NCTA's Approach to the NEPA Process for Mid-Currituck Bridge

NCTA Mid-Currituck Bridge Industry Forum
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Overview

- Study History
- Transition to NCTA
- NCTA's Approach to NEPA
- NEPA Process for Mid-Currituck Bridge
  - Merger vs. Non-Merger
  - Section 6002 Process
  - Section 404 Permitting
- Managing NEPA and Permitting Risks

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Study History

- The Timeline
  - 1995: EIS initiated by NCDOT & FHWA
    - Proposed new Mid-Currituck Bridge
    - Considered as potential toll bridge
    - Prior to creation of NCTA
  - 1998: Draft EIS issued
    - Public hearing held; comments accepted on DEIS
    - Agencies object to new bridge; urge consideration of improving existing roads in lieu of building new bridge

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Study History

- Key Issues in Comments on 1998 DEIS:
  - Impacts on Maple Swamp (on mainland)
  - Impacts on communities (incl. Aydlett)
  - Potential "induced growth" on Outer Banks
  - Questions about ability to meet purpose & need
    - Will it reduce evacuation times?
    - Will it address congestion?
  - Belief that additional alts. need to be studied
    - Widen existing roads; add ferry service

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Study History

- The Timeline – cont'd
  - 2001: scope expanded at agencies' request
    - Essentially re-starts the study w/ broader scope
  - 2003: agreement reached on Purpose & Need
    - Includes hurricane evacuation as project purpose, contingent on completion of evacuation study
  - 2004-07: hurricane study completed
    - Set 18-hour "standard" statewide
    - Established in State law in 2005

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Transition to NCTA

- The Timeline – cont'd
  - 2005: MCB designated as NCTA project
    - "a bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia"
    - NCTA directed to "contract with a single private firm" to design, permit, and construct the bridge
  - 2006: study transitions from NCDOT to NCTA
    - NCTA re-assesses NEPA strategy
    - Seeks to expedite

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NCTA's Approach to NEPA

- Background – NCDOT's Approach:
  - Based on "Merger 01" Agreement
  - Detailed agreement with resource/regulatory agencies on process, documentation, roles.
  - Key concept = "concurrence" from all agencies at key decision points, including
    - Purpose and Need / Range of Alternatives
    - Preferred Alternative
  - Step-by-step, sequential approach

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NCTA's Approach to NEPA

- Different Context for NCTA Projects
  - Fewer projects to manage
  - Higher premium on speed
  - Greater need to combine/overlap steps
- Similarities Between NCTA and NCDOT
  - Same legal requirements apply
  - Ultimately, can't proceed without the permits

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NCTA's Approach to NEPA

- What NCTA is Doing:
  - Monthly coordination meetings with agencies
  - Regular discussion of all major issues
  - Field meetings when needed
  - Seeking comments, not "concurrence"
  - More flexible process; not purely sequential
  - Key points
    - Identify issues early and deal with them
    - Build consensus gradually over time

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NCTA's Approach to NEPA

- "Section 6002" Compliance
  - Enacted in 2005 as part of SAFETEA-LU
  - Includes coordination procedures that must be used for all highway projects involving an EIS
    - Applies equally to NCDOT and NCTA
  - Provides framework for coordination, without requiring concurrence at each step
  - Does not require concurrence
    - "Merger" is allowed under 6002, but not required.

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NCTA's Approach to NEPA

- Section 404 Permitting
  - Section 404 = wetlands/streams permits
  - Permitting agency = Corps of Engineers
    - State DNR – must issue Sec. 401 water quality certification
    - EPA – can veto Sec. 404 permit (rarely done)
    - Other agencies also provide input into 401/404 decisions
  - Key Section 404 requirement = select "least damaging" practicable alternative ("LEDPA")
  - NCTA is in close coordination with Corps and others, focused on ensuring permittability.

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NCTA's Approach to NEPA

- Section 404 Permitting – cont'd
  - Key upcoming events:
    - Comments on draft "Purpose and Need" and "Alternatives Screening" reports – Spring 2008
    - Comments on Draft EIS – Fall 2008
  - Key issues to be decided prior to RFP:
    - Timing of permit
    - Whether to seek "phased" permit
    - What actions, if any, will be taken by the Corps prior to hand-off to concessionaire.

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Managing Risks

- Types of Permitting Risks
  - Risk of delay in reaching decision
  - Risk of permit/approval not being granted
  - Risk of permit/approval being overturned
- Why These Risks Exist
  - Fragmented authority
  - Legal standards = subjective/discretionary
  - Multiple, parallel decision-making tracks

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Managing Risks

- Strategies for Managing Permitting Risks
  - Maintain broad public support
  - Demonstrate urgency
  - Consult intensively with agencies
    - Demonstrate that the project purpose is valid
    - Answer the “what ifs”
    - Reduce impacts of concern
    - Strong commitment to mitigation
    - Build gradually toward consensus

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Managing Risks

- What About Litigation?
  - Federal approvals are subject to potential challenge.
    - FHWA decision = ROD
    - Corps decision = Section 404 permit
  - Deadline for filing suit = 180 days after Federal Register notice announcing the decision.
    - Could announce ROD and 404 in same notice, or could issue one for the ROD, one for 404 permit.
    - Timing of notice depends on timing of decisions.

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Closing Thoughts

- NCTA is working to expedite environmental reviews and permitting, while also reducing the full range of NEPA and permitting risks.
- NCTA welcomes ideas from potential P3/PDA partners about how to reduce NEPA and permitting risks.

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- Thank You

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