



# TESTIMONY

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## **TxDOT Environmental Process**

**Testimony before the  
Senate Committee on Transportation and Homeland Security**

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Region 16 Education Service Center  
10:00 a.m.**

## **Senate Transportation and Homeland Security Committee Hearing** **TxDOT Environmental Process**

### **I. Introduction**

The Senate Transportation and Homeland Security Committee has been charged with studying and making recommendations to expedite the environmental review process. In response to the interim charge, the Senate Transportation and Homeland Security Committee requested that the Texas Department of Transportation (TxDOT) provide the committee with this testimony. This testimony will provide: an overview of the environmental process, existing and ongoing initiatives, and recommendations.

### **II. Overview of Environmental Process**

The environmental review process for transportation projects is complex and must be completed for each project.

Beginning in the mid-1960s, a number of federal and state environmental laws were created. One of these laws, The National Environmental Policy Act, commonly called "NEPA", requires federal agencies to conduct an environmental review prior to taking a "major federal action" (such as approving use of federal funds for constructing a highway). The rules of the federal Council on Environmental Quality, and of the Federal Highway Administration (FHWA), require that a written report be produced describing, for example, the analysis of project alternatives, and direct and indirect effects of the project. An opportunity for public participation is required, as is coordination with federal, state, and local governmental entities that have jurisdiction or subject matter expertise related to the project. The environmental review, public involvement and coordination must be completed before the project can be approved. The Texas Transportation Code requires TxDOT to develop environmental review procedures for projects that are not subject to review under NEPA.

A project's design and location is affected by the environmental review and public involvement processes. Environmental review includes distinct tasks such as scoping, field work, technical analysis and report development, compiling documentation, developing plans for mitigating impacts, agency coordination, public involvement, obtaining permits, and final approval of the environmental document. The environmental studies that are part of the environmental document may investigate impacts to wetlands, water quality, trees, plants, animals, flood plains, air quality, farmlands, parks, open spaces, endangered species, hazardous materials, cultural resources, community issues, environmental justice communities, habitat, storm water pollution, and traffic noise.

The environmental document will show how the project complies with numerous laws, rules and agreements, and how it does or will comply with specific permitting

requirements. TxDOT must satisfy the requirements of, and coordinate with, a number of state and federal agencies including:

### **Federal Agencies**

- U.S. Army Corps of Engineers
- U.S. Fish and Wildlife Services
- U.S. Coast Guard
- U.S. Environmental Protection Agency
- National Marine Fisheries Service
- Federal Highway Administration

### **State Agencies**

- Texas Commission on Environmental Quality
- Texas Parks and Wildlife Department
- Texas Historical Commission and State Historical Preservation Officer
- Texas General Land Office
- Coastal Coordination Council

The coordination with each agency has a separate timeline to follow. Texas statute requires TxDOT to develop and adopt a Memoranda of Understanding (MOU) with the Texas Historical Commission, Texas Parks and Wildlife Department, and the Texas Commission on Environmental Quality for their review and comment on highway improvement projects. Each of the MOU's has separate timelines, which adds to the complexity of the environmental process.

The work is completed by highly specialized personnel, both TxDOT employees and contractors. TxDOT districts handle the project design, location and environmental studies and public involvement process. Many of the smaller districts have one person responsible for all environmental planning and studies. TxDOT's largest district, Houston, has 11 people responsible for this. Each district also has a Director of Transportation Planning and Development, with broad responsibility for the planning of projects, including environmental issues. The districts also have staff responsible for other environmental issues that occur during the construction, maintenance or operations of Texas' highways.

### *Types of Environmental Documents*

Early investigations and related technical reports relative to the associated natural and human environment in the project area, are used to prepare the environmental document for a project and to determine the level of environmental assessment required for the project according to the significance of the anticipated impacts. Routine projects that are not anticipated to have significant impacts are assessed as a "categorical exclusion." If

the significance of the impacts is unknown, TxDOT will prepare a more detailed "environmental assessment." If it is anticipated the project will have significant impacts, TxDOT will prepare an "environmental impact statement."

The least complex project type is a Programmatic Categorical Exclusion (PCE). This project type only applies to projects requiring FHWA approval. However, FHWA entered into an agreement with TxDOT that allows TxDOT to certify projects that meet the criteria outlined in this agreement. TxDOT's Regional Environmental Coordinators are responsible for certification of PCEs, the most numerous and least complex of environmental documents.

The second least complex project type is a Categorical Exclusion (CE). Depending on whether the project has federal aspects, these projects are approved by either FHWA or the Environmental Affairs Division of TxDOT. The actual 5 year average (2005-2009) time to process (does not include the time to conduct the early investigations) CE documents was 14 months.

The second most complex project type is an Environmental Assessment (EA). Depending on whether the project has federal aspects, these projects are approved by either FHWA or the Environmental Affairs Division of TxDOT. The actual 5 year average time required to process (does not include the time to conduct the early investigations) an EA was 30 months.

The most complex project type is an Environmental Impact Statement (EIS). Depending on whether the project has federal aspects, these projects are approved by either FHWA or the Environmental Affairs Division of TxDOT. The actual 5 year average time required to process EIS documents (does not include the time to conduct the early investigations) is 39 months. Changes to the proposed project or new issues that arise related to the project may require a supplemental EIS. The time required is dependent on the scope, intensity and context of any impacts. An average minimum amount to complete a supplemental EIS is 12 months, plus additional time required to complete the assessment of specific applicable variables.

TxDOT may be required to prepare a re-evaluation of the environmental document for any project. A re-evaluation addresses new requirements, design changes or changes in the project area and can occur prior to construction or during construction. The time required is dependent on the scope, intensity and context of any impacts. An average minimum amount of time to complete a re-evaluation is 60 days for the most simple of changes to 180 days for complex changes, plus additional time required to complete the assessment of specific applicable variables.

*Timeline for processing an Environmental Document*

To provide an idea into the variables referenced above for processing an environmental document, provided below is a list of the possible specific tasks (and time requirements):

- Scoping: 9 months
- Public Meeting(s): 41 days for each
- Meeting with Affected Property Owners: 20 Days
- Section 4(f) Evaluation (De Minimis) (applies to publicly owned parks and recreational areas, wildlife and waterfowl refuges, public and private historic sites): 30 Days
- Section 4(f) Evaluation (Non-De Minimis) (applies to publicly owned parks and recreational areas, wildlife and waterfowl refuges, public and private historic sites): 18 months including Chapter 26 public hearing
- Individual Section 404 Permit (jurisdictional waters of the US): 24 months
- 404 Nationwide Permit Preconstruction Notice (jurisdictional waters of the US): 45 days – 6 months
- Jurisdictional determination for isolated wetlands: approx 120 days
- Consultation USFWS (Austin Field Office): Informal Consultation 123 days -9 months; Formal Consultation, 207-319 weeks (Legal review period is 135 days for Formal Consultation, but clock does not start until USFWS determines they have sufficient documentation)
- Consultation USFWS (Non-Austin Field Office): Informal, 90-135 days; Formal Consultation 175-220 weeks (Legal review period is 135 days for Formal Consultation, but clock does not start until USFWS determines they have sufficient documentation)
- Section 106 Coordination (Archeology): Assume 6 months (increase to 1 year if data recovery is necessary)
- Section 106 Coordination (Historic Structures): Assume 6 months
- Section 106 Public Involvement: 60 days
- Historic Cemeteries: Assume 6 months (increase to 1 year if relocations necessary)
- TCEQ consultation: 30 days
- TPWD consultation: 45 days
- Notice of an opportunity for a hearing: 31 days
- Public hearing: 60 days
- FHWA review: 30 days for each
- FHWA legal sufficiency review: 2 months for each
- Publish Section 139(1) notice under the Safe, Accountable, Flexible, Efficient, Transportation Act (SAFETEA-LU), and end of period to file suit concerning the project: 180 days

Many of these activities occur concurrently and not sequentially.

### **III. Existing and Ongoing Initiatives**

TxDOT faces many challenges to ensure that we are complying with federal and state law, such as:

- Many different project types, ranging in scope from small to very large;
- Many different environmental settings crossed by these projects with distinctive issues to be addressed;
- Varied public support or opposition to projects;
- Project scope changes;
- Design changes;
- Changing priorities;
- Changing requirements;
- Limited resources (staff and funding);
- Competing priorities; and
- Coordination with other agencies involved in the review of projects.

TxDOT has implemented, and continues to implement several initiatives targeted at making the environmental process more efficient. The Primavera 6 scheduling tool recently adopted by TxDOT will capture all tasks required to complete the design and environmental process. This will enable us to more efficiently assign all field work for data gathering and analysis in technical reports to specific individuals with fixed times and durations for completing these tasks. The tool is also flexible and can be modified as needed to capture any changes in project scope, design or environmental requirements.

Some of the initiatives specific to the environmental process are described below:

#### ***Standards of Uniformity (SOU)***

Standards of Uniformity (SOU) establish uniform standards for deliverables associated with our environmental documents. TxDOT staff developed SOUs for all of the activities associated our PCE projects, and are working to develop SOUs for the activities associated with the more complex CE, EA and EIS projects. These SOUs are being developed in partnership with TxDOT's staff, contractors, and state and federal resource agency partners. The goal is to eliminate or minimize the number of revisions required during the review process, and as a result reduce the time required for environmental clearance.

#### ***Project development Compliance Action Plan (CAP)***

The environmental Compliance Action Plan (CAP) is a plan to resolve identified and unidentified Environmental Permits, Issues, and Commitments (EPICs). EPICs are the permits and other commitments identified in an environmental document that must be completed as part of the project. The CAP includes the assignment of persons, resources,

and schedules to resolve environmental compliance tasks in regards to identified and unidentified EPICs. Currently, TxDOT is formalizing the utilization of a CAP as a planning tool to ensure scheduling in our project schedules is accurate and transparent. A project development CAP will identify and manage environmental risk to help: eliminate over-programming of resources at the District and Division level, eliminate unnecessary environmental studies, eliminate the need to re-do environmental studies, significantly reduce the number of revisions to NEPA documents, significantly improve environmental compliance performance, significantly improve the timely resolution of environmental clearances, and significantly improve the timely obtaining of required permits.

### ***Comprehensive Data and Reporting System (CEDARS)***

CEDARS is currently under development. CEDARS is a program that tracks environmental compliance and commitments based on needs identified in the CAP. It records the process, outcomes, and on-going requirements for environmental compliance on a project-by-project basis. This program is approved for a two year development process. Once the development of CEDARS is complete, this initiative should help with streamlining the environmental process and enhance compliance by serving as a central repository to minimize errors and clearly communicate status obligations which will better ensure timely project delivery.

### ***Programmatic approaches and agreements***

The department works to streamline the process for review of projects by a resource agency. One of the existing initiatives TxDOT utilizes to achieve streamlining is through programmatic approaches and agreements. For example, the agency has a Programmatic Agreement (PA) and Memorandum of Understanding (MOU) for cultural resources. The PA and MOU allow TxDOT to approve many projects and reduce the Texas Historical Commission review process from the standard 30 days to 20 days.

### ***USFWS agreement initiative***

On April 30, 2010, TxDOT submitted a draft programmatic agreement to FHWA and the United States Fish and Wildlife Service (USFWS) for review and comment. The agreement focuses on the environmental services that would be provided by the USFWS. These services would include assisting TxDOT and FHWA in transportation planning, early project assistance, project consultation, training and the development of programmatic approaches to identifying and evaluating environmental issues. We believe the agreement would assist with delivering transportation improvements more efficiently and effectively.

***Training***

TxDOT has also developed a curriculum of 21 courses on environmental topics. These training courses will be made available to TxDOT personnel, contractors, and local government personnel. TxDOT is adapting the curriculum to incorporate competency testing and to expand the use of video teleconferencing, webinars, and self-guided online training (i-way). Maximizing the format and range of training available to these project partners will make compliance with the environmental process more easily understood and accessible by all parties, and is expected to reduce inefficiencies and inadequate analysis and documentation during the development of the environmental document process.

**IV. Recommendations – Funding Resource Agencies**

A potential means to expedite environmental review times is a measure taken up as SB 502 in the 81<sup>st</sup> Legislative Session, but not passed. This bill would have given TxDOT the authority to enter into agreements to provide funds to a federal agency for the purposes of assigning specific staff for the review of transportation projects. The shortage of staff at these agencies is often cited as a reason for delays in the project review process. These other entities also review other non-TxDOT projects and are working on other agency tasks. This initiative, if enacted, would be a great benefit to TxDOT by expediting the environmental review process.

**V. Conclusion**

TxDOT appreciates the opportunity to testify before the committee on the department's activities to improve the efficiency and timeliness of developing the environmental documents for the state's many highway improvement projects. TxDOT is committed to working with our local government and state and federal resource agency partners to streamline these processes while ensuring we comply with all applicable state and federal environmental laws, rules and regulations. The agency looks forward to continue to work with the committee.