HOMELAND SECURITY ADVISORY COUNCIL

SOUTHWEST BORDER TASK FORCE RECOMMENDATIONS

AUGUST 2010

Homeland Security Advisory Council

Southwest Border Task Force
Draft Recommendation Concepts

Executive Summary

The Southwest Border Task Force (SWBTF) was originally chartered in June 2009 to provide the Homeland Security Advisory Council (HSAC) with recommendations to address issues facing the Southwest border. Led by Task Force Chairman Judge William Webster and Vice-Chairs Ambassador Jim Jones and Sheriff Lupe Trevino, the Task Force completed their second set of recommendation which focused on the need to expand and improve ports of entry as well as improving communication and cooperation among different federal, state, local, and tribal law enforcement agencies.

Building on their initial recommendations to the HSAC in September 2009, the Task Force outlined specific programs to maximize efficiency and offered practical financing options to fund ports of entry (POEs) infrastructure projects. Specifically, the Task Force identified three major themes in their recommendations: how to further accommodate the large volumes of people and goods passing through POEs; discovering additional funding options for potential expansions of ports of entry; and discussing how through better coordination and cooperation with state, local, and tribal agencies, the Department of Homeland Security can improve border security.

In an effort to determine how DHS can better engage private sector partners to promote use of trusted traveler programs and assist in funding dedicated infrastructure for those programs, the Task Force recommends:

1) Expanding and standardizing Trusted Travelers programs; staffing and dedicated infrastructure for these programs should be increased;
2) Moving forward with pilot pre-scanning and pre-clearance programs for goods and cargo;
3) Applying best practices to all POEs along the border including between POEs;
4) Improving the current system of draying goods across the border.

To examine alternative methods for financing new POEs and expansions, and how public/private partnerships and federal/state partnerships can be used to finance new projects the Task Force recommends:

5) Increasing the use of private/public partnerships and search for additional funding mechanisms to help fund ports of entry improvement;
6) Re-examining the U.S. Government process for planning ports of entry;
7) Updating North American Development Bank's charter to explicitly fund border crossing projects;

8) Establishing a single federal point of contact for project sponsors, for POEs issues including reference material, points of contact, and answers to frequently asked questions.

The Task Force noted the importance of coordinating and cooperating with state, local, and tribal agencies to maintain and improve border security. As such, the Task Force recommended:

9) Creating an accessible directory of key borderland officials;
10) Expanding DHS participation in border conferences;
11) Establishing plain language protocol over radios for use by DHS law enforcement across the Southwest border;
12) Formalizing and document roles and responsibilities for Federal Law enforcement acting as first responders;
13) Establishing a clear, formal process for SLLE to request, subject to availability, access to air and marine assets for joint operations, emergency response, or other areas;
14) Establishing interagency operating centers to provide tactical support for day-to-day operations;
15) Standardizing classification and declassification protocols to improve information sharing between agencies;
16) Formalizing relationships between federal/state/local/tribal/Mexican counterparts.

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Southwest Border Task Force
2010 Recommendations

I. Recommendations Regarding the Immense Number of People and Amount of Goods Passing Through Ports of Entry

The Task Force put forth the following recommendations regarding how to improve the flow of people and goods through ports of entry:

1) Expanding and standardizing Trusted Travelers programs; staffing and dedicated infrastructure for these programs should be increased;
2) Moving forward with launching pilot pre-scanning and pre-clearance programs for goods and cargo;
3) Applying best practices to all POEs along the border including between POEs and interior checkpoints;
4) Implementing alternatives to the current system of draying goods across the border.

1) Trusted Traveler Programs

Findings: Trusted Traveler programs are very successful in decreasing the wait times of people and goods crossing the border. However, participation in the programs needs to be expanded.

- Recommendation: Trusted Traveler programs should be expanded and standardized; staffing and dedicated infrastructure for these programs should be increased. Best practices from the NEXUS program on the northern border should be applied to the southwest border, such as integrated and harmonized travel privileges throughout air, land, and marine POEs. Border patrol checkpoints should be connected to the POEs so that FAST and SENTRI participants have expedited clearance. New POEs should allocate additional space so that advances in technology can be utilized in the future.

2) Pre-Scanning and Pre-Clearance of Cargo

Findings: Pre-clearance and pre-screening of cargo both expedite legitimate trade and increase security by moving inspections away from the congested POEs. Clear standards should be made public for the privately funded pre-clearance projects DHS does and does not support based on a cost/benefit analysis of cargo preclearance.

- Recommendation: The SWBTF recommends that DHS move forward with launching pilot preclearance programs to reduce pressure on the southwest border POEs.

3) Best Practices at POEs

Findings: The SWBTF reiterate, best practices from POEs and between the POEs should be shared and adopted along the entire border.

The following are recommendations from the 4th quarter 2009 SWBTF recommendations report:

- Standardize practices and technology at all POEs including fees, fines, the use of biometric identification, and radar arches.

- Appoint a "best practices" team, composed of members from both government and private sector, to study Mexican and Canadian border POEs and recommend standardized protocols at all southwest border POEs.

4) Drayage Fleets

Findings: The process of draying cargo across the southwest border is inefficient and imposes high economic and environmental costs on the movement of legitimate trade across the border.

- ❖ Recommendation: The SWBTF recommends that DHS engage the private sector to make recommendations on ways to improve the current system of draying goods across the border, including the possibility of eliminating the use of drayage across the border. Currently, a truck trailer full of goods for export from the United States to Mexico arrives at the U.S. side of the border, where the trailer is decoupled from the long haul tractor, and must be coupled to a drayage tractor (frequently old with high pollution as they idle at congested land border POEs), and drayed (transported) from the U.S. side to the Mexican side of the border. After reaching the Mexican side and clearing Mexican Customs, the trailer is again uncoupled and must be recoupled to a Mexican long haul tractor. The process is the same in reverse for goods being exported via tractor trailer truck from Mexico to the U.S. This entire cross-border drayage process, involving three different tractors, adds significant transaction costs to all goods imported and/or exported between the two nations via truck.

- ❖ Following that, the SWBTF recommends that DHS engage the appropriate U.S. and Mexican government partners to implement the recommendations, to include consideration of the elimination the use of drayage at the border all together.

II. Need for Additional Funding Mechanisms for Ports of Entry

To address the need for additional funding for ports of entry expansions, the Task Force recommended:

5) Increasing the use of private/public partnerships and search for additional funding mechanisms to help fund ports of entry improvement;
6) Re-examining the U.S. Government process for planning ports of entry;
7) Updating North American Development Bank's charter to explicitly fund border crossing projects;

8) Establishing a single federal point of contact for project sponsors, for POEs issues including reference material, points of contact, and answers to frequently asked questions.

5) Financing Mechanisms

Findings: Numerous financing mechanisms exist to provide financing assistance for transportation infrastructure projects that could be applied to border crossings. These mechanisms are underutilized. Communities and project sponsors are often unaware of financing mechanisms available for their projects. Project sponsors coordinate with relevant agencies infrequently and engagement of project stakeholders and sponsors varies widely by agency and is frequently ad hoc and relationship-based.

- Recommendation: DHS should work with private sector partners to examine, and expand the use of public/private partnerships. The SWBTF believes that existing examples of partnerships prove the benefit of such relationships and the USG should make all necessary provisions to facilitate the use of them with regards to the building and expansion of POEs. In doing so, the USG should set clear standards for the types of public/private partnership programs it will support.

- A reexamination of the OMB scoring rules for POEs should be conducted to remove barriers to public/private partnerships for border infrastructure, in particular the rules governing capital and operating leases. These scoring rules currently either require GSA and CBP to fund the full cost of the term of a lease or all special purpose assets at the outset of the lease, making it difficult to enter into alternative financing arrangements in lean budget years. The SWBTF urges DHS, and other agencies involved in border infrastructure, to work with OMB, CBO and the House and Senate Budgetary Committees to propose necessary changes.

- The budget for POEs construction and improvements should be shifted from the GSA to DHS in order to streamline the process for new construction of these highly specialized structures.

- The appropriations limit for GSA funding of projects should be increased to at least $10,000,00 in order to enable faster approval of necessary expansions of border infrastructure.

- The Task Force believes that the use of funds generated by tolls and convenience fees could be an effective way to establish revenue streams to fund future border infrastructure projects. DHS should work with both private sector and governmental partners to examine, including potential regulatory changes, the use of tolls and convenience fees to fund border crossing projects, for both private and public projects. DHS should explore the use of these revenue streams to pay for facilities, equipment, operations, maintenance and staffing.

- The Task Force believes that the use of congestion pricing at POEs could reduce waiting time at peak hours while generating revenue for needed improvements and expansions of infrastructure. Congestion pricing is a system of utilizing surcharges during periods of high demand to encourage consumers to utilize POEs at times of lower demand. DHS should work with interagency and private sector partners to establish a congestion pricing pilot program where crossers pay a convenience fee to use POEs at high traffic times.

- An extensive list, developed by the SWBTF, of alternative financing methods can be found in Appendix A of this report. The SWBTF believes these can be useful if used appropriately.

6) Planning Ports of Entry

Findings: The Southwest Border Task Force (SWBTF) recognizes the progress that has been made on streamlining the planning and development of ports of entry (POEs) by increasing interagency communication through, among other avenues, an Interagency Policy Committee.

- Recommendation: The SWBTF encourages the U.S. Government (USG) to continue working towards a centralized, fully binational, coordinated planning process for border infrastructure projects. The interagency process for developing, approving, and building POEs must be transparent to stakeholders and must have enforceable deadlines for the participating agencies.

7) The North American Development Bank

Findings: The North American Development Bank (NADBank) is a potential funding source.

- Recommendation: NADBank's charter should be updated to explicitly fund border crossing projects. NADBank should become a true infrastructure bank, able to provide financing for border crossing projects at terms that incentivize building. It should also speed processing of applications and offer competitive interest rates. The USG has the ability, with cooperation and with consent from the Mexican Government, to alter parts of the NADBank charter. Specifically, sections should be altered to make funds more readily available for border infrastructure projects.

8) State/Local Stakeholders

Findings: The SWBTF has found that POEs project sponsors have to work with several USG agencies to develop their project. The SWBTF has also found that there is not currently one simple location for information regarding the building of, or expansion of a POE for project sponsors to find commonly asked question.

- Recommendation: The SWBTF recommends DHS establish and offer appropriate staff support, preferably within CBP, a single federal point of contact

for project sponsors for POEs issues including reference material, points of contact, and answers to frequently asked questions.

III. Improving DHS Coordination with State, Local, Tribal Law Enforcement

The Task Force noted the importance of how DHS, through coordination and cooperation with state, local, and tribal agencies, can maintain and improve border security. As such, the Task Force recommended:

9) Creating an accessible directory of key borderland officials;
10) Expanding DHS participation in border conferences;
11) Establishing plain language protocol over radios for use by DHS law enforcement across the Southwest border;
12) Formalizing and documenting roles and responsibilities for Federal Law enforcement acting as first responders;
13) Establishing a clear, formal process for SLLE to request, subject to availability, access to air and marine assets for joint operations, emergency response, or other areas;
14) Establishing interagency operating centers to provide tactical support for day-to-day operations;
15) Standardizing classification and declassification protocols to improve information sharing between agencies;
16) Formalize relationships between federal/state/local/tribal/Mexican counterparts.

9) Directory of Key Borderland Officials

Findings: A simple problem that many State and Local Law Enforcement (SLLE) have noted to the SWBTF is a lack of centralized contact information for officials along the border.

- Recommendation: Subject to security considerations, DHS should develop and publish a directory of all borderland sheriffs' offices, local, state and tribal police offices, Department of Public Safety officers, tribal government officials, U.S. Customs and Border Protection (CBP) regional contact information including sector chiefs and port directors, Federal agencies and officials such as Immigration and Customs Enforcement and U.S. Coast Guard (USCG), and as much as possible, Mexican law enforcement agencies. Include a guide to federal US agencies and Mexican government agencies and resources by geographic area.

10) Expand DHS Participation in Border Conferences

Findings: DHS can work to establish relationships with organizations which coordinate SLLE along the southwest border. Doing so will help give a single voice to southwest border SLLE and formalize relationships between SLLE and DHS law

enforcement. One way to do this is to formalize DHS participation in SLLE border conferences such as the Southwest Border Sheriffs' Coalition conference.

- Recommendations: DHS should actively participate in such conference, by giving briefings on current events and best practices and engaging SLLE. DHS should expand its participation and communication with law enforcement coalitions along the border.

11) Plain Language

Findings: Use of "plain language" for official police business over radios is on the rise nationally and throughout the border region. However, the practice has not yet been adopted by all SLLE agencies creating communications barriers in some areas.

- Recommendation: DHS should establish "plain language" as common practice for DHS law enforcement. By setting the model for use of plain language, DHS will encourage SLLE to utilize similar plain language practices to make radio communications unified throughout the border region.

12) First Responders

Findings: In many areas CBP agents are often the first on the scene of an accident or crime.

- Recommendation: Formalize and document roles and responsibilities for Federal Law enforcement acting as first responders. DHS should work to formalize protocols to map out roles and responsibilities for USG officers to act as first responders; coordinate with SLLE to standardize their emergency dispatch protocols. Work to insure that federal law enforcement officers are trained to be able to respond to medical emergencies in areas where they are often the first responders on a scene, and formalize relationships with local emergency responders to ensure effective communication.

13) Air and Marine Assets

Findings: Through the CBP Office of Air and Marine and the USCG DHS has access to air and marine assets that many SLLE agencies do not. It would benefit SLLE to, occasionally and for specific operations, have access to these assets.

- Recommendation: Subject to availability, DHS should establish a clear, formal process for SLLE to request access to air and marine assets for joint operations, emergency response, or other areas where CBP and USCG air and marine assets

are available and can be effectively utilized by SLLE. Include in the process a publicized clear outline for SLLE on how they can reach out to CBP and USCG to utilize such assets.

14) Interagency Operating Centers

Findings: As part of the deliberation process, SWBTF members visited the IOC in Charleston, SC and were given a tour of the SeaHawk program. SeaHawk is a fine example of tactical coordination between federal, state, and local law enforcement.

- ❖ Recommendation: DHS should establish Interagency Operating Centers (IOCs) along the Southwest border to provide tactical support in day-to-day operations for federal, state, and local law enforcement agencies. Best practices should be replicated along the Southwest border to create a "force multiplier" effect, formalize relationships between law enforcement agencies, and utilize information sharing from fusion centers for tactical missions.

15) Standardize Classification and De-classification Protocols

Findings: SLLE experiences problems obtaining access to sensitive USG information because there are not currently standardized protocols for either applying for, or granting security clearances for SLLE.

- ❖ Recommendation: SWBTF believes that DHS should create and publicize directions for determining which SLLE personnel should receive security clearances. DHS should standardize, and make public, these guidelines. The process to obtain the security clearances, including who to contact for answers to questions about security clearances, must be easily accessible. Guidelines for receiving security clearances should be based on several factors including, but not limited to:
    - Command Structure - SLLE commanders need to have security clearances if they have personnel in their command who have security clearances and access to classified information;
    - Need-to-Know – DHS should work with SLLE to determine who has a need for access to classified information;
    - Emergency Decision Making Process – Identifying who will be in command in the event of a crisis will help determine who should be receiving security clearances.

- ❖ Develop standards that encourage SLLE to apply for clearances.

- ❖ DHS should stand up a Task Force which includes SLLE officers to specifically discuss and give advice on developing guidelines for the USG for issuing security clearances.

16) Border Relationships

Findings: Much of the cooperation between law enforcement agencies along the border, especially with Mexican counterparts, is based on informal relationships established individually.

- Recommendation: DHS should lead the way in formalizing relationships between CBP sector chiefs and port directors, area SLLE, and Mexican counterparts. By formalizing the relationships, and holding regular meetings among area officials, DHS can help foster the relationships that make law enforcement along the border effective.

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Appendix A

Financing Mechanisms

Alternative financing mechanisms that should be examined for border crossing infrastructure include:

- Debt Financing Structures:
  - **Grant Anticipation Revenue Vehicles (GARVEEs) -** GARVEEs are debt instruments issued when moneys are anticipated from a specific source, typically federal-aid grants, to advance the upfront funding or to accelerate the funding and construction of critical transportation infrastructure.[1]
  - **State Infrastructure Bank Loans -** State Infrastructure Bank Loans are low-cost financing tools made available to public agencies to support a wide array of infrastructure projects. All four border states have State Infrastructure Banks.
  - **Private Activity Bonds (PAB) -** Private activity bonds are bonds issued by state or local governments to finance public goods projects developed by private entities. PAB projects include surface transportation projects that are otherwise receiving federal assistance. As an additional incentive, private projects serving public purposes are eligible for tax-exemption.[2]
  - **Build America Bonds -** Build American Bonds program provides low-cost financing for state and local governments. They allow a new direct federal payment subsidy, are taxable bonds issued by state and local governments that will give them access to the conventional corporate debt markets.[3]
- Federal Credit Assistance Programs:
  - **Railroad Rehabilitation & Improvement Financing (RRIF)** – The RRIF program provides direct federal loans and loan guarantees to finance development of railroad infrastructure. The funding may be used to: acquire, improve, or rehabilitate intermodal or rail equipment or facilities. Priority is given to projects that enhance public safety and the environment and promote US competitiveness.[4]
  - **Transportation Infrastructure Finance and Innovation Act (TIFIA) Loans** – TIFIA program provides Federal credit assistance in the form of direct loans, loan guarantees, and standby lines of credit to finance surface transportation projects of national and regional significance. TIFIA loans provide substantial credibility for project sponsors and can be leveraged to attract other private financing of up to 10 times the value of the TIFIA loan.

[1] http://www.dot.ca.gov/hq/innovfinance/download/garvee_guidelines.pdf
[2] http://www.fhwa.dot.gov/ipd/p3/tools_programs/pabs.htm
[3] http://www.ustreas.gov/press/releases/docs/BuildAmericaandSchoolConstructionBondsFactsheetFinal.pdf
[4] http://www.fhwa.dot.gov/tea21/factsheets/r-rrehab.htm

- **Section 129 Loans** - Section 129 of Title 23 allows Federal participation in a state loan to support projects with dedicated revenue streams. States may make Section 129 loans to a public or private entity to construct either a toll project that is eligible for Federal-aid funding or a non-toll highway project that has a revenue source specifically dedicated to support the project.[5]

- Public/Public Partnerships:
  - In addition to the much discussed public/private partnerships, public/public partnerships have promise for funding new POEs and should be examined along the border. State, local and federal government agencies can collaborate to fund border crossing infrastructure through a mix of sources. The new Otay Mesa East project is an example of how different levels of government can combine to fund POEs.
- Public/Private Partnerships:
  - DHS should work with government and private sector partners to facilitate the use of public/private partnerships for border infrastructure. In doing so, the USG should set clear funding requirements for potential private sponsors of border crossing projects, including the costs of facilities, operations and maintenance, and staffing for federal agencies.
- Development Banks:
  - Numerous development banks and organizations fund international infrastructure projects with economic and/or environmental benefits. DHS should engage with these institutions to see if they could provide financing for southwest border crossings and supporting roads. Potential partners include the Export-Import Bank and Overseas Private Investment Corporation within the US Government, the Inter-American Development Bank, and the Mexican National Bank of Public Works and Services (BANOBRAS).
- Additional Potential Revenue Sources:
  - Carbon Financing through the World Bank and IADB – Speeding crossings at congested POEs could substantially reduce the emissions caused by idling cars and trucks. The World Bank Carbon Financing Unit uses money contributed by governments and companies in Organization for Economic Cooperation and Development countries to purchase project-based greenhouse gas emission reductions in developing countries and countries with economies in transition.[6]

[5] http://www.fhwa.dot.gov/innovativefinance/ifg.htm
[6] http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/ENVIRONMENT/EXTCARBONFINANCE/0,,menuPK:4125909~pagePK:64168427~piPK:64168435~theSitePK:4125853,00.html

Appendix B

Southwest Border Task Force Tasking

MEMORANDUM FOR: Judge William H. Webster, Chairman
Homeland Security Advisory Council

FROM: Secretary Janet Napolitano

SUBJECT: Homeland Security Advisory Council – Southwest Border Task Force Tasking

As discussions about the future of American borders continues, two themes reoccur; infrastructure at and surrounding ports of entry (POEs) and communication and cooperation among law enforcement along the border.

Trade between the US and Mexico has quadrupled in the last fifteen years, stressing POE infrastructure. The in the deliberations for the first recommendations, the SWBTF noted the need to expand existing ports and surrounding infrastructure and build additional POEs. Please explore additional avenues to expand the POEs facilities that allow us to process secure flows of goods and people.

The SWBTF deliberations highlighted several successful coordination programs between federal law enforcement and state, local, and tribal law enforcement, such as Operation Stonegarden. In addition to grant programs, please consider ways to enhance DHS cooperation with state, local, and tribal law enforcement.

I request HSAC examine these two topics. In particular, I ask that the deliberations focus on two main issue areas:

1) Ports Of Entry: Examine alternative methods to finance new POEs and expansions. How can public/private partnerships and federal/state partnerships be used to finance new projects? How can DHS better engage private sector partners to promote use of trusted traveler programs and assist in funding dedicated infrastructure for those programs?

2) Coordination with state, local and tribal public safety agencies: How can DHS enhance our cooperation with, and support to, local public safety agencies along the border in areas such as logistics, communications, training, resources and emergency response Are there best practices that DHS should extend to both northern and southern borders? What type of mechanism should DHS use to analyze and disseminate best practices should be used in the future?

Appendix C

Southwest Border Task Force Membership

William Webster (Chair), Retired Partner, Milbank, Tweed, Hadley, & McCloy, LLP
James Jones (Vice Chair), Chairman and Chief Executive Officer, Manatt Jones Global Strategies
Guadalupe Trevino (Vice Chair), Sheriff, Hidalgo County, Texas
Norman Augustine, Retired Chairman and Chief Executive Officer, Lockheed Martin Corporation
Ruben Barrales, President and Chief Executive Officer, San Diego Regional Chamber of Commerce
Andrea Bazan, President, Triangle Community Foundation
Robert Bonner, Senior Principal, Sentinel Homeland Security Group and Counsel, Gibson, Dunn & Crutcher, LLP
Ray Borane, Former Mayor, City of Douglas, Arizona
Raymond Cobos, Sheriff, Luna County, New Mexico
John Cook, Mayor, City of El Paso, Texas
Jeffrey Davidow, President, Institute of the Americas
Richard Dayoub, President and Chief Executive Officer, Greater El Paso Chamber of Commerce
Victor Flores, Director, Executive Projects, Arizona-Mexico Commission
Francis "Pancho" Kinney, Vice President, HNTB Federal
Melvyn Montano, New Mexico National Guard
Kenny Montoya, Adjutant General, New Mexico National Guard
Ned Norris, Chairman, Tohono O'odham Nation
Ralph Ogden, Sheriff, Yuma County, Arizona
Evelyn Rodriguez, President and Chief Executive Officer, Rodriguez Health Consulting Services
Robert Ross, President and Chief Executive Officer, The California Endowment
Jerry Sanders, Mayor, City of San Diego, California
Maurice Sonnenberg, Senior International Advisor, JP Morgan

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Appendix D

Subject Matter Experts

Karen Hedlund, Chief Counsel, Federal Highway Administration
Norman F. Anderson, President & CEO, CG/LA Infrastructure LLC
Chief David Hoffman, Acting Division Chief, Southwest Border, U.S. Customs and Border Protection
Captain Mark Wilbert, U.S. Coast Guard
Captain John Koeppen, U.S. Coast Guard
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Jeff Klein, Managing Director, Equity Group Investments
Matthew L. Stentz, Unit Chief, U.S. Immigration and Customs Enforcement
J. Chappell H. Lawson, Executive Director, Office of Policy and Planning U.S. Customs and Border Protection
Jaime Vega, Senior Policy Analyst, Office of State, Local & Tribal Affairs, Office of National Drug Control Policy
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