Chairman's Message

by Carol D. Cutshall
Director, Bureau of Environment
Wisconsin Department of Transportation

Congratulations to all who made the Conference on Environmental Research Needs in Transportation such a big success. As many of you know, the Conference was held in Washington, D.C., March 21-23. Our Committee took the lead in organizing the conference with the sponsorship of the Federal Highway Administration, Federal Transit Administration, Environmental Protection Agency, American Association of State Highway and Transportation Officials, Center for Transportation and the Environment, Association of Metropolitan Planning Organizations, and the Surface Transportation Policy Project. This was the third Environmental Research Needs Conference we have organized. Previous conferences were held in Denver in 1991 and Washington in 1996.

More than 200 experts from government, universities, non-profits and the private sector worked for two and a half days in 15 groups to produce a list of top priority research problem statements. It was exciting to see the intensity of effort, the interest in sharing ideas, the cooperation among groups with overlapping concerns, and the tough compromises necessary to develop the final lists.

Special thanks goes to my Co-Chair, John Fisher, Director of the Center for Transportation and the Environment at North Carolina State University; to the Conference Steering Committee; to the facilitators of the subject area workgroups; to our consultant staff, Michael Baker, Jr., Inc.; to the Surface Transportation Environmental Cooperative Research Program Advisory Board; and to Jon Williams, our Transportation Research Board staff.

Jon Williams has taken a new position at TRB, but he continued to perform his old job as staff to the Committee along with his new job in order to make our Conference a success. We appreciate his continued commitment to the Conference and to the success of our Committee. Those of you in attendance at the January Committee Business Meeting know that we presented a clock to Jon as a token of our gratitude. He is an outstanding person, who is very thorough and helpful. We wish him well in this new position.

With the Conference behind us, we are on to new things. We are looking forward to our Summer Workshop in Durham, N.H., July 29-August 1. Bill Hauser of New Hampshire Department of Transportation will be the host.

Also, it is time for us to begin thinking about new members on the Committee. Under TRB rules, each Committee must replace one-third of its twenty-five members every three years. For us, this will be February 2003. Usually new members come from the Friends List. If you are interested in becoming a formal member of the Committee, please turn to the more detailed article in this Newsletter for more information.

Hope to see you in New Hampshire.

If you have any comments or questions regarding TRB Committee A1F02, Carol can be reached at 608-266-9626 and by E-mail at carol.cutshall@dot.state.wi.us.
Announcements

TRB A1F02 Summer Workshops

2002 Summer Workshop
Durham, New Hampshire
July 29-August 1
by Bill Hauser
Administrator, Bureau of Environment, NHDOT

The 2002 Summer Workshop will be held at the New England Center on the campus of the University of New Hampshire in Durham. The dates are Monday, July 29 through Thursday, August 1, 2002. Hosted by the New Hampshire Department of Transportation, this year’s workshop theme is "Don’t Take the Environment for Granted.” The “Granite State” is proud of its natural and cultural resources and is a “rock-solid” location for this gathering of transportation environmental professionals.

The New England Center combines a hotel, conference center and restaurant within a unique architectural masterpiece surrounded by pine woods and granite studded hills. The hotel is comprised of two towers with most rooms nestled in the treetops. The conference center is ergonomically designed and the restaurant is award winning. The Center has a large state-of-the-art fitness center and the recreation center of the University of New Hampshire is also available to guests.

Reserve your room early. Due to the uncertainties of September 11th and what we have heard about State travel restrictions, we felt we could only reserve a block of 60 rooms. Reserving your room early will assure you of staying in the Center and, if we fill the block early, we may be able to get additional rooms. Mail your room reservation form to the New England Center at 15 Strafford Avenue, Durham, NH, 03824, or send it by fax to 603-862-0634. A first night's deposit will be required. Room rates are $89 per night, plus 8% tax, if you register by June 29. These rates are available on each of the conference dates block, but rooms are limited.

The workshop registration fee is $200.00 prior to June 29 and $250.00 after that date. The registration fee covers all sessions, an opening reception, breakfasts, lunch on Tuesday and Wednesday (box lunch), a field trip along the White Mountain Trail (a national scenic byway), and the unforgettable experience of a New England Clambake. As part of the reception, transportation and environmental consultants will showcase their qualifications and consulting services.

Room reservation and conference registration forms can be obtained at www.nhdot.com. Click on the TRB Summer Workshop logo to access the official workshop web site. This site also includes links to other information, including area attractions, campgrounds, directions from the airports, etc.

The Town of Durham has many shops and casual restaurants within walking distance of the Center. The 18th century seacoast City of Portsmouth is only 15 minutes away and features a diversity of restaurants, shopping, festivals, music, cruises, historical charm and old port flavor. The Center offers shuttle service to Portsmouth. For the bargain hunter, there is the Kittery Outlets in Maine, just a short distance north of Portsmouth.

Our Program will include current topics and issues on transportation and the environment, featuring sessions on environmental stewardship/environmental management systems, smart growth, stream restoration, materials recycling, NPDES II, wetlands mitigation, etc.

Durham, New Hampshire is just over one hour north of Boston and Logan International airport, one hour from Manchester airport and 15 minutes from Pease airport in Portsmouth. Long a destination for spectacular scenery, outdoor adventure and activities, Durham is just minutes away from golf, hiking and jogging trails. The workshop host, Bill Hauser, is an avid hiker and would be glad to organize a hiking day trip for early arrivals at the workshop.

Please contact Bill Hauser, New Hampshire DOT, 603-271-3226, e.mail: bhauer@dot.state.nh.us for further information, or go to the web site. Updates on the itinerary for the workshop and other useful information will be posted on the web site.

Recap of St. Louis A1F02 Summer Workshop
July 24 - 27, 2001
by Mark Kross
Missouri DOT

The St. Louis summer workshop was a success. About 190 attendees and guests reached St. Louis, a high number considering only Committee A1F02 was participating. The theme of the conference was "SHOW ME Environmental Sensitivity in Transportation".

Activities began with the A1F02 Committee meeting on Tuesday, July 24. A trade show opening reception was sponsored that evening by the Missouri Department of Transportation (MoDOT) and others. Sessions covered the gamut of topics transportation environmental managers handle, and the Missouri Department of Transportation showed conference attendees quite a variety of topics. The field tour on July 26 included several key environmental projects in St. Louis, such as the Page Avenue Extension project, a complex 10-lane urban project crossing a local park and spanning the Missouri River. The tour viewed the Chain of Rocks Bridge on old US Route 66, spanning the Mississippi River as the longest pedestrian/bicycle bridge in the U.S.A. Ted Curtis of Gateway Trailnet spoke of the partnerships that made their vision a reality. Attendees visited the Riverlands Environmental Demonstration Area operated by the St. Louis District Army Corps of
Engineers. Erin Connett offered an excellent description of how this area affected by the construction of the Mel Price Locks and Dam was transformed to an environmental resource. Mary Donze of the Missouri Department of Natural Resources described a new state park being established at the confluence of the Missouri and Mississippi Rivers. The Sheraton West Port Lakeside Chalet offered very nice accommodations. The West Port venue was very charming, European and relaxing. Weather was excellent and cool, very uncharacteristic of July in St. Louis.

The following reports about the St. Louis meeting, courtesy of BNA PLUS, describe some of the highlights of the mid-year meeting. Text is taken from Transportation / Environment Alert, Volume 3, Issue 49, dated August 3, 2001 and sponsored by AASHTO’s Environmental Technical Assistance Program.

The topics included several presentations by attorneys who described legal issues transportation officials often face in addressing environmental concerns.

**Countering Project Opponents**

Facing an increasing number of transportation project challenges in court, a panel of attorneys provided a laundry list of practical advice on how to counter project opponents. Attorney William Malley explained common strategies used to challenge highway projects and advised transportation officials that they must "anticipate and neutralize" such strategies to keep their projects on track. Malley - a partner with Akin, Gump, Strauss, Hauer & Feld in Washington, D.C. - has represented several state DOTs on environmental challenges facing large-scale projects and is working with AASHTO on environmental streamlining issues under TEA-21.

Malley described "project-stopping strategies" commonly used by groups that are "fundamentally opposed" to a particular project. Opponents will:

1. Define simple, appealing solutions to transportation needs - such as "improve the existing road" and keep the solutions vague and flexible, with no clear definition of impacts or costs.
2. Defend "mum and apple pie" - using ideals such as "save our farmland" or "stop urban sprawl."
3. Attack - attack the project (it will destroy precious resources, waste taxpayer dollars); attack the process ("the process is rigged" or "this is all a charade"); attack the decisionmaker ("they lie," or "they’ll do anything to get this approved.")
4. Validate their message with support from key agencies, technical experts, opinion leaders (newspapers), elected officials, and the public.
5. Spread the message with comment letters, expert reports and testimony, op-ed pieces, and web sites.
6. Always ask for more of everything - wider scope, more detail, more public involvement, more time to comment, newer modeling techniques.
7. Use delay to create more delay - delay means stale data in the Environmental Impact Statement. Updating stale data takes time, and while you update one area, others get stale.

According to Malley, effective opponents create a "siege environment" with constant demands for documents, demands for access, and attacks on "secrecy." Opponents will work to create distractions, fear, uncertainty and defensiveness - thereby forcing the project sponsor to make mistakes. The most effective strategy, he said, is "don’t try to beat your opponent, make your opponent beat himself."

Malley warned of weaknesses in the National Environmental Policy Act process that make projects vulnerable to opponents. Project sponsors should beware of "blind spots," such as unexamined alternatives, or "soft spots," such as unsupported assumptions. They also should watch out for internal inconsistencies or regulatory glitches in the NEPA process. For example, he said, air quality and noise data could be based on different assumptions about traffic volume.

And numerous regulatory issues could crop up under Section 4(f), Clean Water Act Section 404, or the Endangered Species Act, he said. These include: required findings not documented, required steps skipped or combined, required actions taken by the wrong agency (state DOT instead of the Federal Highway Administration), or irrelevant factors considered in making findings.

To "neutralize" these strategies, Malley said, project sponsors should:

1. Recognize the problem, and accept the fact that normal rules do not apply, everything will cost more and take longer, and personal attacks are inevitable.
2. Assemble the right project team, including staff with the technical, legal, and public relations skills who are "battle tested." Leadership should include a strong project manager and effective oversight from FHWA and the state DOT.
3. Be strategic, not reactive. Predict threats - i.e., do not focus solely on current issues. Brainstorm opposition strategies and consider worst case scenarios. Integrate strategic thinking by identifying objectives and developing a detailed action plan.
4. Invest in implementation. Project sponsors must overcome distractions, staff turnover, fatigue and burnout. Effective implementation will require constant attention and will be resource-intensive.
5. Keep your cool - "what you say can and will be used against you." All communications can become public - keep all correspondence simple and businesslike. Do not use email to vent, and never use disparaging or condescending remarks toward project opponents. Do not be provoked into making mistakes - stay focused on the issues and ignore personal attacks. Be patient; accept that delay is inevitable.

According to Malley, the bottom line is that project sponsors must use an integrated strategic approach and a major investment of resources, as well as dedication and commitment to keep projects on track.
Communicate with the Public
Sharon Mattox, an attorney with Vinson & Elkins, in Houston, Texas, urged project sponsors to take a more active role in communicating with the public. "Let people know your side of the issues, or public support will start to drift," Mattox said. She told the group that the basis for project opposition typically is either personal - i.e., "not in my back yard"; philosophical - i.e., "transportation projects are bad"; or as a scapegoat for regional issues - like air quality. Mattox reminded the group that in most cases "project stoppers are a tiny minority. Show that they are, and keep shoving them out there," she said. "Even with a dedicated group of project stoppers, it is important to get your story out there," she added. Project sponsors must take an active role in working with the public through avenues such as citizen advisory groups; public affairs involvement; civic organizations; and newsletters. Public workshops should be favored over more traditional public hearings, which tend to be one-sided, she said.

Mattox listed the following issues commonly raised by project opponents:
1. Procedural errors.
2. Inappropriate reliance on environmental assessments.
3. Alternatives analysis was too narrow.
4. Cumulative impacts were not adequately addressed.
5. Failure to disclose or consider a specific impact.
6. Failure to comply with other environmental statutes.
7. Inadequate administrative record.

Sponsors should use their legal departments to avoid mistakes, Mattox advised. If there is a doubt regarding the appropriate type of NEPA review, use an Environmental Impact Statement, she said. And sponsors should consider a broad range of project alternatives. Mattox also urged sponsors to consult the 1997 Council on Environmental Quality guidance on cumulative impacts. The issue of cumulative impacts is "a biggie" and is difficult to deal with, she said.

Opponents Strategies on the Woodrow Wilson Bridge Project
John Undeland, vice president of Strat@com Inc. public relations firm, identified additional strategies opponents used in fighting the Woodrow Wilson Bridge project near Washington D.C. Opponents often will change the subject, such as dwelling on alternatives they say were preferable, Undeland said. For example, Wilson Bridge opponents continued to urge construction of a tunnel. Opponents also will "say anything" to get attention, he said. According to Undeland, Wilson Bridge opponents used false claims that the Wilson Bridge project would be the "world’s widest bridge," and that it would consist of a 20-lane drawbridge. "Opposition is a stronger motivator than support," he stressed. When facing project opponents, sponsors should be proactive, creative, and inclusive of all interests. Sponsors also must be reasonable - "go the extra mile, and demonstrate flexibility and responsiveness," he said.

Project sponsors should:
1. Develop relationships with key officials and influential third parties;
2. Cultivate and maintain good relationships with the media;
3. Respond swiftly and appropriately to erroneous attacks; and
4. Use the internet to allow "virtual public involvement."

AASHTO Environmental Stewardship Initiatives Moving Forward
Officials told participants AASHTO’s proposed transportation environmental stewardship demonstration projects and Center for Environmental Excellence were on track to move forward this past fall. A team had been working to advance the two AASHTO environmental programs since last May, when the group’s board of directors gave the green light to launch the proposed efforts.

The stewardship demonstration projects are intended to help transportation agencies understand and embrace the concepts of environmental excellence and stewardship in the transportation context, and learn how to increase environmental performance and stewardship activities, AASHTO’s Senior Environmental Specialist Wayne Kober told the group.

Kober - who was a pioneer with environmental stewardship efforts at PennDOT -- has been hired by AASHTO to help launch the demonstration projects and develop a business plan for the proposed AASHTO Center for Environmental Excellence. The proposed AASHTO Center would bring together highly skilled and experienced transportation professionals to provide environmental technical assistance, training and management advice to state DOTs and federal transportation, regulatory, and resource agencies. The AASHTO team has since secured funding for the Center after holding a workshop on Aug. 23-24 to formulate its business plan.

Demonstration Projects
Meanwhile, Gary McVoy, director of New York State DOT’s environmental analysis bureau, has been working with Kober to advance the stewardship demonstration effort. McVoy led his state’s award-winning environmental program, which embraced environmental stewardship as part of the transportation department’s mission. The AASHTO demonstration program aims to show how DOTs can create an agency-wide commitment to environmental protection and stewardship and exceed minimum regulatory requirements for operation or mitigation. Projects will demonstrate how state DOTs can realize the benefit of environmental protection and stewardship through improved public trust, credibility, and streamlined transportation project delivery, Kober said. Projects should illustrate that DOTs leave the environment better off than they found it - and do it...
McVoy and Kober described the range of approaches state DOTs can use to demonstrate stewardship, and encouraged the 23 state DOTs that have volunteered to move forward in identifying and registering their projects. The following states have volunteered to participate in the stewardship demonstration projects: California, Colorado, Delaware, Florida, Indiana, Kentucky, Louisiana, Maine, Maryland, Michigan, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Wisconsin. These state DOTs have unlimited choices in types of projects to pursue. The AASHTO team has identified a continuum of approaches to stewardship as a starting point in helping states to identify demonstration projects.

States could:

1. Add stewardship features on a case-by-case basis. Examples of such projects include: advanced wetlands creation or enhancement, installation of wildlife passages or nesting structures, restoration and enhancement of historic and cultural features, acquisition of scenic easements and overlooks, installation of stream buffers, and extension of sidewalks and trails.

2. Add stewardship features on a programmatic basis. Examples include: programmatic Section 106 agreements; wetland banks; wildlife habitat preservation; programmatic bridge design criteria; preserving significant archeological resources; and partnering with environmental agencies and groups on enhancement, training, and process improvements.

3. Make organizational and cultural changes within the agency. Examples include: environmental protection and enhancement in the agency mission statement, publishing an agency environmental policy, and integrating environmental protection and enhancement into all activities.

4. Install an environmental management system. This could include instituting a comprehensive process improvement program in planning, design, construction, and maintenance of transportation facilities; developing environmental quality assurance/control procedures; developing environmental cost accounting systems; and establishing environmental performance measures.

AASHTO has since hosted a series of national videoconferences in October to assist states in launching their demonstration projects. The conferences, held at offices of the Federal Highway Administration, further explained the details of the program, worked to get upper level management support, and helped states select appropriate demonstration projects. In addition, a web site has been developed to communicate the progress of the demonstration projects.

More information on the demonstration projects and the Center for Environmental Excellence is available from Wayne Kober, e-mail wwkpa@epix.net, or by phone at 717-502-0179.

Lamar Smith (FHWA) Provided Update on Environmental Streamlining Activities

Lamar Smith, NEPA oversight team leader in Federal Highway Administration’s Office of NEPA Facilitation, told attendees that the Federal Highway Administration is “staying the course” on environmental streamlining activities. The agency is continuing its work to implement the federal memorandum of understanding and action plan on environmental streamlining, Smith said. FHWA also is working to advance federal, state and local streamlining initiatives and to encourage delegation of authority and flexibility.

Other efforts include training and guidance on issues like alternative dispute resolution and managing the NEPA process. FHWA also conducted a review of causes for delays on projects with Environmental Impact Statements. And the FHWA streamlining web site has documented streamlining activities on the federal, state, and local level.

According to Smith, the agency’s environmental streamlining priorities include:

1. building and sustaining partnerships with state DOTs and other federal agencies, including support for AASHTO’s environmental stewardship initiatives;
2. advancing streamlining field initiatives through financial support to FHWA divisions and states as well as technical support and resources to advance federal streamlining commitments; and
3. defining training that will support streamlining, including educating and clarifying the appropriate roles of federal agencies under NEPA and improving knowledge of agencies’ NEPA requirements.

Smith said FHWA continues to weigh its options for the proposed NEPA and planning regulations. Options include: moving forward with a final rule; issuing a supplemental proposal; waiting until TEA-21 reauthorization to address the regulations; or moving a small, focused regulation - possibly something on streamlining.

Issue areas FHWA is working on include:

1. improving the planning and NEPA linkage;
2. secondary and cumulative impacts;
3. “federal handle” - determining when NEPA applies;
4. sprawl issues and smart growth;
5. Section 4(f) and Section 106;
6. environmental commitment compliance;
7. Native American issues and consultation;
8. environmental management systems, and

Smith also outlined training and guidance efforts underway and said the transportation community is under-utilizing the FHWA’s Re:NEPA community of practice website. That site can be accessed at http://nepa.fhwa.dot.gov.
The Advisory Council on Historic Preservation Plans Database to Identify, Document Areas of Interest to Tribes

Robert Bush, a senior executive with ACHP, said an initiative that would identify and document areas of historic interest to tribes is being developed by the Advisory Council on Historic Preservation. But the agency needs additional financial support to bring the effort to fruition. The project would use geographic information system (GIS) technology to define areas of tribal historic interest and then develop and maintain a publicly accessible internet database, including a contact list of tribal leaders. The system would establish an identification code for tribes and tribal leaders using information from the Bureau of Indian Affairs annual directory of tribal leaders. The information would be made more user-friendly by assigning code numbers in alphabetical order.

The system would display, within a given state, a county or counties, those areas which the tribes and tribal leaders have identified as being ones for which they wish to consult with federal agencies, for project planning purposes. "While reservation lands of Indian tribes are definable, ancestral lands which contain historic properties are not. The GIS initiative with tribes seeks to utilize another tool to facilitate agency and tribal decisionmaking in the government-to-government relationship," Bush said. But he cautioned that the project will not affect consultation obligations of government agencies. "This project is designed to facilitate identification of 'with whom' to consult among the tribes, not the 'how to consult,' which is internal to each agency or tribe.

Since the conference, ACHP has been seeking more financial support. With support, the project could be completed within a year, and updated on an annual basis. More information on the initiative is available from Robert Bush, ACHP, Lakewood, Colorado. Telephone: 303-969-5110 or by E-mail at rbush@achp.gov.

GIS, Other Technologies Touted As Tools for Decisionmakers

Technologies, including use of geographic information systems for transportation decisionmaking and planning, were among those reviewed in a new NCHRP report, speakers told attendees. National Cooperative Highway Research Program report # 25-22, Technologies to Improve Consideration of Environmental Concerns in Transportation Decisionmaking, had been recently completed, according to Marcy Schwartz, with CH2M/Hill.

The NCHRP report profiles 21 different technologies and includes:
1. a fictional case study demonstrating examples of technologies and their applicability to a portion of the transportation decision making process; and
2. a transportation decision making process diagram showing where the technologies are applicable in the process.

The TRB audience heard presentations providing examples of two such technologies: Florida’s web-based GIS system for transportation decisionmaking using the state’s massive geographic information library; and GIS-based software for community planning and environmental analysis.

The NCHRP report is available on the internet at http://projects.ch2m.com/nchrp25_22.

Overviews from other A1F02 sessions: Officials Describe Challenges in Moving Large-Scale Transportation Projects

Several officials gave overviews of large-scale projects and challenges associated with moving them forward. Bill Richardson, of the Arkansas DOT, described the massive Interstate 69 project, which will run through eight states, from the Mexican border in Texas to the Canadian border in Michigan. That project - also dubbed the NAFTA highway - was designated in TEA-21 as a high-priority corridor of national significance. It has been divided into 32 separate sections of independent utility that will have separate environmental documents. Another presentation described the first-tier EIS process underway for the Interstate 70 project across Missouri (see www.I70study.org). And speakers also reviewed what some called the "mother of all projects" - the Page Avenue Extension Project in Missouri. The Page Avenue project survived a combination of Section 4(f) issues, congressional mandates, local politics and referendums, landowner opposition, resource agency opposition, lawsuits, and court rulings.

Other actions at 2001 summer workshop

At its committee meeting, the TRB Environmental Analysis Committee adopted its Mission Statement. The following is the new mission statement:

"Scope: This Committee is concerned with the protection and enhancement of the natural and human environment as an integral part of the planning, design and construction of transportation systems and projects. Emphasis is placed on research needs identification, research implementation, technology transfer, and information sharing in the following areas: environmental data collection and analysis; impacts assessment and documentation; mitigation and enhancement; systems planning, project development and management; and environmental stewardship and streamlining."

Surveys completed by attendees at the St. Louis meeting indicated that the sessions were informative and interesting and there were compliments for the efforts. Mark Kross, the conference planner and organizer, especially thanks the sessions’ moderators who were responsible for assembling the excellent speakers and, hence, the notable content.
A1F02. . . New Membership

Over the next few months, the A1F02 Steering Committee, made up of Chair Kim Gambrill, Jake Jacobson, and Tim Hill, will be asking members of the Committee whether they wish to continue to serve on the Committee. The Transportation Research Board requires each committee to review its membership and appoint one-third new members every three years. Our members’ three-year terms expire after the January TRB meeting in 2003. In addition to our twenty-five members, we also have four international members and two under-thirty members. We have only recently requested appointments for our under-thirty members, so they will probably continue for the next three years. Membership is based on personal qualifications, interest and commitment to Committee activities, with consideration given to providing a balanced membership based on geographic location and other factors. Friends of the Committee who are interested in serving as a formal member of the Committee starting in February 2003 should send the Steering Committee a paragraph describing your activities in support of the Committee (examples might be attendance at the annual and mid-year committee meetings, peer review of papers or serving as a liaison to another TRB Committee) and a resume. Please submit these by June 30, 2002 to Kim Gambrill at gambrillkm@c-b.com. If you have questions, call Kim at 303-820-4826.

Welcome

Welcome to Kimberly Fisher!

Kim Fisher will be the new Transportation Research Board (TRB) staff representative assigned to the Committee on Environmental Analysis in Transportation. She is replacing Jon Williams, who has taken another position at TRB. As a Senior Program Officer, Kim now has staff responsibility for nine TRB Transportation Planning Committees, and she will take on additional responsibilities for the seven committees in the Environmental Concerns Section. We believe the linkage with the TRB Planning Committees will be an important one.

Kim has a strong background in both policy and technical areas. She has worked as a transportation planner in county and regional agencies, the private sector and with non-profit groups. Before coming to TRB, she worked for the Texas Transportation Institute on assignment at FHWA’s Washington office.

Kim’s phone is 202-334-2968, and her e-mail address is kfisher@nas.edu.

A1F04 Summer Workshop

TxDOT’s Environmental Affairs Division (ENV) will host the Summer 2002 Meeting of the TRB A1F04 Committee on Transportation-Related Noise and Vibration (A1F04), July 7-10 at the Hyatt Regency Town Lake in Austin. Rooms are available at the special conference rate of $80 single/$105 double (per night) July 6 through July 10. Make reservations directly with Hyatt by phone (800-233-1234 or 512-477-1234), or on the internet (www.hyatt.com/usa/austin/hotels/hotel_ausra.html). Information about the 2002 Summer Meeting is available on the TRB A1F04 website (www.thewalljournal.com/a1f04). Events will begin with a reception on Sunday night, July 7, and close at noon on Wednesday, July 10. The conference will be open to any organization willing to pay the $195 per participant registration fee. You may review information about last year’s meeting at the TRB A1F04 website. For more information about this year’s conference, contact conference organizer Jean Beeman (jbeema0@dot.state.tx.us or 512-416-3171). ENV’s main phone number is 512-416-3001 and the mailing address is 125 E. 11th Street, Austin, Texas, 78701.
Subcommittee Reports

Web Site Subcommittee
by Dan Wallace
Wallace & Pancher Ecological Specialists, Inc.

(The following italicized text is a summary of the changes, modifications, and/or areas of investigation to the A1F02 Web Site since the 2001 mid-year conference. It was intended for publication in the November 2001 newsletter. It is printed here to provide continuity with the updated information printed after the italicized text.)

Several names have been submitted over the web site to be added to the mailing list. These names were added to the master list.

The June A1F02 newsletter is posted on the site. The request for projects to be featured has not gone so well. No projects have been submitted to date to be highlighted on the web site. Discussion at the A1F02 business meeting in January should be directed toward keeping or abandoning this effort.

The Bulletin Board has also not been used for its original intended purpose. For this reason, it will be recommended at the January business meeting to eliminate this feature from the web site.

Areas of on-going investigation to enhance the web site and to head in the direction of its original intended use as a Resource Center for environmental professional includes the following:

- Change the current Bulletin Board to an interactive news/information broadcasting mechanism. Initial discussion with Baker’s web designer indicate that creation of a listserve is possible, where a user can submit their name via email, which is automatically entered in the listserve. Users can submit questions, comments, news on regulatory matters, etc. and it will be broadcast to the email names on the listserve at a regular interval, say once per week.
- This function would require coordination with the Center for Transportation and the Environment, who is currently hosting the web site, and Baker’s IT management. It is however, possible to include this service on the web site.
- Obtain past publications sponsored by A1F02 to be located in a central library where users can download. An area has already been created on the web site for publication. Collection of documents and permission to post these documents needs to be obtained. General discussion and a request for information and volunteers will be discussed at the January business meeting.
- An updated members list is needed to keep the Members section current. Digital photos will be taken at the January business meeting for all the officers and subcommittee chairs that are not currently on the web site.
- At the January 2002 Annual Conference the following Committee Members and Friends of the Committee volunteered to assist with maintenance of the A1F02 Web Site: Mr. Ron DeNadai, Mr. Doug Smith, Mr. Craig Casper, and Mr. Dan Harris.

Subcommittee activities since the January meeting are as follows:
1. Made modifications to the programming of the web site to fix a couple glitches in the web site.
2. Worked at modifying the content of the web site, namely to eliminate the “Featured Project” section.
3. Worked at modifying and updating the Members List on the site.
4. Discussed options for new content on the site to make it more usable for the environmental professional.
5. Worked at posting A1F02 Committee meeting minutes and other informational materials.
6. Worked at preparing a Goals and Objectives Statement for the subcommittee.

If you have any comments or questions about the A1F02 web site, contact Dan Wallace at Wallace and Pancher Ecological Specialists, Inc., 2371 Maria Lane, Hermitage, PA 16148; phone: 724-981-0155. Dan’s e-mail address is wallaced@adelphia.net.

Publications Subcommittee
by Terry Boccassini
Louis Berger Company

A total of 12 papers were submitted to TRB Committee A1F02 for consideration for both presentation at the annual TRB meeting and publication in the TRB conference proceedings. The papers were, in turn, reviewed by 15 different individuals from both within A1F02 as well as others selected for their familiarity with the subject matter.

Of the papers submitted, six were authored by members of the consulting community; four by DOT staff; one from the academic community; and one from the international community. The majority of the papers fell under the general heading of environmental systems, addressing such topics as integrated approaches to environmental assessment and tiered environmental studies. Two of the papers dealt directly with the topic of environmental stewardship. A total of seven of the papers were recommended by the reviewers for presentation, with only one of the original papers recommended for publication. An additional five papers were returned to the authors with reviewer’s comments with the request that the paper be reviewed for future consideration of publication. All five papers were subsequently revised with many of the authors expressing their appreciation for comments received. All five revised papers were later also recommended for publication.

The paper review process this year was impacted by many of the events that befell the country this fall. One of the scheduled reviewers, of the Port Authority of New York & New Jersey, while not located in the World Trade Center (WTC), was pressed into emergency service. Another of the reviewers had an office located in lower...
Manhattan close to the WTC and was unable to access his office for two weeks. Despite the obstacles, the reviews were completed and A1F02 sponsored two paper sessions with the seven papers.

For submitting papers in the future for consideration by the TRB, access the TRB web site. Make sure you specifically note Committee A1F02 on your paper to assure that the paper is considered by our committee.

Liaison Subcommittees

The Subcommittee on Environmental Issues Related to Guided Intercity Passenger Transportation (A2M05(1))

2002 TRB Annual Meeting Summary

by Marcia Bowen
Normandeau Associates

The Subcommittee on Environmental Issues Related to Guided Intercity Passenger Transportation (A2M05(1)) considered research needs statements in its January meeting. Marilyn Duffy, subcommittee co-chair, raised the idea of a Research Needs Topic to provide a more systematic understanding of the No-Build Alternative that is the baseline for high-speed rail projects. Many high-speed rail projects went through the NEPA process but were never built. The accuracy of those early no-build projections, considering that the present day reflects the no-build alternative, continues to fascinate the committee. This topic would combine the presentations given in the Subcommittee session at 2002 Annual Meeting into a formal paper. Marilyn will be drafting, a Needs Statement for consideration by the full committee. The subcommittee would like to coordinate this research with the A1F02 and the Rail Planning Committee A1E13 (Jack Tone) on this topic. If your interest is piqued, contact Marilyn Duffy, 415-291-0230 or Carl Hanson, 781-229-0707 (chanson@hmhh.com).

Another potential research project is to develop a guidance manual for FRA and FTA that would provide a standardized methodology for assessing air quality impacts for high-speed rail. The guidance manual would be similar to the one that Carl Hanson authored for noise and vibration assessment of high-speed rail. The research needs will be discussed further at the mid-year meeting, to be held in conjunction with the High Speed Ground Transportation meeting in Orlando, Florida on May 21-24.

The committee sees clear research needs in the area of critical noise levels for wildlife, particularly for high-speed rail and Mag Lev projects. Carl Hanson, Jim Nelson and Rob Greene (noise and vibration technical specialists on the committee) expressed the desire to resubmit the Research Needs Statement to conduct a literature search on annoyance factors and change the specification in the regulation for rail noise limiting the peak noise to 90dB as stated in 49CFR 210 by supplementing the regulation to acknowledge high speed rail. FRA is supportive of this research topic.

The Task Force on the Environmental Impacts of Aviation has been made a permanent, standing TRB committee. This achievement has been a long time coming, some ten years. Their future goals include coordinating with the existing environmental committees, holding and attending mid-year meetings on a regular basis, and framing and implementing a viable agenda for research and policy analysis concerning the environmental impacts of aviation. They recently sponsored discussions at the last Annual Meeting and other topics as diverse as "green machines" and the problem for airports in the application of the general conformity rule. They are beginning to assemble a comprehensive catalogue and library of technical resources used in environmental analysis at airports as well as a handbook on environmental analysis. The Task Force did not hold a meeting in January, due to their uncertain status, but is planning a mid-year meeting in conjunction with one of the other aviation committees. Details were not available at press time.

TRB Task Force on Environmental Justice in Transportation (ALT52)

2002 TRB Annual Meeting Summary

by Lori Kennedy
Kisinger Campo & Associates Corp.

The ALT52 TRB Task Force on Environmental Justice (EJ) in Transportation met on January 16, 2002, at TRB’s Annual Meeting in Washington, D.C. The Task Force welcomed new friends and then discussed the following:

1. George Mazur with Cambridge Systematics, Inc. provided a recap for the group of what would be presented at the EJ Poster Session during the 2002 Annual Meeting. George also provided a recap of the conference session on EJ and Community Impact Analysis that was held during the 2002 Annual Meeting.

2. Task Force committee liaisons provided summaries of other EJ related issues being dealt with by other TRB Committees. Research related EJ issues were also discussed.

3. David Kuehn, Janet Bell and Penelope Weinberger agreed to coordinate a call for papers on EJ in 2002.

4. This year’s TRB summer meeting will be held in Providence, RI.

5. Finally, other items discussed included the following: NHI Training on EJ, recent Supreme Court Cases, security and the TRB Environmental Research Needs Conference (held in March, 2002).
A1C06 Social and Economic Factors of Transportation Committee
by Henry Beale

I have been hanging out with the Community Impact Assessment and Economic Justice folks -- going to a regional conference in Raleigh, NC in December and going to the A1C06 Committee meeting and the CIA Joint Subcommittee Meeting at TRB. I don’t know how much A1F02 has done in the area of CIA although we are one of the three parents of the Joint Subcommittee. There are two National CIA Workshops -- August 19-21, 2002, in Madison, Wisconsin, and August 23-26, 2002 in South Portland, Maine. Committee A1F02 is co-sponsoring them. The A1C06 committee is re-starting its own newsletter. Below is an e-mail that gives the editor’s name and address.

"A1C06 Members: We are planning a revival of the committee newsletter, SEFTalk. The next edition, for Spring, will be distributed in March. I would like for you to submit to me any articles or abstracts related to completed or ongoing research, or any other items of interest (such as upcoming conferences, items related to the recent TRB Annual Meeting, etc.) to me by Friday, February 22. The success of this newsletter will depend, in part, on your contributions!! Electronic submission is fine; you can also fax submissions to my attention at 813-974-5168. We plan for some hard-copy distribution of this newsletter, but also for electronic posting on the internet. I look forward to your submissions, ideas, and comments. Victoria Perk, Research Associate, Center for Urban Transportation Research (CUTR), phone: 813-974-7327."

TRB A1F04 Committee on Transportation-Related Noise and Vibration
Summary of Activities and Happenings
by Dan Harris
Environmental Specialist
FHWA Western Resource Ctr, San Francisco, CA

A1F04 Summer Meetings
The Summer Meeting 2001 was held at the Omni Royal Orleans Hotel in New Orleans, Louisiana, July 22-25, 2001. The agenda, which lists the 18 papers presented and the one roundtable discussion, may be viewed at the TRB A1F04 website (www.thewalljournal.com/a1f04).

The Summer Meeting 2002 will be held at the Hyatt Regency Hotel in Austin, Texas on July 7-10, 2002. Go to the TRB A1F04 website for information.

TRB Winter Meeting 2002
Gregg G. Fleming (Volpe Center) retired as chair of A1F04 after six years. Kenneth D. Polcak (Maryland DOT) is now chair of A1F04, Committee on Transportation Related Noise and Vibration, and Judith L. Rochat (Volpe Center) is chair of A1F04(3), Subcommittee on Highway Noise and Vibration.

At the A1F04 Awards Dinner, Darlene Reiter and William Bowlby (Bowlby & Associates) received the 23rd Annual Harter Rupert Best Paper Award for their paper titled, Using the FHWA Traffic Noise Model (TNM) to Assess Noise Reflections from Elevated Bridge Structures.

A list of the papers presented at the A1F04 sponsored sessions, as well as agendas for the full and sub A1F04 committee meetings, can be found at the TRB A1F04 website (www.thewalljournal.com/a1f04).

Internoise 2002
Dearborn, Michigan, August 19-21, 2002

The theme for this year’s Internoise conference is Transportation Noise. In addition to a major equipment exposition managed by Rich Peppin (Scantek), a session on tire road noise is being organized by Judy Rochat (Volpe Center), and also a session on noise policies by Bill Lange (INCE). There is an A1F04 group discount rate for Internoise on the above web site. It was also mentioned that an INCE Tire Road Noise Compilation Study will be presented at the A1F04 2002 summer meeting.

Two presentations were made during the Committee meeting:

1. INCE Study Team on a National Noise Policy, William Lang (I-INCE). A committee discussion followed on the importance of an INCE Study Team for a National Noise Policy. There is concern that Europe is establishing noise policies that may dictate industry standards in the U.S. if the U.S. does not develop applicable noise policies soon.

2. An Implementation and Simplified Method to Compute Ground Effects, John MacDonald (University of Central Florida). This is a presentation of research on a comprehensive community noise model. Inquiries for a copy of the model can be directed to Noiselab@mail.ucf.edu.

Tom Weck (Section Chair) announced that Jon Williams (TRB Staff Liaison) was moving on and commended him on his dedication; recognized Gregg Fleming’s work as A1F04 Committee Chair over the past six years; welcomed incoming Committee Chair, Ken Polcak; and announced emeritus status for Win Lindeman (Florida DOT).

The Aircraft Noise Subcommittee will be changing to an electronic newsletter. The Subcommittee meeting had two presentations:

1. School Classroom Noise Measurement and Sound Proofing Eligibility, by Alex Chen (Louis Berger Group);


The Guided-Transit Noise Subcommittee plans a special high-speed rail meeting, being organized by Steve Wolf (Parsons Brinkerhoff) for next year’s meeting TRB Annual Meeting, perhaps in collaboration with A2M05, the Committee on Guided Intercity Passenger Transport.
The Highway Noise Subcommittee met. The Acoustical Society of America (ASA) 2002 meeting in Pittsburgh, Pennsylvania June 3-7, 2002 was announced. Information may be found at (http://www.ac.unomaha.edu/lwang/asapittsburgh.htm). Bob Bernhard (Purdue University) is organizing a session on Tire / Road Noise and welcomes participants. The Subcommittee meeting had four presentations:

1. **Measurement of Sound Absorption in situ Including Tire Impedance, Roadway, and even Anechoic Rooms, by Rich Peppin (Scantek), Roger Wayson (University of Central Florida), and Svein Arne Nordby, doing in situ impedance measurements using the Adrienne method to obtain a single number rating;**
2. **Highway Noise Activities in Arizona, by Angela Newton (Arizona DOT), discussed ADOT noise policy and educating the public, and showed educational highway noise video;**
3. **Overnight Highway Noise Measurements, by Bill Bowllby, (Bowllby and Associates), taking noise measurements at several distances from a highway showed nighttime temperature inversion caused an increase in noise levels with less traffic than in daytime and emphasized the need for caution when choosing the time of day for measurements made for model validation;**
4. **The Safe, Quiet, and Durable Highway Institute, by Bob Bernhard (Purdue University), presented an overview of Institute’s goals and current projects, and announced that needs statements for receiving Institute funding were due by January 18, 2002. The website for the A1F04 Committee is (http://www.tiac.net/users/a1f04/index.htm).**

### A2A03 Hydrology, Hydraulics, and Water Quality Business Meeting Summary Notes
by Daniel P. Wallace

**Wallace and Pancher Ecological Specialists, Inc.**

The mid-year conference is in Puerto Rico, July 8-10. The theme for the meeting will be either 1) Extreme events and local issues or 2) Hydrology and Hydraulics and Water Quality issues for highways, with a tentative field trip planned. Attendance in the past for mid-year meetings has been 15 to 25 people. They are hoping to increase the attendance with a tropical location.

During the Committee Reports a question was raised as to the history of the committee. A committee member will check with the TRB library on past activities of the committee and compile research on the committee’s history.

The Hydraulics Subcommittee received 11 problem statements after the 2001 meeting. It eliminated five of the statements. The number one rated statement is the Hydraulics of Environmentally Sensitive Structures. The 2003 Annual Conference themes are 1) dealing with Phase 2 Environmental Analysis; 2) highlighting NCHRP projects (five projects); and 3) coordinating with the A2CO6 Committee.

The Hydrology Subcommittee received six problem statements after the 2001 meeting. The number one rated statement is the Frequency Update in the United States. Number two deals with wetland creation, restoration, and enhancement. The 2003 Annual Conference theme is “Focus on Detention Pond Design”.

The Water Quality Subcommittee received four problem statements after the 2001 meeting. The number one rated statement is the Mean Event Concentrations Responsive to ADT And Other Variables. Members will be attending the Environmental Needs Conference (held in March). The 2003 Annual Conference themes are NPDES Regulations and the need to focus on interaction between water quality, hydrology, and hydraulics.

One final item discussed was that Peter Smith’s chairmanship term expires in January 2003.

### A3B05-2 Subcommittee on Mitigating Animal-Vehicle Crashes

**by Amanda Hardy, Research Ecologist**

**Western Transportation Institute**

**Montana State University, Bozeman**

Animal-vehicle collisions have been a public safety issue since the invention of the vehicle. This safety issue may not be the leading cause of crashes, but animal-vehicle collisions are ubiquitous and pervasive throughout rural, suburban, and even urban areas. Collisions with larger animals such as deer species, moose, elk, antelope, and bear can cause costly damage to vehicles and threaten injury or death to vehicle occupants as well as the animals themselves. Many of the existing solutions to mitigating animal-vehicle collisions are either expensive, ineffective, ecologically damaging, or have not been quantifiably evaluated. Transportation and resource management professionals are recognizing that this safety issue and the ecological impacts of transportation systems on wildlife and habitat is a common challenge involving overlapping resources; efforts are being made nationwide to conduct research and share information on this topic. One such effort includes the formation of the TRB A3B05-2 Subcommittee on Mitigating Animal-Vehicle Crashes.

The Subcommittee on Mitigating Animal-Vehicle Crashes is parented by the Safety Data, Analysis and Evaluation Committee (within Operation Safety and Maintenance of Transportation Facilities Section and the Technical Activities Division of the TRB hierarchy). This subcommittee met for the first time at the 2001 TRB meeting. At that kick-off meeting, the subcommittee defined their focus primarily on the highway safety issues imposed by animal-vehicle collisions. Combined with the safety focus, it was also agreed that the subcommittee would synergistically address wildlife permeability and habitat fragmentation issues secondarily. The initial goals of this subcommittee included the following:

1. Sponsoring a TRB panel session on the issue of animal-vehicle collisions
2. Develop a research needs statement on the issue of animal-vehicle collisions
3. Form liaisons with other TRB committees

The first goal was achieved at the 2002 TRB meeting. With the conference room filled to standing room only, the following experts provided an interesting overview of the animal-vehicle collision issues:

- Overview of CTE efforts and national research direction: Kathryn McDermott, Center for Transportation and the Environment (CTE), North Carolina State University;
- Status of National Center for Research Excellence on Deer Vehicle Collisions and Clearinghouse Project: Keith Knapp, University of Wisconsin-Madison;
- Results of 2000 Nationwide State DOT Survey of Deer Vehicle Collision Issues: Terry Mesmer, Utah State University, The Berryman Institute;

Given the overwhelming interest in the panel session at the 2002 TRB meeting, the subcommittee is considering sponsoring another panel session for the 2003 TRB meeting. Additionally, the subcommittee is encouraging papers to be submitted to TRB for consideration of publication in the 2003 TRB proceedings. A call for papers will be released in May.

The second goal of developing research needs statements is currently in progress. Committee members will be submitting their ideas by June 1, 2002; the statements will be reviewed and ranked and those that incorporate safety will be forwarded to the parent committee for circulation.

There will be an ongoing and committed effort by members of this subcommittee to liaison with other TRB committees. Tom Linkous, chair of the A1F02 subcommittee on Natural Resources and Environment, is initiating a task force related to the issue of ecology and transportation conflicts. Amanda Hardy, friend of A1F02 and member of the aforementioned task force, is serving as the liaison between A1F02 committee and the subcommittee on Mitigating Animal-Vehicle Crashes. Kevin Powell, member of A2A05, the Landscape and Environmental Design Committee, has briefed that committee on A3B05-2’s activities and will continue to network there. Others TRB groups identified to liaison with include efforts within Maintenance and Operations Management and Roadside Maintenance; efforts are being made to share information there.

Potential future projects for the Subcommittee on Mitigating Animal-Vehicle Crashes include identifying gaps in knowledge and composing a statement of need to address those gaps. These efforts could focus on the development of standardized mitigation evaluation guidelines or standardized measures of effectiveness for research related to animal-vehicle conflicts.

To review the A3B05-2 meeting minutes, research statements and other subcommittee information, go to www.coe.montana.edu/wti and find the link to A3B05-2. The Subcommittee on Mitigating Animal-Vehicle Crashes would like to encourage you to participate and share your knowledge about animal-vehicle collisions and efforts to mitigate this conflict. The overlap of the environment and transportation is multi-disciplinary; it is imperative to incorporate various experiences, needs, and success stories to improve the coexistence of people and wildlife. If you are interested in more information about the Subcommittee on Mitigating Animal-Vehicle Crashes, please contact Amanda Hardy (ahardy@coe.montana.edu, 406-994-2322).

Features

Section 106 Update:
Federal Court Overturns Key Provisions of Section 106 Regulations

by William G. Malley and Angela Dusenbury
Akin, Gump, Strauss, Hauer & Feld, L.L.P.

On September 18, 2001, a Federal district court in Washington, D.C., overturned key elements of the Section 106 regulations under the National Historic Preservation Act. The court held that the Advisory Council on Historic Preservation no longer has the ability to reverse a federal agency’s finding of "no historic properties affected" or "no adverse effect" in the Section 106 process. Instead, the Council can simply submit comments on such findings. By eliminating the Council’s veto authority over these key findings, this court decision could significantly alter the role of the Council in the Section 106 process.

Background

The Section 106 regulations were comprehensively revised in May 1999, in response to the 1992 amendments to the National Historic Preservation Act. In response to a lawsuit, the May 1999 regulations were slightly modified in December 2000. As defined in the December 2000 regulations, the Section 106 process includes four basic steps:

1. Step 1 - initiating the Section 106 process (36 CFR 800.3)
2. Step 2 - identifying historic properties (36 CFR 800.4)
3. Step 3 - evaluating effects on historic properties, by applying the "criteria of adverse effect" (36 CFR 800.5)
4. Step 4 - resolving any adverse effects on historic properties, which may involve negotiating a memorandum of agreement (36 CFR 800.6).

At each step, the regulations provide an opportunity to terminate Section 106 consultation without proceed-
Step 1: Finding of "No Potential to Cause Effects." This finding may be made at the end of Step 1 if an action, by its very nature, has no potential to cause effects on historic properties. The finding must be based on the nature of the action itself, rather than on an assessment of the particular circumstances surrounding the action.

Council Role. The regulations did not give the Advisory Council a veto over this finding. Instead, as the Council has stated in its guidance, "if a question arises about an agency improperly using this provision, it should be brought to the Council's attention under Section 800.9(a)," which gives the Council a purely advisory role. Section 800.9(a) states that the Council "may provide . . . its advisory opinion regarding the substance of any finding . . . at any time at the request of any individual . . . or on its own initiative" and requires the agency official to "consider the views of the Council in reaching a decision on the matter in question." This provision was unaffected by the recent court decision.

Step 2: Finding of "No Historic Properties Affected." This finding may be made at the end of Step 2, after historic properties have been identified, but before the criteria of adverse effect have been applied. The finding is appropriate only if no historic properties are present in the project area or if the project will not affect (in any way) any historic resources.

Council Role. Until the recent court decision, the regulations gave the State and tribal historic preservation officers (SHPO/THPO) and the Advisory Council a veto over this finding. Section 800.4(d)(2) stated that: "If . . . the SHPO/THPO or the Council objects to the agency official’s finding . . . [of no historic properties affected], the agency official shall . . . assess adverse effects, if any, in accordance with Sec. 800.5." This provision meant, in effect, that the SHPO/THPO or the Council could force an agency official to proceed to Step 3, rather than terminating consultation at the end of Step 2.

Step 3: Finding of "No Adverse Effect." This finding may be made at the end of Step 3, after applying the criteria of adverse effect to specific historic resources. Unlike the two previous findings, this finding is made on a resource-by-resource basis, rather than being made for the project as a whole. In other words, each individual resource is evaluated to determine whether it will be adversely affected. If a finding of "no adverse effect" is made for every historic resource in the project area, the Section 106 process ends. If any "adverse effects" are found, the process proceeds to Step 4.

Council Role. Until the recent court decision, the regulations gave the Advisory Council a veto over this finding. Section 800.5(c) required a 30-day review period for a finding of no adverse effect, and allowed the Council to request an opportunity to review the finding within that period - either in response to a request or on its own initiative. If the Council chose to review the finding, the regulations made it clear that the Council’s decision was binding: Section 800.5(c)(3) stated that "the agency official shall proceed in accordance with the Council’s determination." This provision meant, in effect, that the Council could force an agency official to proceed to Step 4, instead of stopping at Step 3.

The District Court’s Decision
In February 2000, the National Mining Association filed a lawsuit in the U.S. District Court for the District of Columbia challenging the May 1999 Section 106 regulations. In response to that lawsuit, the Advisory Council made a number of changes to the regulations and re-issued them in December 2000, while the lawsuit was still pending.

On September 18, 2001, the District Court issued its decision in the lawsuit, National Mining Association v. Slater. The court’s decision upheld the regulations in many respects, but specifically invalidated two provisions:

- Section 800.4(d)(2). The court invalidated the provision that allowed the SHPO/THPO and the Council to veto an agency’s finding of "no historic properties affected." The court’s decision leaves the SHPO/THPO and the Council with the right to comment on such a finding, but they no longer have the right to overturn it. As a result, the decision about whether to proceed from Step 2 to Step 3 now rests with the action agency (e.g., FHWA).
- Section 800.5(c)(3). The court invalidated the provision that allowed the Council to veto an agency’s finding of "no adverse effect." Again, the court’s decision leaves the Council (as well as the SHPO/THPO) with the right to comment on the agency official’s finding, but not to overturn it. As a result, the decision about whether to proceed from Step 3 to Step 4 now also rests with the action agency.

The court invalidated these two provisions because it determined that they "crossed the line from procedure into substance." The court explained its reasoning as follows:

Both of these provisions cross the line from procedure into substance because they require an agency to proceed with the section 106 process in the face of that agency’s own determination to the contrary. The practical consequences of these provisions would have been such as to interfere
Features

with an agency’s ability to exercise its statutorily
guaranteed prerogatives.

In reaction to this decision, the Advisory Council
issued interim guidance for cases involving "no historic
properties affected" and "no adverse effect" findings. The
interim guidance states, in essence, that "the Council’s
opinion on such matters will be advisory and will not
require agencies to proceed to the next step in the
process." (The interim guidance, along with a link to the
court decision itself, is available at http://www.achp.gov/
news-interimguidance.html).

Implications for Section 106 Process

If the district court’s decision is not overturned, it
appears likely to cause a significant shift in the balance
of power in the Section 106 process. In general, the
decision-making authority of the Council and the
SHPOs/THPOs can be expected to diminish, while that
of the action agencies (such as FHWA) will most likely be
enhanced. However, in attempting to assess the magni-
tude of this shift, it is important to bear in mind two
important points:

1. As of this writing (December 5, 2001), the Council
has not yet announced whether it plans to appeal the
district court’s decision. If an appeal is filed, the
district court’s decision could be overturned,
restoring the Council’s control over the key transition
points in the Section 106 process. If an appeal is
filed, an announcement will be made at
www.achp.gov.

2. Even if the district court’s decision is not overturned,
the Council and the SHPOs/THPOs will remain
enormously influential and important in the Section
106 process. Terminating the Section 106 process in
the face of strong objections from the Council is now
legally permissible, but it may not be prudent. In
fact, action agencies may now find themselves
exposed to new litigation risks - e.g., lawsuits
challenging them for terminating Section 106
consultation prematurely. In such a lawsuit, courts
can be expected to give significant weight to the
Council’s position, particularly if the Council voices
strong opposition to the termination of the Section
106 process.

For information about this article and topic, contact
William G. Malley (wmalley@akingump.com) or Angela
M. Dusenbury (adusenbury@akingump.com) at Akin,
Gump, Strauss, Hauer & Feld, L.L.P.

New Ohio MOU for Projects with No
Potential to Cause Effects
by Timothy M. Hill, Administrator
Office of Environmental Services
Ohio Department of Transportation

Following is a new Ohio Memorandum of Understand-
ing (MOU) regarding transportation actions exempted
from detailed Section 106 review. This MOU was fully
executed on September 20, 2001.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION,
THE OHIO STATE
HISTORIC PRESERVATION OFFICE,
AND
THE OHIO DEPARTMENT OF
TRANSPORTATION
FOR
PROJECTS WITH NO POTENTIAL
TO CAUSE EFFECTS:
ODOT MAINTENANCE AND
MINOR HIGHWAY PROJECTS
[Agreement No. 10987]

WHEREAS, the Federal Highway Administration
(FHWA) is the “Agency Official” responsible for
compliance with Section 106 of the National Historic
Preservation Act (NHPA) of 1966, as amended (16
U.S.C. 470), and the implementing regulations (36
CFR Part 800); and

WHEREAS, the Ohio Department of Transportation
(ODOT) administers federal aid highway projects
throughout the State of Ohio as authorized by Title 23
U.S.C. 302; and

WHEREAS, the Ohio State Historic Preservation
Office’s (OSHPO) responsibilities under Section 106 of
the NHPA and 36 CFR Part 800 include advising,
assisting and consulting with Federal agencies as they
carry out their historic preservation responsibilities; and

WHEREAS, FHWA, OSHPO, and ODOT have
consulted and determined that certain federally funded
maintenance activities and minor highway projects
constitute an undertaking, as defined in 36 CFR Section
800.16(y), but do not have the potential to affect
historic properties listed in or considered eligible for
listing in the National Register of Historic Places.

NOW THEREFORE, FHWA, OSHPO, and ODOT
agree to carry out their respective responsibilities under
Section 106 and Section 110(f) of the NHPA and the
regulations at 36 CFR Part 800, in accordance with the
following stipulations.
I. Exempt Activities

If ODOT determines that an undertaking only involves (a) properties that are less than 50 years old or (b) exempt activities, as defined below, then the undertaking will be deemed exempt and require no further review under this agreement because, as provided for in 36 CFR Section 800.3(a)(1), these activities generally do not affect historic properties as defined in 36 CFR Section 800.16(f), as long as the undertaking is limited to the activities specified, is not part of a larger undertaking, and does not involve unusual circumstances.

1. Guardrail replacement where no new bank stabilization is required.
1. The replacement of in-kind traffic signals within existing ROW.
1. General pavement marking or “line painting” projects.
1. The installation of raised pavement markers.
1. The installation or maintenance of highway signs and fences.
1. General highway maintenance within the developed right-of-way, including examples such as filling potholes, crack sealing, mill and resurfacing, joint grinding/milling.
1. Installation of new lighting or replacement of existing lighting at underpasses.
1. Approval of utility installations along or across a transportation facility.
1. Construction of bicycle and pedestrian lanes, paths and facilities provided that no new disturbance will occur (e.g., ADA ramps, designations of certain highways as bike routes, painting of existing paved shoulders as bike lanes, bikeway/pedestrian way construction on former railroad corridors.)
1. Acquisition of scenic easements.
1. Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way.
1. Tower lighting projects.
1. Landscaping and beautification within existing right-of-way.
1. Acquisition of land for hardship or protective purposes; advance land acquisition loans under section 3(b) of the UMT Act. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels, as long as those parcels are not properties subject to consideration under 23 CFR 771.135 Section 4(f) (i.e., properties eligible for or listed in the National Register of Historic Places.)
1. Track and rail bed improvements, maintenance activities, railroad warning devices, or acquisition.
1. Improvements to existing maintenance facilities, rest areas and truck weigh stations.
1. Ride sharing activities, transportation corridor fringe parking facilities and park-and-ride lots for ride sharing where there is no demolition of buildings greater than 50 years in age.
1. Emergency repairs under 23 USC 125 necessary to restore essential travel.
1. Grants for training and research programs which do not involve construction.
1. Modernization of a highway within the developed right-of-way by resurfacing where no new bank stabilization or shoulders are added.
1. Rehabilitation or reconstruction of rail and bus buildings, and ancillary facilities that are less than 50 years old.
1. Interstate ramp rehabilitation and intersection improvements consisting of in-place replacement or upgrading of ramps, the widening of cross road bridge overpasses and the addition of ramp turn lanes within developed interstate right-of-way with no acquisition of additional right-of-way.
1. Highway improvement project areas that are proven to be disturbed by previous construction activities, by either highway, utility or other modern development.
1. Modernization of an existing highway by widening less than the width of a full travel lane provided such widening does not expand beyond the limits of developed right-of-way.
1. Limited strip right-of-way takes (defined as the equivalent of one through lane plus shoulder, a maximum width of 16 feet) in urbanized areas that have been disturbed by modern development such as utilities, drainage ditches/systems, driveways, mailboxes, homes, landscaping, parking lots, and modern commercial development including but not limited to strip malls, gas stations, and fast food restaurants, are exempted from archaeological investigation.

II. Project Review

A. If ODOT determines that an undertaking will involve any activities that are not exempt under Stipulation I, ODOT will, in accordance with 36 CFR 800, submit the documentation required by 36 CFR Section 800.11 to OSHPO.

B. The OSHPO will respond, in accordance with 36 CFR Part 800, to ODOT within 30 days after receiving the project documentation by stating that (1) the OSHPO concurs with ODOT’s submission regarding eligibility and/or effect; (2) the OSHPO disagrees with the submission’s finding regarding eligibility and/or effect; or (3) OSHPO needs more information in order to concur or disagree with the submission regarding eligibility and/or effect.

C. If the OSHPO, FHWA, and ODOT agree that the undertaking will have no effect on properties that are listed in or eligible for listing in the National Register of Historic Places, ODOT will retain OSHPO’s response in its project file and the review process, in accordance with 36 CFR Part 800, will be complete.

D. If the OSHPO, FHWA, and ODOT agree that the undertaking will have an effect on properties that are
AASHTO Standing Committee on the Environment Recognizes Its Leaders
by Wayne W. Kober

AASHTO Senior Environmental Specialist

During the closing business meeting at the AASHTO Standing Committee on the Environment (SCOE) Spring 2002 Meeting in Charleston, South Carolina on March 27, the members recognized outgoing SCOE Chair, Jim Codell, Secretary of the Kentucky Transportation Cabinet and his right hand man, John Carr, Deputy State Highway Engineer of the Kentucky Transportation Cabinet, for their outstanding environmental leadership. Jim is now the Vice President of AASHTO. John will continue to assist him in that capacity.

Long-time SCOE and A1F02 member and transportation environmental leader, Gary McVoy presented Jim and John each a plaque from AASHTO acknowledging their meritorious service to the committee and the Association’s members. In presenting the plaque, Gary read a fitting quotation from Winston Churchill, “We make a living by what we get; we make a life by what we give.” Gary also gave Jim a rosewood clock from the SCOE members for his “outstanding transportation environmental leadership.”

Under Mr. Codell’s fine guidance the SCOE committee has continued to actively engage and serve its members very well. The SCOE Steering Committee chaired by John Carr has worked closely with AASHTO staff to provide SCOE members with the AASHTO Environmental Technical Assistance Program, the AASHTO Environmental Stewardship Demonstration Program, the AASHTO Annual Meeting environmental programs, the SCOE Spring Meeting programs and TEA 21 Reauthorization environmental streamlining proposal materials. Also, the business plan for the AASHTO Center for Environmental Excellence was completed and a full time AASHTO Environmental Policy Manager was hired to establish the Center.

In accepting the recognition, Mr. Codell reiterated his favorite saying, “You can’t have environmental stewardship without environmental leadership and you can’t have environmental streamlining without environmental stewardship.” He also thanked John Carr and the SCOE members for their strong support and hard work.

The NEPA Process, Does It Ever End?
by Joseph S. Shalkowski, Environmental Manager Michael Baker Jr., Inc.

Well, you’ve advanced the project through the exhaustive NEPA process - Congratulations! The draft and final NEPA documents have been reviewed, re-reviewed, revised, and finally circulated! There are responses to all the comments, and you’ve dealt with nearly every personality and emotion under the sun! Now, you’re about to file away the Record of Decision (ROD) or Finding of No Significant Impact (FONSI), eagerly awaiting, at last, the FINAL DESIGN!

At this point in the project, the last thing on your mind is NEPA. Nevertheless, the practical reality of the matter is that the full reach of NEPA transcends the ROD or FONSI. In your NEPA experience, I am sure you have heard of such terms as “Reevaluation” and “Supplemental.” Also, those mitigation commitments that were made must now be fulfilled. As a result, the practice of Post-NEPA Phase Monitoring and Tracking has become an essential component of the final design process on many projects. Experience also shows that such a practice actually promotes streamlining of the design process and environmental stewardship, two important considerations to remember.
A Pennsylvania Case Study In Post-NEPA Phase Monitoring

One of the Pennsylvania Turnpike Commission’s (PTC) principal objectives during final design continues to be the avoidance, minimization, and mitigation of adverse environmental effects. The long-term relationships formed with the environmental resource agencies are dependent upon the reassurance that the PTC will fulfill its mitigation commitments as recorded in the following documents:

- The Final NEPA/Section 4(f) Documentation.
- The ROD or FONSI.
- The Pennsylvania Agricultural Lands Condemnation Approval Board (ALCAB) Adjudication.
- The Memorandum Of Agreement for cultural resources (MOA), as applicable.
- The Mitigation Report for the selected alternative.
- The Memorandum Of Agreement for cultural resources (MOA), as applicable.

The issuance of permits is often conditional on the fulfillment of these commitments. Historically, however, as design refinements and/or modifications are made during final design, the potential exists to reduce, increase, or change the scope of the environmental impacts recorded in the final NEPA documentation. These changes could affect the NEPA commitments that were originally made.

The need for post-NEPA phase monitoring to promote environmental accountability and stewardship during final design and construction became clearly apparent to the PTC and other agencies involved on several very large projects in the Pittsburgh region. In response, the PTC has utilized a set of computerized spreadsheet/database tracking systems that identify and monitor the following:

- Additional right-of-way requirements not addressed in the final NEPA document.
- Changes in environmental impacts that may result during final design.
- Fulfillment and incorporation of all mitigation commitments into the PS&E package as well as implementation during construction.

Components of the Tracking Systems

The Post-NEPA Phase Environmental Tracking Systems are comprised of the following components which are continually updated and maintained by monitoring certain aspects of final design and conducting supplemental field investigation as necessary:

- Expanded NEPA Right-of-Way Tracking System
  The Expanded NEPA Right-of-Way Tracking System monitors the need for and use of additional land parcels located beyond the right-of-way limits estimated during the NEPA process. These additional parcels may be needed to accommodate refinements or modifications made during final design. Field investigations are performed on each additional parcel to determine the presence of hazardous/residual waste, wetlands, perennial/intermittent streams, historic/archaeological resources, productive agricultural land, residential/business development, and any other regulated resources that may be involved. The system tracks the station and offsets of the potentially needed parcels, the resources investigated, the presence of investigated resources, the dates in which the results of the investigations are documented and transmitted, and any additional comments or actions.

- Environmental Impact Tracking System
  The primary purpose of the Environmental Impact Tracking System is to monitor post-NEPA phase changes to the environmental impacts recorded in the final NEPA document. It is also quite effective in keeping sensitive environmental issues at the forefront of the design process, so attention is not lost on the PTC’s objective to further avoid and minimize impacts. The findings reported in the Expanded NEPA Right-of-Way Tracking System often will provide the basis for updating this tracking system during final design.

- Mitigation Commitment Tracking System
  The Mitigation Commitment Tracking System provides a method of tracking the mitigation commitments as they are incorporated into the final design plans and then implemented during construction. The tracking system promotes accountability by identifying the responsible parties for developing the mitigation plans/designs and including a sign-off provision to validate the fulfillment of each and every mitigation commitment. Mitigation commitments tracked with this system will have generally been defined during the NEPA process. However, any modifications to the original mitigation commitments will also be tracked. These modifications may be the result of final design activities that reduce or increase the impacts recorded in the final NEPA document.

Lessons Learned

Because the final design of any transportation facility is an evolving process, the environmental impacts listed in the final NEPA document should not be viewed as absolute values. Changes often occur. The PTC’s Post-NEPA Phase Environmental Tracking Systems have proved to be valuable and cost-effective tools to monitor these changes while at the same time promote environmental accountability throughout final design and construction. Additionally, the tracking systems have provided an efficient method for informing resource/permitting agencies of a project’s environmental status during final design. Finally, the system has been instrumental in satisfying FHWA’s reevaluation policy set forth in 23 CFR 771.129 (c).

If you have any questions about the use of Post-NEPA Phase Environmental Tracking Systems, please contact Joe Shalkowski (412-269-4628). Special thanks are extended to the Pennsylvania Turnpike Commission and especially David P. Willis, PTC Environmental Manager.
The Geographic Information System Unit of the Arkansas State Highway and Transportation Dept
by Robert Fuhler, GIS Unit Supervisor
Arkansas State Highway and Transportation Dept

Introduction
The Environmental Division of the Arkansas State Highway and Transportation Department (AHTD) has implemented a Geographic Information System (GIS) that is streamlining the environmental assessment process. The GIS, a process through which graphical maps and databases are linked, is used in the preparation of environmental assessments and impact statements that include fields such as engineering constraints and natural and social environmental analysis. The utilization of GIS saves time during the development of such assessments and improves their accuracy, enabling the AHTD to make better location and design decisions while complying with Federal and State environmental regulations.

The Environmental GIS Unit and Resources
At the time of this writing, AHTD’s GIS Unit has been active for just over a year. In that time, contacts have been established with many state, federal and local governments as well as universities and research institutions. This initial contact permitted the GIS Unit to form a solid base of contacts that are willing to share their data and resources. Solid cooperative efforts have been forged with the Arkansas Department of Information Services (ADIS), the University of Arkansas Center for Advanced Spatial Technologies (CAST), University of Arkansas at Monticello Spatial Analysis Lab (SAL), Arkansas Department of Environmental Quality (ADEQ), U.S. Environmental Protection Agency (EPA), and Natural Resources Conservation Service (NRCS).

The GIS Unit also coordinates within the AHTD as well. Base maps provided by the Mapping Section of the Planning and Research Division are currently the most concise and accurate available statewide. With base maps in place, other information is layered to the GIS. If additional data is needed, and cannot be acquired electronically from other sources, the GIS Unit will create those electronic data layers from hard copy or incorporate data collected in the field by AHTD environmental specialists. There are also times when data acquired from other sources are not at a high enough resolution for our use. If this occurs, we can use those data as a guide to create more accurate data by using aerial imagery or plat files. Other divisions, such as the Surveys and Computer Services are also integral players with the development of the GIS workflow and layout.

Since GIS is a technology that permits dynamic sharing capabilities and is so multi-faceted, cooperative efforts between divisions and sections allow redundancy to be reduced and concurrent updates of data to be made. For example, the Environmental Division uses the most current alternative alignment(s) from the Surveys Division. All these data are live connections, that is to say each time a connection is made to a specific job, the most current alignments are portrayed on our screen. This process is very important since it gives us a dynamic link to the most up-to-date lines created by any division. This streamlining effort allows for much faster and efficient workflows. Cooperation of this nature, both inside and outside the AHTD, is a very important factor that works into the success of a GIS implementation. Since this key ingredient was developed early during the construction of the GIS, the process has been extremely successful.

Training and the Future
Currently, training is being conducted within the Environmental Division. Preliminary training involves windows navigation and will get progressively more complex as specific professional fields are coordinated through the use of GIS. Training in collecting data in the field using Global Positioning Systems (GPS) has also been initiated. This training will also allow the development of data standards and the continuation of cooperative efforts. Each lesson plan is posted on a community server so anyone within the AHTD will have access to it. There are also quick reference sheets that are posted as ‘recipes’ that allow a quick outline-style document (with screen-shots) to be opened and printed to work through various commands. These are also housed on an AHTD server where anyone in the AHTD can access them. Some include descriptive charts that illustrate the GIS workflow and links graphics with data to allow persons not familiar with GIS to have a better understanding of the process. Additionally, the training allows personnel working with GIS to build relationships with others who are doing the same. Ideally, the success of the training resource can be gauged by how efficient the transfer of ideas and techniques occurs between different offices.

Future plans being discussed are live data connections to outside agencies, both Federal and State. Live data connections will be very useful in getting the most current information available without having to transfer information as a static dataset that is only current on the actual date and time those data were transferred. Other plans include customization of workspaces and transfer of information between other GIS platforms and sources.

Conclusion
GIS is actively being used by the AHTD for many different applications. These applications, although
totally different in their scope, are structured so they are fully compatible with other GIS platforms and methods within and outside the AHTD. Now AHTD can use acquired information from many sources, including consultants’ projects. The design also incorporates methods that have enough flexibility to efficiently adjust as new technology or data becomes available.

GIS has also proven to be a great resource that allows the true streamlining of workflow and the increase in accuracy of data. It also gives much more resiliency as to how those data are used. Additionally, redundancy of work can be curbed considerably and implementation of standards that will allow workflows to be even more efficient. The capability and compatibility that the AHTD currently has at its disposal allows a very efficient and unique GIS network to be established.

If there are any questions or comments on this article, please feel free to email or call Robert Fuhler in the Environmental Division (Robert.Fuhler@ahtd.state.ar.us or 501-569-2631).

The Arkansas State Highway and Transportation Department Historic Bridge Management System:
Using a Geographic Information System to Manage Historic Bridges
by Robert Scoggin, Historic Bridge Coordinator
Arkansas State Highway and Transportation Dept

The Arkansas State Highway and Transportation Department (AHTD) consolidates all the AHTD’s historic bridge data into a Historic Bridge Management System (HBMS) using a Geographic Information System (GIS) to evaluate and manage historic bridge inventories, develop management/preservation plans, enhance marketing of historic bridges and aid in mitigation.

The initial construction of the HBMS began in 1999 and is an ongoing process. The HBMS contains bridge data from AHTD Bridge Division’s bridge database (including location, bridge type, the number of spans, span length/width and span height), newspaper articles, digital photographs, digital video and scanned historic documents such as the Historic American Engineer Record (HAER) and National Register Nomination forms.

AHTD has committed to undertake a historic bridge inventory every five years. When an inventory is initiated bridge types potentially eligible for the National Register of Historic Places are queried by bridge type to determine which bridges to evaluate. These bridges are digitally photographed and the photos are attached to the database. These bridges are then evaluated by spatial distribution across the state, number of bridges, length/width of a bridge and physical condition of a bridge. The results are then compared with existing numbers and types of historic bridges to determine their eligibility to the National Register of Historic Places.

Currently, AHTD is involved in a reevaluation of all metal truss bridges in the state of Arkansas. Metal truss bridges not currently on the National Register of Historic Places were input into the HBMS as “Evaluation Bridges.” The use of type queries generated on the Evaluation Bridges by the HBMS has aided in the development of a management/preservation plan for metal truss bridges. By using the type queries to determine the location, condition and number of Evaluation Bridges, as compared to the existing historic metal truss bridges, AHTD is able to categorize preservation alternatives by level of historic eligibility (such as on or eligible to the National Register or Arkansas Register). Once these criteria are determined for each metal truss bridge type, a set of specific preservation treatments are applied to three classes of bridge lengths (200 ft and above, 100 to 200 ft, 100 ft and below) queried from the HBMS.

The HBMS has proven to be a versatile tool for managing Historic Bridges. It has allowed AHTD to centralize all historic bridge data, given AHTD the ability to easily analyze spatial distribution of historic bridges, to efficiently evaluate bridges for nomination to
Features

The National Register or Arkansas Register of Historic Places and develop management/preservation plans. The HMBS allows AHTD to monitor historic bridge replacement across the state and helps AHTD determine if bridges from a lower historic eligibility category should be moved to a higher category to keep the number of historic bridges within the state stable. It also aids AHTD in determining the most appropriate geographic area to market a bridge that is slated for replacement. This insures that all Federal/State agencies and the public are aware of their option to assume ownership of a bridge slated for replacement, for reuse in either its existing location or a different location.

The benefits derived from the HBMS described in this article allow AHTD to streamline the Historic Bridge Inventory process and Historic Bridge Section 4(f) documentation that occurs during the replacement process. It also allows AHTD to decrease the time a historic bridge replacement project takes, by improving the information available for review by the Arkansas SHPO and Federal Highway Administration (FHWA). This improves communication between AHTD, the SHPO and FHWA by reducing or eliminating miscommunication caused by these agencies receiving incomplete or unclear information on a project. The methodology used to create the HBMS could be applied to historic structures in general to increase the efficiency of historic eligibility determinations or improve management of historic structure databases.

For more information, contact Robert Scoggin, Historic Bridge Coordinator, Environmental Division, Arkansas State Highway and Transportation Department (10324 Interstate 30, PO Box 2261, Little Rock, Arkansas 72203-2261; 501-569-2077; Robert.Scoggin@ahtd.state.ar.us).

**TxDOT Environmental Streamlining Efforts**

*by Jim Dobbins*

**TxDOT Environmental Affairs Division (ENV)**

Multi-agency efforts to fully implement the environmental streamlining provisions of TEA-21 are progressing in Texas. The goal is to speed the project development process by establishing clear expectations and procedures between agencies via memorandum of agreement/understanding; developing internal TxDOT procedures to complement the decision-making process; and coordinate concurrent document review by multiple resource agencies. The most recent developments follow.

U.S. Army Corps of Engineers (USACE) Regional General Permit (RGP) - This RGP is under development to authorize many minor maintenance activities and to provide an increased impact threshold for larger construction projects. Development of the RGP has been a team effort between TxDOT’s Environmental Affairs Division and USACE. TxDOT expects the RGP to streamline the permitting process and to reduce paperwork.

**U.S. Coast Guard Section 9 permits** - TxDOT is working with the USACE, Federal Highway Administration (FHWA) and U.S. Coast Guard to reduce the review time for permit applications for Coast Guard Section 9 permits.

**Storm Water Workgroups** - Workgroups composed of TxDOT and TNRCC staffs are looking for ways to make it easier to obtain general permits under municipal separate storm sewer system (MS4) and construction general permit regulations. Results are expected in 2003.

**Permitting Liaison Position** - A full-time position in ENV was created in 2001 to focus on permit and compliance issues with USACE and its enforcement of Section 404 of the Clean Water Act. The permit officer shares office space both at ENV in Austin and at the USACE Galveston District office. This position aids in streamlining the permitting process by providing a direct link between those who prepare permits at TxDOT and the regulatory branch at USACE that reviews and then issues, denies or modifies permits.

**Memorandum of Understanding/Agreement** - TxDOT has signed memorandums of agreement (MOA) and understanding (MOU) with TNRRCC, the Texas Historical Commission, and most recently with Texas Parks and Wildlife Department (TPWD).

"MOUs define TxDOT’s responsibilities and those of the resource agencies so that it can be determined which projects require coordination, what level of documentation is needed, and the length of the review period," said Jenise Walton, an ENV project manager. "MOUs allow for early project development, meaning that TxDOT may not know all of the specifics about a project, but we can contact a resource agency and get their input and comments, which helps with the decision making process. I think the MOUs streamline the project development process because everything is spelled out ahead of time."

**Tribal Consultation Initiatives** - Texas is finalizing an agreement with Native American tribes in Texas that will result in cooperation among the tribes and TxDOT.

**Section 106 Programmatic Agreement** - TxDOT is working to update a Programmatic Agreement with the Advisory Council on Historic Preservation (ACHP) and the State Historic Preservation Officer (SHPO) that dates from 1994. The sought-after update would delegate more responsibility to TxDOT to process Section 106 project requirements that meet agreed upon criteria. It is expected that such an agreement could save about three months of review time for 80 percent of the projects subject to Section 106.

**Advanced Right-of-Way Acquisition** - To facilitate project development in some special circumstances, ENV and the Right of Way Division are developing a process to acquire right of way prior to final environmental approval, while also continuing to address environmental concerns and meet public involvement requirements.
The process to request advanced right of way acquisition will continue to emphasize investigation into potential environmental consequences and public controversy along a locally preferred alignment. Advance purchases may not preclude alternative alignments to avoid impacts to identified resources.

Public Hearing Summary and Analysis Format - In 2001, ENV developed a public hearing summary and analysis format available to all districts. The recommended format provides consistency in the preparation of public hearing documents and facilitates reviews.

Streamlining Pilot Project - The Dallas District’s Loop 12/I-35E is one of 10 transportation projects nationwide selected for a pilot program to streamline its major investment study and environmental assessment. Originally scheduled for letting in fiscal 2009, the project should now move up to letting in fiscal year 2005 or 2006.

I-69 Project - This massive project will cover eight districts (Pharr, Laredo, Corpus Christi, Yoakum, Houston, Beaumont, Lufkin and Atlanta Districts) and may stretch as much as 1,000 miles. In an effort to shorten by two or three years the writing of the environmental impact statements for the proposed segments of I-69, a multi-agency partnership led by TxDOT and the Federal Highway Agency (FHWA) has been formed. Streamlining efforts include the following:

1. Environmental work is being conducted by two oversight consulting firms - Parsons Brinckerhoff, which is overseeing quality control, and PBS&J, overseeing workload issues for subcontractors working on different segments.
2. FHWA hosted partnering workshops on the NEPA process and on endangered species issues. These workshops work to inform resource agencies about these issues. FHWA continues to develop issue specific workshops to help ensure consistency of efforts, reviews and expectations.
3. The formation of a steering committee made up of TxDOT and resource agency decision-makers, and a technical advisory committee, composed of TxDOT and resource agency technical staff, who review the work of the consultants.

Karst Decision Flowchart - Developed by ENV staff, this chart walks Austin and San Antonio District environmental staff through the coordination process when dealing with caves in or near the right of way. A series of "yes" and "no" questions guides the user through the proper procedure, saving considerable time and effort. The flowchart is available on the streamlining page of ENV’s web page.

Mitigation options - State legislation passed in 2001 allows TxDOT new mitigation options. Previously, TxDOT could acquire land and manage mitigation projects itself, or contract with only one outside entity, the Texas Parks and Wildlife Department. Now TxDOT can work with any appropriate public or private entity to acquire and manage property for mitigation when adverse impacts from transportation projects cannot be avoided. The new law also allows the department to pay a "fee in lieu" for its share of mitigation to established funds that direct and manage the preservation, enhancement and/or creation of endangered species habitat, wetlands, etc. This form of mitigation is expected to be more efficient than acquisition of additional real property by TxDOT to create piecemeal mitigation to offset adverse impacts.


For more information, see www.dot.state.tx.us/insdtdot/orchart/env/streamline/streamline.htm.

The ... BUT FOR ... Test versus SEGMENTATION
Adapted from: Parsons Environmental Planning Electronic Newsletter (PEPeNEWS Volume 4, Number 8, April 4, 2002) provided by Robert S. De Santo, Ph.D. Parsons, Glastonbury, CT

A question was raised that deserves an answer shared widely to assure it being correct and complete. If you have something to contribute to clarify or expand what here represents the input from ten colleagues, please communicate it to PEPeNEWS.

Question: "What is the …but for… test?"
Answer: "…but for…" is a phrase often used by lawyers in tort cases, or other types of liability cases. In medical malpractice, the plaintiff’s attorney says, "But for the actions of this doctor, my client would not have died."

With respect to environmental planning and the NEPA process, it appears that this phrase evolved out of attempts to define and differentiate project impacts that are direct from those that are indirect (i.e., secondary) or cumulative. Staff of the Federal Highway Administration (FHWA) associates the test with secondary and cumulative impacts, such as, "But for the construction of a proposed intersection, adjacent businesses and housing developments would not occur." The relationship of the project being assessed and its "but for" relationship to other socioeconomic issues is not considered to be black or white, but rather, shades of gray. Therefore, although FHWA acknowledges that roadway improvement plays a role in spurring subsequent development, it believes that such projects do not carry the sole responsibility for those secondary or cumulative land use changes. For example, were it judged that 65% of secondary or cumulative development would happen without a project, the consequence is that 35% of the secondary impacts would be judged the probable responsibility of the proposed project. Based on that judgment, the project sponsors would be liable for 35% of any impact mitigation costs. In point of fact, general FHWA policy will consider...

Features
mitigation only for direct secondary impacts of highway projects, which it rarely does. FHWA takes the position that secondary and cumulative impacts, especially socioeconomic ones, are land use issues whose consequences are expected to be pre-thought and planned by local jurisdictions that control land use, and that public involvement and understanding of the dynamics and consequences of associated changes is presumed to be a given part of project planning. Therefore, FHWA will not substitute its judgment for that of the local jurisdictions on issues of local land use planning. It takes the position that its primary responsibility is to make sure possible and predictable secondary and cumulative impacts are factored into NEPA decision-making and that those impacts are fully disclosed to the public in the process.

The "but for..." test has been used by the US Corps of Engineers. An example is the assessment of a barge-unloading terminal and the associated Corps Section 404 wetlands permit. If a power plant is adjacent to a river and the operator seeks a 404 Permit to build a barge facility to receive coal shipments, the USACOE will define the project assessment Area of Potential Effect (APE) to include the entire power plant facility, including the proposed barge site and its operation. "But for the permit to build a barge facility, there would be no power plant." This logic thus extends USACOE permit influence/jurisdiction to the entire power plant facility. Both USACOE and the Federal Energy Regulatory Commission have precedents that use the same logic in processing permits issuing from Section 106 of the Historic Preservation Act.

The Endangered Species Act of 1975 (15 USC 1531 et. seq.) also contributes to the use of the "...but for..." test. Section 7 assessments of project impacts related to threatened or endangered species includes the same considerations as those defined above. The US Fish and Wildlife Service and the National Marine Fisheries Service have published an "Endangered Species Consultation Handbook, March 1998." (See http://www.arbta.org/public/docs/enviro/articles2/Sec%207%20Handbook.pdf.) On page 108 of that publication, the "...but for..." test is defined as follows: "As a practical matter, the analysis of whether other activities are interrelated to, or interdependent with, the proposed action under consultation should be conducted by applying a 'but for' test. The biologist should ask whether another activity in question would occur 'but for' the proposed action under consultation. If the answer is 'no,' that the activity in question would not occur but for the proposed action, then the activity is interrelated or interdependent and should be analyzed with the effects of the action. If the answer is 'yes,' that the activity in question would occur regardless of the proposed action under consultation, then the activity is not interdependent or interrelated and would not be analyzed with the effects of the action under consultation. There will be times when the answer to this question will not be apparent on its face. The biologist should ask follow-up questions to the relevant parties to determine the relationship of the activity to the proposed action under consultation. It is important to remember that interrelated or interdependent activities are measured against the proposed action. That is, the relevant inquiry is whether the activity in question should be analyzed with the effects of the action under consultation because it is interrelated to, or interdependent with, the proposed action. Be careful not to reverse the analysis by analyzing the relationship of the proposed action against the other activity. For example, as cited below, if the proposed action is the addition of a second turbine to an existing dam, the question is whether the dam (the other activity) is interrelated to or interdependent with the proposed action (the addition of the turbine), not the reverse.

Example: The Corps of Engineers requests consultation for construction of a dam which requires a Section 404 permit. The dam will provide water to private irrigation canals that will come on line once the dam is completed. The private irrigation canals are interrelated to the proposed dam and must be considered in a biological opinion for the larger water development project since they would not be in existence "but for" the presence of the proposed dam under consultation. Similarly, a power turbine to be constructed concurrently with the dam cannot function and has no independent utility "but for" the dam and is, therefore, interrelated with the project. Thus the effects of this turbine on fish passage and water quality are to be considered in the biological opinion on the proposed dam. Ten years after construction of the dam, a federal permit is needed to add a second turbine to the dam to increase power generation. The addition of the turbine, as the proposed action under consultation, is now the "larger action" against which the "but for" test for interrelated or interdependent effects would be applied. The pre-existing dam has independent utility without the new turbine and therefore is not interrelated to, or interdependent with, the proposed action. Ongoing effects of the existing dam are already included in the Environmental Baseline and would not be considered an effect of the proposed action under consultation. Activities which would be interdependent and interrelated to the proposed turbine could include construction of new power lines or conversion of natural habitat if the additional power capacity allowed for the development of a manufacturing facility that was dependent upon the new power grid. Later, a new federal safety law requires the dam operator to construct a fuse plug on an existing spillway that improves response to emergency flood conditions. Construction of the fuse plug is now the proposed "larger action." Again, the existing dam is not interdependent or interrelated to the proposed fuse plug because it does not depend upon the proposed action for its existence. That is, the test is not whether the fuse plug in some way assists or facilitates in the continued operation of the pre-existing project, but instead whether the water project could not exist "but
for” the fuse plug. Because the answer is that the project would exist independent of the fuse plug, the operation of that project is not interrelated or interdependent. Accordingly, the biologist would not consider the effects of the dam to be effects of the “larger” action under consultation (the proposed construction of the fuse plug). However, if the fuse plug would allow a greater flow of water through the spillway, thereby requiring the operator to increase the depth of the spillway channel and armor it with concrete, such activities would be interrelated to the proposed action.”

These perspectives of indirect (e.g., secondary) or cumulative impacts have become apparently intermingled with the concept of project segmentation, which is differently defined but of equal relevance to understanding the NEPA process. The confusion is encouraged by the tendency for project proponents to fragment a single project of multiple segments into its constituents and treating portion of the project as if it were a whole. Attempting to define that portion as being independent of the whole complex of interdependent constituents may be challenged on the grounds of “segmentation.” For example, a highway going from one terminus to another is subdivided and each such segment is assessed in isolation. The "Big Picture" of the whole highway is not disclosed. Consequently, EISs for such segmented projects misrepresent the otherwise consolidated sum of impacts from all its constituent pieces. Such misrepresentation makes the segmented project appear to have fewer and/or less significant impacts than were all its pieces and their consequences considered as a whole.

FHWA has promulgated three tests in order to define whole and unsegmented projects. Passing the tests listed here [23 CFR 771.111(f)] helps FHWA avoid giving segmented project its approval.
1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
2. Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and
3. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

The difference between the “but for” test and project segmentation tests is mind bending! The former helps identify any and all present, past, and future interrelated and interdependent actions that define the full context of a project. It is appropriate in identifying sources of secondary and cumulative impacts of a project. The latter define those future interrelated and interdependent actions that constitute a single proposed project as required by the NEPA process. It helps identify direct, indirect, and cumulative impacts of a proposed project (40 CFR 1508.7 and 8).

If you have any questions or comments about this article, contact Robert S. De Santo, Ph.D. at Parsons 655 Winding Brook Drive, Glastonbury, CT 06033, robert.desanto@Parsons.com, 860-633-0223, fax: 860-633-9415, cell: 860-460-8167).

Editor's Notes
by Mark Kross
Missouri Department of Transportation

Many thanks to those persons who contributed articles and information for this newsletter. I thank Richard Goldsmith, Texas DOT, for allowing incorporation of the article published in its environmental newsletter into our newsletter. Thanks to Phillip Moore of the Arkansas State Highway and Transportation Department for forwarding the AHTD articles. I also appreciate Robert De Santo supplying the article on "but for."

An international contact, Paul Tomlinson, editor of the Strategic Environmental Assessment (SEA) & Transport Planning newsletter, sponsored by the European Conference of Ministers of Transport, introduced me to his newsletter. He has noted our parallels in transport evaluation, and he wonders whether there are any ways our two newsletters can support each other. That newsletter can be found at the following address: www.trl.co.uk at the environment - projects page. The partnership is worth exploring, and it may develop further by our November 2002 edition of the newsletter.

I’ll be asking for materials in August for submittal by mid October 2002 for the November 2002 issue. If you already have material, send it to me now. I can use the materials because the hopper is now empty.

Thanks to J.K. Robinson, Patti Mulligan, and Margit Fountain of Michael Baker, Jr, Inc. for their help in posting the electronic newsletter.

I send my apologies to you all for the initial delay and ultimate omission of the November newsletter. Some of the reason for the delay was due to tragic personal events beyond my control. National events stemming from the tragedies on September 11 have affected us all. My thoughts are with all affected by tragedy. May you gain strength by knowing that you are supported by the TRB community.

Finally, thanks to Henry Beale for his articles. Henry wrote, "Always remember, if you are in need of a little filler (or humor), that I can provide some short articles: a, an, the; and, in multi-lingual format: un, ein, le, la, der, die, das."

I hope to see you all at the 2002 summer workshop in New Hampshire.
Newsletter Guidelines
Major Headings:
Chairman’s Message Requests for information
Announcements Features
Subcommittee Reports Editor’s Notes
Research News

Submittals should be formatted to 8 ½ " x 11" size, typewritten in caps and lower-case, single spaced, flush left margin. Subject and author should be provided as part of the text. My preferred computer word application is Microsoft Word (although I should be able to translate/convert most other applications). Articles may be submitted as hard copy with a 3.5 " disk, or by fax or e-mail to the Newsletter Editor:
Mark S. Kross
Assistant to the Director of Project Development - Environment
Project Development
Missouri Dept. of Transportation
P. O. Box 270
105 West Capitol Avenue
Jefferson City, MO 65102
Phone: 573-751-4606   Fax: 573-526-3261
e-mail: krossm@mail.modot.state.mo.us

Subcommittee chairs are expected to submit reports on committee activities. Announcements, Features (e.g., reports on activities or news of interest) and Requests for Information may be submitted by anyone.

I’ll request articles for the November 2002 newsletter in August. Please feel free to submit articles anytime during the year, but recognize that we expect to publish in May and November.

Electronic Newsletter
This May 2002 newsletter is NOT being printed and mailed. It is being e-mailed to members, friends of the committee and others who have provided us an e-mail address. Newsletters are available only by e-mail and on the A1F02 web site. Please submit your e-mail address to Mark Kross at krossm@mail.modot.state.mo.us and Linda Wernick at lwernick@mbakercorp.com to get on the e-mail list for the future newsletters. The newsletter is also available at the A1F02 committee’s website at http://www.itre.ncsu.edu/A1F02/default.htm hosted by the Center for Transportation and the Environment (CTE).

SEND US YOUR E-MAIL ADDRESS TO GET THE NEWSLETTER DIRECTLY!!