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

June 26, 2024

### Santa Fe Indian School Broadband Project—Right-of-Way (BIA Southern Pueblos)

#### 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 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. NTIA submitted a request to the Permitting Council Executive Director to extend completion dates for a right-of-way authorization from the Department of the Interior (DOI), Bureau of Indian Affairs (BIA) Southern Pueblos Agency.<sup>1</sup>

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;

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<sup>1</sup> This is NTIA’s third request for modification of the Project’s permitting timetable, and the previous Executive Director Determinations approving the requests are available here:  
<https://www.permits.performance.gov/fpisc-content/santa-fe-indian-school-executive-director-determination-nepa-section-106-404-right>;  
<https://www.permits.performance.gov/sites/permits.dot.gov/files/2024-03/2024-3-28%20Santa%20Fe%20Indian%20School%20ED%20Determination.pdf>

- (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 completion dates shown in the table immediately below.

Action Agency	Action	Milestone	Original Date	Requested Date
BIA Southern Pueblos Agency	Right-of-Way	Initial Application Received	6/30/2023	6/28/2024
		Completed application received	7/31/2024	11/15/2024
		Final decision / agency action	8/30/2024	12/15/2024

During initial planning for the BIA dates on the permitting timetable, the NTIA, BIA, and the Project Sponsor all believed that a BIA National Policy Memorandum (NPM) applied to the Project such that BIA could exempt the Project from right of way permitting. NTIA and BIA added the right-of-way actions to the Permitting Dashboard but kept those actions in a “planned” status while seeking confirmation of the application of the BIA National Policy Memorandum. It took longer than originally anticipated for the BIA and DOI to make a final determination. Ultimately, it was determined that the BIA National Policy Memorandum does not apply because the Project Sponsor is a consortium of Pueblos, and the BIA National Policy Memorandum is written to only apply to individual Tribes.

In addition to the BIA National Policy Memorandum issue, the final decision for the

NEPA action was extended,<sup>2</sup> and the BIA right-of-way action is dependent on the timing of the final NEPA decision. The application for the right-of-way cannot be determined complete until the final NEPA decision is issued and incorporated into the application to the extent necessary. Thus, the requested dates for the right-of-way “complete application received” and “final decision / agency action” are timed to follow the final NEPA decision.

#### 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**

This is a first-of-its-kind FAST-41 project involving a Project Sponsor that is a consortium of Pueblos and the need to cross over lands owned or managed by both federal government and Tribal entities. Given these unique circumstances, it is not unusual for agencies to require additional time to study how a nation-wide policy like the BIA National Policy Memorandum may apply to the environmental review and permitting process for the Project. Additionally, NTIA’s present extension request reasonably seeks to align the completion dates for the BIA Southern Pueblos Agency right-of-way action with the updated completion date for NEPA. Given these facts, the Executive Director concludes that the requested extensions are warranted.

#### **V. Determination**

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



Eric B. Beightel  
Executive Director, Permitting Council

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<sup>2</sup> The extensions to the NEPA action were addressed in the two previous Executive Director Determinations for the Project. *See supra*, n. 1.