



International Right of Way Association Weekly Update

Monday, October 9, 2017

Trump Administration

- A Nossaman expert attended a meeting at the White House on the Administration's infrastructure plan this week, but no new information or details were discussed. When asked about the President's comments on public-private partnerships ("P3s") as an infrastructure delivery tool, Deputy Secretary of Transportation Jeffrey Rosen said that P3s are a tool in the toolbox and that the real issue is how much leverage a project sponsor will be able to achieve, regardless of whether a P3 is used to deliver the project. The President's infrastructure advisor DJ Gribbin also noted repeatedly that everything is subject to change without notice, which seems to be a clear recognition of the fact that the President may speak off-message at any moment.
- The U.S. Department of Transportation ("USDOT") recently released two proposed rules implementing certain environmental provisions of the Fixing America's Surface Transportation ("FAST") Act. The first, "Program for Eliminating Duplication of Environmental Reviews" (82 FR 45220), implements the FAST Act Section 1309 requirement that the Secretary of Transportation "establish a pilot program authorizing up to five States to conduct environmental reviews and make approvals for projects under State environmental laws and regulations instead of the National Environmental Policy Act (NEPA)." The second, "Environmental Impacts and Related Procedures" (82 FR 45530), proposes to include the Federal Railroad Administration in the consolidated environmental review regulations shared by the Federal Highway Administration and the Federal Transit Administration. Comments are due on both rules in late November.

Congress

- The House of Representatives passed a budget resolution last week that includes reconciliation instructions for comprehensive tax reform.
https://www.washingtonpost.com/powerpost/house-passes-2018-budget-taking-a-crucial-step-toward-tax-overhaul/2017/10/05/5ea7294e-a9d1-11e7-850e-2bdd1236be5d_story.html

Analysis

- Not much has been made of the President's anti-P3 comments, and it appears as though the Administration is—at least for the time being—of the strategy that they are best ignored to the maximum extent possible. Through conversations a Nossaman expert has had with senior White House and USDOT staff over the past week, it is clear that the approach will be to focus on the leverage aspect of the Administration's proposal instead of the necessity that such leverage involve P3s. If pressed, the plan is to respond as Deputy Secretary Rosen responded—that P3s are a tool in the toolbox but not a panacea for every project. It is worth noting that this response is itself inconsistent with the President's remarks, which cast doubt on P3 delivery for infrastructure projects, period. The willingness for senior Administration officials to disagree with the President on policy issues has been fairly commonplace in this Administration, but this is the first we are seeing a deliberate “nuancing” of the President's remarks in the infrastructure policy arena.