

Federal Permitting Improvement Steering Council

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Written Submitted Testimony

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Permanent Subcommittee on Investigations

Chairman Portman, Ranking Member Carper, and Members of the Committee, thank you for the opportunity to testify today on how Title 41 of the Fixing America's Surface Transportation Act (FAST-41) is improving the Federal permitting process. Enacted by Congress in 2015, FAST-41 established a coordinating framework designed to improve the permitting process for a diverse portfolio of proposed large-scale, complex infrastructure projects across the nation. A key component of this framework is the Federal Permitting Improvement Steering Council (Permitting Council), chaired by an Executive Director appointed by the President. The Permitting Council is an interagency body comprised of 14 Federal agencies, the Council on Environmental Quality, and the Office of Management and Budget.¹ In the 4 months since I became Executive Director, we have focused on leveraging this interagency body to bring about a new era of transparency, efficiency, and accountability. We are actively reducing unnecessary red tape, costs, and delays for FAST-41 projects.

As you know, today, the Federal infrastructure permitting process can be very fragmented, unpredictable, and inefficient. There are many Federal statutes that govern infrastructure permitting, and they are executed by multiple Federal agencies. In addition, there can be significant overlap in statutory requirements and inconsistency in application of those requirements in the permitting process. FAST-41 provides an interagency mechanism to coordinate implementation of multiple permitting statutes including by providing for a single unified schedule.

For major Federal actions requiring an environmental impact statement (EIS) pursuant to the National Environmental Policy Act, the Council on Environmental Quality has reported that, across agencies, the average time for completing EISs was 4.5 years for the period 2010 through 2017.² Half of the 1,161 EISs reviewed took more than 3 years and 7 months to complete; a quarter took more than 6 years to complete.

¹ Permitting Council Agencies: Advisory Council on Historic Preservation, Department of Agriculture, Department of the Army, Department of Commerce, Department of Defense, Department of Energy, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Transportation, Environmental Protection Agency, Federal Energy Regulatory Commission, General Services Administration, Nuclear Regulatory Commission.

² <https://www.whitehouse.gov/wp-content/uploads/2017/11/CEQ-EIS-Timelines-Report.pdf>

The permitting process can include compliance with not only numerous Federal statutes, but also State and local laws and ordinances, and may vary significantly depending on the unique nature of the infrastructure project being proposed, its location, and potential impacts. For example, one FAST-41 project has 19 cooperating agencies (7 Federal, 3 State, 6 County, and 3 other entities), for which 9 Federal permitting actions are tracked on the Permitting Dashboard. Another FAST-41 project involves over 30 Federal permitting actions and over 50 state and local permitting actions, one of which could comprise authorization for 611 water crossings.

In recognition of these complex permitting challenges, FAST-41 established the Permitting Council to provide a one-stop resource within the Federal government for coordination across Federal agencies in a way that respects agencies' responsibilities as regulators while also serving as a reliable Federal partner to all stakeholders – state and local government officials, tribes, the public, and project proponents. In other words, the Office of the Executive Director serves as an impartial third party that helps shepherd projects to deliver a definitive beginning and end to the permitting process.

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.

The FAST-41 project inventory has a total investment value of \$174 billion, with an average project investment value of \$4.25 billion. One of the benefits of tracking these projects on the Permitting Dashboard, according to coordinated project plans, is shown in the NEPA process for FAST-41 projects. While the number of projects currently represented on the Permitting Dashboard continues to grow, some initial observations can be made. Projects that voluntarily applied to become covered under FAST-41 are shown on the Permitting Dashboard to take an average of 2.2 years to complete a Record of Decision. For FAST-41 legacy projects that were identified by agencies as an initial inventory of FAST-41 projects, the Permitting Dashboard shows the NEPA process to take 4 years. FAST-41 project permitting durations are therefore on average, 0.5 to 2.3 years shorter³ than other EISs.

This year, the Permitting Council has grounded its activities on five key principles designed to keep FAST-41 projects on track and on schedule by (A) breaking down silos across Federal permitting agencies through enhanced coordination, (B) identifying and implementing intra- and inter-agency efficiencies in the permitting process, and (C) providing oversight and issue resolution. These principles include:

³ <https://www.permits.performance.gov/projects>

1. Demystifying the permitting process at each agency;
2. Clarifying roles and responsibilities among Federal agencies to avoid issues that could derail the project;
3. Aligning agency roles and permitting processes, where possible, in the following ways: joint and programmatic approaches, improved planning among agencies, and maximization of concurrent permitting actions;
4. Requiring transparency and accountability in meeting milestones throughout the process; and,
5. Sharing lessons learned to facilitate successful adoption and implementation of best practices to improve the permitting process across the agencies.

These principles are carried out through **four** critical Permitting Council activities that serve as the pillars of FAST-41 to deliver real-time, predictable results - reducing the decision-making time for projects without compromising our valued natural, community, cultural, and historic resources. These four activities include:

First, the Permitting Council agencies have developed best practices that address these principles in the Fiscal Year 2019 Best Practices report, which will be published this month. For example, the first principle – demystifying the permitting process at each agency – is addressed through the following best practice for Permitting Council agencies:

Provide the project sponsor/applicant and all cooperating and participating agencies of a FAST-41 covered project information about the environmental review and authorization processes, including all steps, by the time the initial coordinated project plan (CPP) or project management plan is completed. Provide updated schedule to the project sponsor and the other governmental entities with environmental review and authorization processes when substantive changes occur. Substantive change is when any Agency or the project sponsor does not conduct or complete on time a scheduled activity or milestone upon which another entity is dependent.

Second, the Office of the Executive Director issues an Annual Report to Congress, which serves as the only interagency tool assessing agency progress in implementing the best practices identified by the Permitting Council agencies for that fiscal year. The Annual Report to Congress for fiscal year 2018 was submitted to Congress on April 15, 2019.

Third, the Office of the Executive Director works in partnership with Council agencies to provide in-person facilitation of interagency permitting processes. The Permitting

Council uses the Permitting Dashboard and interagency meetings facilitated by my office that discuss critical issues and deadlines for FAST-41 projects' permitting processes. This allows my office to help agencies align their permitting processes, and develop a prudent, timely, and realistic permitting schedule that effectively addresses any statutory, regulatory, or procedural overlap, redundancies, and inconsistencies. Should conflicts arise, FAST-41 provides a formal dispute resolution process to ensure a final decision is reached in a timely and efficient manner.

Fourth, and finally, as Chair of the Permitting Council, my office is actively working with the Permitting Council agencies to help support the agency field staff responsible for implementing FAST-41 provisions and managing the permitting processes for FAST-41 projects day to day. The inherent complexity of these projects combined with the decentralized organizational structure of many agencies can lead to inconsistent interpretation of the policies and guidance issued from Headquarters offices. Illustrating the opportunity for inconsistent application, many agencies have divisions, regional offices, districts, and field offices across the country, where several can be responsible for permitting for the same project.

To address this problem, my office is working with the agency staff in the headquarters, regional, and field offices to identify how we can best support consistent implementation of FAST-41 provisions, including on-location meetings with agency staff and community stakeholders to build a strong foundation and identify a clear path forward for each new FAST-41 project. My office is also focused on proactively developing relationships between Federal, State, local and tribal governments around the country.

Together, these four activities support our efforts to increase Federal coordination in the permitting process. Looking ahead, the Permitting Council will continue to strongly support initiatives that will enable agencies to further improve their processes and promote the efficient and effective use of agency resources.

- Encourage the expanded use of non-Federal funds, using existing authorities, to support accelerated development and review of permit applications and other environmental documents, where appropriate.
- Explore ways to enhance the coordination of Federal environmental laws with State, local, and tribal governments. The goal is to prevent unnecessary conflict or duplication of efforts.
- Ensure access for State and local governments and tribes to FAST-41 tools and best practices, as appropriate, and assist with their environmental reviews and authorizations.
- Harness the use of technology through expanded use of technology such as web tools, online applications and assistance, and geographic information systems (GIS) (as appropriate) to increase transparency and efficiency.

In summary, through partnership with Federal agencies, State, local, and tribal governments, as well as the private sector, the Permitting Council is accelerating the delivery of complicated environmental reviews and authorizations for critical infrastructure projects.

I look forward to continuing to work with you in implementing FAST-41. Through the promotion of reliable and comprehensive permitting schedules and increased coordination and collaboration, we will continue to improve the permitting process for these unique and complex infrastructure projects.

Thank you again for the opportunity to participate today and I look forward to your questions.