

STATEMENT OF
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IMPROVEMENT STEERING COUNCIL (PERMITTING COUNCIL)
BEFORE THE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
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Senator Portman, Ranking Member McCaskill, and Members of the Committee, thank you for the invitation to this roundtable discussion on the federal permitting process for infrastructure projects. The Permitting Council continues to make significant progress in improving transparency, predictability, and accountability in the form of avoided delays in the permitting process. We are accomplishing this by using the tools provided by the Fixing America's Surface Transportation Act (Pub. L. No. 114-94) (FAST-41). I am grateful for the opportunity to take part in this critical discussion on how we can improve the efficiency and timeliness of the permitting process. I am also pleased to be able to describe some of the project specific successes we have had to date. In fact, the Permitting Council has succeeded in saving FAST-41 projects over \$1 billion in costs that would have otherwise resulted from avoidable permitting process delays. This \$1 billion estimate is the result of avoided cost estimates provided by the project sponsors for those projects as well as associated public court filings that estimate costs due to potential delays.

FAST-41 Background

FAST-41 is a voluntary program for eligible large, complex infrastructure projects that provides oversight, strengthens cooperation and communication among regulatory agencies, enhances transparency, and emphasizes concurrent processing of environmental reviews and authorizations. FAST-41 does not modify any underlying federal statutes, regulations or mandatory reviews.

Of the 38 FAST-41 projects currently on the publicly available Permitting Dashboard, 16 have completed the Federal permitting process. Anyone can use the Dashboard to view a project's schedule and the status of all the environmental reviews and authorizations required for a FAST-41 project. The information on the Dashboard is required to be reviewed and updated quarterly, at a minimum.

The Permitting Council uses the Dashboard, in concert with the coordinated project plans (CPPs) developed for each FAST-41 project, to keep FAST-41 projects on track and on schedule by: (1) breaking down silos across Federal permitting agencies through enhanced coordination, (2) ensuring efficiency in the permitting process, and (3) providing oversight and issue resolution.

Breaking Down Silos through Enhanced Coordination

The Permitting Council creates a more standardized, predictable permitting process through enhanced project-specific coordination that ensures multi-agency collaboration for FAST-41 projects. The Permitting Council agencies have appointed both Council members (Deputy-Secretary or equivalent) and Agency Chief Environmental Review and Permitting Officers (Agency CERPOs) to act as agency leaders to identify and resolve potential impediments to the permitting process for FAST-41 projects.

Since January 2018, my office has scheduled eight in-person meetings with the designated Agency CERPOs to discuss projects. My office provided focus areas for discussion based on apparent gaps or concerns about the CPPs and schedules, as well as any other issues that appeared to be unresolved that could result in avoidable delays. Lead agencies coordinated with the Agency CERPOs for the cooperating and participating agencies to ensure the appropriate agency representatives would be in attendance and would be prepared to participate in in-depth project discussion.

Efficiency in the Permitting Process

The Permitting Council ensures projects progress through the permitting process in an efficient manner while working to identify opportunities to improve internal procedures. My office serves as a communication bridge to connect personnel at all levels of government with staff and subject matter expertise within or across agencies to make the appropriate connections needed to resolve issues. By collaboratively working with the agencies to identify opportunities for permitting process improvement, the Permitting Council is able to ensure each project's permitting schedule has been optimized. Similarly, by identifying resources across agencies to assist with resolving complicated policy questions on a FAST-41 project, the Permitting Council is able to ensure such complex issues are elevated to the appropriate staff while ensuring work continues in the field office further preventing confusion and unnecessary delays.

Oversight and Issue Resolution

Through our oversight, the Permitting Council brings agencies together to ensure FAST-41 projects receive the most efficient and effective permitting process possible. We accomplish this by using the tools provided by FAST-41, including the CPPs, Dashboard, Permitting Council representatives (working group, agency CERPOs, and Council members), and the provisions surrounding any modifications to the permitting schedule. For example, modifications to the permitting schedule of more than 30 days must be approved by my office to prevent undue delays and ensure a realistic and concurred-upon schedule has been developed, upon which all parties will act moving forward. To date, modifications have been requested for 11 projects – my office coordinated with project sponsors and Federal agencies to facilitate communication and resolution of the challenges responsible for those schedule modifications.

My office, the Office of the Executive Director, reduces permitting delays for FAST-41 projects by providing the oversight needed to ensure transparency, accountability, predictability, and concurrent processing throughout the permitting process. Some examples of my office's role in keeping FAST-41 projects on track and on schedule through FAST-41 oversight and issue resolution are provided below.

- My office facilitated cooperation among agencies involved in the Nexus Gas Transmission Line to ensure an efficient and timely Section 106 review under the National Historic Preservation Act (Section 106 NHPA). My office worked with the lead agency (Federal Energy Regulatory Commission (FERC)), the Advisory Council on Historic Preservation (ACHP), and other Permitting Council member agencies to determine what information still needed to be provided by the applicant to support FERC's completion of the review. My office and Permitting Council member agencies cooperated with the project sponsor to facilitate delivery of that information and an expedited conclusion to the review, allowing subsequent authorizations to move forward and, according to the project sponsor, saving an estimated 6 months and \$300 million in capital costs to the project.
- My office's oversight role and involvement led to the successful drafting and implementation of a Programmatic Agreement for Section 106 NHPA for two FAST-41 projects, and supported ACHP in playing a key role in reaching agreement on appropriate resolution of key issues with FERC, the U.S. Forest Service (USFS), the National Park Service (NPS) and the states that were involved. For one of these projects, Atlantic Coast Pipeline, the completion of the Programmatic Agreement allowed other Federal permitting actions to move forward. This in turn allowed the permitting process to be completed in time to utilize that year's tree clearing window for construction activities, preventing a delay of one year.
- The Mid-Barataria Sediment Diversion project was the first project to apply to the FAST-41 process, and is a key example of the successful implementation of Federal-State coordination on a FAST-41 project by creating and implementing the first FAST-41 memorandum of understanding (MOU). This MOU established roles and responsibilities for both Federal and State agencies, including their specific permitting responsibilities. In addition, my office identified complex questions related to National Environmental Policy Act (NEPA) implementation not yet resolved by the agencies, and worked with the Council on Environmental Quality (CEQ) to provide subject matter expertise to the agencies to assist them in determining their next steps. These actions resulted in a reduction in the current permitting schedule by nearly two years.

Permitting Council Policy

The Permitting Council is using the lessons learned through the work done on FAST-41 projects to inform and identify permitting process efficiencies and improvements for all infrastructure projects. The Permitting Council includes CEQ and Office of Management and Budget (OMB), and the Permitting Council continues to work closely with them on implementation of Executive Order 13807 and the One Federal Decision Memorandum of Understanding, which foster an unprecedented level of coordination and collaboration in conducting environmental reviews and authorizations of major infrastructure projects.

Through improved agency coordination, increased transparency and accountability and timely decision making, we can ensure FAST-41 projects progress through the permitting process in a more predictable way.

I look forward to continuing to work with you to set the stage for success in year two of FAST-41 implementation (since publication of the CEQ and OMB FAST-41 Implementation Guidance document on January 13, 2017). As I stated earlier, we've saved FAST-41 projects over \$1 billion due to avoided permitting delays, according to estimates provided by project sponsors for their projects and associated court filings that estimate costs due to potential delays. Through the promotion of accurate and comprehensive permitting schedules, we will continue to enhance interagency coordination for these unique and complex infrastructure projects.

Thank you again for the opportunity to participate in today's discussion.