

TRANSITION ALERT

LAND USE ISSUES: Infrastructure



December 4, 2008

Authors:

First in a special B&D series on issues likely to be embraced by the next administration

INFRASTRUCTURE

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“Infrastructure.” Just the very sound of the word, repeated often, is enough to cure even the most chronic insomniac. But coming from the lips of the President-elect, repeated often, the word “infrastructure” is downright invigorating. From the perspective of natural resources and land use law, a commitment to national infrastructure improvement triggers serious considerations of federal and state environmental review and permitting requirements.

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President-elect Obama has made it clear that the rebuilding and repair of our nation’s roads and bridges is a central component to his plan for economic recovery. A comprehensive public works program has the potential, in the minds of the new administration’s team of economic advisors, to put thousands of Americans back to work and, at the same time, promote transportation safety and mobility. In the face of huge budget shortfalls and declining gasoline tax revenues, these crucial projects have recently fallen to the wayside. Given Mr. Obama’s bold public pronouncements and strong Democratic majorities in both houses of Congress, funding may soon be available for highway and transit projects.

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Making more money available for infrastructure, however, doesn’t automatically put people to work. The planning, environmental review and permitting process for these major projects often takes years. Ironically, the incoming President’s desire to promote highway and bridge repair and construction may place it closer to the goals and objectives of the outgoing administration.

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Specifically, President Bush signed Executive Order Number 13274 in September 2002 to “streamline” the approval process for a priority list of transportation projects around the country. The motivation was fairly simple: certain projects had a long history of controversy and bureaucratic delays and only a concerted and coordinated effort amongst key federal resource agencies would lead to a final decision. Immediately, these efforts were the target of criticism from environmental organizations who alleged that the Executive Order would “steamroll,” instead of “streamline,” mandated analysis under NEPA and Section 4(f) of the Transportation Act, as well as other important permitting programs involving wetlands, endangered species and historic or cultural resources.

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The program met mixed success. One Executive Order project in New Hampshire was challenged in court and remanded to the FHWA for further NEPA review. Another in Maryland survived federal court litigation and is currently under construction.

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How will the Obama Administration’s desire to kick-start the economy through infrastructure improvements fit with long-standing environmental requirements? Will new leadership at the U.S. Department of Transportation re-invent the Executive Order process? Will the desire to promote “smart growth” and transit-friendly urban development clash with the stated objective to rebuild or improve an aging highway system? Can the need for prompt review and approval of these projects co-exist with a new, and perhaps more vigilant, federal environmental enforcement team?

At Beveridge & Diamond, we have been on the front lines of these major infrastructure projects in both Democratic and Republican administrations. We understand the best ways to promote efficient and defensible federal decision-making for highway, transit and bridge projects because we've helped shape those procedures and craft complex NEPA documents. Working for State Departments of Transportation and partnering with sophisticated consultant teams, B&D has a unique set of skills that has contributed to major infrastructure projects across the country. Currently, we serve in leadership posts with national transportation and planning organizations and have been called on in the past by the White House Council on Environmental Quality to recommend ways in which federal agencies can fulfill their obligations under NEPA and related laws, while at the same time reach prompt decisions on key development projects. As the Obama administration hits the ground running, we will be prepared to apply our experience to the expected emphasis on transportation and infrastructure development.

See? "Infrastructure" can be exciting.

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