The Environmental Review Process for Transportation Projects: Opportunities for Streamlining and Stewardship

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Bill Malley
Akin Gump Strauss Hauer & Feld LLP
Washington DC
Overview

- The Environmental Review Process Today
  - What’s wrong with the process?
  - What’s causing the problems?
  - What have we been doing to fix them?
  - Has it been working?

- SAFETEA-LU
  - Changes in Section 6002
  - Impact on streamlining and stewardship
What’s Wrong with the Process?

Some common criticisms:

- Costly and time-consuming
- Incomprehensible to non-technical readers
-Disconnected from decision-making
- Formulaic, canned
- Impedes collaborative approaches
- Purely predictive; no follow-up
- Easily bogged down
What’s Causing the Problems?

- *Project* disputes become *process* disputes
- Legal framework is a “patchwork quilt”
  - Authority is widely dispersed
  - Procedures not well coordinated
- Technical tools are increasingly complex
- Litigation spurs risk-aversion
- Process grows by accumulation
- Difficulty translating frustration into change
What’s Been Done So Far?

- Streamlining efforts focused on:
  - Better agency coordination
  - Concurrent reviews
  - Schedules and deadlines

- Stewardship efforts focused on:
  - Embracing an environmental ethic
  - Proactive approach; not just compliance
  - Collaboration; not adversarial
  - Real commitment in dollars and staff
Is It Working?

**Streamlining**

- **Encouraging Signs:**
  - Streamlining agreements in place
  - Resource agencies focused on streamlining
  - Growing body of best practices

- **Concerns:**
  - Little evidence of reduced time frames
  - Perception that “speeding up” = “cutting back”
Is It Working?

Stewardship

- Encouraging Signs:
  - Greater flexibility to fund stewardship measures
  - Organizational changes in State DOTs
  - Cultural changes in State DOTs

- Concerns:
  - Is the change permanent?
  - How deep is it?
Where Things Stand Now

- Streamlining and stewardship are real commitments – it’s not just talk.
- Progress has been made on both fronts since TEA-21.
- But much work remains to be done.
- The next big challenge: addressing the new requirements in SAFETEA-LU.
Changes in SAFETEA-LU

What Do They Mean for Streamlining and Stewardship?
Changes in SAFETEA-LU

- SAFETEA-LU includes changes that will affect the environmental review process.
- Key sections include:
  - 6001: Changes to planning process
  - 6002: Changes to NEPA process
  - 6003-05: Delegation to State DOTs
  - 6007 and 6009: Changes to Section 4(f)
  - 6011: Changes to conformity requirements
Changes in SAFETEA-LU

- Of these sections, one of the most significant is Section 6002.
  - Defines an “environmental review process”
  - Must be used for all projects involving an EIS.
  - May be used for other types of projects.
- Similar to existing practices, but . . .
  - Uses new terminology
  - May require changes in your State’s process
  - May create new opportunities
Changes in SAFETEA-LU

- So what’s actually in Section 6002?
- And how is it likely to affect the environmental review process?
Section 6002 – Key Elements

- **Lead Agency**
  - USDOT must be lead agency for projects requiring its approval.

- **Participating Agencies**
  - USDOT must invite all agencies with interest in project to be “participating agencies”.
  - If invited, Federal agencies must accept, unless they don’t want to participate at all.
  - “Cooperating agencies” may also be named.
Section 6002 – Key Elements

Coordination Plan

- Must be established by lead agency (USDOT).
- Must address agency, public coordination.
- *May* be incorporated into inter-agency MOU.
- *May* be program-wide or project-specific.
- *May* include a project schedule, in consultation with participating agencies.
Section 6002 – Key Elements

- **Issue Identification and Resolution**
  - Lead agency must provide information about:
    - Environmental and socio-economic resources
    - General locations of alternatives
  - Participating agencies must identify any “issues of concern” – which are issues that could:
    - Substantially delay approval
    - Result in denial of permit
  - Issue resolution process can be invoked by project sponsor or Governor
Section 6002 – Key Elements

- **Purpose and Need**
  - Must provide “opportunity for involvement” by agencies and the public in defining P&N.
  - Decision on P&N is made by lead agency.
    - Applies to its study only.
- **Goals in P&N may include:**
  - Achieving objective in a transportation plan
  - Supporting local land use and growth objectives
  - Serving national defense, security needs.
Section 6002 – Key Elements

- **Alternatives**
  - Range of Alternatives:
    - Similar to P&N – after providing “opportunity for involvement,” lead agency makes decision.
  - Methodologies and Level of Detail:
    - Lead agency decides, in collaboration with participating agencies
  - Preferred Alternative
    - May be developed to higher level of detail than other alternatives
Section 6002 – Key Elements

- **Deadlines**
  - Maximum 60 days for DEIS comments, 30 days for all other comment periods
  - Longer time periods may be set by USDOT, “for good cause.”
  - Savings clause: Nothing shall reduce any time period provided for public comment under existing federal law or regulation.
Section 6002 – Key Elements

- **Assistance to Other Agencies**
  - Activities are eligible for funding if they “meaningfully contribute to expediting” the process. Examples include:
    - pre-NEPA transportation planning activities
    - developing programmatic agreements
    - resource mapping
    - dedicated staffing; training
  - Agencies eligible to receive funds are:
    - Federal agencies (including USDOT)
    - State agencies and Tribes
Section 6002 – Key Elements

- **Statute of Limitations**
  - Applies to decisions by any Federal agency approving a highway or transit project.
  - Bars lawsuits unless filed within **180 days** after Federal Register notice of decision.
  - Each Federal agency decision is a separate action; may have separate 180-day periods.
Section 6002 – Key Elements

**Effect on Existing Processes**

- Repeals Section 1309 of TEA-21.
- Grandfathers any “State environmental review process” that was “approved” by USDOT under Section 1309.
- Example: ETDM in Florida.
Section 6002 – What It Means

- **So what does this all mean?**
  - How will Section 6002 affect the project development process?
  - How will it affect efforts to promote streamlining and stewardship?
Section 6002 – What It Means

Section 6002 Should:

- Give the lead agency greater responsibility for overall management of the process
- Ensure all agencies are at the table
- Ensure a role for agencies and the public in defining P&N and range of alternatives
- Establish a “normal range” for comment periods – while allowing for longer periods
Section 6002 – What It Means

- **Section 6002 Should (cont’d)**
  - Support concurrent compliance with NEPA and other requirements, such as Sec. 404
    - By allowing more detail for Preferred Alternative
  - Allow funding for activities that expedite NEPA reviews but occur *outside* the NEPA process
  - Encourage faster resolution of any litigation after NEPA is complete.
Section 6002 – What It Means

**What Section 6002 Doesn’t Do:**
- Doesn’t reduce resource agencies’ authority
- Doesn’t reduce public opportunities for comment
- Doesn’t require “rigid” comment deadlines
- Doesn’t alter other laws
- Doesn’t magically speed up the process
Conclusion

- **Section 6002:**
  - Promotes streamlining and stewardship.
  - Preserves existing authorities.
  - Leaves substantial flexibility for State DOTs.
  - Should be win-win for transportation project delivery and environmental protection.
Thank You

For additional information, contact:

Bill Malley
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Ave., NW
Washington, D.C. 20003
202-887-4280
wmalley@akingump.com