Testimony of

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Hearing on

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

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Chairman Duncan, Congressman De Fazio, members of the subcommittee, my name is Michael Replogle and I am Global Policy Director and Founder of the Institute for Transportation and Development Policy, a 25-year old non-profit organization that works world-wide to support implementation of more environmentally sustainable and equitable transportation and urban development. A civil engineer with more than three decades of experience in transportation policy, planning, and project development, I am a member of the U.S. Advisory Council for Transportation Statistics, and recently served as a member of the U.S. Intelligent Transportation Systems Advisory Council. I am an advisor to the Environmental Defense Fund, where I served as Transportation Director from 1992-2009.

ITDP is actively engaged in helping dozens of cities worldwide plan, design, implement, and operate billions of dollars of transportation improvements. ITDP played a key role in the development of the recently opened Bus Rapid Transit (BRT) projects in Guangzhou, China, Capetown, South Africa, Ahmedabad, India, Jakarta, Indonesia, and several cities in Mexico, which together carry nearly half a billion passengers annually. Working with local governments to plan and develop public bike systems, bicycle and pedestrian networks, and smarter traffic management, ITDP seeks to expand affordable and low-emission travel options that support equitable economic development. ITDP is advising selected U.S. local governments developing BRT projects and smarter parking management.

ITDP works closely with the Climate Works Foundation, The Rockefeller Foundation, the Partnership for Sustainable Low Carbon Transport, Asian Development Bank, Inter-American Development Bank, U.S. Green Building Council, Urban Land Institute, national governments, and other institutions that share the goal of taking to scale successful models for cost-effective, timely, sustainable urban infrastructure development. ITDP is also a member of Transportation for America (T4A), a coalition of housing, business, environmental, public health, transportation, equitable development, and other organizations, whose staff assisted in the preparation of my testimony today, but I am not representing the position of that coalition in this testimony.

Project Delays Can Be Reduced. It is a generally agreed that U.S. federally funded transportation projects take longer to complete than non-federally funded projects, due to various planning, design, procurement, and implementation requirements administered by multiple agencies under dozens of statutes. Thus, when transportation agencies are in a rush to implement, they may find it advantageous to find ways to get the job done quickly with state, local, and private funding. That said, the current federal planning and project review process often improves the quality of transportation projects in important ways.

Federal transportation funding is a valuable asset that can help communities and states do more to meet national mobility, economic development, environmental, health, and energy resource management goals than they could accomplish on their own. Federal transportation law since the mid-20th century has been a work-in-progress to establish a more effective incentive and accountability framework serving these broad goals in exchange for support from scarce federal transportation and general tax revenues.

Nonetheless, unnecessary bureaucratic delays to the planning and delivery of sound transportation projects harm taxpayers, the economy, and the environment. A new transportation authorization bill should include reforms to simplify the project development process and improve planning and project delivery, while retaining safeguards designed to protect the environment and ensure adequate opportunity for informed public involvement in transportation planning and decision-making. A well-designed reform initiative would reduce duplication, increase cost-effectiveness of planning and project reviews, lead to more effective investment and operations, and support needed innovation in transportation systems. But for reform to succeed, resource agencies need to be adequately funded so they can participate effectively in the transportation planning process.

What Causes Project Delays? There is a lack of consensus about what specifically delays federally funded projects. It is clear, however, that some of the largest causes of delays in federally supported transportation project delivery are related to a lack of funding or a lack of consensus about what specific project investment is needed and how projects should be designed. Delays related to environmental laws, such as the National Environmental Protection Act (NEPA) or historic and parks protection statutes (Section 106 and 4(f)), account for only a small share of total transportation project delays, and in most cases these delays arise in relation to a few highly controversial and complex projects that entail large unmitigated adverse impacts.[1] Of all highway projects that received federal funds in 2001, only 3 percent of projects, accounting for 9 percent of funds, had a significant enough impact on the environment to require preparation of an Environmental Impact Statement (EIS).[2] Indeed, nine out of ten federally supported transportation projects underwent little or no formal environmental review, as they were eligible for Categorical Exclusions (CEs) or Findings of No Significant Impact (FONSIs).

SAFETEA-LU Has Helped Avoid or Reduce Delays. SAFETEA-LU contained several provisions intended to improve project delivery. Many of these sought to address the largest causes of project delay with efforts to improve administrative processes and ensure more effective coordination early in the planning process between transportation agencies, resource agencies, and stakeholders. States have reported that because of SAFETEA-LU Section 6001, the environmental, land management, and natural resource agencies are now routinely invited to participate in all planning studies and that the Act has increased involvement of environmental planners in pre-NEPA planning studies, with 20 of 27 state DOTs reporting revisions to their practices.[3]

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[1] Jennifer Dill, "What Influences the Length of Time to Complete NEPA Reviews? An Examination of highway Projects in Oregon and the Potential for Streamlining," Portland State University, Submitted for Presentation at the 85th Annual Meeting of the Transportation Research Board, 2005. Accessed 2/13/11 at: www.dot.state.ak.us/stwddes/desenviron/assets/.../nepareviewtime.pdf

[2] U.S. General Accountability Office, "Highway Infrastructure: Perceptions of Stakeholders on Approaches to Reduce Highway Completion Time," GAO-03-398, 2003. Accessed 2/13/11 at: www.gao.gov/new.items/d03398.pdf

[3] National Cooperative Highway Research Program, "Legal Research Digest 54: Practice Under the Environmental Provisions of SAFETEA-LU," Transportation Research Board, December 2010. Page 19.

This remains the major area where further progress in reducing project delays is most promising. While experience with the SAFETEA-LU reforms has been short, in a recent survey by the Transportation Research Board (TRB), more than a third of all responding State DOTs reported that SAFETEA-LU has prevented or reduced delays. One state DOT commented that:

> *Early involvement and dialogue has led to earlier issue identification and discussion to resolve important issues collaboratively with partnering agencies. Critically flawed projects are identified and have been removed from consideration, thus saving funds and reducing costs… In addition, early collaboration has identified the type and level of environmental studies needed on a project during project development.*[4]

Other reported state DOT responses included such statements as:

> *there is "better resource agency input earlier into the development of alternative alignments that might have delayed the project in the permitting phase"; and "…getting local entities, state, federal and the public engaged early and often has got to reduce delays later in a project."* [5]

Cuts in Resource Agency Budgets Threaten to Increase Project Delays. Cuts in resource agency budgets pose an increasing risk to progress in reducing project delays. As GAO said in a recent report to the Senate Committee on Environment and Public Works:

> *State DOTs, resource agencies, and other transportation stakeholders we contacted recognized some potential benefits of post-SAFETEA-LU changes in environmental reviews, including*
> *• improved project management,*
> *• increased likelihood of weeding out flawed alternatives early, and*
> *• better informed and more involved resource agencies.*
>
> *According to FHWA, these changes institutionalize more disciplined project management, essentially "tightening up" the environmental review process. In addition, these changes put FHWA in a stronger management role. State DOTs and resource agencies cited four main challenges in their efforts to implement the post-SAFETEA-LU changes in environmental reviews.*
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> ***(1) Resource agency resources are limited. Resource agencies cited their core regulatory duties as their main responsibility and told us that resource constraints hamper their ability to take on extra responsibilities. These constraints may limit their ability to fully participate in the early stages of environmental reviews**. [emphasis added]*
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> *(2) Resource agencies' and local public authorities' knowledge of post-SAFETEA-LU requirements is incomplete.*
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> *(3) Existing processes must be adapted to meet the revised requirements.*[6]

When resource agencies are undergoing sharp budget cutbacks, as is the case for most

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[4] Op.cite. Page 17.

[5] Op.cite., page 17.

[6] U.S. Government Accountability Office, "Highways and Environment: Transportation Agencies are Acting to Involve Others in Planning and Environmental Decisions," April 25, 2008, GAO-08-512R Highways and Environment.

state and federal resource agencies today, their capacity to participate during the planning process is sharply curtailed, as it is not a part of their mission and can represent a change in practice from focusing on project specific issues. Even prior to recent budget cuts, resource agencies expressed concern over how limited staffing resources limited their ability to respond to requests for engagement from multiple Metropolitan Planning Organizations (MPOs) as well as the state DOT. As GAO pointed out, states like Ohio, North Carolina, and Texas have 17 to 25 MPOs, making it impossible for a single state resource agency to be concurrently involved in the planning process for each without new staff resources.

To reduce project delays, Congress should examine ways to ensure federal and state resource agencies are adequately funded to allow them to engage in the state and metropolitan planning process so environmental issues can be avoided and addressed earlier in the process. This could be done by creating a set aside of a fixed percentage of Highway Planning and Research (HPR) and metropolitan planning formula funds and/or other transportation formula funds to ensure land management, environmental, and resource agency involvement in state and metropolitan planning and project reviews.

Such funding could also help state natural resource agencies address problems up-front and avoid long delays later in the project development process by ensuring they can map known environmental, historic and other sensitive areas. This allows states to avoid these areas when determining corridor location. The sharing of information also saves times for DOTs as they can check corridor locations using integrated technology instead of sending information to multiple agencies and waiting for individual feedback. While such an approach is already in place in a number of states, including Florida, Massachusetts, North Carolina, and Oregon, such programs are threatened by budget cuts. Instead, they should become the state of the practice in integrated transportation and natural resource planning across America.

Proposed cuts in funding threaten to reduce the capacity of agencies to meet statutory requirements to protect the environment and support counterpart agencies, such as federal and state DOTs. EPA has taken steps to support better coordination of resource and transportation agencies with *NEPAssist,* an innovative tool that facilitates the environmental review process and project planning in relation to environmental considerations. The web-based application draws environmental data dynamically from EPA regions' Geographic Information System databases and provides immediate screening of environmental assessment indicators for a user-defined area of interest. These features contribute to a streamlined review process that potentially raises important environmental issues at the earliest stages of project development.[7]

A proposal by the House Appropriations Chair, Harold Rogers (R-KY), on February 9, 2011, would slash more than $2.4 billion from EPA's budget over the remaining 6 months of the fiscal year. This would represent a 16% cut for EPA's total budget for the year, but an effective 32% cut for the budget in the remaining months. Such cuts threaten EPA's ability

[7] For more information, see https://oasext.epa.gov/NEPA/

to support timely transportation project reviews. To reduce project delays, Congress should protect funding for the Environmental Protection Agency, the Interior Department's Fish and Wildlife Agency, and other resource agencies to ensure they can continue to support timely transportation project delivery.

Oppose Time Limits on Transportation Project Reviews by Agencies. In the face of widespread budget cuts to resource agencies, proposals for more stringent time limits on agency comments in transportation project reviews and for the imposition of financial penalties on agencies that submit comments after time limits have passed amount to veiled efforts to weaken the enforcement of environmental laws. Such time limits are inherently arbitrary, as they tend to apply to a diverse array of projects, from small and simple to massively complex and controversial. They leave little room to adapt to highly variable agency workloads, the adequacy or inadequacy of information provided as a basis for decision-making, and other factors. Interagency partnership agreements, not statutory deadlines, are the appropriate framework for expediting project delivery through effective scheduling and coordination.

Create New Incentives for Timely Project Delivery. Strong partnership and coordination among stakeholders, supported by financial incentives have been successful in engendering early project completion.[8] Congress should consider the recent proposal offered by the Brookings Institution to allow the U.S. DOT to maintain an incentive pool to reward states and metropolitan areas that consistently deliver projects on time while meeting or exceeding environmental standards.[9] Savings from more timely project delivery could potentially offset the costs of the program.

Create New Incentives for Better Transport Planning-Project Review Linkage. The Surface Transportation Project Delivery Pilot program (SAFETEA-LU Section 6005, codified as 23 United States Code (U.S.C.) 327(h)), offered California and four other states the opportunity to take on the federal role in administering the NEPA process. Only California took the necessary steps to assume the appropriate legal responsibility and institutional capacity to pursue this delegation of authority under the pilot program. It appears that California has realized significant time savings by coordinating state agency review of environmental documents. Other states have not been willing to waive sovereign immunity or to ensure appropriate agency resources to take on federal roles.

The California Environmental Quality Act (CEQA) remains a model for other states to copy, requiring not only evaluation of potential mitigation actions to protect the environment, but requiring environmental mitigation to be adopted as part of project implementation. California has also recently adopted the AB 32 and SB 375 legislation, which strengthen

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[8] As noted by Robert Puentes in a recent Brookings Metropolitan Policy Program report, "Moving Past Gridlock: A Proposal for a Two-Year Transportation Law," the American Recovery and Reinvestment Act contained a use-it-or-lose-it provision that states obligate highway dollars by a certain date, and not one state failed to meet the deadline.

[9] Robert Puentes, "Moving Past Gridlock: A Proposal for a Two-Year Transportation Law," Brookings Institution, Washington, DC, December 2010.

regional transportation and land use planning coordination to encourage reduction in the long-term growth in per capita motor vehicle travel to reduce greenhouse gas emissions.

If resource agencies are given resources and a mandate to be engaged in the planning process, they will be better able to consider alternatives and mitigation in transport investment and operation planning and analysis, reducing the need to consider these elements later in the project programming and approval process. This might be done through new kinds of Programmatic Agreements or "Program Delivery Partnering Plans".

A voluntary pilot program might be created in which US DOT, EPA, and other agencies work with certain states to determine how to accelerate project delivery through more thorough federal review of states' long range transportation plans, satisfying NEPA requirements through the planning process so that fewer NEPA requirements need to be satisfied at the project review level. In this way concerted deliberations about projects might take place much earlier in the process. States with strong environmental review and planning processes – combining such features as California's CEQA and SB 375 – might be permitted to waive steps such as the draft EIS.

Congress should not, however, take any steps to weaken the vital protections of NEPA in such a process. The 1970 NEPA law remains the *Magna Carta* of environmental law, ensuring adequate public notice and comment opportunities before major federal decisions are made, ensuring consideration of alternatives to proposed major action, and ensuring consideration of actions that might avoid or mitigate adverse impacts to the natural environment or communities. A draft EIS is often the first chance for the public to examine the detailed alternatives and characteristics of proposed major transportation actions. The public comments provided on the draft EIS enable agencies and project sponsors to consider ways to improve or modify project proposals prior to a final EIS.

Increase Use of Mitigated FONSIs and Mitigated CEs. Increased use of Mitigated Findings of No Significant Impact (FONSIs) and Categorical Exclusions (CEs) could help provide a basis for advancing some transportation projects faster. The Council on Environmental Quality (CEQ) issued Guidance on Mitigated FONSISs on January 21, 2011 (Federal Register Vol. 76, No. 14, pg. 3843-3853), discussing the framework under which many projects can be approved without requiring a more detailed EIS. Mitigation commitments should be explicitly described as ongoing commitments with measurable performance standards and adequate mechanisms for implementation, monitoring, and reporting. Agencies should provide for public participation and accountability in the development and implementation of mitigation and monitoring efforts described in their NEPA documentation. This could be done through both project level initiatives and through programmatic agreements. Mitigated Categorical Exclusions (CEs) and Mitigated Programmatic CEs, following the same principles, could also be facilitated to expedite project delivery, while still safeguarding the environment. But in each of these cases, adequate engagement of resource agency staff early in the planning process to help design and implement effective impact avoidance, mitigation and monitoring programs will be required. These approaches are likely to flounder if resource agency budgets are sharply cut back.

Congress Should Encourage Greater Transportation Project Design Flexibility. Currently the Federal Highway Administration requires all projects to meet the highest of design standards even when potential traffic volumes may never be realized – at times this results in the over-design of projects causing in community impacts and concerns, while at other times it can bog down projects in drawn out exceptions requests. Though it varies state-by-state, traffic engineers in city and state DOTs are often required to follow state design guidelines, which generally follow the AASHTO Green Book and the Manual on Uniform Traffic Control Devices (MUTCD). These manuals focus primarily on maximizing the level of service and the speed of mixed traffic vehicles, with little thought to transit priority, traffic calming, complete streets, or maximizing the number of people carried efficiently in a corridor. Traffic engineers are generally reluctant to deviate from these standard designs.

One example of delay caused by design standards is the Meadowville Interchange near Richmond, Virginia. This project would provide a new interchange on Interstate 295 to serve the Meadowville Technology Park – one of the premiere economic development sites of the state. Virginia was unable to find enough revenue to fund the preferred design of the project – however working with the federal and local government it was able to cobble together $20 million to build a scaled down version of the interchange. However, according to FHWA standards, this interchange would potentially not be able to handle traffic volumes 20+ years into the future at a passing level of service. Despite the fact that the next interchange would be failing in 20 years and that the new interchange would help improve traffic flow there, FHWA refused to approve the scaled down project. It took 10 months for FHWA to finally agree to "conditionally approve" the project – and FHWA may require that the state "revisit" the project in 10-15 years. This delay impacted access to a key economic development site and put the delicate balance of funding for the project at risk.[10] State and local DOTs have expert engineers that should be able to make these decisions without having to go to Washington to ask permission – especially when a project – while not perfect – will make things better than if nothing is built.

Inflexibly applied state DOT design standards can also get in the way of project implementation. An example of this has arisen in the still delayed effort to put a full Bus Rapid Transit (BRT) system on San Francisco's Van Ness Avenue. Van Ness Avenue is also US Highway 101, and as such, is under the control of Caltrans, the state department of transportation. Caltrans administrative procedures require the city to adhere to strict rules, such as retaining an equal vehicular throughput on Van Ness, even if automobiles are diverted or traffic is reduced by the improved transit services and changes in road configuration. This requirement would be easy to meet in the developing world, where creating a bus lane will generally increase the corridor's throughput substantially, but this is less than certain the United States. Caltrans street design requirements are also antiquated and do not easily adapt to transit- and pedestrian-friendly design. Exceptions will be necessary and moving through this bureaucracy is proving to be difficult for those involved in the project, which remains stalled.

[10] For more information, http://www.meadowville.com/mtp_news.asp.

To reduce project delays, Congress should encourage DOTs to pilot test alternative road and public transport infrastructure designs where these might solve problems effectively.

Consider Further Analysis of How to Integrate Planning and Project Reviews and Concerns About AASHTO Proposals for Expediting Project Delivery. Attached as a part of this testimony is a cover letter, dated April 9th, 2009, from the Environmental Defense Fund, National Recreation and Park Association, Smart Growth America, Southern Environmental Law Center, and the Natural Resources Defense Council, to the leadership of the House and Senate transportation committees, concerning strategies for integration of the transportation planning and project review process. The cover letter conveys a paper, "Reforming U.S. Transportation Planning Procedures to Support National Goals and a More Effective Transportation Project Review Process," dated March 26, 2009, which is also part of this testimony. This examines recent developments in the relationship between transportation planning and project level environmental reviews and recommends reforms that could help build public support for increased transportation funding, reduce legal and political conflict, and help expedite good transportation investments.

The paper also examines proposed changes to law to expedite transportation project delivery that have been proposed by the American Association of State Highway and Transportation Officials (AASHTO). Some of AASHTO's ideas merit support if implemented in the right framework, but others would weaken environmental protections and exacerbate delays, rather than improving the planning and project review process.

Thank you for the opportunity to testify today. I would be pleased to answer any questions from the subcommittee regarding these matters.