

## Federal Reauthorization Policy Paper: Environmental

Title: **Environmental Stewardship: Transportation Investment Program to Support a Healthy Environment**

Prepared by: Carol Lee Roalkvam for Megan White, Brian Smith, Charlie Howard

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### **Executive Summary**

Washington State has a great track record of delivering projects that combine transportation and ecosystem improvements. We warmly support the recommendations made by the congressionally established National Surface Transportation Policy and Revenue Study Commission for increased funding (from 5% to 7%) for environmental stewardship as a part of the Federal surface transportation program.

Several national transportation organizations (including AASHTO) have indicated there is momentum at the federal level to change the federal environmental review process. Our view on the environmental process-related recommendations is that reform should target the alignment of regulatory requirements and providing tools that ease the procedural burden federal environmental regulations. We support the efforts to align various federal requirements, including aligning National Environmental Policy Act (NEPA) with other acts protecting endangered species, water, and air (ESA, CWA, CAA), and to clarify federal roles in conflict resolution.

NEPA compliance plays a very important role in public and agency decision making; and with our state equivalent (SEPA) we want to make sure environmental review is consistently fair, open and accountable. Washington State supports the Commission's concept of a consolidated environmental program. However, Washington State does not want "streamlining" to result in delegation of federal oversight. The state enjoys a positive working relationship with federal partners and is not in a position to take over their roles of working through the federal environmental processes. Washington State advises caution to those who push for full delegation.

### **Background**

The National Surface Transportation Policy and Revenue Study Commission (Commission) recommends a consolidated program to replace several existing environmental programs. The Commission believes the reform will provide more flexibility to States in their efforts to mitigate the environmental impacts of transportation. The Commission further recommends 7% of total funding (an increase of 2%) should go into four areas: Air quality, vehicle retrofit, transportation enhancements, programmatic mitigation (such as habitat banks). They call for creation of a Cabinet-level reconciliation process to which the U.S. Department of Transportation can appeal adverse decisions.

Please note that the Study Commission did not address climate change and greenhouse gases in their recommendations on environmental stewardship. Much stronger climate change and transportation proposals are very likely to emerge. AASHTO is recommending the creation of a new “Climate Change and Air Quality Program to replace the Congestion Mitigation and Air Quality (CMAQ).

AASHTO’s policy papers also focus on environmental performance and streamlining. Key recommendations are to promote integrated planning and programmatic approaches, expand delegation, streamline current processes and examine effectiveness of the Clean Air Act’s conformity requirements.

USDOT (July 29, 2008) urges reform as well and suggests national performance standards and further streamlining of the environmental review process. USDOT proposes a new “mitigation-based alternative to the environmental decision-making process” which would expand the use of watershed-scale solutions.

There is a widely held belief that NEPA takes too long – especially for complex projects requiring an EIS. SAFETEA-LU included several new NEPA process improvements implemented nationally, and piloted delegation of FHWA’s NEPA responsibilities (tested only by 1 of 5 states, CA). The new law clarified process review timelines and made federal project dollars eligible for funding involvement of natural resource agencies and tribes if tied to expedited review. Reauthorization proposals from AASHTO and USDOT call for continued process improvements. They propose specific streamlining measures for environmental review process, including:

- modify and simplify SAFETEA-LU Sec. 6002 new EIS process;
- changes to NEPA to eliminate or condense the Final EIS;
- designate one lead USDOT agency to approve plans and projects with multiple USDOT actions or funding sources;

Options with Pros and Cons of each option - include benefits and/or costs to the state in your analysis

**NEPA Reform:**

California is piloting the full NEPA delegation acting on behalf of Federal Highway Administration during project environmental review and decision-making. WSDOT is tracking the pro’s and con’s of California’s experience.

In WA State, we rely on joint NEPA and SEPA processes. We favor administrative delegation over full delegation (full delegation would require WSDOT to act as the federal lead, and state attorneys would be the ones to defend us in federal court if challenged). Since 1999, Washington State has very effectively applied administrative delegation from Federal Highways that allows WSDOT to administer the simplest projects. The majority of our projects are categorically exempt. In the last biennium, we completed 944 projects classified as categorical exclusions under NEPA. Of those, 566 were signed by FHWA and 388 were completed by WSDOT without FHWA signature

under our joint agreement. We have two legislative reviews (audits) of the environmental review process as it relates to transportation project delivery. The NEPA process was not found to be the cause of delay; major causes were funding uncertainties, design changes, lack of adequate agency staffing, new or changes in regulation. See links:

<http://www.leg.wa.gov/JLARC/Audit+and+Study+Reports>  
<http://www.leg.wa.gov/JLARC/Audit+and+Study+Reports/2005/05-14.htm>

Washington State should recognize that proposals that actually amend NEPA will be extremely unpopular. If the reforms are only in reauthorization and are limited to USDOT's NEPA implementation then, we should advocate along with AASHTO for the simpler Final EIS, and possibly an "EZ Form" as rumored. SEPA's checklist is a good model of an EZ form.

Our state's little NEPA (SEPA) is equally time consuming for EIS-level projects and we would not gain any efficiency if SEPA were to satisfy NEPA. Further, additional requirements to address **climate change** in SEPA will extend the scope of SEPA compliance beyond NEPA.

#### **Environmental Stewardship:**

Environmental stewardship in our state is a strongly held value. WSDOT is active in state efforts: the Biodiversity Council, Mitigation that Works, Puget Sound Partnership. When commenting on SAFETEA-LU to Congress we expressed strong support for integrating natural resource planning with transportation planning. We have many examples of good work in this area (I-90 is most well known).

Stewardship takes resources. Although each of the current programs has constituencies who will seek to maintain the status quo; we see real value reform that increases the flexibility and multiple benefits of our investments. Some examples are: storm water retrofit projects on existing highways or other transportation facilities (particularly at critical locations or benefitting critical receiving waters such as Hood canal and the Puget Sound), or for wildlife passage restoration or enhancement, or for advance mitigation, landscape scale activities benefitting multiple projects and species.

#### Subcommittee Recommendations

All three national forums are pushing for wider application of habitat banks, alternative and advance mitigation – WA State should warmly support these ideas.

Washington State should support the efforts to align various federal requirements. Much more productive would be federal regulatory reform to align NEPA with ESA, CWA, CAA, and to clarify federal roles in conflict resolution (especially between CEQ, EPA, FTA and FHWA). This is a critical need.

CMAQ program should be modified to address climate change/GHG reduction activities.