Written Testimony of Alexander Herrgott President,

The Permitting Institute

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Committee on Natural Resources

"Permitting Purgatory: Restoring Common Sense to NEPA Reviews"

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Chairman Westerman and Ranking Member Huffman, my name is Alex Herrgott, and I am the President of The Permitting Institute ("TPI"). Since 2021, TPI has operated as a nonpartisan 501(c)(6) nonprofit pro-development trade association focused on practical permitting reform. Our members and partners share a common goal: to accelerate infrastructure improvements across all sectors—conventional and renewable energy, transportation, water, pipelines, mining, manufacturing, ports, waterways, and broadband.

Congress has held no shortage of hearings on infrastructure permitting—and I've testified at more than a few. We walk through delayed projects, outline what's broken, and offer ideas to move faster. But the reason we still don't have a bipartisan path forward is because we haven't agreed on the most basic thing what's actually causing the paralysis.

I don't come at this from theory. I've spent my entire career in the middle of this fight. I served as President Trump's Director of Infrastructure at the Council on Environmental Quality (CEQ) and was honored to be appointed as the first Executive Director of the Federal Permitting Council. Before that, I served Senator James "Mountain" Inhofe as is staff director of the Senate Environment and Public Works Committee, where I helped draft and negotiate the FAST Act of 2015—including the permitting title that created the Council itself. I was working on these issues before they became the subject of daily headlines, and long before "permitting reform" became the political buzzword it is now.

For me—and for the staff of TPI and the hundreds of current and former agency colleagues we work alongside—this isn't abstract. It's bread and butter. It's what I—and the coalition I represent—wake up every day to fix. I'm not here to add to the noise. I'm here to help solve this problem, and to do it with the level of truth, clarity, and urgency it demands.

So let's begin with the obvious: the system isn't just slow—it's stuck. What started as a framework for accountability has become a blueprint for paralysis. And if we don't name that reality plainly, then every policy solution we propose will be solving the wrong problem.

As this Committee—and Chairman Westerman in particular—continues to prioritize real permitting reform, I stand ready to assist in whatever capacity is most helpful. These windows of opportunity don't come often. When they open, we need to move with urgency, clarity, and the shared purpose of building a system that actually delivers.

II. When Process Becomes the Punishment: Litigation Tactics That Undermine Permitting

As the permitting process becomes more transparent and robust, a parallel trend has emerged: litigation designed not to correct legal failures, but to weaponize process against progress. Even when projects meet their obligations—consulting stakeholders, disclosing impacts, coordinating across agencies—many still find themselves stalled for years by lawsuits that never reach the merits. This has led to a growing chorus of reform proposals—aimed at restoring fairness, predictability, and discipline to environmental review.Some of these proposals focus on judicial reform: imposing tighter timelines for project challenges, limiting how long a case can linger unresolved, or narrowing the "zone of interests" so

that only parties with a direct, demonstrable stake can sue. These measures are designed to confront a hard truth: that too often, the goal of litigation is not to improve outcomes but to exhaust the capital behind them. The point isn't to win—it's to delay, destabilize, and outlast the proponent. It's a strategy of attrition, not adjudication.

That strategy worked. For over a decade, opponents relied on a well-coordinated playbook—sharpened through platforms like the Pipeline Fighters Hub—that successfully stalled or defeated major infrastructure projects. Constitution, Keystone XL, PennEast, Jordan Cove, and Millennium Bulk Terminals–Longview all fell victim to targeted procedural attacks, many of them built around Section 401 water certification, narrow impact disclosures, or NEPA scoping defects. Even in cases like the Atlantic Coast Pipeline, where project sponsors eventually prevailed at the Supreme Court (in the Cowpasture case), the win came too late. The financial attrition had already done its job.

But the landscape has changed. The tactics that worked in the last cycle won't necessarily work in the next. The Seven County case is instructive—not just for its legal reasoning, but because it signaled that opponents can no longer rely on old scripts alone. The administrative records being built today are stronger. The litigation strategies of the past are growing stale. And procedural creativity is now a requirement, not an advantage.

Still, we must be realistic. The likelihood of sweeping judicial reform passing through this Congress is low—and there are legitimate dangers in restricting standing too far. Just like in the Seven County case, we must move from the theoretical to the actual. Fixes must be grounded in the world we're operating in now, not the one we wish we had. That means finding solutions that protect legal integrity without sacrificing access to justice or triggering backlash that undermines reform entirely.

The broader problem isn't simply legal—it's structural. The environmental review framework still rests on assumptions forged decades ago: assumptions about information scarcity, limited access to records, and an agency workforce bound by mail and fax. NEPA was enacted before the internet, before PDF filings, before geospatial visualization, before livestreamed comment hearings, before electronic docketing, before the Freedom of Information Act became self-executing through real-time uploads. Many of the statutes at play were written when scoping documents had to be physically retrieved in agency reading rooms, and public comment was handwritten and mailed in.

That world no longer exists. The modern process is built in full view of the public, with extraordinary analytical power. There is no hiding the ball. If you fail to disclose climate or cumulative impacts, you will lose—full stop. Developers, sponsors—including utilities, federal agencies, and states—are now assembling rigorous applications and building comprehensive administrative records. And with automation, language processing, and AI increasingly used on the front end, these documents are becoming more complete, transparent, and defensible than ever before.

The Real Cost of Procedural Drift

These tactics are no longer limited to fossil fuel opponents. They are being deployed across every sector—and the friction is spreading. Consider:

- A semiconductor facility in **Ohio** sued for failing to analyze indirect emissions from silicon suppliers in Taiwan
- A geothermal permit in **Nevada** challenged over spiritual harm to tribal springs never physically touched by the project
- A hydrogen hub questioned for its hypothetical impact on fertilizer prices in **South America**
- A hydropower dam relicensing delayed by demands for modeling downstream agricultural impacts hundreds of miles away
- A transmission line in **Utah** subjected to radar-based nocturnal bird flyover modeling using Doppler sensors
- A pipeline in **West Virginia** required to simulate salamander mating noise response to compressor vibration
- A solar project in **Arizona** ordered to field test headlamp frequency impact on migratory moths
- A DOE-funded hydrogen hub project in the **Midwest** reviewed for potential Chilean fertilizer price distortion

- A wind project in **Oklahoma** required to produce golden-hour blade glint drone photography from ceremonial grounds
- A transmission upgrade in **Texas** challenged for enabling future crypto mining that wasn't even proposed

These are not rhetorical hypotheticals. These are real examples of NEPA reviews and lawsuits—produced not to improve project outcomes, but to stretch the review process until the capital dries up. And when it does, consensus erodes. Because it doesn't matter whether the project is clean or conventional, public or private, rural or urban—if the permitting process itself becomes unworkable, then infrastructure becomes unbuildable.

These reviews aren't the result of overzealous protection. They are the result of a system that's lost its ability to prioritize. When every hypothetical scenario becomes grounds for delay—and every speculative objection gets equal footing with actual impacts—we don't get better decisions. We get no decisions. That's not environmental stewardship. That's procedural collapse. And until we restore discipline, discretion, and scope to the review process, even the best projects will remain at risk—not because they fail to meet the law, but because the law no longer knows what it's asking.

III. Institutional Guardrails Against Weaponized Delay

That's why The Permitting Institute has argued for targeted judicial reform—not to eliminate environmental litigation, but to restore fairness and discipline to the process. One foundational fix: if a party files a NEPA complaint, it should also be required to seek injunctive relief—either a Temporary Restraining Order (TRO) or Preliminary Injunction—within a defined window, such as the first 60 days. Why? Because without a timely motion for injunctive relief, a project may languish under a legal cloud for years with no adjudication, no resolution, and no pathway forward. Filing a complaint becomes a tactic of attrition, not adjudication—a way to exhaust capital, unsettle investors, and delay projects indefinitely without ever winning on the merits.

This strategy was easier to weaponize when administrative records were paper-based, fragmented, and often incomplete. But today, project proponents—developers, sponsors, utilities, and states—are submitting comprehensive applications to federal agencies and building rigorous, well-defended records. They are coordinating across jurisdictions, engaging communities, disclosing impacts, and embracing analytic tools once unavailable. Automation, language processing, and AI are enabling more complete and transparent filings. There is no "hiding the ball" anymore.

And yet, as procedural strength increases, so does the creativity of opposition. Litigation is no longer focused solely on correcting errors. It is increasingly deployed to exploit ambiguity, intimidate financiers, or simply delay long enough to kill a project's momentum. Every project is vulnerable. No sector is immune. Unless legal constraints are reintroduced, the permitting system will remain dangerously unconstraine

IV. Legacy Architecture in a Digital Era

The broader problem is not only legal or political. It is technological.

NEPA and its supporting frameworks were built in an era when federal agencies relied on physical reading rooms, mailed scoping notices, and carbon-copied interagency memos. For decades, this paper-based structure defined the pace and visibility of environmental review.

Today, everything has changed. Agencies, applicants, and communities operate in a fully digital world. Documents are filed, indexed, searched, and cross-referenced in real time. GIS layers allow ordinary citizens to explore site impacts with precision. FOIA requests are satisfied before they're even filed. And public hearings can reach more stakeholders than ever before via livestream.

New tools are beginning to reflect that reality. The White House Council on Environmental Quality (CEQ) recently launched the Permitting Innovation Center and introduced the "CE Explorer" platform to help identify Categorical

Exclusions and streamline review pathways across federal agencies. These tools signal an important shift—away from opaque, siloed processes and toward digitized, publicly accessible permitting guidance. CEQ has been in the trenches on this transformation, and there is no doubt that the reform outcomes of this endeavor are going to be quite dramatic.

Chairman-designate Katherine Scarlett brings precisely the kind of experience required to operationalize these changes in the field. As President Trump's Director of Infrastructure at CEQ, she helped lead the rollout and accountability systems for One Federal Decision under Executive Order 13807—and later ensured those reforms were codified in IIJA (2021). She now returns to CEQ with the opportunity to finish the job she helped start. Scarlett was the architect of the tracking, accountability, and segmentation framework that elevated agency performance across DOT, DOI, and USDA—and she has proven she can translate digital modernization into field-level clarity. That is no doubt why the new NEPA implementation procedures due in August are expected to prioritize lifecycle integration, transparency, and results.

If there is someone who can ensure these reforms are operationalized—and not just published—it's Katherine. And as industry and government work to finally scrape away the scar tissue of a legacy, paper-based permitting regime, I am confident CEQ and its partners at OMB, the GSA Technology Transformation Office, and other federal agencies will translate modernization principles—digitization, transparency, lifecycle integration—into real-world permitting certainty. That certainty will be measured not in dashboards or press releases, but in meaningful, near-term reductions in permitting timeframes and cost to developers, and to the communities that benefit from them.

Because when things finally start moving at the speed we claim to want, the American economy will see what it's been missing—and what it can build when the system is aligned with its purpose.

And to be clear: faster will not mean less protective. These laws were written in a different time, for a different pace of information. With modern transparency and public access, speed and scrutiny are not opposites—they are complements. The fierceness of the opposition to faster decisions is becoming less relevant by the day. We now have the tools and the visibility to do this right. It's time to use them. **IV.A1. Before the Notice: How Delay Begins Long Before NEPA Officially Starts**

Unregulated Discretion, Silent Attrition, and the Permitting Phase Congress Forgot to Fix

The most damaging permitting delays don't begin after a federal agency publishes a Notice of Intent (NOI) in the *Federal Register*. They begin long before it. In this undocumented pre-NEPA phase, project sponsors often spend one to three years navigating a system with no formal starting point, no statutory definition, and no clear rules. This period—before any official environmental review is triggered—is where most timelines go off course, where billions in capital are quietly burned, and where the real breakdowns occur.

It is a discretionary gauntlet: informal, subjective, and largely invisible to Congress, CEQ, and the Permitting Dashboard. There are no deadlines. No triggers. No rules of engagement. Just agency preference, professional instinct, and a growing list of unwritten expectations developers are told to satisfy—without any guarantee that the project will move forward once they do.

<u>The Liminal Space: Pre-NOI Limbo</u>

This unregulated limbo routinely lasts 8 months to 2 years—and in many cases, indefinitely. During this time, sponsors are asked to:

- Conduct biological and cultural surveys,
- Model alternative routes or configurations,
- Adjust mitigation plans before impact thresholds are even defined,
- Rewrite submittals based on internal preferences,
- And restart the informal loop each time a staffer departs or an office reorganizes.

There are no published timelines, no appeals, no disclosure requirements, and no accountability mechanism. Projects are simply held in suspension—asked to do more modeling, produce more data, or "address stakeholder concerns"—without any legal clarity on when, how, or even whether the agency intends to begin formal NEPA review.

This isn't delay. It's erosion. The kind that slowly breaks a project down until the capital runs out, the momentum fades, and the docket goes silent.

Pre-Scoping Overbuild: Writing the EIS Just to Get to the EIS

In this undocumented front end, developers often find themselves simulating a full Environmental Impact Statement (EIS) just to be allowed to initiate one. It's a form of anticipatory overbuild—an expensive, time-consuming exercise in preemptive appeasement driven by unspoken agency expectations and the fear of being told their application is "not complete."
The logic is simple, but destructive: better to over-prepare than to be sent back to the starting line. Better to overspend now than risk losing investor confidence later. But this behavior isn't optional—it's survival instinct in a system where progress depends on discretionary, off-record feedback.
This is what it looks like in practice:

- **Engineering Rework ($5M–$15M):**
  Sponsors are informally told to "explore alternatives" to their preferred alignment—often before any official scoping has occurred. The result: wholesale redesigns of pipeline corridors, transmission paths, elevation profiles, and interconnect layouts. Entire geotechnical and constructability studies are redone based not on public input or legal mandate, but on pre-scoping conversations with regional staff—conversations that are undocumented and non-binding.

- **Surveying and Modeling ($2M–$10M):**
  Developers are frequently expected to conduct multi-season biological fieldwork, cultural resource surveys, hydrologic modeling, and visual simulations—well in advance of any determination that an Environmental Impact Statement is required. These studies are costly, iterative, and tailored to satisfy perceived agency preferences, not statutory thresholds. Agencies often accept the data, use it to refine internal understanding, then withhold a decision anyway.

- **Alternatives Development ($1M–$5M):**
  Even before the formal NEPA process begins, sponsors are encouraged—or flatly told—to model multiple "feasible" alternatives, complete with route engineering, cost estimates, visualizations, and mitigation scenarios. But because there's no working definition of feasibility at this stage, developers err on the side of caution. They build out every alternative they think an agency *might* ask for—effectively simulating the entire NEPA alternatives analysis section before a single NOI is published.

- **Consultant Stack ($500K–$3M):**
  Behind the scenes, developers are forced to assemble entire consultant teams—former agency staff, permitting attorneys, GIS analysts, biologists—not to navigate the NEPA process, but to anticipate what it will take just to get *into* the NEPA process.
  As one developer put it: "You end up writing the EIS just to get them to start the EIS."
  This is not defensive permitting. It's existential permitting—where compliance is simulated in advance not to satisfy legal requirements, but to secure a basic right of entry. The environmental review process has become so unpredictable, and so procedurally risky, that the rational response is to front-load everything—to *assume* delay, and build the defense case before there's even a complaint.

  The result is millions in sunk cost, years of timeline distortion, and a process that selects not for merit or environmental benefit—but for endurance.

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IV.A2 Fear, Discretion, and the Threat of Silence

Why do developers comply with this pre-permitting gauntlet?

Because the greatest risk in this phase isn't being denied—it's being ignored.

There's no rejection letter. No formal clock. Just silence. And in permitting, silence is fatal.

The fear is real: that pushing too hard for clarity will trigger quiet retaliation. That asking for transparency will be seen as adversarial. That questioning vague feedback will lead to weeks of radio silence—or worse, a new staffer being assigned who restarts the entire conversation.

In this phase, developers don't operate under law. They operate under discretion.

- A **staffer transfer** can delay a project by six months—because the new point of contact needs to be re-briefed, often from scratch.
- A **revised cultural interpretation** from a field office archaeologist can trigger a full re-review of previously accepted surveys.
- A **policy memo or guidance change**, even if internal, can override months of informal progress, forcing developers to adjust modeling assumptions, rerun alternatives, or renegotiate mitigation strategies.
- And none of these shifts are accompanied by accountability. There's no notification system. No dispute resolution process. No elevated review. Just a quiet bureaucratic reset—and another round of sunk costs.

This isn't rare. This is the norm.

Developers keep complying not because it makes strategic sense, but because it's the only way to stay in the game. To get a meeting. To avoid falling off the radar. It's a system that selects for caution, not clarity—for overcompliance, not efficiency.

The burden is compounded by asymmetry:

Agencies can delay indefinitely with no consequence. Sponsors, meanwhile, are burning capital every day just to keep the possibility of progress alive. They fund consultants, revise documents, and absorb holding costs while waiting for an undefined signal that the project is "ready enough" to move forward.
The result is not better environmental analysis.

It's a procedural culture defined by ambiguity, risk aversion, and whispered gatekeeping.
Until this fear-based compliance loop is broken—and until developers have a predictable, accountable entry point into NEPA—any talk of "streamlining" is empty. Because no amount of timeline reform can fix a process that punishes initiative and rewards submission to silence.

The Interior Memo didn't create friction—it exposed it. And perhaps the most important thing it revealed is how much damage happens before a project ever reaches formal review. Because the truth is, the delays that kill most projects don't show up in dashboards or court filings. They happen in silence, in inboxes, and in endless rounds of informal "preparation" that are neither defined nor defensible.

V. The Expansion of Downstream Theory — and Why It Matters

This trend is no longer hypothetical. The unchecked expansion of downstream and indirect impact theories in NEPA litigation is now a central—and metastasizing—feature of environmental review across sectors and jurisdictions. While once limited to fossil fuel cases, plaintiffs are now asserting similar theories in lawsuits involving long-haul transmission lines, semiconductor plants, LNG terminals, data centers, and even renewable energy projects. These claims allege that agencies must analyze speculative market shifts, future emissions, or indirect behavioral responses far outside the scope of their statutory authority. They frequently succeed—not because the record was incomplete, but because the court found the agency had not guessed far enough into the future.

This trend is no longer confined to federal litigation. It is replicating itself at the state level. California, Washington, and New York have all adopted or encouraged lifecycle and greenhouse gas displacement analyses in state EIRs and SEPA reviews—often citing federal NEPA case law as justification. In effect, we are witnessing a state-level metastasis of the same unconstrained theories—applied even where the governing statute never contemplated such obligations.

This is not just a scare tactic. It is a material risk to project delivery. It explains why environmental reviews are ballooning in length, why developers increasingly overbuild records to preempt claims, and why even the best NEPA reviews are vulnerable. I refer to it as the *kitchen sink opposition model*: when opponents cannot stop a project through policy, they use creative legal theories to pull any available thread—no matter how speculative—to unravel years of environmental work. These tactics often lead to remand orders, costly supplemental reviews, or procedural delays, even when the agency has met all statutory obligations.

This is also why you increasingly hear calls—however inexact—for judicial reform. Because if the law is followed and the process is sound, but the project still fails to advance, the system itself begins to lose legitimacy. At some point, we must ask: Where is the line? What is enough?

That is precisely what made *Seven County* so important. The case was not about who did or didn't comply with NEPA. It was about forcing agencies to assume NEPA obligations they never had in the first place. The administrative record was not flawed. It was targeted anyway—because in this legal environment, even perfection can be insufficient.

There's a growing belief in some circles that judicial reform alone could solve the permitting problem. That if we simply narrowed the grounds for NEPA lawsuits or restructured standing doctrine, we could break the logjam. But that view misses a deeper shift already underway.

For years, I've argued that the best defense against litigation is a strong administrative record: one that demonstrates the agency did its job—complied with statutory obligations, consulted relevant parties, and disclosed foreseeable impacts. That remains true. But increasingly, even projects with extensive, transparent, and technically sound records are being delayed or derailed. They are not failing because the agency did too little. They are being targeted because of what the project is—because of what it represents.

That's the fundamental reality of *Seven County*. This case didn't arise from a deficient environmental review. It arose because the project was fossil-based—because it implicated greenhouse gas emissions in a political and symbolic way. If this had been a road project or a wind project, this theory may never have emerged. But once it did, the tactic metastasized.

What we're now seeing is a wholesale shift: litigation theories that once targeted natural gas pipelines are now being applied to transmission lines, carbon capture facilities, and solar installations. Many of these newer projects were funded

under the Inflation Reduction Act—ironically, the same law meant to accelerate clean infrastructure. Yet they, too, are now subject to the same speculative NEPA claims that once delayed fossil projects.

The pendulum has swung beyond energy source and policy preference. The *kitchen-sink litigation model*—where every conceivable theory is thrown at the wall to delay or remand—is now being normalized.

That's why *Seven County* shouldn't be read only as a fossil fuel case or a partisan victory. It's a cautionary marker for anyone putting capital at risk. If a project that followed the law can still be blocked by invented obligations—if no amount of compliance is enough—then the permitting system is no longer grounded in statute. It's floating in theory.

And that's what's driving renewed calls not just for judicial reform, but for permitting reform that restores predictability. Because without a meaningful standard of adequacy, the very projects we claim to support—renewable, resilient, grid-connected—will face the same fate. Not because they were wrong, but because the rules have become unknowable.

VI. The Scorecard and the Project That Never Existed

In January 2025, just seven days before leaving office, the White House Council on Environmental Quality (CEQ) released a report declaring that Environmental Impact Statements (EISs) now take only 2.2 years—a 28 percent improvement since 2020. The press release framed it as proof that permitting delays had been solved. "You don't have to choose between quicker permitting and environmental protection," it claimed.

But the 2.2-year figure was not a measure of actual performance. It was a manufactured result—built by changing how timelines were calculated, narrowing the sample set, and excluding the very delays that consume the most time and money. CEQ didn't just redefine the outcome. It redefined the question.

For over a decade, CEQ and the Government Accountability Office (GAO) measured EIS timelines from the publication of a Notice of Intent (NOI) to the final Record of Decision (ROD). That span captured everything from scoping and alternatives analysis to final coordination and permit action. But in its final report, CEQ quietly truncated the yardstick. It stopped measuring when decisions were made—and began measuring only through the Final EIS. That removed months, sometimes years, from the record.

Then it changed the statistic. Instead of using the mean (which accounts for the full range of delay), CEQ used the median—a method that suppresses long-tail outliers and paints a rosier picture. It further excluded 99 percent of NEPA reviews by counting only completed EISs—not Environmental Assessments (EAs), not Categorical Exclusions (CEs), and not any project that stalled or died before reaching Final EIS.

What CEQ published wasn't a performance report. It was a political message. And that message was clear: permitting reform was no longer urgent, because the problem was already fixed.

Even under CEQ's narrowed methodology, 61 percent of projects still exceeded the two-year timeline required under the Fiscal Responsibility Act. That figure was buried. Meanwhile, developers in the field continued to face 7–10 year cradle-to-decision timelines, spent millions on untracked pre-filing costs, and endured endless informal delay that CEQ refused to even count.

This is not just misleading—it's dangerous. When the federal government publishes false reassurance, it makes real reform harder. It saps momentum. It weakens the hand of agency champions trying to push for internal change. And it undercuts the credibility of project sponsors with funders, auditors, and oversight bodies who still have to explain why a "2.2-year system" is now five years and counting.

Because the reality is far messier—and more expensive.

The Project That Never Existed—On Paper

This story is a composite—but it's real. Imagine spending $14 million and three years trying to define "completeness." Drafting archaeological reports, performing pre-scoping modeling, commissioning wildlife studies, and answering shifting agency demands—all without a single public notice being filed. Then imagine being told the package still wasn't ready. That no Notice of Intent would be issued. That the agency recommended withdrawal. The investors walked. The project disappeared. There was no rejection letter. No appeal. No record. And because no clock ever started, CEQ didn't count it.

That experience was not a statistical anomaly. It was a design failure. The most costly delays occur long before the formal NEPA process begins. They occur in inboxes, in ambiguity, and in years of discretionary review that CEQ excluded from its report. That's why the real crisis isn't what CEQ measured—it's what it refused to measure.

What Real Metrics Should Track

If Congress wants to understand permitting timelines, it cannot rely on success-only averages or handpicked samples. It must track the full lifecycle of review. That means:

- **Start the clock at first agency contact**, not NOI
- **Log all review types**—EAs, CEs, EISs, and withdrawn projects
- **Publish cradle-to-decision timelines**, not just the middle third
- **Document pre-filing costs**, not just calendar days
- **Track suspensions, rework cycles, and stalled applications** in real time

Until we do that, every CEQ scorecard will be a work of fiction—and every conversation about reform will be built on sand.

Congress didn't ignore permitting. It wrote around it. And in doing so, it left a vacuum—one that agencies, field offices, and sponsors have had to navigate without guidance, recourse, or real coordination.

But there are moments—rare ones—when the system itself tries to fix what Congress wouldn't. And one of the clearest examples came just this month.

VII. The Interior Memo — A Diagnostic Moment

On July 15, 2025, the Department of the Interior (DOI) issued a memorandum titled "Enhanced Headquarters Review of Covered Actions." Critics immediately labeled it a bureaucratic chokepoint—a way to delay renewable projects through centralized political review. But that framing misses the broader institutional reality: the system was already paralyzed. This memo didn't create friction. It exposed it.

For years, discretionary ambiguity—especially in the pre-NOI phase—has functioned as the default setting of federal permitting. Sponsors spend millions in pre-scoping limbo, navigating unwritten rules, shifting internal standards, and "completeness" reviews that can drag on for years with no public visibility. The result isn't decision-making. It's drift.

The Interior memo is best understood as an institutional acknowledgment that the current system cannot keep pace with modern project complexity. It centralizes oversight not to stall—but to confront the reality that field-level processes often lack clarity, authority, or capacity. The projects targeted by this memo—large-scale energy, transmission, and interagency actions—are the very projects that have suffered most under opaque gatekeeping.

The technical burden now carried by project sponsors is extraordinary. Application appendices include hydrologic modeling, 3D seismic inversion data, geostatistical habitat projections, and predictive archaeological overlays. These are not generic checklists—they're PhD-level simulations backed by proprietary software and cross-disciplinary teams. Yet the responsibility to verify, interpret, and act on these submissions often falls to individual GS-13 staff in field offices with no structured mandate or protective authority.

The result is paralysis—not through denial, but through avoidance. Projects don't fail because someone says "no." They fail because no one is empowered to say "yes."

That's what this memo aims to correct. It requires that covered actions undergo final headquarters review—bringing consistency to decisions that were previously delegated to decentralized, uneven processes. And for many agency staff, that centralization offers relief. It signals that leadership is finally taking ownership of a burden that field offices were never equipped to carry alone.

This memo also begins to build a permitting epidemiology—a way to identify the friction points in the project lifecycle that silently kill investment. These include undefined completeness thresholds, stalled consultation loops, subjective determinations under Section 106 and ESA, and open-ended scoping periods with no procedural clock. It maps out, for the first time in years, where and why permitting collapses—and what it would take to diagnose and solve it.

As someone who helped design the One Federal Decision model and led the Permitting Council through hundreds of real-world project reviews, I can say with confidence: this kind of institutional diagnosis is overdue. The delays we're now seeing didn't begin with this memo. They've been compounding for a decade—through inaction, ambiguity, and the normalization of procedural erosion.

I had a front-row seat to these breakdowns. I watched as projects triggered up to sixteen statutes across thirteen agencies—each one making its own decisions based on regulatory frameworks never designed to work together. A single infrastructure project can require compliance with twenty to twenty-five distinct environmental reviews and authorizations. Some are handled at DOI. But others—wetland determinations, endangered species, tribal consultation, state air quality certification, Section 404 permitting—stretch across EPA, Army Corps, USDA, NOAA, DOE, and more. If you think this memo is just about DOI, you're mistaken.

Whether you support this administration or not, the Interior memo marks an inflection point—not because it solved the problem, but because it exposed one that spans far beyond the Department of the Interior. It didn't invent delay—it surfaced it. It pulled back the curtain on a permitting system where more than 60 environmental statutes are administered by 13 federal agencies, and where a single major infrastructure project can trigger compliance with 20 to 25 distinct legal requirements, delegated across hundreds of field offices. The memo's 69 covered actions may have captured public attention, but they are just a fraction of the decisions that stall elsewhere in silence—untracked, uncoordinated, and unelevated.

If you think this visibility shock is going to remain within DOI, you're mistaken. This is the catalyst for a broader realignment, and I can say without hesitation: at The Permitting Institute, we will not let this moment pass quietly. This decision was made. It's done. And now, we are going to use it to pull back the veil on how permitting actually functions in this country—to illuminate the disconnect between statutory intent and lived experience, and to demand a system that doesn't just centralize responsibility, but redistributes authority in a way that actually works. This isn't just a departmental memo. It's a structural breach—long overdue—and it's the shock the system needed**.**

VIII. Legislative Look Back: Ritual Without Reform

Over the past 20 years, Congress has passed law after law promising to "streamline permitting." But if you look past the headlines—at what was actually enacted, and what project sponsors experienced on the ground—a much different picture emerges.

The Infrastructure Investment and Jobs Act (IIJA, 2021) was hailed as a landmark permitting reform. It wasn't. It codified a Trump-era executive order—One Federal Decision—but applied it only to surface transportation and offered no enforcement tools. The Inflation Reduction Act (IRA) authorized hundreds of billions in infrastructure and climate investment—yet failed to include a single structural reform to NEPA or related environmental statutes. And the Fiscal Responsibility Act (FRA, 2023), though finally imposing statutory NEPA timelines, started the clock too late, defined authority too weakly, and delegated enforcement to the same agencies already struggling to execute.

What Congress has delivered is not reform. It's ritual. We legislate coordination without consequence. Deadlines without discipline. Dashboards without delivery. And while project sponsors burn capital navigating pre-application drift, internal agency standoffs, and litigation-proofing loops, federal law still treats permitting reform as a press release—rather than a platform for execution.

The Pattern Is Clear

From SAFETEA-LU to MAP-21, from FAST-41 to FRA, the legislative record reveals three truths:

1. **Real reform is generational**
   Structural breakthroughs like MAP-21 and FAST-41 remain the exception, not the rule. Most laws offered coordination language or pilot programs—but lacked enforcement, deadlines, or legal triggers.
2. **Implementation routinely fails**
   Even when Congress writes the right words—"streamlining," "coordination," "accountability"—the system breaks down in execution. Agencies miss deadlines, resist governance, and substitute process for progress.
3. **Permitting became a buzzword**
   We've treated mentions of permitting as proof of reform, even in bills that changed no statutes. The word appears in headlines—but rarely in the provisions that matter.

(For a full statutory summary, see Appendix B.)

IX. Conclusion: Reform with Eyes Wide Open

Permitting reform is not a partisan issue. It is a governance issue. Done poorly, it alienates everyone. Done well, it creates durable consensus.

We do not need to choose between environmental protection and economic progress. But we do need to choose whether the permitting system will continue to serve delay, or begin again to serve the public.

The status quo is unsustainable. Let us be honest about that—and act accordingly