Appendix B — Structural Patterns in Permitting Legislation (2005–2025)

(See also Section VIII: Legislative Look Back for summary.)

I. The Illusion of Action: Congress's Legacy of Symbolic Permitting Reform (2005–2025)

Twenty Years of Reform in Name Only

One System Still Broken

Over the last two decades, nearly every major infrastructure bill has claimed to "streamline permitting" or "accelerate project delivery." But when you examine what Congress actually enacted—and what project sponsors experienced in the field—a very different picture emerges. Bold headlines. Vague mandates. No enforceable shift in how projects get approved.

The Infrastructure Investment and Jobs Act (IIJA) is a prime example. It's been widely described as a landmark permitting reform statute. In reality, it was a missed opportunity disguised as reform. The only provisions with structural weight were the codification of a 2017 Trump-era executive order—One Federal Decision—and the permanent authorization of the Federal Permitting Improvement Steering Council (FPISC), first created by the FAST Act in 2015. These were not new ideas in 2021. They were recycled—and weakened by carve-outs, loopholes, and limits to DOT jurisdiction. Calling IIJA permitting reform is like calling a fresh coat of paint a structural retrofit: it may look different, but it doesn't change the bones.

This section takes a hard look at how Congress has approached permitting reform through some of the most consequential infrastructure laws of the past 20 years: from SAFETEA-LU (2005) to MAP-21 (2012), from the FAST Act (2015) to IIJA (2021), the Inflation Reduction Act (2022), and most recently the Fiscal Responsibility Act (2023). In bill after bill, permitting language was included—but rarely implemented with the clarity, teeth, or enforceability needed to change outcomes.

Despite being central to infrastructure delivery, permitting reform has consistently been relegated to a sidecar. MAP-21 treated it as a meaningful title. The FAST Act elevated governance through FAST-41. But IIJA—spanning over 1,000 pages—devoted just a few dense subsections to permitting. The IRA, which authorized $737 billion in energy and climate funding, mentioned permitting exactly once—only to fund FPISC. Appropriations bills added staff and issued report language, but never addressed the structural bottlenecks that stall projects before they even begin.

The larger pattern is this: the more ambitious the funding bill, the less likely it was to confront the permitting system that governs execution. For a country investing trillions in infrastructure, that disconnect has become untenable.

And yet—despite this long legislative trail—it consumed an extraordinary amount of our time and political energy. Permitting became a policy safe space: a topic everyone agreed needed attention, and one that reliably made it into every infrastructure bill. We drafted titles, held hearings, and inserted coordination language. But what we produced was legislative fatigue—not reform...After twenty years—and having worked on many of these bills myself—I can say the progress has been marginal at best. It's embarrassing. And it's fixable. We can do far better than this.

The truth is, most of the delays that continue to paralyze project sponsors—pre-application

scoping, data sufficiency purgatory, internal agency standoffs, and litigation-proofing loops—were not even touched by these laws. While Congress debated dashboards and deadlines, real-world developers were stuck in informal drift: burning capital on modeling updates, waiting months for basic feedback, or watching projects collapse in silence before a Notice of Intent was ever published.

Between 2021 and 2025 alone, Congress enacted IIJA, IRA, FRA, multiple Water Resources Development Acts (2014–2024), the CHIPS and Science Act (P.L. 117–167), the American Rescue Plan Act (P.L. 117–2), and a series of annual appropriations. Collectively, these laws reshaped America's infrastructure budget. But structurally, they left the permitting system unchanged. Even the most promising provisions—like FRA's statutory NEPA timelines or IIJA's categorical exclusion adjustments—remain undermined by weak enforcement, agency avoidance, or a total absence of cross-agency discipline.

We passed laws that sounded like reform—but never delivered the tools to implement it. And that is what this section now turns to examine in detail.

The Legislative Record from 2005 to 2025 Reveals a Clear Pattern:

Generational Tiering: Real Reform Is the Exception, Not the Rule: Only a handful of laws—MAP-21, FAST-41, and the Fiscal Responsibility Act—can be described as structural breakthroughs that rewired legal authority or imposed enforceable deadlines. These moments of genuine reform are generational. Most other statutes offered coordination mandates, pilot programs, and new funding—but avoided the hard choices required to fix a broken system. The result is a two-tiered legacy: a small set of laws with legal teeth, and a much larger body of legislation that offers visibility without leverage and guidance without accountability.

Systemic Implementation Failure: Good Policy on Paper, Nowhere on the Ground: The laws sound promising. The statutes include all the right words—"streamlining," "coordination," "accountability"—but the system never delivers. Deadlines are routinely missed. Interagency schedules are manipulated. Dashboards are published but disconnected from reality. Enforcement mechanisms are vague, optional, or entirely absent. Congress passed bill after bill that promised progress, but never addressed the real bottlenecks—pre-application drift, jurisdictional conflict, staff turnover, and legal second-guessing. We wrote mandates. What we didn't write were consequences. That distinction is everything.

Permitting as Buzzword: Symbolic Gestures Disguised as Reform: Somewhere along the way, "permitting reform" became a tagline. Any bill that mentioned infrastructure could claim credit—even if it didn't change a single statute. The word "permitting" appears in headlines, executive summaries, and press releases—but not in the provisions that actually matter. And while we sat in rooms passing these bills, the real problems kept compounding outside: project sponsors were burning capital, relitigating scopes, and watching their applications die in inboxes. Those realities were rarely acknowledged, let alone fixed. What we solved was the need for a press release—not the process. And that is the failure this testimony now turns to confront. Despite two decades of legislative activity, the gap between what Congress authorized and what project sponsors experienced has only widened. The permitting language in these bills functioned more like symbolic scaffolding—structurally visible, but incapable of holding the system up. In hindsight, most of these laws were built to be admired, not implemented. Reform was drafted as

an aspiration, not as a plan of action—and that distinction has left the system directionless in the moments that have mattered most. Legislative Record from 2005 to 2025 Reveals a Clear Pattern

The Illusion of Innovation

As far as real reform goes, nearly everything we've done in the past decade is just a recycled version of what we did once—and only once—with clarity and conviction.

It started with SAFETEA-LU in 2005, the first serious attempt to structure the environmental review process. That law gave us lead agency designation, dispute resolution procedures, and coordinated scheduling—at least on paper. But it stopped short of imposing deadlines or shifting authority. It was a procedural framework, not a system of accountability. It diagnosed the problem, but never treated it.

Then came MAP-21 in 2012—and that's where Congress finally crossed the line from policy to law. MAP-21 codified deadlines. It gave states real authority through NEPA Assignment. It hardwired delegation, and in doing so, delivered the closest thing we've ever had to structural permitting reform. It was the only moment when Congress didn't just talk about faster project delivery—it created the legal conditions to demand it.

Everything since has been a variation on that original theme.

One Federal Decision, the Permitting Council under FAST-41, even the statutory timelines in the Fiscal Responsibility Act—these aren't new blueprints. They are extensions of the architecture built in 2012. Slightly updated. Re-scoped. Rebranded. But substantively familiar. And increasingly detached from enforcement.

What began as a reform model tailored to Department of Transportation projects has metastasized—applied across sectors, across agencies, and across statutes, without ever confronting the structural mismatches that exist in transmission, mining, water, broadband, or manufacturing. The process spread. But the discipline didn't.

So here we are—13 years later, still legislating around the same edges. Still layering new language onto old tools. Still expecting transformation from tweaks.

That's not reform. That's ritual.

And for a permitting system that now governs trillions in public and private capital, that failure to evolve is not just inefficient—it's indefensible. At some point, this body has to stop reinventing the map and start paving the road.

Key Takeaways:

- **First Foundation:** *SAFETEA-LU (2005)* – Introduced procedural coordination and structure, but left authority, deadlines, and enforcement untouched.
- **True Breakthrough:** *MAP-21 (2012)* – The first and only statute to impose real deadlines, shift legal responsibility, and empower states to lead. A functional template that remains unmatched.

- **Institutional Replication:** *FAST-41 and IIJA codification of One Federal Decision* – Provided visibility, coordination, and governance across agencies—but relied on voluntary compliance and lacked enforcement teeth.
- **Proof of Drift:** *Fiscal Responsibility Act (2023)* – Claimed to impose statutory timelines, but started the clock too late, lacked elevation authority, and left the hardest parts to agencies already struggling to execute.

What Reform Really Means—Four Types, Not One

Before we can assess what, Congress has done on permitting, we need to clarify what "permitting reform" actually means. Too often, the term is applied loosely used to describe everything from statutory timelines to staffing increases to pilot programs. But those aren't equivalent. A reform that adjusts agency schedules is not the same as one that rewrites statutory triggers. A reform that adds funding is not the same as one that limits legal discretion. And a reform that requires a report is not a reform at all.

There is no silver bullet. The federal permitting process is a web of overlapping legal obligations, agency-specific authorities, and statutory requirements that were never designed to work together. Any serious reform effort has to acknowledge that complexity. It also has to distinguish between changes that move projects and those that merely move paper. Without that clarity, we risk mistaking activity for progress.

Broadly speaking, there are four categories of permitting reform. Each operates at a different level of authority, and each has a different relationship to real-world impact:

1. **Structural Reform**
   These reforms change law. They alter legal triggers, reassign responsibility, or impose binding timelines. They are the most difficult to enact—but also the most durable and effective. NEPA Assignment under *MAP-21*, FAST-41's codification of permitting governance, and the NEPA deadlines in the *FRA* all fall into this category. These reforms rewire the process itself.

2. **Procedural Reform**
   These adjust how agencies operate within existing law. They create timetables, designate lead agencies, or promote coordination tools like dashboards or consolidated reviews. Procedural reforms can improve transparency and planning—but they do not change statutory obligations or reduce the number of reviews required. OFD, as codified in *IIJA*, is a procedural reform. It offered structure, but no override power.

3. **Capacity Enhancement**
   These reforms provide agencies with more funding, staff, or technology to manage permitting workloads. While helpful in reducing backlog and administrative delay, capacity investments do not fix the underlying statutory misalignments or resolve jurisdictional conflicts. The $350 million allocated through the *IRA*'s Environmental Review Improvement Fund falls squarely into this category.

4. **Symbolic or Enabling Provisions**
   These include report mandates, pilot programs, planning grants, or voluntary coordination language. They signal interest but impose no obligation. Often included for optics or interagency encouragement, these provisions are not reform in any practical sense. They are placeholders that rarely shift outcomes.

   This framework is essential to understanding what Congress has—and hasn't—done over the

past two decades. Many bills that claim to "streamline" permitting fall into the second, third, or even fourth category. They coordinate timelines but don't shorten them. They fund staff but don't shift authority. They publish dashboards but don't enforce decisions. And yet—despite this long legislative trail—it consumed an extraordinary amount of our time and political energy. Permitting became a policy safe space: a topic everyone agreed needed attention, and one that reliably made it into every infrastructure bill. We drafted titles, held hearings, inserted coordination language. But what we produced was legislative fatigue—not reform...

- **Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (*SAFETEA-LU*, 2005, Public Law 109–59)**
  A procedural framework without deadlines. The system gained structure, but no enforcement.

  What it was trying to fix:
  Before 2005, there was no statutory framework requiring coordinated environmental reviews for surface transportation projects. Agencies operated in parallel, often with unclear roles and no clear path to dispute resolution. SAFETEA-LU attempted to impose some structure—defining who led reviews, how disagreements would be handled, and how information would be shared among agencies.

  How it was codified:
  SAFETEA-LU created 23 U.S.C. § 139, which established the "Environmental Review Process for Transportation Projects." This section formally designated lead and cooperating agencies, introduced early scoping and comment timelines, and required the creation of coordinated schedules. It also included dispute resolution procedures and encouraged early engagement with stakeholders and the public.

  Impact assessment:
  A procedural foundation, not a solution.
  SAFETEA-LU was the first real attempt to bring order to the permitting process for highway projects. It introduced structure and terminology still in use today. But it imposed no deadlines, no enforcement, and no override authority. Agencies could still move at their own pace, and disagreements remained common. It was a meaningful policy step—but mostly a procedural foundation. Timelines stayed long. Projects still languished. The law diagnosed the problem, but stopped short of solving **it.**

- **Moving Ahead for Progress in the 21st Century Act (*MAP-21*, 2012, Public Law 112–Fixing America's Surface Transportation Act (*FAST Act*, 2015, Public Law 114–94)**
  Created FAST-41 and the Permitting Council. A structural governance reform—but with no power to compel agency action.

  What it was trying to fix:
  By 2015, the biggest infrastructure projects—pipelines, transmission lines, energy corridors—faced overlapping reviews from more than a dozen agencies. There was no single timetable, no transparent schedule, and no mechanism to resolve interagency disputes. The FAST Act sought to solve this by creating a government-wide permitting governance framework.

  How it was codified:
  Title XLI of the FAST Act established FAST-41 and created the Federal Permitting Improvement Steering Council (FPISC), codified at 42 U.S.C. §§ 4370m–4370m-12. The statute required

federal agencies to develop Coordinated Project Plans (CPPs), post project schedules to a public Permitting Dashboard, and adhere to project-specific timetables. It also authorized an Executive Director to elevate disputes and coordinate agency participation for covered infrastructure projects—those over $200 million in value.

Impact assessment: Structural governance—but without enforcement.
FAST-41 created the bones of permitting accountability. It was the first statute to impose visibility across federal agencies. Covered projects had timelines, dispute resolution tools, and public dashboards. But agencies that missed deadlines faced no consequences. The Executive Director lacked override authority. Cooperating agencies could disengage with little recourse. It's a strong foundation that has helped—but the system still depends on voluntary compliance. In short: governance exists, but authority still doesn't.

- **Infrastructure Investment and Jobs Act (*IIJA*, 2021, Public Law 117–58)**
  *A trillion-dollar infrastructure law with barely two meaningful permitting provisions. Codified a Trump executive order and extended an existing Permitting Coun**cil*** **from 2015.**

What it was trying to fix:
IIJA promised to "streamline" infrastructure delivery across sectors. The law acknowledged long timelines and duplicative reviews, especially in transportation. It was positioned as a permitting breakthrough—but included almost no structural reform. Instead, it focused on codifying a prior executive policy and making minor tweaks within DOT authority.

How it was codified:
- **Section 11301**: Codified *One Federal Decision* (OFD) for surface transportation—originally a 2017 executive order
- **Section 11304**: Raised CE thresholds from $30M to $35M in total project cost
- **Section 11305**: Allowed reuse of environmental documents across agencies (optional)
- **Section 11306**: Authorized early utility relocation prior to NEPA clearance

Impact assessment: A Framework Without Foundation: When Congress passed the Infrastructure Investment and Jobs Act (IIJA) in 2021, it took a visible step toward environmental review reform. For the first time, the core principles of One Federal Decision—originally outlined in a 2017 executive order—were given the force of law for Department of Transportation projects.

Those principles were sound: designate a single lead agency, set a formal permitting timetable, consolidate review documents, and issue a final Record of Decision no later than 90 days after the Final EIS. The statute also raised the threshold for categorical exclusions from $30 million to $35 million, authorized early utility relocation before NEPA completion, permitted reuse of environmental documents across agencies, and encouraged the broader adoption of DOT categorical exclusions by other federal agencies.

Each of these provisions reflected pragmatic, bipartisan ideas. But like so many reform statutes, the IIJA suffers from a familiar problem: implementation without enforcement, and authority without accountability.

Consider the 90-day Record of Decision deadline. It only applies after the Final EIS is

published—and even then, agencies can waive it unilaterally under a "good cause" exemption that requires no public justification. There is no elevation trigger. No formal notice to Congress or the sponsor. No consequence for inaction.

The permitting timetable requirement is another example. Agencies are expected to post schedules for major DOT projects on the Permitting Dashboard. But if a schedule slips, nothing happens. No penalty. No course correction. No disclosure to affected stakeholders. A reform without a response mechanism is not reform—it's a policy suggestion.

The categorical exclusion expansion is similarly limited. While DOT raised the project eligibility threshold, other agencies are under no obligation to adopt it. The statute allows for coordination—but does not compel it. Many agencies have chosen to ignore the provision entirely.

Even the lead agency designation—arguably the linchpin of the One Federal Decision model—lacks teeth. Cooperating agencies can delay reviews indefinitely, and the lead agency has no statutory authority to enforce adherence to the schedule. When conflict arises, there is no dispute resolution process. No override. And no shield for the sponsor caught in the middle.

We also need to be clear about scope. The IIJA's permitting provisions only apply to surface transportation. They do not apply to energy transmission, pipelines, broadband, ports, or mining. In that sense, the law codified not just a model—but a boundary. It showed what coordinated review could look like—but limited who it could serve.

Even within DOT, the impact is uneven. Agencies can track how long an EIS takes once started—but they are not required to account for pre-NOI drift, internal scoping delays, or periods of dormancy. And that's where most of the time is lost—before the clock starts. If you don't measure delay, you don't fix delay.

So while the IIJA established a reform framework, the permitting system itself remains structurally unchanged. Agencies can still delay. Sponsors still wait. And statutory expectations, in the absence of enforcement, become just another layer of paperwork.

Congress got the structure right. But structure without follow-through is process—not progress. The IIJA gave us a blueprint. Now it's time to build the foundation underneath it.

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- **Inflation Reduction Act (*IRA*, 2022, Public Law 117–169)**
  The largest energy bill in U.S. history—over 900 pages, and not a single structural permitting reform.

  What it was trying to fix:
  The IRA set out to accelerate clean energy deployment, grid modernization, and climate-focused manufacturing. It authorized $737 billion in new funding—much of it for sectors that require timely federal approvals. But the statute included no reforms to the permitting process that governs those projects. The foundational laws—NEPA, the Clean Water Act, the Endangered Species Act—remained untouched.

  How it was codified:

The law included only one permitting-adjacent provision: **Section 70007**: Allocated $350 million to the Environmental Review Improvement Fund (ERIF), overseen by the Federal Permitting Improvement Steering Council (FPISC)

Impact assessment:
The Inflation Reduction Act (IRA) is rightly described as the largest climate and energy investment in American history. It established or extended over a dozen tax credits for clean energy production and storage. It supported hydrogen hubs, EV supply chains, and domestic manufacturing. It included new tools for decarbonizing industry, retrofitting buildings, and expanding the grid. And yet, for all its ambition, it said almost nothing about how to actually permit the infrastructure it funded.

In the entire bill, there was only one line of substance addressing permitting: $350 million appropriated to the Environmental Review Improvement Fund (ERIF), housed at the Federal Permitting Improvement Steering Council (FPISC). That funding supported interagency staffing, dashboards, and technology modernization. But it came with no deadlines, no dispute resolution authority, no enforcement mechanism, and no change in statutory mandates. NEPA remained untouched. Section 404 of the Clean Water Act remained untouched. So did the Endangered Species Act, the National Historic Preservation Act, and every other statute project sponsors must navigate to actually build.

That's the gap. We invested in delivery, but not in the system that governs delivery. And while the IRA resourced the scaffolding around permitting, it left the legal architecture unchanged. It did not shorten timelines. It did not narrow scope. It did not reduce uncertainty. The agencies became better funded—but not better aligned.

The results speak for themselves. Developers still face 7–10 year timelines to complete major reviews. Transmission lines funded by the IRA have yet to receive their first agency determination. Clean energy projects supported by IRA tax credits are still dying in pre-NOI limbo—buried in technical feedback, jurisdictional conflict, or untracked consultation loops. In fact, the very dashboard funded by IRA still does not log delays before scoping begins. As later sections of this testimony show, nearly 40% of delays occur before a single page is filed in the Federal Register.

And then something extraordinary happened. The party that had just secured hundreds of billions of dollars for climate, manufacturing, and infrastructure—many of whom had campaigned on this moment for over two decades—resisted permitting reform. Not because the need wasn't real, but because it was framed as a threat. As if fixing the process meant harming communities or weakening environmental standards.

At the exact moment when the clean energy transition was finally ready to manifest itself—when the scale of investment matched the scope of the challenge—permitting was sidelined. And we are now living with the results. More than half of those projects have either died on the vine, stalled in pre-application limbo, or been effectively banned through local or interagency resistance.

This isn't an indictment. It's a political reality. A reality that Democrats, despite good intentions, were not prepared to fully confront. Permitting reform was treated as a postscript—something that could come later, after the money went out. But later never came. And because of that, much of the funding remains stuck. Uncommitted. Unexecuted. The Loan Programs Office is sitting on authority it cannot activate. Grid expansion dollars remain unspent. And shovel-worthy projects are stuck in inboxes because no one has the authority to say yes.

Had permitting reform been paired with the IRA's passage—had Congress addressed the process alongside the policy—the story would be very different today. We wouldn't be debating how much of the IRA's funding will go unspent. We'd be watching it deliver. Large portions of that investment would already be committed, projects would be under construction, and the political debate wouldn't be about clawbacks or lapsed authority—it would be about momentum.

But the reality is that billions now sit idle, not because of opposition to clean energy, but because the system to approve it remains fundamentally broken. That was the missed opportunity. And next time, we cannot afford to separate ambition from execution.

In this case, ambition distracted from execution. And in the rush to deliver a legacy, a political line was drawn—suggesting that one party owned permitting reform while the other owned climate investment. That framing led to a fatal miscalculation: the assumption that process could wait. It couldn't.

Today, you can bank that an estimated 20 to 30 percent of total capital costs—funded by taxpayers, developers, and public-private partners alike—is being spent not on building, but on navigating a bureaucratic process that rewards inaction. These are costs burned in pre-application attrition, consultant churn, duplicative modeling, and legal defensibility exercises that add no environmental value and offer no public benefit. That is not a climate strategy. That is institutional waste. And if the next generation of clean energy investment is going to deliver—on jobs, resilience, and emissions—it must be paired with a system that is actually built to execute.

- **CHIPS and Science Act (*CHIPS*, 2022, Public Law 117–167)**
  Funded semiconductor manufacturing at scale—with zero permitting provisions to support it.

  What it was trying to fix:
  CHIPS was passed to reshore semiconductor manufacturing, strengthen national security, and reduce U.S. reliance on foreign chip supply chains. It authorized $52 billion in direct incentives to support facility construction and research investments. These projects often require extensive environmental review under NEPA, Clean Air Act, and Clean Water Act—especially when sited on federal land or using federal funds.

  How it was codified:
  The law provided financial grants, loan guarantees, and tax incentives for private manufacturing buildout. It created new offices within the Department of Commerce and authorized the National Semiconductor Technology Center. But it included no permitting authority, coordination framework, or environmental review provisions.

Impact assessment: Capital without clearance.
The CHIPS and Science Act of 2022 authorized more than $52 billion in direct subsidies and tax incentives to accelerate domestic semiconductor manufacturing. It was one of the most ambitious industrial policy bills passed in a generation. It promised a rebirth of American manufacturing, catalyzed billions in public-private partnerships, and greenlit industrial-scale construction of fabs, support facilities, energy systems, and logistics infrastructure.

What it did not include was a permitting framework to deliver those facilities on time.

The bill made no changes to NEPA. It included no timelines for review, no lead agency designation, no permitting dashboard, and no requirement for coordinated interagency consultation. In effect, the CHIPS Act authorized some of the most complex infrastructure projects in the country—then assigned their execution to a permitting system that had not been reformed.

That has created a serious implementation gap.

The Department of Commerce and the Department of Energy, which administer CHIPS funding, now serve as de facto permitting coordinators—despite lacking the statutory authority or institutional tools to compel cooperation, enforce timelines, or resolve jurisdictional conflict. There is no consolidated permitting pathway for CHIPS-funded facilities. The result is delay, improvisation, and legal ambiguity.

This is not theoretical. A semiconductor fabrication facility can cost between $5 and $20 billion. These are not modular projects. They take years to design, construct, and operationalize. Time is not a rounding error—it's a primary risk variable. And when permitting delay occurs, it doesn't just increase costs. It threatens the project's viability altogether.

It supercharged industrial demand—but left the delivery system untouched. It appropriated capital without aligning it to schedule without aligning it to schedule. And that is not a small oversight—it is a structural vulnerability.

Congress cannot continue to legislate investment while outsourcing the friction. In the case of CHIPS, the delivery system was left untouched—and we are now seeing the consequences in stalled construction timelines, permitting backlog, and confusion about which agency actually governs the buildout.

If future industrial bills are going to deliver on-shoring, resilience, or national security, they cannot just fund the output. They must reform the process that governs how we get there.

- **<u>The Fiscal Responsibility Act of 2023: A Statute That Moved—but Still Stalls</u>**

The Fiscal Responsibility Act (FRA) of 2023 marked the first time Congress codified NEPA timelines across all sectors. It was a meaningful step—and it deserves recognition. After years of delay fatigue and billions in stranded capital, Congress finally acknowledged that the permitting system needed statutory guardrails.

The FRA set new expectations: one year for Environmental Assessments (EAs), two years for Environmental Impact Statements (EISs), both measured from the publication of a Notice of Intent (NOI). It mandated designation of a lead agency, encouraged joint documents, promoted programmatic reviews, capped page counts, limited alternatives analysis to feasible options, and allowed for shared data and categorical exclusions (CEs) between agencies.

On paper, this was progress. But as with many well-intentioned statutes, the implementation reality tells a different story. Laws are only as strong as their follow-through—and the FRA left too many tools on the table.

What FRA Required—and Why It's Not Enough

- **Timeline Enforcement (Section 4336b(a))**
  What it said: One-year limit for EAs, two-year limit for EISs, beginning at NOI.
  What it missed: Most delay occurs before the NOI—during agency-controlled scoping and "completeness" reviews. These phases remain untracked, undefined, and entirely discretionary. The FRA's clock starts late and ends early. Deadlines mean little when the process to begin them is itself unregulated.
- **Lead Agency Designation and Joint Reviews**
  What it said: Lead agencies are responsible for setting and managing schedules.
  What it missed: Lead agencies were given responsibility without authority. They cannot compel cooperation, override disputes, or penalize delay. In practice, they're accountable for slippage but powerless to prevent it.
- **Page Limits**
  What it said: EIS capped at 150 pages (300 for complex projects); EA at 75.
  What it missed: Appendices are excluded. Agencies now comply by offloading core analysis into bloated annexes. The overbuild remains—just in a different location. The statute addressed format, not function.
- **Limitations on Alternatives Analysis**
  What it said: Only technically and economically feasible alternatives must be considered.
  What it missed: No common definition of "feasible." Without sector-specific or agency-wide guidance, sponsors still overcompensate to avoid litigation. Courts will decide what "feasible" means—and results will vary.
- **Reasonably Foreseeable Effects (Rule of Reason Standard)**
  What it said: Review only impacts that are reasonably foreseeable.
  What it missed: This replaced cumulative impacts with a tort-inspired standard—but gave no real instruction. Agencies now apply the Rule of Reason inconsistently, and project sponsors can't predict how far "foreseeability" extends.
- **Shared Data and Interagency Categorical Exclusions**
  What it said: Agencies may rely on each other's data and adopt existing CEs.
  What it missed: The provision is entirely discretionary. There is no obligation to accept another agency's review. Many simply don't.
- **Judicial Review for Missed Deadlines**
  What it said: Sponsors can sue if deadlines are missed; courts have 90 days to respond.
  What it missed: The 90-day window only starts after court acceptance. There is no guaranteed remedy, no injunctive relief, and no standard for judicial enforcement.
- **New Definitions for "Major Federal Action" and "Significantly Affecting the Environment"**
  What it said: These are now treated as separate NEPA triggers; "major" requires substantial federal control.
  What it missed: With 13 agencies, 40+ statutory triggers, and no centralized guidance, this change introduces new uncertainty. Field offices are interpreting "major" and "significant" differently. Sponsors are already seeing contradictory treatment of nearly identical projects.

<u>What Congress Did—and What It Didn't</u>

The FRA was an acknowledgment that the system was broken. That alone was progress. But what

Congress passed codified expectations, not enforcement. It created the appearance of discipline—without the tools to impose it.

And in key areas, it defaulted to a familiar pattern: legislate just enough to declare victory, then delegate the hardest parts to executive agencies—some of which had vocally opposed permitting reform to begin with. When implementation predictably diverged from intent, Congress blamed the agencies rather than the statute's design.

That's the loop we're stuck in.

Why legislate a deadline, then offer no mechanism to start the clock? Why assign lead agency authority with no override? Why narrow legal scope, then give courts and regional offices total discretion to interpret it?

Congress wrote margins. It wrote frameworks. But it left the substance—timing, enforcement, definitions, standards—to be filled in by future rulemaking. That's not reform. That's a process memo disguised as law\

What Needs to Happen Next

If Congress wants a permitting system that delivers, it has to finish what it started.

- If you want enforceable deadlines, define when the clock starts.
- If you want a lead agency to manage the process, give it the power to compel participation.
- If you want the Rule of Reason applied consistently, legislate what it actually means.
- If you want transparency, track pre-NOI scoping and require cradle-to-decision data.

We cannot keep mistaking legislation that sounds like reform for reform itself. The FRA was framed as a breakthrough—but it functioned as a delay mechanism. It codified the appearance of change while shifting the burden of real reform to agencies unequipped—and in some cases unwilling—to carry it out.

It enshrined a vision. But it didn't equip it. It wasn't a starting point—it was a stalling point dressed as reform.

Permitting reform isn't about slogans. It's about building. And that starts by doing what the FRA didn't: following through.

- **American Rescue Plan Act (*ARPA*, 2021, Public Law 117–2)**
  Emergency funding at scale—with no structural or procedural permitting provisions.

What it was trying to fix:
ARPA was designed as an emergency response to the COVID-19 pandemic. It delivered over $1.9 trillion in direct aid, healthcare investments, school reopening support, and infrastructure stimulus—much of which was directed to state and local governments for water, broadband, and transportation

improvements.

How it was codified:
ARPA funded infrastructure deployment through existing federal channels—including EPA's State Revolving Funds and broadband grants through NTIA. But it made no statutory adjustments to permitting requirements. No agency coordination mandates. No NEPA reforms. No interagency scheduling tools.

Impact assessment:Infrastructure stimulus without permitting support.
ARPA gave states and agencies money to build—but left them navigating the same pre-existing permitting structures. Water infrastructure grants still required full environmental review. Broadband projects in federal corridors still faced multi-agency jurisdiction. ARPA was not a permitting bill—but it amplified the pressure on a permitting system that remained unchanged. The dollars changed. The delays didn't.

- **Annual Appropriations Acts (*FY2021–FY2025*)**
  Funded the agencies doing environmental review—but never reformed the statutes governing delay.

  What they were trying to fix:

  Annual appropriations bills provided billions in discretionary and programmatic funding to federal agencies responsible for permitting and environmental review. This included the U.S. Army Corps of Engineers, EPA, DOE, DOT, DOI, CEQ, and the newly reconstituted FPISC. The goal was to improve agency capacity, reduce backlog, and accelerate project delivery through staffing and operational support.

  How they were codified:
  Each fiscal year, appropriations bills included earmarked funding for permitting-related work, staffing, IT modernization, and interagency coordination. In many cases, the bills also included committee report language encouraging programmatic review, early consultation, or the use of CEs. But these directives carried no legal force.

  Impact assessment: Capacity funded, dysfunction preserved.
  Appropriations allowed agencies to hire staff and upgrade systems—but they did not resolve the legal conflicts, statutory overlaps, or discretionary timelines that continue to stall projects. Agency permitting teams became better resourced but not better aligned. Report language encouraged coordination—but agencies were free to ignore it. This was not reform. It was maintenance funding for a system that Congress still hasn't structurally fixed.

  A call to appropriators—and a reality check for Congress.
  As someone who served for over 15 years as an authorizer in the U.S. Senate—drafting *SAFETEA-LU*, *MAP-21*, and the *FAST Act*—I know what it means to be accountable for infrastructure legislation. If we had failed to act—if we had missed reauthorizing a highway bill or delayed a Water Resources Development Act—I would have fully expected appropriators to step in and do the job for us.
  But when it comes to permitting, that urgency disappears. Everyone agrees it's a problem. Everyone says it needs to be fixed. Yet no one wants to admit that their individual piece of the process—their account, their rider, their scope—is part of a system that is structurally broken. The truth is: any single committee, any chamber, and any appropriator could make a meaningful difference. But instead, we defer.

If you’re going to fund the project, you should also fund its delivery mechanism. And if there is no statutory pathway for timely review, you are funding delay. Going forward, appropriators should not allocate another dollar toward infrastructure unless there is a clear plan to get it permitted. The dollars changed. The delays didn’t.