

DRAFT

The Honorable Penny Pritzker
Secretary
United States Department of Commerce
1410 Constitution Avenue, NW
Washington, DC 20230

Dear Secretary Pritzker:

Over the last 3 years, The Department of Commerce Advisory Committee on Supply Chain Competitiveness (ACSCC) has been reviewing a wide range of issues as part of our charter. One topic we have been monitoring is Permitting Speed and Reform – the significant impact that construction permitting practices and regulations impose on new U.S. infrastructure projects. We’ve summarized our findings below, and recommend that the Department of Commerce take a decisive implementation role to ensure the success of permitting reform efforts.

Supply Chain Construction Projects Are Critical to US Competitiveness

New supply chain infrastructure projects – both publicly and privately funded – are critical to keeping U.S. farmers, miners, drillers, processors, manufacturers, and retailers competitive in domestic and world markets.

The scope, range and scale of supply chain infrastructure projects is vast – encompassing roads, bridges, railways, waterways, ports, terminals, warehouses, and associated information systems – and the nature of projects includes not only those required for expansion but very importantly, those critical for modifications to networks, gateways and sites in response to global supply chain shifts.

Success for US private industry and supply chain providers often hinges on our ability to innovate, create agile solutions in response to supply chain patterns and challenges, and invest accordingly. When we take more time to permit construction projects than the Chinese take to build them, we erode the strength of the U.S. supply chain.

Permitting Delays and Complexity Add Significant Costs and Lead to Underinvestment

Construction permitting regulations and practices can cause significant delays, which produce multiple forms of inefficiencies and additional costs, and increase the risk of underperforming investment returns. Permitting delays and their causes are well documented, both for many specific projects and for broad categories of infrastructure.

A recent study by Common Good has estimated that the cost of permitting delays ***can more than double*** direct project construction costs when all delay factors are considered. This finding is counter-intuitive, but the types of costs associated with delays are subtle and insidious – and we too often accept them as

status quo without realizing the massive drag they have created on our economy. For example, many proposed new projects offer environmental benefits compared to the status quo, so by delaying the new “greener” solution, we may often prolong higher emissions and congestion associated with the status quo.

Furthermore, delays may mask a greater threat – important infrastructure projects **may not even be considered** or initiated because of investment uncertainty and risk created by permitting delays. The risk of delay and associated lower returns can be a powerful disincentive for **any** private capital participation. As you recall, this obstacle was cited extensively at the 2014 Infrastructure Investment Summit, hosted by the Departments of Treasury and Transportation in response to President Obama’s Build America Investment Initiative.

Viewed in this light, permitting delays may represent a larger barrier to US infrastructure development than the challenge of “public infrastructure funding” – identifying acceptable funding sources for public infrastructure (for example, alternatives to the gas tax or other means of restoring the Highway Trust Fund). However, if permitting processes can be reined in to achieve “safe but swift” timelines – **total infrastructure construction funding can increase** by allowing public sector dollars to go further, and attracting a larger pool of private capital.

The Solutions Are Well Known, and Practiced by Other Countries

Numerous studies of permitting issues and best practices point to a finite list of 10 logical solutions that can significantly increase permitting speed, efficiency and effectiveness. These approaches are well-documented by multiple think tanks and organizations, including The Brookings Institute, Common Good, US Chamber of Commerce, and the White House.

Solution	Description
Lead Agency	Assign lead agency as "one-stop shop" to coordinate cross-agency permitting
Early Screening	Conduct preliminary assessments - early identification and scoping of issues
Federal-State Coordination	Avoid duplicative federal environmental review following competent state review
Standardization Across Agencies	Harmonize permitting procedures and timelines across agencies, for similar issues
Collaboration Across Agencies	Share information and coordinate reviews among participating agencies
Concurrent Reviews	Conduct simultaneous, rather than sequential, reviews by agencies
Tracking and Transparency	Establish on-line dashboard to monitor permit approval process against goals
Tools & Education	Provide technical assistance and support to state/local agencies
"Shot Clock"	Establish a defined time period for permit milestones and issuance
Finite Challenge Period	Establish reasonable statute of limitations for permit challenges

The proof of success of these 10 solutions is evident in other countries – for example, in Canada, Australia and Germany – where “safe but swift” permitting is achieved, typically within two years.

Progress at the Federal Level has been Slow, But Gaining Momentum

These 10 solutions require both administrative and legislative actions. On both fronts, there has been slow progress over the last three years, but strong momentum in the fall of 2015 and passage of the Fixing America's Surface Transportation (FAST) Act are encouraging.

Administratively, the White House highlighted the permitting speed issue in 2011, established a "dashboard" to track major projects subject to federal review, and issued a detailed implementation plan in May 2014 to transition from "best practice to common practice".

On September 22, 2015, the White House (OMB and CEQ) issued "Guidance" for heads of 11 federal departments and agencies, calling on each to take steps to make the May 2014 Implementation Plan a reality. The specific charge was to systematically expand and upgrade the White House permitting dashboard to include all major infrastructure projects, support better project management, cut timelines by synchronizing agency reviews and schedules, troubleshoot roadblocks, and improve accountability by increasing public transparency.

This recent Guidance from the White House, while over a year in the making, is welcome news, but one observer, Phillip Howard of Common Good, identified the ongoing challenge: "Having parallel reviews rather than sequential ones, as the White House proposes, is clearly a valuable step. But it will not change a regulatory culture, with no accountable decision maker, that has led the approval process to last, in many cases, a decade or longer." Another concern is that the dashboard will be limited to only the very largest projects (>\$200 million in total cost) or those initially perceived as the most complex. To achieve a critical mass of value from speedier permitting, federal agencies will need to err on the side of being more inclusive, by adding more projects to the dashboard rather than limiting the scope to an arbitrary threshold.

On the legislative front, Congress passed the FAST Act in December 2015. The FAST Act incorporates many elements of previously proposed permitting reform bills embracing many of the 10 solutions described above, and codifies many of the elements of the Administration's September 2015 Guidance for more streamlined and coordinated inter-agency project management, including the Permitting Dashboard to track project review timelines. Additionally, it consolidates surface transportation infrastructure streamlining under a new National Surface Transportation and Innovative Finance Bureau within the Department of Transportation, which is charged with ensuring expeditious and thorough consideration of freight projects applying for financing and funding.

The FAST Act (under Title 41 or "FAST-41") also created a new entity – the Federal Permitting Improvement Council (FPIC). According to the White House's website, the Federal Permitting Improvement Council will "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."

See the excellent article, attached, by Former Secretary of the Interior David Hayes, describing how the FPIC and other key elements of FAST-41 will work to streamline and expedite permitting processes across all federal agencies.

Recommendation: The Department of Commerce Must Champion This Effort

America's supply chain capacity and efficiency has been the envy of the world, but it's clear from many measures that the health of our infrastructure is eroding, and may jeopardize our competitive position in world commerce. Permitting reform – through both administrative and legislative action – is all about restoring our competitive advantage through teamwork based on common sense solutions. American supply chain interests need a federal agency leader in this effort.

The Department of Commerce is one of the many federal departments and agencies identified as members of the Federal Permitting Reform Council, but perhaps has the broadest mandate to ensure its success as an inter-agency coordinating body whose mission is to accelerate our permitting process – “safe but swift” – to keep America's supply chain competitive on the world stage. The Department of Commerce is the only department in Washington – as our Advisory Committee on Supply Chain Competitiveness is consistently reminded by our DOC staff – that considers the competitive position of U.S. business and “serves as the voice of U.S. business”. Furthermore, the #1 point in the Department of Commerce's mission statement emphasizes that the Department shall:

“Build for the future and promote U.S. competitiveness in the global marketplace, by strengthening and safeguarding the nation's economic infrastructure.”

Therefore, we recommend that the Department of Commerce seek the leadership role in the Federal Permitting Improvement Council (FPIC) to progress permitting reform initiatives across the federal agency landscape, especially working with the Secretary of Transportation and the new Innovative Finance Bureau.

Further, we recommend that the Department of Commerce work with the White House to establish the FPIC with all deliberate speed, so that it can be institutionalized and remain operational during the transition to a new Administration in 2017.

Madam Secretary, pursuing these recommendations will help launch the first important steps to improve U.S. permitting speed and effectiveness. We look forward to establishing a productive dialogue with you on this topic, as well as other ACSCC focus areas, to progress our strong mutual interests in preserving and enhancing one of the most valuable legacies we have inherited from previous generations of supply chain professionals and government leaders – a U.S. supply chain that is second to none.

Respectfully,

Dean Wise
Leslie Blakey
Jim Cooper
Paul Fisher

And Members of the ACSCC