

Minutes from the FHWA/FTA/NASTO CEO Roundtable

DRAFT Minutes

Meeting of June 10, 2013

Portland, Maine

NASTO President Jim Redeker (CT) opened the meeting at 1:15 pm.

President Redeker welcomed the participants to Portland and the NASTO Annual meeting and asked all attendees to introduce themselves. All NASTO members were represented. Representatives from the Federal Highway Administration, Federal Transit Administration, and AASHTO were present including: Mr. Victor Mendez, Mr. Jeff Paniata, Mr. Greg Nadeau, Ms. Mary Beth Mello, and Mr. Bud Wright (see attachment for complete list of attendees).

President Redeker introduced Host State Commissioner David Bernhardt (ME) who provided an informative introductory presentation about the State of Maine. Commissioner Bernhardt welcomed all the delegates to Portland and encouraged everyone to take advantage of the many offerings within the Portland region, and the state as well.

Greg Nadeau (FHWA), being a Maine resident, also welcomed everyone to the state and thanked Commissioner Bernhardt for hosting the conference and for the informative presentation highlighting the many facets of Maine.

President Redeker then turned the discussion over to the FHWA Administrator; Mr. Victor Mendez. Mr. Mendez took notice of all the USDOT folks in attendance and recognized the intermodal cooperation between the federal agencies. He also thanked President Redeker for the invite to NASTO, thanked Commissioner Bernhardt for hosting the conference, and Mr. Bud Wright (AASHTO) for working on behalf of all Northeast States.

Mr. Mendez started by saying that many things are happening with regard to transportation throughout the nation. He emphasized that federal and state staff working together via “partnerships” is the most important ingredient for success in the future. As an example, he noted the recent cooperation among the Federal Agencies and the Northeast States after the devastation caused by Hurricane Sandy.

Extreme Weather:

As a result of Hurricane Sandy, Mr. Mendez stated that his agency responded “aggressively and immediately” to those states hit worst by the storm. FHWA began processing emergency release funds or “quick release funds” within the first 24 hours. Mr. Mendez noted that \$59M was promptly made

available to the NASTO states of CT, NJ, NY, RI, and the non-NASTO state of NC. Once President Obama signed the disaster relief bill an additional \$527M was made available to those same states bringing the total amount to \$586M of disaster relief funds. He also recognized that there is still “plenty of work to be done” and noted the following recent accomplishments:

- Ocean Parkway in Long Island was recently re-opened
- Federal Lands allocated \$32M to the National Park Service for recovery efforts in Sandy Hook, NJ and Liberty Island, NY (the current goal is to have Liberty Island open by July 4th)

Also, as a result of super storm Sandy, Mr. Mendez recognized the need to continue to have discussions and “an open dialog” with regard to vulnerability and resiliency in order to better prepare for these types of storms in the future. He noted a pilot study with NJ (funded by FHWA) to address vulnerability as a result of climate change.

Map-21:

Mr. Mendez stated that his agency continues to move forward with the implementation of the new Transportation Bill. He recognized that they have done much research and outreach with transportation stakeholders throughout the country. Outreach conducted to date has been via stakeholder meetings, webinars, published guidance and published Q&A. He also noted that the 2013 apportionments were issued in the beginning of the fiscal year and they continue to move forward with the rulemaking as required by Congress.

Mr. Mendez noted one particular success story resulting from the new bill. Changes that Congress enacted with regard to the provisions of Categorical Exclusions (CE’s) when dealing with emergency repairs have been beneficial. As an example, Mr. Mendez noted the I-5 Skagit River bridge collapse (due to truck hitting a steel member) in Washington State. He remarked that this project was the first to utilize the new CE provisions that Congress implemented for emergency repairs which will result in a swift turn-around as the bridge will reopen for service by October 1st. Mr. Mendez stated that these changes will “bring good things to the American people and do it quickly”.

Performance Measures:

Mr. Mendez acknowledged that on the performance measurement front work is currently underway and advised all the NASTO states to look for guidance in the near future and also to get engaged in the process. He identified three tiers of rulemaking being addressed by FHWA and their corresponding schedule as follows:

- Safety – to be completed by the end of the 3rd quarter of this year
- Infrastructure – to be completed by the end of the calendar year
- Remaining Portions (incl. congestion, emissions, system performance) – to be completed in the first quarter of next year

Mr. Mendez also reiterated that there are other related rules to be issued by FTA, NHTSA, and others related to these three tiers which should all be carefully considered going forward. He stated: “you should understand the overall concept and how they interrelate to each other”.

Inactive Obligations:

Mr. Mendez identified a lack of sufficient controls regarding inactive obligations. This was identified in a November 2012 audit conducted by KPMG which identified “material weaknesses” in the obligation process. Mr. Mendez acknowledged that; “much work has been done by the states and AASHTO, but we must do everything we can to continue to close out projects”. He asserted: “this is a very important issue and we must make sure that we have the proper controls in place”. Also, with reauthorization coming, Mr. Mendez stated that “we can’t go to Congress for more funding when we have millions of dollars sitting idle in our bank accounts – it’s not going to work”.

Innovation:

Mr. Mendez recognized that through innovation many benefits can be realized by the American people when it comes to traveling on our highways, roads, and public transportation systems. He noted that in the spring his agency hosted virtual technology summits were very successful. These summits brought more than 2600 transportation professionals together via this technology and saved the participating states travel expenses.

Mr. Mendez stated that a lot of work is underway to try to get creative new ideas into the field, and get them deployed. However, he noted that it was up to the individual states to choose which strategies work best for them, not the federal government. He provided the following data to illustrate that point:

- 33 states plan to use 3-D modeling
- 35 states are using accelerated bridge techniques
- 16 states are making use of design/build
- 19 states are continuing to pursue CMGC

Also, Mr. Mendez identified three other innovative initiatives disseminated by MAP-21 as follows:

- SHRP2 Solutions Program
- Accelerated Innovation Deployment (AID)
- Accelerated implementation and development of Pavement Technologies

In addition, Mr. Mendez recognized the formation of the State Transportation Innovation Council (STIC). Via the Council, Mr. Mendez indicated that additional funds will be brought to the table to help support the Every Day Counts Initiative and to implement innovation and technology. With regard to the SHRP2 program, thirty-four states nationwide will participate and among the NASTO members eight states and the District of Columbia that will be deploying SHRP 2 solutions on a total of 17 projects. The states are RI, NJ, ME, MA, DE, PA, NH, and MD. Mr. Mendez thanked these “early adopters” for utilizing the SHRP 2 program.

Also, Mr. Mendez confirmed that last January, FHWA announced the launching of thirteen projects to promote new financial management approaches. New Jersey was one of those states that suggested utilizing federal aid dollars to support, or to fund, new oversight engineers to improve LPA projects. FHWA is moving forward with this project as well as twelve other projects submitted from around the country.

Safety:

Mr. Mendez confirmed that much work has been done with regard to safety initiatives. He stated: “We’ve done a lot with regard to work zone safety, but in 2011 587 people died in work zones (11 more than 2010) but in the past 10 years we’ve cut our fatalities by one half which is good.” He reiterated that this work must continue until we bring it down to zero.

Mr. Mendez concluded by reminding everyone to buckle up, put your cell phone away and keep an eye out for pedestrians and bicyclists. He again thanked President Redeker for the invitation to NASTO.

FTA:

President Redeker introduced Mary Beth Mello, Regional Administrator (Region 1), of the Federal Transit Administration.

Ms. Mello welcomed everyone to the meeting and stated that it's a great time for the transit industry as ridership is at its highest level since 1957. She added that census projections indicate a continued growth of elderly population and a younger demographic decline in car ownership leading to increased ridership in public transit systems. As such, Ms. Mello stated that this growth will provide many challenges and will require leadership (Federal & State) to address the necessary infrastructure improvements.

Ms. Mello noted that the FTA is also working hard to implement MAP-21 requirements. Specifically, the FTA has updated many of the formula programs as required by the new legislation which was a welcome change by the industry. Ms. Mello confirmed that FTA has attained the authority to have a public emergency relief program. In the wake of Hurricane Sandy, the FTA was appropriated \$10.9 billion in relief funds with the bulk of the money going to New York and New Jersey. CT, MA, NH, and RI also received funding. There is an additional \$3 billion leftover for Sandy related damage and the notice for these funds will be released soon along with any criteria. NASTO states affected by storm Sandy will have the opportunity to apply for these funds but it was noted that the focus will be on "building resiliency" not just damage repair.

Also, Ms. Mello acknowledged that FTA published a New Starts rule back in January which was well received by the industry. Its focus was on "cost effectiveness" and providing for a "less arcane" and more "user friendly" program. She recognized that there is a "huge" demand for New Starts projects and, as a result, the program is becoming a bit oversubscribed.

Ms. Mello added that the other big authority item (with regard to MAP-21) has been safety. She noted that Peter Rogoff (FTA Administrator) has been "pushing to get that authority because he believes it can add significant value on the safety front". Additionally, the FTA has been working on finalizing safety regulations and staffing a new safety office within FTA. The newly released federal register notice provided apportionments to all state safety oversight organizations (rail side is utilizing the SSO's to implement safety authority). Bus guidance is also forthcoming. Ms. Mello stated that, "every single transit property will have to develop a safety plan, including all of the bus properties".

Ms. Mello cited the largest challenge facing the transit industry is the tremendous backlog of state-of-good repair projects estimated at over \$80 Billion and remarked that the bulk of these repair projects are located in the major transit cities. She added: "we are trying to work closely with these states and we appreciate so many states stepping up to the plate with their own revenue raising measures".

Ms. Mello concluded by thanking all the NASTO states for being good "partners". She stated that the "FTA values these relationships because by working together, as a team, much can be accomplished".

Q&A

President Redeker opened the floor for any questions. Hearing none, he asked the first question: “With regard to the many safety requirements of MAP-21, how can you best help the states, first understand the requirements, and more importantly come forward with the easiest ways to address those requirements?”

Mr. Mendez acknowledged that the rules and regulations for safety have increased under MAP-21 as directed by Congress. He added that under Secretary LaHood’s leadership, FHWA has strived to be consistent with all of the other federal agency requirements but because of the many different programs (and different roles) it will always be a challenge. As an example, he cited FHWA’s work with NHTSA to develop a non-motorized safety measure that makes sense for everyone.

Jeff Paniati (Executive Director FHWA) added that the most significant activity in safety (rulemaking) has been in the performance management area. He noted that this rulemaking has been “relatively straightforward” in terms of the kind of measures contemplated in MAP-21. Mr. Paniati stated that: “MAP-21 has provided additional flexibility in terms of how and where the safety dollars can be used so it can follow the problems whether they are in infrastructure, behavioral areas, or any other area”.

Mr. Paniati also stated that FHWA’s safety office will continue to provide guidance on tools and techniques with regard to what works, proven safety counter measures, any new analytical tools, and the Highway Safety Manual enabling states to make good decisions on how to spend safety dollars and apply it to specific problems that will ultimately benefit the customer.

Ms. Mello added that MAP-21 clearly defines two separate authorities on the safety front. FRA will continue as sole authority on the commuter rail and the FTA will maintain authority on the bus and rapid transit side. She emphasized that both agencies will continue to work closely together to meet the requirements of the new bill.

Moving to another topic, President Redeker offered the following question: “what are your philosophies with regard to TOD and joint development efforts from the perspective of a federal partnership?”

Ms. Mello responded that: “TOD is our bread and butter and a significant goal for the FTA because it brings in private dollars and increases ridership”. At a recent APTA conference she heard from a developer who stated that TOD’s are “hot” for development because they produce the most lucrative revenues. Ms. Mello stated that FTA has created guidance for this type of development and will work closely with the states on a case-by-case approach because these types of arrangements are unique and very complex.

Mr. Mendez stated that this topic is very important to the nation as states continue to struggle with the lack of infrastructure funding. He noted that a better understanding of “value capture” is important and it’s “an area we need to get good at”. He noted that there are four or five experts in this field and

suggested that we establish a dialogue with them in order to get a better understanding of value capture.

Mike Lewis (AASHTO President, RI Secretary) added that the Boston Central Artery could be a good case study for value capture. Specifically, he noted that since the completion of the artery \$18 billion in private development has taken place in downtown waterfront area.

Secretary Rich Davey (MA) agreed that Boston's waterfront area would make for a "truly impressive" case study for value capture because of the tremendous amount of investment, due primarily to the artery and the new bus rapid transit silver line. He also added that Massachusetts is working to "tap into" any opportunities that can incentivize private sector development.

President Redeker recognized Portland's FTA office which allowed for the use of future transit fares (40 years' worth) to be credited into a deal as a "joint development value" making it affordable for the developer. He also commented that: "the only place where you see growth in employment is in young people, and young people want to live in TOD areas".

Mr. Nadeau added that value capture should be a "21st century priority" and in order to capture these "state of the art" concepts it is vital to bring the RPO's and municipalities to the table to discuss economic development as it relates to long-range planning.

Mr. Scott Christie (PennDOT) raised two issues that are a major concern for Pennsylvania.

- ADA issues relating to construction
- Difficulty dealing with Amtrak on any issues

With regard to the first issue, Mr. Christie mentioned that construction ADA requirements are not clearly defined (???) and therefore it is difficult enforcing old views/rules based on improper criteria. These inconsistencies have unfortunately resulted in higher costs and decreased safety.

Regarding the second issue, Mr. Christie offered an example in which Amtrak would not engage in any meaningful discussions regarding emergency repairs for a bridge over Amtrak property that was in such poor condition it was near collapse. Only after PennDOT threatened to send out a press release did Amtrak agree to "shoring up the bridge" as a safety precaution until more permanent repairs could be made. Consequently, Mr. Christie stated that "bullying seems to be the only way to work with them in order to get anything done".

President Redeker commented that this is a common issue when dealing with Amtrak properties. He added that the NEC Commission is "taking this issue up" and asked that all of our Federal agencies work together to bring pressure on them particularly as it relates to safety issues.

Mr. Mendez responded that FHWA will soon (next couple of months) be issuing ADA guidance/directives that will be very helpful to everyone. He noted that they've been working closely with the

DOJ and he thinks everyone will be happy with the results. Also, Mr. Mendez offered to take the Amtrak feedback back to Washington to see what can be done.

Terry Bellamy (DDOT) posed a question concerning the Buy America provisions required of Federal Agencies with regard to utility projects. Specifically, he asked: “how do we know if the individual materials we use in these projects meet the Buy American requirement”?

Mary Beth Mello acknowledged that these requirements are certainly a challenge but reiterated that it is a FTA requirement about which they have been very clear.

Bud Wright added that AASHTO has been engaged in dialog with the Edison Electric Institute which represents many of the electric utilities. He stated that “the Institute believes they can comply with the buy America provisions as an industry but they don’t completely understand what they need to comply with”. For example, Mr. Wright explained that there are a lot of “definitional things” that are not yet clear and until the utilities have a better understanding of the specific requirements they will not commit to anything. With that in mind, AASHTO is continuing to work with the utilities to develop the “right questions” to be asked so that clarity can be brought to the issue.

Mr. Mendez added that in California, Southern California Edison (SCE) has many projects that are being affected by the MAP-21 requirements and they too believe they can be compliant but just need time to get there. He stated that “we are continuing to work on this issue internally to see if we can possibly modify our guidance to accommodate a transition period and have turned it over to our attorneys for further review”.

Karen Songhurst (VTRANS) raised the topic of disaster recovery and preparedness. Having served on several committees’ pertinent to disaster recovery, Ms. Songhurst acknowledged that the recovery programs administered by the different federal agencies (FHWA vs. FEMA) are very dissimilar and it “presents severe problems on the ground in being able to respond effectively and emerge in a better place”. She recognized that, “although her state has a wonderful partnership with FHWA it was not so smooth with FEMA”. With that, Ms. Songhurst recommended that some “alignment” of those programs (across agencies) was necessary so that “in disaster response were filling out the same papers, were looking at the same information, in order to expedite the relief process”.

Secondly, Ms. Songhurst recommended the ability to co-mingle FEMA and FHWA funds with the goal of establishing resiliency in infrastructure related projects. (FEMA does not allow this as they consider this a duplication of benefit). “The two agencies look very differently at rebuilding plans and eligibility requirements for horizontal structures”. She recognized that post-Sandy many positives have come to fruition but reiterated that a more collaborative approach is necessary to be successful in these types of situations, one that includes the ability to flex programming dollars.

Mr. Mendez commented that he will figure out a way to get both agencies together (internally) to discuss these type of issues. He asked for list (bullet format) of the top five or six issues to be provided to him so that they can evaluate and address them specifically.

From transit side, Ms. Mello added that congress has recognized this issue with FEMA and required FTA to address them in their emergency relief program via a Memorandum of Agreement (MOA). As result, this MOA has established some continuity between the agencies when applying for emergency relief funds.

Lynn Weiskopf (NYDOT) posed a question with regard to ARRA project closeouts. Specifically, New York has \$10.7M remaining in unobligated balances due to lower than expected bids on some of their ARRA projects. They also have some ARRA projects that exceeded their budgets. Her question was stated as follows: “Is it possible to get flexibility to apply any of the excess unobligated money to those projects that had higher than expected costs?”

Mr. Paniati responded that the ARRA projects, unlike regular FHWA projects, have very specific rules. Specifically, there is a \$25M cap for adjustment across the states and the program funds are at the end of the period of availability. Nevertheless, FHWA has asked their divisions to reach out to their states to identify any possible over adjustments. Once they have that information, FHWA will evaluate any opportunities and then approach the Department to see if there is any flexibility around the \$25M cap. Mr. Paniati stated that “they are interested in using as much of the ARRA funds as possible, but they still have to comply with all the laws and regulations that govern the program”.

On the FTA side, Ms. Mello added that this wasn’t an issue because their ARRA grants contained no line items and the programs were very broad allowing the states to move money around. She noted that the FTA is very flexible in that it allows for transfer/movement of up to 20% of grant funds.

Stewardship

In conclusion, Mr. Paniati provided a brief update with regard to FHWA’s approach to the stewardship and oversight agreement. In particular, he noted that effective June 1st 2013 FHWA is moving to a “risk-based” approach to stewardship. This change in approach can be attributed to several factors:

- MAP-21 providing his agency with some additional flexibility as to oversight
- Resource management issues (doing more with less)
- Inspector General’s assessment of processes within FHWA in order to be more consistent with practices across the states.

President Redeker thanked everyone for participating in the roundtable discussion and adjourned the meeting at 2:55 pm.