

# Edward V.A. Kussy

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With nearly 40 years of experience holding senior positions in federal government, Ed Kussy is one of the nation's leading experts on federal surface transportation policy and regulations. He uses this background to provide unique insight on many of the Firm's most important matters.

Before joining the Firm, Ed served as deputy chief counsel (top career lawyer) at the Federal Highway Administration in Washington, D.C. There, he helped develop and implement the innovative federal policies that support public-private partnerships (P3s) – such as the U.S. Department of Transportation's policies on Private Activity Bonds (PABs), the Transportation Infrastructure Finance and Innovation Act (TIFIA) and SEP-15. He also helped draft and set in motion many laws governing the Federal-aid Highway Program, which provides financial assistance for construction, maintenance and operation of the nation's 4.1 million-mile highway network. Over the course of his federal career, Ed has worked on virtually every part of the federal aid highway program and aspects of many other federal transportation programs, including issues related to the use of airspace and federal utilities policies. His advice has advanced a host of major transportation projects across the United States.

Ed also offers vast experience dealing with the National Environmental Policy Act and other environmental laws impacting transportation planning and construction. While at the USDOT, he helped develop environmental regulations and policies governing the Federal-aid Highway Program. He has worked on hundreds of NEPA and other cases, including several that went to the U.S. Supreme Court.

Ed began his career as an environmental lawyer and served for many years as a professorial lecturer in environmental law at George Washington University Law School.

## EXPERIENCE

**Arizona Department of Transportation.** Part of the legal team representing the Department against an environmental challenge by local groups and a Native American community to the \$1.8 billion South Mountain Freeway in Phoenix. ADOT prevailed on all counts in defense of NEPA and Section 4(f) challenges in *Protecting Arizona's Resources & Children v. FHWA*, U.S. Dist. Ariz. Case Nos. CV-15-00893; 012121 (D. Ariz. Aug. 19, 2016, Granting ADOT's Motion for Summary Judgment). The project is currently under construction, and on December 8, 2017, the Ninth Circuit Court of Appeals unanimously rejected two challenges to the 2016 decision, No.16-16586, No. 16-16605, --- Fed. Appx. ----, 2017 WL 6146939 (9th Cir. Dec. 8, 2017) (memorandum op'n). Ed also advised ADOT on federal laws and regulations regarding commercial activity at highway rest areas.

**City and County of Honolulu – Honolulu High Capacity Transit Corridor.** Advisor to the legal team on a \$5.2 billion, 20-mile elevated rapid-transit line that will connect West Oahu with downtown Honolulu and serve major commercial and tourist destinations. Nossaman has assisted the City and County with procurement matters involving the planning, financing, design, construction and operation of the Honolulu High Capacity Transit Corridor – the first project of its kind in the state. Ed advised on federal environmental requirements and helped successfully defend the City and County against a lawsuit contending federal officials failed to consider transit alternatives or properly vet the route's impact on historic sites. In a decision of national importance for rail transit and highway projects, the Ninth Circuit Court of Appeals upheld the suit's dismissal in March 2014. The project is under construction.

**Interstate JCDecaux – Chicago Digital Sign Network.** Advisor to the world's largest outdoor advertiser in connection with a major billboard P3 project in Chicago, which required the passage of state and federal legislation to proceed. In 2013, the City made a deal with a partnership of Paris-based JCDecaux and regional outdoor advertising company Interstate Outdoor to erect new state-of-the-art large-format digital billboards on City-owned land adjacent to Chicago expressways. The signs will post weather, traffic and missing person alerts; public event promotions and a series of rotating ads. The project, built at no cost to the City, will earn \$700 million in revenue over the next 20 years, generating payments of at least \$150 million to the City. Nossaman is also helping the company pursue similar projects in other large metropolitan areas including Los Angeles and New York City.

**Texas Department of Transportation – P3 Program.** Advisor to the legal team serving as outside counsel to the agency on this groundbreaking program. Texas's statewide comprehensive development agreement program represents the largest P3 transportation program in the U.S. Nossaman is assisting the Department with environmental issues, procurement, contract documents, negotiated concession agreements and innovative financing arrangements (including applications to the federal TIFIA credit assistance program) for this massive program.

**American Association of State Highway and Transportation Officials – Federal Transportation Legislation.** Advisor to AASHTO on the impact of transportation legislation, including the expansion of federal credit assistance programs like TIFIA, Private Activity Bonds and a national infrastructure bank.

**Treasure Island Community Development – Federal Bridge Program.** Advisor to state and local officials and project developers regarding the federal highway bridge program – advice that led to availability of federal funding for a \$100 million ramp project connecting the Treasure Island Development with the Bay Bridge. A joint venture of Lennar Corporation and Wilson Meany Sullivan, the Treasure Island project includes the 405-acre redevelopment of the former naval station and parts of Yerba Buena Island in the San Francisco Bay between San Francisco and Oakland.

**Highway Projects – Disadvantaged Business Enterprise and Buy America Programs.** Advisor to numerous clients on compliance with federal DBE and Buy America issues as they apply to federally funded highway projects, such as DBE and small business provisions in contracts for the Presidio Parkway project in San Francisco.

**Project Labor Agreements – Federal Requirements.** Advisor to various states on the form and content of project labor agreements – in particular compliance with federal requirements.

**Orange County Transportation Corridor Agencies (TCAs) – Surface Transportation Legislation.** Worked with congressional staff on legislation reauthorizing federal surface transportation programs.

## INSIGHTS

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### SPEAKING ENGAGEMENTS

Panelist, "Mileage Based User Fees," Transportation Research Board's 101st Annual Meeting, Washington, DC, 01.11.2022

Moderator, "Environmental and Transportation Initiatives in the Biden Administration," Transportation Research Board's 101st Annual Meeting, Washington, DC, 01.11.2022

Panelist, "Legal Issues Regarding Mileage Based User Fees," Transportation Research Board's 60th Annual Workshop on Transportation Law, 09.13.2021 – 09.15.2021

Moderator, "Environment and Transportation Initiatives in the Biden Administration," Transportation Research Board's 60th Annual Workshop on Transportation Law, 09.13.2021 – 09.15.2021

Speaker, "The First 100 Days of President Biden's Environmental Policy: Revolution or Back to Basics?," Nossaman Webinar, 04.15.2021

Moderator, "The New NEPA Regulations: A Practical Guide to What You Need to Know," Nossaman Webinar, 12.10.2020

Moderator and Speaker, "The Integrity of the Profession: Discrimination, Harassment, and Attorney Misconduct," Transportation Research Board's 59th Annual Workshop on Transportation Law, 09.15.2020 - 09.16.2020

Speaker, "Weathering the Storm: Extreme Weather & Climate Change," Environmental Law Institute Webinar, 06.25.2020

Speaker, "Lessons Learned from 100 Years of Project Delivery Workshop," 2020 Transportation Research Board Annual Meeting, Washington, DC, 01.12.2020

Panelist, "Past, Present and Future of Legal Ethics," Transportation Research Board's 58th Annual Workshop on Transportation Law, Cleveland, OH, 07.24.2019

Speaker, "Preparing for a P3 Procurement," U.S. Department of Transportation's Federal Highway Administration's Center for Innovative Finance Support Webinar Series, 06.24.2019

Speaker, "An Overview of the P3 Procurement Guide," U.S. Department of Transportation's Federal Highway Administration's Center for Innovative Finance Support Webinar Series, 06.17.2019

Speaker, "Transportation for a Smart, Sustainable, and Equitable Future," Transportation Research Board's 98th Annual Meeting, Washington, DC, 01.13.2019

Moderator and Panelist, "Creating and Maintaining an Ethical Culture in Your Organization," Transportation Research Board's 57th Annual Workshop on Transportation Law, Cambridge, MA, 07.18.2018

Moderator, "The Scope of the Administrative Record in Environmental Litigation," Transportation Research Board's 57th Annual Workshop on Transportation Law, Cambridge, MA, 07.17.2018

Moderator, "A Distinguished Lecture, Some Duties You Owe Your Public Client, and An Ethics Free For All," Transportation Research Board's 56th Annual Workshop on Transportation Law, Salt Lake City, UT, 08.02.2017

Speaker, "New Era of Transportation Civil Rights Challenges: Going Beyond Environmental Justice," Transportation Research Board's 96th Annual Meeting, Washington, DC, 01.10.2017

Speaker, "Diversity and Discrimination: What's up in Civil Rights Enforcement in Transportation Planning, Design, and Implementation," Transportation Research Board's 96th Annual Meeting, Washington, DC, 01.10.2017

Speaker, "Don't Sit on Your A\$\$ets! Innovative Approaches to Raise Revenue," 2017 Transportation Research Board 96th Annual Meeting, Washington, DC, 01.08.2017

Speaker, "Diversity and Discrimination: What's Up in Civil Rights Enforcement?," Transportation Research Board's 55th Annual Workshop on Transportation Law, Washington, DC, 07.20.2016

Moderator and Commenter, "Ethics Chaos: Three Ethics Traps, Controversies, and Perils and How to Avoid Them," Transportation Research Board's 55th Annual Workshop on Transportation Law, Washington, DC, 07.20.2016

Speaker, "Recovering Fair Market Value from 'Utilities' Seeking Longitudinal Occupation of Limited Access Facilities," Transportation Research Board's 55th Annual Workshop on Transportation Law, Washington, DC, 07.19.2016

Speaker, "Ethics Issues Grounded in the Uniform Act and Other Tales," Condemnation Summit XVIII, Phoenix, AZ, 04.29.2016

Speaker, "Section 106 and Section 4(f): Fraternal Twins Turn 50," Transportation Research Board's 95th Annual Meeting, Washington, DC, 01.12.2016

Moderator and Speaker, "The Ethics of the Deal," Transportation Research Board's 54th Annual Workshop on Transportation Law, Chicago, IL, 07.22.2015

Speaker, "Amending Federal State Agreements and Regulations," Outdoor Advertising Association of America's Annual Legal Seminar, 12.2014

Speaker, "Exploring the Roots of Section 4(f) of Department of Transportation Act and Citizens to Preserve Overton Park v. Volpe: Discussion by Those Who Made it Happen," Transportation Research Board's 91st Annual Meeting, Washington, DC, 01.25.2012

Moderator and Speaker, "Ethics Session: Subjects to be Addressed in Agency Ethics Codes and Social Media Issues for Attorneys," Transportation Research Board's 50th Annual Workshop on Transportation Law, Seattle, WA, 07.20.2011

Moderator and Speaker, "50 Years of TRB Workshops — The Legacy of Citizens to Preserve Overton Park v. Volpe," Transportation Research Board's 50th Annual Workshop on Transportation Law, Seattle, WA, 07.17.2011

Speaker, "Private Sector Perspectives on Risk Management," Transportation Research Board Workshop: NCHRP 20-24 (71) Expediting NEPA Decisions and other Practitioner Strategies for Addressing High Risk Issues in Project Delivery, Washington, DC, 03.15.2011

Speaker, "Ethics for Transportation Professionals," Transportation Research Board 89th Annual Meeting, Washington, DC, 01.12.2010

Speaker, "American Recovery and Reinvestment Act: What Have We Learned?," Transportation Research Board 89th Annual Meeting, Washington, DC, 01.11.2010

Speaker, "Professional Responsibilities and the American Recovery and Reinvestment Act: Duties and Challenges," Transportation Research Board's 48th Annual Workshop on Transportation Law, Denver, CO, 07.22.2009

## **PUBLICATIONS**

Co-Author, "NEPA is Not the Right Vehicle to Address Climate Change," *Eno Transportation Weekly*, 10.22.2021

Co-Author, "NEPA Rules Rewrite: Déjà Vu All Over Again," *Nossaman eAlert*, 10.12.2021

Co-Author, "Extreme Weather and Climate Change," *The Environmental Law Reporter*, 12.01.2020

Co-Author, "NEPA Rules Rewrite: What Else Do You Need to Know?," *Nossaman eAlert*, 09.01.2020

Author, "NEPA Rules Rewrite: Public Involvement Process," *Nossaman eAlert*, 08.20.2020

Co-Author, "NEPA Rules Rewrite: Initiation of the Environmental Impact Statement Process," *Nossaman eAlert*, 08.06.2020

Author, "NEPA Rules Rewrite: What's in a Name?," *Nossaman eAlert*, 07.29.2020

Author, "Proposed NEPA Regulations: No Significant Changes for Highway and Transit Projects," *Eno Transportation Weekly*, 02.28.2020

Author, "CEQ's Proposed NEPA Regulations: Are They Really That Terrible or So Very Helpful for Surface Transportation Projects?," *Eno Transportation Weekly*, 02.21.2020

Co-Author, "Public-Private Partnership (P3) Procurement Guide," *U.S. Department of Transportation*, 03.01.2019

Co-Author, "Environmental Provisions of the FAST Act," *The Natural Lawyer*, 01.04.2016

Co-Author, "Talking Transportation Dollars & Sense: The Future of Funding," *Eno Center for Transportation*, 04.08.2015

Co-Author, "Guidance for Managing NEPA-Related Risks and Other Risks in Project Delivery," *National Cooperative Highway Research Program*, 05.2014

Co-Author, "CEQ Issues Final Guidance on Categorical Exclusions," *The Natural Lawyer*, 01.01.2011

Co-Author, "The American Recovery and Reinvestment Act: Implementing its Highway and Rail Related Provisions," *American Bar Association Transportation Committee Quarterly*, Spring 2009

Author, "Surface Transportation and Administrative Law: Growing Up Together in the 20th Century," *Transportation Research Record #1527*, 01.01.1996

## HONORS & RECOGNITIONS

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Selected to the Super Lawyers List for 2014-2016

Secretary's Award for Outstanding Public Service, USDOT, 2008

General Counsel's Award for Lifetime Legal Achievement, USDOT, 2008

Distinguished Career Service Award, USDOT, 2008

Lester Boykin Award, USDOT, 2008 (first recipient of a new award designed to recognize particularly creative FHWA attorneys in honor of the first FHWA Chief Counsel)

Heartland Award, 2007 (given to an FHWA employee who has made major contributions of marked national significance to FHWA programs, in honor of those who died in the Oklahoma City bombing)

Secretary's Gold Award, USDOT (twice), 2007 (for the Minneapolis I-35 Bridge Response Team, and for the Secretary's Urban Partnership Initiative Team)

Secretary's Award for Partnering for Excellence, USDOT, 2006 (for the DOT Congestion Initiative Working Group)

SES Presidential Rank Award U.S. Government (twice) Distinguished Executive, 2000, Meritorious Executive, 1995

Distinguished Lecturer, Annual Meeting of the Transportation Research Board, 1996

Exceptional Contribution to Transportation Law, Federal Bar Association, 1994

## COMMUNITY & PROFESSIONAL

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Transportation Research Board of the National Academies: Emeritus Member of the Legal Resources Group, 2017; Member of Technical Activities Council, 2009 – 2012; Chair of Legal Resources Group Executive Committee, 2009 – 2012; Chair of Committees on Environmental Issues in Transportation Law, 1985-1991; Member of Transit and Intermodal Law; Past Member of Committee on Project 20-6, Legal Problems Arising out of Highway Programs, under National Cooperative Highway Research Program

Federal Bar Association, Past Member and Chair of the Motor Carrier and Surface Transportation committees

Department of Transportation Law Library Advisory Group, Founder and Past Chair

## PRACTICES

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Infrastructure

Environment & Land Use

Government Relations & Regulation

Legislation & Policy

Regulatory & Compliance Matters

## INDUSTRIES

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Government & Public Sector

Transportation

## EDUCATION

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Harvard University, John F. Kennedy School of Government, Program for Senior Managers in Government, John F. Kennedy School of Government, 1991

George Washington University Law School, L.L.M., 1981, Environmental Law with Highest Honors

University of Michigan Law School, J.D., 1971

University of Michigan, B.A., 1968

## LANGUAGES

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German

## ADMISSIONS

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District of Columbia

U.S. Supreme Court

Supreme Court of Pennsylvania

U.S. Court of Appeals, Third Circuit

U.S. Court of Appeals, Ninth Circuit

U.S. Court of Appeals, District of Columbia Circuit

U.S. District Court, Eastern District of Pennsylvania