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Federal Agencies Agree to Streamline Environmental Review and Approval of Infrastructure Projects

Two years is the goal for completion of NEPA review

On April 9, 2018, the White House released a Memorandum of Understanding (“MOU”) between twelve federal agencies that is intended to increase the speed and reliability with which the federal government reviews and approves infrastructure projects under the National Environmental Policy Act (“NEPA”). The MOU seeks to centralize each NEPA review in one agency for a speedy evaluation that results in a single Environmental Impact Statement within two years. It is effective immediately.

The MOU, issued jointly by the Office of Management and Budget and the Council on Environmental Quality, implements Executive Order 13807, entitled “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure.” President Trump signed the Executive Order in August of last year, seeking to add speed and predictability to the NEPA process. In recent years the average NEPA review has regularly exceeded 1,000 days.

Under the MOU’s policy of “One Federal Decision”:

- Environmental review of major infrastructure projects will be administered through a single lead agency;
- The lead agency will develop a permitting timetable of actions and milestones for the environmental review and authorization;
- The filing of the Notice of Intent will start the two year clock for the Environmental Impact Statement;
- The lead agency will coordinate concurrent reviews and the issuance of a single Environmental Impact Statement;
- The lead agency will draft a single Record of Decision; and



- Agencies are directed to issue authorization decisions within 90 days of the signing of the Record of Decision.

The signatories to the MOU are the Departments of the Interior, Agriculture, Commerce, Housing & Urban Development, Transportation, Energy, Homeland Security, Army Corps of Engineers, Environmental Protection Agency, Federal Energy Regulatory Commission (“FERC”), Advisory Council on Historic Preservation, and the Federal Permitting Improvement Steering Council. Additional agencies may join in the future.

This new process is designed to provide much-needed regulatory flexibility for major infrastructure projects. It offers greater predictability and a simpler review process by designating a lead agency and setting a timetable. The sponsor of any infrastructure project should immediately consider whether, and how, to take advantage of the MOU. One threshold question is whether a project would be considered “major,” and therefore entitled to the “One Federal Decision” review. Another is which federal agency would be the preferred lead agency, and thus should be contacted first.

Moreover, the general mandate of the Executive Order and MOU to improve project delivery may assist project sponsors in their negotiations with federal agencies on many other points as they navigate the NEPA process. Project sponsors must bear in mind, however, that the MOU and the commitment to an expedited process do not relieve federal agencies of the responsibility to comply with all applicable legal requirements, including, for example, a thorough review of all environmental impacts and a full alternatives analysis. To assure that Environmental Impact Statements prepared under this process will survive judicial scrutiny, it is crucial that project sponsors play an active role by helping to scope the NEPA study, working closely with agencies to address issues as they arise, and providing agencies with the data and other information needed for the analysis.

For those approaching NEPA review of infrastructure projects, outside counsel can advise on how best to navigate this process to ensure the MOU’s purposes of “a more predictable, transparent and timely Federal review” and the promotion of “good environmental, community and economic outcomes” are achieved.

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