

TESTIMONY OF

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For a Hearing

BEFORE

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Permanent Subcommittee on Investigations

ON

*“Cutting Through the Red Tape: Oversight of Federal Infrastructure Permitting
and the Federal Permitting Improvement Steering Council”*

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Chairman Portman, Ranking Member Carper, and distinguished Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the progress of the Federal Permitting Improvement Steering Council (the “Permitting Council”) in improving the efficiency and timeliness of the Federal permitting process for infrastructure projects through increased transparency, predictability, and accountability.

The Permitting Council’s work to create a more standardized, predictable permitting process that protects public health, safety and the environment focuses on: conducting project-specific coordination to ensure multi-agency collaboration for large and complex infrastructure projects; incorporating best practices identified by industry and government into the Federal permitting process; and establishing recommended performance schedules for use by agencies in developing permitting timetables with target completion dates.

As you emphasized in our June Council meeting, the Permitting Council is uniquely positioned to transform Federal permitting practices by implementing Title 41 of the Fixing America Surface Transportation Act (FAST-41). The Council has had recent successes in both systematic and project-specific permitting process improvements.

Implementation of FAST-41 began soon after the law was enacted through recruitment of an Executive Director to oversee the permitting improvement process, designation of the General Services Administration as the agency to provide administrative support, enhancements to the Permitting Dashboard to address FAST 41 requirements, and establishment of a physical Permitting Council office. With initial funding from interagency contributions for Cross-Agency Priority (CAP) Goal funding, the Office of the Executive Director, in cooperation with Permitting Council agencies, made significant progress in standing up the FAST-41 governance structure:

1. Permitting Council agencies have appointed both Council members and senior-level staff to serve as Chief Environmental Review and Permitting Officers (agency CERPOs), and these appointments have been posted on the Permitting Dashboard for enhanced transparency and accountability. These agency leaders have taken a proactive role in FAST-41 implementation and success.
2. In 2016, the Permitting Council released an initial inventory of 34 infrastructure projects considered to be “covered projects” under the requirements of FAST-41.

3. The inventory of all covered projects, including project specific permitting timetables with target completion dates, is posted on the publicly-available Permitting Dashboard for an unprecedented degree of transparency and accountability. The Dashboard is a key FAST-41 tool for tracking permitting timetables and keeping projects on schedule.
4. Permitting Council agencies developed inter-agency Coordinated Project Plans (CPPs) for covered projects. CPPs promote inter-agency problem solving, accountability and predictability by identifying: lead, cooperating and participating agencies for the project; all Federal environmental reviews and authorizations required for the project and associated target completion dates; a discussion of potential avoidance, minimization, and mitigation strategies; and plans for public and tribal outreach and coordination.
5. In January of 2017, the Permitting Council Office of the Executive Director hired three full-time career federal staff and five contract support employees.
6. In January of 2017, the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ), in coordination with the Permitting Council, jointly issued guidance for agencies to carry out their responsibilities under FAST-41. In addition to addressing statutory requirements, the guidance introduced a framework for tracking covered projects on the Permitting Dashboard.
7. The Permitting Council participated in multiple tribal consultations conducted by the US Department of Justice, US Army, and US Department of the Interior to identify additional opportunities to improve the infrastructure permitting process. Following these consultations, a report called *Improving Tribal Consultation and Tribal Input in Federal Infrastructure Decisions* was produced in January of 2017.

I was hired as Deputy Director in the Permitting Council's Office of the Executive Director in January of 2017 and have been serving as Acting Executive Director since January 20, 2017. The Administration is in the process of hiring an Executive Director and hopes to fill it soon. From my first day, I have sought to improve the permitting process by focusing on four main areas: transparency and accountability; project specific coordination and dispute resolution; interagency coordination, collaboration, and technical support; and stakeholder outreach.

Transparency and Accountability: Permitting Dashboard and Coordinated Project Plans (CPPs)

The permitting timetable developed in every project's CPP is made public on the Permitting Dashboard. The Permitting Dashboard serves as a single point of reference for information on covered projects, where anyone can see the timetable schedule and status for all the environmental reviews and authorizations required for any covered project. The Office of the Executive Director, in cooperation with the Permitting Council, is improving the quality and usefulness of the Permitting Dashboard in the following ways:

- Since the beginning of 2017, the Office of the Executive Director has worked with Permitting Council agencies to improve the data accuracy and completeness of permitting timetables on the Dashboard. Following the March 2017 quarterly update, the Office of the Executive Director provided each agency with a data assessment from which to track agency progress in publishing the requisite data to the Dashboard, and now is ensuring Dashboard Administrators fully understand the requirements and have the necessary training to meet these Dashboard requirements. Complete Dashboard data not only is key to transparency and accountability in the permitting process, but is essential for collecting two years of baseline data for use in developing recommended performance schedules that agencies can use in the future to establish their permitting timetables.
- The Office of the Executive Director continues to improve the Permitting Dashboard, with technical support from the Department of Transportation, through enhancements such as automated notifications to agencies when authorization deadlines are approaching or when a deadline is being changed.
- New dynamic reporting and visualization enhancements for the Dashboard are planned for a more user-friendly presentation of the data. Project sponsors and the public will be able to see how projects are progressing through visualizations controlled by user-selected data fields. Agencies will be able to report on their effectiveness and every covered project's status will be displayed through a color-coded system.

In addition to being a tool for transparency and accountability, the Dashboard plays an important role in process improvements. FAST-41 requires Executive Director approval for certain modifications to the Permitting Dashboard timetables. These approvals help the agencies and

Executive Director identify issues specific to a particular project, and with time, recurring bottlenecks for overlapping or contingent permitting processes.

Another key feature of FAST-41 is the CPP, which serves as the foundation for interagency coordination, early identification of difficulties and issues that could delay Federal decision-making, and verification of implementation of best practices. To facilitate effective and timely decision-making, the Office of the Executive Director, in cooperation with the Permitting Council, is improving the quality and usefulness of CPPs in the following ways:

- A CPP template has been developed, primarily for use in new covered projects but recommended and available for use for all current covered projects.
- The Office of the Executive Director met with each agency serving in a lead role on a covered project between the most recent CPP quarterly updates to discuss what work remains for those CPPs to be deemed accurate and complete.
- The Office of the Executive Director plans to do the same for each agency serving in a cooperating agency role on a covered project before the next CPP quarterly updates in September.

Project-Specific Coordination and Dispute Resolution

The Office of the Executive Director conducts project-specific coordination and implements the FAST-41 dispute resolution provisions to ensure successful implementation of permitting timetables for covered infrastructure projects. Initial examples of project-specific issues identified and addressed through the implementation of FAST-41 include:

- Project sponsors have contacted the Executive Director for help with project specific issues, such as when: an agency did not respond to their questions; different staff within an agency provided contradictory responses; and different agencies working together on a project provided conflicting information. In these situations, my office has been able to step in when communication within and among agencies breaks down to facilitate and resolve a misunderstanding, disagreement, or dispute.

- The Office of the Executive Director has helped address conflicting messages by ensuring headquarters and field offices coordinate and deliver consistent information to project sponsors.
- The Office of the Executive Director worked with an agency whose inefficient internal review process was not in line with that agency's responsibilities under FAST-41. The corrected, more efficient process resulted in 6-8 weeks in time saved.
- Multiple field offices from within a single agency recently coordinated with each other and, for the first time for a covered project, met with the project sponsor as one agency. Ensuring coordinated decision making among district and field offices facilitated information sharing and enhanced predictability for project sponsors.
- The Office of the Executive Director has convened meetings with agencies facing unusual circumstances outside their control to identify and implement creative solutions to keep the permitting process on schedule while ensuring those agencies' statutory responsibilities are not in any way compromised.

Interagency Coordination, Collaboration, and Technical Support

The Permitting Council's Office of the Executive Director is leading the effort to implement one of the FAST-41 cornerstones for systematic changes to the permitting process: best practices. This is accomplished through the Best Practices Report, in which the Permitting Council issues recommendations on best practices for environmental reviews and authorizations common to covered infrastructure projects. It is through agency-wide implementation of these best practices that improvements in the permitting process will be realized.

- The Permitting Council's first Best Practices Report was published in January 2017, and provides a compendium of established best practices for each of the eight categories of best practices identified in FAST-41.
- Preparation of the Permitting Council's second Best Practices Report is currently underway and seeks to build on the January 2017 Best Practices Report by identifying those best practices that can be implemented across agencies for maximum impact in addressing common stakeholder concerns. This report, to be published at the end of this

year, will serve as the roadmap for systematic permitting process improvement as Permitting Council agencies implement and institutionalize these best practices during fiscal year 2018.

The Office of the Executive Director submits an annual report to Congress every April assessing agency progress in making improvements consistent with best practices.

- The Office of the Executive Director's first Annual Report to Congress, for fiscal year 2016, was published in April of 2017.
- Preparation of the assessment tool to be utilized for the second Annual Report to Congress (due in April 2018), is currently underway and will assess agency progress in implementing best practices identified in the January 2017 Best Practices Report.

Through weekly meetings of the Permitting Council Working Group, monthly CERPO meetings, and quarterly Council meetings, agencies collaborate and share lessons learned from best practices to help other agencies establish their own effective programs. Agencies also are able to share feedback from stakeholders on how to improve the permitting process. For example, the Advisory Council on Historic Preservation issued a report on Improving Tribal Consultation in Infrastructure Projects (May 2017) to provide recommendations for improving tribal consultation in the Section 106 review process for federal infrastructure decisions. This report is a companion to the January 2017 Improving Tribal Consultation and Tribal Input in Federal Infrastructure Decisions report.

The Permitting Council continues to develop policies and procedures to govern the implementation of FAST-41. For example, when the Permitting Council received its first application from a Project Sponsor to become a covered project, there was no defined process to make the determination as to whether that project would be a covered project. The Office of the Executive Director, in cooperation with the Permitting Council, is nearing completion of a set of procedures that clarify how a project sponsor's application is evaluated.

Stakeholder Outreach

The Permitting Council continues to engage in education and outreach efforts with stakeholders and to meet with groups and individuals representing state, local and tribal governments engaged in the infrastructure permitting process. These efforts are building sustainable relationships and increasing engagement in the Permitting Council's efforts to improve the infrastructure permitting process. Specific outreach efforts include meetings with:

- Current and potential project sponsors - individual meetings, trade organization events, industry panels, and infrastructure-themed conferences;
- State government representatives - Environmental Council of the States - State Environmental Protection Meeting;
- Tribal entities - National Tribal Preservation Conference;
- Local government representatives - National Association of Counties Annual Conference, including meeting with the Environment, Energy, and Land Use Steering Committee and Western Interstate Region; and
- Non-Governmental Organizations - individual meetings and infrastructure-themed meetings, workshops, and conferences.

Conclusion

I am proud to say that the Permitting Council has made significant progress across the board in each of these priority areas. We already are beginning to see improved transparency, predictability, and accountability and we are just beginning to reap the benefits in terms of avoided delays in the permitting process for covered projects. As more new projects sign up for FAST-41, these benefits will increase substantially.

FAST-41 is not the first time the Federal government has tried to reform the permitting process, but this is the first time the framework to accomplish real reform is in place. Chairman Portman, because of your leadership, the Permitting Council Office of the Executive Director is positioned to truly change the siloed nature of the permitting process. Additionally, the Permitting Council is poised to play a major role in the Administration's Infrastructure Initiative, and is actively working with the Administration in the implementation of FAST-41.

Going forward, in addition to the reforms and activities mentioned above, our office intends to be fully engaged with agencies and project sponsors to improve the process for permitting decision making. Our capacity and resources over the next year, including fully funding the FY 2018 President's Budget request of \$10 million for the Environmental Review Improvement Fund in the General Services Administration appropriation, will determine our ability to scale up and provide the promised benefits to covered projects, including enhancement of the Permitting Dashboard. FAST-41 provides the authority to issue fees regulations and the Permitting Council is working together to take advantage of this important tool provided by statute.

I thank you for the opportunity to testify before the Subcommittee today, and I welcome your questions and the opportunity to further discuss how we can work with Congress to make this unprecedented opportunity for transformational change a reality.