



**Testimony of the Transportation Construction Coalition
Delivered by:**

**Jim Roberts
President & CEO
Granite Construction, Inc.**

**“Building a 21st Century Infrastructure for America: Highways and Transit
Stakeholders’ Perspectives”**

Wednesday, October 11, 2017

10:00 a.m.

2167 Rayburn House Office Building

Established in 1996 and co-chaired by the American Road and Transportation Builders Association (ARTBA) and the Associated General Contractors of America (AGC), the 31 associations and labor unions that make up the TCC have a direct market interest in the federal transportation program. TCC members include:

American Road & Transportation Builders Association (co-chair); Associated General Contractors of America (co-chair); American Coal Ash Association; American Concrete Pavement Association; American Concrete Pipe Association; American Council of Engineering Companies; American Subcontractors Association; American Iron and Steel Institute; American Society of Civil Engineers; American Traffic Safety Services Association; Asphalt Emulsion Manufacturers Association; Asphalt Recycling & Reclaiming Association; Associated Equipment Distributors; Association of Equipment Manufacturers; Concrete Reinforcing Steel Institute; International Slurry Surfacing Association; International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; International Union of Operating Engineers; Laborers-Employers Cooperation and Education Trust; Laborers’ International Union of North America; National Asphalt Pavement Association; National Association of Surety Bond Producers; National Electrical Contractors Association; National Ready Mixed Concrete Association; National Steel Bridge Alliance; National Stone, Sand and Gravel Association; National Utility Contractors Association; Portland Cement Association; Precast/Prestressed Concrete Institute; The Road Information Program; and United Brotherhood of Carpenters and Joiners of America.

“Building a 21st Century for America: Highways and Transit Stakeholders’ Perspectives”

Testimony of James Roberts, President and Chief Executive Officer, Granite Construction Incorporated on Behalf of the Transportation Construction Coalition

October 11, 2017

Chairman Graves, Ranking member Holmes-Norton, and all members of the subcommittee, thank you for holding today’s hearing to review the important role highways and public transportation improvements will play in Building a 21st Century Infrastructure for America.

My name is Jim Roberts and I am the President and Chief Executive Officer of Granite Construction Incorporated. We are a full-service infrastructure solutions provider performing as a general contractor, construction management firm and construction materials producer headquartered in Watsonville, California. Granite specializes in complex infrastructure projects, while also building many of the standard day to day roads across America. We are one of the largest transportation contractors in the nation.

I am pleased to appear before you today representing the Transportation Construction Coalition (TCC). The TCC is a partnership of 31 national associations and construction unions representing hundreds of thousands of individuals with a direct market interest in federal transportation programs. The TCC was initiated in July 1996 to focus on the federal budget and surface transportation program reauthorization debates. TCC activists can be found in virtually every congressional district and provide a vital service to their communities by helping to improve the efficiency and safety of our nation’s transportation infrastructure. The TCC’s unique membership enables the coalition to articulate the impact of federal policies and investment levels on all aspects of the transportation construction industry. TCC member organizations represent contractors, planning and design firms, materials and manufacturing firms and the construction trade unions that represent many of their employees. In addition to being able to speak with one voice for our industry, the TCC’s wide-ranging expertise and shared resources allow the coalition to be involved in a variety of issues of importance to our member organizations.

We thank President Trump and the bipartisan leaders in Congress for continuing to include an infrastructure package as a key priority for the 115th Congress. The dialogue to date clearly demonstrates that the president’s interest in improving the U.S. infrastructure is more than just campaign rhetoric. Infrastructure investment and reforms are among the few areas in the federal policy arena that have the potential to quickly deliver tangible and meaningful improvements across the nation. TCC members are eager to begin and advance this important debate.

The federal government’s role in delivering infrastructure solutions has been an essential component of our nation’s history. From President Lincoln and the Transcontinental Railroad to President Roosevelt’s New Deal Programs that produced projects like the Hoover Dam to President Eisenhower and the Interstate Highway System, leaders of both parties have routinely embarked on bold, infrastructure initiatives and delivered.

Some 60 years after the visionary investment in our Interstate Highway System that still supports our economy today, the country once again is ready to rally behind a bold federal infrastructure vision backed by a significant commitment to fund this vision. Taking the cue after decades of chronic federal inaction, more than half of the states in our country have increased funding commitments to their transportation programs in the past few years. Now is the perfect time for leadership to re-emerge at the federal level.

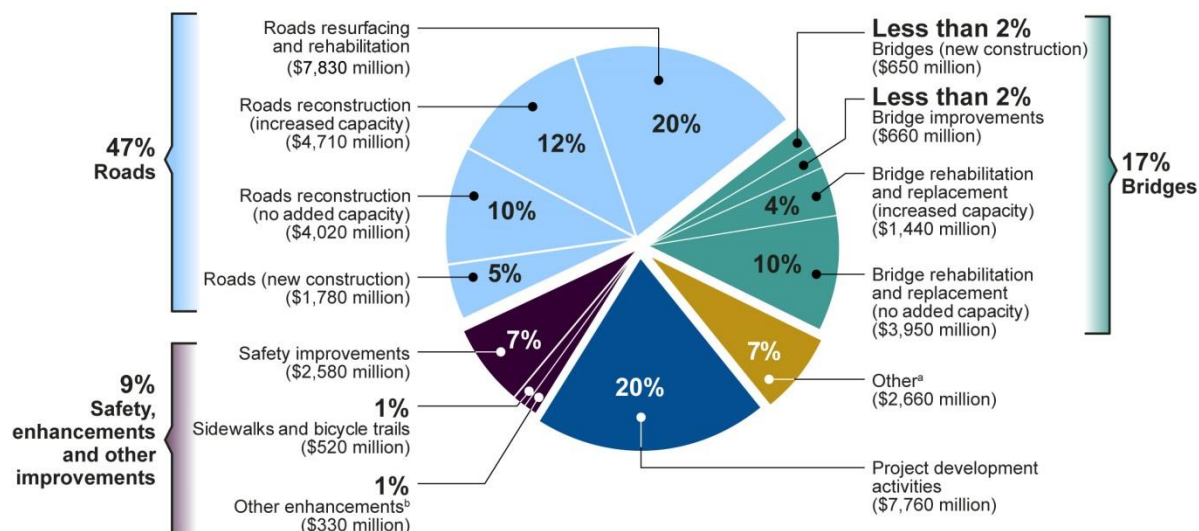
In my testimony today, I will articulate the infrastructure investment and environmental streamlining needs and options Congress must consider when crafting an infrastructure package.

I. Federal Infrastructure Investment

a. Continued Federal Leadership Is Essential

The partnership between local, state and federal governments is one of great importance, on many levels, to the 241-year success of the nation. The partnership has lasted nearly as long when it comes to investment in our nation’s infrastructure. Investments in canals, ports, railroads, highways and aviation systems have all been partnerships among all levels of government for generations. That cooperation is still as important as ever.

By law, virtually all federal highway program funds provided to the states must be used to improve the state’s major highways and bridges, and most of it must be devoted to capital investments—including construction activity, right-of-way acquisition and planning and design. In fact, the U.S. Government Accountability Office documented that in FY 2013, 98 percent of federal highway funds were spent for road and bridge activities.



Source: GAO analysis of Federal Highway Administration data. | GAO-15-33

Due to the focus of the federal highway program, federal funds, on average, provide 51 percent of annual state department of transportation capital outlays for highway and bridge projects. This reliance

ranges from 29 percent in New Jersey to over 75 percent in Alaska, Hawaii, New Mexico, South Carolina, Montana, Vermont and Rhode Island.

Federal investment is crucial to ensuring that state departments of transportation (DOTs) are making needed investments in the major freight corridors that drive national and regional economic growth. The one million miles of roadways eligible for the federal aid highway program account for 25 percent of total miles, but carry 84 percent of all traffic.¹ The 48,000 miles of the Interstate Highway System, which is the backbone of the U.S. economy, carries 25 percent of all traffic, including over half of the miles driven by freight trucks delivering goods across the country. Federal investment also accounts for 82 percent of rural and 64 percent of urban transit agency capital outlays, in infrastructure and rolling stock.

With traditional federal highway user fee rates static for nearly 25 years, federal highway and transit program investment growth has failed to keep up with inflation as well as labor and materials cost increases. State and local governments have begun to augment their own programs. However, recent research by TCC members shows the growth in state and local investments is not nearly enough to keep our transportation infrastructure in a state of good repair, let alone improve the system for 21st century needs and growth.

Roads earned a “D” in the American Society of Civil Engineers’ 2017 Infrastructure Report Card. The U.S. has an \$836 billion backlog of highway and bridge capital needs, \$420 billion of which is in repairing existing highways. An additional \$123 billion is needed for bridge repair, \$167 billion for system expansion, and \$126 billion for system enhancement, which includes safety enhancements, operational improvements, and environmental projects. Due to congestion and worsening conditions, the average American wastes 43 hours a year stuck in traffic. As a country, traffic delays cost us \$160 billion and more than two out of every five miles of America’s urban interstates are congested.

ASCE’s Report Card assigned transit a “D-“, the lowest of the 16 grades assigned in 2017. While transit ridership is high – 10.5 billion trips in 2015 – the sector is grappling with overdue maintenance, chronic underinvestment, and aging infrastructure. It’s estimated that the country faces a \$90 billion rehabilitation backlog; this number is projected to grow to \$122 billion by 2032. When examining the physical transit infrastructure, 17 percent of power, signal, communications and fare collection systems are not in a state of good repair. Thirty-five percent of guideway elements (such as tracks) and 37 percent of stations are also not in a state of good repair.

We can no longer afford to underinvest in the infrastructure that Americans rely on in our daily lives. Any responsible proposal must provide improvements to all types of infrastructure throughout the country and address large important projects that make our businesses more competitive by reducing shipping, commuting, water and energy costs.

b. Economic Importance of the U.S. Highway, Bridge & Transit System

¹ U.S. Federal Highway Administration, Highway Statistics

An improved highway, bridge and transit network results in lower operating costs, allowing business to increase investment in other capital outlays and expand their operations. Commuters spend less time in traffic and congestion as mobility increases, and safety enhancements help save lives and reduce injuries.

The positive relationship between transportation capital investment, economic output and private sector productivity has been well documented for decades by business analysts, economists and the research community.² A safe, reliable and efficient transportation network helps businesses increase access to labor and materials, increase market share and expand their customer base, reduce production costs, access global markets and foster innovation.

Several recent reports underscore the significant return on transportation investment:

- A study commissioned by the U.S. Treasury Department found that for every **\$1 in capital spent on select projects, the net economic benefit ranged between \$3.50 and \$7.00.**³ Released in December 2016, “40 Proposed U.S. Transportation and Water Infrastructure Projects of Major Economic Significance” also explores some of the challenges of completing the work. The report found that a lack of public funding was “by far the most common factor hindering the completion” of the projects. A complete recapitalization of the Interstate Highway System would yield net economic benefits of \$1.6 trillion.
- A 2005 report by Dr. Robert Shapiro and Dr. Kevin Hassett found that the U.S. transportation network provides more than **\$4 in direct benefits for every \$1 in direct costs** that taxpayers pay to build, operate and maintain this system.⁴ These economic benefits include lower costs and higher productivity for businesses, and time savings and additional income for workers. The authors noted that the estimate substantially understates the full net benefits of the U.S. transportation network and does not take into account the increased benefit from better access to schools and hospitals, or other ways these investments support economic growth and allow American workers and companies to compete successfully on the global stage.
- Academic studies on the long-run benefits of transit investment estimate that every \$1 spent provides economic returns from \$1.60 to over \$4.00.⁵ Some of the benefits include the cost of foregone medical and work trips, emissions, crashes, travel time and vehicle ownership and operation expenses.

Consider the benefits to a business when the state makes transportation improvements. The increase in construction activity will mean more demand for products and services in the area. A local business would sell more of its products and may even hire additional employees to increase output. With an

² A review of major studies is available in: Weisbrod, Glen, Donald Vary and George Treyz. Economic Implications of Congestion. NCHRP Report #463.

³ Report available at <https://www.treasury.gov/connect/blog/Pages/Importance-of-Infrastructure-Investment-for-Spurring-Growth.aspx> as of Feb 2017.

⁴ Shapiro, R., PhD., & Hassett, K., PhD. (2005). *Healthy Returns: The Economic Impact of Public Investment in Surface Transportation*.

⁵ Ranjit Doarthy, Jeremy Mattson & Elvis Ndembe, “[Cost-Benefit Analysis of Rural and Small Urban Transit](#),” National Center for Transit Research, North Dakota State University. Prepared for the U.S. DOT, October 2014

improved transportation network, local business on the many main streets across the country would thrive.

The business will also have lower distribution costs because of the improved highways, bridges and transit in the area. More customers will be able to reach the business, and the owner may be able to hire more talented, educated and skilled workers that live further away.

The increase in demand may also lead the business to expand, opening another store, plant or business location. Finally, the business will demand more inputs and raw materials from their own suppliers, creating economic ripple effects throughout the economy. It could also be the case that the business owner is able to purchase cheaper inputs because they have greater access to more markets.

Transportation capital investments trigger immediate economic activity that creates and sustains jobs and tax revenue, yet yields long-lived capital assets that facilitate economic activity for many decades to come by providing access to jobs, services, materials and markets.

c. 253 House Members Are Correct: Highway Trust Fund Revenue Fix ASAP

Any federal infrastructure effort, however, will be diluted unless the fiscal chaos surrounding the Highway Trust Fund (HTF) is addressed once and for all. The trust fund currently supports \$50 billion per year in transportation infrastructure spending. To put the importance of the HTF in context, maintaining that level of investment for 10 years would produce a level of investment that is 250 percent more in direct federal spending than the Trump Administration has called for as part of its \$1 trillion infrastructure package.

While recent laws authorizing federal highway and surface transportation programs have greatly improved the effectiveness and efficiency of these programs, they made no progress towards ensuring the long-run solvency of the trust fund. Instead, Congress and the past two administrations made a series of last-minute transfers from the U.S. Treasury General Fund to the HTF to the tune of \$140 billion since 2008. Additionally, these laws failed to create any new sustainable revenue sources for the HTF or increase the federal excise taxes on gasoline and diesel fuel, currently the main revenue source for federal highway and transit investment.

The resulting uncertainty has had dramatic negative effects on the ability of state and local governments to plan, fund, and construct transportation projects.⁶ Absent long-term stability for the Highway Trust Fund, many projects critical to the efficient movement of people and goods have the real potential to be backlogged or never built. Further, mounting deferred maintenance could cause current infrastructure to fall into an even greater state of disrepair.

⁶ Several state departments of transportation (DOT) delayed transportation construction projects amid federal funding uncertainty over the last several years. These include, but are not limited to the Tennessee DOT delaying [\\$400 million](#); the Georgia DOT delaying [\\$123 million](#); the Arkansas DOT cancelling [\\$112 million](#); the Utah DOT delaying [\\$65 million](#); the Kansas DOT delaying [\\$32 million](#); and New Hampshire DOT delaying [\\$25 million](#) worth of federal construction projects.

Failure to resolve the issues facing the trust fund prior to the expiration of the current law in 2020 will require either additional short-term stopgap measures or find a \$110 billion offset to pass a long-term bill that will at best maintain current funding levels that do not meet our transportation infrastructure needs. It would be nonsensical to advance an infrastructure package and then face either of these alternatives shortly thereafter.

The TCC strongly agrees with the 253 members of the House of Representatives that June 12 called on the House Ways and Means Committee to include a Highway Trust Fund revenue solution in any tax reform package. I want to commend the leadership of Chairman Graves and Ranking Member Holmes-Norton for championing this letter and thank all the members of this subcommittee that joined this important effort.

As your letter notes, virtually all HTF revenue enhancements have occurred as part of broader tax and budget measures. I would also like to point out that addressing the trust fund's revenue shortfall as part of tax reform does not necessarily mean an infrastructure package has to be included in tax reform legislation. In fact, increasing HTF revenues as part of tax reform could certainly be a meaningful down payment for an infrastructure package and could ease its development and passage subsequent to tax reform.

While there are a wide variety of revenue solutions available, contrasting the last 10 years of trust fund instability with the previous pay-as-you go model is instructive in evaluating potential options. Increasing the federal motor fuels tax is the simplest and most effective way to achieve this goal, but several other viable revenue alternatives exist.

The following are key attributes for any HTF revenue construct:

- Permanent, recurring revenue stream(s);
- Revenue generation sufficient to eliminate the shortfall AND support increased investment;
- Based on surface transportation system use;
- Dedicated solely to surface transportation improvements.

Adhering to these principles would assure a meaningful outcome that would continue the federal government's constitutionally directed role in developing and maintaining a safe and efficient national surface transportation network well into the 21st Century.

d. Infrastructure Package Structure

An infrastructure initiative is a generational opportunity to end the cycle of uncertainty that has plagued America's infrastructure network and usher in a new era of stability and improvements we so desperately need. It is easy to say the nation needs a bold infrastructure package, but past experience demonstrates such a measure must combine substantial resources with a structure targeted to achieve specific goals. The TCC believes economic competitiveness and upgrading infrastructure conditions should be the overriding objectives of any infrastructure initiative.

The 2015 “Fixing America’s Surface Transportation (FAST) Act” surface transportation program reauthorization law reformed the structure of the federal highway and public transportation programs in a manner that emphasized national goals and provided states additional flexibility. Specifically, the measure created two new dedicated programs to focus federal resources on easing the movement of freight throughout the nation. In doing so, the measure reinforced the constitutionally-dictated role of the federal government to regulate and promote interstate commerce. At the same time, the FAST Act expanded the ability of states to use federal funds in a manner that best meets their unique needs.

Given this admirable combination of policy objectives and the broad-based, bipartisan support the FAST Act earned in 2015, I do not think we need to reinvent the wheel. I do, however, think it is appropriate for Congress to use its discretion to allocate any new highway and public transportation resources among existing FAST Act programs in a manner that emphasizes certain outcome objectives, such as economic competitiveness. There are a number of programs that would be appropriate recipients if that is a goal and other programs that clearly have other outcomes intended.

The TCC, however, believes the FAST Act’s overall ratio of highway to public transportation spending should be maintained in any infrastructure package. The FAST Act was a carefully negotiated piece of legislation and attempting to advantage one mode disproportionately threatens to upend that balance. For example, the transportation component of the infrastructure spending blueprint released by Senate Democrats earlier this year is heavily tilted toward transit and rail. As I noted at the outset, I think we can save a lot of time by not attempting to reinvent the wheel.

We certainly agree with Trump Administration officials that private sector capital and public-private partnerships can and should play an important role in any infrastructure plan. That role, however, must be complementary to direct federal investment. While the private sector certainly has the ability to help advance projects—particularly those capable of generating a revenue stream—there is a difference between project financing and public funding. We must also acknowledge the private capital is not a viable option in many states, particularly those with large land areas and sparse populations.

Granite has first-hand experience in many public-private partnerships and I can tell you they are an invaluable tool. In the transportation arena, however, direct public sector investment is always going to be the majority of the marketplace.

The TCC strongly supports the Administration’s proposals to liberalize tolling, increase TIFIA program funding and eligibility and lift the cap on Private Activity Bonds. Each of these policy actions are tangible proposals that would help certain projects move forward. The combination of these actions with a robust Highway Trust Fund revenue plan that would grow core highway and public transportation investment in the future should be a foundation of any infrastructure package.

II. The Continued Need for and Recommendations to Improve Environmental Review and Permitting for Infrastructure Projects

TCC members know first-hand how to build infrastructure in a safe, effective and efficient manner. Similarly, they know the many challenges to doing just that. The federal environmental review and

permitting process is such a challenge, repeatedly echoed by TCC members across the country; it's a process that is circuitous, costly and time-intensive for many infrastructure projects.

The TCC and its members appreciate the legislative efforts of this Committee in the enactment of both the Moving Ahead for Progress in the 21st Century Act (MAP-21) and Title 41 of the Fixing America's Surface Transportation (FAST-41). However, there remain opportunities to build upon MAP-21 and FAST-41 as well as reduce duplication in and improve the efficiency of the federal environmental review and permitting process. Improving environmental approval processes alone while maintaining the integrity of those processes to mitigate environmental impacts could generate project cost savings. In addition, such improvements could allow the public to receive and benefit from infrastructure projects in a timelier fashion.

a. Why Further Improving the Environmental Review and Permitting Process is Necessary

Again, the TCC must note its appreciation for the work this Committee has undertaken in helping enact environmental reforms in MAP-21 and FAST-41. But, more work can to be done and improvements upon those enacted reforms can be made.

TCC members have pointed to a host of technical and procedural problems that government agencies face, in general, during document preparation and interagency reviews: they inevitably lead to inconsistencies in the environmental approval process, schedule delays and costs overruns. Such uncertainty spurs legal challenges, which can ultimately threaten the viability of the project.

Based on TCC members' first-hand experiences, technical and procedural risks typically stem from:

- Poor interagency communication (leads to missed deadlines and conflicting agency requests and responses);
- Inability of the lead agency to make timely decisions, particularly where projects are "political" or controversial;
- Lack of qualified government staff to conduct reviews (leads to delays in document review/publication and resource-agency comments that are conflicting, redundant, repetitive, or inconsistent);
- Confusion during National Environmental Policy Act (NEPA) reviews with joint lead agencies (federal and state) because not all agencies have the same directives/thresholds;
- Disagreement over the project's "Purpose and Need;"
- Insufficient "Alternative Analysis;"
- Ineffective stakeholder outreach and engagement;
- Uncertainty over the level of analytical scrutiny to apply in reviewing projects (agencies are risk averse and often choose not to pursue streamlined options out of concern that such "short-cuts" will increase litigation); and
- Complex overlay of laws and regulations that apply to infrastructure projects – *in addition to NEPA* – complicates the permitting process (e.g., number of species listed and the breadth of critical habitat identified under the Endangered Species Act grows every year).

Current law provides steps for the lead agency of a project to coordinate and establish schedules with participating agencies and other interested stakeholders. But, importantly, as the “deficiencies” column on TCC’s Current Environmental Streamlining Programs & Deficiencies Chart (see Appendix A) shows, the lead agency must consult with, and obtain the concurrence of, each participating agency before establishing or shortening a “schedule for completion of the environmental review process” AND there is no deadline for the government to complete the NEPA review process, from start to finish. In addition, where current law does set deadlines for agency actions under NEPA, or for issuing permits and permissions, those deadlines are missed because the list of exceptions is as long as the list of approvals you need to be in compliance with the 30-plus federal environmental statutes that may apply to any given project (see Federal Environmental Review and Permitting Flowchart at Appendix B).

Current law (per MAP-21) does go so far as to impose penalties on federal agencies that fail to meet deadlines. Even so, these deadlines are not being met and the fines have never been levied. It is not happening because the lead agency can certify, for example, the permit application was not complete – or that the participating agency is waiting on another entity to make “some” decision before it can move forward with its permit, license or approval; and there is apparently a reluctance to elevate disputes. This also is clearly shown on the “deficiencies” column on TCC’s Current Environmental Streamlining Programs & Deficiencies Chart (see Appendix A).

In addition, the “deficiencies” column on TCC’s Environmental Streamlining brings to light the following missed opportunities:

- The government also is not conducting federal and state permitting reviews concurrently, and together with NEPA. It is not happening because the law states that agencies do not need to carry out their obligations concurrently if it would impact their ability to conduct any analysis or meet any obligation;
- Current law requires the lead agency to provide the participating agencies and public the opportunity for “involvement” in determining the project’s Purpose and Need and Range of Alternatives; however, the participating agencies are not required to engage in any meaningful way or to ensure these procedural steps produce information to satisfy other federal approvals and/or permits required for the project;
- The “Planning and Environmental Linkages” provisions in current law intend to use the information, analysis, and products developed during transportation planning to inform the environmental review process. But there are 10 conditions spelled out in statute -- and participating agencies, the lead agency, and project sponsors must all concur that these conditions have been met; and
- The lead agency must develop an “environmental document” sufficient to satisfy federal permits, approvals or other federal action required for the project, but only “to the maximum extent practicable,” per the current law.

In the face of this statutory and regulatory reality, the delays add up and it’s clear that Congress can do more. For example, a National Association of Environmental Professionals (NAEP) review of the 194 Environmental Impact Statements (EIS) published in 2015 found that the average time to complete an EIS was five years and only 16 percent were prepared in two years or less. Meanwhile, 2015 report by

Common Good, a non-profit government watchdog, finds that a six-year delay in starting construction on public projects costs the nation more than \$3.7 trillion in lost employment and economic gain, inefficiency, and unnecessary pollution. That is a staggering amount of statutory and regulatory inefficiency that needs to be addressed.

b. Opportunities for Improving Efficiency, While Maintaining Process Integrity

The ripe, high-level opportunities for improving the efficiency of the environmental review and permitting processes rest in the ability of Congress to: (A) merge sequential and duplicative federal environmental reviews; (B) mandate the use of previously completed environmental review and study information to avoid duplicative reviews; and (C) consider a reasonable and measured approach to citizen suit reform designed to prevent misuse of environmental laws.⁷

i. Sequential and Duplicative Reviews Add Hurdles to Infrastructure Approvals

The current process of performing sequential and often duplicative environmental reviews and permits on the same project – performed by all levels of government following the NEPA approval process – is presenting massive legal hurdles to infrastructure approvals (see Federal Environmental Review and Permitting Flowchart in Appendix B). A builder of infrastructure—whether a contractor or government agency—must seek approval not from “the government,” but from a dozen or more different arms of the government. According to bonding companies that finance large public works projects, two environmental approvals are critical in rating a project’s risk for bond financing. Those are the NEPA review (1,679 days, on average, to complete an EIS) and Clean Water Act (CWA) Section 404 permit authorization (788 days, on average, to obtain an individual permit). Obtaining these approvals prior to bonding greatly reduces risk and achieves a higher bond rating to the benefit of the project sponsor.

Due to the inability of project owners (e.g., state departments of transportation or private developers) to obtain Section 404 permits quickly following NEPA approval, 404 permitting risk is often transferred to the construction contractor.

REFORM: Several states have merged their NEPA and CWA Section 404 permitting processes; this should be the national standard and the U.S. Army Corps of Engineers’ (USACE) current regulations already point in this direction but do not go far enough. Across the nation there is considerable variation in the usage and emphasis of merger processes. In an integrated process, the project sponsor would submit the 404-permit application to USACE simultaneously with the publication of the draft EIS. USACE would be required to issue the 404 permit at the end of the NEPA process based on the information generated by NEPA.

⁷ For a complete list of environmental review and permitting reform recommendations, see: <http://newsmanager.commpartners.com/agcleg/downloads/AGC%20HSGAC%20Statement%20on%20Permitting%209.7.17.compressed.pdf>

Both the NEPA and Section 404 processes involve the evaluation of alternatives, the assessment of impacts to resources, and the balancing of resource impacts and project need. Conducting two processes simultaneously (or allowing the former to satisfy the latter) would greatly expedite project decision-making and avoid duplication and process inefficiencies. The federal funding agency should assume a lead role in shaping the project “purpose and need” and “range of alternatives” during the NEPA review. To simplify the review process, and reduce the potential for impasses over minor changes, Congress should modify any existing requirements for lead agencies to obtain participating agencies’ “concurrence” in project schedules or the adoption/use of “planning products.”

More generally, it should be a requirement for all government agencies involved in the issuance of a federal permit for any given project to complete concurrent reviews (in conjunction with the NEPA review process) within established time periods. From the perspective of the permit applicant, a coordinated concurrent review under all major federal and state authorities avoids duplication and delays and helps to avoid potentially conflicting permit conditions or limitations (e.g. differing mitigation requirements). There must be timelines and deadlines for completing the environmental permitting process as well as NEPA review deadlines.

ii. Redoing Permit Documentation and Analyses Wastes Time and Money

Time and money is wasted on redoing project analyses and reviews and on collecting duplicative information from permit applicants. Challenges with environmental documentation and permitting processes are root causes for delays on infrastructure projects. The environmental permit approval process generally entails sequential reviews by multiple agencies and various requests for project-specific information. Even though each agency has slightly different forms and different information requirements, some of the information (like project descriptions) is duplicated across applications. This means that there can be multiple forms requesting the same information in different ways.

To reduce paperwork, MAP-21 allows the use of errata sheets, rather than rewriting the draft Environmental Impact Statement (EIS), when minor modifications are needed in a final EIS. Also, under current law the lead agency should use one document for the final EIS and Record of Decision (ROD), as much as possible, unless there are substantial changes or there are significant new circumstances or information changes. By preventing the needless production of multiple additional documents, MAP-21 significantly reduces the amount of time involved in EISs. MAP-21 also encourages the use of “programmatic” mitigation plans and makes it somewhat easier to use previous planning work to meet NEPA requirements. Notably, the FAST Act also calls for the lead agency to develop a NEPA ROD that is sufficient to satisfy any other federal approvals/permits that the project may require; however, the duty to use a “single document” is void if its use would be impracticable, e.g., impair the ability of any federal agency to conduct needed analyses or meet any obligations.

REFORMS: The monitoring, mitigation and other environmental planning work performed during the NEPA process, and included in the final EIS/ROD, must satisfy federal environmental permitting requirements, unless there is a material change in the project.

- Implement an integrated “one-stop” permitting system by creating a single form that collects all information needed for major permits. That way, applicants only need to provide information once (and to fill out one long form and file it once);
- Also, build an online database of technical information (e.g., on distributions of endangered species, critical habitat, or previous permit requirements) so that new information does not have to be gathered anew for every project operating in a similar watershed or geographic area;
- Allow environmental reviews to adopt material from previously completed environmental reviews from the same geographic area; and
- Require federal agencies to use regional- or national-level programmatic approaches for authorizations and environmental reviews, for frequently occurring activities as well as those activities with minor impacts to communities and the environment.

To cite a program worthy of replication: Once a natural gas infrastructure project under the Federal Energy Regulatory Commission (FERC) jurisdiction is authorized, project sponsors can request changes as “variances.” FERC will consider approval of variances upon the project sponsor’s written request, if it agrees that a variance:

- provides equal or better environmental protection;
- is necessary because a portion of this Plan is infeasible or unworkable based on project specific conditions; or
- is specifically required in writing by another federal, state, or Native American land management agency for the portion of the project on its land or under its jurisdiction.⁸

TCC recommends that all federal and state agencies regulating approved publicly-needed infrastructure have a clearly defined variance process to follow to efficiently make project changes while maintaining environmental protection.

⁸ Variances are not specifically mentioned in FERC’s regulations but rather in its standard best management practices for operators found in the “UPLAND EROSION CONTROL, REVEGETATION, AND MAINTENANCE PLAN” and “WETLAND AND WATERBODY CONSTRUCTION AND MITIGATION PROCEDURES.” Note that these plans are referenced in the regulations at 18 C.F.R. 380.12(i)(5) and 380.12(d)(2) – but not the details of the plans. Both plans were updated in 2013, but the variance process has been in place since at least 2003. See Sections I.A.,

Applicability in these online documents: <https://www.ferc.gov/industries/gas/enviro/plan.pdf>;

<https://www.ferc.gov/industries/gas/enviro/procedures.pdf>.

iii. Judicial Review Reforms in Current Law Are Limited and Not Likely To Provide Significant Relief

The citizen suit provisions in 20 environmental statutes are being used to challenge all types of projects, land restrictions and permit requirements relating to the projects. These lawsuits can take years to resolve and the delay not only impacts the ability to secure the necessary environmental approvals and the financing of the project, but – in far too many cases – impedes projects that are vital to the renovation and improvement of our nation’s municipal water supplies, wastewater treatment facilities, highway and transit systems, bridges and dams.

As currently written, the FAST Act’s judicial review changes are limited and not likely to provide significant relief. FAST-41 reduced the statute of limitations (SOL) for NEPA challenges from six to two years; however, most NEPA lawsuits already are filed well within two years. FAST-41 also provides that in any action seeking a temporary restraining order or preliminary injunction of a covered project, the court shall “consider the potential effects on public health, safety, and the environment, and the potential for significant negative effects on jobs resulting from an order or injunction” and shall not presume that such harms are reparable. However, most courts already consider an injunction’s negative impact when balancing the harms and equities. Another FAST-41 provision dictates that NEPA challenges can only be brought by those who commented on an EIS and did so with sufficient detail to put the lead agency on notice of the claims. With regard to standing, many courts have limited NEPA challenges to comments raised within the public review period on the EIS (others allow plaintiffs to file suit as long as they can show “injury in fact”).

MAP-21 reduced the time limit to 150 days after publication of a notice in the *Federal Register* announcing that a permit, license or approval is final, for parties to file lawsuits that challenge agency environmental decisions regarding surface transportation projects. However, the preparation and announcement of a “supplemental” EIS, when required, restarts the 150-day clock.

REFORMS: Citizen suit reforms are necessary to prevent their abuse.

- Further shorten and standardize the SOL for challenges to final NEPA RODs or claims seeking judicial review of an environmental permit, license or approval issued by a Federal agency for an infrastructure project;
- Require interested parties to get involved early in a project’s review process to maintain standing to sue later;
- Require bonds be posted by plaintiffs seeking to block activities to reduce abuse and delay tactics that harm private parties and taxpayers; and
- Require that the enforcement of federal environmental rules on a construction site be enforced only by trained staff of government agencies -or-
 - Limit citizen suit penalties to violations of objective, numeric limitations rather than subjective, narrative standards;
 - Extend “notice period” beyond the current 60 days (giving regulatory agencies more time to review notice of intent letters and initiate formal actions);

- Clarify definition of “diligent prosecution” of alleged violations, thereby allowing federal/state authorities to exercise their primacy in enforcement and preventing unnecessary citizen suit intervention.

III. Conclusion

Mr. Chairman, thank you again for convening today’s hearing and for allowing the TCC to participate. The linkage between a reliable, efficient and safe national infrastructure network to the competitiveness of the U.S. economy cannot be overstated. Unfortunately, given the years of underinvestment at all levels of government, there is no such thing as a quick fix. The sooner we get started, however, the faster we will be able to deliver results for the American people and the first right step would be to fix the Highway Trust Fund now and identify additional tools for the tool box.

A powerful first right step would be to fix the Highway Trust Fund now. I want reiterate that a true trust fund fix is not simply dedicating more one-time resources to simply preserve existing levels of highway and public transportation investment. We need a permanent and robust, user-based, revenue solution that once and for all stabilizes the Highway Trust Fund and ensures surface transportation funding will grow to the levels necessary to deliver a 21st century infrastructure network.

I want to be clear that despite what some may think, we do not have the luxury of ample time to address this dilemma. If states follow past practices, we will begin to see project delays well over a year in advance of the shortfall projected to begin October 2020. Similarly, experience teaches us that if Congress again waits until the next trust fund crisis is upon us to act, we will be looking at more one-time emergency bailouts and a new round of short-term program extensions.

I should also point out that the timing of the next HTF shortfall will coincide with the 2020 presidential election. I think we can all agree that getting out ahead of that dynamic would be in all of our best interests.

For all these reasons, a permanent HTF revenue solution as part tax reform is an opportunity we cannot afford to pass up. In addition to the synergy of generating new trust fund revenue while other taxes are reduced and simplified, increased surface transportation investment contributes to economic growth and competitiveness. This outcome also happens to be the stated goal of reforming the nation’s tax code and we should pursue both.

The infrastructure conversations taking place on Capitol Hill and at the White House as well as those in states across the nation are very encouraging. While the task ahead may seem daunting, the members of the transportation construction industry stand ready to work with you to achieve the goals you and President Trump have identified.

Thank you again for allowing me to appear before you today and I look forward to your questions.

APPENDIX A

Current Environmental Streamlining Programs & Deficiencies Chart

| | MAP-21 + Title I FAST ACT <i>23 U.S. Code Chapter 1, §139, 168-69⁹</i> | | FAST-41 <i>42 U.S.C. Chapter 55, SubCh. IV</i> <i>§§4370m – 4370m-12¹⁰</i> | |
|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CATEGORY | WHAT'S IN THE LAW | DEFICIENCIES | WHAT'S IN THE LAW | DEFICIENCIES |
| Early Coordination/ Collaboration | <p>FAST Act §1304 AFTER NOI, LEAD MUST:</p> <ul style="list-style-type: none"> • Identify other agencies w/in 45d • Coordination plan w/in 90d; incl NEPA completion schedule • Dev chklist w/ partic. agencies to help proj sponsor identify all resources • Respond comments from partic. agencies • Dev enviro doc sufficient to satisfy all proj permits/approvals <p>PARTIC AGENCIES MUST:</p> <ul style="list-style-type: none"> • Provide updates in “searchable internet website” ... connect to Fed Permitting Dashbd <p>MAP-21 §1305 Requires concurrence of partic. agencies for enviro review schedules</p> | <p><i>No increased authority of lead agency over other partic. agencies</i></p> <p><i>Partic. agencies must “concur” on proj. schedule in coordination plan and modifications to shorten it; can lengthen schedule for “good cause”</i></p> <p><i>Obtaining concurrence is a challenge, esp for controversial projects</i></p> <p><i>Lead agency can extend deadline for agencies/public to comment NEPA docs for “good cause”</i></p> | <p>Project sponsor applies to be “covered project”</p> <p>Federal Permitting Improvement Council</p> <p>Early consultation (w/in 60d proj sponsor request), coordinated project plans (w/in 60d entry on Dashbd), project timetables, public Dashbd tracking...</p> | <p><i>Def of “covered proj” excl MAP-21 + WRRDA projects</i></p> <p><i>Limited application – MORE THAN \$200M</i></p> <p><i>Proj sponsor must “opt in”</i></p> <p><i>President must appoint ED; each of 13 agencies must appoint member to council (Deputy Sec. or higher) ... positions remain vacant</i></p> |

⁹ Provisions apply to all federally aid surface transportation projects for which an environmental impact statement is prepared under NEPA and may apply to other projects reviewed under the National Environmental Policy Act (NEPA), as determined by the Secretary.

¹⁰ Projects *may* be eligible for coverage under FAST-41 if they: involve construction of infrastructure; require authorization or environmental review by a Federal agency; are subject to NEPA; are likely to require a total investment of more than \$200 million; and do not qualify for an abbreviated environmental review and authorization process.

| MAP-21 + Title I FAST ACT 23 U.S. Code Chapter 1, §139, 168-69 ⁹ | | FAST-41 42 U.S.C. Chapter 55, SubCh. IV §§4370m – 4370m-12 ¹⁰ | | |
|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CATEGORY | WHAT'S IN THE LAW | DEFICIENCIES | WHAT'S IN THE LAW | DEFICIENCIES |
| Deadlines Conflict Resolution | <p>MAP-21 §1306</p> <ul style="list-style-type: none"> • 30d after DEIS – lead <u>may</u> convene schedule check • <i>POST-NEPA</i> 180-day deadline – for permits, licenses, & other approval decisions (clock starts aft applic complete) • Disputes – Go to head disputing agency, CEQ, then President <p><u>Penalty if Miss Deadline:</u> 180 days after (1) lead agency has issued final decision + (2) complete permit app filed... Funds rescinded from office of head of agency, or head of office to which permit decision was delegated. <u>Amount:</u> per week after 180-day deadline passes – \$20k if project requires a financial plan (Major Project) / \$10k for all other projects <u>Exceptions:</u> No funds rescinded if lead agency concurs that delay is not the fault of the permitting agency.</p> <p>MAP-21 §1309 If EIS underway 2+ yrs, USDOT provide addt'l assistance, establish permitting/approval schedule need concurrence – FINISH w/in 4 years of start date</p> | <p><i>NEPA: No deadlines</i></p> <p>PERMITTING: <i>No increased authority of lead over partic. agencies – agencies decide when applic. “complete”</i></p> <p><i>Partic. agencies can say application not complete or can't move ahead until another entity makes a decision...</i> <i>Eg, Federal permit, license, or approval dependent on:</i></p> <ul style="list-style-type: none"> ✓ 401 CWA Water Qual Cert; ✓ NHPA - no effect; ✓ CZMA determination; ✓ NPDES sw permit; ✓ Floodplain permit by the local floodplain mgmt. administrator; ✓ FWS/NMFS Section 7 consult; and ✓ Tribal concurrence <p><i>Reluctance to elevate dispute or exercise penalties – Partic. agency self-polices</i></p> <p><i>Concurrence</i></p> | <p>180-day window for fed agency decision on enviro review or authorization – starts from date agency has all info needed</p> <p>Disputes re: Timeline Go to ExDir Fed Perm Impr Council – if 30d pass then OMB + CEQ facilitate a resolution by day 60. Action taken by Dir. OMB is final and conclusive and not subject to judicial review</p> | <p><i>Does not set specific NEPA review or permitting schedule</i></p> <p><i>Completion date in recommended performance schedule for each category cannot exceed the avg time to complete an environmental review or authorization for projects within that category. Calculation based on analysis of time req'd to complete item (for projects within the relevant category of covered projects) during the preceding two calendar years.</i></p> |

| MAP-21 + Title I FAST ACT <i>23 U.S. Code Chapter 1, §139, 168-69⁹</i> | | FAST-41 <i>42 U.S.C. Chapter 55, SubCh. IV</i> <i>§§4370m – 4370m-12¹⁰</i> | | |
|---------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| CATEGORY | WHAT'S IN THE LAW | DEFICIENCIES | WHAT'S IN THE LAW | DEFICIENCIES |
| Concurrent Reviews | <p>MAP-21 §1305 Agencies coordinate and carry out activities concurrently, instead of sequentially, and in conjunction with the NEPA review</p> <hr/> <p>FAST Act §1313 Coordinated/concurrent reviews + permitting for Title 49 projects, ALSO</p> <ul style="list-style-type: none"> • Purpose and Need (P&N) and Range of Alternatives must be suff to provide resource agencies w/ needed info • P&N issues must be resolved during scoping – all other “issues” resolved expeditiously | <i>Waived if it “would impair the ability” of any agency to meet obligations</i> | Requires that state/federal permitting reviews run concurrently for a “covered project” | <i>So long as doing so does not impair a federal agency’s ability to review the project</i> |
| Alternatives Analysis | <p>FAST Act §1304 Lead agency must provide partic. agencies and public opportunity for “involvement” in defining P&N and determining Range of Alternatives – used for fed enviro reviews/permits req’d for project</p> | <p><i>As early as practicable in the review process</i></p> <p><i>Partic agencies not required</i></p> <p><i>To the max extent practicable ... unless alternatives must be modified to address sign new info/ circumstances or to do NEPA in timely manner</i></p> | N/A | N/A |
| Use of Planning Products in Enviro Reviews | <p>MAP-21 §1310; FAST Act §1305 USDOT integrate “planning products” in NEPA (e.g., mitigation needs) ... narrows concurrence reqm’t</p> | <i>“Planning & environmental linkages” – far from simple: 10 conditions and need concurrence</i> | Adoption, incorporation by reference, and use of state documents | <i>Must meet complex process/procedural standards</i> |
| Programmatic Approaches | <p>MAP-21 §1305 Use programmatic approaches for enviro reviews, eliminate repetition</p> <p>MAP-21 §1318; FAST Act</p> | | | |

| MAP-21 + Title I FAST ACT 23 U.S. Code Chapter 1, §139, 168-69 ⁹ | | FAST-41 42 U.S.C. Chapter 55, SubCh. IV §§4370m – 4370m-12 ¹⁰ | | |
|---------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| CATEGORY | WHAT'S IN THE LAW | DEFICIENCIES | WHAT'S IN THE LAW | DEFICIENCIES |
| | <p>§1315 Programmatic Agreement (PA) Template</p> <ul style="list-style-type: none"> PA w/ States – state can make NEPA categorical exclusion (CE) determinations <p>FAST Act §1303; 1311</p> <ul style="list-style-type: none"> Waive case-by-case Section 106 + 4(f) review certain bridges/culverts Adopt/incorp. by ref another Federal or state agency's docs <p>MAP-21 §1311 Allows “programmatic mitigation plans” to be developed in transp planning process (by state or MPO).</p> | | | |
| Accelerate Review Reduce Paperwork | <p>MAP-21 §§1319; FAST Act §1304 Codifies use of errata sheets and FEIS/ROD as single document</p> <hr/> <p>FAST Act §1311 Expanded provision to Title 49 projects</p> | <i>Unless FEIS makes substantial changes to proposed action or significant new circumstances</i> | N/A | N/A |
| Single Enviro Document | FAST Act §1304 LEAD AGENCY MUST: Develop “enviro document” sufficient to satisfy fed permits, approvals, etc. | <i>Only to the maximum extent practicable</i> | N/A | N/A |
| Modernize NEPA | FAST Act §1317 Explore electronic and other innovative technology options | Report to Congress in one year | N/A | N/A |
| Limits on Lawsuits | MAP-21 §1308 150 days after notice in <i>Fed. Reg.</i> announcing permit, license or approval is final, for | <i>Most NEPA challenges brought well before deadline</i> <i>Prep + announcement</i> | <ul style="list-style-type: none"> Two (2)-year SOL NEPA – “get in or get out” Prelim Inj – consider harmful economy | <i>NEPA challenges brought well before deadline</i> <i>Prep + announcement</i> |

| MAP-21 + Title I FAST ACT <i>23 U.S. Code Chapter 1, §139, 168-69⁹</i> | | FAST-41 <i>42 U.S.C. Chapter 55, SubCh. IV</i> <i>§§4370m – 4370m-12¹⁰</i> | | |
|---------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|----------------------------------------------------|---------------------------------------------------------------|
| CATEGORY | WHAT'S IN THE LAW | DEFICIENCIES | WHAT'S IN THE LAW | DEFICIENCIES |
| | parties to file lawsuits that challenge agency enviro decisions re: surface transportation projects | <i>of a "supplemental" EIS, when required, restarts the 150-day clock</i> | impacts (already was done when "balance equities") | <i>of a "supplemental" EIS, when required, restarts clock</i> |

