

12. Cutting Red Tape in the Infrastructure Permitting Process

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CAP Goal Statement: *Modernize the Federal permitting and review process for major infrastructure projects to reduce uncertainty for project applicants, reduce the aggregate time it takes to conduct reviews and make permitting decisions, and produce measurably better environmental and community outcomes.*

President Trump has pledged to boost spending for crumbling roads, bridges and other infrastructure. But if current permitting and review processes take an estimated six years for major projects, can his Administration preside over any ribbon-cutting ceremonies for completed projects?

The Obama Administration first faced a similar dilemma of delays when implementing the 2009 Recovery Act. It launched an effort in 2011 to untangle the nest of 35 sets of permitting and review responsibilities across 18 different agencies. An initial assessment study concluded, drolly, that the interplay among these different statutory requirements “is challenging and can sometimes result in uncertainty.”

Background. Historically, no coordinating mechanism existed to bridge the different laws administered by different agencies at the federal level, let alone at the state or local levels. Each agency focused on its own mandates, largely without any awareness of what other agencies are doing or if there would be any benefit from coordinating efforts.

While it is important to weigh competing interests and values around historical, safety, environmental and social justice values that are reflected in the reviews, there is growing agreement among various stakeholders that there needs to be a process clear enough to reach a resolution—whether it is “yes,” or “no.”

Former Harvard president Larry Summers [points to](#) a local Boston bridge rehabilitation project as an example of “American sclerosis” where repairs have been delayed more than four years with no end in sight: “a gaggle of regulators and veto players, each with the power to block or to delay, and each with their own parochial concerns. All the actors—the historical commission, the contractor, the environmental agencies, the advocacy groups, the state transportation department—are reasonable in their own terms, but the final result is wildly unreasonable.”

It is this lack of clarity that has triggered outrage and frustration among some, leading to charges that the government is broken. The advocacy group [Common Good](#) claims “that a six-year delay in starting construction on public projects costs the nation over \$3.7 trillion, including the costs of prolonged inefficiencies and unnecessary pollution. This is more than double the \$1.7 trillion needed through the end of this decade to modernize America’s infrastructure.” The group [recommends](#) cutting the review process to two years for major projects.

But is it possible? The Obama Administration has taken an iterative approach to improve the permit and review processes, with increasingly hopeful results. Historically, streamlining was viewed by some stakeholders as an attack on environmental, endangered species, historical preservation or other policies. Instead, the Office of Management and Budget framed the new streamlining effort as a management improvement challenge, which was acceptable to a wide range of stakeholders.

A Series of One-Off Heroic Efforts. Early on, the [Obama Council on Jobs and Competitiveness](#) recommended establishing an infrastructure steering committee and a permitting dashboard for about 50 priority projects, many associated with the Recovery Act or rebuilding after Superstorm Sandy. The steering committee [improved the timeline](#) on a number of these projects—largely by encouraging concurrent rather than sequential reviews. For example, it reduced the timeline for the replacement of the Tappan Zee Bridge in New York by two to three years and reduced project timelines for selected rail projects in Minneapolis and California by up to 30 percent.

To support these efforts, the president signed a [directive in 2011](#) that instructed Federal agencies to prioritize and expedite the environmental review and permitting process for a set of infrastructure projects with significant potential for job creation and to improve the accountability, transparency and efficiency of those processes. This led to the piloting of the [Federal Infrastructure Permitting Dashboard](#) to track progress on 14 significant projects.

In 2012, building on lessons learned from the pilot projects, the president [signed an executive order](#) that expanded use of the dashboard to additional types of projects. It also created a Steering Committee on Federal Infrastructure Permitting and Review Process Improvement. The committee worked to expedite over 50 major infrastructure projects, including bridges, rail, waterways, roads and renewable energy generation projects. Of these, 30 had been completed by 2014 (and one was denied).

However, these time-intensive efforts did not result in systemic changes to the permitting and review systems. Therefore, in 2013, [another presidential directive](#) directed the Steering Committee to come up with an implementation plan to move from an ad hoc process to a more standardized, repeatable process with an overall governance structure. That [plan was completed in 2014](#) and laid the groundwork for the initiative to be designated as a Cross-Agency Priority Goal. The plan set out 96 milestones with a goal of cutting the permitting and review process time in half, “while improving outcomes for communities and the environment.” Much of this would be done by creating greater interagency coordination and transparency.

Moving to a Systematic Approach. Designating the steering committee’s implementation plan as [a Cross-Agency Priority Goal](#) for the administration in 2014 gave it new prominence. Having the plan in hand resulted in a high degree of clarity for what needed to be done to move the Priority Goal forward—albeit, much of the plan’s success hinged on the creation of a central office to manage the cross-agency efforts and this required congressional support and funding. The CAP Goal team—co-led by OMB, the Council on Environmental Quality and the Department of Transportation—ensured that the required quarterly progress reviews by top leadership focused attention on the need for a central office.

In the Fall of 2015, the Obama Administration released guidance that would expand the process improvement efforts to all major infrastructure projects. As the Administration was gearing up to implement the guidance, Congress passed the [Fixing America’s Surface Transportation Act](#) in December of 2015. According to a [brief history](#) on the Dashboard’s website, Title 41 of the Act (dubbed “FAST-41”) created “a new entity—the Federal Permitting Improvement Council—to oversee the cross-agency Federal permitting and review process, composed of agency Deputy Secretary-level members and chaired by an Executive Director appointed by the President.”

The law also required each of the 13 participating agencies to designate a Chief Environmental Review and Permitting Officer which will serve as the agency point of contact responsible for agency-specific training and process improvements as well as facilitating effi-

cient and timely processes for environmental reviews and authorizations for FAST-41 covered projects, including dispute resolution. In addition, the CAP Goal team focused the existing working group of operational staff (from each participating agency created by the 2012 executive order) on FAST-41 implementation.

The new law also expands the range of infrastructure projects that could be included, such as conventional energy generation and manufacturing. In addition, it “establishes new procedures that standardize interagency consultation and coordination practices” and granted the authority to collect fees from major projects in order to fund the new cross-agency coordination processes for federal permits and reviews.

Funding and staff support became available in early 2016 to stand up the new Council and update the [Permitting Dashboard](#). Richard Kidd was named the first executive director by mid-summer, and an updated [inventory of projects](#) being tracked on the Dashboard was posted on the website to reflect new statutory requirements in mid-September. The 34 projects on the Dashboard have 60 days to develop the statutorily-required Coordinated Project Plans and post project timelines on the Dashboard.

Next Steps. In January 2017, President Trump [signed an executive order](#) to expedite environmental reviews and approvals for infrastructure projects and, at an event at the Department of Transportation in June, President Trump [announced](#) that he was creating an office in the White House Council of Environmental Quality to help project managers navigate the maze of federal permitting and reviews required for infrastructure projects. In August 2017, he re-designated this initiative as a Cross-Agency Priority Goal and [signed an executive order](#) that “requires federal agencies to process environmental reviews and permitting decisions for major projects under a “One Federal Decision” plan” with a designated lead agency to develop a unified schedule for project completion. The order also sets a goal “to process all actions required by federal law for environmental reviews and permits of major infrastructure projects within two years.”