Administrative and Regulatory Actions to Further Accelerate Infrastructure Project Delivery

President Trump has identified robust infrastructure investment and regulatory reform as key priorities for his Administration. In order to facilitate efficient and timely delivery of critical projects funded through federal programs, ACEC has identified the following recommendations to streamline the process between project development and delivery.

Under current law and federal and state agency procedures, the multiple permits, reviews and approvals required for infrastructure projects can lead to confusion by project sponsors, turf wars between federal and state agencies with competing interests, and unnecessary delays in delivering projects that grow our economy. These challenges result in additional cost and delay in the delivery of projects and their associated benefits, including increased employment, safety and security enhancements, economic development and expansion, and resiliency in the nation’s infrastructure.

It must be acknowledged that a significant amount of legislative and regulatory work has already been done in this arena, particularly for surface transportation programs under SAFETEA-LU, MAP-21, and the FAST Act. While the implementation of these bi-partisan reforms is on-going, many of the changes are already delivering noticeable time savings. Implementation of the enacted reforms should continue in earnest.

Additional changes can be accomplished with straightforward administrative actions that are permissible under current laws and regulations. These actions would further expedite environmental reviews and approvals for all infrastructure projects including port facilities, airports, pipelines, bridges and highways. These changes are simple but could lead to significant time and cost savings. Other changes would be more far-reaching but require additional regulatory or legislative authority.

Administrative Changes

- Enable early, substantive coordination among regulators and project sponsors to identify critical issues that can be avoided during planning and agree upon mitigation strategies for those impacts that cannot be avoided. This will reduce the risks associated with projects and focus efforts on the defining factors that shape decision-making.

- Fully utilize “Lead Agency” role to designate single agency for driving the process; establish gateways or checkpoints that memorialize critical decision points that cannot be revisited unless significant changes occur to the project. Leverage the recommendations of the recent “Red Book – Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects” and aggressively apply those principles across all infrastructure sectors, not just transportation.
• Ensure that agencies are equipped (through appropriate staffing and designated responsibility) to engage with private entities that may eventually partner with the public agencies to deliver projects being pursued as a public-private partnership. When scoping a project and developing alternatives for consideration, it is critical that investors/operators are engaged early, providing critical feedback on key elements of the project necessary for their financial interests.

• Provide greater technical assistance to local governments and non-traditional grantees that would not normally engage in the federal permitting and approval process so that such grantees are not immediately disadvantaged in discretionary programs simply because they had not anticipated a federal funding component to their project.

• Develop government-wide strategy to address Design-Build projects, ensuring all agencies are equipped to support their permitting and environmental approvals; clarify existing authority to review and approve with limited design information and modify permits if the design changes.

• On Design-Build and Public-Private Partnership projects, use front-end Programmatic Agreements, with funding allocation, to allow environmental clearance after bid with environmental survey needs and commitments.

• Leverage authority provided in the FAST Act to fund dedicated staff at reviewing agencies e.g. State Historic Preservation Office, U.S. Army Corps of Engineers, U.S. Fish & Wildlife service, and co-locate them with the funding agency where possible.

• Issue Program Comment (by Advisory Council on Historic Preservation) on classes of actions with minimal chance of impacting cultural resources under Section 106 of the National Historic Preservation Act (FHWA actions could include ADA curb cuts, pavement overlays, improvement of existing shoulders, intersections without widening, bridge deck replacements; pipeline example would be maintenance of existing and/or adding new line next to existing line).

• Issue Program Comment (by Advisory Council on Historic Preservation) exempting the majority of post-war residences from Section 106 of the National Historic Preservation Act due to tremendous volume and mass production of houses built during post-WWII building boom; generally require that a district be present for Section 106 consideration, and exempt all but “exceptional” (i.e., high style or architect-designed) single homes.

• Fill vacant seats on the Federal Energy Regulatory Commission to provide a quorum and allow FERC to resume review and approval of interstate energy transmission projects.

• Appoint full-time Executive Director for the Federal Permitting Improvement Steering Council created under Title 41 of the FAST Act.
**Hybrid Strategies**

- Create a list of Federal Categorical Exclusions or enable federal agencies to “share” Categorical Exclusions, reducing the need for lengthy studies on otherwise routine actions.

- Strengthen the role of the federal funding agency in shaping the project purpose and need and range of alternatives for the purposes of approvals by other federal agencies.

- Incentivize states receiving federal funds for infrastructure development to better align their state-level permitting and reviews with the federal requirements and encourage greater use of “joint-permit applications” where possible. Encourage state-level interagency regulatory review teams, e.g. SHPO, DNR, DOT, etc.

- Develop checklist for each federal agency that identifies projects with minimal chance of impacting cultural resources under Section 106 of the National Historic Preservation Act. Regulations could be modified to codify that these minor projects are “no adverse effect.”

- Require that agencies upload to Data.gov or other platform GIS mapping and other environmental management and resource inventories completed for projects, to be available for use in other studies.

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1 These strategies could be accomplished through administrative action but would be strengthened by legislative action and funding.
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<th>Changes Requiring Legislation</th>
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<td>• Expand the role of the Pipeline and Hazardous Materials Safety Administration to include oversight and approval of interstate pipeline alignments and exempt FERC rate determinations from NEPA requirements, thereby establishing a clear point of contact for planning and constructing the physical infrastructure and separating the rate discussion. This would improve the ability of developers to engage regulatory agencies and inform design in ways that will facilitate more efficient reviews.</td>
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<td>• Relocate the Bridge Permit program from the U.S. Coast Guard to the Maritime Administration, aligning the regulatory oversight of navigational clearance of our nation’s waterways with the agency tasked with advancing the interests of the maritime industry.</td>
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<td>• Eliminate the mandatory reviews and ratings of EISs conducted by EPA pursuant to Section 309 of the Clean Air Act. When enacted, this provision was intended as oversight of federal agencies without sufficient expertise in environmental reviews. Since that time, federal agencies have gained significant experience and in-house expertise in developing NEPA documents. This review by EPA is no longer necessary and should be discontinued.</td>
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<td>• Create a “customer service center” for all infrastructure projects (similar to the Build America Bureau within the U.S. DOT) that will help connect sponsors with the relevant agency personnel, provide technical assistance to help sponsors better understand the process, and generally improve the applicant’s experience.</td>
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<td>• Provide permitting agencies with streamlined cost-recovery authority to enable them to accept funds and/or staff from project sponsors to support their dedicated review of permit applications and other environmental documents. Include appropriate controls for potential conflicts-of-interest and appropriate prioritization of project reviews.</td>
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<td>• Develop mitigation banks for statewide resource mitigation (wetlands, habitat, cultural resources) – encourage funding tools that benefit future assessments and streamline projects overall.</td>
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<td>• Incentivize programmatic approach to Sections 106 and 4f for historic bridge projects (for bridges not addressed by Program Comment for common types), e.g. if the state has a management plan for historic bridges that prioritizes the most significant and those in best condition for preservation, make it easier to replace other historic bridges (less significant and in poor condition).</td>
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