



PERMITTING COUNCIL

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Executive Director Determination re Extending FAST-41 Final Completion Date by More Than 30 Days

July 27, 2022

SunZia Southwest Transmission Project – National Historic Preservation Act Section 106 Review and Consultation

I. Summary

The SunZia Southwest Transmission Project (Project), sponsored by SunZia Transmission, LLC (Project Sponsor), is a “covered project” under Title 41 of the Fixing America’s Surface Transportation Act (FAST-41), 42 U.S.C. §§ 4370m *et seq.* The United States Department of the Interior’s Bureau of Land Management (BLM) is the lead agency with principal responsibility for an environmental review for the Project under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.* BLM is also the lead agency coordinating the review and consultations required by Section 106 of the National Historic Preservation Act (Section 106), 54 U.S.C. § 306108. On July 20, 2022, BLM submitted a request to the Executive Director of the Federal Permitting Improvement Steering Council to modify the Project’s entry on the Federal Permitting Dashboard by extending the final completion date by which BLM will conclude its Section 106 consultation from August 30, 2022, to November 30, 2022. BLM requests this extension because route changes for the Project will require modifications to the programmatic agreement¹ needed to conclude the Section 106 consultation. For the following reasons, the extension request is **GRANTED**, and the Project permitting timetable will be revised accordingly.

II. Legal Standard

A lead agency may modify a permitting timetable only after: (1) consulting with the Executive Director regarding the potential modification; (2) reaching agreement on a different completion date with the affected cooperating agencies, after consulting with the participating agencies, the Executive Director, and the project sponsor; and (3) providing a written justification for the modification. 42 U.S.C. §§ 4370m-2(c)(2)(D)(i)(I-III).

¹ Programmatic agreements under Section 106 allow the resolution of adverse effects from complex projects through negotiation of an agreement between the federal agency responsible for Section 106 consultation, appropriate State and/or Tribal Historic Preservation Officers (SHPO, THPO), and other parties. *See* 36 C.F.R. §§ 800.6(b)(1)(i-iv), 800.14(b).

Pursuant to 42 U.S.C. §§ 4370m-2(c)(2)(D)(i)(IV), if the proposed modification entails extending a final completion date by more than 30 days beyond the original final completion date, the lead agency additionally must submit a request to the Executive Director, who shall consult with the project sponsor and make a determination on the record whether to grant the lead agency authority to make such modification, based on consideration of the relevant factors described under subparagraph 42 U.S.C. §§ 4370m-2(c)(2)(B). The Executive Director's determination is based on consideration of "relevant factors," including, but not limited to:

- (i) the size and complexity of the covered project;
- (ii) the resources available to each participating agency;
- (iii) the regional or national economic significance of the project;
- (iv) the sensitivity of the natural or historic resources that may be affected by the project;
- (v) the financing plan for the project; and
- (vi) the extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.

Executive Director determinations to extend permitting timetables by more than 30 days beyond an original final completion date made pursuant to the statutory authority described here are not subject to judicial review. 42 U.S.C. § 370m-2(c)(2)(D)(iv)(I).

III. Background

BLM initiated Section 106 consultation with the appropriate State Historic Preservation Officer and Tribal Historic Preservation Officer as planned on November 8, 2021. As the lead agency for the Section 106 review and consultation, BLM has been coordinating with consulting parties, including the Advisory Council on Historic Preservation and the Project Sponsor, to negotiate and execute a Section 106 programmatic agreement that sets out the measures to resolve the adverse effects on historic properties that the Project may have. Due to recent route changes for the Project in New Mexico, BLM has determined, in consultation with the relevant Section 106 consulting parties, that the programmatic agreement requires modification.

The new routes in New Mexico cross the Sevilleta National Wildlife Refuge, which is managed by the United States Fish and Wildlife Service (FWS). To ensure that the Section 106 programmatic agreement for the Project adequately addresses any potential adverse effects to historic properties along the new routes, FWS will be added as a consulting party and signatory to the programmatic agreement. In addition to receiving valuable input from FWS, BLM will also need to engage in further discussions about measures to resolve the potential adverse effects of the new routes to historic properties.

The current target date for completion of the Section 106 consultation, listed on the Permitting Dashboard as “Section 106 consultation concluded,” is August 30, 2022. After coordinating with the cooperating agencies and the Project Sponsor, BLM and all relevant Section 106 consulting parties agree that an additional 90 days likely will be needed to complete the revised programmatic agreement. Accordingly, BLM, as the lead federal agency, has requested authorization from the Executive Director to extend the Section 106 consultation concluded milestone target date for the Project’s permitting timetable to November 30, 2022. Based on discussions with BLM, the Executive Director is satisfied that changing the Section 106 milestone date from August 30, 2022, to November 30, 2022, will not affect any other milestone target dates in the Project’s permitting timetable.

The Project Sponsor, in consultations with BLM, has indicated that it not only has no objection to the proposed permitting timetable extension, but also understands and supports extending the milestone date by 90 days to facilitate the development and execution of a Section 106 programmatic agreement to adequately consider and include measures to resolve potential adverse effects of the Project on historic properties. The Executive Director also consulted with the Project Sponsor, as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV), and confirmed the Project Sponsor concurs with the requested date change.

IV. Discussion

The FAST-41 statute expressly identifies the sensitivity of the natural or historic resources that may be affected by the project as a relevant factor to consider when modifying the permitting timetable. BLM has determined that more time is needed to adequately address the potential impacts of the Project on historic resources due to route changes that will now take the Project across a wildlife refuge. The Executive Director appreciates BLM’s comprehensive coordination with all stakeholders, including the Project Sponsor, in making this determination. Indeed, this is an example of the Federal permitting process working as it should: following a project change that could result in different or additional impacts, the lead agency cooperatively worked with all stakeholders to identify a path forward that will yield a higher quality Federal permitting decision. The Executive Director anticipates that the additional 90 days invested now to create a more comprehensive programmatic agreement will result in better environmental and community outcomes. Additionally, the Executive Director finds it significant that extending the completion date for the Section 106 consultation will not extend the overall project timetable. Given these circumstances, extending the completion date for the Section 106 consultation is justified.

V. Determination

For the reasons identified above, BLM's extension request to extend the final completion for concluding its Section 106 consultation from August 30, 2022 to November 30, 2022 is **GRANTED**, and the permitting timetable is revised as requested.

 for

Christine Harada
Executive Director
Federal Permitting Improvement Steering Council