

PRELIMINARY PROGRAM

53rd Annual Workshop on Transportation Law



Sunday, July 13 - Wednesday, July 16, 2014

THE FAIRMONT SAN FRANCISCO

950 Mason Street San Francisco, CA

53RD ANNUAL WORKSHOP ON TRANSPORTATION LAW

SPONSORED BY

Legal Resources Group Technical Activities Division Transportation Research Board

Legal Resources Group Chair, James S. Thiel Legal Resources Group Secretary and TRB Representative, James B. McDaniel Committee on Transportation Law, Chair, Frederick Schranck Committee on Transit & Intermodal Transportation Law, Chair, Dorval Carter Committee on Contract Law, Chair, Edward S. Harris Committee on Emerging Technology Law, Chair, Bryant Walker Smith Committee on Environmental Issues in Transportation Law, Chair, Janet Myers Committee on Eminent Domain & Land Use, Chair, William James Committee on Tort Liability & Risk Management, Chair, Pamela Leslie

Transportation Research Board Staff

Mark Norman, Director, Technical Activities James B. McDaniel, Counsel for Legal Research Projects Joanice L. Johnson, Associate Program Officer Bruce Millar, Director of Meetings Megan Burns, Meeting Coordinator

The workshop has in the past been approved for continuing legal education (CLE) credits in states requiring such credits. Rules vary from state to state, so participants needing credit should obtain necessary forms for individual applications. Inquiries about such matters should be made to James B. McDaniel, TRB Counsel for Legal Research Projects at 202-334-3209.

The registration fee covers all sessions of the workshop program and papers distributed at or following the workshop, plus the Sunday, evening reception (July 13), Tuesday evening social event (July 15), Monday through Wednesday continental breakfasts, and morning and afternoon coffee breaks. Additional tickets for the Tuesday social event may be purchased for each on-site; subject to availability

TRANSPORTATION RESEARCH BOARD OF THE NATIONAL ACADEMIES

The **Transportation Research Board** is one of six major divisions of the National Research Council, which serves as an independent adviser to the federal government and others on scientific and technical questions of national importance. The National Research Council is jointly administered by the National Academy of Sciences, the National Academy of Engineering and the Institute of Medicine. The mission of the Transportation Research Board is to provide leadership in transportation innovation and progress through research and information exchange, conducted within a setting that is objective, interdisciplinary, and multimodal. The Board's varied activities annually engage about 7,000 engineers, scientists, and other transportation researchers and practitioners from the public and private sectors and academia, all of whom contribute their expertise in the public interest. The program is supported by state transportation departments, federal agencies including the component administrations of the U.S. Department of Transportation, and other organizations and individuals interested in the development of transportation.

Cover Photo: James R. Browning U.S. Court of Appeals Building

Agenda at a Glance

7:00 AM 7:00 AM 7:00 AM 7:00 AM 7:30 AM 8:00 AM 8:00 AM 8:00 AM 8:00 AM 8:15 AM Welcome 8:00 AM 8:00 AM 8:00 AM 8:15 AM Session 1 8:00 AM 8:00 Breakfast 8:00 Breakfast 9:00 AM Session 1 8:00 Breakfast 8:00 Break 9:15 AM 9:00 AM Session 2 8:00 Break 9:10 Break 9:10 Break 10:03 AM Session 2 8:00 Break 9:30 Break 9:30 Break 10:04 S AM Session 2 9:00 Break 9:30 Break 9:30 Break 11:13 AM 11:30 AM 9:9 Committee Meetings (AL060, AL050,		Sunday,	Monday,			Tuesday,			Wednesday,		
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SUNDAY, JULY 13, 2014

3:30 PM – 6:00 PM registration

6:30 PM - 8:00 PM RECEPTION

MONDAY, JULY 14, 2014

7:30 AM – 5:00 PM registration

7:30 AM – 8:00 AM CONTINENTAL BREAKFAST

8:00 AM - 8:15 AM

WELCOME

James S. Thiel, Chair, Legal Resources Executive Board Mark R. Norman, Director, Technical Activities Division, Transportation Research Board

8:15 AM – 9:45 AM

SESSION 1: LEGAL ISSUES CONFRONTING HIGHWAYS, TRANSIT AND TRANSPORTATION

James S. Thiel, Consultant, presiding Sponsored by the Legal Resources Group (AL000)

Panel Discussion

Dorval R. Carter, Federal Transit Administration; Thomas P. Holian, Federal Highway Administration; James S. Thiel, Consultant; and James LaRusch, American Public Transportation Association

9:45 AM – 10:00 AM break

10:00 AM - 11:30 AM

SESSION 2: LEGAL HIGHLIGHTS FROM TRB'S VEHICLE AUTOMATION WORKSHOP

Ellen L. Partridge, Research and Innovative Technology Administration, presiding Sponsored by the Emerging Technology Law (AL040)

Speakers will address the implications of their topic for different modalities of automated vehicles including public transit, commercial trucking, passenger and military vehicles if appropriate.

Session 2 Continued...

Update from National Highway Traffic Safety Administration (NHTSA) Jesse Chang, National Highway Traffic Safety Administration

Privacy Issues Encountered by Toll Authorities and Their Applicability to Connected/Automated Vehicles Thomas J. Bamonte, North Texas Tollway Authority

Automated Vehicles Liability Issues and the RAND Report James M. Anderson, RAND Corporation

Automated Vehicle Insurance Issues Eric Williams, Insurance Institute for Highway Safety

11:30 AM -1:45PM

LUNCH COMMITTEE MEETINGS (lunch provided)

TORT LIABILITY & RISK MANAGEMENT (AL070) TRANSPORTATION LAW COMMITTEE (AL010) TRANSIT & INTERMODAL TRANSPORTATION LAW COMMITTEE (AL020) EMERGING TECHNOLOGY LAW COMMITTEE (AL040)

2:00 PM - 3:30 PM

SESSION 3: THE CHANGING LANDSCAPE OF DISADVANTAGED BUSINESS ENTERPRISE PROGRAM AND SMALL BUSINESS SET ASIDES

Edward S. Harris, Maryland State Highway Administration, presiding Sponsored by the Contracts Law Committee (AL030)

Speakers will address and discuss the implications of recent legal challenges, how the U.S. Department of Transportation response to the Office of Inspector General report will affect state and local agencies, narrowly tailored programs based on disparity studies, and other issues relating to the federal DBE and small business programs.

Panel Discussion

Colette Holt, Colette Holt & Associates; TBD, Federal Transit Administration; and Virginia Harmon, San Francisco Municipal Transportation Agency

SESSION 4: THE STATUTES AND RULEMAKINGS—ASSET MANAGEMENT AND SAFETY IN PUBLIC TRANSPORTATION

Scott Biehl, Federal Transit Administration, presiding Sponsored by the Transit and Intermodal Transportation Law Committee (AL020)

Panel Discussion

Candace Key and Scott Biehl, Federal Transit Administration

3:30 PM – 3:45 PM break

3:45 PM – 5:15 PM

SESSION 5: BUY AMERICA FOR UTILITIES

Eric Kerness, Kerness Consulting, presiding Sponsored by the Contract Law Committee (AL030)

Speakers from the federal, state and utility perspectives will discuss certification, problems and buy America requirements and its effect on transportation delivery.

Federal Perspective

Jomar Maldonado, Federal Highway Administration; and Mary Lee, Federal Transit Administration

Utility Perspective Peter Ouborg, Pacific Gas and Electric

State Perspective

Alice Ramsey, California Department of Transportation

SESSION 6: IDENTIFYING COST EFFECTIVE WAYS TO IMPROVE HIGHWAY SAFETY

John M. Mason, Auburn University, presiding Sponsored by the Tort Liability and Risk Management Committee (AL070)

This session will look at the use of modern quantitative and qualitative analytical methods by transportation agencies as an element of their enterprise risk management program with a goal toward improving highway safety and reducing exposure to tort liability.

Panel Discussion

John C. Milton, Washington Department of Transportation; Erin Ferguson, Kittelson & Associates, Inc.; and Douglas Johnson, California Department of Transportation

TUESDAY, JULY 15, 2014

7:30 AM – 3:00 PM REGISTRATION

7:30 AM – 8:00 AM CONTINENTAL BREAKFAST 8:00 AM – 9:30 AM

SESSION 7: ISSUES ASSOCIATED WITH MULTIMODAL PROJECTS, INCLUDING NEPA

Nancy-Ellen Zusman, Federal Transit Administration, presiding Sponsored by the Transit and Intermodal Transportation Law Committee (ALO20)

This session will address the challenges associated with multi-modal projects, especially in the environmental review process. We will use the Columbia River Crossing project in Oregon/Washington and TIGER projects, as well as the Tappan Zee Bridge in New York for the discussion. This will be a "hands-on" discussion of such issues as to whose rules apply, what are the requirements when you have different agencies funding and implementing a project, and how to meet all the requirements.

Panel Discussion

Lawrence P. Hanf, Ken Dymond & Jack Gilbert, Federal Highway Administration; and Ted Uyeno, & Rita Maristch, Federal Transit Administration

SESSION 8: CURRENT LEGAL CHALLENGES WITH CARGO SIZE, WEIGHT AND SAFETY

Tamar Graham Scott, Oklahoma Department of Transportation, presiding Sponsored by the Transportation Law Committee (AL010)

Railroad Industry Perspectives: Safety of Crude-By-Rail Shipments

Allison I. Fultz, Kaplan Kirsch & Rockwell LLP

Specialized Transportation Perspective: Legal Issues in the Permitting and Moving of Oversize and Overweight Cargo

Ray Morgan, Perkins Specialized Transportation Contracting

State and Local Government Perspective: Transport Control of Fracking Sand and the Heavy Impact on Highways and Communities

James Thiel, Retired Wisconsin Department of Transportation

PHMSA Perspective: On Transportation of Shale Oil and Other Hazardous Materials Vasliki Tsanganos, United States of Department of Transportation

9:30 AM – 9:45 AM break

9:45 AM – 11:15 AM SESSION 9: HOW FEDERALIST ARE WE, ANYWAY? TRANSPORTATION LAW, MARIJUANA, AND THE CHANGING DRUG ENFORCEMENT ENVIRONMENT

Atinuke O. Diver, Volpe National Transportation Systems Center, presiding Sponsored by the Transportation Law Committee (AL010)

Since the enactment of the Control Substances Act in 1970, 26 states and the District of Columbia have enacted legislation to decriminalize or legalize the "medicinal" and "recreational" of uses marijuana – a Schedule I drug prohibited for use by the US Department of Transportation's Regulated Drug and Alcohol Testing Program and federal law. The tension between state and federal laws with regard to marijuana touches on issues of civil rights/liberties as well as the need to ensure the safety of the US transportation system and its travelers and operators. This panel will provide an overview of current marijuana issues related to transportation at both the state and federal level.

Panel Discussion

Patrice M. Kelly, United States Department of Transportation; Peggy Fulton Hora, Retired, National Highway Traffic Safety Administration; and Kathryn Stewart, Safety and Policy Analysis International

SESSION 10: ARE YOU READY? WHAT'S INVOLVED IN TAKING OVER FEDERAL ENVIRONMENTAL REVIEW RESPONSIBILITIES

Brett Gainer, Federal Highway Administration, presiding Sponsored by the Committee on Environmental Issues in Transportation Law (AL050)

The MAP-21 removed the limitation on the number of States that can take an assignment of FHWA NEPA and other environmental review responsibilities, and more States are considering the option. This session will cover which modal responsibilities can be assigned, changes due to MAP-21, how the assignment process works, and the practical and legal considerations in taking an assignment from the perspectives of the State's lawyers and environmental practitioners.

Panel Discussion

Jomar Maldonado, Federal Highway Administration; David McCray & Dale Jones, California Department of Transportation; and Christopher Van Wyk, Federal Transit Administration

11:15 AM -1:45 PM

LUNCH COMMITTEE MEETINGS (lunch provided)

EMINENT DOMAIN & LAND USE COMMITTEE (AL060) ENVIRONMENTAL ISSUES IN TRANSPORTATION LAW COMMITTEE (AL050) CONTRACT LAW COMMITTEE (AL030)

2:00 PM - 3:30 PM

SESSION 11: WHAT'S NEW SINCE NASHVILLE? IMPLEMENTATION OF MAP-21 AND OTHER PROJECT DELIVERY EFFICIENCY INITIATIVES

Fred R. Wagner, Beveridge & Diamond, presiding Sponsored by the Committee on Environmental Issues in Transportation Law (AL050)

This session will cover FHWA, FTA, and CEQ regulations and guidance issued since July 2013. Topics will include the use of the new NEPA categorical exclusions for operational right-ofway and limited Federal assistance, the combined FEIS/ROD, programmatic agreements, efforts to better coordinate permit reviews, NEPA, and early acquisition options.

Panel Discussion

David McCray, California Department of Transportation; Janet Myers, Federal Highway Administration; Dana Nifosi, Federal Transit Administration; and Shannon Eggleston, American Association of State Highway and Transportation Officials

SESSION 12: TRANSIT LAW UPDATE, BUS RAPID TRANSIT, AND STREETCARS

Bruce M. Smith, Apperson Crump PLC and Shelly Brown, Brown & Associates, presiding Sponsored by the Transit & Intermodal Transportation Law Committee (AL020)

Bus Axle Weights -- When the Rubber Meets the Road Robin Reitzes, San Francisco City Attorney's Office

Bus Rapid Transit (BRT) & Small Starts RTA Health Line

Sheryl King-Benford, Greater Cleveland Regional Transit Authority

Joint Development and Real Property—Recent Developments Christopher Hall, Federal Transit Administration

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Title VI Update

Minming Wu Morri, San Francisco Bay Area Rapid Transit District

6:30 PM – 9:00 PM DINNER

WEDNESDAY, JULY 16, 2014

7:00 AM – 7:45 AM CONTINENTAL BREAKFAST

7:45 AM – 9:15 AM

SESSION 13: IMPROVED BUSINESS PRACTICES FOR REAL PROPERTY ACQUISITION AND MANAGEMENT

James H. Isonhood, Mississippi Office of Attorney General, presiding Sponsored by the Eminent Domain and Land Use Committee (AL060)

Overview of NCHRP Project 20-84: Improved Business Practices For Real Property Acquisition and Management Under the Uniform Act Cesar A. Quiroga, Texas A&M Transportation Institute

State Considerations for Changes to Real Property Acquisition and Management Practices James Kirk, Texas Department of Transportation

Federal Perspective on Recommendations Provided in NCHRP Project 20-84 Arnold Feldman, Federal Highway Administration

9:15 AM – 9:30 AM break

9:30 AM - 11:00 AM

ETHICS SESSION

SESSION 14: THE ATTORNEY'S DUTY OF CONFIDENTIALITY

Edward V.A. Kussy, Nossaman LLP, presiding Sponsored by the Legal Resources Group (AL000)

This session will explore the duty of confidentiality in the attorney client relationship. Government agencies are pressed to operate transparently. New technology makes the creation and maintenance of important records much easier, but at the same time, the risk of both deliberate and accidental disclosures increases. We will consider such questions as: What is the scope of the duty of confidentiality? How does confidentiality differ from the attorney client and attorney work product privileges?

Panel Discussion

Bruce Smith, Apperson Crump PLC; Pamela Leslie, Transportation Management and Policy Consultants, and Thomas P. Holian, Federal Highway Administration

11:00 AM - 11:15 AM CLOSING REMARKS & ADJOURNMENT

11:45 AM – 2:00 PM GROUP COUNCIL MEETING (Closed Meeting)

