

Janet Pfleeger
Acting Executive Director
Federal Permitting Improvement Steering Council
Testimony before
Senate Committee on Energy and Natural Resources
December 12, 2017

Good morning Chairman Murkowski, Ranking Member Cantwell, and distinguished Members of the Committee, thank you for the opportunity to testify today concerning the permitting processes employed at Department of Interior and the Federal Energy Regulatory Commission. My name is Janet Pfleeger and I am the Acting Executive Director of the Federal Permitting Improvement Steering Council (the “Permitting Council”) and I am here to discuss the progress being made on environmental streamlining by 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.

The Permitting Council is actively working with the Administration to improve the permitting process for infrastructure projects. On August 15, 2017, President Trump signed Executive Order (E.O.) 13807, entitled “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,” in which the Permitting Council has several prominent roles and responsibilities. This E.O. will further enhance the work of the Permitting Council through the establishment of a “One Federal Decision” policy for major infrastructure projects determined under the National Environmental Policy Act (NEPA) as requiring an Environmental Impact Statement. The framework for implementing “One Federal Decision” will be developed by the Council on Environmental Quality (CEQ) and the Office of Management and Budget (OMB), in consultation with the Permitting Council. The E.O. also requires OMB to establish an accountability and tracking system to ensure the project review schedules are met, the guidance for which will be issued in consultation with the Permitting Council.

The Permitting Council is uniquely positioned to transform Federal permitting practices by implementing Title 41 of the Fixing America Surface Transportation Act (FAST-41). FAST-41 allows the Permitting Council to oversee the Federal permitting process for covered projects that require authorization or environmental review by a federal agency, including NEPA reviews. The Council has had recent successes in both systematic improvements, such as increased Permitting Dashboard transparency, and project-specific permitting process improvements, including enhanced coordination and dispute resolution procedures. These improvements helped save one project six months and \$300 million in capital costs, as estimated by the project sponsor.

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 U.S. General Services Administration as the agency to provide administrative support, initiation of enhancements to the Permitting Dashboard to address FAST-41 requirements, and establishment

of a physical Permitting Council office. With initial Cross-Agency Priority (CAP) Goal funding, the Office of the Executive Director, in cooperation with Permitting Council agencies, has made significant progress in establishing the FAST-41 governance structure:

- Permitting Council agencies have appointed both Council members and senior-level staff to serve as Chief Environmental Review and Permitting Officers (agency CERPOs). These agency leaders have taken a proactive role in FAST-41 implementation and success. With an eye toward enhanced transparency and accountability, the CERPO appointments have been posted on the publicly-available Permitting Dashboard.
- In 2016, the Permitting Council released an initial inventory of 34 infrastructure projects considered to be “covered projects” under the requirements of FAST-41. FAST-41 covered projects may include large infrastructure projects such as roads, bridges, pipelines, and energy production, or projects which are likely to benefit from designation as “covered projects.”
- Since the initial inventory of projects, four projects have voluntarily submitted FAST-41 Initiation Notices and been approved to become covered projects. One project is currently under evaluation to become a covered project.
- 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 serves as a key FAST-41 tool for tracking permitting timetables and keeping projects on schedule.
- Permitting Council agencies have 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.
- As of December 2017, the Permitting Council Office of the Executive Director has three full-time career federal staff, five detailees from other agencies, and eleven contract support employees.
- In January of 2017, OMB and 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.
- 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. The Advisory Council on Historic Preservation (ACHP) released a companion report in May 2017 *Improving Tribal Consultation in Infrastructure Projects* (<http://www.achp.gov/docs/achp-infrastructure-report.pdf>), which I distributed and highlighted to the Permitting Council as a roadmap for federal agencies in improving the permitting process.
- Most recently, the Permitting Council received additional support and responsibilities from the President in E.O. 13807 of August 15, 2017. In addition to several prominent roles in the process enhancements required under the E.O., the General Services Administration (GSA), which was recently included as an official member agency to the Permitting Council, is identified as the agency to provide the necessary administrative and organizational support to the Permitting Council, unless otherwise determined by the Director of the Office of Management and Budget (OMB).

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. 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.

1) 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 view 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 to the Dashboard. The quarterly assessments following the March, June, and September 2017 quarterly updates, 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 is not only 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 U.S. Department of Transportation (USDOT), 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 to better allow users to view criteria and learn how federal agencies are performing in critical areas. Project sponsors and the public will be able to track 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.
- The Dashboard is a useful tool for Federal agencies, project sponsors, and interested members of the public to track the environmental reviews and authorizations required for large or complex infrastructure projects. The Dashboard currently tracks all covered projects under FAST-41 as well as projects subject to 23 U.S.C. 139 under the authority of the USDOT. E.O. 13807 reinforces this practice by the USDOT and requires milestone dates for all projects tracked on the Dashboard to be updated monthly, or on another appropriate timeline as determined by the Executive Director. The E.O. also allows for other projects or classes of projects to be tracked on the Dashboard at

the discretion of the Executive Director.

- 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.

The permitting timetable posted to the Dashboard is only part of the CPP, which establishes a concise plan for coordinating public and agency participation in, and completion of, any required Federal environmental review and authorization for the project. The CPP therefore 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 has met with each agency serving in a lead and cooperating agency role on a covered project to discuss remaining work for CPPs to be deemed accurate and complete.
- The Office of the Executive Director reviews CPPs for ongoing projects in its FAST-41 oversight role and, when necessary, brings together Federal agencies to ensure that they are using the most efficient and effective permitting processes available that are then reflected in the CPPs. Based on these meetings and work to date, the Office of the Executive Director is updating the CPP template to reflect lessons learned. The Office of the Executive Director will also participate in the development of CPPs for new projects on an as needed basis to ensure that early coordination and potential issue identification takes place at the start of the FAST-41 process.

2) Project-Specific Coordination and Dispute Resolution

The Office of the Executive Director conducts project-specific agency and project sponsor coordination and implements the FAST-41 dispute resolution provisions to ensure successful implementation of permitting timetables for covered 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—for instance, when an agency did not respond to their questions, when different staff within an agency provided contradictory responses, and when different agencies working together on a project provided conflicting information. In these situations, my office has been able to intervene when communication within and among agencies breaks down to facilitate and resolve a misunderstanding, disagreement, or dispute.
- As reported at the Permitting Council's September 2017 Council meeting, the Office of the Executive Director coordinated closely with involved agencies, including FERC, to address a stalled Section 106 review under the National

Historic Preservation Act. The resulting coordination among agencies allowed subsequent authorizations to move forward and, as relayed by the project sponsor, saved an estimated 6 months and \$300 million in capital costs to the project. As more projects elect to use the FAST-41 process, we expect to hear of more cases where these sorts of benefits are achieved. Similarly, the Office of the Executive Director coordinated with DOI to facilitate project sponsor understanding and action on DOI information needs from state agencies.

- The Office of the Executive Director worked with an agency whose inefficient internal environmental review process did not comply with the agency's responsibilities under FAST-41. The corrected, more efficient review process resulted in a 6-8 week shorter environmental review period.
- The Office of the Executive Director has facilitated conflict resolution between agency headquarters and field offices to coordinate and deliver consistent information to project sponsors.
- Upon advice from our office, multiple field offices within a single agency performed a pre-meeting collaboration and, for the first time for a covered project, met with the project sponsor with one voice. 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 of their control to identify and implement creative solutions to keep the permitting process on schedule while ensuring that those agencies' statutory responsibilities are not compromised.

Additionally, E.O. 13807 establishes new policies that will further enhance dispute resolution for all major infrastructure projects. The E.O. requires agencies to automatically elevate instances where a milestone is missed, or anticipated to be missed, to appropriate senior agency officials of the lead Federal agency and the cooperating and participating Federal agency or agencies to which the milestone applies. E.O. 13807 authorizes CEQ to mediate interagency disputes concerning Federal environmental review or authorization decisions upon the request of a Federal lead, cooperating, or participating agency, except where dispute resolution processes are otherwise provided for in law, such as FAST-41.

The Permitting Council Executive Director remains the established point of contact, or "one-stop shop," for project sponsors and government agencies to request assistance in resolving an issue or initiating the formal dispute resolution process for issues affecting the timeline of covered projects under FAST-41. The E.O. further authorizes the Executive Director to, upon request of a project sponsor or Permitting Council member agency, work with the lead agency or any cooperating and participating agencies to facilitate the environmental review and authorization process for any infrastructure project, regardless of whether the project is a "covered project" under FAST-41.

3) 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 change 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 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.
- The Permitting Council's second Best Practices Report was published on December 1, 2017 (<https://www.permits.performance.gov/documentation/fiscal-year-2018-best-practices-report>) and builds 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 will serve as the roadmap for systematic permitting process improvement as Permitting Council agencies implement and institutionalize these best practices during fiscal year 2018 at all levels within their organizations, including critical field offices that interact with project sponsors on a regular basis.

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 FY 2016 Annual Report to Congress was published in April of 2017.
- Preparation of the FY 2017 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 regular 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 of the National Historic Preservation Act 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 will work to determine the best solution for implementing ACHP's recommendations. E.O. 13807 reinforces the Permitting Council's work by directing agencies to implement appropriate best practices identified by the Permitting Council and to ensure that such implementation is established at the agencies' field level.

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 FAST- 41 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 processed and evaluated to meet the statutorily required 14 day deadline. Additionally, last week the Permitting Council adopted a Charter describing roles and responsibilities and establishing the Council's purpose and operating procedures.

4) 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 with current project sponsors as well as outreach and education to potential project sponsors through industry and trade organization events, industry panels, and infrastructure-themed conferences;
- State government representatives - Environmental Council of the States (State Environmental Protection Meeting) and State Historic Preservation Officers (Permitting Dashboard Training; similar training planned for Tribal Historic Preservation Officers);
- Tribal entities - National Tribal Preservation Conference;
- Local government representatives - National Association of Counties Annual Conference, including meeting with the 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 are already beginning to observe improved transparency, predictability, and accountability in our covered projects in the form of avoided delays in the permitting process. As more projects elect to use the FAST-41 process, 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. 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 on the implementation of FAST-41 and Executive Order 13807.

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 fee 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 Committee 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.