

**Invited Testimony of Leroy Alloway, Alamo Regional Mobility Authority  
June 8, 2010**

**Senate Committee on Transportation and Homeland Security**

**Invited Testimony of Leroy Alloway**

June 8, 2010

My name is Leroy Alloway and I currently serve as the Director of Community Development for the Alamo Regional Mobility Authority in Bexar County. In this role I am responsible for directing and managing the public engagement and involvement efforts of the Alamo RMA in the development of all projects, and specifically, am responsible for the overall implementation and execution of two Environmental Impact Statements currently underway on portions of the state highway system.

These two environmental impact statements represent potential improvements to approximately 43 miles of roadway within Bexar County, and are being conducted via contracts worth approximately \$18 Million for the multi-year detailed analysis and study necessary to secure environmental clearance to provide much needed relief to our community.

I appreciate the opportunity to appear before you today, to address the environmental review process for certain highway projects within Texas, and offer recommendations for potential enhancements to this process, based upon our rather unique experience with this critical aspect of delivering transportation infrastructure for our region.

As way of background, please note that the Alamo RMA has, since our creation, had a hand in obtaining environmental clearance for needed projects in our region, but the undertaking of two Environmental Impact Statements in 2008, the most detailed environmental review allowed under Federal Law, was done as much by necessity to move relief projects forward for our region, as the choice was made to ensure that the rather unique aspects of the Bexar County region's environmental and natural resources could be protected and mitigated for, availing ourselves of all available opportunities under law.

The decision to have a local entity, and not TxDOT undertake these projects was done at the request of our County Judge and local leadership who recognized that local agencies do have a role in working in close partnership with state and federal agencies to help advance primarily regional concerns and projects, projects in which a truly local presence, able to focus day in and day out on these projects, would be crucial and critical to the continued development and growth of our region.

**Invited Testimony of Leroy Alloway, Alamo Regional Mobility Authority  
June 8, 2010**

As a regional mobility authority, we pride ourselves on being flexible, on being open to new ideas and concepts, and of not being afraid to be told “yes” when presenting new ideas. When we apply that same mindset, and willingness to help put a “local” perspective on environmental process and review, we begin to open the doors of new pathways which allow us to be willing to find different ways to engage the community throughout the environmental review process, not simply at public meetings; to find new ways to engage stakeholders throughout the process, not simply in one on one meetings; and to find new ways to address environmental issues and concerns as they arise, not simply as part of the overall mitigation which may or may not be required as part of the environmental review process.

With that framework, it is important to note that we do have a limiting factor to our environmental review process; it is, of course, the requirements of the National Environmental Policy Act.

ENVIRONMENTAL PROCESS OVERVIEW

The National Environmental Policy Act (NEPA) process is intended to help public officials make decisions that are based on an understanding of environmental consequences a proposed project and to take actions that protect, restore, and enhance the environment §1500.1(c). However, today’s litigious climate coupled with dwindling funds for transportation infrastructure means new levels of scrutiny on each step of the project development process, particularly in connection with assessing the environmental impacts of a project, on both the human and natural environments.

Ever-increasing scrutiny results in decisions rendered after careful consideration of legal risks rather than careful consideration of the environmental consequences of an action. Time and resources are expended on process with little or nothing remaining to fund actual environmentally sustainable outcomes. In other words, too much time and money is spent on process, and that undermines the focus and availability of resources that should be used to enhance environmental protections and controls that can be integrated into the project.

While the majority of projects in Texas, according to the recently released Grant Thornton Management Review of the Texas Department of Transportation, are handled with a Categorical Exclusion, larger more complex projects, often with detailed construction and potential environmental impacts, require the preparation of either an Environmental Assessment or in the case of the US 281 corridor in northern Bexar County, and Loop 1604 from US 90 to IH 35 North, require the preparation of an Environmental Impact Statement, the most detailed environmental study allowed under current federal law and practice.

**Invited Testimony of Leroy Alloway, Alamo Regional Mobility Authority  
June 8, 2010**

These studies are undertaken to determine the best transportation solution given the impact to the environment, the financial constraints to deliver projects, and the long-term purpose and need for improvements. The environmental impact statement and environmental assessments normally examine a transportation horizon of twenty-five years or longer, to provide long-term relief, not simply applying band-aids to the problems we are facing across our region in terms of congestion relief.

The Environmental Impact Statement is a complex document, involving extensive review by multiple levels of governmental agencies, and intensive public engagement, to document and analyze potential impacts of proposed improvements to the natural and human environments.

However, with the growing rise of Environmental Impact Statements being undertaken, and with the increased calls for environmental protections to be incorporated into transportation projects, managing expectations on the ability to deliver projects quickly is becoming a challenge for all agencies.

With limited staff, limited financial resources, and ever increasing needs for detailed environmental examination prior to undertaking much needed congestion relief and mitigation projects, the current environmental review process in Texas is in need of some enhancements and modifications before the process is clogged beyond belief, causing timelines for review to increase even more than we currently experience, and further delaying our ability within government to provide needed infrastructure to our communities on a timely basis.

### ENVIRONMENTAL REVIEW ENHANCEMENTS

#### Prioritization of Projects when funding deadlines exist

The State of Texas needs to establish and implement procedures through which projects can be prioritized when funding deadlines exist. Finite staff resources exist within State and local governments for participating in the environmental review process. As such, those resources should be focused on projects likely to result in substantial environmental impacts and/or those projects that are absolutely critical in terms of Texas transportation.

As we recently saw with the American Recovery and Reinvestment Act deadlines, projects where funding is in jeopardy of being lost without environmental clearance, should be prioritized for review and attention by state staff within all agencies involved in the review.

**Invited Testimony of Leroy Alloway, Alamo Regional Mobility Authority  
June 8, 2010**

This is often difficult to achieve given the sheer number of projects that can be proposed, but in order to not leave any potential projects unfunded by not reaching the environmental clearance deadline, we were able to accomplish the American Recovery and Reinvestment Act primary obligation by working together at all levels of government.

With the re-obligation deadline looming, and the push for regions to use all remaining funds due to project cost under-runs, we anticipate seeing another push to prioritize projects to not lose potential funding as a deadline exists for this re-obligation.

We need to take the necessary steps to enshrine this behavior in the future, specifically, that if a funding deadline exists, reviews for projects will be given priority.

With ever decreasing federal funding coming for transportation projects, we need to position the State of Texas to be able to always utilize this funding source, without the real concern that a project may not make the obligation deadlines due to not having environmental clearance, which given the length of time involved with some reviews, can become a very real concerns for local agencies trying to deliver needed infrastructure projects.

Staffing

The State could also provide funding for positions dedicated to transportation projects at agencies like the U.S. Fish and Wildlife Service and/or the U.S. Army Corps of Engineers who often have major roles in the environmental review portion of project development process.

TxDOT currently has the authorization and practice of helping fund some positions with the Texas Commission on Environmental Quality. Local agencies seek similar authority for our projects.

While this concept was introduced during the last session, and was ultimately incorporated into HB 300, the need still exists to provide this resource to state agencies to assist with environmental review, especially in light of the growing complexity of environmental reviews being undertaken by local agencies.

With ever increasing environmental reviews being undertaken, and ever increasing complexity of the documents being done to avoid the potential of litigation, studies and projects are creating their own traffic jam, so to speak, by needing increasing levels of state and federal staff time to review the documents, comment on the documents, and partner with local agencies, in the case of the Alamo RMA projects, to make necessary revisions in order to more closer to environmental clearance.

**Invited Testimony of Leroy Alloway, Alamo Regional Mobility Authority  
June 8, 2010**

Additionally, the Alamo RMA would strongly support the ability of local agencies to be able to fund state positions to assist with review of environmental documents, and coupled with this funded position should be a priority timeline for review.

This type of approach, specifically funding positions in order to help expedite review is currently undertaken and utilized by the City of San Antonio and a majority of school districts within the San Antonio region to help expedite plan review for new school buildings and reconstruction / modifications.

Time is money, and being able to apply funding to help expedite needed reviews can be incredibly beneficial to communities seeking environmental clearance for infrastructure projects, again, this becomes even more crucial when considering an environmental impact statement.

To say that an Environmental Impact Statement, for example, needs 15-18 months of review at the agency level before it can be approved for a public hearing, after almost a year and a half of public involvement and meetings, further delays the relief our communities are requesting from congestion, and also means that further growth and development with the project corridors can occur, changing the recommendations of the study.

This timeline, the 15-18 months, includes at least 8 months potentially spent in review within TxDOT before the document is presented to the Federal Highway Administration for their comments and review.

This 15-18 month timeline is also 15-18 months where the community is not seeing the document, not able to comment on the document, and lends itself to the criticism that decisions are made behind closed doors, out of the light of day, when in truth, the review being conducted is ensuring that all necessary science, environmental examination, and engineering applications utilized are consistent, provide necessary and through information and meets the requirements of NEPA, as well as other applicable laws.

But again, by finding a way to allow for funding of additional staff positions to assist in this review, and by ensuring a priority and expedited timeline for this review, if a staff position is funded by the local agency, we are hopeful that we can decrease the timeline by a dramatic amount of help increase the timeliness of the information contained within these complex documents.

**Invited Testimony of Leroy Alloway, Alamo Regional Mobility Authority  
June 8, 2010**

Environmental Simplification

The State of Texas should use its legislative power to simplify the environmental process and procedures rather than creating additional steps and requirements beyond that of applicable federal laws. The State should revise its environmental review policies and guidance to insure consistency with federal policies and guidance. Reviews, even when conducted concurrently with partner agencies, often yield very different results. Efforts should be made at the State level to gain the perspective of partner agencies so that a standard set of expectations can be defined and applied to the environmental review process and decision making.

We understand that TxDOT Environmental and the Federal Highway Administration are currently preparing guidance on common errors and issues contained within environmental documents that should help to avoid these issues moving forward. For the Alamo RMA, this is a crucial piece of information as we start the process of preparing the Draft Environmental Impact Statement for both Loop 1604 and for US 281.

We agree with that complex and comprehensive review of draft documents, such as the Draft EIS, do require thorough and complete reviews, including a detailed quality assurance and quality control process, we would hope that the implementation of such a step by TxDOT would then allow, if the document is of good quality after the initial quality assurance / quality control review, that an expedited schedule could be established for the remainder of the review by subject matter experts within the department and partner agencies / consultants.

As I stated, we agree with this concept, but in the determination to provide higher level quality documents for reviewers, we would hope that personal influences, such as wordsmithing and editing would not happen during the subject matter review, and instead the remaining review would focus on the technical aspects of the proposed project. The editing for tone and wordsmithing should happen during the quality assurance / quality control phase, which is currently estimated to take at least 30 days from the date of submission.

We would also encourage that a definition of what exactly is to be reviewed and handled during the quality assurance / quality control phase be established by TxDOT and other partners, so that all agencies involved with developing environmental clearance documents can be working on the same standard, and providing the same level of information within the respective documents.

**Invited Testimony of Leroy Alloway, Alamo Regional Mobility Authority  
June 8, 2010**

Technology

The current environmental review process is still stuck, as far as review and public engagement, behind the use of modern technology. Having to produce numerous paper copies of all documents, for example, helps increase the cost of the environmental study, while ignoring that information can be handled via electronic mediums. To have to formally transmit documents by hand to state agencies, instead of being able to email completed drafts for review, adds to the time of review, the cost of review, and betrays the move to a more e-friendly government.

Specifically, an updating of existing statues to allow for more flexibility in the use of technology would be beneficial. Who could have foreseen even five years ago the use and rise of social media, e-mail, and web based applications to help expedite business actions? Why should government still be limited in the use of these same applications?

For the Alamo RMA, as a local agency leading two environmental impact statements, we made the decision, recognizing the changing way people communicate and receive information today, to invest in the usage of social media as an outreach tool for our projects.

We have adopted methods utilized by the private sector, specifically, having linked branded pages that all reinforce the project website, including using Facebook, Youtube, Twitter, Flickr, blogs and stand alone websites solely dedicated to the environmental impact statement process and progress, to enable more members of our community to be engaged, aside from those who attend public meetings.

By the next business morning following a public meeting – all materials we presented and used in the meeting are posted online for the community to view and consider during the public comment portion.

We utilize these tools to engage in low cost to no cost promotion of the public meeting, promotion of the public comment period, and to highlight aspects of the project.

While we are limited, given the newness of this approach, to not including comments posted on Facebook or Blogs in the administrative records of the project, we are hopeful that future projects will be able to include these comments in the administrative records of the project and recognized as additional outreach in compliance with NEPA.

Additionally, the efforts of the Loop 1604 Environmental Impact Statement process and team was recently awarded the Best Use of Technology for Public Participation by the Technology Division of the American Planning Association, in recognition of the integrated social media applications we are utilizing to help promote public engagement and involvement.

**Invited Testimony of Leroy Alloway, Alamo Regional Mobility Authority  
June 8, 2010**

We look forward to a day where this approach is the norm for how the state and other agencies help communicate and engage with the community, not the exception.

One important aspect to note, however, is we do not use environmental clearance project pages, websites, or social media, to advocate for a project solution. We remain neutral in the environmental clearance project, until a preferred alternative is established, and our comments and postings are carefully crafted to ensure we respect the fine line between engagement and information versus being perceived as advocating a solution.

NEPA is not about advocating or pushing a solution, it is a process in which the best information available is presented to help make informed decisions. The constantly changing technology available to use today is helping expand that ability, but we need to ensure that all aspects of environmental review are able to make use of this same benefit, not simply public involvement.

Construction

One additional area in need of enhancement and improvement is the ongoing environmental review process during active construction projects. As currently exists, the environmental review required during construction is subjective, without defined geological or biological training offered to contractors, consultants and agencies that are charged with ensuring environmental protection during construction.

This subjectivity can potentially result in confusion, differing opinions, and differing levels of interest from agencies involved and required by law to oversee aspects of construction.

The State of Texas should require necessary environmental training be a part of any certifications for construction across the state for infrastructure projects, to be developed by all agencies involved, on a regional basis.

This training should included, at a minimum, standardized guidelines which are consistent, based on regional environmental conditions, and the steps necessary to be undertaken if an environmental feature is discovered during construction.

This could be added to the current certification requirements of TxDOT, and would greatly enhance the ability of our contractors, project inspectors and managers to be able to be more environmental attune during construction of projects.

**Invited Testimony of Leroy Alloway, Alamo Regional Mobility Authority  
June 8, 2010**

Conclusion

It would be easy to say that the best way to expedite the environmental process would be to undertake a holistic and sweeping change of the current process, but the result of such a change would only further delay needed projects across the state.

Instead, what is needed is a strengthening of our environmental review processes and procedures, a recognition that as technology changes so should the usage and approach undertaken by government agencies engaged in review, and most importantly, that local agencies, such as RMAs, who are empowered by legislative action to help develop and implement improvements to the state highway system, will be engaging in more environmental clearance preparation over the coming years.

The current system does not adequately address the concept of local participation, and in fact and practice, while there are areas we feel could be improved in our experience with the environmental impact statement process to date, the Alamo RMA has been very fortunate the TxDOT ENV and other state partners have been very willing to work with us, and to help us through this process. But we need to ensure that this happens for every local agency, and this is essential if devolution of transportation projects and funding continues to be handed to the local levels of government.

There is no acceptable reason why it should take, on average, fourteen years for a transportation project to move from concept to handling traffic.

We look forward to working with the committee during the interim and regular session to further refine and enhance the transportation environmental review process as the actions we undertake today will have impacts for decades to come in terms of congestion relief, natural environment improvements and the ability of our economy to continue to remain strong across Texas.