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Speed Limits on Trump's Infrastructure Drive: Federal Laws, Rare Species and Nimbys

Environmental regulations and neighborhood opposition routinely bog down projects and will likely constrain the administration's plan to spend \$1 trillion on 'highways, bridges, tunnels, airports

By **David Harrison**

Almost sixty years ago, officials at California's transportation department unveiled a plan to build a six-mile freeway extension in Los Angeles County.

They are still working on it.

During the 1960s, the road plan appeared on track. In the 1970s, new environmental laws required voluminous studies and sparked legal fights between the neighboring towns of South Pasadena and Alhambra, which lie along its intended path. The project remains under review.

"I am totally for the national and statewide environmental laws," said Hasan Ikhata, executive director of the Southern California Association of Governments, who supports the extension project. Still, "sometimes it gets to be ridiculous."

Many lawmakers and economists agree with President Donald Trump that America needs to fix a backlog of infrastructure needs, which the Transportation Department pegs at \$926 billion. There's a similar agreement that conservation and preservation laws have helped mitigate damage on neighborhoods and the environment.

A tour through of the nation's thorniest infrastructure struggles shows how these two goals are often in conflict. As a result, long, costly reviews and legal battles will likely confront Mr. Trump's efforts, just as they delayed much of President Barack Obama's 2009 economic-stimulus efforts.

"You would have to fix some of these issues" said McKinsey & Co. partner Tyler Duvall, a DOT assistant secretary for policy in the George W. Bush administration, "in order to get the money into the system in a productive way."

The president has yet to reveal details of his plan. On Jan. 24, Mr. Trump issued an executive order calling for expedited reviews on "high priority" projects. Before signing, he said: "We can't be in an environmental process for 15 years if a bridge is going to be falling down or if a highway is crumbling."

Any significant new infrastructure-spending package would have to clear Congress. And executive orders alone won't do much to change a well-entrenched four-decade-old regulatory process, said Philip Howard, chairman of Common Good, a think tank favoring looser federal regulation. The White House didn't respond to requests for comment.

Presidents Obama and George W. Bush sought to accelerate projects with executive orders. The Obama administration was concerned prolonged reviews could hold back stimulus spending under the 2009 American Recovery and Reinvestment Act, said Gary Guzy, general counsel at the White House Council on Environmental Quality under Mr. Obama, now a lawyer for Covington & Burling LLP.

The act devoted about \$48 billion to transportation, with a priority on “shovel-ready” projects. Getting money out the door took longer than expected. By January 2012, about \$33.5 billion had been spent. In 2015, Congress exempted some bridge replacements from environmental reviews.

Economists say well-designed infrastructure investments could increase economic productivity in the long term by making it easier for businesses to ship products and for employees to get to work. In advanced economies, boosting infrastructure investment by 1% of gross domestic product can raise overall GDP by 1.5% four years later, an International Monetary Fund study found.

It can take decades to bring such investments to fruition. Reviews under the National Historic Preservation Act of 1966, the National Environmental Policy Act of 1970, the Endangered Species Act of 1973 and other laws can involve multiple agencies before permits are issued.

Completing the process took an average of almost 10 years for major highway projects that received their final review in 2015, up from about five years in 2005, according to a study by Piet and Carole A. deWitt, retired Interior Department officials who have compiled some of the most comprehensive and frequently cited data on infrastructure-project reviews.

It took 16 years to get permits for the Army Corps of Engineers to dredge the harbor in Savannah, Ga. At least 10 federal and state agencies in Georgia and South Carolina weighed in. Work began in 2015.

In Mobile, Ala., local officials say a state proposal to bridge the Mobile River could expand business. Now, more than 73,000 cars daily cram a tunnel built for 36,000.

The Port of Mobile, on the bay’s western side, opened a new container terminal in 2008. A less-congested crossing could entice businesses to use the port, said Brian Harold, managing director of APM Terminals, a port operator in Mobile, which runs the new facility. “When prospective companies look at the eastern side of Mobile Bay and into Florida, the tunnel is always a topic of concern for them.”

The proposed \$850 million bridge would generate \$173 million to \$690 million annually in increased economic activity, the state estimates. After 14 years of reviews, it is years away from construction.

It is hard to compare project timelines before and after the 1970 environmental law because earlier projects weren’t subject to the same reporting requirements. Anecdotally, it appears projects before that year moved more quickly.

Ten years after the Interstate Highway System’s 1956 creation, the government had inaugurated 21,000 Interstate miles. That drove public capital spending to record levels and helped boost the country’s productivity, according to research by John Fernald, a senior research adviser at the Federal Reserve Bank of San Francisco.

The postwar U.S. construction boom eventually faced backlash among people who objected to the impact on neighborhoods, sensitive environmental locations and historical sites.

The 1970 National Environmental Policy Act, or NEPA, made planners issue environmental-impact statements for their most significant projects detailing how they would alter surroundings while offering ways to mitigate damage. NEPA gave environmentalists and conservationists a voice in planning, allowing them to sue if they believed developers weren’t properly following the law.

Today, the law has become so deeply ingrained that officials often spend years working through every detail to avoid suits, even if an environmental-impact statement isn’t required.

“There’s a lot of defensive medicine built into it,” said John D. Porcari, Maryland’s former transportation secretary, who served in the Obama administration and is now an executive at Parsons Brinckerhoff Inc., an engineering and consulting firm.

Environmental groups have found themselves making the same case, on the grounds that more efficient reviews would let planners devote more energy to mitigating damage, according to Deron Lovaas, senior policy adviser at the National Resources Defense Council, an environmental group “I don’t think unnecessary delay serves anyone.”

Almost 100 NEPA-related lawsuits hit federal agencies every year. One, filed by North Carolina environmental groups, spent four years in court before a resolution last year let the state replace the deteriorating Herbert C. Bonner Bridge, which links Hatteras Island to the mainland.

Since opening in 1963, the 2.7-mile bridge on the Outer Banks has been scoured by wind, water and hurricanes. State officials said it has reached the end of its life. Environmental groups challenging a \$246 million replacement said the new bridge would illegally disturb a wildlife refuge.

Construction, begun in 2016, is scheduled for 2019 completion.

In 2014, Oklahoma discovered cracks on a 79-year-old bridge between Purcell and Lexington, about 45 minutes south of Oklahoma City. State officials launched an expedited effort to replace it. Because of the bridge’s historical significance as a Depression-era project, they first needed to consult Oklahoma’s historical-preservation office under the 1966 federal preservation act.

Then officials needed to find a way to protect the Arkansas River shiner, a threatened minnow under the endangered-species act. The state plans to begin work in 2018. “It’s hard to explain that to our constituency,” said Mike Patterson, director of Oklahoma’s transportation department, “because for them it’s illogical.”

As an example of how things should work, Mr. Porcari, the former Maryland transportation chief, cites the renovation of the Woodrow Wilson Bridge connecting Maryland and Virginia. After years of lawsuits almost killed the project, officials revived it in 1999, inviting environmentalists and community groups to planning meetings to discuss how to offset the new bridge’s effects.

They agreed to restore the nearby Anacostia River, including cleaning up an illegal landfill. The revamped review was completed in 2000 and the new bridge opened in 2006. Today, the landfill is a wetland where wild rice and cattails thrive. Cormorants, herons and egrets populate the cleaner river.

In Southern California, planning for the State Route 710 extension continues to divide South Pasadena and Alhambra.

During the 1960s, the state prepared by buying homes along its proposed route. After the 1970 environmental law, South Pasadena sued to block construction, saying the state hadn’t followed the act’s review process. Residents feared the highway would split the town in two. Neighboring Alhambra argued the highway would ease congestion.

The 1973 lawsuit touched off a 25-year effort to revise the proposal, which succumbed to another lawsuit in 1999 by South Pasadena.

Planning efforts since have focused on a tunnel, which state officials estimate would generate up to \$1.59 billion in net benefits over 20 years. The state is starting to sell the homes it bought 50 years ago for the roadway.

Opponents in South Pasadena worry a tunnel could weaken the ground under its historic Craftsman houses. “This is something that can never be built,” said Joanne Nuckols, 73, a board member of a local preservation group who has been fighting the road for 30 years.

Alhambra council member Barbara Messina, 76, has been advocating for the extension since 1978. “God forbid we had people like that when we had our major infrastructure projects done,” she said. “We would never have gotten anything done.”