

**I 70 Collaborative Effort
Advanced NEPA Session
May 20, 2008
9:00-12:00**

Purpose of Meeting

- Implementation, how do you move things forward in the Environmental Impact Study (EIS)
- How to document the agreement
- Should there be or might there not be a supplemental
- What the next steps are, how to keep things moving forward
- Clear about how National Environmental Policy Act (NEPA) is moving forward

Methodology for Creating the Agencies' Proposed Action (Colorado Department of Transportation (DDOT) and Federal Highway Administration (FHWA))

- The agencies will take the Collaborative Effort (CE) agreement and will incorporate this into the preferred alternative. The preferred alternative/recommendations will include:
 - Part One: Specific highway improvements, AGS, and interchange improvements; and
 - Part Two: Other elements including future highway improvements. Part two will meet the purpose and need and the specification in the clean water act.
- A participant felt the proposed "part two" was unknown and also assumes 6-laning through Clear Creek County. The CE agreement did not identify what was going to occur after the specific highway improvements and AGS. There is not currently enough information to assume highway expansion through Clear Creek will be necessary. The participant suggested the agencies are viewing the triggers as ways to reassess the project to build more highways.
- CDOT believes AGS is a strong component of the agreement but feels in order to have an informed discussion, there needs to be impact analysis.
- As FHWA moves forward in this process, it will need to rely on the purpose and need to meet requirements.
- One of the purposes was to do what is best for the environment in the corridor. It was suggested that the preferred alternative being discussed by FHWA was not the best option for the environment.
- A suggestion was made to add another part to the preferred alternative. The three parts included:
 - Part One: Non-infrastructure;
 - Part Two: Specific highway improvements; and
 - Part Three: To be determined based on what happens in parts one and two.
- If AGS does not deal with the capacity issue, will need to go back and make further improvements to the corridor.

- One participant felt there was not enough specificity to the triggers. Another participant felt perhaps language around what occurs if the triggers were met needs to be further fleshed out.
- When discussing increased capacity on a highway, this translates to more lanes. The same discussion with AGS could mean more vehicles or double laning. There could be options other than expansion of the highway. There are a number of structural options for the movement of people.
- CDOT is at a programmatic level and there will be an implementation plan for AGS. There will be some unknowns, some things left to tier two, and some things left for reassessment.
- There are certain things that need to be determined for AGS to be installed. There needs to be identification of an owner operator, maintenance of the facility, and feeder stations. CDOT and FHWA would like to support AGS and is willing to give assistance with support for studies. Local agencies may have to alter land use policies for the AGS system as well.

What are CDOT and FHWA going to do to secure that AGS occurs?

The triggers are supposed to be in place to keep the group on track and to help with AGS.

Would environmental analysis' need to be done to look at impacts?

Yes, would have to do some analysis of the impacts and this would be tied to the preferred alternative because it is something that could happen. If a trigger was initiated with out this, tier one would have to go back and be revisited.

- One of the facilitators felt the request for more specificity in the triggers points was valid. Additionally, there needs to be other ways to meet the demand on the infrastructure. Maybe the triggers can be clearer that they are about specific impacts of the highway improvements.
- Any alternatives with out impact analysis could cause the project to go back to tier one.
- AGS will not meet the travel demand in 50-years.
- The triggers could be written in a manner that leaves flexibility. A suggestion given was a version of the preferred alternative that gives flexibility for a case if the triggers are not triggered. Another possibility would be if all the triggers were triggered and the highway needed all identified improvements. There needs to be flexibility to look at things as they progress, look at traffic through out the corridor, and to reassess to do more or if conditions are meeting the needs.
- The ideal situation is to have the research done so the tier one does not have to be revisited.
- The central message is to find a way to incorporate the CE agreement and the triggers in a way so it is clear to CDOT and FHWA is not trying to wiggle its way into getting 6-lanes which is what they originally wanted. CDOT requested assistance in writing the document so it reads in a way that makes everyone comfortable.
- It was suggested the document could read as one possible option is to do further improvements on highways, another option is to do more TDM, another is to further

AGS capacity, or another is to increase bus system. Each option would also need its own analysis. Active traffic management could also be an option.

- Also relating to triggers, better definition is needed for the term “improving mobility”.

Next Steps for the Programmatic EIS

- There was a concern voiced over the transition of the Draft Programmatic Environmental Impact Study (DPEIS) to the Final PEIS (FPEIS) and the Record of Decision (ROD). A participant felt the section at the end, related to environment, was very scant. There needs to be further inclusion of air quality.
- In terms of the CE agreement and the FPEIS, the group would like to see a smooth transition with the NEPA process.
- There has been some preliminary discussion that the FPEIS would be a more streamlined version of the DPEIS. The FPEIS will need to respond to the public feedback and questions on the alternatives. Also looking at air quality and other information that needs to be added and updated.
- The agencies discussed future check-in points including
 - Maintain monthly check-ins with the Project Leadership Team (PLT);
 - Establish CSS process schedule; and
 - Incorporate stakeholders into the PLT.
- The PEIS schedule as of today, following an aggressive schedule is:
 - 6 months (minimum) to prepare first draft of the FPEIS;
 - One month (minimum) for internal review, including engaging FHWA on an chapter by chapter on-going basis;
 - One month (minimum) review by cooperative agencies; and
 - One month review of the third and final draft.
 - This is about a 9 month process before it goes to review by the public.
- There is a regulatory requirement and obligation to update the information from the time between the DPEIS and the FPEIS. CDOT will engage in a conversation with FHWA to determine what information needs to be updated. If there are not much updates, the schedule may be maintained. It is more realistic to have an expectation of a 9 to 18-month schedule.
- Once the FPEIS is out for public comment, there will be a 6 to 9-month time frame before the ROD.

How will you respond to the public comments?

They will be included in the RODS.

- A suggestion was made to not only list the questions from the public with answers but to reflect they were incorporated into the document. The point of NEPA is to show the comments were considered, taken to heart, and to show them addressed in the alternative.
- The PLT has not yet been identified. At the May 29, 2008 CE meeting, will pull in stakeholders to be part of the PLT.

Need for a Supplemental Draft PEIS

- Jerry Sherk, one of the NEPA experts hired for work by the CE, revealed to the participants two groups have approached him to represent them in a challenge to the PEIS. He feels the group will have to do a supplemental and if they choose not to, there will be fair possibility of a law suit. If the case goes to court and comes back with a ruling against the defendant (Department of Transportation), the judge could order a supplemental.
- FHWA does not feel a supplemental is necessary at this time. They have read the regulations and modified alternatives and feel there are not significant impacts to warrant a supplemental. FHWA also pointed out there are several ways to handle more information and is open to a supplemental if and when sufficient new information comes about.

Have the agencies talked about the litigation risks?

FHWA and CDOT have thought about litigation risks. It is not the actual risk of getting sued but rather the risk of losing that is troublesome.

- There is one element in the CE agreement that was not identified in the PEIS. This was a small addition of one lane. This is a very small piece in a large 140-mile corridor.
- The Sierra Club is not satisfied with the purpose/need and the federal laws on supplementals. It is unclear if the old PEIS handle the new information specifically around global warming and peak oil. There is a state-wide programmatic agreement dealing with global warming and peak oil. These will be addressed in the FPEIS by following this state-wide agreement.
- At this time, the agencies are not sure what a supplemental would say or what topic would be covered. Doing a supplemental is not going to bring the group to a different place than it currently is.

Question directed at Jerry Sherk:

With the litigation issue aside, do you feel a supplemental will be needed?

The PEIS can not go final as it is currently because the economic analysis is very poor. The DPEIS states it will engineer around the problems of spoil material and historical properties but does not weigh this in the economic evaluation. Economic analysis is done with cost/mile, cost/vehicle, or cost/traveler give very different results than when using life cycle costs. Highway costs were the most expensive when looking at life cycle costs. When an agency relies on flawed studies, the EIS gets set aside and needs to complete a supplemental.

- One option would be to do the more in depth analysis in the context of the FPEIS. There is no new information to gain by completing a supplemental when the FPEIS can be flushed out.
- CDOT would have a public hearing and outreach on the FPEIS.
- One participant felt the new studies on AGS and new rail technologies qualified as new information. According the Federal Transit Administration (FTA) looks at rails

as rails. A rail and bus rapid transit would be considered different alternatives. The FTA would consider any kind of AGS the same alternative.

- The facilitator directed the agency representatives to decide if there was information heard today to make them think a supplemental is necessary at this time. The agency representatives maintained they did not see a need for a supplemental right now but were open if there is the need in the future.
- There was a request for a further discussion on the flaws of the DPEIS. The agencies would like to have the flaws addressed in the FPEIS. They would prefer to address the flaws in the FPEIS and keep the process moving forward rather than have a supplemental.
- The reasons outlined to support the creation of a supplemental include:
 - Litigation risk;
 - Magnitude of new information making it necessary; and
 - Public expectation.