CONSERVATIVE COALITION *for* CLIMATE SOLUTIONS

Options for Permitting and Regulatory Reform in the 119th Congress

A Roadmap for Energy Abundance, Economic Growth, and Reindustrialization in America

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Executive Summary

American innovators, inventors, and builders moved mountains to provide families and businesses with the energy and infrastructure needed to power the modern economy. We built the Empire State Building in a year, constructed the Hoover Dam in five years (two ahead of schedule), and issued a nuclear plant construction permit in 13 months.[1] Too often these days, our building projects languish. To meet America's energy and infrastructure needs, we desperately need to build in America. Both sides of the political spectrum have realized this in recent years. To achieve this, we must modernize ineffective regulations that hinder American dynamism.

When we can't build efficiently, American families and businesses suffer. They have fewer sources of energy. Jobs and innovative technologies are shelved for years, sometimes indefinitely. Further, a broken procedural system jeopardizes our ability to support the buildout adequately and has enabled unquestioned American global leadership.

Hollowing out our industrial capacity has left us vulnerable and stagnant. Today, with the advent of profoundly capable artificial intelligence systems and the realities of competition with China, we must enable a more productive economy. The advent of AI and emphasis on reindustrialization place new demands on our electricity grid. If we have any hope of meeting the challenge of this moment, the United States will need to address the many regulatory barriers to building.

By adopting speed-to-power as the core objective ... projects will be incentivized to get data centers powered and operational as quickly as possible.

To restore America's ability to build, Congress should replace the current procedural permitting system with a compliance-based framework. The first step is to reform the National Environmental Policy Act and place limits on litigation that delays critical infrastructure. While this paper focuses on federal policy reforms, states[2] should also modernize their permitting and siting laws.[3]

This report will provide three sets of solutions to help Congress address the vast expansion of bureaucratic requirements that have plagued infrastructure, housing, and numerous other projects. The first section will consider the viability of a federal permit-by-rule, or compliance-based framework for environmental protection. This section will focus on how to get more innovative, effective, and economical projects into the construction and implementation pipeline for the benefit of all Americans while meeting rigorous environmental standards.

The second section will address the other most problematic barrier facing new development—litigation and injunction reform. In this section, we provide examples of several options for reducing frivolous lawsuits without compromising environmental protections or the rights of vulnerable communities.

In the third section, we give an overview of legislative fixes to improve the functioning of environmental laws.

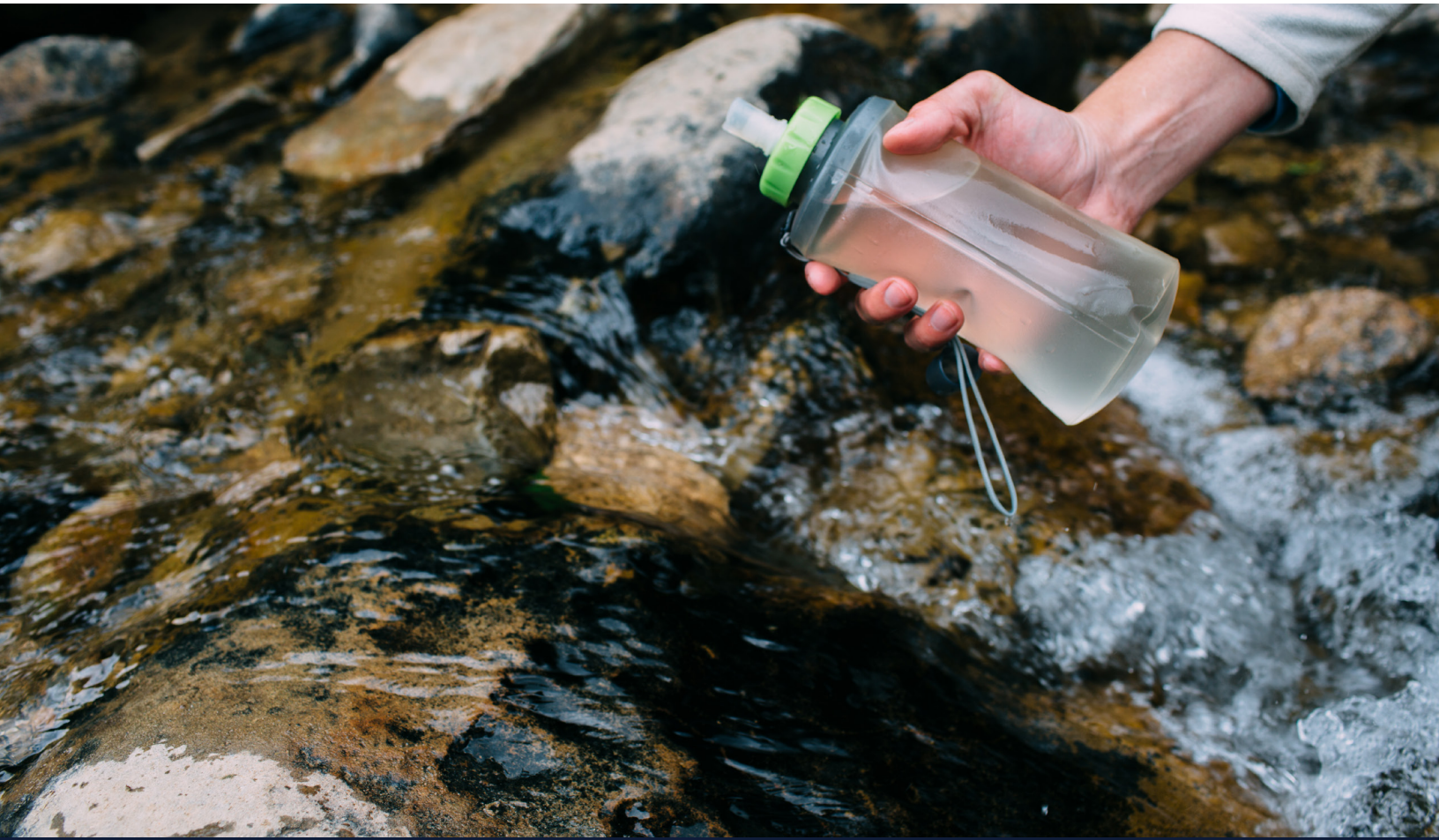
Permitting and regulatory reform would foster an environment that enables Americans to build responsibly and effectively, improving the lives and livelihoods of our fellow citizens. We want the economy to be vibrant for human flourishing and to protect the environment for future generations. This involves stewarding the environment around us and constructing essential infrastructure, including housing and energy. This collection of reforms provides a pathway to address the system's most significant shortcomings, allowing Americans to build responsibly, efficiently, and effectively once again.

Compliance not Paperwork:
Moving to federal permit-by-rule

We have remarkably high compliance rates with environmental laws in the United States. We should be proud of our shining Great Lakes, stunning mountain ranges, and National Park System. Our industries are very clean. As a nation, the United States ranks highly on the Yale Environmental Performance Index.[4] Major environmental laws from the 1970s, such as the Clean Air Act and Clean Water Act, have been crucial in protecting air and water quality. Still, they are not well-suited to address today's economic realities and environmental challenges. These laws now impose increasingly high compliance costs but offer only diminishing environmental benefits. Other laws are less effective and often block more environmentally-friendly projects from moving forward.

NEPA is an ineffective law and a major cause of delays in construction projects. NEPA is purely procedural and does not provide environmental protection. Instead, it simply requires the federal government to pause and assess before acting. In many ways, NEPA paved the way for the landmark environmental laws of the 1970s. But today, NEPA adds further delays to the process, even when companies are already complying with numerous other environmental laws. NEPA overlaps with multiple other federal and state regulations and involves lengthy, unclear processes.[5]

On the other hand, permit-by-rule is a compliance-based framework. Currently, if a private business wishes to build any number of different types of infrastructure or conduct various actions that may bear on the health of the environment—which can be construed extremely broadly as nearly all actions can bear on the health of the environment—then the company must seek permission from the federal government in the form of permits. Because it is also bound by various environmental laws, when the federal government issues a permit, it must consider the environmental effects of allowing the action.



But it is not just the project's environmental effects. If the project occurs on federal land or receives federal funding, agencies must also consider the potential environmental impacts of not building the project. For instance, agencies have needed to consider how a new highway would increase the number of cars on the road or how mechanical thinning of a federal forest would affect emissions from sawmill factories.

Consequently, companies must endure what will usually amount to years of paperwork and review. While a recent Supreme Court case clarified and narrowed the scope of NEPA reviews, procedural law has created a culture of risk aversion among agencies to ensure that environmental analyses are litigation-proof. Many projects, including those for clean energy on federal lands and conservation[6] that would have protected America's forests and communities, did not move forward quickly (or at all) due to NEPA delays.

But there is an alternative which will not endanger our environment or cause backsliding on the truly amazing goals of securing a prosperous and verdant environment in our country. We can give up on the endless years of paperwork and pursue a substantive, compliance-based environmental regulatory approach. Instead of paperwork, ecological law can shift to compliance, following the same policy playbook as workplace safety. Regulations imposed[7] by the Occupational Safety and Health Adminisration (OSHA) require that workplaces maintain compliance with federal law, but do not require each company to endure long waits and lawsuits to get certified that their new office is, in fact, safe for workers. Many state environmental departments have procedures in place[8] for air-polluting sources, such as the construction of new gasoline stations. Shifting federal environmental law from a permission-based to an audit-and-compliance model would yield similar efficiencies.

IMPLEMENTING A COMPLIANCE-BASED SYSTEM: FEDERAL PERMIT BY RULE

Creating a path for projects to meet compliance with all substantive environmental laws would enable energy and infrastructure to come online years earlier than under the current procedural burdens. The path to a compliance-based framework lies most obviously through the commonly referred to "permit-by-rule" (PBR) framework. PBR can be done in two ways. First, specific, discrete standards for what is required to obtain a permit would be established and promulgated by an agency. Applications that meet the criteria for a permit are then automatically approved within a specified, short period, unless substantive objections are raised. Two U.S. senators introduced[9] a bill requiring agencies to take steps to implement a PBR system.

The second path to PBR is to exempt projects that meet narrow criteria, such as being under a specified size and located on a brownfield, from the permitting process entirely, requiring only compliance with substantive environmental regulations. This would allow these particular projects to submit a notice to the relevant federal agencies and then begin construction or activities immediately. However, this exemption would be accompanied by increased oversight to ensure compliance with regulations. This broader reform, which eliminates the need for a permit for specific projects, would be available to projects that comply with federal regulations and do not require prolonged government review or legal challenges to verify that the developer is following regulations. If there are concerns about the project's compliance, such as the risk of damaging a fragile ecosystem or endangering a species, the project developer can opt to seek a permit, for example, under the Endangered Species Act.

These two paths to a compliance-based or permit-by-rule system are not mutually exclusive. The first, agency-driven path offers the advantage of leveraging agency expertise and closely aligns with the current regulatory framework. It is also the route currently under consideration following President Trump's Executive Order 14154[10], "Unleashing American Energy." This order prompts agencies to explore the use of a permit-by-rule system. Some federal agencies have already made advances in this area, led by the Department of the Interior, which has set ambitious goals[11] for 14-day environmental assessments and 28-day environmental impact statements under NEPA (reducing them from roughly 1 and 2 years, respectively). Additionally, EPA already[12] employs PBR for certain projects in specific locations, such as gasoline dispensing facilities, auto body repair & miscellaneous surface coating operations, and petroleum dry cleaners, as streamlined pre-construction approvals.

The second path offers a more durable route for projects vital to national growth. A proposal[13] from James Connaughton, former Chairman of the Council on Environmental Quality under the George W. Bush administration, outlines a vision for a permit-by-rule framework that exempts various essential infrastructure projects—those we urgently need more of to lower energy, housing, and grocery costs—that meet specific siting criteria. These include projects on brownfields or where existing rights-of-way are already permitted. Connaughton and others have also proposed that legislation establishing a federal PBR of this second type should require states to pass similar laws to qualify for federal funding for streamlined projects.

Legislatively, Sens. Cynthia Lummis (R-WY), Ted Budd (R-NC), and Pete Ricketts (R-NE) introduced[14] the Full Responsibility and Expedited Enforcement Act (FREE Act) in July 2024. The bill would enable a federal PBR by empowering agencies to identify opportunities for PBR implementation if applicants meet predetermined conditions and certifications. Agencies would have the "right and responsibility to audit and enforce compliance with permitting requirements."[15] Representative Celeste Maloy (R-UT) reintroduced[16] the FREE Act in the House of Representatives in July 2025.

Fund Clean-Ups, not Lawyers: Litigation Reform

One of the most significant obstacles to infrastructure project construction, particularly new linear infrastructure such as pipelines and power lines, is litigation and judicial injunctions.[17] There is an essential and appropriate space for litigation, whether from the government or a private citizen, to stop a project that violates environmental laws or causes direct harm. For example, if a factory dumps toxic waste, federal regulations are designed to hold that company accountable for the economic and environmental damage it causes. It is important to note that the company has a strong incentive to avoid such actions due to the potential financial and reputational consequences.

However, this is often not the type of litigation brought against projects under NEPA or other environmental laws. Instead, plaintiffs frequently file cases alleging that the permitting agency did not adequately consider certain environmental impacts. This was exactly the issue in the recently decided Seven County Infrastructure Coalition v. Eagle County: whether the Surface Transportation Board sufficiently considered downstream environmental impacts of oil refining at the Gulf of America. The Supreme Court's 8-0 decision[18] clearly indicated[19] that such considerations were beyond the scope of the agency's appropriate action. Nevertheless, the potential for future litigation and injunctions on vital infrastructure projects remains high.

One reason litigation reform is crucial to permitting reform is the widespread use of bad-faith lawsuits[20] aimed at delaying, stopping, or disrupting projects, especially energy infrastructure projects. It is because of these bad-faith efforts to use lawfare against energy infrastructure—whether renewables, advanced, or traditional—that limitations on litigation are needed.

Even if the lawsuits are in seemingly good faith, they can still do much more harm than good. For instance, environmental NGOs held up a forest thinning project for a decade because it would endanger the habitat of spotted owls. The thinning, which would have significantly reduced the impact of wildfires in the region, was dubbed a "timber grab." Ryan Sabalow and Dale Kasler write[21] in the Sacramento Bee that while the project was "tied up in environmental red tape and other bureaucratic delays, the Antelope Fire in early August burned through the site before a single chainsaw touched a tree, destroying the owl habitat that the environmental groups were trying to save."

The mere threat of litigation increases timelines because risk-averse agencies want to guard against lawsuits. Litigation-proofing NEPA analyses adds significant time, pages, and cost to a review without much additional benefit.

As C3 Solutions noted in recent testimony, "the mere threat of litigation increases timelines because risk-averse agencies want to guard against lawsuits.[22] Litigation-proofing NEPA analyses adds significant time, pages, and cost to a review without much additional benefit."

Congress should act, following on the Court's laudable decision, and provide clarity to curb the uncertainty that stalls and discourages infrastructure projects. This section will lay out four steps to improve the outlook for infrastructure projects in litigation: the harmless-error principle, a right to cure, clarifications of standing, and reforms to statutes of limitation.

THE HARMLESS ERROR PRINCIPLE

When a plaintiff files a case against an approved infrastructure project, the judge often issues an injunction to vacate the permit, preventing further construction or action until the case is resolved. The 88-mile train line in Seven County couldn't be built until the litigation over the Surface Transportation Board permit was resolved. Even if the case had been upheld or the STB had considered the long-term, downstream effects, such as increased emissions from Gulf Coast refining, the permit likely still would have been granted from the beginning. The lawsuit and years-long delay were not caused by significant environmental harm but by an administrative and procedural oversight that the Supreme Court determined was not even worth considering.

Thomas Hochman, Director of Infrastructure Policy at the Foundation for American Innovation (FAI), has argued that Congress should adopt one of two approaches to reforming litigation and injunctions.[23] Either the plaintiff must show a high likelihood of winning the case and demonstrate that no delay would cause irreparable harm, or "alternatively, Congress could direct courts to treat procedural missteps as 'harmless error' unless the plaintiff can show the defect is substantially likely to change the agency's ultimate decision."[24]

Even the Biden administration's CEQ showed interest in the harmless-error principle. In the now rescinded CEQ guidelines, minor and non-substantive errors were to be "considered harmless." Congress could establish the "harmless error" principle by clarifying that any judicial review under a specific environmental law, such as NEPA, must treat procedural deficiencies as harmless errors unless the plaintiff can prove that it would have changed the agency's decision. Congress can also require that, while the permit decision is remanded to the agency due to a harmless procedural deficiency, the permit is not vacated so that construction or activity can continue without interruption.

RIGHT TO REPAIR: THE REMAND FOR A CURE PERIOD

Suppose the plaintiffs can show that the error could reasonably lead the agency to change its decision, but cannot demonstrate immediate, irreparable harm to the environment. In that case, the agency, in consultation with the project sponsor, would be given a specific period, such as 120 days, to address or "cure" the error. This would allow agencies to address procedural issues or other minor mistakes while the project continues.

The Bipartisan Policy Center has proposed similar reforms, including setting deadlines for agency remands and narrowing the scope of decisions.[25] While not a "right to repair" per se, making changes to narrow the scope of judicial review decisions, such as a remand with or without vacatur (the legal term for when the court nullifies the agency decision), and implementing time limits for a remand would establish a basis for decisions that require the agency to address the error and specify the error that would need to be addressed.

The Institute for Progress (IFP) has also proposed a similar reform that would impose time limits on injunctions (discussed in the following section).[26] As Mackenzie, Datta, and Stapp argue, by establishing caps on when injunctions—especially preliminary injunctions—can be issued, agencies could hear objections and then respond. This part of the IFP proposal would allow for preliminary injunctions during that period while the agency considers the issue. Then it would bar injunctions, thus rendering the agency's and court's decisions final. The right to a repair period provides an alternative: courts are prevented from issuing an injunction while the agency addresses the issue when the error would not cause immediate, irreparable harm.

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There are multiple ways to establish a right to a repair period for permits. A minimum period could be set by law, but the agency can also extend it to allow sufficient time to fix errors. If the plaintiff can show that there will be irreparable harm to the environment, the court may still vacate the permit decision.

TIME-LIMITS AND STATUTES OF LIMITATIONS

Various proposals have been made to set time limits on different parts of the permitting process.[27] In the Fiscal Responsibility Act, Congress established one-year and two-year caps for environmental assessments (EAs) and environmental impact statements (EISs), respectively. However, one area where delays remain common and prolonged is litigation and the use of court injunctions to delay or halt projects.

There have been many suggestions for reforming the permitting litigation process, especially for energy infrastructure. The reports from the Bipartisan Policy Center and the Institute for Progress mentioned earlier are notable, as are several others. This section draws on the insights from these sources and offers several recommendations for improving how courts handle injunctions in permitting-related lawsuits.

The first recommendation is to shorten the statute of limitations for challenging agency decisions. Under the FAST-41 process, projects have a two-year limit. The Infrastructure Investment and Jobs Act (IIJA) also set a two-year limit for transportation projects. These are positive steps, but further reductions could be beneficial in providing projects with faster certainty about their permits. At a minimum, the IIJA and FAST-41 standards should be extended to all federal licenses, and BPC's report mentioned that most participants in their meeting were comfortable with a statute of limitations of one year or less.[28] Thomas Hochman of FAI has proposed a 150-day limit, and BPC noted support for a six-month limit.

The second recommendation, related to the proposal above, is that Congress should establish time limits on injunctions. Aidan Mackenzie of the Institute for Progress and Hochman both advocate setting time limits on injunctions, requiring injunctions that prevent project construction during litigation to be issued only within a specific, fixed timeframe.[29] Both Mackenzie and Hochman argue that imposing a time limit from the moment project sponsors submit a permit application would motivate agencies to complete reviews quickly, within the timeline mandated by Congress. Alternatively, a

shorter injunction period could be allowed if it begins after the agency's final decision.

In another report, researchers from IFP propose a third option: a very short period—60 days from the agency's decision—during which claims seeking a preliminary injunction can be filed.[30] After this period, preliminary injunctions would no longer be allowed, and only final injunctions could be issued.

LIMITING STANDING

A fourth way to reduce litigation burdens on infrastructure projects is to reform the standing requirements for seeking an injunction against a permitting decision. Standing requires the complainant to demonstrate a sufficient impact from the action in question. Narrowing the standing criteria would reduce the number of people able to sue over a particular project or activity, rather than allowing parties far removed from a case to file lawsuits. The two most promising proposals for narrowing the statute of limitations are: first, to restrict suits to individuals who can prove a pre-existing interest that is threatened or harmed by the project; and second, to limit standing to those who participated in the public notice and comment process and raised specific issues they are concerned about.

Currently, plaintiffs can be distant from a project and demonstrate only minimal harm to establish standing to sue. The first proposal is to limit standing to individuals who can show a pre-existing interest and activity affected by the project. The standing of these individuals is the most important to protect because they are the conservationists, outdoors enthusiasts, sportsmen, and anglers who regularly know and use the land. These individuals should have standing to sue against projects that would needlessly disrupt the character or access to the lands or activities they wish to preserve. These individuals, rather than national or global activist NGOs, should be the parties whose cases take priority and influence the regulatory process. The criteria for what constitutes a pre-existing interest should be defined to exclude mere desire or intangible concern for a site, and instead include meaningful activities and involvement.

The second proposal acts in connection with the first and permits the participation of NGOs, non-profit organizations, other organizations, universities, and even activist groups. This proposal would grant standing to plaintiffs who participated in the public notice-and-comment period for a permitting application and raise a specific, actionable issue of concern. These plaintiffs may be granted standing when bringing a suit alleging that the exact, actionable item(s) they raised were not addressed and that this failure led to a violation of law by the permitting agency or project sponsor. This would significantly reduce the scope of allowed litigation. An advantage of this proposal is that it focuses attention on the issues most important to groups, including activists, while giving project sponsors and permitting agencies the opportunity to address concerns before they escalate into litigation. This should prevent bad-faith lawsuits while still allowing organizations to influence the permitting process based on genuine concerns.

These two proposals work in tandem. Those claiming standing based on a pre-existing interest must show they had an interest and engaged in activity before the project was announced or the permit was applied for. Still, they do not need to have taken part in the public notice and comment period. These individuals may not have known about the scope of a project or how it would impact specific site uses. This aims to keep open the possibility of filing a good-faith lawsuit when appropriate while helping to reduce frivolous lawsuits. Regardless of reforms to standing, statutes of limitations, and time limits on injunctions, these remain critical for reforming the litigation cycle and enabling sponsors to build in America.

The Menu of Reforms

This section offers a variety of proposals to reform various permitting laws. The table below demonstrates various reforms evaluated based on their effectiveness in reducing barriers to innovation and construction, while maintaining the core functions of the underlying substantive laws, except for the National Environmental Policy Act, which is purely procedural and should be repealed. These proposals are drawn from various drafts and legislative proposals, as well as other policy sources, such as Thomas Hochman's article, "A Permitting Wishlist for Congress,"[31] the Bipartisan Policy Center's Goldilocks report, and direct stakeholder engagement.[32]

	Good	Better	Best
NEPA	e-NEPA; Defining Major Federal Action, Studying NEPA's Impact on Projects Act	Excluding certain federal activities from triggering NEPA; The SPEED Act	Full REPEAL
ESA	Delisting specific species by statute	Threatened species protection is discretionary; Limiting consultations if "not likely to adversely affect a listed species or designated critical habitat"	The ESA Amendments Act
CWA	Codify the definition of WOTUS from Sackett v. EPA; Extend duration of permits	The PERMIT Act Extend permit life	Federal override for projects in the national interest
CAA	Modernizing Clean Air Permitting Act	NAAQS to consider implementation and economic impacts	Cap-and-trade for emissions and pollution
NHPA	Authorize FEMA to waive NHPA for certain projects		Limit the definition of affected properties

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Full Repeal: While unlikely, complete repeal of NEPA should be a core component of permitting reform. As noted above and by others, NEPA is purely procedural and does not provide substantive protections for the environment. Instead of endless litigation over procedural issues, repealing NEPA would redirect agency and NGO efforts toward substantive environmental laws that better protect a healthy, thriving ecosystem while enabling us to rebuild.

Exempting Additional Activities: NEPA can be further reformed by excluding certain activities from requiring review. These would not be categorical exclusions, which still require significant environmental reviews that can take years, but full exclusions that waive NEPA for these projects. These could include routine maintenance, safety upgrades, and similar projects that have no environmental impact but still go through NEPA processes.

Defining Major Federal Action: The Fiscal Responsibility Act defined "major federal action" as that which is "subject to substantial Federal control and responsibility" and laid out a set of actions that are excluded.[33] Better still would be to provide a specific definition of a "major federal action." Mackenzie and Hochman have proposed a two-part test for significant federal action, and BPC offers several definitions.[34] One of the simplest, as noted by BPC[35], is a straightforward economic impact of $100 million or more, with at least 15% of the funding coming from federal sources. This approach would limit major reviews to significant projects that might not proceed without government support.

The SPEED Act: Introduced by Reps. Bruce Westerman (R-AR) and Jared Golden (D-ME), the SPEED Act would eliminate the need for a NEPA analysis if the proposed agency action is reviewed under another federal statute or if a review by a state or tribal entity serves a purpose that is similar to that of NEPA. This change would not only reduce redundancies but also enable states and tribes to conduct more efficient reviews that better address the needs and concerns of local communities. The Act would also narrow the scope of environmental assessment to the "reasonably close causal relationship to and are proximately caused by" the project or agency consideration. This would eliminate the need to consider speculative, downstream, and indirect effects, which adds substantial time to the analysis and forces agencies into rabbit holes of "butterfly effects" for projects and actions.

Furthermore, the SPEED Act would limit the court's power to invalidate an agency action only if the agency abused its "substantial discretion," and the "agency would have reached a different result on said action without the abuse." The bill states that any inadequate NEPA analysis (such as a deficiency or error in an environmental impact statement) does not require a court to vacate the agency's approval of a project. Instead, the agency's action would remain in effect, and the project can move forward as the agency corrects any errors or deficiencies. Regarding legal standing, the Act would require individuals to have actively participated in the NEPA process—such as through public comments—before filing suit, and to demonstrate direct harm, as outlined in the comments. Additionally, the bill shields categorical exclusions from lawsuits. It would also shorten the statute of limitations to 150 days, down from the current 6-year limit.

e-NEPA: Introduced by Reps. Dusty Johnson (R-SD) and Scott Peters (D-CA), e-NEPA aims to fully digitize the NEPA permitting process[36] by creating a single online portal that simplifies application submission, centralizes document posting, and consolidates public notices and interagency comments on NEPA documents. President Trump issued an Executive Memorandum to update the permitting process, emphasizing the use of digital

technology and the development of a unified permitting portal. Congress has the authority to formalize this memorandum and require all agencies to establish and utilize a government-wide permitting portal.

Studying NEPA's Impact on Projects Act: The act, introduced by Rep. Rudy Yakym (R-IN), would require the Council on Environmental Quality to prepare an annual report, starting in July, that revises and consolidates three reports previously prepared by the CEQ. The first is a yearly NEPA litigation survey published from 2001 to 2013 that reports on NEPA litigation data. The second is a report on the length, number of drafts, costs, and five-year trends of these data for environmental assessments and environmental impact statements; this report was previously prepared in 2019 and 2020. The bill's third provision requires reporting on the duration of a project's NEPA review and a description of 10-year trends; this was previously reported in 2018 and 2020.

ENDANGERED SPECIES ACT (ESA)

The ESA Amendments Act (H.R. 1897), introduced by Rep. Westerman, aims to revise the Endangered Species Act to achieve measurable recovery. It sets clear statutory deadlines for listing, delisting, and five-year status reviews; limits future "critical habitat" designations to areas occupied by a species; and establishes a recovery-credit marketplace that rewards private and state landowners who improve habitat. It also directs the Fish and Wildlife Service to focus resources on the most at-risk species while reducing "sue-and-settle" litigation by capping attorneys' fees and increasing transparency in citizen suits. These changes are intended to streamline project permitting, promote genuine conservation efforts, and restore congressional intent without weakening essential wildlife protections.

Discretionary Protection for Threatened and Endangered Species: This follows the "ESA Flexibility Act" introduced by Rep. Stauber (R-MN). This would give the Secretary of the Interior the authority to apply Section 4(d), which allows tailored rules for threatened species, to endangered species as well. Congress can clarify that threatened listings automatically trigger species-specific 4(d) rules, encouraging landowners to participate in Safe Harbor agreements and aligning regulations with actual threats.

Streamlined "Not Likely to Adversely Affect" Consultations: Even projects expected to have negligible impacts still require ESA consultations. The Department of the Interior's 2022 guidance piloted a 30-day informal concurrence track for NLAA actions, but adoption is inconsistent. Congress can lock in a 30-day concurrence limit, require standardized digital templates, and mandate annual public reporting on NLAA timelines to maintain accountability.

Delisting Species by Statute: Congress has removed species that have recovered sufficiently from the endangered species list by statute, such as the gray wolf in 2011.[37] This is a practical mechanism to address specific cases in which species have recovered but not been delisted, or when a project of vital national importance needs to move forward. Nonetheless, because of the political capital involved, these instances will —and should —be few and far between.

CLEAN WATER ACT (CWA)

Federal Override for National-Interest Projects: Congress could authorize the President to determine that a

project is sufficiently in the national interest, allowing the Army Corps to issue Clean Water Act permits even if a state withholds or conditions permit certification. The override could apply to projects deemed essential to national defense, grid reliability, or strategic supply chains and would limit states' ability to interfere with national-interest projects.

The PERMIT Act: Introduced by Rep. Mike Collins (R-GA) and approved by the House Transportation and Infrastructure Committee, the PERMIT Act is a package of reforms to the Clean Water Act that clarifies permitting processes by (1) codifying long-standing WOTUS exclusions such as ephemeral streams, groundwater, and prior-converted cropland, (2) extending Nationwide Permits to ten years and including linear infrastructure, (3) establishing firm deadlines for agency decisions and court challenges, and (4) adding targeted fixes for Section 401, NPDES, and wildfire-retardant exemptions. These changes aim to speed up routine projects while maintaining essential water quality protections.

Extend the validity of General and Nationwide Permits: Current general permits intended for minimal-impact activities last 5 years, leading to unnecessary renewals. FAST-41 demonstrated that more extended validity periods, combined with monitoring, can ensure environmental protection. Statutory ten-year terms, with a mid-term compliance review using satellite or sensor data, would reduce red tape for low-risk projects. Rep. Rouzer's bill, the "Nationwide Permitting Improvement Act," included in the PERMIT Act, would achieve this by extending the reissuance period to 10 years.

Codify Sackett WOTUS Standard: The Supreme Court's 2023 Sackett v. EPA decision limits the Clean Water Act's jurisdiction to wetlands with a continuous surface connection to traditional navigable waters because Congress has not defined what qualifies as the Waters of the United States (WOTUS). This significantly narrows the definition of WOTUS from prior interpretations while preserving the CWA's protective features. Congress can codify this definition to provide consistency for applicants.

CLEAN AIR ACT (CAA)

A Cap-and-Trade System: The Bush administration proposed implementing a cap-and-trade system for pollutants such as mercury, sulfur dioxide, and nitrogen oxides in its Clear Skies plan.[3839] A cap-and-trade system sets a limit on emissions from a single site, and if the site emits below that limit, it can bank or trade credits to offset higher emissions elsewhere. This provides a compliance-based approach as an alternative to the complex, time-consuming New Source Review currently required under the CAA. Legislation to establish this was introduced by Sen. Inhofe in 2003, but it did not advance.[40] Notably, these cap-and-trade proposals did not include greenhouse gases but focused on other polluting emissions.

Extending the NAAQS Review Cycle: Introduced by Sen. Shelley Moore Capito (R-WV), the National Ambient Air Quality Standards Implementation Act (S. 2125, 2023) would (1) lengthen EPA's mandatory review of each criteria-pollutant standard from five to ten years and (2) require the agency to consider economic and technological feasibility when setting or revising those standards—adding predictability and practicality to Clean Air Act implementation.

Modernizing the Clean Air Permitting Act: Introduced by Sen. Bill Cassidy (R-LA) (S. 3826, 2024), the bill would streamline Clean Air Act implementation by (1) excluding wildfire and other resilience-related emissions from state National Ambient Air Quality Standards (NAAQS) inventories, (2) allowing

governors to discount mobile-source emissions when calculating non-attainment, (3) prohibiting EPA from tightening a criteria-pollutant standard until 85% of regions meet the previous standard, (4) reclassifying primary sources that remain below hazardous air-pollutant thresholds for six months as area sources, (5) automatically grandfathering draft permits caught in the middle of rule changes, and (6) directing EPA to finalize implementing rules within three years.

NATIONAL HISTORIC PRESERVATION ACT (NHPA)

Expediting Hazard Mitigation Assistance Projects Act: Introduced by Sen. James Lankford (R-OK) (S. 378, 2025), the bill authorizes FEMA to waive or significantly shorten NEPA and related historic-preservation reviews for property buyouts, demolitions, or relocations funded under the Hazard Mitigation Grant Program, BRIC, or Flood Mitigation Assistance, after a brief, less than 30-day consultation with state and local officials. The waiver authority preserves essential protections but speeds up disaster mitigation processes.

Narrowing the Area of Potential Effects: This reform would redefine the Section 106 "area of potential effects" to include the project's direct physical footprint and an immediately adjacent buffer, covering direct effects that would physically impact the footprint. It would exclude distant viewsheds, traffic changes, and other indirect or speculative impacts. By limiting reviews to historic sites directly touched or altered by construction, agencies can reduce consultation time, limit expansive mitigation requirements, and accelerate approvals while still safeguarding landmark properties.

Conclusion

Permitting reform is necessary to create opportunities for Americans to build the infrastructure needed to support prosperity, energy security, and a healthy environment. Our goal should be to steward a vibrant and sustainable landscape while also ensuring that essential infrastructure for housing, energy, and transportation can move forward efficiently. The reforms we propose would address the most significant shortcomings of the current system and enable projects to proceed responsibly and on time.

The United States already maintains high compliance rates with environmental laws, and instances of serious ecological harm are rare. Permitting reform is not about reducing those protections. It is about replacing extensive paperwork, redundant reviews, and costly litigation with a system that focuses on measurable compliance and demonstrated environmental outcomes. Updating America's major environmental statutes to reflect today's economic and technological realities is long overdue. The future of U.S. growth and competitiveness hinges on permitting reform.

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Endnotes

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