

October 11, 2017

Brandye Hendrickson  
Acting Administrator, Federal Highway Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue S.E.  
Washington D.C. 20590

Dear Acting Administrator Hendrickson:

The American Association of State Highway and Transportation Officials (AASHTO) is providing comments on the Federal Highway Administration's (FHWA) requirement that transportation projects be included in fiscally constrained planning documents prior to approving final National Environment Policy Act (NEPA) decisions. Mandating compliance with these planning requirements prior to final NEPA approval adds burdensome administrative requirements to the project delivery process, significantly limits the ability of State DOTs to be prepared for funding changes and shifting project priorities, and causes substantial delays and additional costs. Also, this requirement conflicts with the Administration's priority of streamlining environmental reviews and expediting project delivery.

On January 28, 2008, FHWA issued an internal memo on *Transportation Planning Requirements and Their Relationship to NEPA Approvals*. On February 9, 2011, FHWA issued a supplement to the 2008 memo. These memos state that FHWA will not complete the NEPA process for any project unless the project is included in the fiscally constrained Metropolitan Transportation Plan (MTP) and at least one project phase is included in the Metropolitan Transportation Improvement Program (TIP) or the Statewide Transportation Planning Program (STIP). This requirement needlessly ties environmental review requirements to compliance with transportation planning requirements. There is no statute or regulation requiring that projects be in the fiscally constrained plan prior to NEPA completion. The planning and environmental requirements are parallel and separate; it is only FHWA's memos that tie these two separate requirements together.

Requiring that transportation projects be included in fiscally constrained planning documents prior to FHWA approving final NEPA decisions often results in projects advancing through environmental review only to be held up at the end while planning documents are updated, reviewed and approved through the required planning processes. This requirement creates a catch-22 for large projects, especially those that rely on discretionary grants, innovative financing, or other funding sources. The dilemma for such projects is that the funding picture may not come into focus until NEPA is completed, but the NEPA process cannot be completed without at least a general definition of the funding plan for the project. The process mandated by this requirement discourages private investment in infrastructure projects as private investors will not consider investing in a project until the environmental reviews are complete and the 150 day statute of limitations for challenging

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environmental documents has expired. This process also prohibits States from developing a list of ready-to-go projects for which funding has not been identified. If and when funding becomes available, States and MPOs must go through a long process of completing NEPA, and amending the MTP and TIP or STIP to include the projects.

To relieve these administrative burdens, provide flexibility and expedite the project delivery process, FHWA should rescind the 2008 and 2011 memos. This would allow the NEPA process to be concluded, subject to the condition that projects be included in a fiscally constrained MTP and TIP or STIP before project implementation activities begin. This approach provides a more logical sequence of allowing States to finish NEPA, then finalizing the financial plan, then using that financial plan to meet fiscal constraint requirements, and then implementing the project.

For areas in air quality non-attainment, fiscal constraint requirements are connected to the NEPA process through the transportation air quality conformity regulations. As such, AASHTO is pursuing a legislative remedy to allow the NEPA process to conclude, contingent upon the project being included in the fiscally constrained planning documents and the demonstration of project level conformity, prior to project implementation. All planning and environmental requirements would remain in effect, this approach merely changes the timing of application of the requirements. This legislative remedy supports the Administration's priority of streamlining the environmental review process and expediting project delivery. As such, we request your support in pursuing this legislative remedy.

We appreciate the opportunity to provide comments and look forward to working with FHWA to address this and other project delivery challenges. If you would like to discuss the issues raised in this letter, please contact Bud Wright at (202)-624-5811.

Sincerely,

A handwritten signature in black ink, appearing to read "John Schroer", with a long horizontal flourish extending to the right.

John Schroer, President  
Commissioner, Tennessee Department of Transportation

