

**Testimony of Nancy H. Sutley**  
**Council on Environmental Quality**  
**Before the**  
**Committee on Environment and Public Works**  
**MAP-21 Implementation Hearing**  
**September 18, 2013**

Chairman Boxer, Ranking Member Vitter, and Members of the Committee, thank you for the opportunity to discuss the Administration's efforts to implement the Moving Ahead for Progress in the 21st Century Act or, as it is commonly known, "MAP-21." As you know, the Administration takes seriously the development of the Nation's transportation infrastructure in order to improve the mobility of our communities and foster economic growth and I am pleased to be here today to talk about our efforts in implementing MAP-21.

Implementation of MAP-21 is being led by the Department of Transportation (DOT) with the cooperation of our natural resource agencies, such as the Department of Interior (DOI). I will let them speak today on the specifics of implementing the law and use my time to talk about the Administration's broader efforts to expedite permitting of critical infrastructure projects and the importance of the National Environmental Policy Act (NEPA). CEQ maintains its statutory role of overseeing agency implementation of NEPA.

One of the key areas of focus for the Administration is cutting red tape to help businesses grow and improve the transportation options and mobility of the Nation. We support NEPA's goals of giving communities the opportunity for input into Federal decisions that affect them and ensuring that those decisions are informed by good analysis of alternatives and project impacts. CEQ advances those goals by working to avoid redundancy and conflict in the environmental review process, and by fostering an efficient, cohesive environmental policy. A great example of this is our handbook on coordinating NEPA and the California Environmental Quality Act (CEQA), one of the most robust state environmental laws in the country. The handbook is intended to help in the development of a single environmental review process that can meet the requirements of both statutes.

We believe that better agency collaboration and coordination, combined with good guidance to implement existing authorities and missions in an efficient manner, leads to better outcomes for those doing business with the Federal government and communities affected by Federal decisions, as well as a healthier environment and savings for the taxpayer.

Under this Administration, CEQ has been focused consistently on increasing efficiency in Federal processes, including infrastructure permitting, and identifying new areas to improve the performance of the Federal government. American taxpayers expect and deserve nothing less.

## **The Importance of the National Environmental Policy Act**

I'd like to offer a few words about the importance of NEPA, because I think it provides important context given our discussion about Federal permitting for transportation projects.

Today, I think we take for granted that the public has a right to participate in Federal decisions regarding the environment, energy and natural resources, but in fact it was in NEPA that Congress and the President clearly established this right. It wasn't that long ago that the public had little voice in the Federal decisionmaking process regarding all aspects of the human environment, which includes the social and economic aspects of Federal decisions, for projects that affected them. Prior to NEPA and Federal agencies beginning to embrace environmental stewardship, dams displaced Tribes or water projects harmed important ecosystems. Our country is still addressing such impacts decades later for some of these projects. Before NEPA, there were limited opportunities for preventing the Federal Government from ignoring the environmental concerns of affected communities. It is also important to remember that the House of Representatives approved NEPA by a vote of 372 to 15 and that the Senate passed NEPA by voice vote without any recorded dissent.

NEPA democratized the Federal decisionmaking process and instilled accountability in Federal actions by formally including environmental considerations and public input into Federal decisions. Today, it is NEPA that ensures the ability of the public, communities, State and local governments and industry to have a seat at the table when Federal agencies make decisions that impact our communities and the environment.

As eight of my predecessors at CEQ from both Republican and Democratic administrations noted to Congress a few years ago,

“Consideration of the impacts of proposed government actions on the quality of the human environment is essential to responsible government decision-making. Government projects and programs have effects on the environment with important consequences for every American, and those impacts should be carefully weighed by public officials before taking action. Environmental impact analysis is thus not an impediment to responsible government action; it is a prerequisite for it.”<sup>1</sup>

At its heart, NEPA recognizes that we need to look before we leap into making a decision and that citizens, communities, local and State governments, Indian tribes, and businesses all have a vital interest in government actions. And, more often than not, their unique knowledge of the risks, consequences, and possible alternatives to a proposed project can produce better decisions. And better decisions reduce the risk of future litigation and project delays, which is a shared goal of the Congress and this Administration.

A few facts about NEPA:

---

<sup>1</sup> Letter to Rep. Cathy McMorris, Chair of the Task Force on Improving the National Environmental Policy Act. September 19, 2005. Signed by former Chairs and General Counsels of CEQ.

- More than 90% of all Federal actions are quickly handled through categorical exclusions, the least intensive form of NEPA review.
- Only a very small fraction of projects or decisions require a full Environmental Impact Statement (EIS), the most time intensive NEPA review. In the case of the 275,000 projects funded under the Recovery Act, only 841 projects (or 0.44%) required a full EIS. 96% of all Recovery Act projects used categorical exclusions.
- Each year, Federal agencies conduct hundreds of thousands of actions, yet the amount of litigation on these is relatively small. Between 2001 and 2011, no more than 175 NEPA cases were filed each year – with fewer than 100 cases filed during several of those years including 2010 and 2011.

## **NEPA and Surface Transportation Projects**

Since today's hearing is focused on MAP-21 implementation and the permitting of surface transportation projects, I want to provide this Committee with some important facts about these types of projects and the NEPA process. I would note for the Committee that CEQ and DOT developed principles on the implementation of MAP-21. A copy of those principles is attached with my written testimony.

The Federal Highway Administration (FHWA) estimates that, annually, about 9,700 projects are covered by CEs), which involve no significant environmental impacts and, hence, require limited documentation, analysis, or review under NEPA. Approximately 130 EAs are processed by FHWA in a year, which can take just a couple of months to complete, and 30 projects require a full EIS, the most rigorous form of NEPA analysis. Of the projects completed each year, it is estimated that 98% are CEs, 1.7% are EAs and only 0.3% are EISs.

In 2011 and 2012<sup>2</sup>, the Congressional Research Service (CRS) found in its analysis of transportation project delivery that, “The overwhelming majority of highway projects are deemed to have no significant impact on the environment and require no or limited environmental review or documentation under NEPA.”<sup>3</sup>

For the Federal Transit Administration (FTA), the majority of FTA projects fall within the CE class of action. Of the projects completed per year (2010-2012), FTA estimates that on average per year approximately 3,000 projects (99%) were classified as CEs, 20 projects were (0.6%) were processed as EAs, and 5 projects (0.2%) were processed as EISs.

In our conversations with these agencies, they confirm CRS' findings. While it can be true that litigation over NEPA documents or an overly detailed NEPA process due to the fear of litigation may result in project delays, many other realities of major project development often are incorrectly attributed to the NEPA process. Challenges such as securing project funding, low priority, local opposition to a project, project complexity, or changes in project scope are more

---

<sup>2</sup> CRS Report R42479, “The Role of the Environmental Review Process in Federally Funded Highway Projects.” April 11, 2012.

<sup>3</sup> CRS Report R41947, “Accelerating Highway and Transit Project Delivery: Issues and Options for Congress.” August 3, 2011.

often responsible for delays in building projects. However, because these issues are frequently identified during the NEPA process, NEPA itself is often targeted as the culprit.

It's also important to bear in mind that some State and local jurisdictions have their own permitting processes, which can and do add time or delay to federally funded projects, in some cases at the request of State and local officials. And States and local communities often vary in their available resources, both in staff and funding, and levels of sophistication to permit challenging projects.

We all want to see the permitting of critical transportation projects – from highways and bridges, to bike paths, streetcars, and intermodal facilities – built in an expeditious and timely manner. However, we should focus on the most common causes of delay.

### **The Administration's Efforts on Federal Permitting and Infrastructure Projects**

With some basic facts out of the way, I'd like to speak about our efforts within the Administration to cut red-tape for infrastructure projects. Major infrastructure projects typically require multiple permits and reviews from multiple agencies across multiple jurisdictions, at times leading to confusion, duplication, and delay. CEQ is working closely with the Office of Management and Budget (OMB) and Federal agencies to address these concerns with the goal of saving time by enhancing efficiencies in the review processes of major infrastructure projects, without sacrificing the important protections for communities and the environment embedded in our laws. We've worked hard to maintain the fundamental precept of NEPA, which is ensuring the ability of the public, communities, State, local and tribal governments, environmental organizations and industry to have a seat at the table when agencies are making decisions, while at the same time identifying steps to cut time and save money. Moreover, NEPA ensures that Federal agencies consider environmental consequences of proposed major actions; we take this obligation very seriously as we seek to build critical infrastructure that creates jobs and ensures America's competitiveness in the future.

We believe our work on modernizing infrastructure permitting can serve as a model for maintaining the integrity of NEPA while finding efficiencies across the Federal government to enhance our review and permitting processes for major infrastructure projects and improving outcomes for the environment and communities.

For example, the Los Angeles County Metropolitan Transportation Authority's (LACMTA) \$2.058 billion Crenshaw/LAX Transit Corridor project is a good example of our permitting modernization efforts. The project was one of the FTA's first projects piloting a new streamlined risk assessment process that helped identify and mitigate project risks more efficiently. Through the project review process, the LACMTA determined that a five-mile stretch of the project could utilize a rarely-used existing freight rail line corridor. The freight railroad executed an agreement and obtained a regulatory exemption to abandon the line and allow LACMTA to use it. That decision decreased project costs, saved time and reduced disturbances for the nearby community by using existing right-of-way.

The Tappan Zee Bridge Replacement project in Westchester County, New York is another good example of our progress. The bridge serves about 138,000 vehicles a day, and represents a vital link in the regional and national transportation network. Similarly large and complex projects can require as many as four years or more for review, but through a coordinated effort by numerous State and Federal agencies, the project team was able to set an aggressive schedule and completed the Federal permitting and review process in 1.5 years, saving up to three years on the timeline of a multi-billion project that will create an estimated 45,000 jobs.

Furthermore, FHWA has had an “Every Day Counts” (EDC) initiative in place for several years. EDC is aimed at accelerating the delivery of transportation projects without compromising the quality of the environment. Many good ideas and best practices have been identified and shared to date.

We’ve already learned from our infrastructure permitting work that:

- Bringing agencies, project applicants and stakeholders to the table at the beginning of the process saves time and money – early project development work involving affected resource agencies often avoids or minimizes potential conflicts over routing and impacts on natural resources.
- Establishing mutually agreed-to project milestones and target schedules – not arbitrary deadlines – for complex or significant projects fosters a coordinated process that saves time and money.
- Concurrent, coordinated, and collaborative– rather than isolated and sequential – reviews across Federal agencies and with States, Indian tribes and local government saves time and money.
- Using information technology tools, like GIS tools that make relevant scientific and environmental data easily accessible to project applicants and facilitate good project siting or project dashboards that make timelines and milestones public on the Internet, along with key project information and status, increases transparency and helps to save time and money.

In March of 2012, the President issued an Executive Order<sup>4</sup> directing Federal agencies to expedite permitting and review decisions for infrastructure projects. We can now show that these efforts have helped to improve permitting timelines by several months to several years, while at the same time improving environmental and community outcomes. You can track the results of specific projects on the Administration’s Infrastructure Permitting Dashboard,<sup>5</sup> which provides an unprecedented level of transparency into the Federal permitting and review processes.

---

<sup>4</sup>Executive Order 13604 – “Improving Performance of Federal Permitting and Review of Infrastructure Projects.” March 22, 2012. <http://www.whitehouse.gov/the-press-office/2012/03/22/executive-order-improving-performance-federal-permitting-and-review-infr>.

<sup>5</sup> Federal Infrastructure Projects Permitting Dashboard: <http://www.permits.performance.gov/>.

We are also setting new goals based on this progress. In May 2013, the President signed a Presidential Memorandum<sup>6</sup> that takes the next step by calling on agencies to institutionalize the time-and cost-saving tactics identified over the past year and setting a goal of cutting aggregate Federal permitting timelines for major infrastructure projects of up to 50 percent. These best practices range from expanding use of information technology to cut paperwork and provide agencies with better information faster, to making time-saving collaboration the norm. For example, by having multiple agencies review a project at the same time, instead of one after the other. We are also seeking to apply some of these same principles in our Hurricane Sandy recovery work.

We are collaborating with Federal agencies and working hard to meet this goal to adequately address our infrastructure needs, ensure sound decisions, and navigate the difficult fiscal climate.

## **Conclusion**

As this Committee oversees the implementation of MAP-21 and considers reauthorization of our surface transportation programs, we are eager to work with you to identify ways to expedite the permitting of transportation project in a manner that protects public input and the environment in Federal decisionmaking.

We are, however, concerned with attempts to impose financial penalties on already cash-strapped agencies or arbitrary deadlines as a means to permit projects more quickly. In our view, these efforts are counterproductive and may actually slow project approval. Moreover, they could constrain science-based decision making, increase litigation risk, and undermine the integrity of several foundational environmental laws, including the Clean Water Act, the Endangered Species Act, and NEPA.

In our experience, early coordination and collaboration with Agencies and projects sponsors is key to expediting projects. Just as important is the setting of mutually agreed to timelines and project milestones – not statutory deadlines - between Federal agencies, State and local governments, and project sponsors. Finally, making this information available to the public through project dashboards provides transparency and accountability to the public and project proponents.

I would urge Congress to work with us in the Administration to focus our efforts on what actually works and getting at the root causes of project delay. It is these efforts that will encourage expediency in the permitting process, protect our communities and ensure the public has a voice in the process.

In closing, I am proud of what we have accomplished over the past four and a half years, and I am looking forward to continuing our progress this year. The permitting efforts I've described represent just a few of the many steps we have taken within CEQ and the Administration to

---

<sup>6</sup> Presidential Memorandum – “Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures.” May 17, 2013. <http://www.whitehouse.gov/the-press-office/2013/05/17/presidential-memorandum-modernizing-federal-infrastructure-review-and-pe>.

transform the way we do business by promoting efficiency and speed in the delivery of projects that create jobs, engaging the public in decisions, and protecting the health of American communities.

I appreciate the opportunity to appear before you this morning and look forward to answering your questions.



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, D.C. 20590

December 19, 2012

The Honorable Nancy Sutley  
Chairwoman  
White House Council on Environmental Quality  
722 Jackson Place, NW  
Washington, DC 20503

Dear Chairwoman Sutley:

Congress recently passed a new surface transportation authorization bill known as the Moving Ahead for Progress in the 21st Century Act (MAP-21). This law provides new tools that are intended to improve project delivery by enabling the U.S. Department of Transportation (DOT) and its modal agencies, other Federal departments and agencies, and the States to expedite important infrastructure projects without sacrificing quality.

As the President has recognized in Executive Order 13604, entitled *Improving Performance of Federal Permitting and Review of Infrastructure Projects* (March 22, 2012), our Federal permitting and review processes must provide a transparent, consistent, and predictable path for both project sponsors and affected communities. Our goal in implementing this law and this Administration's permitting reforms is to provide demonstrable improvements in the performance of Federal infrastructure permitting and review processes, including more timely and efficient decisions. Most importantly, we seek to use the environmental review process to deliver better and more sustainable projects that result in a healthier and cleaner environment.

In implementing this law, we will adhere to the following principles:

- (1) DOT will implement MAP-21 in a way that utilizes the National Environmental Policy Act and other Federal environmental statutes to promote better environmental outcomes, improve transparency, and support informed decisionmaking.
- (2) DOT will promote environmental stewardship, transparency, and early inter-agency consultation and collaboration as it carries out all of the new mandates included in MAP-21.
- (3) DOT will encourage early collaboration among agencies, project sponsors, affected stakeholders and the public, both in the transportation planning process and in project development, to avoid adverse impacts to communities and the environment, minimize or mitigate impacts that may occur, and avoid project delay.
- (4) For greater transparency and accountability, DOT will utilize cost-effective information technology to collect and disseminate information about individual projects and agency performance and to fully consider the priorities and concerns of affected communities.
- (5) In developing schedules for projects, DOT will ensure that the timing for decisionmaking regarding any required actions, such as permits and licenses, must be consistent with applicable regulations governing coordinating with cooperating agencies.

Page 2

The Honorable Nancy Sutley

- (6) DOT will encourage planning and project development procedures that avoid disputes and resolve any that do arise early in the process, thus preventing unnecessary elevation wherever possible.

We appreciate the engagement and help that you and your staff have provided already to help us meet tight deadlines while producing better projects and better environmental results. We look forward to continuing our relationship while working to implement this Act.

Sincerely yours,

Ray LaHood

A large, stylized handwritten signature in blue ink, written over the typed name 'Ray LaHood'. The signature is highly cursive and fluid, with long, sweeping strokes that extend across the page.