



PERMITTING COUNCIL

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

February 29, 2024

Alaska FiberOptic Project Segment 1 — NEPA; Section 106; Section 10/404

I. Summary

The Alaska FiberOptic Project Segment 1 (Project), sponsored by Doyon, Ltd. (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 February 12, 2024, NTIA submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) to extend completion dates for several Federal actions on the Project's permitting timetable. This includes the NEPA action and consultation under Section 106 of the National Historic Preservation Act (Section 106), 54 U.S.C. § 306108. It also includes a United States Army Corps of Engineers (USACE) permit decision under Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403, and Section 404 of the Clean Water Act, 33 U.S.C. § 1344 (Section 10/404).

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 | 4/8/2024 | 5/3/2024 |
| | | Issuance of a Final EA | 6/7/2024 | 8/8/2024 |
| | | EA Process Concluded | 6/7/2024 | 8/8/2024 |
| NTIA | Section 106 | Section 106 Consultation Concluded | 3/31/2024 | 7/29/2024 |
| USACE | Section 10/404 | Final Verification/Permit Decision Rendered | 6/10/2024 | 8/8/2024 |

NTIA is requesting additional time to issue the draft Environmental Assessment (EA) because the Project Sponsor updated the proposed installation methodology for the fiber optic cable while the EA was being developed. The original proposed installation methodology involved laying cable directly on the river bottom and allowing it to self-bury within a day. Recent cable testing demonstrated that the cable might not self-bury as envisioned, which would

create a higher risk for cable failure and, if the cable were to “float” in the Yukon River, could create a navigation hazard. Furthermore, ice dams on the Yukon River have been unpredictable and could also create the potential for failure of the fiber optic cable; the ice dam data also were not clearly understood until recently. To address these risks, the Project Sponsor proposed a different installation methodology that will “scratch” the cable into the river bottom at a depth of approximately 12 inches. The update to the installation methodology required changes and updates to multiple areas of the EA analysis, including geological resources, biological resources, and water resources.

The completion date for the final EA will be impacted not only by the timing of the draft EA but also by the Section 106 consultation process. The final EA cannot be completed until the Section 106 process has concluded, and the Section 106 Programmatic Agreement is taking additional time because more interested parties have been identified than originally anticipated. The programmatic agreement process has identified more than 30 interested parties, and due to the logistical considerations of engaging with this large number of interested parties, more time is needed to fully inform them of the proposed Programmatic Agreement and provide them with opportunities to participate.

The completion date for USACE’s Section 10/404 permit decision is dependent on the completion date for the NEPA action. USACE is requesting that the completion date for its action be extended to be concurrent with the finalization of the EA.

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

It is not unusual for project design or installation methodology changes that occur during the environmental review and permitting process to impact the permitting timetable. Additionally, extending the permitting timetable will provide additional time for meaningful engagement with all stakeholders in the Section 106 consultation process, which is critical to identifying and protecting natural, archeological, and cultural resources 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