



Expediting Environmental Reviews for NCTA Projects

Bill Malley
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Objectives

- Speed up the process
- Minimize permitting risk
- Minimize litigation risk

Challenges

- Trade-off between speed and risk
- Difficulty changing established practices (Merger 01)
- Constraints imposed by statutes and regulations

Opportunities

- New agency (NCTA)
- New law (SAFETEA-LU Section 6002)
- Increased recognition of the need for change

Our Approach

- Use a new process (“6002”) that has the potential to expedite project approvals
- Implement this process in partnership with FHWA, NCDOT, and other agencies – not “go it alone”
- Recognize that agencies’ basic regulatory roles have not changed; we still need to get the same permits
- Develop realistic schedules and stick to them

- Now for the specifics ...

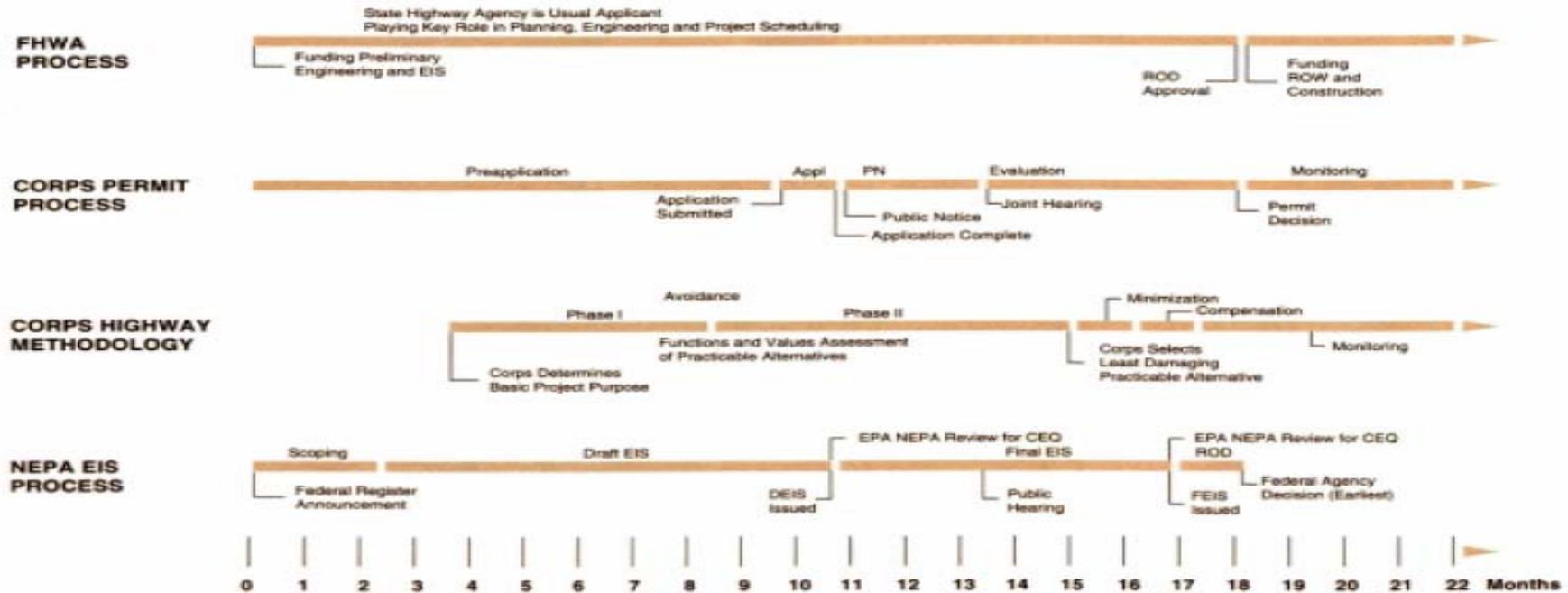
Section 6002 Process

- What is “Merger”?
- What is “Section 6002”?
- How would Section 6002 differ from Merger?
- What are the benefits and risks?
- What are the next steps?

Origins of Merger

COMPOSITE TIME LINE SCHEDULE

INTEGRATING THE CORPS OF ENGINEERS SECTION 404 PERMIT PROCESS WITH HIGHWAY PROJECTS AND NEPA



US Army Corps of Engineers
 New England Division
 November 1993

If Corps is kept a team member from the earliest planning stages its permit requirements can be integrated into traditional highway planning, engineering and NEPA processes with little additional cost or time delays



Merger 01

- Created by agreement (not by statute)
- Intended to coordinate compliance with multiple laws
- Involves “concurrency” by environmental agencies at key milestones during the process
- Steps must be sequential
- Advantages:
 - ◆ Minimizes risk that permit will be denied at end of process
- Disadvantages:
 - ◆ Highly prone to delay
 - ◆ Allows agencies to stop/delay projects based on issues over which they have no regulatory authority

Merger 01 – How it Works in Practice

- Excerpts from minutes of 8/20/03 merger meeting on Currituck project:
 - ◆ “The [hurricane evacuation] model assumptions were **established without input from the USACE and the DWQ.** There may be need for the Merger Team to review the model when it is complete. A request was made for a meeting to review the model inputs.”
 - ◆ “The USFWS and USEPA representatives stated that they **could not concur with a Purpose and Need** which includes hurricane evacuation **until the NCDOT addresses the modeling concerns** discussed at previous meetings.”

Merger 01

- Excerpts continued:
 - ◆ “The USEPA representative stated that **the Merger Process should be followed step by step**, and the step for the Purpose and Need Statement should be completed before the next step begins.”

 - ◆ “The **USEPA indicated they would not approve hurricane evacuation as a part of the Purpose and Need Statement** until the hurricane evacuation model was revised and the results provided to the Merger Team for review.”

Section 6002 of SAFETEA-LU

- Created by statute in 2005
- Intended to coordinate compliance with multiple laws
- Provides “opportunity for involvement” by agencies
 - ◆ Does not require “concurrence” at key milestones
- Agencies’ regulatory authorities are not changed
- Advantages:
 - ◆ Greater ability for lead agencies to “keep it moving”
 - ◆ Less blurring of agency roles/authorities over a project
- Disadvantages:
 - ◆ Less assurance that permit will be issued at end of process

Section 6002 – FHWA Draft Guidance

- Recommends review of existing Merger agreements:
 - ◆ “... interagency merger agreements should be reviewed to determine if they meet the requirements of SAFETEA-LU. In particular, **agreements that call for other agencies to ‘concur’** in purpose and need statements and the range of alternatives **should be renegotiated or reinterpreted to indicate that agencies are free to offer input**—supportive or adverse—at these points.”
 - ◆ Recommends working with agencies with “independent jurisdiction” – such as the Corps – to develop a “mutually acceptable” purpose and need and range of alternatives.

Comparison of 6002 and Merger

■ Key differences:

- ◆ Increased responsibility for lead agencies to manage the process and keep it moving
- ◆ Agencies given opportunity to comment; concurrence not requested
- ◆ Purpose and need can be developed concurrently with range of alternatives; need not be sequential

■ Similarities:

- ◆ Regular coordination with agencies (may be even greater)
- ◆ Corps and DENR have major influence due to their permitting role, which is defined in statute and does not change
- ◆ Permit decisions made at end of process

Benefits and Risks of Using 6002

■ Benefits:

- ◆ Greater ability to keep the process moving
- ◆ Fewer agencies with “veto” power

■ Risks:

- ◆ Less assurance of ability to obtain permit at end of process (but this risk can and will be managed through coordination with Corps and DENR)

Next Steps

- Obtain FHWA approval to use Section 6002 process
 - ◆ Currently requested for Cape Fear and Currituck
 - ◆ May also request for Monroe
 - ◆ Awaiting FHWA decision
- Develop “Coordination Plan” (required by Sec. 6002)
 - ◆ Draft in progress
 - ◆ Intend to share with FHWA and NCTA soon
 - ◆ Will discuss with environmental agencies on 11/21
- Begin Implementation
 - ◆ Met with NEPA consultants this week to discuss steps
 - ◆ Ready to move quickly once FHWA approval is granted