Building a Prosperous Future

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Business Roundtable

Introduction

There is a growing bipartisan agreement that the federal permitting system for major infrastructure projects is overly complex and time-consuming. This cumbersome process unnecessarily drives up costs, hinders essential investments, and slows down economic development and job creation.

McKinsey in a recent study estimated that it takes approximately four to five years for the average investment dollar to go through the federal permitting process.[1] This means there is as much as $1.5 trillion in potential investments currently awaiting required federal permits across the eight key sectors that were analyzed. Delays in the permitting process have a range of effects, including lost economic development opportunities for communities and regions, diminished job creation, and specific sectoral, social and environmental impacts. For example, the unrealized returns from infrastructure in federal permitting are between $100 billion and $140 billion per year and the unrealized induced GDP impact of infrastructure currently in federal permitting is approximately $1.7 trillion to 2.4 trillion.

Over the past decade, Congress has taken significant steps to improve the permitting process through bipartisan legislation such as Moving Ahead for Progress in the 21st Century Act (MAP-21) and the Fixing America's Surface Transportation Act (FAST Act) for surface transportation projects, FAST-41 for certain "covered projects" that voluntarily opt into the process, the Water Resources Development Act for certain water projects, and the Infrastructure Investment and Jobs Act which made important changes to FAST-41 and appropriated funds for permitting capacity building at the federal, state and Tribal levels. Environmental Impact Statement (EIS) completion time is down 40% in the last five years, in part due to the Fiscal Responsibility Act which incorporated key procedural reform best practices into the National Environmental Policy Act (NEPA).

These reforms have led to better agency coordination, quicker dispute resolution and shorter timelines for environmental reviews. For instance, the most recent median time to complete an EIS for major infrastructure projects has been reduced to 26 months (2.2 years), as compared to the median of 43 months (3.6 years) in 2019, an improvement of nearly a year and a half.[2] However, a subset of projects drives the average (or mean) time for review to over three years, so there is still much work to be done. In addition, reforming the litigation process regarding the sufficiency of the EIS or Environmental Assessments (EA) associated with major infrastructure projects would substantially reduce permitting times. For that subset of projects where litigation proceeds through the appeals stage and an increasing number of projects are finding themselves facing legal challenges, the average time incurred for judicial reviews exceeds four years, thus undercutting the benefits of the reforms that have been achieved.[3] Additionally, each economic sector is subject to its own unique permitting and licensing regime in addition to the NEPA-driven environmental reviews. To truly unlock the potential of our economy, we need to streamline and accelerate the review and permitting processes for non-NEPA-related projects.

The current Administration has taken bold action to address needless permitting delays, and we are hopeful that as these initiatives are fully implemented, we will see improvements that will help drive economic growth and job creation. Some of these initiatives may affect several of the recommendations that follow. However, it is important that Congress codify these recommendations to help ensure the durability of significant reforms.

Permitting reform can tackle rising costs, address critical minerals shortages and supply chain vulnerabilities, alleviate transmission constraints and remove other barriers to American economic success. By making necessary changes, we can pave the way for building a more efficient, resilient and prosperous future.

The Fiscal Responsibility Act Codified Key Best Practices of a Modern Permitting Process

Business Roundtable has long supported certain key reforms to make the federal permitting process more predictable, streamlined and expeditious. Many of these reforms were codified in Title III of the Fiscal Responsibility Act, including:

+ Requiring joint lead agencies, single environmental documents and concurrent agency reviews.
+ Establishing time limits of one year for EAs and two years for EISs.
+ Defining "major federal action" to include only those activities or decisions subject to sufficient federal control and responsibility.
+ Limiting an EIS to 150 pages (or 300 pages for projects of unusual scope or complexity).
+ Requiring agencies to consider "reasonable alternatives" that are technically and economically feasible and that meet the purpose and need for the proposed action.
+ Requiring agencies to further develop and use categorical exclusions to the maximum extent permissible under law.

In addition to the amendments to NEPA made by the Fiscal Responsibility Act, Congress recently amended NEPA to accelerate environmental reviews for project sponsors electing to pay opt-in fees for environmental reviews. This provision, which was included in the Budget Reconciliation bill recently enacted into law[4], allows project sponsors to pay 125% of the anticipated costs to prepare an EA or EIS and in exchange, requires agencies to complete an EA within 180 days and an EIS within one year. Since this provision has not yet been implemented, it is too soon to predict its ultimate effect on permitting timelines.

More Improvements Are Needed Beyond Those Addressed in the Fiscal Responsibility Act

Congress should amend and modernize NEPA and other statutes to provide for a more effective and efficient review of infrastructure permit applications:

+ Limit NEPA reviews to environmental impacts that are not already within another federal agency's direct regulatory jurisdiction to eliminate needless redundancy and focus NEPA reviews on impacts not otherwise subject to review.[5]

+ Require agencies to make permitting decisions within 90 days of issuing a final EIS or EA. If an agency has not acted within 90 days of issuing a final EIS or EA, either to approve or deny an application for a permit, the application should be deemed approved by operation of law.

+ Define NEPA's "reasonably foreseeable environmental effects" phrase to provide clear guidance regarding the scope of reviews.

+ Codify the requirement that agencies leverage digital technologies to streamline and speed up the permitting decision-making process, as called for in a Presidential Memorandum on April 15, 2025.

+ Reduce or eliminate redundant reviews and consultation by utilizing state data where states have primary regulatory authority over a project.

+ Require agencies to catalog the number and types of permits required and develop categories of permits that may be issued by rule to the extent permitted by law.

+ Require agencies to establish transparent processes that include clear guidelines, timelines, including dispute resolution time limits, and an obligation to ensure these processes are adhered to consistently across all offices within an agency.

+ Direct agencies to utilize nationwide permits, programmatic EISs, categorical exclusions and permits by rule to the maximum extent permitted by law to reduce redundancy and make reviews more efficient.

+ Reaffirm and codify the authority for the Army Corps of Engineers Nationwide Permit program for linear infrastructure and direct the Corps to preserve longstanding practices under this program.

+ Reform the Clean Water Act Section 401 state disapproval process to limit a state's opportunity to disapprove, or condition, a certification of a water permit for reasons other than the project's direct impact on water quality within the state.

- Reform Clean Water Act Section 404 consistent with the Supreme Court's *Sackett* decision regarding the definition of "Waters of the United States." The Administration initiated the process in March to conform guidance and regulations with the *Sackett* decision, but durability requires Congress to clarify language in the Clean Water Act.

- Allocate funding consistent with recent law to ensure that agencies have adequate resources, including personnel, to administer permitting programs in a timely manner.

The NEPA Litigation Process Remains a Key Source of Needless Delay and Should be Reformed by Congress

While Title III of the Fiscal Responsibility Act took important steps to codify best practices into NEPA's permitting framework, it did not fix longstanding problems in NEPA-related litigation. Litigation over the sufficiency of EAs or EISs has proven to be one of the most significant sources of delay for infrastructure projects. According to a recent study of NEPA litigation by The Breakthrough Institute,[6] between 2013 and 2022, circuit courts heard approximately 39 NEPA appeals cases per year, a 56% increase over the rate from 2001 to 2015. Agencies won about 80% of the 2013–2022 appeals cases. The rate at which agencies' reviews are upheld is high, meaning these environmental reviews are seldom changed because of litigation. However, on average, 4.2 years elapsed between publication of an EIS or EA and conclusion of the corresponding legal challenge at the appellate level. In the meantime, projects are left in legal limbo and often are subject to an injunction prohibiting construction pending the outcome of litigation.

Another recent study, analyzing a data set of 355 major transportation and energy infrastructure projects that completed a federal environmental study between 2010 and 2018, found that 28% of the projects requiring an EIS faced litigation and 89% of these projects involved a claim of a NEPA violation. The study also found the highest litigation rate was with respect to solar energy projects, nearly two-thirds of which were litigated. Other high-litigation sectors include pipelines (50%), transmission lines (31%), and wind energy projects (38%).[7]

Congress should amend NEPA to expedite permitting and reduce frivolous litigation that only adds to costs and delays while respecting the core objective of NEPA, which is to identify major federal actions that may significantly affect the quality of the human environment. Business Roundtable recommends the following litigation reforms, **all of which will require Congress to change the underlying law to codify needed reforms:**

- Specify a statute of limitations of no more than 150 days for any litigation that may result from a federal permitting decision, consistent with the timeline established for surface transportation projects, whereas the default statute of limitations under the Administrative Procedure Act is six years.

+ Require accelerated case schedules and deadlines to act on remanded permit decisions.

+ Specify that once an agency issues a permit or completes a NEPA process, the courts can instruct the agency to correct errors in the environmental analysis or add additional explanation, but cannot invoke NEPA as grounds for injunctions or vacating an agency decision based on the environmental analysis because NEPA is a procedural statute not conferring substantive rights.

+ Limit standing to those parties that participated in the underlying NEPA proceeding while engaging communities and affected parties and proactively coordinating with relevant state, territorial and local governments as early as possible and in a sustained manner. FAST-41 contains provisions limiting standing for litigation concerning "covered projects."

+ Require challenges involving NEPA to be brought at the earliest stage possible (e.g., the leasing stage and not permitting stage) when land lease sales are involved, so needless time and expense are not incurred after leases are awarded for parcels that ultimately may be found to be unsuitable for development.

Other Key Reforms

Increase Domestic Energy Production and Export

Domestic energy production is necessary to reduce reliance on energy from foreign countries, export lower carbon energy to friends and allies, and facilitate the growth of the U.S. economy. The current Administration has taken significant steps to ensure the availability of future U.S. energy supplies necessary to ensure continued economic growth and job creation. More can be done to ensure the development of all energy resources.

The Administration and Congress should:

+ Support the development of energy assets across onshore and offshore federal lands by accelerating relevant leasing programs and ensuring timely permitting of infrastructure needed to deliver energy resources to market. *The Administration has taken steps to accelerate leasing for conventional energy resources but codification and expansion to other resources is needed.*

+ Accelerate the permitting and construction of liquefied natural gas (LNG) export infrastructure and associated pipelines to meet growing demand for exports. This should include support for FERC actions to eliminate obstacles to the development of natural gas infrastructure and enhance permitting efficiency, including waiving and permanently repealing Order No. 871 regarding stays of construction while litigation or rehearing requests are pending, increasing the cost limits on Blanket Certificates, and revisiting NEPA procedures to ensure they are in-line with the Seven Counties Infrastructure Coalition case. *The Administration has lifted the pause on processing LNG export license applications and is accelerating the permitting of LNG facilities. FERC recently voted unanimously to revise its NEPA procedures to comply with the Seven Counties Infrastructure Coalition case, increase the cost limits on Blanket Certificates and waive Order No. 871 pending repeal.*

+ Accelerate the permitting and construction of natural gas pipeline development and power generation infrastructure, including expanded and new overhead transmission lines.

+ Accelerate the permitting and construction of flexible infrastructure that can be used to deliver a range of fuels now and in the future.

+ Support the planning, permitting and construction of infrastructure to deliver captured CO_2 for utilization and sequestration. Congress should also direct EPA to fast-track approval of Class VI primacy for states that are interested and have proven qualified to administer carbon capture and storage programs.

+ Support increased development of alternative low- and zero-carbon fuels, including for transportation, to reduce emissions and enhance environmental benefits.

Expand and Improve Transmission Capabilities and Capacity

The U.S. economy is increasingly relying on electrons to fuel economic growth, and the ability of the electric grid to withstand natural, cyber, kinetic and other security challenges is becoming more important. A reliable, resilient electric grid that can be planned and constructed in a timely way is a national security imperative that will help unlock economic opportunity and is an essential step in maintaining competitiveness for the U.S. economy. While regional differences significantly impact policy, policymakers should work together to address barriers to transmission development and interconnection related to permitting, planning and cost allocation where these challenges exist.

Potential actions should include the following:

+ Support the Federal Energy Regulatory Commission (FERC) efforts to improve the speed of the interconnection queue process and support regional and interregional transmission planning.

+ Promote industry efforts to expedite the interconnection process and facilitate shovel-ready projects that meet demonstrated reliability needs in an objective and non-discriminatory manner.

- Consider providing more durability of FERC's recent initiatives with more specific legislation guiding the agency, while ensuring FERC retains the flexibility to address differing regional market structures, and evolving market changes.

- Facilitate promising technologies that can speed modeling necessary for interconnection studies, help enhance operational performance of the grid, allow for better accounting of real-time performance and inform energy development decisions.

Expand Access to Key Raw Materials, Including Critical Minerals

Grid modernization, as well as the proliferation of electric vehicles, batteries, renewable energy generation and data center demand, are dramatically increasing the need for new investments in electric generation and transmission infrastructure. Many of these technologies depend on critical raw materials that are either in short supply or dependent on foreign supply chains that make the U.S. vulnerable to future disruptions. Expanding and accelerating responsible domestic production and processing of critical minerals in a manner that upholds strong environmental, labor, safety, Tribal consultation and community engagement standards is key to ensuring adequate, secure and reliable supplies of these critical materials. The permitting reforms listed above would help ensure adequate supplies of critical materials and address supply chain vulnerabilities. *The Administration has taken important steps to prioritize and accelerate critical mineral leasing and processing, which we support.*

In addition, Congress and the Administration should:

- Adopt additional provisions for key minerals mining, processing, end-use manufacturing and recycling that expand the availability of minerals essential to clean energy, including nuclear and batteries.

- Encourage the growth of a domestic critical minerals recycling industry through statutory and administrative changes and legislation that provides regulatory agencies with set timelines to issue permits.

- Promote the global adoption of a baseline environmental standard across supply chains.

Streamline the Permitting of Modern Data Infrastructure, Fiber and Wireless Infrastructure

Economic growth and national security rely on continuous development, deployment, and investment in modern technologies. Artificial intelligence (AI), machine learning, robotics, modern data infrastructure, fiber and wireless communication advances provide the United States with a unique opportunity to accelerate innovation and growth, while helping strengthen national leadership in critical technologies. In addition, the Administration has noted the urgency of updating certain critical infrastructure, including modernizing the Air Traffic Control System. Needlessly delaying these investments will not only drive-up costs but also compromise public safety. Congress has a key role in helping ensure these opportunities are realized by streamlining the approval process for investments needed to accelerate these advances and address urgent public safety concerns.

In addition to the recommendations above, we also urge Congress and the Executive Branch to:

+ Codify NEPA Categorical Exclusions for both new and existing facilities, including fiber facilities, wireless facilities, and associated equipment, in a developed area or on previously disturbed ground.

+ Allow a mutual recognition permitting approval process for federal, state, and local applications to streamline the approval process by reducing redundant reviews. This approach would acknowledge state programs with primary regulatory authority, allowing federal agencies to rely on state-approved permits.

+ Require permitting authorities to establish a single point of contact for the permitting process associated with fiber connectivity for AI infrastructure projects. This will reduce confusion and redundancy by ensuring that all necessary information is centralized and accessible. Bulk permitting, by requiring only one application for long-haul projects, should also be considered to reduce redundancy.

+ Collaborate with state and local counterparts to streamline permitting fiber and broadband deployment, including by adopting uniform time limits for review of applications across state and local governments.

+ Update federal rules impacting wireless facility deployments to conform with NEPA and other statutes, Administration directives, and current Supreme Court guidance, including narrowing the standard for "major federal actions" under NEPA. This will help clarify and provide greater certainty to the NEPA process.

Endnotes

1 McKinsey & Company, *Unlocking US federal permitting: A sustainable growth imperative* (July 28, 2025) available at: **Unlocking US federal permitting: A sustainable growth imperative**.

2 Executive Office of the President, Council on Environmental Quality, *Environment Impact Statement Timelines (2010-2024)*, (January 13, 2025) available at: **Environmental Impact Statement Timelines (2010-2024)**.

3 The Breakthrough Institute, *Understanding NEPA Litigation* (July 11, 2024), available at: **Understanding NEPA Litigation | The Breakthrough Institute**.

4 Sec. 60026, Pub. L No. 119-21 (July 4, 2025).

5 In a May 2025 decision, the Supreme Court limited EIS reviews to potential environmental effects directly related to the project under consideration and within the agency's jurisdiction to address. The Court also required judicial deference to an agency's judgment regarding the extent of reviews so long as it was not arbitrary or capricious. *See Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 S. Ct. 1497 (May 29, 2025), *available at* **https://www.supremecourt.gov/opinions/24pdf/23-975_m648.pdf**. However, codification into NEPA of these principles would be useful.

6 *Understanding NEPA Litigation, supra* note 3.

7 Bennon and Wilson, *NEPA Litigation Over Large Energy and Transport Infrastructure Projects*, 53 Environmental Law Reporter 10836 (October, 2023), available at: **nepa_litigation_over_large_energy_and_transport_infrastructure_projects.pdf**.

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