



PERMITTING COUNCIL

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Executive Director Determination on Request to Extend FAST-41 Final Completion Date by More Than 30 Days

December 28, 2023

Santa Fe Indian School Broadband Project—NEPA; Section 106; Right-of-Way (BLM); NPS Permit; Right-of-Way (FWS Sevilleta NWR); ESA-FWS; Section 404

I. Summary

The Santa Fe Indian School Broadband Project (Project), sponsored by Santa Fe Indian School, Inc. (Project Sponsor), is a covered project under Title 41 of the Fixing America's Surface Transportation Act (FAST-41), 42 U.S.C. §§ 4370m. The Department of Commerce, National Telecommunications and Information Administration (NTIA), has principal responsibility for an environmental review for the Project under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, which makes NTIA the lead agency for both NEPA and FAST-41.

On December 12, 2023, NTIA submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) to extend completion dates for multiple Federal actions on the Project's permitting timetable. Namely, NTIA's request includes extensions for its NEPA action and consultation under Section 106 of the National Historic Preservation Act (Section 106), 54 U.S.C. § 306108. NTIA asks to extend consultation with the Department of the Interior, Fish and Wildlife Service (FWS) under the Endangered Species Act (ESA), 16 U.S.C. §§ 1531. NTIA seeks extensions for right-of-way authorizations from both FWS and the Department of the Interior, Bureau of Land Management (BLM). NTIA's request includes an extension for a permit from the Department of the Interior, National Park Service (NPS permit). Finally, NTIA requests an extension of authorization from the United States Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act, 33 U.S.C. § 1344 (Sections 404).

For the following reasons, NTIA's extension request is **GRANTED**, and the Project permitting timetable will be revised accordingly.

II. Legal Standard

Pursuant to 42 U.S.C. §§ 4370m-2(c)(2)(D)(i)(II) & (IV), a lead agency may extend a final completion date by more than 30 days beyond the original final completion date only after

consulting with the project sponsor and obtaining Executive Director approval. After receiving an extension request, the Executive Director must consult with the project sponsor and make a determination on the record whether to grant the requested date change. 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.

42 U.S.C. §§ 4370m-2(c)(2)(B) and 4370m-2(c)(2)(D)(i)(IV). Executive Director determinations made pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV) are not subject to judicial review. 42 U.S.C. § 4370m-2(c)(2)(D)(iv)(I).

III. Background

NTIA seeks authorization to modify the interim and final completion dates shown in the table immediately below.

Action Agency	Action	Milestone	Original Date	Requested Date
NTIA	EA	Issuance of a Draft Environmental Assessment (EA) / Release for Public Review	2/14/2024	6/15/2024
		Issuance of a Final EA	4/30/2024	8/15/2024
		EA Process Concluded	7/15/2024	9/15/2024
NTIA	Section 106	Section 106 Consultation Concluded	1/31/2024	5/1/2024

FWS	ESA	ESA Consultation Request Package Submitted	2/15/2024	4/1/2024
		FWS Determines ESA Consultation Package is Complete	4/30/2024	7/1/2024
		ESA Consultation Concludes	6/29/2024	8/15/2024
BLM	Right-of-Way	Final Decision / Agency Action	7/31/2024	11/15/2024
FWS	Right-of-Way	Application Deemed Complete	4/30/2024	8/15/2024
		Final Decision / Agency Action	10/30/2024	1/30/2025
NPS	NPS Permit	Final Decision / Agency Action	7/31/2024	12/15/2024
USACE	Section 404	Pre-construction Notification (PCN)/Form ENG 4345/Joint Application Form Received	4/1/2024	7/1/2024
		Complete Pre-Construction Notification (PCN)/Application Received	5/1/2024	8/1/2024
		Final Verification/Permit Decision Rendered	8/13/2024	11/1/2024

NTIA is requesting to modify the permitting timetable to allow the Project Sponsor to conduct additional surveys to support the Section 106 consultation, development of the ESA biological assessment, and more refined details regarding the proposed route alignment. Additional time is needed to conduct the surveys, some of which were not known at the time the original permitting timetable was established. For example, a survey specifically focused on the Interstate 25 corridor through the Sevilleta National Wildlife Refuge will determine whether the proposed fiber optic line in that area can be constructed entirely within the New Mexico Department of Transportation Right-of-Way (ROW). This survey will further refine the proposed route and will help determine whether a ROW authorization is needed from the U.S. Fish and Wildlife Service. Additional time is also needed to conduct further coordination between the Project Sponsor and Pueblos and Tribes regarding alignment of the proposed route and protection of important resources.

The Section 106 consultation, ESA biological assessment, and route alignment affect timing of the Environmental Assessment, which then affects the cooperating agency dependent actions. Specifically, the completion dates for the BLM right-of-way, NPS Permit, and USACE Section 404 actions are dependent on the timing of completion dates for NTIA's NEPA action. BLM requests 60 days, NPS requests 90 days, and USACE requests approximately 45 days between NTIA's EA final decision and those agencies' respective decisions.

Consultation with Project Sponsor on Permitting Timetable Modifications

Prior to submitting its extension request to the Executive Director, NTIA consulted with the Project Sponsor per 42 U.S.C. § 4370m-2(c)(2)(D)(i)(I) and represents that the Project Sponsor has no objection to the proposed permitting timetable extension.

The Executive Director also has consulted with the Project Sponsor, as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV), and the Executive Director has confirmed the Project Sponsor does not object to the requested permitting timetable modifications.

IV. Discussion

The Santa Fe Indian School Broadband Project is a complex project located in a culturally sensitive area, and therefore it is not unusual that a need for additional survey work and coordination was identified after the original permitting timetable has been established. Indeed, 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. Additionally, extending the permitting timetable will provide additional time for meaningful engagement with the Pueblos and Tribes, which is critical to identifying and protecting natural, archeological, and cultural resources as well as locations of historic and religious significance in the Project area. Given these circumstances, the requested completion date modifications are warranted.

V. Determination

NTIA's extension request is **GRANTED**, and the permitting timetable shall be revised as requested.



Eric B. Beightel
Executive Director
Federal Permitting Improvement Steering Council