**AGENDA**

**Welcome and Introductions** 8:00 to 8:15
Carlos Braceras: Advisory Board Chair, AASHTO Center for Environmental Excellence, Deputy Director, Utah Department of Transportation

**Overview Presentation** 8:15 to 8:45

*Managing the NEPA Process for Complex Projects – An Overview*

Presenter: Bill Malley, Akin Gump Strauss Hauer & Feld LLP

**Roundtable Session # 1** 8:45 to 9:30

*Getting Started – How to Lay the Foundation for a Successful NEPA Study*

Presenter/Facilitator: Ysela Llort, Assistant Secretary for Intermodal Systems Development, Florida Department of Transportation

Background:

Decisions made before the NEPA process even begins can greatly affect both the time needed to complete the NEPA process as well as the ultimate success of the project. For example, pre-NEPA planning studies can be used to establish the “starting point” for purpose and need and the range of alternatives. The pre-NEPA phase also can be used to develop agreements with agencies regarding study procedures and methodologies; to gather baseline environmental data; to develop and refine traffic and air quality models; to resolve fundamental policy issues, such as the role for private investment and tolling; to determine the type of NEPA document needed (e.g., whether to prepare a tiered or traditional EIS); and to retain a consultant team for preparation of the NEPA study.

**Suggested Issues for Discussion**

- What actions should be taken before NEPA begins? What actions should be taken only after NEPA is formally under way?
In particular, how should the planning process be used? What can realistically be achieved in the planning process for a complex project that faces potential litigation?

When is a tiered EIS appropriate for a large project, instead of a pre-NEPA planning study?

How involved should FHWA and other federal agencies be in the pre-NEPA stage?

What are the “must do” items during the pre-NEPA stage – in other words, what is the bare minimum that should be in place before NEPA begins?

Roundtable Session # 2 9:30 to 10:15

Creating Effective Frameworks for Agency Coordination and Regulatory Compliance

Presenter/Facilitator: Neil Pederson, Administrator, Maryland State Highway Administration

Background:

The “NEPA process” involves compliance with much more than NEPA itself. A major project typically requires the project sponsor to navigate through several regulatory proceedings at the same time: Section 106 consultation for historic properties, Section 7 consultation for endangered species, Section 404 permitting for wetlands, Clean Air Act conformity requirements for air quality, and Section 4(f) for parklands and historic properties. Keeping all of these proceedings on track requires careful coordination and strong working relationships with agencies – which may be a challenging for any project, but can be particularly difficult for high-profile, complex projects. It also frequently requires effective methods for dispute resolution, since federal agency decision-makers may take opposing positions on fundamental project issues, such as preferred alternative selection and mitigation measures.

Suggested Issues for Discussion:

What is the most effective approach for managing agency relationships – a formal MOU that establishes expectations and deadlines, or a more informal approach? What are the pros and cons of each approach?

Are “concurrence points” (as in the MATE process) helpful? If so, at what point should project sponsors seek concurrence? From which agencies?

How should timeframes for agency reviews be established? As part of a comprehensive agreement that addresses other issues, such as methodology and data needs? Or as a standalone agreement on project schedule? Or just determined informally?

What are the pros and cons of “priority project” designation (under E.O. 13274)?
Would the procedures contained in the House and Senate bills help to streamline the process? What are the pros and cons of each approach?

Break  
10:15 to 10:30

Roundtable Session # 3  
10:30 to 11:15

Writing Readable and Legally Sufficient NEPA Documents

Presenter/Facilitator: Tim Hill, Environmental Administrator, Ohio Department of Transportation

Background:

The CEQ regulations state that an EIS “shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.” But over time, EISs have grown dramatically in size. It is not uncommon for an EIS to approach or even exceed 1,000 pages in length. As they have grown in size, EISs also have increased in complexity. The increasing complexity reflects many factors, including the availability of more complex technical tools; the need to comply with increasingly complex (and often-changing) regulatory requirements; a desire to be responsive to regulatory agencies’ requests for detailed technical information; a desire to be responsive to community concerns; and a desire to minimize litigation risks. As EISs have become more complex, they have become more difficult for non-technical readers to understand. As a result, the EIS itself can actually impede effective communication and alienate broad sections of the public, by creating the perception that a complex document is being used to obscure important issues. Recently, efforts have been made – in Washington State and elsewhere – to make EISs more readable, but these efforts have run into concerns about legal sufficiency. As a result, while there is general agreement that NEPA documents should be easier to read, there is little agreement on how to do that – and a real reluctance to experiment with new approaches on projects that face high potential for litigation.

Suggested Issues for Discussion:

• Does increased readability require new skill sets in the project team – e.g., technical writers, technical editors, graphic artists?
• Does increased readability require new document formats – e.g., larger size, greater use of color, “magazine-style” page layout?
• Are new document formats well-received by resource agencies? Will agencies be satisfied if the technical information they need is largely confined to appendices?
• Should innovative document formats be used only for uncontroversial projects? Or should they also be used for projects that face high potential for litigation?
What does it really take to make a document more readable? What is the additional cost? What is the impact on project schedules?

Roundtable Session # 4  
11:15 to 12:00

Public Involvement in a Polarized Environment

Presenter/Facilitator: Carlos Braceras

Background:

The public involvement component of the NEPA process has changed dramatically in recent years. Increasingly common public involvement methods include: community advisory committees; project field offices; project web sites; multiple public meetings and comment opportunities before the DEIS is issued; extended comment periods on both the DEIS and FEIS; and the use of specialized consultants to manage all aspects of the public involvement effort. These innovations create opportunities for collaboration and problem-solving. They also may help to make the process more open. But, where views on a project are highly polarized, increased interaction with and among stakeholders may have the unintended result of hardening interest group positions and compounding each side’s feeling of isolation from the other. In addition, as organized groups (both for and against the project) take on a more prominent role in the process, individual community members may feel discouraged and tend to withdraw from participation.

Suggested Issues for Discussion

- How can the project team most effectively engage the general public – not just the well-organized groups?
- Should public meetings primarily be used to give information to the public? Or as an opportunity for the project team to receive information from the public?
- Are community advisory committees (or working groups, focus groups, etc.) effective public involvement tools in a polarized environment? How should a project sponsor respond if key interest groups refuse to participate?
- In a polarized environment, should public meetings and public hearings be led by a member of the project team? Or by a neutral third party?
- What limits can be imposed to maintain order and security at a public meeting or hearing while respecting the free-speech right to protest?
- What are the proper protocols for releasing study data when the DEIS is still a “work in progress”?