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

March 31, 2025

Navajo Nation Department of Education E-Rate Funded Broadband Project — NEPA; Section 106; Right-of-Way (BLM); Right-of-Way (BIA); Use Authorization (BOR); ESA (FWS)

I. Summary

The Navajo Nation Department of Education E-Rate Funded Broadband Project (Project), sponsored by the Navajo Nation Broadband Office (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 the Interior (DOI), Bureau of Indian Affairs (BIA), has principal responsibility for an environmental review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, which makes BIA the lead agency for both NEPA and FAST-41.

BIA submitted a request to the Federal Permitting Improvement Steering Council (Permitting Council) Executive Director to extend completion dates for all Federal actions on the Project's permitting timetable. BIA'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. BIA seeks extensions for its own right-of-way authorization and a right-of-way authorization from the DOI, Bureau of Land Management (BLM). BIA also requests an extension for a use authorization from DOI, Bureau of Reclamation (BOR). Finally, BIA asks to extend consultation with the DOI, Fish and Wildlife Service (FWS) under the ESA, 16 U.S.C. §§ 1531. This is BIA's first request for modification of the Project's permitting timetable.

For the following reasons, BIA'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

BIA seeks authorization to modify the completion dates shown in the table below.

Action Agency	Action	Milestone	Current Date	Requested Date
BIA	EA	Issuance of Draft Supplemental Environmental Assessment (EA)	10/20/2025	12/30/2025
		Issuance of Final Supplemental EA	11/24/2025	03/25/2026
		EA Process Concluded	12/23/2025	4/30/2026
	Section 106	Consultation initiated with SHPO/THPO	3/6/2025	9/8/2025
		Section 106 Consultation Concluded	6/6/2025	12/8/2025
	Right-of-Way	Completed Application Received	11/17/2025	3/17/2026
		Final Decision / Agency Action	12/23/2025	4/30/2026

BLM	Right-of-Way	Completed Application Received	11/17/2025	3/17/2026
		Final Decision / Agency Action	12/23/2025	4/30/2026
BOR	Use Authorization	Application Deemed Complete	11/17/2025	3/17/2026
		Final Decision / Agency Action	12/23/2025	4/30/2026
FWS	ESA	ESA Consultation Request Package Submitted	3/6/2025	9/8/2025
		FWS Determines ESA Consultation Package is Complete - Formal	4/4/2025	10/8/2025
		ESA Consultation Concludes	8/20/2025	2/23/2026

BIA is requesting these extension date modifications for several reasons. The Project requires review by multiple BIA offices in addition to BLM, BOR, and FWS, and it has taken time for BIA to identify the correct points of contact, processes, and coordination required across the federal agencies. Additionally, the Project Sponsor did not have a comprehensive understanding of the documentation that needed to be provided to BIA so that BIA could timely initiate Section 106 and ESA consultation and proceed with the rights-of-way authorization process.

With the assistance of Permitting Council staff, BIA held an in-person meeting with the Project Sponsor and relevant federal agencies on January 27-29, 2025 in Farmington, New Mexico. At that meeting, the Project Sponsor briefed the federal agencies about the Project, and the federal agencies asked questions and explained agency review processes to the Project Sponsor. This meeting made progress toward the goal of ensuring that the Project Sponsor understood what documents, forms and supporting information needed to be provided to the federal agencies. The meeting also aided the federal agencies' understanding of each of their roles and how they could work collaboratively during the authorization process. The agencies were able to discuss the substance and sequencing of cooperating agencies' review of the Project as well as the need and timing for site visits.

The federal agencies have asked the Project Sponsor to validate the precise location, or route, of the Project prior to the agencies moving forward with the authorization process or any consultation processes. The Project may be located on Navajo Tribal Trust, Indian Allotments, BLM, DOI-BOR, state, private, and Public Land Order 2198 lands. The proposed route also may cross roads under the jurisdiction of the state, BIA, and Continental Divide Electric Cooperative, Inc. Accordingly, BIA has asked the Project Sponsor to provide survey plats to confirm the definite location of the Project. BIA is also requesting that the Project Sponsor submit either

permits or joint use agreements with the State Highway Department, BIA Roads Department, and Continental Divide Electric Cooperative, Inc. to confirm that the Project Sponsor has any necessary easements or rights-of-way required for the Project to traverse land under those entities' jurisdiction. Confirming the route by obtaining any necessary permits or joint use agreements with relevant entities prior to the federal agencies proceeding with consultations ensures that the Project route on which the federal agencies are consulting will not later be modified.¹

In an in-person meeting attended by the Project Sponsor and the federal agencies on March 3-4, 2025, the Project Sponsor stated that the survey plats need to be reconstructed, and their consultant needs at least three weeks to complete the reconstruction. Once the survey plats are completed, BIA will initiate ESA and Section 106 consultations.

The final milestones for NEPA and the right-of-way authorizations are dependent on the conclusion of the ESA and Section 106 consultations. Therefore, the NEPA and right-of-way completion dates need to be correspondingly extended.

Consultation with Project Sponsor on Permitting Timetable Modifications

Prior to submitting its extension request to the Executive Director, BIA 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 that the Project Sponsor does not object.

IV. Discussion

FAST-41 is working for the Navajo Nation Department of Education E-Rate Funded Broadband Project. This is a situation in which the Project Sponsor has relatively little experience with federal authorization processes. Additionally, BIA has not regularly been a lead agency responsible for coordinating NEPA, ESA, and Section 106 consultation for multiple federal agencies, and this Project is more complex than other broadband projects due to its scale. Permitting Council staff recognized the unique challenges of this Project and successfully brought all parties together to communicate with one another. This communication has enabled the federal agencies to better understand the Project so they could identify their own information needs and to then communicate those information needs to the Project Sponsor. The meetings and conversations that have occurred to date are a direct result of the Project's participation in FAST-41 and have paved the way for the parties to move forward cooperatively.

Thus, the permitting timetable modifications addressed in this Memorandum are a

¹ If the Project route changes after the federal agencies have initiated consultation then the agencies will need to consult on the updated route, which would likely extend the overall consultation process timeline.

positive outcome of FAST-41. It is positive that the Project Sponsor and federal agencies all now comprehend the documentation needs and have a shared understanding of when the documentation will be submitted. It is positive that FAST-41 provided a forum for the Project Sponsor and federal agencies to have the conversations needed to get in alignment so that the Project did not languish due to miscommunication or lack of communication. Finally, it is positive that, as a result of this permitting timetable modification, both the Project Sponsor and the federal family will have an accurate and transparent permitting timetable that can be relied upon. Given these circumstances, the requested completion date modifications are warranted.

V. Determination

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



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Federal Permitting Improvement Steering Council