



The Environmental Quarterly

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LETTER FROM THE EDITOR

Dear Environmental Colleague

This issue continues our nod to NEPA's 40th anniversary with more quiz answers and new questions for you. We also have part two of our NEPA Recollections series – which asks professionals who have worked with NEPA to think back on its impact – and a special article on the 1975 amendment to NEPA.

What are your thoughts on NEPA's 40th anniversary? Send your comments to marie.roybal@dot.gov and we will publish them in the next issue.

As always, if you have stories you'd like to contribute or story ideas for this newsletter, let us know.

Sincerely,

Lamar Smith

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INSIDE

- **H.R. 3130: The 1975 Amendment to NEPA...p. 3**
- **40th Anniversary: NEPA Recollections...p 5**
- **RC Environment Team and the TRB Summer Meeting...p. 7**
- **Environmental Calendar...p. 11**

NEPA Trivia Questions Part 2

by Lamar Smith

In the Spring Issue of the EQ I posed four additional NEPA questions continuing what I started in the Winter Issue. The questions were: 1) What other U. S. President deserves at least an honorable mention in the evolution of the NEPA process and why? 2) With all the men involved and recognized, were there any women given credit for NEPA in any way? 3) What Federal agency has considerably more NEPA responsibility than any other? 4) A bonus question: In what way do you think NEPA has evolved (and is evolving) beyond the original intent?

Given that I wrote the questions, I had a pretty good idea of what the answers were, at least the answers I was looking for. The exception was with the bonus question, which I included to see if anyone had similar thoughts to my own and to get you thinking about it.

One of the responses I received was from a lawyer friend of mine who has been involved with NEPA in one way or another since the beginning. I'll call him Skip. Skip was kind enough to allow me share his interesting and informative answers with you and to compare them to my own. So, here it is.

Skip's answer to the first question is: "In my opinion, President Jimmy Carter should be honorably mentioned as providing the Executive Order 11991 (May 24, 1977) that amended EO 11514 and gave CEQ regulatory authority. Although they have used it sparingly and probably didn't need it since the courts had already recognized their "guidance" as the equivalent of regulatory authority". For

NEPA Trivia, continued from page 1.

this question, Skip and I are in total agreement. I think President Carter deserves at least an honorable mention in the evolution of the NEPA process for the very reasons Skip mentioned.

Skip's answer to the second question is different from mine, but that doesn't make it wrong. Skip said: "The first woman appointed to the CEQ by President Nixon was Beatrice E. Willard of Boulder, CO. She brought the first ecological perspective to the Council. She enunciated the seven principles of ecology (*Ecological Considerations in Transportation Systems, by Beatrice E. Willard, Engineering Issues: Journal of Professional Activities, Vol. 101, No. 3, July 1975, pp. 329-336*). The woman I was thinking of is Rachael Carson. As you probably know she wrote *Silent Spring*, a book that had a tremendous influence on the environmental movement in the 60's. She also appears very prominently in the early history leading up to the passage of NEPA. There are perhaps many women in addition to Ms. Willard and Ms. Carson that have played a significant role in the evolution and implementation of NEPA.

Skip and I agreed on the third question. Skip's answer: "The EPA, other than CEQ, has considerably more responsibility due to Sec. 309 of the CAA which requires it to review and rate EISs. This was largely added to placate Senator Muskie." I really can't add much to his answer. EPA has been legislated and delegated considerable responsibility regarding other agencies implementation and compliance of the CEQ regulations (or NEPA). The EPA reviews every draft and final EIS produced by every Federal Agency, provides comments to the lead agency, and rates the quality of the preferred alternative on its environmental merits and the documents themselves on their overall quality and adequacy from their perspective. It's an incredible responsibility and they do an admirable job with little recognition.

Skip's thought on the last question goes like this: "Finally, NEPA has never evolved into a substantive statute (or set of regulations) but has been used to justify considerable environmental research and analyses that

would not otherwise have occurred. Moreover, its more recent emphasis on adaptive management has at times been used to justify on-going obligations of Federal agencies to fix the things gone wrong. However, for the most part, individual Federal agencies have extended the scope and application of NEPA requirements voluntarily through their own implementing regulations while simultaneously creating enormous bureaucratic procedures as well." He goes on: "I had the privilege to work at the CEQ its first summer in existence for Bob Cahn and went to the White House for Nixon's signing of the 1st CEQ Annual Report. I also had the opportunity as Counsel to Dingell's House subcommittee to write the only amendment to NEPA in 1975." Be sure to read Skip's account of the 1975 amendment in this Issue of the EQ.

I'm not going to add my thoughts on the last question at this time. Instead, I'm going to try again to get you to share your opinions with me. I'm curious because I think there may be several ways in which the NEPA process as it exists today does not exactly align with the original intent of the law. So, here's the question again: In what way do you think NEPA has evolved (and is evolving) beyond the original intent? I would really enjoy hearing from you. My email address is lamar.smith@dot.gov.

ICOET 2011

Tentative dates for the next International Conference on Ecology and Transportation are August 22-25, 2010. The conference will be held in Seattle Washington.

For general information about ICOET, please visit the website at <http://www.icoet.net/>.

ANNOUNCEMENT:

FHWA's Surface Transportation Environment and Planning (STEP) Cooperative Research program is currently seeking stakeholder feedback on the FY2011 STEP plan. Stakeholders may suggest lines of research to be pursued under the five STEP emphasis areas: Environment, Planning, Real Estate Services, and Tools to Support Environment and Planning. Feedback will be accepted until September 30, 2010. Visit the STEP website at <http://knowledge.fhwa.dot.gov/cops/step.nsf/home/>.

H.R. 3130 – The 1975 Amendment to NEPA

by James “Skip” Spensley, Former Legal Counsel to the U.S. House of Representatives Merchant Marine & Fisheries Committee

(Some of this history was taken from an excellent unpublished article authored by Andrew Quartner in August 1975.)

On December 11, 1974, the Second Circuit Court of Appeals handed down a decision that led to the first and only amendment to the National Environmental Policy Act of 1969. In *Conservation Society of Southern Vermont v. Secretary of Transportation*, the court invalidated the Federal Highway Administration procedures that allowed state applicants for Federal-aid highway monies to prepare the NEPA-required environmental impact statement (EIS). In ruling that it was exclusively a Federal duty to prepare the EIS, the Court reached a decision contradictory to those in several other circuits and resulted in the suspension of all highway construction projects in Vermont, New York and Connecticut by the Federal Highway Administration (FHWA) regional director. Further, no location or design approval could be authorized for projects requiring an EIS, nor could any draft or final EIS prepared by a state be approved. This court decision and the FHWA reaction to it created demands for a legislative solution leading to the passage of H.R. 3130 nine months later.

The *Conservation Society* case involved the construction of a 20-mile segment of road between Bennington and Manchester Vermont on U.S. Route 7. The Vermont Highway Department (VHD) was under a 1968 legislative mandate to build the road and the FHWA allowed the VHD to prepare the required EIS. The earlier District Court had commented that, “there is no indication whatsoever that FHWA or any of its employees conceived, wrote, or even edited any section of or passage in the EIS.” The FHWA role consisted only of, “informal chats touching on the subject, together with a field trip...” thus indicating that even the minimal involvement required by the CEQ was not undertaken by FHWA.

The *Conservation Society* case first arose under the original CEQ Guidelines issued on April 23, 1971

that did not address the issue of delegation at all.

However, CEQ amended its Guidelines on August 1, 1973 after several court decisions involving the issue of delegation had been decided. When it did address the issue, it appears as if CEQ chose not to face the issue head on. Those guidelines only stated:

“Where an agency relies on an applicant to submit initial environmental information, the agency should assist the applicant by outlining the types of information required. In all cases, the agency should make its own evaluation of the environmental issues and take responsibility for the scope and content of draft and final environmental statements.”

This passage neither commended nor disapproved of the delegation practice. In its Fifth Annual Report, CEQ said:

“CEQ has traditionally not objected to delegation of the preparation of a statement in those instances where the Federal agency has maintained responsibility for the objectivity and adequacy of the statement. Efficient use of resources suggests that the party closest to the development of a project should engage in at least its preliminary environmental analysis. Where this party is a state or local government, the responsibility of the Federal agency is to ensure that environmental considerations are meaningfully integrated into the project’s design. This requires at least some review of the project and the impact statement by the agency. But it does not require an agency in every case to engage in an independent preparation of the impact statement...”

The leading case on delegation had been decided in 1972 by the Second Circuit, authors of the *Conservation Society* case, in *Greene County Planning Board v. The Federal Power Commission*. In that case, the applicant was the Power Authority

Continued on page 4.

of the State of New York (PASNY) who was proposing the construction, operation and maintenance of a million kilowatt pumped storage power project. Under the procedures then followed by the Federal Power Commission (FPC), applicants prepared the EIS when required and which were then reviewed and adopted by the FPC. The court held that, “the FPC has abdicated a significant part of its responsibility by substituting the statement of PASNY for its own.” The court noted that NEPA made consideration of environmental values the “primary and non-delegable responsibility” of the Commission. This decision was subsequently followed by most courts considering the delegation issue both within and outside the second circuit

The *Conservation Society* decision came at a time when the construction industry was already suffering high unemployment (19.2%) and the work stoppage caused by reaction to the decision involved anywhere from 71,000 to 300,000 jobs and \$2 billion to \$3.3 billion, depending on various estimates.

Legislative action began first in the U.S. House of Representatives Public Works and Transportation Committee. After hearings in March, the committee reported out one of several bills it was considering favorably, H.R. 3787 that subsequently passed the House on April 21st. This bill was a very narrow response to the specific problem then being faced in the second circuit and merely declared that any EIS prepared for a Federal-aid highway project in the states of New York, Vermont and Connecticut by the State to be deemed a statement prepared by the Secretary of Transportation for the purposes of NEPA.

This bill was subsequently sequentially referred to the Merchant Marine and Fisheries Committee pursuant to the Rules of the House of Representatives where our Subcommittee having NEPA jurisdiction and chaired by Congressman John Dingell, one of the original authors of NEPA, reported the bill out unfavorably. We had several problems with the H.R. 3787. First, it was considered a “backdoor” amendment – an approach that had been unsuccessfully tried by other committees on other occasions. In such cases, the proposed amendments were usually drawn so narrowly that they ignored the ramifications for

other Federal agencies. The Public Works bill suffered this shortcoming and didn’t acknowledge the probability that this issue would arise again elsewhere. Second, the wording of this bill would have led to new litigation in an effort to define the parameters of required Federal involvement and finally, the delegation issue needed to be addressed for all agencies and not just the Department of Transportation.

Thus, our Fisheries and Wildlife Subcommittee held its own hearings and eventually reported out its own bill H.R. 3130 favorably. This bill was an across-the-board amendment to NEPA and one that we felt did no more than clarify existing law. We used language taken from the CEQ guidelines. The environmental community and CEQ had testified that legislation was not necessary but if needed should only clarify existing law and practice. Eventually, both H.R. 3787 and H.R. 3130 went to the House floor for a vote that in itself confused most House members since both bills appeared to address the same problem just in different ways. To remedy this confusion, House members simply passed both bills where upon they were subsequently referred to a joint committee of Interior and Public Works in the Senate. After hearings before this joint Senate committee, H.R. 3787 was reported out unfavorably since it was too narrow in addressing the issues while an amended version of H.R. 3130 was reported favorably. However, the Senate amendment added language that made its applicable only to major Federal actions funded under a program of grants to states and required the state agency or official to have statewide jurisdiction and principal planning and decision making responsibility for such action. Further, it added a provision to address projects that had impacts of major interstate significance by requiring the responsible Federal official to prepare an independent analysis of such impacts and alternatives thereto in such cases. Since the House and Senate bills adopted by their respective bodies were substantially different, a conference committee was scheduled to resolve the differences. All members received intense lobbying from the FHWA for a quick resolution favoring the House version since it required less Federal responsibility.

NEPA's 40th Anniversary

NEPA Recollections: The Advantages and Best Practices of NEPA

Editor's note: A questionnaire was sent to a variety of FHWA and DOT leaders, current and former, who had experience with NEPA. The questionnaire asked a variety of questions about their experiences and impressions of NEPA. This is the second in a series of articles in which we share their answers to some of these questions.

What was the primary advantage of implementing NEPA?

“People can understand and comment on the purpose and need, alternatives, impacts, and mitigation before implementation of regulations, programs, management actions, and projects.

People can challenge analyses, documentation, and decisions.”

- **Wayne W. Kober** has 36 years of involvement with NEPA. He is the President of Wayne W. Kober, Transportation and Environmental Management Consulting and a former Director of the PENNDOT Bureau of Environmental Quality.

“Balance and sustainability; participation and interdisciplinarity.”

- **Jim. St. John** has 37 years of involvement with NEPA. He is a part-time advisor for HNTB. He is retired from FHWA.

“NEPA did a couple of things: it provided an almost poetic statement of what we were trying to accomplish as we fit the pieces of our societal puzzle together (long before "sustainability" entered our national vocabulary), and it forced Federal agencies to change the way they did business in a way that benefitted the environment.”

- **Fred Skaer**, recently retired from FHWA where he was the Director of the Office of Project Development and Environmental Review. He was involved with NEPA for over 30 years.

“One of the primary advantages to implementing NEPA is that it makes Federal transportation agencies take a hard look at the social, economic, and environmental impacts of its actions and to weigh them against the need to provide for a safe and efficient transportation system. In most cases this results in needed transportation projects being built in a much more environmentally sensitive way, and in some cases results in both improved mobility and the environment. Another advantage is the requirement to utilize a systematic interdisciplinary approach in the development of NEPA documents. This requirement forced Federal, State, and local agencies to increase their environmental skills and expertise. During my career with FHWA, I witness FHWA environmental expertise go from non-existent (pre-NEPA days) to highly skilled and in many cases rival those of the Resource Agencies. Another advantage is the requirement for interagency coordination. At the beginning of the NEPA period, this was an extremely challenging requirement because of the lack of understanding and trust between the respective agencies. However, we have come a long way since the beginning of NEPA and there is much more trust and respect between agencies at this point. That's not to say that agencies will always agree on the issue because they most certainly will not. But negotiations today are usually done in a much more congenial atmosphere.”

- **James M. Shrouds** has 35 years of involvement with NEPA. He is an independent consultant working on transportation and environmental issues. At the time of his retirement from FHWA, he was the Director of the Office of Natural and Human Environment.)

What has worked best, or what still needs improvement?

“The involvement of the courts has been a blessing and a curse. Having the prospect of judicial review really made Federal agencies and their partners take NEPA seriously. On the other hand, court decisions have made the implementation of NEPA too legalistic.”

- *Fred Skaer*

“The three classes of Federal actions allow for the appropriate level of analysis, documentation, coordination, and public involvement depending on the scope, magnitude, and complexity of the proposed action.

“The multi-disciplinary approach promotes collaboration and accurate analysis.

“The current EIS format should be abandoned. It does not tell a story about the evolution of a program or project.

“An EIS should be prepared and distributed as a series of modules as the process proceeds. The paper EIS (500 pages) should be replaced by the video EIS or You Tube EIS (20 Minutes).

“Environmental performance should replace environmental impact assessment. Solutions to problem should be designed to perform to criteria and standards. Context-sensitive solutions approaches are headed in this direction.”

- *Wayne W. Kober*

“We have evolved a systematic, interdisciplinary approach for developing surface transportation infrastructure within our SEE [Social, Economic and Environmental] context. While we missed the correct scale of impact consideration early (say the first 15 years), discussions today are more about regional scope and scale as I think NEPA envisioned. Micro mitigation and enhancement is now largely “built in” through normal practice, and interagency discussions are more about how to meet each involved agency’s objectives. We must work on compressing the time and costs for getting to the right decisions.”

- *Jim. St. John*

How and why did you become professionally involved with NEPA?

“I wanted to assist PENNDOT in complying with state and Federal environmental laws.

“I wanted to apply the sciences of environmental resource management to building and maintaining the transportation system.”

- *Wayne W. Kober*

“My first in depth NEPA involvement was in the FHWA Maryland Division during the push to complete the Interstate Highway System. Successfully navigating NEPA was important to achieving the agency's mission and was an intellectually engaging exercise. The interdisciplinary nature of NEPA work and the opportunity to interact with a number of agencies and citizens was very appealing to me.”

- *Fred Skaer*

“I think my Myers-Briggs scores made this pathway inevitable if I was to stay with FHWA through retirement. I am a big picture thinker, loved collaboration and learning new things, and frankly, believed this was the right way to do the public’s work. Being a hungry GS-12 trying to find my niche when the opportunity was there in FHWA was the catalyst. Best personal work decision I ever made.”

- *Jim. St. John*

Resource Center Environment Team and the TRB Summer Meeting

by Dave Gamble, FHWA Resource Center Environment Team



This is a photo of one side of Raleigh's relatively new convention center. The nearly 9300 square foot display consists of 79,464 light and dark aluminum squares that shift about in the wind, creating multiple variations of the primary image of an oak tree (which has, incidentally, become a symbol for the city). At night, it is backlit by light-emitting diodes that can be programmed in more than a million different colors.

In early June, over 500 hundred transportation professionals from around the world gathered in Raleigh, North Carolina, for the 2010 Transportation Research Board (TRB) Environment and Energy Conference. Having been dubbed by some as the “mega” TRB summer meeting, the conference was conducted jointly by the AASHTO Standing Committee on Environment and over a dozen TRB committees. Amid aromas of barbecue and pitchers of sweet tea, the themes of sustainability and balancing environmental protection with economic realities were discussed in earnest.

The event was conducted over a four-day period in Raleigh's gleaming convention center (which has received acclaim as a “green” building) and covered a wide range of topics. The Resource Center Environment Technical Service Team was very engaged in the conference; eight team members were

in attendance. Copies of the various presentations made during the conference may be found by clicking on the relevant session number at this link: <http://www.cte.ncsu.edu/cte/EEConference/agenda.asp>

Section 4(f) et al

David Grachen, who was a member of TRB's ADC10 Committee on Environmental Analysis in Transportation from 2006 through 2009, moderated a panel titled “*Environmental and Historic Preservation Regulations: Overlap and Divergence*” (Sessions 60 and 66). The purpose of the panel was to identify the similarities and differences between certain requirements of NEPA, Section 106 regulations implementing the National Historic Preservation Act, and Section 4(f) of the US DOT Act of 1966 in the context of transportation project

Continued on page 8.

development. Opportunities for achieving efficiencies with overlapping requirements were discussed with the aim of streamlining compliance and improving decision making.

Dave Gamble served on this panel and presented “Section 4(f) – That Was Then, This is Now.” After briefly revisiting the origin of the feasible and prudent standards established by the famous Overton Park court case, Dave presented a summary of more recent changes in Section 4(f) compliance. This began with an overview of the March 2005 update of the Section 4(f) Policy Paper that introduced a more organized approach to the Section 4(f) process. It also included expanded discussions of alternative selection including more detail on the feasible and prudent standard as well as illustrating the concept of least overall harm.

The next topic discussed was the April 2005 Programmatic Section 4(f) Evaluation for Projects that have Net Benefit, including the results of an informal query pertaining to its utilization throughout the country (it has been used in at least sixteen states). Gamble noted that awareness of this programmatic may have been somewhat eclipsed by the passage of SAFETEA-LU and the new *de minimis* provision, but that it still has utility. Finally, the major points of the March 2008 FHWA and FTA regulations on Section 4(f), 23 CFR 774 were discussed.

This panel also included presentations by Carol Legard, the FHWA Liaison from the Advisory Council on Historic Preservation. Ms. Legard examined more effective coordination of both Section 106 and Section 4(f) with the NEPA process. There were also project-oriented presentations by Bill Malley from Perkins Coie on the InterCounty Connector in Maryland, Beth Bartz from SRF Consulting Group on the St. Croix River Crossing in Minnesota, and Beth Smyre from North Carolina DOT on the Bonner Bridge Replacement Project. All of these projects presented a myriad of challenging issues regarding the overlap of Section 4(f) and Section 106, the two most important preservation statutes affecting transportation project development. The two-part panel was attended by approximately seventy conference participants and generated a number of thoughtful comments and questions.

Stormwater Management & Water Quality

Best practices in addressing National Pollutant Discharge Elimination System Permitting and other water quality Issues were highlighted in a two-part session titled “*Stormwater Management and Water Quality*” (Sessions 32 and 39). Brian Smith, co-chair of the domestic scan tour in 2009 on the aforementioned topic, presented information from the scan tour. He was joined by representatives from US Environmental Protection Agency (EPA), Maryland State Highway Administration, North Carolina Department of Transportation and California Department of Transportation. The final scan tour report is located on TRB’s website at http://icma.org/en/icma/knowledge_network/documents/kn/Document/301483/Putting_Smart_Growth_to_Work_in_Rural_Communities%5d.

Stormwater regulation can become problematic for DOTs. Coordinating with multiple stakeholders, geographically diffuse and diverse stormwater facilities, limited right-of-way, and staff and budget constraints present challenges to meeting stormwater management requirements. Procedures, practices and leadership must continually evolve to meet these challenges. One of several strategies that DOTs are developing to improve efficiency is automation of databases, inspection results and BMP maintenance schedules. Proposed strategies being researched to increase flexibility in permits include water quality credit trading, source control strategies, and creating a model permit for use by DOTs. The Stormwater Management and Water Quality sessions also highlighted EPA's Stormwater Rule, regulatory updates, erosion control accountability and perspectives on low impact development for stormwater treatment.

Streamlined Project Delivery

Lamar Smith served as a panelist on Session 21 titled “*Faster Project Delivery with New Efficiencies.*” There continues to be a lot of focus nationally on ways to streamline the project development process and specifically the completion of environmental documents. This session highlighted a number of national examples that have resulted in a quicker decision making process and better decision-making in the District of Columbia,

TRB Summer Meeting, continued from page 8.

Kentucky and North Carolina. Lamar's presentation focused on the FHWA's Every Day Counts initiative, which is designed to identify and deploy innovative techniques and technology to meet the needs of 21st century transportation system. Some of the sub-topics included as part of this initiative are examining the expanded use of programmatic agreements, planning and environmental linkages, clarifying the scope of preliminary design, and enhanced technical assistance on delayed or stalled EIS projects. Products of this initiative will include guidance memos, criteria, specifications, and training modules.

The NDOR/FHWA Local Government ARRA Workshops

Dan Johnson served as a panelist on Session 35 titled "*Lessons Learned from ARRA*," reporting on several highly successful workshops conducted in Nebraska to benefit local public agencies (LPAs). When the American Recovery and Reinvestment Act of 2009 (ARRA) was signed into law, Nebraska's LPAs had nearly 80 potential ARRA projects, but only a few of them had approved environmental documents. Rather than have the LPAs seek project approvals for the remaining projects through normal channels, the FHWA Nebraska Division office and Nebraska Department of Roads (NDOR) requested assistance from the Resource Center Environment TST to take the process directly to the LPAs to streamline the review and approval process.

The Division worked with NDOR to establish several emergency service contracts with consultant firms experienced in the NEPA process to assist the LPA's in completing their NEPA analysis. The FHWA and NDOR then sponsored two 2-day workshops in July and August 2009 during which the LPAs brought their project information to the workshops and completed all appropriate environmental forms on site. Workstations were established, each staffed with an FHWA and NDOR specialist qualified to deal with all aspects of the environmental review process, including threatened and endangered species, wetlands and historic preservation. Laptop computers were available to allow the LPAs and their consultants to revise their documents on site. As a result of providing the opportunity for the LPA representatives to speak directly to FHWA and NDOR staff, learn what

needed to be done, and ask questions about any remaining follow-up actions, over 60 of the projects were cleared by the end of the second workshop. Dan reported that the process was so successful that NDOR and FHWA now hold the LPA workshops on a quarterly basis for non-ARRA projects. The process offers a great opportunity to avoid misunderstandings that frequently occur when local governments' exposure to the NEPA process is filtered by letters through multiple layers of the State DOT and the Feds. For further information, you may contact: Melissa Maiefski, Lead Environmental Specialist FHWA Nebraska Division Office, (402) 437-5973, melissa.maiefski@dot.gov, or Cindy Veys, Environmental Section Manager, Nebraska Department of Roads, (402) 479-4410, cindy.veys@nebraska.gov, or Dan Johnson, (410) 962-0702, danw.johnson@dot.gov.

Tribal Consultation

Stephanie Stoermer organized and moderated Session 44, "*Improving Project Delivery through Early Tribal Consultation: Approaches and Tools*." Failure to initiate tribal consultation in a timely manner can negatively affect project development. A related concern is the availability of reliable data regarding resources of concern to Tribes, both on and off tribal lands. Featured presenters Dr. Paul N. Backhouse and Juan J. Cancel of the Seminole Tribe of Florida's Tribal Historic Preservation Office (THPO) provided an in-depth overview of the Seminole THPO's use of Geographic Information Systems (GIS) to facilitate timely reviews of transportation projects located in the Tribes ancestral homelands. Innovative applications of GIS paired with a relational database to track project correspondence enables the Seminole THPO to review more than 3000 off-reservation projects annually as well as to respond quickly to consultation requests.

Livability: What is it?

Team member Rod Vaughn discovered that attending the TRB Conference gave him a greater understanding of "livability" and what it means for our transportation programs. During Session 65 – "*Livability: What Is It and How Do You Measure It?*" – it was said that, "Transportation is the means, Context Sensitive Solutions (CSS) is the process,

and Livability and Sustainability are the outcomes.” Over the last few years, there has been quite a bit of education and training in CSS. Rod notes we are now delving into livability and sustainability with greater emphasis. Just what does livability mean as we work with the transportation system and program?

Livability involves:

- Providing more transportation choices,
- Valuing unique characteristics of communities,
- Improving the links between public transit and communities,
- Gaining better access to affordable housing,
- Lowering transportation costs,
- Enhance the economic and social well-being of Americans,
- Providing easy access to employment opportunities and other destinations, while protecting the environment in communities.

Some critical considerations in making a community more livable are whether to restrict motorized transportation in order to make places more pedestrian friendly, and also consideration of whether creating a “sense of place” should trump mobility. Both of these concepts can result in very challenging discussions and negotiations affecting our transportation programs.

Vaughn concludes that equitable and acceptable solutions to these issues can only be accomplished through incorporation of sound CSS principles such as involvement of all stakeholders, creating shared visions, understanding contexts, and fostering communication and collaboration to achieve consensus. Exercising flexibility and creativity in shaping transportation solutions, using an interdisciplinary approach, and establishing a clearly

ACHP releases Citizen’s Guide to Section 106

The Advisory Council on Historic Preservation (ACHP) recently announced a new publication: *Protecting Historic Places: A Citizen's Guide to Section 106* (<http://www.achp.gov/docs/CitizenGuide.pdf>). Filled with practical advice for people engaging in historic preservation at the local level, this booklet is useful to keep handy in case federal historic preservation laws come into effect during a project.

When the conference committee finally met, the controversy surrounded the “major interstate significance” language in the Senate bill. The House conferees felt that, even narrowly interpreted, this provision added a burden to Federal agencies that did not exist anywhere, and that instead of restating the law as it existed in other circuits, the Senate bill would be making new law. Although I had prepared a compromise version for consideration in the conference that clarified the intent of the Senate language to apply to impacts “out of state” not “interstate”, this clarification was not enough to satisfy the House conferees and, eventually, this entire reference to interstate cases was omitted from the final amendment version.

Ultimately, a conference committee version was agreed upon after a few other changes that were finally adopted by both houses of the Congress by the end of July 1975. This experience gave me an appreciation of how the words used in legislation can be interpreted in so many different ways depending upon circumstances considered. It also underscored the risks of using a reactive legislative process to resolve crisis situations under the pressure of time and special interests. In my view, it has been fortunate that NEPA has avoided significant direct amendments over years despite the criticism it has received for being an impediment to quick action. In the final analysis, it is the only legislative mandate that we have to ensure that we fully consider and share with the public the consequences of our actions.

Putting Smart Growth to Work in Rural Communities

The International City/County Management Association has issued a new publication, *Putting Smart Growth to Work in Rural Communities* (http://icma.org/en/icma/knowledge_network/documents/kn/Document/301483/Putting_Smart_Growth_to_Work_in_Rural_Communities%5d). This report is designed to provide rural decision-makers with strategies for balancing competing goals while creating more vibrant, sustainable communities. These strategies are based around three central goals: 1) support the rural landscape by creating an economic climate that enhances the viability of working lands and conserves natural lands; 2) help existing places to thrive by taking care of assets and investments such as downtowns and existing infrastructure; and 3) create new places by building vibrant, enduring neighborhoods and communities that people, don’t want to leave.

What's Going On?

Here are a few of the upcoming events of interest to the environmental community:

October 2010

Oct. 18-19

Transp. Systems for Livable Communities Conference
(Sponsored by TRB)

Washington, DC

<http://www.cvent.com/EVENTS/Info/Summary.aspx?e=eb5457c9-46c0-4143-96fd-a17bd771aa9f>

Oct. 19-20

2010 AMPO Annual Conference

St. Louis, MO

<http://www.ampo.org/content/index.php?pid=216>

Oct. 27-30

National Preservation Conference

Austin, TX

<http://www.preservationnation.org/resources/training/npc/>

November 2010

Nov. 7

Daylight Saving Time ends

Nov. 14-17

Green Streets & Highways Conference

Denver, CO

<http://content.asce.org/conferences/greenstreets-highways2010/index.html>

February 2011

Feb. 3-5

10th Annual New Partners for Smart Growth

Charlotte, NC

<http://www.newpartners.org/index.html>

Feb. 23-25

Green Infrastructure Community of Practice Conference

Shepherdstown, WV

For additional conferences
and events, see

www.fhwa.dot.gov/hep/calendar.htm



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Getting the news:

*If you would like to receive this newsletter electronically, please send your email address to: marie.roybal@dot.gov