



TRANSPORTATION PERFORMANCE AUDIT BOARD

P.O. Box 40937 · 531 15th Ave. S.E. · Olympia, Washington 98504 · 360-786-7313 · <http://www1.leg.wa.gov/tpab>

Date: January 17, 2006

To: Governor Christine Gregoire
Senate Transportation Committee
House Transportation Committee

From: Doug Hurley, Chair

Subject: Final Report — Business Process Review of Environmental Permitting for Transportation Projects

In January 2005, the Transportation Performance Audit Board (TPAB) authorized the Joint Legislative Audit and Review Committee (JLARC) to conduct a review of the environmental permitting issues related to capital construction projects delivered by the Washington State Department of Transportation (WSDOT) on TPAB's behalf. Ten sample projects were selected in order to analyze the environmental documentation and permitting process to identify key contributors to delays, prioritize streamlining efforts, and assess recent changes in regulations of drainage ditches and storm water runoff.

The Transportation Performance Audit Board previously transmitted the JLARC report and its enclosed recommendations. This letter provides supplemental comments and recommendations based on the JLARC report and the experience of TPAB members.

Please note that, unless otherwise specified, page references below refer to the consultant's report, which, because of its size, is not included in this document. This letter, its attachments, the complete consultant's report, and WSDOT's comments are available online on the [TPAB audit web site](#).

FINDINGS

1. TPAB finds, in accordance with the report from the consultant, that the primary cause of environmental delays are interruptions in funding. Of the 10 projects included in the analysis, nine suffered from funding interruptions which became the root cause for other delays and problems. Given that the report set out to look for environmental delays, we find it especially worthy of note that funding interruptions turned out to be so much more frequent and significant source of delay. The core solution to this problem lies in funding continuity.
2. TPAB finds that in addition to the fundamental problem of funding delays that there are a complex maze of planning and decision making processes, environmental and permit processes, right of way acquisition processes, design requirements, as well as basic project management and staffing arrangements which can, and often do, cause project delays. What is particularly difficult about these multiple elements of a project is that they often have project specific or heuristic origins as opposed to routine characteristics and as steps they are inter-active and iterative. For instance:

- A delay in funding may last long enough that regulations such as stormwater regulations which originally applied to the project have been updated, right of way costs have increased and other changes may have occurred. In such a case new stormwater facilities may need to be designed, new right of way identified, new costs estimated for both and more funding found, with each new solution taking yet more time to resolve.
- Community resistance to a project may take multiple forms including resistance to each environmental step, resistance to funding, requirements for new design provisions, and more. This may elongate each step, which can add up to multiple delays mounting up to months, even years. By then the participants in the decision making process may have changed several times, requiring a revisiting of early steps which once seemed settled.
- And the list of such examples goes on and on. There is no silver bullet solution to such dilemmas, but decision makers need to be aware of the impact of each new requirement on a process and program and project managers need to follow the project management procedures recommended in an earlier audit and adopted by Secretary MacDonald's Executive Order of June 2005 with special attention to these likely project disturbances. The Office of Regulatory Assistance is encouraged to look for each and every opportunity to simplify and consolidate regulatory requirements.

RECOMMENDATIONS

In addition to supporting the JLARC recommendations, TPAB recommends the following:

Funding

1. JLARC recommendation #7 said that "WSDOT should develop guidelines for suspending environmental documentation activities on projects where construction funding is not provided." TPAB recommends adding planning and design activities to those for which such limiting guidelines should be established, perhaps setting a percentage limit of the estimated budget for a transportation project that could be spent on planning (project definition), design, and environmental analysis and permitting without having dedicated construction funding or a high probability of such funding for the project.
2. The Legislature should recognize partial funding of projects is not cost efficient and focus funding on those projects where funding can be fully implemented to minimize funding interruptions whenever possible.

Storm Water

3. Ecology should conduct some analysis of the relative costs and benefits of various levels of storm water runoff management, particularly related to comparing the differences between practices that meet pre-development conditions versus existing site conditions (i.e. what are the benefits and are they commiserative with projected costs).
 - In 2001 when TPEAC was established as the legislative response to the Blue Ribbon's call for regulatory process reform, the balance was that improvement in procedures would be sought without damage to environmental requirements. Since then environmental standards relative to stormwater have evolved significantly, mostly in pursuit of an improved

- aquatic environment for fish. The potential for significant cost impacts on transportation and other physical development activities is major.
- Some of the new standards move towards a “pre-development standard” for stormwater management on projects. In a state that has grown by millions in population over the past decades and is projected to grow by a couple million more in the next two decades, the conflict between the natural environment and the human environment is inevitable. We urge policy makers to consider whether “pre-development” standards essentially attempting to replicate the hydraulic regime of a natural northwest pine forest are environmentally achievable, environmentally effective and cost-effective.
 - We acknowledge that parallel to ongoing and increasing investment to address a transportation needs backlog, there are ecological concerns about salmon and whales and many other northwest species. And, just as in transportation, there are dollar shortages in those restoration efforts. We encourage policy makers to assess whether the project specific “mitigation” tools applied to transportation and other development are likely to achieve the environmental goals sought in terms of salmon restoration, habitat protection and more or whether broader watershed and habitat strategies might better achieve the environmental goals. Between the state and regional transportation investment programs, tens if not hundreds of millions of dollars will be spent on environmental mitigation. It would be a shame if when we were done all we had to show for it were a bunch of big stormwater detentions boxes, but no more salmon.

Expand Programmatic Permitting, Decrease Regulatory Overlap

4. WSDOT has made tremendous progress using Programmatic Permitting to consolidate permit activities on common facility maintenance and repair projects. TPAB encourages WSDOT to examine other Departmental activities where collective permitting could be achieved either around common practices or around geographic proximate projects.
5. Many environmental subject areas have been the topics of regulatory protection at federal, state and local levels. The Office of Regulatory Assistance is encouraged to examine ways to consolidate the various policies, requirements and procedures, minimizing overlap and duplication. A probably unachievable standard, but one which makes clear the intent, might be that only one agency from one level of government should have regulatory oversight over a single topic area.

Communications

6. Early and continuous communications between all interested parties relative to the permitting process was emphasized in the JLARC recommendations. Everything TPAB has been told and observed drives us to emphasize the importance of this point. In discussion with agencies during review of this letter, communication issues around 401 permit certification came up as an example, which causes us to recommend that:

Ecology should allow WSDOT to review draft conditions in the 401 certification.

Currently, WSDOT cannot review draft 401 certification conditions, which shuts

down early interagency communication. Projects have received final 401 certifications with conditions that cannot be implemented and resulted in permit administrative violations before earthwork started. At present, WSDOT's only recourse is to appeal the permit and risk not meeting the Ad date. Review of draft 401 certifications is necessary for WSDOT to prevent violations and protect target Ad dates. Early review would allow WSDOT to negotiate permit revisions, make design changes, or (in rare instances) plan an appeal.

Cost Effectiveness Analysis of Section 404 Delegation

7. TPAB members are somewhat hesitant about the practicality of JLARC's 2nd recommendation that consideration should be given to pursuing programmatic permitting for Clean Water Act Section 404. Independent research done by a TPAB board member causes us to note that additional DOE analysis relative to JLARC recommendation #2 should include: lack of funding, limit of program administration to "non-navigable waters," concerns regarding federal requirements and oversight, availability of alternative mechanisms for state wetlands protection, and controversial nature of regulation of wetlands and other aquatic resources. Further consideration should include examining, which, if any, areas or aspects of permit authority delegation under Section 404 of the Clean Water Act may prove most fruitful, relative to successful delegation authority in other states.

IT and Accounting

8. Modify and/or update IT systems and Accounting practices to allow the collection of information regarding staff time and costs of resources required to complete and process environmental documentation and permitting. (see pg. 18 of report) Additionally WSDOT should prioritize tracking and managing costs on a per project basis. (see page 19 of report). WSDOT should also ensure that the next upgrade of the PDIS or new technology will include timeframes for environmental permitting. (see page 26 of report).

Paperwork Streamlining

9. TPAB encourages the Office of Regulatory Assistance to pull interagency groups together to review and to identify common mistakes and omissions in applications, with the intent of minimizing mistakes and omissions and thus ultimately streamlining the permitting process.
10. TPAB encourages the Office of Regulatory Assistance, WSDOT and resource agencies to continue efforts to formally document standardized processes for certain aspects of environmental documentation and permitting. (see page 10 of report.) It may well be that the best way to accomplish this is through the discipline required in setting up a unified online, comprehensive permitting process, taking the JARPA efforts along these lines as a base and systematically extending that base to other topic areas and other agencies, state, local and federal.

Relative to JLARC's recommendation 3, we recommend that the Office of Regulatory Assistance establish specific dates for progress, as well as specifying a percentage of use of the on-line Joint Aquatic Resource Permit Application (JARPA) and e-permitting in general. TPAB urges the Office of Regulatory

Assistance to set a goal to create a unified project process online for all state, local and federal permits. The mere effort to create such a system would assist in such modest system reforms as having agencies develop standardized permit language for common permit provisions.

I would appreciate your feedback or discussion about our report. If you or your staff have questions about this letter or the report, please feel free to contact me.

Attachment

cc: Doug MacDonald, Department of Transportation
Paula Hammond, Department of Transportation
Megan White, Department of Transportation
Jay Manning, Department of Ecology
Scott Boettcher, Department of Ecology
Jeff Koenings, Department of Fish and Wildlife
Gayle Kreitman, Department of Fish and Wildlife
Mike Groesch, Senate Transportation Committee
Beth Redfield, House Transportation Committee
Victor Moore, Office of Financial Management
Robin Rettew, Office of Financial Management
Louise Bray, Office of Financial Management
Rich Struna, Office of Financial Management
Karl Herzog, Office of the Governor
TPAB Members