

Statement of Christy Goldfuss
Senior Vice President for Energy and Environment Policy, Center for American Progress
Roundtable examining the federal permitting process for major infrastructure projects,
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Introduction

Thank you, Senators Portman and McCaskill, for inviting me to participate in this important discussion about the federal permitting process for major infrastructure projects. What we are talking about today should not be political or divisive. Both Republicans and Democrats have sought to improve the process by which the Federal Government works to permit major infrastructure projects while ensuring that community input is included, and clean air, clean water, and wildlife are protected.

As Managing Director of the Council on Environment Quality (CEQ) under President Obama, I worked closely with my colleagues at OMB and NEC at the time to implement the [Fixing America's Surface Transportation \(FAST\) Act](#) by standing up the Federal Permitting Improvement Steering Council (FPISC), writing its inaugural guidance, and staffing it with talented people that knew how to move the levers of government to overcome barriers and achieve greater efficiency in the environmental review process. As you know, CEQ is responsible for administering the National Environmental Policy Act (NEPA), which allows federal decision-makers to understand the impacts of their actions ahead of time. I supported the creation of FPISC and other permitting reforms because I saw first hand the need to coordinate agencies, establish milestones, and create transparency so that environmental review can be improved where necessary, and not blamed for the burdens of a complicated network of public and private requirements.

Through Title 41 of the FAST Act and other recent actions, Congress has given the Federal Government the tools to modernize the way it does business. In corporations, it has been well documented that highlighting best practices, measuring progress, and tracking metrics leads to better outcomes. However, those tested measures only work if the government uses them and builds trust with industry to demonstrate that this model will work in the complex government structure. Unfortunately, the Trump administration has pushed Congress to expand its authority rather than effectively exercising what it already has.

As a result, I have reservations and concerns about amending the FAST Act to expand the authority of the Federal Government without more proof points from implementation of the existing authorities. At its core, FAST-41 was written to modernize the permitting process, which includes responding to data that show where the problems may exist. The administration has failed to aggressively implement those authorities to give you the data you need to address the infrastructure needs of the country. If Congress does move forward with amending the FAST Act, however, I have several recommendations on how to make those changes additive to other recent steps that Congress has taken and ensure that the permitting process continues to protect communities and the air, water, and wildlife on which they depend.

Congress enacted permitting reforms

Prior to working at CEQ, I was the Deputy Director for the National Park Service (NPS) which gave me a front row seat to interagency conflicts and disputes. Without direct oversight from the Secretary of the Interior's office, there was little incentive to work through differences and hold agencies accountable to making progress. The statutes that each of the agencies were tasked with administering inevitably were at odds on occasion, so it took focus and accountability to find solutions that worked under the law. To give you a simple example, the Bureau of Land Management's multiple use and sustained yield mission at times would conflict with the conservation and preservation responsibilities of the National Park Service, and those types of competing responsibilities exist across the government. Therefore, it was clear that it would be helpful to have an entity that would support the experts in these agencies with the guidance, oversight, and political support necessary to work through conflicts in a timely manner.

Congress took action to address these permitting challenges three times over the past six years—passing the [Fixing America's Surface Transportation \(FAST\) Act](#) in 2015, the [Water Resources Reform and Development Act \(WRRDA\)](#) in 2014, and the [Moving Ahead for Progress in the 21st Century Act \(MAP-21\)](#) in 2012. The FAST Act, WRRDA, and MAP-21 contained some of the most significant legislative rollbacks of NEPA and the environmental review process in history. The three laws, however, also included bipartisan provisions to clarify several permitting requirements and provide the federal government with many new tools to expedite review processes without sacrificing environmental considerations and community input.

Federal agencies [often coordinate](#) their review processes so that experts on a range of environmental impacts or infrastructure types can weigh in on projects' potential outcomes. The FAST Act also provided project sponsors with a path to help them identify potential environmental impacts as well as agencies with jurisdiction over affected natural, cultural, and historic resources. Thanks to MAP-21 and the FAST Act, agencies with jurisdiction now have improved early coordination procedures; clarified roles and responsibilities; and dispute resolution practices. Projects must follow a single government-wide project schedule and can carry planning-level decisions forward into the NEPA process.

In 2015, two new offices were established to focus on permitting—the [Infrastructure Permitting Improvement Center](#) (IPIC) at the Department of Transportation (DOT) and the [Federal Permitting Improvement Steering Council](#) (FPISC) with an executive director appointed by the President. The FPISC was viewed as essential to bringing agencies together to surface interagency disputes and share best practices. At the time it was established, the connection to the POTUS and the Executive Office of the President (EOP) was viewed as integral to the success of the executive director who would need to build relationships with deputy secretaries and staff across at least 13 departments and agencies, while also having credibility with project sponsors. From issuing [Executive Order 13766](#) in the early days of the Trump administration which confused implementation of permitting reforms to failing to appoint an executive director, the Trump administration has not demonstrated acumen in implementing the authorities it currently has to expedite permitting.

Struggles with implementation of permitting reforms

The Trump administration and others point to the permitting process as the main cause for project delays. [Existing data](#) show that delays are more often the result of a lack of funding. Recognizing the need to further study the causes of project delays, the U.S. Congress directed DOT to establish a public-facing online tracking system of projects in the permitting process. Project sponsors and the public

should be able to use the tracking system—known as the [Federal Infrastructure Permitting Dashboard](#) to expedite projects and understand the true causes of any delays. The Permitting Dashboard is still very much a work in progress, with [incomplete data](#) and limited [mapping capabilities](#), but it has significant, untapped potential. The IPIC, too, is only just getting started. In its [Annual Report to Congress](#), the IPIC notes that its “accomplishments this past year have laid the foundation for the time and resource efficiencies that DOT expects will soon be realized in the environmental review and permitting of infrastructure projects.” Like many of the other provisions Congress provided, the Permitting Dashboard and the IPIC have not had sufficient time to demonstrate success in expediting project delivery.

President Trump has also [failed to appoint](#) people to key positions that could help accelerate project delivery. The Federal Highway Administration, which processes [approximately 10 percent](#) of the federal government’s environmental impact statements in any given year, is still without an administrator. While we were pleased to see an Acting Director announced, the FPISC executive director position is [still vacant](#). As mentioned above, a political appointee is particularly important in this role to demonstrate to departments and agencies the level of priority and commitment from the White House. The same is true for project sponsors who may question the legitimacy of the FPISC without political leadership. This person would have broad authority to advance the group’s [mission](#) and move large projects forward.

The FAST Act allowed FPISC to [establish](#) a “fee structure for project proponents to reimburse the United States for reasonable costs incurred in conducting environmental reviews and authorizations” for certain projects. The FPISC has not yet implemented this initiative, which would help facilitate faster reviews at the expense of project sponsors—in this case, private developers. By failing to utilize these existing tools, the Trump administration is not advancing the established goals within the agreed-upon frameworks of MAP-21, the FAST Act, and WRRDA.

Lastly, as with any new authority and tool, there needs to be an extensive and rigorous training component for subject matter experts across the government on how the new authorities impact their work. The [Annual Report to Congress for FY2017](#) from the FPISC shows that each agency has at least one updated online training tool, and while that is a start, it will hardly be enough to change behavior across the government. When the executive director of the FPISC is appointed, he or she should prioritize developing a strong community of practice across the government so that case studies, training tools, and data needs can be shared regularly by practitioners.

Amending the FAST Act to improve the federal permitting process

As stated above, I have reservations about giving new authorities to untested and unproven government entities without greater data and proof points around implementation. However, if the Senate Homeland Security and Governmental Affairs Committee (HSGAC) chooses to advance legislation to enact more permitting reforms, I respectfully offer several recommendations for your consideration. First, the FAST Act, WRRDA, and MAP-21 all contained permitting reforms and changes to environmental review that need to be harmonized to make clear which authorities apply to which projects. If transportation and water projects qualify to be covered projects under the FAST Act, the same judicial review and guidelines must apply to them as other covered projects.

Next, given that the Trump administration has not kept pace with Congress’ appetite to implement infrastructure permitting reforms, it would be prudent to keep a sunset date for provisions of FAST-41 that have yet to be implemented, such as for advancing a preferred alternative or judicial review. This

will allow for appropriate oversight of untested authorities, while demonstrating strong support for the FPISC and the Dashboard by eliminating their sunset date.

Lastly, I strongly recommend against any consideration of legislated deadlines. Congress has laid out a clear path for the administration to address the challenges of permitting infrastructure projects, but it requires the administration to do the hard work of governing by addressing challenges and developing solutions that work under the law. Little can be gained by forcing under-resourced agencies to develop projects faster without the strong backbone of a fully functioning FPISC. This will only lead to more court battles and additional stops and starts in permitting timelines as agencies rush reviews and communities are cut out of the process. Instead, the thorough implementation of FAST-41 and the other permitting reforms will net excellent data for the Committee to truly diagnose any additional problems in process and procedure.

Conclusion

In conclusion, Congress has acted repeatedly in recent years to address the challenges associated with permitting major infrastructure projects. However, the Trump administration has delayed progress in achieving the stated goals of FAST-41, WRDA, and MAP-21 by not properly resourcing the newly established entities, by not staffing the key positions across the government, and by not investing in the technology and data necessary to truly modernize this highly complex process. I thank you again for inviting me to speak to you about a top priority issue for all of us, which is addressing the needs of the nation's crumbling infrastructure while protecting the air, water, and wildlife on which we all depend.