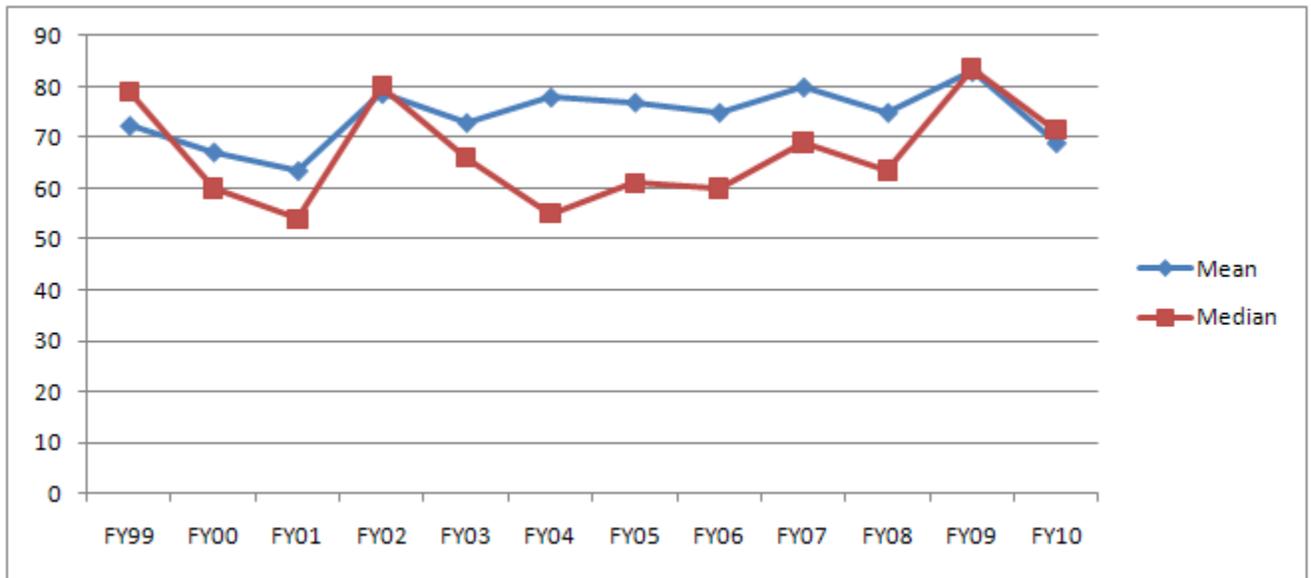
For the **37 projects in FY06**, the **average** amount of time from the NOI to the ROD is **75 months**. The **median value** is **60 months**.

For the **30 projects in FY07**, the **average** amount of time from the NOI to the ROD is **80 months**. The **median value** is **69 months**.

For the **28 projects in FY08**, the **average** amount of time from the NOI to the ROD is **75 months**. The **median value** is **63.5 months**.

For the **32 projects in FY09**, the **average** amount of time from the NOI to the ROD is **83 months**. The **median value** is **83.5 months**.

For the **30 projects in FY10**, the **average** amount of time from the NOI to the ROD is **69 months**. The **median value** is **71.5 months**.



FHWA records for the Fiscal Years 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010:  
 Times are from the signing of the Notice of Intent to the signing of the Record of Decision.