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HEARING ON INFRASTRUCTURE PROJECT STREAMLINING AND EFFICIENCY:
ACHIEVING FASTER, BETTER, AND CHEAPER RESULTS

Wednesday, May 3, 2017

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 10:04 a.m. in room 406, Dirksen Senate Office Building, the Honorable John Barrasso [chairman of the committee] presiding.

Present: Senators Barrasso, Carper, Inhofe, Capito, Boozman, Wicker, Fischer, Moran, Rounds, Ernst, Sullivan, Cardin, Whitehouse, Gillibrand, Booker, Duckworth, and Harris.

STATEMENT OF THE HONORABLE JOHN BARRASSO, A UNITED STATES
SENATOR FROM THE STATE OF WYOMING

Senator Barrasso. Good morning. I call this hearing to order.

Infrastructure is a shared bipartisan priority of all of the members of this Committee. It is also a major priority for the President. The largest hurdles to starting roadwork is getting the needed government approvals. The costs and delays of regulatory red tape can be staggering.

Washington needs to be smarter about these rules and more aware of the effects that they have in communities. We need to find ways to get projects started faster, build roads better, and make costs cheaper.

Simplifying these processes will allow for construction companies to start hiring and for workers to begin building faster; it is a common-sense way to boost our economy and upgrade our public works. If we find ways to streamline review processes, mindful of environmental protection and other public interests, then we can initiate projects more promptly.

More efficient and streamlined regulation can enable transportation departments to focus on efforts to improve safety, personal mobility, and facilitate economic growth. Less time and money and staff effort would need to be dedicated to regulatory compliance.

When we find opportunities to streamline regulation, it enables the State Department of Transportation or other regulated entities to focus more closely on delivering transportation projects and programs and do a better job on them.

Now, there are many reasons to provide more relief to State Departments of Transportation. For example, I have concerns with subjecting rural States to the same rules as more densely populated States. The idea that we would need to have Wyoming or Alaska, South Dakota, Oklahoma do transportation traffic congestion studies on roads that are infrequently traveled is a waste of valuable time and taxpayer resources. Most importantly, these requirements meant for more urban areas impact a rural State's ability to complete projects.

I also have concerns about barriers that exist at the Federal level that might interfere with applications of technologies that can accelerate project delivery at lower costs. Modifying these requirements to allow technological innovations that can save valuable taxpayer money and speed project construction is just common sense.

We also should remember that in most cases regulation in the highway program by the U.S. Department of Transportation is regulation of State governments. A citizen could ask whether it is really necessary to have one government regulate another

government. State Departments of Transportation are public sector entities; they are concerned with safety and environmental protection, and they deserve respect.

The Wyoming Department of Transportation Director Panos' diverse experience makes his participation today particularly helpful to the Committee. He has served as an environmental regulator, as a construction program executive, and now as our State Transportation Agency CEO. He has seen these issues from many perspectives and, as the Director's testimony notes, it is important to move the projects associated with additional funding through the review process promptly, responsibly, and get them built. I agree, and I think it can be done responsibly.

So I urge my colleagues to work with me in a bipartisan way to find these solutions.

With that, I would now turn to the Ranking Member for his testimony. Senator Carper.

[The prepared statement of Senator Barrasso follows:]

STATEMENT OF THE HONORABLE THOMAS R. CARPER, A UNITED STATES
SENATOR FROM THE STATE OF DELAWARE

Senator Carper. Thanks, Mr. Chairman.

Welcome to our witnesses, at least one who has been before us. A couple have been before us before and one of them I was just telling about, Senator Inhofe, the work that has been done on the omnibus budget bill involving Diesel Emission Reduction Act, and instead of seeing it eliminated or greatly diminished, it is actually going to be increased a little bit. And I know that is something you and George Voinovich and I have worked on a lot, and we appreciate your help as well, Leah.

I am glad to be here with all of you today. This hearing's title asks whether we are able to build transportation projects faster, better, and cheaper, and that has a nice ring to it. I certainly agree with the intent. I suspect we all do. But I want to add maybe one other adjective to that list, and it is smarter.

I am sure we all remember stuff that our parents used to say to us growing up. I certainly do. My dad always wondered if any of it was actually getting through. But among the things he was always saying to my sister and me, when we would do our chores and not do them well, he would say, if a job is worth doing, it is worth doing well. That is what he would say. If a

job is worth doing, it is worth doing well. And he said that a lot. We must not have done our chores so well.

But out of that I took the idea, I take the idea that everything I do I can do better. I think the same is true of all of us. That includes all Federal programs. We can do them all better, including the ones we have partnerships with the States.

The other thing my dad used to say a lot to my sister and me, he used to say, just use some common sense. He said that a lot too, not so nicely. We must not have had any common sense. But he said it a whole lot.

And I am thinking of those two things, if it isn't perfect, make it better, and just use some common sense, today as we approach this hearing.

When it comes to streamlining legislation, being smarter also means understanding how things are working now and allowing the existing streamlining measures to be well on their way to implementation before we enact new ones that are likely to delay the benefits of earlier streamlining measures that are still being implemented.

It is a little bit like you are moving into a house. Maybe it is a fixer-upper. It needs a lot of work and the house needs to be painted. And you have the option you can move your

furniture in before painting or you can wait, paint the house, and then move in the furniture.

It is the same kind of situation. I just want us to keep that in mind as we approach today's hearing.

But as we know one tool designed to help public agencies make smarter decisions is the National Environmental Policy Act, NEPA. When it works as intended, NEPA ensures that Federal decision-makers are better informed through project analysis and community engagement. When the NEPA process is well coordinated, it can improve project outcomes, it can reduce costs, and identify conflicts early enough to resolve them without delay.

Unfortunately, there are times when coordination isn't done well and projects are delayed without good reason. That is why I supported the 22 streamlining provisions that passed in MAP-21 in 2012. And again I turned to Jim Inhofe. I know he did a lot of work and our staffs did a lot of work on that. Eighteen additional streamlining provisions were included in the FAST Act in 2015. Again, kudos to all who were involved.

But I believe that it is smart to improve coordination between agencies. I think it is smart to avoid duplication and to focus agency reviews and public input on the projects with the most significant impacts.

I continue to believe that measures intended in the past two bills have real promise to improve timelines and outcomes. But we will only see those benefits if we give them an opportunity to be fully implemented by USDOT and actively used by our States, Native American Tribes, and community partners.

For that reason, one of our Committee's top priorities right now should be, I think, oversight to make sure that the existing streamlining measures that we have adopted in the last five years are being fully implemented and effectively implemented as a good part of our job.

Moreover, adopting new measures at this juncture could well perform a disservice, if we are not careful, to project delivery by delaying implementation of the new authorities for MAP-21 and FAST Act. I don't think we want to do that, so we have to be smart about it.

A new report released in March by USDOT's Office of Inspector General states that there are real risks in enacting new streamlining measures before the old ones are implemented. The IG report says that streamlining measures Congress adopted in the FAST Act may have perversely delayed the benefits from the MAP-21 streamlining provisions, which had to be revised in order to incorporate the FAST Act changes.

In other words, we are already seeing some counterproductive effects of adopting additional streamlining

measures. We must act carefully to avoid doing so yet again. In my father's words, let's just use some common sense.

Finally, we also need to be clear on two critical points when it comes to transportation project delivery and delays. First, 90 percent of highway projects are already categorically excluded from extensive environmental analysis under NEPA. I was surprised to learn that. The environmental reviews for those projects are completed in a month, on average. About 4 percent of the remaining highway projects face the most extensive reviews, and they are large, complicated projects; they are not our vast majority of highway projects, though.

Second, although environmental permits and reviews take a lion's share of the blame for delays, multiple studies and reports have demonstrated that project delays more often result from causes that are unrelated to environmental laws. Last year, a report from the Treasury Department found a lack of public funding is by far the most common factor hindering the completion of transportation projects. We will not solve our underlying funding shortage by cutting environmental reviews alone.

The best way to ensure a timely completion of environmental permits and reviews is by bringing all the agencies together to coordinate early. However, funding constraints at the Federal permitting agencies, such as EPA and U.S. Fish and Wildlife

Service, do not enable them to engage early in all projects. Let's keep that in mind. Unfortunately, the fiscal year 2018 cuts proposed to EPA and the Department of Interior budgets would only exacerbate permitting delays if we adopt them.

I will also be open to looking for ways to make the government more effectively, to improve transparency and accountability, and avoid unnecessary duplication or delays. Completing projects more quickly brings the benefits of that project to a community more quickly, whether it is less time wasted in traffic, fewer fatalities, or new access to jobs, housing, and other destinations.

We also know that projects can have real impacts on communities and the environment. Congress must ensure that any revisions to the way we review projects are going to result in smarter processes and better outcomes that will not impede the progress we have made to date.

That it is. All right, thank you all for being here. It is great to be with us. Let's have a wonderful hearing. Thank you.

Thanks, Mr. Chairman.

[The prepared statement of Senator Carper follows:]

Senator Barrasso. Thank you very much, Senator Carper.

We will now hear from our witnesses, and we will start with Bill Panos, who is the Director of the Wyoming Department of Transportation.

Welcome back to the Committee. Look forward to your testimony.

STATEMENT OF WILLIAM T. "BILL" PANOS, DIRECTOR, WYOMING
DEPARTMENT OF TRANSPORTATION

Mr. Panos. Thank you, Mr. Chairman. Chairman Barrasso, Senator Carper, members of the Committee, I am Bill Panos, the Director and Chief Executive Officer of the Wyoming Department of Transportation.

Today, infrastructure investment is on the national agenda. Yet, delivering the best possible transportation infrastructure requires more than money. We also must use each dollar efficiently.

There are ways to reform Federal requirements so that transportation dollars can be put to work more efficiently, while protecting the environment and other public interests.

We can improve the project review process. We can also streamline other regulations. When regulation is not streamlined, personnel effort and scarce dollars have to be unnecessarily redirected from executing projects to regulatory compliance. That is a suboptimal result.

More specifically, we can improve scheduling for review of projects requiring an EIS. Today, Federal agencies can obtain more time for review by not concurring in the lead agency's proposed schedule. Congress should assume that the lead agency will give fair consideration to the scheduling views of other agencies and let the lead agency set the schedule.

Turning to smaller infrastructure projects, they generally receive categorical exclusion treatment for NEPA review. This expedited approach helps States use funds more promptly. We would welcome additions to the classes of projects receiving categorical exclusion treatment.

Let me add that smaller projects can also be delayed by requirements other than NEPA review. For example, a State DOT may have to wait months for a determination that no 404 permits are needed for a project within an existing operational right-of-way. This is frustrating, especially when there is no water in the project area. We suggest that for cases like that a time limit should be placed on responses from other agencies.

Turning to other regulation, rural States should be excused from requirements intended to address urban traffic congestion. For example, in the proposed rulemaking notice for the System Performance and Congestion Management Rule, the first reason provided by FHWA for the proposal was congestion reduction. Rural States do not experience anything resembling the congestion in heavily populated areas.

However, under that Rule, States must develop computerized applications and report on millions of traffic data points. For example, Wyoming would report to USDOT the number of vehicles on the road halfway between Cody and Casper at 10 a.m. on a Monday. USDOT does not need this information from States like Wyoming.

But it will take time and money for us to comply. That will detract from our efforts to advance basic transportation improvements, including those intended for safety.

We also have concerns with stewardship agreements between FHWA and State DOTs. These agreements, once brief, now routinely exceed 50 pages. Most texts in these agreements is standardized and the subject matter extends beyond the provision that give rise to these agreements. For example, a State assumes DOT responsibilities for project design, plan, specifications, and other similar matters. Yet, these agreements require advanced notice or approval of changes in many State DOT practices. This includes those for which the State supposedly assumed USDOT responsibilities. Statute does not require these advanced approvals. Yet, today States have to accept these terms in stewardship agreements.

Instead, requirements for these agreements should be established through rulemaking. USDOT should have to include in a proposed rulemaking notice justification for requirements that are not in statute. The provisions that survive the rulemaking process would then supersede the current provisions.

Before closing, I will briefly comment on infrastructure investment. The Nation benefits from Federal investment in surface transportation infrastructure in rural States like ours. Yet, public-private partnerships and other approaches that

depend on a positive revenue stream from a surface transportation project are not a solution for rural States.

Projects in rural States are unlikely to be able to generate revenues that attract investors; however, using the formula-based FAST Act approach to distributing funds would ensure that all States participate in the transportation portion of an infrastructure initiative. It would also help deliver the benefits of any increase in infrastructure investment to the public promptly.

In conclusion, as the Nation considers increasing transportation infrastructure investment, our statement offers ideas for streamlining transportation project and program regulation, while continuing to protect public interests. The public won't want additional investments in transportation to be slowed down by unproductive requirements, and we hope our suggestions are timely and helpful to the Committee.

Thanks for your consideration and for the opportunity to testify.

[The prepared statement of Mr. Panos follows:]

Senator Barrasso. Well, thank you so very much, and I thought those comments were timely and were helpful, and we appreciate you being here, and we have some questions for after we get through the panel.

Mr. Panos. Thank you, sir.

Senator Barrasso. I would like to next turn to Leah Pilconis, who is the Consultant on Environmental Law & Policy on behalf of the Associated General Contractors of America.

Thanks so much for joining us today.

STATEMENT OF LEAH F. PILCONIS, CONSULTANT ON ENVIRONMENTAL LAW & POLICY, ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Ms. Pilconis. Thank you. Chairman Barrasso, Ranking Member Carper, and members of the Committee, thank you for inviting Associated General Contractors of America to testify here today. My name is Leah Pilconis, and I am AGC's Senior Environmental Law & Policy Advisor.

I have spent the last 16 and a half years establishing and leading AGC's environmental program. AGC members know firsthand how to build infrastructure in a safe, effective, and efficient manner, but funding has been insufficient to repair and replace it. Congress and the Administration must first and foremost increase funding for our Nation's infrastructure programs to ensure that we can address our increasingly dire infrastructure backlog.

In addition to increased funding, AGC has long been committed to simplifying the sequential and layered approach of the existing environmental permitting process. The chart behind me attempts to illustrate how complex it is. The chart identifies areas of duplication, as well as each of the potential procedural and legal chokepoints that can grind the process to a halt, or even restart it entirely.

AGC believes we can make the Federal environmental review process faster, better, and cheaper without sacrificing

environmental protections. AGC recommends expanding the meaningful reforms this Committee has helped to enact in MAP-21 and the FAST Act.

The current laws provide a mechanism to ensure that leading agencies engage in early outreach and meetings with participating agencies and stakeholders. But, importantly, there is no deadline for the Government to complete the NEPA review process from start to finish. And 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.

MAP-21 goes so far as to impose penalties on Federal agencies that fail to meet deadlines. Even so, these deadlines aren't being met, and fines aren't being collected. It is not happening because the deciding agency can say the permit application was not complete or it is waiting on another entity to make a decision. And there is apparently a reluctance to elevate disputes.

The Government also is not conducting Federal and State permitting reviews concurrently, even though this is called for by MAP-21 and FAST-41. It is not happening because the laws say you don't have to do this or these things at the same time if it

would impact your ability to conduct any analysis or meet any obligation.

Congress should strengthen the time-limited schedules in current law to make them truly mandatory. There also should be a hard deadline for completing a NEPA review. In addition, AGC has identified three ripe, high-level opportunities or streamlining.

First, Congress should require a nationwide merger of the NEPA and the Clean Water Act Section 404 permitting processes. Congress should require the Corps to issue the 404 permit at the end of the NEPA process based on the information generated by NEPA.

Second, and more generally, the monitoring, mitigation, and other environmental planning work performed during the NEPA process included in the final EIS and Record of Decision must satisfy Federal environmental permitting requirements unless there is a material change in the project. Time and money is wasted on redoing project analyses and reviews, and on collecting duplicate information from permit applicants.

Agencies must break away from always preparing one-of-a-kind products from the ground up. Congress should strengthen the programmatic approaches in current law and require agencies to use the work previously prepared by other agencies for

similar type projects and for projects in the same region and/or impacting similar resources.

Third, Congress must consider a reasonable and measured approach to citizen suit reform to prevent misuse of environmental laws. These lawsuits can take years to resolve and delay or prevent the public from receiving and benefitting from cleaner water, safer roads and bridges, and a more reliable energy system.

Congress should clarify requirements for legal standing, require bonds to be posted by plaintiffs seeking to block activities, and require that enforcement of complex environmental rules be enforced only by trained staff of Government agencies.

Thank you again for the opportunity to testify on behalf of AGC. I look forward to answering your questions.

[The prepared statement of Ms. Pilconis follows:]

Senator Barrasso. Well, thank you so much for being with us and for sharing your testimony.

I would like to next invite Senator Cardin to introduce our next guest and witness.

Senator Cardin. Well, thank you, Mr. Chairman. It is great to have John Porcari back before our Committee. I think most of the members of this Committee know he was the Deputy Secretary for the United States Department of Transportation from 2009 to 2013, so he is well known to our Committee.

We know him for two stints as Secretary of Transportation in Maryland. I point out that it is very relevant to today's hearing. He supervised the Woodrow Wilson Bridge construction, a multibillion dollar connection between Virginia and Maryland on I-95. He also was responsible for the ICC, Intercounty Connector, which alleviates traffic congestion in this region in Prince George's and Montgomery County. He also supervised the expansion of the BWI Thurgood Marshall Airport.

What I think is relevant, he understands the connections between highways, transit systems, roads, bridges, tunnels, ports, and airports, which I think is very vital for our work.

He now is the President of the U.S. Advisory Service at WSP Parsons Brinckeroff, a global engineering and professional services organization, and Interim Director of the Gateway Development Corporation.

Lastly, Mr. Chairman, if I might ask consent that the statement from Earth Justice and other groups be made part of our record.

Welcome, John. It is a pleasure to have you here.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Barrasso. Mr. Porcari, welcome back to the
Committee.

STATEMENT OF JOHN PORCARI, PRESIDENT OF U.S. ADVISORY SERVICES,
WSP PARSONS BRINCKERHOFF

Mr. Porcari. Thank you, Chairman Barrasso, Ranking Member Carper. And thank you, Senator Cardin. It is a pleasure to be here today, and I truly appreciate this Committee's continued leadership on this very important issue through the years.

My abbreviated verbal testimony is supplemented by a written testimony that I have submitted for the record.

And I have to say this is a topic that I feel very passionate about. As Senator Cardin points out, having twice served as a State DOT Secretary with responsibility for every mode of transportation, highway, bridge, transit, airport, and port projects, I have experienced firsthand the frustrations that are inherent in delivering large, complex infrastructure projects. And I brought those frustrations and hard lessons with me to my tenure as Deputy Secretary and Chief Operating Officer of USDOT.

Streamlining the approval processes and delivering better projects through a faster, more predictable process is a necessary precursor to fixing our Nation's broken infrastructure. It is clear that together we have made significant progress, but much more work remains to be done.

We have had two successive surface transportation reauthorizations, MAP-21 and the FAST Act, that have

incorporated significant streamlining provisions. Our common goal moving forward should be better outcomes in a faster, more predictable process.

With MAP-21, among other things, we have five new categorical exclusions, including a CATEX for emergency repairs that was used right after its adoption for the Skagit River Bridge collapse. It allowed us to combine the final environmental impact statement and Record of Decision. It allowed NEPA assignment for highway projects, and initially only the State of California took advantage of that for highway projects. Later, Ohio, Texas, Florida, and Utah did that as well.

That was followed by the FAST Act, which, in addition to bringing some consistency and predictability to the process, set deadlines requiring a schedule, and it applies to projects beyond transportation for the first time. So for infrastructure writ large, we have an opportunity to enact some of the process reforms that are out there.

It also, importantly, allowed funding for dedicated staff for highway, aviation, and transit projects in the reviewing agencies. I believe that is an underutilized tool that can be very effective, in particular for major projects. It also permitted concurrent review of a coordinated project plan.

And this played out in what I think of as a tale of two bridges. Both were complicated multibillion dollar replacement bridge projects. Both were urgently needed. The difference is one is nearing completion and the other is unbuilt.

The first one, the Tappan Zee Bridge replacement, the New York Bridge, received a Record of Decision in 13 months. We believe that is a record. It had all of its other Federal approvals by month 15. The governor, the cabinet secretaries for the President were all personally involved in making sure this project moved forward, and that is a critical success ingredient for major projects.

A rapid response team, which is the precursor to today's Permitting Improvement Council, was formed in response to this project to front-load the coordination to make it happen.

In contrast, the Columbia River Crossing, a major bridge replacement program for the States of Washington and Oregon, received NEPA approval, but not the Coast Guard bridge permit. It can't proceed without it. That was a major breakdown between two agencies. It required senior level intervention to get it back on track. That is the very definition of failure.

With later outstanding help from the Coast Guard, it resulted in a Memorandum of Understanding between DOT and the Coast Guard to allow the simultaneous issuance of a Record of

Decision and the Coast Guard bridge permit. But it is clear that showed what should not happen.

So what were the lessons? First, it is not in legislation, but without passionate project advocates, external and internal, projects don't make it over the finish line. It is elected officials and project professionals alike that are committed to the project.

Front-loading the process, getting all the review agencies around the table at the very beginning of the process, really works. It forces everyone to acknowledge and understand the issues. Direct conflicts, and there are some, usually, between agencies get resolved and identified early.

What are the next steps? Let me suggest five things that we can build on that work. One is the Liaison Program, where you can fund dedicated staff at agencies. It has been proven to improve the review times and ensure better outcomes. It has expanded to include aviation and transit under the FAST Act. This is a cost-effective investment for major projects.

Second, NEPA assignment for highway and other projects to the States. As has been pointed out by the Chairman, we work under a federalist system. The States have the primary responsibility for delivering projects. The States are capable of doing this work. And where it has been delegated, with California, Texas, Florida, Utah, and Ohio, they have taken

advantage of it. Texas reports a 25 percent reduction in approval times for major projects. Ohio reports an approximately 20 percent time savings in delivering their overall program.

The third essential element for major projects is to get the project on the President's dashboard and use the Permitting Improvement Council to front-load the process and move it forward.

Fourth, concurrent reviews within NEPA are permitted and encouraged. They need to be the norm, as has been pointed out.

And, five, outside of the NEPA process, other permits that are typically needed, as the other witnesses have mentioned, the Corps 404 permits, Coast Guard bridge permits, those can run, and should run, concurrently with the NEPA process.

So what remains to be done? First, we should do no harm. Any additional legislative requirements could actually slow down the process of implementation of the reforms under MAP-21 and the FAST Act. We should not permit that.

Next, reporting back to Congress and the public on review and approval times for EA and EIS projects. We pay attention to what we measure. We should measure it all.

And then, finally, the Permitting Improvement Council, which was set up in the FAST Act, every project of regional and national significance should be tracked. It is the single best

interagency mechanism to engineer better project approval process. It is up to the President's direction to name the director for that. That is a critical position within the Federal Government that could do more than any other single element to improve the process.

Thank you, and I appreciate the opportunity.

[The prepared statement of Mr. Porcari follows:]

Senator Barrasso. Well, thank you very much for the testimony for all of you. We look forward to having a chance to hear the answers to your questions, and I will start with Director Panos.

In your written testimony you stated that "using the current predominantly formula-based FAST Act approach to distribution would ensure both rural and urban States participate in the initiative." You went on to say it would "also help push the benefits of any new infrastructure initiative out to the public promptly."

So is it safe to say that increasing funding through this formula-based process, as opposed to establishing some new process, that is one way to expedite the delivery of additional infrastructure spending and that through the use of a formula-based funding, projects will actually therefore get built faster than they would otherwise?

Mr. Panos. Yes, Mr. Chairman. You know, we can move projects through the current program structure faster than we could through any new structure that would have to be implemented, although, of course, any streamlining reforms would be helpful. But certainly the existing process would be very effective.

Senator Barrasso. So you think this is kind of a ready-made way to distribute the funds in terms of we should be

considering this for any infrastructure, any comprehensive infrastructure bill?

Mr. Panos. Yes, Mr. Chairman.

Senator Barrasso. In your written and oral testimony you have laid out a series of additional targeted streamlining provisions, and you just made a comment about those. Some believe that we should wait until the streamlining provisions of the FAST Act are actually implemented before we consider any additional streamlining. Can you talk about what your response would be to that argument?

Mr. Panos. Yes, I can, Mr. Chairman. The public is eager to improve our infrastructure. An improved process would help that. So I respectfully disagree with the argument. And we have made it clear on the first page of our written statement that we can streamline requirements and processes while protecting the environment and other public interests. So we ask that our suggestions be considered on their merits. We owe it to the public to look hard for win-wins.

Further, and importantly, Mr. Chairman, some of the issues we address were not ripe during the development of past legislation. The overreaching rules to monitor traffic even on rural routes and HS routes had not been promulgated. Giving a fresh look at stewardship agreements wasn't discussed. So we simply ask for a fair consideration of our ideas on the merits.

Senator Barrasso. Thank you, Mr. Panos.

Ms. Pilconis, the Associated General Contractors believes that there are still some opportunities to further streamline some of the transportation projects. Now, we all support and commend the bipartisan work that occurred when we passed MAP-21 and the FAST Act, but can you elaborate a little bit on some of the limitations of these streamlining reforms?

Ms. Pilconis. Some of the limitations of the streamlining reforms that were --

Senator Barrasso. Of the streamlining reforms that are there in terms of adding some more, yes. Some of the ones that have already come forward through the MAP-21 and the FAST Act.

Ms. Pilconis. Oh, yes, of course. Well, with the reforms that have already been passed, some of the limitations really lie with the amount of exemptions that are provided within those reforms. So, for example, where there are requirements to conduct concurrent reviews, those requirements can be waived if an agency can say that it would impair their ability to conduct any analysis or meet any obligation. Under the FAST Act, they don't have to do it so long as they could say that it would impair their ability to review the project. So there are significant exceptions to the requirement to conduct concurrent reviews.

Similarly, where there are deadlines within current law requiring you to complete a review within a certain amount of time, so, for example, under MAP-21, there is a 180-day deadline for permits, licenses, or other approvals. Within that 180-day deadline, the agency can say, well, I don't have all of the information that I need to say that that application is complete, or I am waiting for another entity to make a decision before I can move forward. And in that sense the agency, the deciding agency is essentially self-policing because they will say I don't have the information that I need, so I don't have to meet that deadline. And, in fact, the lead agency would then have to take the initiative to really elevate that to a level of dispute to say, no, you do have all the information that you in fact need and, really, that is just not happening.

Senator Barrasso. And then are there barriers that still exist within the construction industry that might interfere with the application of, say, new technologies to accelerate some of the project deliveries?

Ms. Pilconis. I think not barriers, but in fact there are many technologies that provide great opportunities. For example, now that we have aerial photography, drones, GIS data, LIDAR data. In fact, there are so many ways that we are collecting information that can be used in centralized databases and accessed via the Internet so that we are not repeating

processes, so that when you need to conduct a review in a situation where it is a similar project or a similar set of circumstances or similar ecological or natural or resource concerns, you can pull from information that has already been collected, that is logged and categorized, and apply it rather than redoing it.

Senator Barrasso. My final question, Mr. Panos, my perception is that you have identified a number of ways that we can reduce bureaucracy. But there doesn't seem to be anything that you have promoted or talked about that actually reduces environmental protection. Am I correct that you are continuing to protect the environment?

Mr. Panos. Yes. I mean, we have focused on improving the process, Mr. Chairman. In addition, we have addressed some areas that are not part of the environmental review process. We cut back on some non-productive data collection requirements and other requirements. That would enable us to put effort and resources into infrastructure, including safety projects.

Senator Barrasso. Thank you. Thank you very much.

Senator Carper.

Senator Carper. Thanks again.

Our appreciation to all of you for being here and for helping us with this. This is a great panel and I want us to use this opportunity to try to develop some consensus, to see

where you agree, because to the extent that this panel can agree, it is enormously helpful to us as we go forward.

So let me start out with John. We went down a whole list of items. You gave us five at the end of your testimony.

Did he say anything, Leah, that you actually agreed with in those five comments? And you may want to refresh your memory, and ours as well. Did he say anything in those last five? He said there are five things you ought to do.

Ms. Pilconis. Things that were sticking out to me were comments that he was making related to the items that are in the FAST Act that are requiring early coordination. There is a large amount in the FAST Act that is dealing with the Federal Permitting Improvement Council that is requiring early consultation, coordinated project planning, the dashboard, laying out your timetables. These things are really going to be very effective at bringing the parties together very early on in the process, getting everybody in the same room and on the same page.

And that is one of the reasons why AGC is suggesting that so much is happening during the NEPA process; it is the umbrella process where all of the other environmental statutes are being brought together, all of the other agencies that have any jurisdiction over the process. And in great part because of

FAST Act, reforms are going to be brought to the table to engage in discussion and set some timelines.

So the information that is generated during that time, the data that is collected, the surveys that are done, the mitigation plans that are written into the final environmental impact statement, that should be used to meet the permitting obligations. So that will be helpful.

Senator Carper. Good.

I am going to turn the tables. Leah went through a whole list of things in about half of her statement, just one after the other that we ought to do, could do to help expedite the processes and maybe get better results for less money. Just thinking back to some of the things that she mentioned, anything there that you find had special value?

Mr. Porcari. Great question, Senator. If I may, first, Director Panos pointed out that the vast majority of projects are proceeding under categorical exclusion, and we shouldn't forget 95 percent or so, there are more CATEX categories in broadening that can help those projects. But for the major projects, which are the visible ones, the 5 percent or so, the type of process that Leah described, where you are front-loading it, where the collaboration among the agencies is required in the beginning so that you don't have conflicts down the road, or the aha moments late in the process where you essentially have

to start over, that is both common sense. It is encouraged in the FAST Act and it is something I think we all agree, when it happens in practice, you get great results, for example, with the Tappan Zee Bridge.

Senator Carper. All right.

Mr. Panos, great to see you again. Elaine Chao is our Secretary of Transportation. I think she will be a good one. She was quoted as saying, the other day, the problem is not the money, with respect to actually moving projects along, transportation projects along. The problem is not the money. I had a delightful meeting with her about a week ago and we talked about how money could help solve some of the problems.

Do you agree the problem is not the money?

Mr. Panos. Senator, I do agree that the problem is both money and process. We have to have both in parallel. As we deploy the money, we need --

Senator Carper. Good. That is all you need to say.

Leah, do you agree with that? Is it both? Can we walk and chew gum at the same time? Is money part of the problem, as well as the process?

Ms. Pilconis. Yes, absolutely.

Senator Carper. And John?

Mr. Porcari. It absolutely is. And if I may give a project example, the Gateway Project, multibillion dollar

project tunnel under the Hudson River. We have a 24-month EIS process. It is half the usual time. It is the money part that is going to hold up the replacement of that 106-year-old tunnel.

Senator Carper. I just say to my colleagues I think we are spending about, I want to say, roughly \$56 billion a year out of Federal dollars for roads, highways, bridges projects, something like that. I think the revenues that are coming in are about \$36 billion a year. And somewhere those lines cross and we run out of money again, and we need to be serious about all these huge backlogs of projects we have across the Country. We have to be serious about doing something about it. Streamlining, fine. We have done some. Is there more that we can do? If we use common sense, I am sure there is. But we need the money.

It was the Beatles who used to sing the best things are free, but you can give them to the birds and bees; I want money. We need some revenue. And the idea of the users paying for this stuff, user fee approach I think is certainly a good way to go. We have always done that. Those who use roads, highways, bridges pay for them; businesses, people. I think that is still a pretty good approach.

Thank you all so much.

With apologies to McCartney and Lennon.

Senator Inhofe. [Presiding.] Thank you, Senator Carper.

First of all, I ask unanimous consent that included in the record a letter from ARTBA, the American Road and Transportation Builders Association. It is very revealing. It is a statement concerning streamlining.

Without objection, that will be part of the record.

[The referenced information follows:]

Mr. Carper. Mr. Chairman, could I make just a quick unanimous consent request? I am sorry I didn't do this before. I would ask unanimous consent to submit three items for the record: CRS Report by CRS Report, testimony from Earth Justice and other groups, and USDOT OIG's report that I mentioned in my opening statement.

Senator Inhofe. Without objection, they will be made a part of the record.

[The referenced information follows:]

Senator Inhofe. First of all, Director Panos, nice to have you back.

Mr. Panos. Thank you.

Senator Inhofe. Your testimony is always revealing. You know, there has been a lot of talk about the FAST Act and the things that we have done in this Committee.

Let me just commend the Democrats and the Republicans, both, on the Committee that we have done things other committees don't do. We not only did the FAST Act, we did the Water Act, we did the Chemical Act. So we are kind of the Committee that gets things done and works together. And I see this as no exception.

When you were talking about your categorical exclusions, the discussion came up, I think it was with the Chairman asking the questions, with the question as to why should we do anything more until we have completed the exclusion process that is already in place. My feeling, and the feeling of people from Oklahoma, Mr. Panos, is that we need to be doing both at the same time. If you sit around and wait, that is just going to stall the things that we should be doing in order to streamline these projects. Somehow, I have always associated streamlining with how many more miles can we get out of a project, or how many more miles and more bridges can we get.

So I would ask you do you agree with the concept that we need to be doing all at the same time? And then, also, the kind of delays still associated with exclusion.

Mr. Panos.

Mr. Panos. Senator, I would agree that we need to do all at the same time, and our proposals really don't have potential to be negatively interactive at all with the existing streamlining that is going on. Some of the issues that we address, again, as I had stated, were not ripe during the development of past legislation; today they are, and it is about continuous improvement while some of the other streamlining is going on. So, to answer your question, I would say both.

With regards to CATEX, Senator, I would just say, as our testimony stated, there are some more categories that could be included. We use it frequently in Wyoming and other rural States, and more of CATEX would be helpful to us.

Senator Inhofe. That is very helpful.

So that everybody knows what is happening, we are in the middle of a vote right now. I am staying until the Chairman gets back, and hopefully we can get through, Senator Whitehouse, as soon as I conclude here. Or, in fact, I will even interrupt mine so you can get away, if you need to.

Now, I want to come back to you and ask you for some specific projects that you feel would be good to be given the privileges of the exclusions that were under discussion.

Before we do that, Ms. Pilconis, you made some comments, and it hasn't been discussed yet in terms of questions, on the citizen suits, and the costs and delays that come with these, and I would like to have you kind of go over with us what types of delays are there. And then when you mentioned there are four or five suggestions that came out of the contractors, if you were to single that down to one or two suggestions, what would that be?

Ms. Pilconis. Yes, sir, thank you.

Well, the delays are extensive. I think there is a project right now that you can look at in the press, the I-70 project in Denver. It is a billion dollar project and the project hasn't gotten off the ground yet because of citizen suits, suits that are really attempting to delay or stop the project, and potentially just stall it until the 2018 election, where there may be a new governor who has a different opinion about the project.

So citizen suits are a problem where it is preventing the public from realizing the benefit, as I said, of cleaner water, safer roads and bridges, a more efficient and reliable energy system. And some of the things that we have looked at are the

positive improvements in the current streamlining reforms where it is shortening the statute of limitations. There are two different timelines under MAP-21 and FAST-41. So perhaps having a consistent timeline --

Senator Inhofe. Okay, just a minute. I am going to ask you to elaborate on that because I am staying here when everybody else is gone, so there is going to be plenty of time.

[Laughter.]

Senator Inhofe. But let's go ahead. I know that Senator Sullivan has to preside as soon as we vote, and he had one question he wanted to move in front of Senator Whitehouse.

Senator Sullivan. Thank you, Mr. Chairman. And, Senator Whitehouse, thank you.

I really appreciate the panelists. This is a really important topic. We are going to be introducing a bill called the Rebuild America Now Act, which relates directly to this infrastructure streamlining the permitting process.

Mr. Chairman, I would like to submit for the record a Wall Street Journal article on this topic from December of 2016.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Sullivan. And my very quick question is I still believe that there are a whole host of things that we can do that weren't included in the FAST Act. And again, to the Chairman's credit, this is a Committee that gets things done in a bipartisan way. But I think there are a number of things, whether it is categorical exclusions, whether it is timelines, because when you look across the Country, you know, it takes, on average, 60 years to permit a bridge. It took, in Alaska, almost 20 years to permit a gold mine. The average in a GAO study from 10 years ago talked about highways taking, from beginning of planning and permitting to completion, 9 to almost 20 years.

I mean, we still have enormous problems. What would you say beyond what was in the MAP-21 and FAST Act, which is a good start, but from my perspective we need to do much, much more. And, by the way, it is not just the members here, but one of the things that we are doing with our bill right now is the vast majority of the building trades, unions that build things, see this as their highest priority. So we are hopeful to get a bipartisan bill out of the Committee.

But what would be the issues that you would focus on that aren't currently in the law?

Ms. Pilconis. I am sorry, I didn't realize that question was directed at me. Thank you. I appreciate that.

We are very much focused on requiring a nationwide merger of NEPA and the 404 permit process. We are also focused on more generally requiring the monitoring, mitigation, and other environmental planning work that is generated during the NEPA process and that is included in the final environmental impact statement to satisfy the Federal environmental permitting requirements.

So if I can use the 404 permitting process as an example, we are focused in on 404 permitting and being part of the NEPA process so that when you complete NEPA, you actually have your final 404 permit approval from the Corps, because those processes are the longest, they are the most costly. With the 404 permitting, you have the most disagreements, and we have identified in our written statement that that is really where you have the most chokepoints. And I say chokepoints because with 404 permitting you are bringing in many related consultations, approvals, and certifications. So you are bringing in other agencies where you are doing a 401 water quality certification with the States, you have 408 approvals, you have endangered species consultations. Maybe you have historic properties. Maybe you have coastal zone management issues; migratory birds; wild and scenic rivers.

All of these agencies, if you are doing 404 permitting after NEPA, so it is not happening concurrently, all have to get

together again and go through the same things that you have already discussed during NEPA. It is almost a do-over. Let's get it done during NEPA. Let's rely on the information that is collected during NEPA. And processing times are further extended by many months when the Corps will not accept the wetland delineation procedures that have come out of the NEPA process. That is creating a lot of uncertainty in the 404 process. It is increasing the cost of construction.

Senator Sullivan. Thank you. That is a great idea. We look forward to working with you on that.

And thank you again, Senator Whitehouse.

Senator Inhofe. Good.

Senator Whitehouse?

Senator Whitehouse. Thank you.

For the record, Chairman Inhofe has led us through a considerable number of bipartisan successes in this Committee, and I hope that this forum provides the opportunity for another bipartisan success in this Committee. But I do think, in order for that to happen, what needs to be clear is that we are not using the general problem of citing often controversial projects as an excuse just to attack environmental regulation.

I would like to read from a Treasury Department document. Forty proposed U.S. transportation water infrastructure projects have major economic significance, which on page 6 concludes that

these projects "face four major challenges to completion: (A) limited public resources, (B) significantly increased capital costs, (C) extended program and project review and permitting processes, and (D) lack of consensus among multiple public and private sector entities. A lack of public funding is by far the most common factor hindering the completion of transportation and water infrastructure projects."

That sentiment is echoed by the Congressional Research Report, which I would like to ask unanimous consent to put into the record, responding to the Philip Howard "Two Years, Not Ten Years" report, and saying that CRS could find no information suggesting that compliance with Federal requirements "delayed" the project, which this relates to our T. F. Green Airport in Rhode Island. Within the timeframe available, the planning and the design and the engineering phases of development can take years for large and/or complex construction projects. Factors that may play a more significant role in the development of projects identified in the Howard report are primarily the lack of funding, local opposition, and design and engineering challenges.

I would also like to add to the record the Memorandum of Understanding that was entered into between the City of Warwick and our Rhode Island Airport Authority, which relates problems like the Land Acquisition Program, the Winslow Park ballfields,

the relocation of Main Avenue, historical cemeteries, community outreach, and water and air quality, and note that there is actually a pending action between the City and the Airport Authority over that project.

So we have a situation in which, very often, projects that are not thought through, are not fully engineered, or haven't been worked adequately with the local communities then take a long time, as the extension of the T. F. Green Airport runway did. But if you took out the NEPA process, you would still have all those same issues with the local community.

I will tell you, when you have an airport in a city and the City hates with the Airport Authority is doing, you have a problem on your hands. So working through to that Memorandum of Understanding was really the important solution in that, not undoing environmental regulations.

I would, on a positive note, describe one incident that took place in Rhode Island with respect to deepwater wind. Rhode Island is the first State in the Country to get steel in the water to build offshore wind facilities, and as of last week paid electrons are now flowing into the grid and Block Island is having lower cost electricity as a result of this.

Here is what we did. We had a bold State agency that decided it was going to regulate in Federal waters. Just go ahead and do it. And they put together an extremely wide-

ranging process in which all major stakeholders were brought to the table together. They brought in the University of Rhode Island to provide factual and scientific support for allegations or concerns that were made in that process and to run the facts down and provide the best science.

And the result was that we went quite rapidly through that process and did such a good job that when it came time for the Department of Interior to provide its review, they basically promised Senator Reed and I that they would, if they viewed the Rhode Island process as having been adequate, not require a whole second process with them. So they looked closely at the Rhode Island process; they said you guys did a great job, we are done with it, you are licensed, get going.

The result is that we have steel in the water off of Rhode Island, we have people at work, we have boats being built to service all of that, we have electrons flowing. And just one State over, in Massachusetts, you have Cape Wind that died on the regulatory cross because they were never able to organize their regulatory process well enough.

So the lesson that I have learned in the long life of looking at these things is that if you really want to move projects expeditiously forward, getting everybody in the room together, making the process itself more expeditious is the way to do it, rather than singling out the environmental aspect of a

process and blaming that for everybody's woes, and then trying to smash the environmental protections that are often significant, but not always significant, in these projects.

So I offer that in the spirit of a manner of going forward in bipartisan fashion.

I saw John Porcari doing a lot of nodding. Do you want to respond quickly to that?

Mr. Porcari. Senator, I think you are bringing up a very important point, which is there are a lot of other potential issues on projects that we haven't really talked about, including community issues. The same principles that we have been talking about, front-loading the process and getting the stakeholders around the table in the beginning, so everyone hears the same thing at the same time, is really important. And as you unpack these case studies, it is clear that many of the things that tripped up these projects for multiple years could have been avoided by doing it in a concurrent process with everyone around the table.

Thank you.

Senator Whitehouse. Thank you, Chairman.

Senator Barrasso. [Presiding.] Thank you very much,
Senator Whitehouse.

Senator Rounds.

Senator Rounds. Thank you, Mr. Chairman.

Director Panos, in your written testimony you cite concerns with subjecting rural States to the same rules as more densely populated States. Can you explain to the Committee how these requirements impact a rural State like Wyoming or South Dakota's ability to complete transportation and infrastructure projects in a timely fashion?

Mr. Panos. Thank you, Senator. As I stated in my oral testimony, the kind of requirements take our very limited resources in rural States away from doing transportation projects, and specifically some safety projects. We simply don't have enough people to do all of the things that are being required by some of these additional requirements like the ones that I cited, the congestion studying the data points for the congestion study.

Again, as I stated in my oral testimony, we simply don't have urban congestion in Wyoming, and so to go out and spend a number of hours looking at dirt roads and looking at very rural highways that have very, very few cars on them, I have traveled once on a road, a two-lane road, an NHS road in Wyoming for four hours and did not see another car.

Senator Rounds. More goats than cars?

Mr. Panos. More antelope than cars, yes, Senator. So we just don't have the same situation.

And I guess the point is that there are differences among the States. And I want to commend the Congress and commend, frankly, the U.S. Department of Transportation and this Committee for making steps towards those goals. But we are not done. There is more to do relative to not just environmental process improvement and streamlining, but non-environmental process review and streamlining like some of those that we had suggested earlier.

Senator Rounds. I am going to follow that up a little bit on something that I think was important you talked about earlier. Can you explain how State stewardship and oversight agreements are turning into Federal regulations instead of oversight? In other words, what can be done to strengthen what should be an equal partnership between USDOT and State DOTs to streamline the process and make it a substantive partnership rather than a back doorway to impose additional Federal regulations?

Mr. Panos. Senator, we believe that the stewardship agreements have been an excellent start for us to work in an understandable, cooperative way, very efficient way with our USDOT partners. So they are a great start. We think that there are improvements to be made because of the inconsistencies from State to State, particularly with rural States, but also that some of them have been used to deliver additional requirements

that we don't find in statute. And it is these kinds of streamlining, this kind of sort of extension of the use of the stewardship agreements that we would like to just take a look at, work with the Congress and USDOT, and make some improvements to those, because it is, and can be, an extremely valuable tool for us to move projects forward, a great platform, if you will, Senator.

Senator Rounds. Before I leave this particular line, in your testimony you pointed out that requiring the concurrence of every other agency that has a meaningful role in the process extends the timeline for completion of a project. Can you discuss an experience? You have the anecdotes behind it and the reason why you share it. Tell us the experience you had with this where a project was delayed for this particular reason and suggest a solution.

Mr. Panos. Senator, we have had a project in our North Sheridan area, which is close to the Montana border, that the lead agency had established a schedule, but the U.S. Army Corps of Engineers, with their 404 permit program, did not agree with, so they extended the project. And I think I had mentioned it in my previous testimony to this Committee that we spent 10 years on a project that takes 10 months to build. We were able to resolve it and get it built, it is under construction now, but

it took about 10 years to get there, and it was because of this issue.

In our written and oral testimony, one of the solutions that the Committee could consider is giving the lead agency the authority to establish the schedule with consultation with some of the other agencies to ensure that that schedule meets their needs, and then deploy that schedule, and not have those other agencies have veto power, if you will, over that schedule as it moves forward. And there would be an appeal process to resolve disagreements, and that appeal process even could involve the White House at some point.

But the point is that there could be a process which could expedite these projects even further without sacrificing environmental compliance, without sacrificing public interests. So we believe that that is a possible solution and one that the Congress should look at.

Thank you, Senator.

Senator Rounds. Thank you, sir.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Rounds.

Senator Booker.

Senator Booker. Mr. Chairman, I am grateful.

Mr. Porcari, if you don't mind, I am going to direct my questioning to you. First of all, I am just grateful for your

leadership. You are really playing what I think is an essential role for our Country right now as Interim Director of the Gateway Development Corporation. I have become obsessed for the last three years of my life with getting this northeast corridor fixed and getting this Gateway Project done. We were able to resurrect it from something that had been killed to now something that seems to be moving forward. The previous Administration put it as part of their presidential dashboard and prioritized it.

Most people have no understanding about, number one, that northeast corridor region, one of the most economically productive regions on the planet Earth. More people travel along the northeast corridor by rail than by plane. But more than this, it is a vital artery, it is like the jugular vein in terms of the arteries of our Country. And right now it is being constricted to the point where we are seeing every week it is eroding productivity, it is undermining the well-being of New Jerseyans, as well as others, because of that clogged artery and because of the challenges.

This is a case study, in my opinion, of us going from an enlightened American age where we invested in infrastructure and knew it was essential for jobs, essential for economic productivity, to what is a nightmare era where we took the inheritance from our grandparents and trashed it, didn't invest

it, and are now left with, in this case, from the portal bridge to those two tunnels which are just decaying, over a century old. It was actually faster to travel along the northeast in the 1960s, half an hour quicker, than it is today.

So you are right there in the center of what is perhaps, at least according to the last Administration, the number one most urgent infrastructure project in the United States of America because of all the economic activity that is essential to that. And, again, one of the biggest concerns I hear about from my residents is how the delays and the unpredictability of transit between New York and New Jersey has just undermined the quality of life for individuals, making residents of New Jersey move back into New York because of that problem.

So getting this project done is so important. That is why your leadership, to me, is so central right now.

I know you made some comments, while I was off voting, about some of the process that is going on right now, the environmental review process, and I wonder if you can just talk for a second about any of the critical lessons you have learned and how that relates to the urgency of getting this project completed.

Mr. Porcari. Thank you, Senator. I appreciate the question. As you point out, the Gateway Project is eliminating a single point of failure for 10 percent of America's gross

domestic product, and between the Portal North Bridge, the bridge and the tunnel component, both of which are 106 years old, both of which were open to passenger service while the Titanic was under construction and the Wright Brothers were switching from the Model A to the Model B flyer, replacing those single points of failure is critical.

The first part of the project, the Portal North Bridge, is 100 percent designed, 100 percent permitted. It is ready to go subject to funding. It just missing the Federal funding component. The local funding component is in place.

The tunnel component, which by any standards is a major EIS, is on an accelerated basis. Instead of what was typically a 48-month or more process, it will be completed in 24 months or less. We will have a draft environmental impact statement in the next 60 days. One of the lessons from this is some of the very things that you have heard from the other witnesses and myself today, which is you can run the process concurrently. You have all the stakeholders in a front-loaded process around the table in the beginning, and the other associated permits, even outside of the NEPA process, whether it is the Corps 404 permit, Coast Guard bridge permit or anything else, they can today be run concurrently. They aren't always, but they can be. And that should be the norm, not the exception. And I think that is a place where we all agree.

So the Gateway Project shows, as well, that one of the unwritten but critical success ingredients is leadership, internally and externally. Externally, you and your fellow Senators from both New Jersey and New York, and both governors, have positioned the project so that it is ready to move forward. It would not have happened without that personal leadership.

Senator Booker. And I appreciate that, and this is something that I have invested a considerable amount of my time in in trying to get this project as expeditiously done as possible. But, critically, your leadership and that of others who have been able to shrink dramatically the usual time it gets to get reviews, everything from the early engineering specs to the environmental reviews, has been extraordinary.

I want to just conclude by saying I am really happy that Senator Wicker just walked in at this time, because it has been a bipartisan --

Senator Wicker. [Remarks made off microphone.]

[Laughter.]

Senator Barrasso. The Chairman recalls seeing you earlier, Senator Wicker.

Senator Booker. And the word around the whole Senate is that you were focusing on the issues of your great State, sir, and we understand how you are pulled in many different directions. But the enlightenment of this bipartisan coalition

to invest in rail, and you said that the issue for us right now is not the speed with which we are getting this done, it is waiting for the funding. And I was very happy, with Senator Wicker, to come up with a bipartisan compromise to fund rail not only in areas like the northeast corridor, but to understand that rail is essential for economic growth, job creation. Dollars invested in rail produce multiples of return that anyone in New York City would celebrate in terms of the financial markets.

I just want to conclude by saying that that was critical about the CR that we just did, the bipartisan compromise, and right now it is a celebration for the Gateway Project to keep the resources there, and I just want to really give credit. This is the Committee that focuses on these issues. I know the Chairman, I know leaders like Roger Wicker have shown their commitment to making strategic investments of public dollars to get a boon in job creation and economic growth, and I am grateful for my colleagues. Thank you.

Senator Barrasso. Thank you very much, Senator Booker.

I would like to next turn to Senator Wicker, who has worked closely with me on issues related to his home State of Mississippi and has continued to be focused on infrastructure needs there.

Senator Wicker.

Senator Wicker. Well, thank you very much. This is a typical morning where I rush from a vote, after having attended two hearings, two very important hearings on national defense and connectivity. So it is regrettable that I had to miss the testimony. But I certainly want to be here, Mr. Chairman.

And to my friend, Senator Booker, as a statement, first of all, about the importance of infrastructure and say that it seems to me that this might be one of the big areas that we would go ahead and address quickly on a bipartisan basis, because there is bipartisan support for infrastructure. Of course, we are here today talking about transportation infrastructure.

I have a couple of questions regarding challenges and roadblocks for the entire panel, and also a question about rural States like mine versus urban States like New Jersey, perhaps.

There are certainly regulatory hurdles. Can any of you talk, though, about the legal hurdles? And is there something to be said for legislation attached to any infrastructure bill about a certain timeframe in which the courts hear legitimate concerns, but it is not dragged out forever and ever?

Let me ask about that, if anybody would like to touch on that, and then I might have a moment or two to ask about the differences in getting to urban areas, where there is a lot of

toll roads, and rural areas like Mississippi where there are none.

So, Mr. Panos, were you prepared to talk about the legal challenges?

Mr. Panos. Senator, on the timing not so much, but I can talk a little bit about we were speaking earlier about the delegation to States of NEPA authority, and that some States have taken that on. Not a lot of smaller States have, and one of the reasons is a legal issue. The liability associated with taking on those responsibilities is significant for a small State, and it is a consideration for us, in addition to the capacity that we have to exercise sort of NEPA authority.

Also, we deal mostly with projects that are CEs or CATEX projects, categorically excluded projects. So we don't really have a need to do that. And, frankly, even if we had the opportunity to take on that authority, we may not do that.

So that is the only legal side.

The second part of your question, I apologize, Senator.

Senator Wicker. Well, let's let others discuss the lawsuit impediments, and then I might get back to the other about the small States versus large States.

Mr. Panos. Thank you, Senator.

Ms. Pilconis. Sure. Thank you. So there are timelines within current law, setting a statute of limitations. There are

different timelines in both MAP-21 and FAST-41, so there might be some merit in synchronizing the timelines. One is 150 days; one is 180 days.

Also, in FAST-41 there is a sort of get-in or get-out provision, so if you need to have been involved in commenting during the NEPA process and have commented on the issue in sufficient detail to have grounds, then, to bring a lawsuit, I think that Congress should consider making that an across-the-board requirement.

In addition, you might want to further consider and clarify the requirements for legal standing in general. AGC members have brought up the idea and suggested requiring that bonds be posted by plaintiffs seeking to block activities.

And with regard to environmental statutes, so not the procedural requirements, but actually the 20 environmental statutes that have citizen suit provisions, so those statutes obviously have resulted in hundreds and hundreds of environmental regulations that are very, very complex and difficult to understand, and have a lot of grey areas. So we would suggest that the enforcement of those very complex Federal environmental rules be enforced only by trained staff of government agencies.

Senator Wicker. Okay. Well, Mr. Chairman, if I might, since I touched on the other, and since Mr. Panos mentioned it

in his written testimony, what I want you to do, if you don't mind, sir, is elaborate on the concern that you expressed on page 8 about public-private partnerships and approaches that work in the more densely populated States and might not work in States like Wyoming and Mississippi.

Mr. Panos. Senator, in my written testimony as well as previous testimony in front of this Committee, I talked a little bit about the application of private-public partnerships in rural States. First I would say that it depends, I think, a lot on how you define public-private partnerships. There is a lot of variation in people's perceptions about what is and what is not a public-private partnership.

In our case, I think public-private partnerships in rural States are not the solution. We don't have toll roads, as in your State. It is unlikely that we will have the kind of equity and the kind of economic value that would be attractive to a public-private partnership in some of the definitions that I have heard.

Now, we do have an opportunity to do what we will call creative contracting, and bring in private partners to help us with warranties and other kinds of things associated with projects, but certainly public-private partnerships where there is an upfront investment of capital just simply doesn't have the kind of return in rural States that it does in urban State.

Senator Wicker. Thank you very much.

And thank you for your indulgence, Mr. Chairman.

Senator Barrasso. Well, thank you very much, Senator Wicker.

And by the early bird rule, Senator Fischer is next.

Senator Fischer, thanks.

Senator Fischer. Thank you, Mr. Chairman.

And thank you to our witnesses today.

Director Panos, thank you for being here again. In your written testimony you advocate for waiver authority for the Federal Highway Administration to be able to provide relief for rigid rules when unforeseen circumstances arise that can severely delay our projects. Could you elaborate on the value of these waivers and how they might facilitate greater innovation and compliance?

Mr. Panos. Senator, anything that can offer us a partnership which will perform better is a good thing. And there are times when waivers can be effective and not impact environmental compliance or environmental needs or public interests. So when those conditions occur, it would be optimal for us to have a waiver system that is regularly exercised that allows for projects to move forward, and focused on regulatory requirements, specifically focused on regulatory requirements. It would be very helpful.

Senator Fischer. Okay. Thank you.

Ms. Pilconis, in your written testimony you go into really quite extensive detail regarding NEPA process and the cumbersome permitting process, the requirements for our infrastructure projects. Certainly, each of us here wants to protect the environment and protect our precious natural resources. But, from my perspective, we now have a process in place that is not only expensive, I think it is inefficient.

Last week our Nebraska governor signed a bill into law that would allow the Nebraska Department of Roads to assume authority over the NEPA process, and we currently have several States that have that same process implemented, like Ohio and California, Florida and Utah.

From your perspective, has this been a successful endeavor, and would you recommend that more States assume that NEPA permitting process?

Ms. Pilconis. Thank you for the question. That actually is not something that we have explored in our recommendations, the State assumption of the NEPA process. What we have really been most focused on is the concurrent review and issuance of the permit during the NEPA process, so that you don't have the permitting come after the NEPA process is complete. We are not focused on excluding anything but, rather, avoiding duplication,

so that you are not trying to complete the same consultations and reviews a second time.

Senator Fischer. Now, have you found, though, when that permitting process works together, I would assume that it works more smoothly. But do you still have a lot of back and forth? I see that. I see that, that the Federal Government comes in and requires more, and then the State has to answer. Does that help eliminate that at all? Time is money when you look at infrastructure projects.

Ms. Pilconis. So a good way to explain it, and something that I think the chart that we have prepared illustrates, is how much duplication that you have throughout the system. So within the NEPA process, it is kind of --

Senator Fischer. The famous chart.

Ms. Pilconis. Yes, the famous chart that is at the very top. So if you have any project where you are on Federal land or you have Federal funding or you need a Federal permit, you are going to be going through the NEPA process; you are going to be bringing in all of the other environmental statutes where they are having some kind of impact on the project. And all the agencies that are related to jurisdiction over those programs are all coming to the table.

So let's say you have a project where you are evaluating endangered species, historic properties, Coastal Zone Management

Act issues. Now, those same issues, endangered species consultation, coastal zone management issues, historic properties, they are triggered again with every single Federal permit. So if you were to follow the color tracks down, if you need a 404 permit for your project and you are doing that separately, after NEPA, you again are doing endangered species consultation and those other steps. If you need a NIPT stormwater permit, again.

So the amount of time that it takes to get all those parties together and to reengage in those conversations, if you were benefitting from the streamlining provisions that we have in place, having early outreach, meetings and involvement, everybody at the table during NEPA, let's get it done, use the work product from the NEPA process and not be repeating efforts.

Senator Fischer. Well, hopefully we can achieve that and cut back on some of this duplication, because we do have limited resources when it comes to these projects and, as I said, time is money when it comes to infrastructure. And if we are going to invest in the future, we have to be able to stretch taxpayer dollars and make them really count. So thank you very much.

Senator Barrasso. Thank you, Senator Fischer.

Senator Capito.

Senator Capito. Thank you.

I want to thank all of you and extend apologies for not being here for the beginning. We are all running between our various committees and we were over on Commerce, too.

We have spent a lot of time and I am going to jump into the public-private partnership discussion. The consensus seems to be that P3 is ideal for projects, but, as we have talked about, for rural America not quite so easy.

I would like to talk about, shortly, an example of something that is most unusual, and I wanted to see if anybody had run into this kind of a case.

Last week I participated in a stakeholder meeting with Congressman Evan Jenkins from West Virginia to discuss a project called the King Coal Highway. To make a long story short, a coal company is seeking to operate on a stretch of land that would become part of the highway. The State and local governments are working with the private sector to have, with the relevant 404 permitting, terms requiring it as the land is returned, which they are required to return the land after mining activity, that it would become flattened and it would become pavement-ready, which, in a State like ours, is pretty difficult sometimes for the State Department of Transportation to lay down a stretch of highway.

This would all of the stakeholders to coordinate -- this has been going on for years, years, and it has been stonewalled

and we are back at it again. But it would cut construction costs for the State to the tune of about \$110 million.

So I am curious to know, Mr. Panos, have you run into any kind of unusual P3 projects that are sort of nonconventional like this in your State?

Mr. Panos. Senator, I can actually give you two examples that are, as you have described, nonconventional P3 projects. One is exactly or very much like what you just talked about, the replacement of a road by a coal mine associated with their work. They needed to get to an area where there was a State highway, and we simply negotiated with them over a period of time to replace that State highway with another State highway, frankly, an upgraded one, and they did that. And then we turned over --

Senator Capito. Was that just a State-to-State transaction? Were there Federal --

Mr. Panos. It was a Federal-State-county-city interaction.

Senator Capito. Okay.

Mr. Panos. But it was recent, in the last year. We have, like your State and like your example, have done it very frequently.

Another example of a nontraditional, I guess you would say, and it is not really a P3, it is more of, again, this idea of creative contracting.

Senator Capito. Right.

Mr. Panos. We have one of the largest snow fence inventories in the United States, I think the largest snow fence inventory in the United States. A private sector company actually, once we model where the snow fences need to be, they install, maintain those snow fences at no cost to us. The return to them is that they use the wood in the furniture-making market and in the flooring market and things like that; it is aged barn wood, as you can imagine. So that is a creative contracting, but not a P3. This isn't something that they put the upfront capital into; we do, did, and now they are just replacing it as we go forward. So it is a little untraditional, but can be looked at that.

And those are two examples, Senator.

Senator Capito. Very interesting. The first one sounds like it has a lot of similarities for what we have been trying to accomplish in a very expensive place to build a road. It would be a great way to open that up for economic development.

I was just in Commerce Committee and we were talking about deployment of broadband. And according to the 2016 FCC Broadband Progress Report, my State is the 48th best connected. I am wondering how does that sound? It sounds good, but it is not good. And Wyoming is number 44, because of lack of population density, large area of difficult terrain, all the different areas.

Senator Hatch has introduced a bill called Highway Rights-of-Way Permitting Efficiency Act, which is cosponsored by me, Senator Ernst is on the bill, Senator Fischer, that will allow the secretaries of Interior and Agriculture to enter into Memoranda of Understanding with the States to allow them to approve broadband deployment through Federal lands and to make the ease of laying that cable through our States. So it is almost a dig once kind of proposition, but it would really help, I think, so that we wouldn't have to have redundant permitting approvals.

I am wondering, obviously Wyoming has great need in the broadband deployment area. How does that sound to you?

Mr. Panos. Senator, it sounds excellent, and it is something that we are already deploying with some of our State rights-of-way and broadband to connect our schools, our public schools and our rural communities. So I don't know if we are ahead, but we are certainly on our way towards that goal.

Senator Capito. Thank you.

Ms. Pilconis, do you know of telecommunication infrastructures that are already being used in existing rights-of-way, this concept?

Ms. Pilconis. No, I am sorry, I am not familiar with that.

Senator Capito. Okay.

All right. Well, I think my time is up.

Thank you, Mr. Chair.

Senator Barrasso. Thank you, Senator Capito.

Senator Ernst.

Senator Ernst. Thank you, Mr. Chair.

Ms. Pilconis, Iowa DOT works closely with the U.S. Army Corps in obtaining 404 and 408 permits, and I have been told by the folks at IDOT, or Iowa DOT, that the Section 408 permit is required prior to the issuance of a Section 404 permit, and that a streamlining effort to make the 404 and 408 permits simultaneously would be very helpful.

Can either of you comment on this, or can any of you comment on this? And, relatedly, can you also explain why AGC is so focused on the 404 permitting process just in general?

Ms. Pilconis. Sure. Thank you. The 408 approval process is currently something now that is required by law that that does come before the 404 permitting process, and that is something that our members have identified as a step that is drawing out the length of time it takes to get approval on a 404 permit. So, in fact, that is kind of an extra step in the process. It is something that we have identified in our chart that I continue to refer to.

So, within the 404 permit process we are so focused on that and the concept of merging that with the NEPA process because -- and I have mentioned this already -- that is a permit that is

one that is the longest to obtain when you are obtaining an individual permit. Data showed that it is, on average, 788 days. It is the most costly, \$270,000 per project. So if you are doing that after the EIS, you are talking about a large amount of money and a very long time.

You have the most disagreements, or as I identified in my written statement, we call them chokepoints in the process, and that is likely because of the many related consults, approvals, and certifications that go into 404 permitting. So, as you said, at the onset it is do I need a 408 approval.

But, in addition, because it is a Federal permit, it is also triggering Endangered Species Act consultation, 401 water quality certification with the State, historic properties, Coastal Zone Management Act issues.

Those same things, though, and I want to point this out, are also triggered with the 408 approval. So if you have a Federal approval or permit, there are certain things that are triggered. So that is the duplication that AGC is trying to stress. You have those same agency consultations happening at NEPA; you will have them happening with the 408, and you will have them happening with 404. Therein is the extreme duplication.

Senator Ernst. I appreciate that. And what we would like to see, of course, is a much more efficient process going

through that and hopefully, then, less costly, as well, to do those projects.

Mr. Panos, Iowa is a pay-as-you-go State, pay-as-you-go funding State for major transportation investments. As you are aware, there is a fiscal constraint requirement for planning that requires indication that there is enough revenue available to construct a project in statewide metropolitan transportation improvement programs. This requirement causes Iowa significant challenges in timely development of major projects such as Mississippi River crossings and projects that would be on the shelf, ready for funding on short notice.

It is my understanding that when you are at the beginning stages of the project planning and you are a pay-as-you-go State just like Iowa, this adds additional hurdles to project development. It is kind of that chicken and egg situation, you know, which came first.

Has there been any discussion of providing reasonable flexibility with this requirement or decoupling this from NEPA approval to allow construction-ready projects to proceed through environmental reviews and continue to progress as funds become available for pay-as-you-go States like Iowa?

Mr. Panos. Senator, as in my written testimony, in fact, it is one of the suggestions that we make for improvement to the process as we move forward, and it is something that the

Congress could consider, should consider as we move forward, is the idea of pay-as-you-go and the decoupling of it. Not completely, but there can be some flexibilities in that process.

Senator Ernst. Very good. I think we would all appreciate a little more flexibility and efficiency.

Thank you, Mr. Chair. I will yield back my time.

Senator Barrasso. Thank you, Senator Ernst.

Senator Carper. Thanks, Mr. Chair.

Mr. Panos, I looked back through your testimony and I read just a short paragraph. I will say it again. "To some extent, the increase in the percentage of highway projects receiving CATEX treatment" -- I had to look that up, what is it, categorically excluded? -- categorically excluded treatment "results from the increasing emphasis given to preservation type projects within State DOJ budgets. That has been the case in Wyoming where, in recent years, nearly all projects have been categorically excluded under NEPA." Is that true?

Mr. Panos. That is true, Senator.

Senator Carper. And it says nearly all. I think in my testimony I said as many as 90 percent are categorically excluded from NEPA. Is it like closer to 100 percent?

Mr. Panos. I don't know the exact percentage, but it is significant, and it primarily the way we go because we are preserving our highways and not expanding them.

Senator Carper. Okay. I am going to ask you a question for the record just to see if we can nail that down more accurately, okay? Thank you.

Let me come back to funding. We have a project in Southern Delaware. We have three counties in the county seat of Sussex County, which is in the south. Third largest county in America. The county seat is Georgetown. They have an airport just outside of Georgetown called Delaware Coastal Airport. They just renamed it Delaware Coastal. And they were trying to extend the runway length to 6,000 feet so that we can bring in bigger airplanes to undergo significant work that goes on at a company there called Aloft. And we are having a hard time getting this done expeditiously.

The county has finally actually come in. We have already extended the runway once another 500 feet. The county has said we will pay for that just to get it moving, so we said that is good. Now we have to move a road and kind of align one road with another road, better intersection. And I met with our secretary of transportation, gosh, a month ago, a terrific woman, Jennifer Cohen, and I said how are we doing on our project and when is it going to be done? I think she said in four years. I said, you have to be kidding. You have to be kidding. It has taken like a number of years already because

they didn't have any money, or enough money to pay for it along with other projects.

We have another big project up in Wilmington. I-95 comes right by Wilmington. Northeast corridor comes right through Wilmington. Eleventh busiest train station in the Country. We have a wonderful riverfront there on the Christina River called the Riverfront, and we are trying to find a way to get ingress and egress out of the Riverfront; it is not very good coming off 95.

On the other side, to the east, we have State Route 13, which is a major north-south road, and we have gotten money to do an ingress-egress off Route 13 into the Riverfront, and it has taken 10 years, and a big part of the problem is money. Money.

If you were giving us some advice as to how to raise some money for roads, highways, bridges projects as we look forward to filling -- it is not the cupboard is bare, but there is a lot more demand, as you know, then there is money to meet the demand. But just give us a couple of good ideas.

Leah, do you want to go first, please? I think you all have been very supportive with some other ideas in the past, but give us a couple good ideas, please.

Ms. Pilconis. The funding issue is not where my expertise lies, my focus really is on the environmental issues.

Senator Carper. That is fine.

Ms. Pilconis. But AGC definitely does recognize that the primary challenge to being able to build more infrastructure, of course, is the funding. We have noted in our testimony that Congress has not raised the primary source of infrastructure funding, the Federal gas tax, since 1993.

Senator Carper. Since when?

Ms. Pilconis. 1993.

Senator Carper. That would be how many years? Twenty-four years.

[Laughter.]

Senator Carper. That would mean that the gas tax, what is it, 18 cents, is worth about less than a dime.

Ms. Pilconis. Yes, we do that calculation.

Senator Carper. -- less than 15 cents. Is that right?

Ms. Pilconis. Also terrible at math.

Senator Barrasso. The Senator is leading the witness.

[Laughter.]

Senator Carper. And you are doing a great job of following.

Ms. Pilconis. In terms of surface transportation, Congress and the Administration must restore solvency to the Highway Trust Fund. So we are pointing those things out in our statement.

Senator Carper. Thank you. For someone who is not the expert on this, AGC did great.

John, same question.

Mr. Porcari. It is an excellent question, Senator. I would first point out that local jurisdictions throughout the United States do self-help measures. Referendum and other measures have been raising revenues for important projects. So the local and State component is typically in place. The Federal Government is a less reliable partner on the funding side than it used to be, and that, in practical terms, impacts on both the kind of projects you described. Typically, the larger the project, the more the uncertainty hurts the project, and that will be, I think, even more prevalent in the future as you look at these large projects.

So as important as the discussion is today about reengineering the process, greater efficiencies, more concurrent process, all of which we support, that only helps if the money is there to actually build the project at the end of it. And in my practical experience with major projects, in particular at the State level, you are not nearly as driven to complete the environmental process and other permitting processes if you don't know the construction money is there at the other end.

Senator Carper. That is a great point. That is a great point.

Mr. Panos, Bill?

Mr. Panos. I would only say that, as has been said, fully funding the Highway Trust Fund I think is important. The idea of funding and process improvement together, links together, I think is important. But, you know, the Federal financing of transportation infrastructure is complex, and I wouldn't purport to tell you how to do it, but certainly it is going to be very important that we figure this out, because it is going to take both money and process improvements as we go forward.

Senator Carper. Good.

Later today we will have some folks in. There is a Northeast Corridor Commission that is going to be in town and they are going to spend some time with us later today and talk about the really serious need for infrastructure improvement up and down the northeast corridor. I think our freight railroads, for the most part, are in pretty good shape; you know, they largely fund themselves through their businesses.

But I think it is under the FAST Act we created an initiative that calls us to look really closely at an idea that I call vehicle miles traveled. The North American car of the year, Chevrolet Bolt, gets 240 miles per charge. Yesterday I drove a vehicle, a Honda. They have the Honda Prius. Not the Honda Prius -- oh, gosh, several models of Honda, and they have a new model they are just introducing called the Clarity, like

the Accord and all that stuff, but it is a new model, and they come in battery, just battery; they come in fuel cells, just fuel cells, and they get something like 350 miles on a charge, fuel cells on hydrogen. And those vehicles, General Motors Bolt will not use any gas or diesel. The car I drove yesterday, fuel cells, Honda, won't use any gas or diesel. And we need to come up with ways more and more vehicles like that enter the roads to make sure that they are going to pay for these roads, highways, bridges.

So vehicle miles traveled can be a good way to do that. If we are smart enough in this Country to develop vehicles that can drive without a drive from coast to coast, we ought to be able to figure out how to do it. The smart way would be vehicle miles traveled irrespective of privacy.

Thanks, Mr. Chairman.

Senator Barrasso. Well, thank you very much for your comments.

I want to thank all of you for being here today and for your testimony.

The hearing record, of course, is going to be open for the next two weeks because other members may put in written questions. I know you had suggested that you had a written question or two.

I want to thank all of you for your time, your testimony.

The hearing is adjourned.

[Whereupon, at 11:45 a.m. the committee was adjourned.]