

## Special Report: TRB Conference on Streamlining and Stewardship

### Speakers Say Better Planning, Technology Training Key to Streamlining, Stewardship

Santa Fe, N.M. – Integration of environmental and transportation planning and improved technology and training are necessary to streamline environmental reviews for transportation projects while ensuring better stewardship, according to speakers at a joint conference of Transportation Research Board committees held Sept. 11-14.

Titled “*Environmental Streamlining and Stewardship: Fact or Fiction?*” the conference brought together government officials and private sector transportation and environmental experts to analyze progress in achieving environmental streamlining and stewardship for transportation projects and consider ways to improve the process.

Speakers addressed a joint mid-year meeting of three TRB panels: the Environmental Analysis in Transportation Committee, the Historic and Archeological Preservation in Transportation Committee, and the Native American Transportation Issues Committee.

An expert panel addressed streamlining and stewardship issues in opening and closing sessions, taking into consideration a range of individual presentations and facilitated group sessions. Speakers and audience members alike were asked to provide input as to “the ideal” world of streamlining and stewardship, obstacles to reaching the ideal, and tools that can be used or developed to improve the state of the practice.

Overarching themes included the need to bring environmental considerations into transportation planning, the need for improved communications and better relationships among transportation and resource agencies, increased use of technology such as geographic information systems for transportation projects and programs, and making use of new flexibility and resources provided in the surface transportation reauthorization bill to help achieve streamlining and stewardship goals.

The panel included

- Lamar Smith, team leader for training, technical assistance and technology in the Federal Highway Administration’s Office of Project Development and Environmental Review;
- William Malley, an attorney with Akin, Gump, Strauss, Hauer and Feld, in Washington, D.C., specializing in NEPA implementation for transportation projects;
- Michael Repogle, transportation director with Environmental Defense.
- Alan Downer, representing the Navajo Nation historic preservation program;
- Don Klima, representing the federal Advisory Council on Historic Preservation; and
- Wayne Kober, president of Wayne W. Kober Inc. transportation and environmental consulting firm, and retired director of the bureau of environmental quality at the Pennsylvania Department of Transportation;

#### Need to Streamline

The concept of environmental streamlining was incorporated into the 1998 Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) to address concerns that environmental reviews and permitting requirements and compliance with the

National Environmental Policy Act were delaying surface transportation projects funded by the law.

Section 1309 of TEA-21 called for speeding up project delivery through integrated permitting and review processes, participation by all relevant agencies in the process, coordinated time schedules, and dispute resolution provisions. But despite these goals, many transportation practitioners complained that projects continued to face delay. Meanwhile, resource agencies, facing inadequate resources to meet increasing workloads from transportation project reviews, found themselves struggling to speed up their reviews while meeting the mandates of their own governing statutes.

Malley, who serves as AASHTO's legal counsel on issues related to streamlining, told the conference audience that over the years critics have complained that the environmental review process for transportation projects that is costly and time-consuming. Documents prepared to comply with NEPA have reached thousands of pages, he said, prompting some to ask whether the process is something people can understand, or just an "elaborate ritual" that produces a formulaic document without engaging the public.

Others have complained that the NEPA review process impedes collaborative approaches, that it is a predictive process with no follow-up, and is easily bogged down, Malley said.

Problems often begin as disputes over projects that evolve into disputes over process, he said. The legal framework of environmental requirements that projects must navigate is a "patchwork quilt," with authorities that are widely dispersed, procedures that are not well coordinated, and technical tools – such as air quality models -- that are increasingly complex and difficult to explain.

And legal challenges to project decisions "spur risk-aversion," Malley said, further complicating the review process.

### **Progress, Yet Work to be Done**

In an effort to address these concerns, he said, streamlining efforts have focused on better agency coordination, concurrent reviews, and establishing schedules and deadlines for the agency reviewers.

On a separate track, transportation agencies have begun advancing environmental stewardship by embracing an "environmental ethic," with a proactive approach that goes beyond compliance. Transportation agencies increasingly are looking to advance interagency collaboration and work with their counterparts in a way that is not adversarial, and they have demonstrated a "real commitment" with dedicated dollars and staff, Malley said.

And while there are "encouraging signs" – including interagency agreements and cooperation and a growing body of streamlining and stewardship best practices – Malley said there is little evidence that the timeframes for completing environmental reviews has lessened. In addition, transportation agencies continue to face the perception that speeding up the environmental review process equates to cutting back on environmental protections.

Regarding stewardship, Malley said "encouraging signs" include greater flexibility to fund stewardship measures, and he noted that organizational and cultural changes are now evident in many DOTs. But concerns remain regarding the degree to which such changes are permanent and entrenched within the agencies, he said.

According to Malley, "Streamlining and stewardship are real commitments – it's not just talk."

And although much progress has been made on streamlining and stewardship since TEA-21, much work remains to be done. Predicting that new requirements in SAFETEA-LU will help to advance the cause, Malley provided an explanation of the law's environmental review process (see related story below).

### **Origins of Streamlining, Stewardship**

Kober—who has worked on environmental management for transportation projects for over 30 years—agreed that transportation sector has come a long way, and that much remains to be done to realize the ideals of environmental streamlining and stewardship.

Streamlining first came into play in 1978, when the Council on Environmental quality issued regulations to implement NEPA, said Kober, who now works as a consultant to AASHTO providing technical assistance to state DOTs. Principles such as “scoping” where people got together at beginning to develop a plan of attack – were established at that time, he said. If people did scoping today the way they should according to those regulations, it would go a long way towards streamlining the process, Kober said.

NEPA regulations issued in 1980 by the Federal Highway Administration and Federal Transit Administration established the concept of categorical exclusions and environmental assessments, he said, and then “happy days” came along with the Finding of No Significant Impact (FONSI). The Pennsylvania Department of Transportation developed the first programmatic categorical exclusion, he said, and in 1987, FHWA and FTA revised the regulations and said historic bridges could qualify for a categorical exclusion.

But it wasn’t until 1996, in preparation for TEA-21, Kober said, that he and a team of other state DOT officials got together and developed the AASHTO environmental streamlining principles, he said. Although many members of the AASHTO community were “very upset” with the notion, many of the principles got into TEA-21, he said. And the most important principle was at the core, he said: “respect people and establish relationships.”

“That’s what Section 1309 was designed to do.” And now, he said, “people are talking to each other.”

Kober said the dialogue at the conference was “reflective of what’s going on around the country. Tribes, attorneys, FHWA, the Advisory Council, we’re all talking to each other.”

“That wasn’t the case when I started this business. We weren’t talking to each other. We did the environmental documents, sent them off for comment, and then all hell broke loose,” Kober said.

“It’s not perfect, but I think the conversation is really there,” he added.

### **Advances in Stewardship**

The concept that transportation agencies should go beyond streamlining environmental reviews and pursue environmental stewardship began in 2000, Kober said, when AASHTO presented the issue to state transportation secretaries at its annual meeting. The concept was well-received, and was the subject of similar presentations over the next three years.

Meanwhile, AASHTO launched the Center for Environmental Excellence in 2001, as “a place to share information, train people, and provide technical assistance so we can learn from each other,” Kober said.

The federal highway and transit agencies have turned from a regulatory approach aimed at streamlining to an information-sharing and tool-development approach centered on stewardship, Kober said.

And states are at various stages of stewardship efforts, with some focused on projects, some on programs, and the most ambitious looking at environmental management systems. At the same time, FHWA and AASHTO both have been recognizing best practices in environmental stewardship through annual awards programs.

In 2002, President Bush issued Executive Order 13274, “that has environmental stewardship right in its name,” Kober said. That effort “may not have not have gotten there yet,” Kober said, but “the task force that’s been formed to help implement the order can move beyond the streamlining focus, and move into stewardship. And I think it’s ready to do that.”

Kober also stressed the importance of the 1996 Thinking Beyond the Pavement conference that launched the context-sensitive design movement. That conference resulted in a “real

commitment” by transportation agencies to better integrate transportation solutions into their environment. Today, there is extensive training being conducted by FHWA and even in college curriculums to teach engineers about context-sensitive approaches, he said.

“What we’re talking about is respect, understanding, and collaboration. “That’s what transportation planners and engineers need you to help them do,” he told the audience, referring particularly to cultural resource experts.

“When it comes to context-sensitive design, the cultural resources people have the potential to help the DOTs really understand the environment. Not just the cultural aspects, but the geology, everything, Kober said.”

### **Environmental Thinking in Transportation Planning**

According to FHWA’s Smith, environmental streamlining and stewardship for transportation projects “are closely related.” Ultimately, he said, “It’s not the process in and of itself that matters, it’s the outcome. It’s how we get to the good outcomes.”

Although there a tendency to equate the terms stewardship and streamlining, Smith said, there is a need to balance the equation by providing additional resources, training, and developing better relationships to achieve stewardship.

Smith and other speakers also called for better “integration of environmental thinking” into transportation planning.

Alan Downer, representing the Navajo Nation Historic Preservation Department, said that every day there is someone telling the historic preservation office “you’re holding up my project.”

But in reality, Downer said, delays result when environmental reviews are not started until the end of the process.

Commenting that in many cases, “streamlining is just a way to make mistakes faster,” Downer said the key is to “really integrate cultural resources and environment into the planning process.”

Malley also said there is a need to “take more of a look” at environmental concerns during transportation planning.

Replogle echoed the call for better integration of environmental issues and land-use planning into transportation planning along with better consideration of project alternatives.

### **The ‘Real Frontier’**

Kober said integrating environment into transportation systems planning is the “real frontier”.

“Transportation planning is where the real decisions are made – not in project development,” he said.

If you want to put real resource protections into transportation, he said, “you have to put it into planning.”

That is why the environmental community is adamant about transportation conformity and transportation planning, he said. “You have to get it in before the project.”

Kober urged participants to get involved in efforts such as FHWA’s course on integrating NEPA and planning.

“You have to get involved now, because it’s the train that’s leaving and it’s going to be the place to go. Because we’ve done about as much as we can project-by-project,” he added.

### **Better Decisionmaking**

Don Klima, with the federal Advisory Council on Historic Preservation, warned audience members that the term “streamlining” itself should be avoided, advising audience members to “lose it like a bad headache.” The term “comes across as self-serving” for transportation agencies that want to get projects approved faster, Klima said.

Instead, he advised a new focus on improving project decisionmaking. He urged better training on shared decision-making as part of the interagency consultation process and better communication, including making Section 106 historic preservation reviews a “totally paperless process.”

### **Future Opportunities**

While programmatic agreements, categorical exclusions, and environmental assessments are good as temporary fixes, Kober said the long-term solution is to “integrate these business processes together so they become transparent.”

He said SAFETEA-LU’s new flexibility for interagency funding agreements allows federal transportation money to be spent “to improve how you communicate, how you do database development, and how you understand context.”

“You can do more than just put the pavement out there,” Kober said.

In addition, Kober and other speakers also urged increased use of tools such as Geographic Information Systems.

Systems such as cultural resources GIS databases need to go beyond listing the sites in a database, Kober said. He called for a better understanding of the context of transportation projects – including farmland, bridges, watersheds, habitat conservation, and cultural resource districts.

Speakers and conference attendees pointed to model efforts, such as the Oregon statewide bridge delivery program and Florida’s Efficient Transportation Decisionmaking, process as ideals in collaboration, development and use of tools, and streamlined review processes.

### **Performance Measures Vital**

Kober also suggested that measuring environmental performance also is vital for transportation projects and programs.

He cited a need to “move from the NEPA reactive model” and to go beyond traditional impact assessment and mitigation. Policymakers need to ask, “What do we want the community and the environment to look like?”

He also pointed to a focus within AASHTO on helping states integrate environmental performance into planning, design, construction, maintenance and operations through environmental management systems.

### **Principles for Streamlining, Stewardship**

Michael Repogle, with Environmental Defense, suggested that transportation agencies could achieve effective environmental streamlining and stewardship by following six “principles”:

- Facilitate early, effective, continuous involvement of stakeholders and resource agencies;
- Foster interagency coordination and resource sharing;
- Properly classify and scope project reviews;
- Consider an array of alternatives, including partial build, demand management, pricing, smart growth, and mode choices, seeking to avoid and minimize adverse impacts;
- Effectively consider secondary, cumulative, indirect impacts, induced demand, health, equity impacts; and
- Better integrate transportation, natural and community resource planning.

Replogle said transportation plans and reviews typically “go wrong” in one of three ways: they neglect alternatives that could reduce or avoid adverse impacts, ignore indirect impacts, or discourage stakeholder engagement.

According to Replogle, progress on streamlining and stewardship has included extensive training and outreach to improve interagency understanding and process development. In addition, some project reviews are being done in shorter time, he said.

And while some agencies are developing better tools to analyze impacts, many models fall short of best practices, he said.

In addition, he said, resource agencies are still “plagued” with inadequate resources, and stewardship progress “remains highly uneven” among the state DOTs.

Replogle described a 2004 report in which environmental groups rated the projects designated for priority review under Executive Order 13274. The report gave only one of the priority projects a “green light” rating for good environmental stewardship, while six received a “yellow-light” rating indicating aspects should be reconsidered, and another six received a “red-light,” indicating they did not adhere to stewardship principles.

Replogle described several of the administration’s priority projects, and charged that many of them fell short of stewardship goals due to inadequate consideration of alternatives and inadequate mitigation.

Regarding environmental provisions of SAFETEA-LU, Replogle said the final bill provided a “fairly effective balance.”

While the measure affirmed the authority of transportation agencies over purpose and need and alternatives, he said, resource agencies will continue to serve a “check role” to ensure that alternatives are adequate under other statutory responsibilities.

Although air quality conformity provisions were weakened, he said, the conformity process itself was “confirmed.”

The law also retained vital protections requiring all possible planning to minimize harm to parks and wildlife refuges under Section 4(f) of the Department of Transportation Act, he said, and provisions delegating federal review authority to states retain requirements for public involvement, judicial review, and federal oversight.

According to Replogle, transportation agencies can achieve “real stewardship” by:

- Designing investment packages that avoid and fully mitigate adverse impacts by managing corridor traffic growth, land use impacts, and remediation of impacts from the current system.
- Developing sustainable transportation systems with cleaner vehicles, cleaner fuels, better options for walking, biking, public transport, ridesharing, communications, smart growth, smart travel pricing, affordable housing growth, smart travel pricing, and affordable housing.
- Integrated planning for smart investment and system operations: including linking housing, economic development, natural resources, public health, and transportation.

## Top Priorities

Asked to describe the top priorities for streamlining, the panel members echoed numerous themes repeated throughout the conference.

According to Replogle, transportation practitioners should celebrate successes – those projects that have obtained consensus approval.

In addition, he suggested using the extra year for planning provided in SAFETEA-LU “to do a better job of considering alternatives.” Replogle stressed the need to better integrate transportation and land use planning, including a new focus on the “breathtaking new investments” for walking, biking and other modes provided in SAFETEA-LU.

And transportation agencies should work with environmental resource agencies in implementing their lead agency authority to establish project purpose and need and alternatives, Replogle said. Transportation agencies need to consider impact avoidance and mitigation needs, as well as public concerns, he said, keeping in mind that resource agencies still have to meet their own responsibilities.

In response, Kober said that there is not a lot of conservation planning data available for transportation agencies to use, and what is available “is pretty weak.” He suggested that environmental advocacy groups should focus on getting increased funding to environmental agencies. As it is, he said, environmental planning is being conducted by DOTs.

Replogle replied that in achieving stewardship and streamlining “you have to follow the money.” With billions of dollars in infrastructure investments, the transportation sector has a huge potential for adverse impacts, he said. And “fiscally hard-pressed” local agencies and resource agencies will look to the transportation sector to help them address these impacts.

“It is not fair or reasonable” to say that transportation agencies cannot participate unless resource agencies get additional funding, Replogle said.

The sectors “have to work together; there needs to be give and take,” he added.

In addition to bringing environmental considerations into planning, Malley called for expanding use of GIS and other data management technologies, developing and funding programmatic approaches, and institutionalizing change within the DOTs.

FHWA’s Smith stressed the need for transportation projects to address indirect and cumulative impacts, and to make good decisions up-front.

Education and training is important, Smith said, urging individuals to develop training plans and institutions to develop curriculums and competency-building initiatives.

Klima stressed the need for better interagency consultation, communication, and training.

And Kober observed a need for practitioners to “change paradigms.” People need to “learn how to engage,” he said. “Don’t just look at projects as they come out of the mill, look at the assembly line,” he said.

He urged the audience to participate in development and implementation of new tools. Projects already underway include a model for integrating environmental factors into transportation systems planning and development of a Web-based software for environmental information management and decision support systems, Kober said.

And opportunities for new tools such as GIS will be advanced through generous funding provided for environmental research in the new surface transportation bill, including the new Surface Transportation Environmental Cooperative

Research Program and the Future Strategic Highway Research Program, he added.

Kober also urged practitioners to “take the role of leadership yourself.”

“Dedicate yourself, work hard, and make it happen,” he advised.

Kober said his definition of environmental streamlining is: “A collaborative process to plan, design, build and maintain a context-sensitive transportation solution that protects and enhances the natural and human environment.”

According to Klima, environmental streamlining should not be a goal in and of itself, but rather, a means to an end. It should focus on delivery of the best possible project, he said.

The conference included numerous other sessions describing case studies of streamlining efforts and cultural resource issues across the country. Presentations from the TRB joint committee meeting will be compiled and made available through the TRB committees.

### **Review Process Called ‘Win-Win,’ As Officials Promise More Guidance**

SANTA FE, N.M. – The environmental review process for transportation projects established under the new highway funding bill will present a “win-win” opportunity for transportation project delivery and environmental protection, an environmental attorney told an audience of the Transportation Research Board conference on streamlining and stewardship on Sept. 12.

Attorney William Malley said the important environmental features of the new surface transportation law include changes to the planning process, changes to National Environmental Policy Act review process, delegation of authority to state DOTs; changes to Section 4(f) requirements for historic resources, parkland, and wildlife refuges; and changes to air quality conformity requirements.

He focused on the new environmental review process established under Section 6002 of the law, which he said will promote streamlining and stewardship and preserve existing authorities while leaving substantial flexibility for state DOTs, he said.

Lamar Smith, team leader in FHWA’s Office of Project Development and Environmental Review, also gave a run-down of some of the primary provisions of the new federal surface transportation law and referred the audience to the interim guidance on implementation of the planning and environmental issues issued by FHWA and FTA on Sept. 2. The guidance was posted on FHWA’s Web site on Sept. 9.

Smith also described several additional guidance documents to assist in implementing the new law’s provisions soon to be released by the agency.

#### **New Review Process Described**

Malley gave a detailed description of SAFETEA-LU’s new environmental review process. He told the audience that the new process should:

- give the lead agency greater responsibility for overall management of the process;
- ensure all agencies are at the table;
- ensure a role for agencies and the public in defining purpose and need and range of alternatives;
- establish a “normal range” for comment periods – while allowing for longer periods;
- support concurrent compliance with NEPA and other requirements, such as Clean Water Act Section 404, by allowing more detail for the preferred alternative;
- allow funding for activities that expedite NEPA reviews, but that occur outside the NEPA process; and
- encourage faster resolution of any litigation after NEPA is complete.

But he also cautioned that the provisions do not “magically speed up the process.” Malley said the provisions do not reduce resource agencies’ authority, reduce public opportunities for comment, require “rigid” comment deadlines, or alter other laws.

### **More Guidance Coming**

Smith said that upcoming guidance to address implementation of the Section 4(f) “de minimis” provisions for historic resources and parkland should be issued by the end of September. The provision will be implemented slightly differently for historic resources – which are subject to the Section 106 process under the National Historic Preservation Act – than for parks, recreation areas, and wildlife refuges.

The agency also has a goal to issue regulations clarifying the prudent and feasible standard under Section 4(f) within 270 days of the law’s enactment, he said.

In addition, Smith said “question-and-answer” guidance will be issued on implementation of the pilot program to delegate authority for NEPA implementation to 5 states: California, Texas, Oklahoma, Alaska, and Ohio. The FHWA guidance will address numerous questions the agency has received on the program, Smith said.

Regarding the new law’s 180-day statute of limitations for legal challenges, Smith said the provision is effective immediately, although the agency must establish a mechanism for submitting notices of agency decisions under NEPA for publication in the *Federal Register*. Under the provision, the 180-day period would begin upon publication of a notice of the agency decision. Such decisions could include NEPA-related decisions, such as records of decision, categorical exclusions, findings of no significant impact, or resource-specific decisions, such as Clean Water Act Section 404 permits.

Although notices of intent under NEPA are filed by the Environmental Protection Agency, notices of other types of project decisions have not been required in the past, and FHWA must resolve some issues related to publication of these types of notices, Smith said.

### **Details of the Review Process**

Malley gave a detailed overview of the bill’s environmental review procedures, which he said are similar to existing practice, but use new terminology and may require changes in state processes.

The new process must be used for all projects involving an EIS and is optional for use on other types of projects, he said

The U.S. DOT must be the lead agency for projects requiring its approval, Malley said, and must invite all agencies with an interest in the project to be “participating agencies.”

The bill also has provisions for the transportation agency to name “cooperating agencies,” and requires DOT to establish a coordination plan that addresses interagency and public coordination. The plan may be incorporated into a memorandum of understanding, it may be program-wide or project-specific, and it may include a project schedule developed in consultation with participating agencies.

Regarding identification and resolution of issues, the lead agency must provide information about environmental and socio-economic resources and general locations of alternatives. And participating agencies must identify any “issues of concern” – including issues that could substantially delay approval or result in denial of a permit. The issue-resolution process can be invoked by project sponsor or a governor.

### **Purpose and Need, Alternatives**

The measure also includes new provisions regarding determinations of project purpose and need, specifying that such determinations are the responsibility of the lead agency for its own studies. But it also requires an “opportunity for involvement” by agencies and the public in defining purpose and need. The new law also specifies that purpose and need may include goals related to achieving objectives identified in a transportation plan, supporting local land use and growth objectives, and serving national defense and security needs.

Determining the range of alternatives to be considered also is the responsibility of the lead agency, after providing “opportunity for involvement” by agencies and the public. Alternatives are determined in collaboration with participating agencies, and the preferred alternative may be developed to a higher level of detail than other alternatives.

The review process includes new deadlines, with a maximum of 60 days for draft EIS comments and 30 days for all other comment periods. Longer time periods may be set by USDOT, “for good cause.” The law also specifies that none of its provisions shall reduce any time period provided for public comment under existing federal law or regulation.

The law continues to allow transportation agencies to provide financial assistance to regulatory and review agencies, and specifies that activities are eligible for such funding if they “meaningfully contribute to expediting” the process. Malley said examples of eligible activities could include pre-NEPA transportation planning activities, developing programmatic agreements, resource mapping, and dedicated staffing and training. And federal, state, and tribal agencies are eligible, he said.

Another significant provision establishes a 180-day statute of limitations that applies to decisions by any federal agency approving a highway or transit project. The 180-day period begins upon issuance of a *Federal Register* notice of decision, he said. And each federal agency decision is a separate action and may have a separate 180-day period.

The new process repeals the environmental review procedures established under Section 1309 of TEA-21, Malley said. At the same time, the SAFETEA-LU provisions “grandfather” any state environmental review process that was approved by U.S. DOT under TEA-21. State processes, such as Florida’s Efficient Transportation Decisionmaking (ETDM) process, would be allowed to continue.

An overview of environmental and planning provisions of the SAFETEA-LU bill has been posted on AASHTO’s Center for Environmental Excellence Web site, under the Hot Documents tab.