Opportunities for Accelerating FTA Project Development Post MAP-21

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Overview

- Framework for FTA approach to environmental review during project development
- Provisions in MAP-21 to accelerate project development of FTA projects
- Opportunities to streamline FTA environmental review
- Implications for project development in the future - one practitioner’s view
National Environmental Policy Act (NEPA)

- Consider consequences of federal actions on the human and natural environment, including trade-offs
- Evaluate alternative courses of action that could achieve purpose and need
- Discuss situation with interested and affected parties
- Document decisions and outcomes
Key Drivers of FTA Environmental Review

- **Federal Transit Law** (49 USC Chapter 53)
- **Federal Highway Law** (23 USC Section 139)
- **CEQ’s Regulations for Implementing NEPA** (40 CFR Parts 1500-1508)
- **FHWA/FTA Environmental Impact Procedures** (23 CFR part 771)
- **FEIS/ROD Interim Guidance** (2013)
Roles in FTA Environmental Review

**FTA Role**

- Serves as NEPA Lead agency or a cooperating agency for projects seeking FTA funding
- Actively manages development of environmental documents
- FTA approval required for all FTA NEPA documents/environmental determinations

**Transit Agency Role**

- Joint lead agency under NEPA
- Prepares NEPA document with direction from FTA
- Implements projects
Class I Action: Environmental Impact Statement (EIS)

- When severe or complex environmental impacts are expected and/or public opposition is identified

Class II Action: Categorical Exclusions

- When sponsoring agency suggests or concurs that the proposed action is unlikely to adversely impact the physical or social environment

Class III Action: Environmental Assessment (EA)

- When impacts are unknown or unquantified; and/or social impacts are not apparent
- When there may be impacts, but mitigation can reduce effects to less than significant
- May lead to further examination as Class I Action (EIS)
Streamlined Documents Expedite Decision-making

- Provide clear project definition, purpose, and need
- Highlight **key issues** and be concise
- Know your audience and engage readers (Tell the story)
- Use plain language, avoid jargon and acronyms
- Use graphics and tables
Keys to Streamlined Documents: Proportional Analysis

Environmental Documents should:

• Contain information important to the decision

• NOT address every conceivable area of impact

• Note impacts that are not significant or of concern

• List issues/resources investigated and not affected by project

• Reference technical analysis in the appendix
Key Tools in MAP-21 to Accelerate Project Development

• Lead agency roles in schedules
• Agency coordination and schedules
• Incorporating prior planning work into NEPA review
• Categorical Exclusions
• Combined FEIS/ROD
• Coordination with funding programs
Section 1305

- Amended 139(g)(1)(B)(i) of 23 USC139

“(i) IN GENERAL- The lead agency may establish as part of the coordination plan, after consultation with and the concurrence of each participating agency for the project and with the State in which the project is located (and, if the State is not the project sponsor, with the project sponsor), a schedule for completion of the environmental review process for the project.”
Section 1306 (Accelerated Decision-making)

• Financial Provisions Affecting Federal Agencies
  – Applies to instances where a decision on a permit, license, or other approval is not made within the deadlines established in the project financial plans (23 U.S.C. § 139(h)(6))
  – Reviewing Agency has 180 days to render a decision from the later of FHWA/FTA’s issuance of a FONSI or a ROD, or the date on which a complete application is submitted
  – Penalties to Federal agencies for not making decisions in prescribed timelines

• Issue Resolution and Referral (new Sec 139(h)(5))
  – Expands upon the issue resolution process established in SAFETEA-LU

• Work in progress
Linking Planning and NEPA
Section 1319 (Accelerated Decision-making in Reviews)

- Minor comments (factual corrections or explanations of why no further response is needed) on DEIS can be addressed in errata form for FEIS

- To maximum extent practicable, publish a combined FEIS and ROD document, unless
  - There are substantial changes to the proposed action relevant to environmental or safety concerns; or
  - There are significant new circumstances or information relevant to environmental concerns

- FEIS/ROD interim guidance complete (01/14/13)
MAP-21 Flexibility for FEIS/ROD

Proportional timeframes only – Not by law or regulation
Categorical Exclusions (CEs): A Powerful Streamlining Tool

MAP-21

- Multi-modal CE Process (Sec. 1314)
- Emergency CE (Sec. 1315)
- Operational Right-of-Way CE (Sec. 1316)
- Limited Federal Assistance CE (Sec. 1317)
- Additional New CEs (Sec. 1318)

FTA CEs at Section 771.118

- Ten CEs at Sec. 771.118(c)
- Broad Authority with Six Examples under Sec. 71.118(d)
Good Planning = CE = Streamlined Environmental Review

• Rewards choosing better project locations:
  – within or adjacent to existing transportation right-of-way
  – in areas consistent with existing land use and zoning requirements (including floodplain regulations)

• Using existing facilities to the extent possible

• Taking advantage of public involvement and agency coordination during the planning process

• Avoiding environmentally sensitive areas/resources
CEs listed in Section 771.118(c)

1. Utility and similar appurtenance action
2. Pedestrian or bicycle action
3. Environmental mitigation or stewardship activity
4. Planning and administrative activity
5. Action promoting safety, security, accessibility
6. Acquisition, transfer of real property interest
7. Acquisition, maintenance of vehicles / equipment
8. Maintenance, rehab, reconstruction of facilities
9. Assembly or construction of facilities
10. Joint development of facilities
11. Emergency recovery actions
CE Examples and Broad Authority in Section 771.118(d)

Examples

- (1) Highway modernization
- (2) Bridge replacement or rail grade separation
- (3) Hardship or protective property acquisition
- (4) Acquisition of right-of-way
- (5) Bicycle facility construction
- (6) Facility modernization

Open-ended broad authority

- Enables CE for those actions that have no significant environmental impacts and can be processed as CEs but don’t neatly fall under any of the CEs or examples listed
A Word on Pre-Award Authority and CEs

• Framework for FTA Approach to environmental review during project development

• Applicants may incur costs for projects that clearly meet the criteria for CEs

• However, if a project is subsequently found not to qualify as a CE, it will be ineligible for FTA assistance

• Contact your FTA Regional Office early for assistance
Other MAP-21 Provisions that Assist Expedited Delivery

Section 1307 (Federal/State Agency Assistance)
• MOU requirement for dedicated staffing funds
  – No change to overall process
  – Added agreement vehicle (MOU) provision for establishing projects/priorities to be addressed with use of the funds

Section 1308 (Limitations on Claims)
• 150 days (no longer 180 days)
Other MAP-21 Provisions that Assist Expedited Delivery

Section 20016 (Corridor Preservation)

• Prior to MAP-21: Limited to pre-existing railroad ROW for a future transit project (former 49 U.S.C. § 5324(c))

• MAP-21: Removed “railroad” limitation and moved provision to 49 U.S.C. § 5323(q):
  – FTA may assist in the right-of-way acquisition before NEPA is initiated under certain conditions
  – Right-of-way may not be developed until NEPA is complete
Other MAP-21 Provisions that Assist Expedited Delivery

Section 1309 (Enhanced Technical Assistance)

• Provision applies only:
  – When technical assistance requested for outstanding issues and project delay **AND**
  – To projects with ongoing EISs for which a ROD has not been issued within at least two years of NOI

• FHWA/FTA must establish and meet a schedule for completing the specific outstanding issues/project delay

• Result: Completion of any permit, approval, review, or study subject to the technical assistance scope within four years of Notice of Intent (NOI)
Section 20008 (Fixed Guideway Capital Investment Grants)- Alternatives Analysis

• Eliminates the stand-alone Alternatives Analysis (AA) requirement from 49 U.S.C. § 5309

• For environmental review purposes, former or ongoing AAs:
  – considered a “planning study” that can be used to inform the NEPA process
  – reference in the NEPA document (Linking Planning and NEPA)

• FAQs on www.fta.dot.gov/12304_15522.html
Taken together, MAP-21 provisions:

• Provide much needed flexibility in key areas of project development

• Drive towards increased transparency, accountability and efficiency in transportation decision-making at all levels

• Clarify definition of what is federal interest versus what is local decision-making

• Reinforce that good planning matters - solid local foundation and commitment essential

• Unlock opportunities to accelerate environmental reviews