

STATEMENT OF
JOHN PORCARI
DEPUTY SECRETARY
U.S. DEPARTMENT OF TRANSPORTATION

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
U.S. SENATE

HEARING ON

Implementing MAP-21's Provisions to Accelerate Project Delivery

September 18, 2013

Chairman Boxer, Ranking Member Vitter, Members of the Committee:

Thank you for inviting me here today to discuss our progress in expediting the delivery of transportation projects.

Both before and after the passage of the Moving Ahead for Progress in the 21st Century Act (MAP-21), we have been working extensively to improve the efficiency of environmental reviews of transportation projects. I am pleased to share with you our efforts to date to rebuild our nation's infrastructure and put Americans back to work as soon as possible.

We are committed to providing the American people with safe, reliable transportation choices, and we acknowledge that delivering those projects can take a long time. There are many causes for this delay. The Congressional Research Service (CRS) has reviewed the causes of project delay and found that the "Causes of delay that have been identified are more often tied to local/state and project-specific factors, primarily local/state agency priorities, project funding levels, local opposition to a project, project complexity, or late changes in project scope."¹

Nonetheless, we recognize that there is an opportunity to improve the Federal permitting and review processes to deliver those projects and that is the focus of my testimony today. To improve the Federal environmental review and provide more timely decisions for transportation projects we are working with our sister agencies and the President's Council on Environmental Quality (CEQ) to re-engineer the process, seeking ways to provide better outcomes for communities and the environment and a faster, more predictable process. The project delivery provisions found in MAP-21 are in many cases consistent with the Administration's broader efforts. The provisions on programmatic mitigation of environmental impacts, eliminating duplicate reviews, integration of planning and environmental reviews, and assistance to affected Federal and State agencies will help us to move infrastructure projects from concept to

¹ CRS Report R42479, "The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress." April 11, 2012

completion more efficiently. This will ensure the best value for every taxpayer dollar and reduce undue regulatory burden in delivering transportation projects, while achieving measurably better environmental outcomes.

Status of Implementation

Immediately after passage, we began working aggressively to fulfill all the requirements of MAP-21. Although facing ambitious deadlines, we are meeting and exceeding Congress's challenge through our outreach to partners and development of guidance and rulemakings.

One of our highest priorities was to establish the new Categorical Exclusion (CE) under the National Environmental Policy Act (NEPA) for repair or reconstruction projects required after emergencies. We issued a proposed rulemaking on October 1, 2012, and the CE became effective in February of this year. Our prompt implementation of this CE let us move quickly when faced with the collapse of a section of the Interstate 5 Bridge in Washington State. The use of the new CE is helping Washington State swiftly restore this critical infrastructure.

Another success came with the implementation of the Combined Final Environmental Impact Statement (EIS) and Record of Decision (ROD) procedure, for which we issued interim guidance in January. Four projects have already used this new procedure, allowing these reviews to be completed at least 30 days earlier.

Similarly, we quickly issued guidance regarding the changes to the Statute of Limitations provision, which has reduced litigation risk for over a dozen projects thus far.

We also recently published a proposed rulemaking on the Surface Transportation Project Delivery Program provision, which allows States to assume responsibility for certain environmental reviews. Texas passed legislation enabling it to apply for this delegated responsibility, so our timely publication of the proposed rulemaking provides critical information to Texas and other interested States as they develop their applications.

Many of the project delivery provisions require interagency coordination. We have engaged in early informal coordination as much as possible in order to expedite the formal interagency review when needed. For instance, we worked extensively with potentially affected agencies when drafting guidance regarding revised financial penalties. This guidance is now entering the formal interagency review process.

Another example of our interagency collaborative efforts can be seen through our implementation of the Programmatic Agreements and Additional Categorical Exclusions requirement in MAP-21. To carry out this requirement, we conducted a survey of stakeholders to consider additional CEs that could be created to help sponsors move ahead with their transportation priorities without unnecessary delays. We worked with other Federal agencies to review the survey results and draft a rulemaking that proposes additional CEs. We expect to publish this proposed rulemaking soon.

We welcome the opportunity to update and make our regulations more efficient, and have integrated this effort with ongoing rulemakings work whenever possible. For instance, the

Federal Transit Administration (FTA) was in the process of updating its environmental review procedures when MAP-21 was enacted, so it adapted its rulemaking to respond to the requirements of MAP-21. This final rulemaking was issued in February and created new FTA CEs for many of the actions covered by the MAP-21 CEs, which helped to streamline the implementation of these provisions.

Executive Actions to Improve the Permitting and Review Process

However, our efforts to speed project delivery go far beyond MAP-21. In August of 2011, nearly a year prior to MAP-21 enactment, we were a leader in the President's call to expedite the permitting and review process for certain infrastructure projects identified as high priority (HPPs). We led the effort under this initiative for six of the fourteen total high priority projects initially posted on the Federal Infrastructure Permitting Dashboard (Dashboard), publicly posting schedules and detailing the milestones necessary to complete the permitting process. These major investments included transit projects in Los Angeles and Baltimore; deployment of NextGen technology in the Houston Metroplex; a critical transportation link in Provo, Utah; and the replacement of two bridges in the Northeast, the John Greenleaf Whittier Bridge and the Tappan Zee Bridge.

Under government-wide NEPA procedures, agencies are directed to integrate NEPA reviews and other planning and environmental requirements so that reviews run concurrently, but this does not always occur. For each of the HPPs, we worked extensively with project partners to coordinate and establish aggressive timelines for completion, emphasizing concurrent reviews where possible. The Tappan Zee project highlights the efficiencies that can be achieved when all project partners coordinate early, establish shared expectations for project milestones, focus resources and work collaboratively to achieve those milestones. Using a design-build contracting method, the Federal Highway Administration (FHWA) and the partner agencies were able to complete an EIS and issue a ROD for the Tappan Zee project in just over a year and complete all permitting actions within 15 months. That is a fraction of the time generally required to navigate the project delivery process for many major infrastructure projects.

In order to achieve the aggressive project schedules developed for these critical infrastructure projects on the Dashboard, we partnered with Federal resource agencies and the CEQ to establish the Transportation Rapid Response Team. This interagency group of senior staff continues to meet bi-weekly to identify and resolve concerns from agency partners. The relationships built among the staff and the agencies more broadly further our efforts to better align Federal actions and improve consistency and predictability in the permitting and review process. With enactment of MAP-21, the Team was already well-positioned to facilitate the coordination needed to advance rulemakings and guidance documents to meet statutory deadlines and has been instrumental to our success.

The success of the initial HPPs in demonstrating the potential for process streamlining led to a commitment from the President in his 2012 State of the Union Address to clear away "the red tape that slows down too many construction projects" of infrastructure projects and his subsequent issuance of Executive Order (EO) 13604 on *Improving Performance of Federal Permitting and Review of Infrastructure Projects*. Support of this EO led to an expansion of the

Dashboard and the identification of thirty-six projects across multiple sectors, including transportation, that were deemed to have national or regional significance. The schedules and progress for these projects, in addition to the original fourteen, are tracked on the Dashboard, holding all agencies accountable and providing unprecedented transparency to the Federal permitting and review process. Through the Dashboard and Rapid Response Team, we have helped cut review times, delivering significant savings so that the public may enjoy the benefits of upgraded infrastructure sooner.

The successful strategies used to achieve these time savings helped form a *Federal Plan to Modernize the Federal Permitting and Review Process* (Plan), which describes specific steps the Administration is taking to enhance the review process for vital infrastructure projects. Through best practices and specific and measurable actions described in the Plan, we are creating a more transparent and predictable process that will help maintain the confidence of stakeholders, improve engagement with project sponsors, and reduce timelines while protecting the public's health and safety, our security, and the environment.

In May, President Obama issued a Presidential Memorandum tasking Federal agencies with the goal of cutting their review and permitting timelines in half for major infrastructure projects. We continue to lead efforts in this regard, and are well underway to achieving this important goal.

Departmental Efforts to Deliver Projects More Efficiently

As you know, MAP-21 expanded on significant work that was already underway in the Department. Soon after his confirmation, FHWA Administrator Mendez created the Every Day Counts (EDC) initiative, designed to identify and use innovation aimed at shortening project delivery time, enhancing the safety of our roadways, and protecting our environment.

Several of the accelerated project delivery stipulations in MAP-21 complement the successes of the EDC initiative, by providing an array of provisions designed to move projects from start to finish more efficiently to yield broad benefits nationwide. Congress recognized the benefits of EDC methods by including certain EDC initiatives in MAP-21, such as planning and environmental linkages to minimize duplication of effort and foster more informed decisions, time-saving programmatic agreements, and use of the construction manager–general contractor project delivery method to encourage innovation and optimize construction schedules.

In addition to the EDC initiative already underway at FHWA, FTA recently conducted a thorough look back at its project delivery process and identified some much needed updates. This look back resulted in the creation of an entirely new list of CEs tailored for transit projects to further expedite the environmental review and decision-making process, reducing the need for unnecessary and duplicative reviews. In addition, FTA has refocused staff resources on better managing the environmental review process, resulting in more clear and concise environmental documentation and quicker reviews. FTA's emphasis on providing guidance, Standard Operating Procedures, and training to its field staff has enhanced the Agency's ability to expedite environmental reviews.

The Federal Railroad Administration (FRA) has also taken steps to improve the efficiency of project delivery for rail projects. In January, FRA revised its *Procedures for Considering Environmental Impacts* by creating seven new CEs for classes of action determined not to have a significant effect on the environment. This update will facilitate the efficient delivery of expanded rail programs, including those created through the Passenger Rail Investment and Improvement Act of 2008. The seven new categories cover a broad array of passenger and freight rail projects, including track and track structure maintenance and improvements carried out predominately within the existing right-of-way; bridge rehabilitation, reconstruction or replacement projects also within the existing right-of-way; acquisition, rehabilitation or maintenance of vehicles and equipment; environmental restoration, remediation and pollution prevention activities; and installation of safety-related improvements (e.g., railroad warning devices, train control systems, and signalization and security equipment). The use of these new CEs will save both time and money, eliminating the need for more detailed environmental reviews and expediting project approval and project implementation.

Conclusion

In addition to the work being done in the modes, we are engaged in a comprehensive update of our Department-wide NEPA procedures to ensure consistency across our operating administrations to the greatest extent possible. We are working to ensure that our procedures reflect the new reality of blended funding streams that require an innovative and collaborative approach to the NEPA analysis.

A key lesson we have learned through all of these efforts is that we need a large toolbox to address the various issues that arise during project planning and delivery and to quickly move the many different types of critical infrastructure projects through the permitting and review process. Even within surface transportation, projects do not face the same hurdles and challenges and therefore require different solutions to avoid conflicts during project planning and delivery. A project sponsor would have a very different approach to permitting a bridge project and a streetcar project. One size does not fit all in project delivery, and solutions must consider project context, complexity and impacts. This Administration is committed to improving the process and leveraging all available tools, working across government to find efficiencies and implement comprehensive reform.

Delivering infrastructure projects quickly, stretching the value of every dollar, and ensuring better environmental outcomes are a major priority for this Administration. Our proactive approach to implementing the project delivery provisions of MAP-21, combined with the Administration's ongoing initiatives to use innovative delivery methods and expedite the permitting and review process, is making a difference in accelerating projects from concept to completion.

We must also recognize that creating efficiencies in project delivery is only one piece of a larger challenge facing project sponsors as they try to build and repair our nation's infrastructure. Focusing only on the permitting and reviews ignores the larger issue of sustainable and sufficient funding for the critical infrastructure needs of this country. Repeated attempts to legislatively streamline the process may ultimately result in an environmental review and permitting process

that does not adequately protect our most important resources. Moreover, we haven't accomplished anything if NEPA and permitting are completed quickly, but the project still has no funding to go to construction. We have to find a balance of reform to the permitting and review process while maintaining the critical environmental protections in place, acknowledging that the environmental review process is a contributor but not the primary cause of delay for most major infrastructure projects.

We look forward to working closely with this Committee as we seek that balance and continue these efforts to bring infrastructure improvements to the American people in a faster, better and smarter way.

Thank you for the opportunity to appear before you today. I look forward to answering any questions you may have.