Bipartisan Policy Center

Smarter, Cleaner, Faster Infrastructure Task Force:

Policy Recommendations

When we launched the Smarter, Cleaner, Faster Infrastructure Task Force in February, we noted that in the race to grow the economy, create jobs, and confront climate change, our most limited resource is time.

We were pleased that President Biden acknowledged the need for speed in the Administration's American Jobs Plan saying:

In addition, the President's plan will use smart, coordinated infrastructure permitting to expedite federal decisions while prioritizing stakeholder engagement, community consultation, and maximizing equity, health, and environmental benefits.

In April, our task force released a framework of principles to encourage and inform Congressional action to modernize American infrastructure. The attached list of 23 policy recommendations builds upon these principles and provides concrete proposals to spur substantive debate that can lead to bipartisan consensus.

The stakes for our nation are very high and the details matter. We encourage thought leaders, advocates and policy makers to consider this proposed framework as they work to design a realistic course for achieving our nation's economic and environmental imperatives.

MAY 2021

Julián Castro, former HUD Secretary

John Delaney, former U.S. Congressman

Colette Honorable, former FERC Commissioner

Bobby Jindal, former Governor

Rick Santorum, former U.S. Senator

Bill Truex, Chairperson and Commissioner, Charlotte County, FL

The Spirit of Consensus: The BPC's Smarter, Cleaner, Faster Infrastructure Task Force endorses these ideas as a package. As with all principled compromise, no member should be assumed to be satisfied with every individual proposal or to support a particular recommendation in isolation.

SMARTER, CLEANER, FASTER INFRASTRUCTURE

Accelerating the Deployment of Clean Infrastructure to Achieve Net Zero

These policy recommendations from the Smarter, Cleaner, Faster Infrastructure Task Force will be the first in a series building off of the principles released by the Task Force, which explained why we need to build clean infrastructure at a pace that is much quicker than we have historically built. The faster we can build, the better the outcomes for our climate, for jobs, and for economic growth. This set of recommendations focuses on two policy areas crucial to accelerating the deployment of clean infrastructure. Part 1 outlines general "good government" policy recommendations for improving agency processes for reviewing and approving projects. The framework of these recommendations is intended to accelerate clean infrastructure projects, but many of these recommendations are equally applicable to all infrastructure projects and we should carry over lessons learned from these improvements to all project reviews going forward. Part 2 describes several policy options for "bigger and bolder" thinking to move past the current conventions of project-by-project approvals to quickly and creatively deliver nationally significant and climate-critical projects. Part 2 also describes a new program to create incentives for states to incorporate clean infrastructure planning and investment into their decarbonization strategies.

Part 1. General Good Government Reforms to Accelerate Permitting

The recommendations in this section are intended to be good government reforms to improve coordination, bring

new efficiencies, provide transparency, institutionalize best practices, and maximize the use of effective public engagement and dispute resolution strategies, as well as ensure that agencies have the necessary resources to efficiently complete reviews. The recommendations build on similar, process-oriented reforms advanced by previous administrations, Republican and Democrat, and through bipartisan legislation, such as the FAST Act in 2015. An easy first step would be for Congress to reauthorize the FAST-41 provisions of the FAST Act to provide certainty going forward. Further bipartisan reforms are detailed below.

COORDINATION

1. **Congress should support coordinated agency action by requiring, to the extent possible, that:**

   a. *A lead agency be designated to lead multiagency environmental reviews;*

   b. The lead agency work collaboratively to develop a single permit plan and permitting timetable for the necessary environmental review and approvals, including the early identification of all necessary permits and clear delineation of responsibility and timelines for acquiring them;

   c. Participating agencies raise and adjudicate any issues that might limit schedule adherence early in the process;

   d. Participating agencies work concurrently rather than sequentially; and

   e. The lead agency and participating agencies prepare a single environmental document and sign a single record of decision.

Infrastructure projects are subject to various environmental and planning statutes and typically require multiple permits, from many levels of government. Enshrining the use of simultaneous rather than sequential reviews—a time-consuming process where differing agencies review projects and issue their respective permits one after the other—can significantly increase the speed with which decisions are made and projects can move forward. Developing a single EIS and record of decision, using coordinated timetables, and empowering key decision-makers to resolve disputes also help to speed up a complex and lengthy process.

2. **Congress should direct CEQ to study overlapping permitting initiatives, guidance, and regulations and make recommendations to clarify and harmonize them, with a focus on legal limitations to coordinated action.**

Permitting rules, regulations, and procedures vary among infrastructure sectors, having been adopted in a piecemeal fashion over time. With so many efforts to recognize and designate high-priority projects for expedited, coordinated reviews, there is a need to clarify and synchronize overlapping initiatives. The process should be clear, predictable, and uniform among all participating federal agencies, with best practices universally adopted. Congress should direct CEQ to conduct this

study with a particular focus on current legal limitations to coordinated agency action, such as with FERC and the Army Corps of Engineers, to maximize the degree to which coordination and harmonized processes can be effective.

3. **Congress should retain FAST-41 provisions to encourage cooperation between federal-state agencies via MOUs for specific projects or categories of projects.**

Under the FAST Act's Title 41 or FAST-41, states can request to participate in the federal FAST-41 process, which provides for coordinated and expedited multiagency reviews and results in the requirements under FAST-41 applying to the state. Sufficient federal-state coordination requires a memorandum of understanding (MOU)—to assure that a state will follow FAST-41 procedures such as a concurrence role for the permitting timetable, a heightened role for modification of schedules and decisions to extend public comment periods, a specific role in NEPA alternatives analyses and selection of methodologies for environmental review of the covered project, and a concurrence role in decisions to develop the preferred alternative to a higher level of detail.

EFFICIENCY

4. **Congress should codify the presumptive time limits of two years for an environmental impact statement and one year for an environmental assessment, with a clear and transparent process for extension if needed.**

Delays in the permitting process are costly for both the public and private sectors. Direct costs can go up if the costs of materials, supplies, and labor rise during a delay. There is also a public cost to delaying needed infrastructure improvements, including the adverse effects of prolonged inefficiencies, such as the unnecessary pollution generated from existing, outdated infrastructure. A feature of the review process in other countries, including Canada, time limits can help to limit costly delays and provide more certainty of process—the latter being critically needed to attract private investment in infrastructure. Agencies and project sponsors should have the flexibility to reset timetables, when needed or preferable, with mandatory consultation and transparency. Extensions beyond these time limits should require a public explanation for the delay.

5. **Congress should direct the administration to maximize the use of programmatic reviews for all types of infrastructure projects.**

Programmatic reviews are a proven, efficiency-gaining tool utilized by federal agencies when the actions under a specific program are routine and repeated, allowing for analyses and documentation of non-site-specific impacts. Congress has frequently recognized and encouraged their use, on a bipartisan basis. For example, the USE IT Act, which became law attached to the NDAA for fiscal year 2020 (P.L. 116-92), directed CEQ to provide guidance on the development of programmatic environmental reviews under NEPA for carbon capture,

utilization, and sequestration projects and carbon dioxide pipelines.

6. **Congress should expand NEPA assignment pilots and further look towards piloting NEPA assumption programs to allow states with state-level environmental laws—that are as stringent or more than federal requirements—to assume federal NEPA responsibilities along with federal audits and monitoring.**

Alaska, Arizona, California, Florida, Ohio, Utah, and Texas all participate in a Federal Highway Administration program to assign, and states to assume, NEPA responsibility for highway projects. Reports have shown that these programs can result in significant time savings, cutting document processing times. With NEPA assignment and its attendant benefits increasingly well documented, DOT should solicit information on how to make the program attractive to other states and encourage further uptake. DOT, in a September 2017 proposed rulemaking, also issued regulations for comment on a related pilot program, which will allow these states who have successfully implemented assignment pilots to further substitute their environmental laws for NEPA—if they are as stringent or more than the federal laws—and assume full authority. Congress and the administration should work together to encourage greater uptake to the program, including expansion to other infrastructure sectors outside of transportation, such as water, wastewater, and energy projects.

7. **Congress should direct the administration to coordinate and transparently maximize the use of categorical exclusions (CEs) for clean infrastructure projects.**

CEs are categories of actions that agencies have determined, by regulation and CEQ approval, do not have a significant effect on the environment and for which, therefore, neither an environmental assessment nor an environmental impact statement normally is required. Maximizing the use of CEs to exclude certain actions from detailed NEPA review is a valuable time-saving approach.

CEs reduce paperwork and allow agencies to focus their resources on actions that may significantly affect the quality of the environment. The regulatory process required for CEs allows for public participation and transparency.

8. **Congress should remove the sunset on the Federal Permitting Improvement Steering Council (FPISC) and merge it with CEQ.**

CEQ and FPISC missions are closely aligned and overlap. CEQ's mission is, in large part, to ensure that Federal agencies meet their obligations under NEPA in the permitting process and FPISC's is ensuring efficiency in the whole permitting process. FPISC was created as an independent agency as was CEQ. Merging the two would better institutionalize their roles and formalize the synergies that have occurred in practice over the last five years since FPISC was created. This closer partnership could ensure the quality of

agency NEPA analysis and ensure that the environmental and infrastructure priorities of the Administration are translated into coordinated actions.

9. **Congress should allow applicants to prepare environmental documents, while maintaining requirements for federal agencies to retain responsibility for oversight, transparency, and the final document.**

Under the 1978 NEPA regulations, applicants are allowed to prepare draft EAs for agency review. However, an EIS must be prepared by the agency or a contractor selected by the agency upon a showing of no financial interest in the outcome of the agency decision. Contractor- led EISs are often inefficient and subject to increased time and expense with any change in the proposal for agency evaluation/action. CEQ's 2020 regulations allow applicants to prepare either of these environmental documents, for the sake of efficiency, while requiring agencies to retain responsibility to oversee and take responsibility for the final environmental document. Current requirements for full transparency of who has prepared the draft EAs and EISs should be retained. In addition to removing a procedural hurdle for the preparation of an EIS, these changes should improve communication between project proponents and the agency officials tasked with evaluating the effects of the action and reasonable alternatives.

TRANSPARENCY AND BEST PRACTICES

10. **Congress and the Administration should maximize use of the Permitting Dashboard, requiring all NEPA analyses to be included on the site along with permitting timetables, plans, and project details.**

The Permitting Dashboard is an online tool for federal agencies, project sponsors, and the public to transparently track projects as they move through the federal environmental review and permitting process. Created by the Obama administration, Congress adopted this approach and directed federal agencies to track "covered projects" designated under FAST-41 on the Dashboard. Because little substantive data exists tracking permitting and environmental review, and the associated costs, it is difficult to pinpoint where in the process projects languish and make evidence-based recommendations for additional process improvements. Congress and the administration should improve and expand this important online tool, including integrating the site with the EPA-managed EIS database, to provide needed public accountability and transparency to an often-opaque process.

11. **Congress should further improve the FPISC's ability to accelerate clean infrastructure projects by expanding the number and types of projects eligible and by assigning and funding dedicated staff to ensure they are efficiently reviewed and permitted.**

E.O. 13807 requires all projects subject to 23 U.S.C. 139 and "covered projects" under 42 U.S.C. 4370m to be tracked on the Permitting Dashboard, with monthly updates of project milestones, and gives the FPISC Executive Director the authority to add others. This commitment to using and expanding the dashboard is a step in the right direction and should be continued; it transparently tracks permitting requirements, timelines, and participating agencies' responsibilities. Congress can support this effort by requiring more projects and data points to be collected and tracked via the dashboard.

12. **Congress should require federal agencies to adopt remedial plans when they fail to use CEQ/FPISC best practices for efficient and effective execution of their authorizations and environmental reviews.**

Created by the Obama administration in 2012, codified by Congress in FAST-41, and further strengthened by the Trump administration's Executive Order 13707, FPSIC has come to serve many important functions beyond its voluntary process for coordinated multiagency reviews and permits. One such role is to annually develop a guide for FPISC agencies to improve the environmental review and permitting process for large, complex projects, while evaluating them on the implementation of recommended best practices. Executive Order 13807 further directed FPISC, along with CEQ and OMB, to assess process deficiencies at each agency and develop remedial action plans. Such measures should be reviewed and codified by Congress. Often, agencies are reluctant to change their procedures and respond to recommendations from other agencies. This mechanism would help ensure all relevant agencies are making use of best practices.

13. **Congress should codify DOT's "Every Day Counts" initiative and the administration should disseminate lessons learned from it and DOT's Planning and Environmental Linkages initiative.**

For years, FHWA—particularly its Center for Accelerating Innovation—has been working to identify new and better ideas to get highways planned, designed, built, and maintained. Its "Every Day Counts" and "Planning and Environmental Linkages" initiatives offer particularly valuable lessons to other infrastructure sectors on collaborative and integrated approaches to project decision-making. Important components include early consideration of environmental, community, and economic goals in the planning process, guidance to incorporate that input into project design and siting, and other time- and money-saving opportunities to accelerate project delivery.

DISPUTE RESOLUTION

14. **Congress should ensure more timely and effective use and adequate federal resources for Environmental Collaboration and Conflict Resolution (ECCR) for agency-stakeholder disputes.**

ECCR is a structured approach to conflict resolution using a neutral, third-party facilitator to work with agencies and stakeholders through collaboration, negotiation, structured dialogue, mediation, and other processes to prevent, manage, and resolve environmental conflicts. This can reduce the attorney time and staffing necessary for an agency to make a decision and reduce the complexity of any unavoidable litigation. Effective use of ECCR techniques is time-bounded, proportional to the significance of the conflict and the resources at issue, and efficient in terms of the time and effort expended to resolve or minimize the points of conflict.

15. **Congress should retain the FAST-41 process for dispute mediation.**

Disputes between different agencies involved in the permitting process can significantly delay projects. FAST-41 provided for dispute mediation by the Permitting Council's Executive Director if agencies are unable to agree on the timetable. If this mediation is unsuccessful, the Office of Management and Budget makes a final decision. An efficient process for resolving disputes is essential to ensuring permitting timetables stay on track.

PUBLIC ENGAGEMENT AND ENVIRONMENTAL JUSTICE

16. **Congress and the administration should support improving public engagement by codifying the NEPA 2020 regulations' expansion of scoping and directing all agencies to prioritize early engagement and consensus building.**

While encouraging simultaneous agency reviews, setting deadlines, and expediting priority projects can all help speed the permitting process along, the system can work quickly for projects that have public buy-in, clear public purpose, and coordinated, early, and meaningful engagement with the public and other stakeholders. Based on the successful experience with fast-tracking of renewable energy projects at the Department of the Interior, the scoping provision in CEQ's NEPA 2020 regulations would require agencies to engage stakeholders before developing a public notice of intent to prepare an EIS and to include specific information for, and to solicit information from, the public regarding proposed actions.

17. **Congress and theAdministration should direct CEQ to assess how best to use new technologies to solicit public input and engage affected communities.**

The current complexity and length of many NEPA documents may actually exclude the public from accessing and understanding them—and therefore, from engaging more meaningfully in the review process. Current rules and practices too rigidly exclude, and therefore discourage, project sponsors from considering how to expand, facilitate, and promote the use of visual, interactive, and virtual information, as well as other technological developments, to better and more cost effectively communicate the significant effects of proposed government actions to the public.

18. **Congress should direct CEQ, in its capacity as Chair of the White House Environmental Justice Interagency Council, to provide comprehensive direction regarding the consideration of disproportionate and adverse environmental effects and the use of mitigation to reduce such effects. Congress should codify CEQ's 2011 mitigation guidance and support well-established compensatory mitigation programs.**

NEPA requires the consideration of environmental justice, including adequate community participation. When an agency has identified a disproportionately high and adverse human health or environmental effect on these populations from either a proposed action or alternative, the distribution as well as the magnitude of the disproportionate impacts in these communities are a factor in determining the environmentally preferable alternative. The Biden Administration's environmental justice (EJ) goals should be accompanied by an update of CEQ's EJ methodologies in NEPA Reviews to address the evaluation of indirect and cumulative effects of environmental and related human health impacts on historically underserved communities. CEQ should also provide clear direction on EJ impact assessments in NEPA practice through an update to Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994) and the accompanying Presidential Memorandum.

RESOURCES

19. **Congress should provide the training, support, and staff salaries and expenses funding necessary to ensure agencies have sufficient resources to conduct accelerated, coordinated reviews and permits.**

Many federal agencies face similar challenges—retiring workers, staff turnover, outdated IT systems and capabilities, and limited capacity. It is not reasonable to direct federal agencies to coordinate and expedite the federal environmental review and permitting process without providing the requisite resources for staff salaries and expenses, training, and recruitment

to increase the experiential and practical understanding of the NEPA process among staff senior level officials. Federal agencies also need the IT capabilities and systems to best facilitate more transparent, coordinated, and multiagency processes. For example, there are many new technologies that can enhance planning, mapping, and data sharing (e.g., satellite-based data, geospatial tools, visioning and scenario-planning software) that could lead to more thorough reviews, reduced environmental impacts, and ultimately better projects.

20. Congress should ensure that FPISC is finalizing and operationalizing the Environmental Review Improvement Fund

The FAST Act's Title 41 provided the authority to establish a fee structure for project proponents to cover the reasonable costs incurred in conducting environmental reviews. Funds collected would be deposited into a Permitting Improvement Fund and made available to cover the expenses of the FPISC or transfer funds to agencies conducting environmental reviews to help make their processes timelier and more efficient. Finalizing and enacting this rule should be a priority.

21. Congress should ensure that historically underserved communities have the necessary resources to participate in the environmental review and permitting process

Too often, historically underserved communities are left out of the process. They often don't have the funding for professional grant writers or predevelopment experts to site, scope, and plan infrastructure projects. Both for environmental justice and to ensure we are building all of the critical climate infrastructure necessary to achieve our goals, we must ensure historically underserved communities have the funding and resources to plan clean infrastructure projects.

PART 2: BIGGER AND BOLDER REFORMS TO REALLY MOVE THE NEEDLE

The recommendations in this section are intended to go beyond simple process improvements to the current system, instead finding ways to dramatically accelerate the deployment of clean infrastructure.

22. Pre-approve Projects on Mass Scale

a. State Grants to Identify and Pre-approve Sites for Clean Infrastructure Projects.

Rather than siting, scoping and permitting projects one at a time, Congress should provide grants for states to pre-select sites available for emissions reduction projects with pre-approval for certain types of projects. This will accelerate infrastructure deployment and reduce uncertainty for investors who will then propose specific projects.

Congress should consider also providing bonus grants on a competitive basis for states that pre-approve the largest percentage of land for clean infrastructure projects.

b. Pre-approve Federal Land for Clean Infrastructure Projects

Consistent with the mixed-use principle for public lands, Congress should direct the Administration to set aggressive goals for siting and pre-approving certain kinds of clean infrastructure projects on federal lands. This concept was included in Rep. DeFazio's H.R. 2 in the previous congress and in the Energy Policy Act of 2005. These goals should include both energy production as well as enabling infrastructure for Direct Air Capture such as CO2 pipelines.

c. National Grid Planning Authority

The energy mix of the future will require connecting significantly more renewable energy production, storage and improving nationwide transmission and distribution redundancies with new high voltage transmission lines. Continuing to build out transmission in a patchwork fashion as new energy projects are approved will be more costly, time-consuming, and less efficient. This is especially true in the case of offshore wind. Enabling this country-wide grid expansion will require national planning to connect production, storage and distribution and handle the siting and permitting before construction can begin. The National Grid Planning Authority could also provide attractive financing to the private stakeholders that will be constructing transmission lines.

d. Updated Version of Energy Corridors

The Energy Policy Act of 2005 authorized Energy Corridors to help address growing energy demand by facilitating the siting of pipelines and transmission and distribution facilities on federal lands, while also protecting the environment. They act as agency-preferred siting locations, providing certainty to stakeholders in infrastructure planning.

The program should be revisited with a particular focus on the clean infrastructure necessary to achieve net zero goals, such as increased renewable energy and high voltage transmission, including offshore wind, as well as CO2 pipeline infrastructure and on how to incorporate state approvals.

23. Race to Net-Zero Grants

Race to Net-Zero Grants would be a new, competitive grant program to create an incentive for States to work as quickly as possible to reduce their own greenhouse gas emissions. States would be eligible for several rounds of competitive grants for planning and building clean infrastructure projects, permitting streamlining and harmonization to speed the deployment of clean infrastructure, and achieving actual emissions reductions compared to baseline. This program recognizes the unique role states play in our federal government and that actions at the state level are just as important as action at the federal level.

Phase 0: Pre-development funding for clean infrastructure projects in opportunity zones

The Opportunity Zone program was created in 2017 to encourage private investment in historically underserved communities by providing tax incentives for those investments. It is not a given, however, that the program will ensure each opportunity zone will

get the investments they need. Private investors look at the risk-reward profile for projects when considering whether or not to invest. Clean infrastructure projects can be an important investment in these communities, but not every opportunity zone has the local funding and expertise to site, scope, and plan projects that will attract investment. Providing pre-development capital grants for clean infrastructure projects will both level the playing field and result in higher quality projects in these communities, helping them improve public health, create jobs, grow their local economy, and fight climate change at the same time.

Phase 1: Competitive grants based on planned clean infrastructure buildout to reduce emissions

Because of our federal system of government, each state will have a large role to play in the clean infrastructure deployment within their state boundaries. States have varying emissions profiles, current fuel mixes, clean energy production potential and distribution requirements, and energy needs. Phase 1 grants will be awarded on a competitive basis to states that map out aggressive, but feasible plans to leverage private capital for clean infrastructure investments to reduce CO2 emissions, with an additional focus on achieving environmental justice goals. States are encouraged to work regionally to account for the cross-state nature of a significant amount of clean infrastructure, including but not limited to transportation and water infrastructure, transmission lines, and CO2 pipelines.

Phase 2: Competitive grants based on streamlining permitting and harmonizing with new federal system.

Funding alone will not be sufficient to build enough clean infrastructure to achieve our climate goals, we must significantly increase the speed in which we permit and approve projects so we can more quickly take advantage of the environmental, societal, and economic benefits. But improving the federal permitting and approval system alone isn't enough when so many states and local governments have their own permitting processes. State Permitting Streamlining and Harmonization Grants would create an incentive for states and local governments to enact their own permitting reforms that harmonize with the improved federal permitting system, create State Permitting Councils that coordinate with FPISC and enter into MOUs, creating a federal-state-local partnership to effectively and efficiently ensure that we can protect our local environment without delaying emissions-reducing infrastructure projects.

Phase 3: Competitive award grants based on achieved emissions reductions by 2030.

The last phase of the Race to Net-Zero Grant program focuses on actual achieved emissions reduction compared to a predetermined potential emissions reduction. This baseline will be determined based on a variety of factors including available land, geographical features and renewable energy potential, and the current emissions profile of the state.

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