

Marubeni Washington Report**The Debate Over U.S. Federal Permitting Reform**

How Executive Fast-Tracking, Congressional Gridlock, and Regulatory Uncertainty Are Shaping the U.S. Industrial Buildout

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- The United States has made rebuilding domestic industrial capacity a strategic priority. Artificial-intelligence infrastructure, semiconductor manufacturing, critical minerals, electricity generation, transmission, pipelines, ports, and defense-related production all require substantial new physical investment. Federal incentives and tariffs can encourage that investment, but they cannot ensure that the necessary facilities will be approved and built.
- Federal permitting has consequently moved from a specialized regulatory concern to a central economic and national-security issue. The problem is not simply that projects must comply with environmental laws. It is that major projects may face overlapping reviews, uncertain timelines, litigation, and policy reversals after substantial capital has already been committed.
- The second Trump administration has responded with sweeping executive actions intended to shorten environmental reviews and prioritize energy, mining, data-center, nuclear, and other infrastructure projects. However, this is not a neutral fast track. The administration has accelerated projects it favors while creating new obstacles for wind and solar development.
- This selective approach may help some projects in the near term, but it cannot provide the policy stability required for long-term investment. Only Congress can establish a durable framework that applies consistently across technologies and administrations. Based on interviews conducted for this report, however, individuals close to the congressional debate generally view comprehensive reform during the current Congress as unlikely.

Washington's long-standing political consensus around free trade and globalization has been fading for years. In September 2016, just 48 days before the presidential election, both Donald Trump and Hillary Clinton opposed the Trans-Pacific Partnership. Joe Biden, who was vice president at the time, also acknowledged that free trade and globalization had "not been an unalloyed success" and had "not been wonderful for an awful lot of people."¹

The first Trump administration turned that frustration into tariffs, "Buy American" policies, and a push to rebuild U.S. manufacturing. The Biden administration took a different route, using measures such as the Bipartisan Infrastructure Law, the CHIPS and Science Act, and the Inflation Reduction Act. But the basic goal was similar: expand domestic production and reduce dependence on foreign suppliers in strategically important sectors.

That shift has grown into a broader push to build more things in the United States. Subsidies and tariffs can encourage investment, but they do not build houses, power plants, transmission lines, factories, or other essential infrastructure on their own. Republicans and Democrats now broadly agree that the United States needs to compete more effectively with China, bring strategic industries back home, and strengthen its energy and infrastructure base. They still disagree sharply over what should be built and how. Republicans tend to focus on reindustrialization, "energy dominance," fossil fuels, and mineral production. Democrats are more likely to emphasize clean energy, transmission, semiconductors, public infrastructure, and housing.

¹ Biden made the remarks at the Council on Foreign Relations on September 21, 2016. ([link](#))

One of the more interesting changes is happening inside the Democratic Party. For decades, Democrats have generally stressed the role of regulation in protecting consumers, workers, and local communities. That remains true. But there is also growing concern that overly complicated rules and review processes are making it harder to build the housing, renewable energy projects, and transmission lines needed to meet the party's own goals. The emerging "supply-side liberalism" and "abundance" movements argue that subsidies and demand-side policies are not enough. If the rules themselves are blocking new supply, those rules also need to be revisited.

This is where the contradiction in U.S. policy becomes clear. The federal government uses tariffs, tax breaks, grants, loans, and procurement preferences to encourage domestic investment. At the same time, many of the projects needed to make those policies work face permitting systems that are slow, fragmented, and hard to predict. The problem is not just a lack of money. The United States also lacks enough energy, housing, infrastructure, and industrial capacity. Permitting reform has therefore become one of the main challenges in turning industrial policy into real-world production.

How Federal Permitting Works and What Reformers Want to Change

There is no single federal "permit." A major project may need to complete several environmental reviews and consultations, obtain licenses and rights-of-way, and secure construction or operating permits from different agencies under different laws. One important distinction is between procedures that require the government to study a project's environmental effects and permits or approvals that a project must obtain before it can legally move forward.

At the center of the debate is the National Environmental Policy Act of 1970, or NEPA. NEPA requires federal agencies to evaluate the environmental effects of major federal actions before making a decision. This usually applies when a project involves federal funding, a federal permit, federal land, or some other form of federal action. Depending on the expected level of impact, an agency may apply a categorical exclusion, prepare an Environmental Assessment, or conduct a full Environmental Impact Statement.^{2 3}

NEPA is not itself a permit to build or operate a project. Nor does it require an agency to choose the most environmentally protective option. It is a procedural law designed to inform government decision-making. Agencies must study and disclose environmental effects, consider alternatives, and provide opportunities for public participation. The actual decision to approve or reject a project is made when an agency exercises its authority under another law, such as its permitting, funding, or land-management authority. In court, the main question is usually whether the agency followed the NEPA process properly.

Other environmental and sector-specific laws work differently because they can impose substantive standards and permit requirements that must be met before a project can proceed. The examples

² The Council on Environmental Quality, or CEQ, is a federal agency within the Executive Office of the President. It plays the central role in overseeing and coordinating how NEPA is implemented across the federal government. CEQ's website provides guidance and other materials on the law, including its purpose and the review framework built around Environmental Assessments and Environmental Impact Statements. ([link](#))

³ According to CEQ, roughly 99 percent of NEPA reviews are completed through a categorical exclusion or an Environmental Assessment rather than a full Environmental Impact Statement. That figure is often cited to argue that permitting delays are overstated. But it measures the number of reviews, not the economic importance of the projects involved. Many of the large, capital-intensive projects that matter most for industrial policy fall into the roughly 1 percent that require a full EIS. That is also where the risks of delay, litigation, and decisions being overturned are most concentrated.

below are only some of the most common ones. The laws that apply depend on the type of project, its location, the land or water involved, its emissions, and the resources that may be affected.

For example, if a project involves discharging dredged or fill material into waters covered by Section 404 of the Clean Water Act, it will generally need a permit from the U.S. Army Corps of Engineers. Without that permit, the activity cannot legally go ahead. Factories and power plants covered by the Clean Air Act's New Source Review program may also need an air permit before construction begins. Whether those permits are issued, and what conditions they contain, may depend on emissions limits, pollution-control equipment, and mitigation measures.

The Endangered Species Act requires federal agencies to make sure that projects they carry out, fund, or permit do not jeopardize protected species or destroy or adversely modify designated critical habitat. The consultation process may lead to changes in the project or require alternatives. In some cases, the project cannot proceed in its original form.

Section 106 of the National Historic Preservation Act requires federal agencies to consider effects on historic and cultural resources and to consult with tribes, state historic preservation offices, local communities, and other interested parties. The law does not require one specific preservation outcome, but the consultation process may still lead to project changes or measures to avoid or reduce harm.

How Major Federal Environmental Laws Affect Projects

Law	Main Focus	Legal Function	Practical Effects on Projects
National Environmental Policy Act (NEPA)	Environmental effects of major federal actions	Requires environmental analysis, consideration of alternatives, public disclosure, and opportunities for public participation	Does not itself approve or reject a project, but the review must generally be completed before the federal agency makes its decision
Clean Water Act	Discharges, dredging, fill, and other activities affecting regulated waters	Requires permits based on statutory standards	If the required permit cannot be obtained, the covered activity cannot proceed
Clean Air Act	Air emissions from factories, power plants, and other facilities	Requires construction or operating permits subject to emissions limits and pollution-control requirements	Whether a permit is issued, and the conditions attached to it, can directly affect facility design, construction, and operations
Endangered Species Act	Protected species and designated critical habitat	Requires federal agencies to consult and ensure that their actions do not jeopardize listed species or destroy or adversely modify critical habitat	May require changes to the project or alternative approaches, and in some cases may prevent the project from moving forward as originally planned
National Historic Preservation Act	Historic and cultural resources	Requires agencies to consider project effects and consult with tribes, states, local communities, and other interested parties	Does not require a particular outcome, but may lead to project changes or measures to avoid, minimize, or mitigate adverse effects

Source: Prepared by the Washington Office based on publicly available information.

This means that a major project may have to go through a broad NEPA review while also obtaining water and air permits, completing consultations on protected species and historic resources, and securing sector-specific licenses and approvals from several agencies. These processes operate under different laws and authorities. One agency may not have the power to control another agency's

timetable or decision. As a result, there is not always a clear lead institution responsible for managing the entire process and ensuring that all approvals are completed.

State and local requirements matter just as much. Zoning rules, utility-siting approvals, state environmental permits, and local political support can all determine whether a project moves forward. Securing some federal approvals therefore does not mean that construction can begin. Even a project that is mostly local may trigger federal review or permitting if it affects regulated waters, protected species, federal land, or federal funding.

For investors, the problem is not that environmental protections exist. Major projects in any advanced economy need oversight and public accountability. The real question is whether these different reviews, consultations, permits, and approvals are coordinated well enough to produce decisions within a reasonable period of time. Investors need enough predictability to judge whether a project can be completed on commercially viable terms.

How Permitting Shapes the Industrial Buildout

The sectors the United States sees as most important to national security and industrial competitiveness also tend to depend on large physical assets, including factories, power plants, transmission lines, mines, pipelines, and ports. As those sectors become more important to industrial policy, delays in permitting, divided authority across levels of government, litigation, and uncertainty over whether issued permits will remain valid become more visible as policy constraints.

The examples below do not all point to the same problem. Each highlights a different issue, including the limits of federal reform, sector-specific exemptions, conflicts between competing rights, the durability of permitting decisions, and coordination across agencies.

(1) Power Infrastructure for Data Centers: The Reach of Federal Reform and the Limits Imposed by States and Localities

As AI infrastructure expands rapidly, electricity supply has become the main constraint on new data-center development. One important distinction is that data centers themselves and the power and energy infrastructure that supports them are often governed by different levels of government and different legal frameworks. State and local authorities are generally responsible for siting and construction approvals for data centers.⁴ Power plants, transmission lines, natural-gas pipelines, substations, and projects on federal land are more likely to involve federal review and permitting.

That means faster federal permitting cannot solve every problem facing data-center expansion. States and localities are increasingly tightening restrictions in response to concerns about electricity prices, zoning, water use, and local opposition. A federal categorical exclusion cannot override a governor's permitting freeze or a county's siting decision. Those risks remain at the state and local level.

⁴ The Congressional Research Service describes the permitting landscape for data centers as follows: "Although data centers consume large amounts of electricity, individual facilities have a clearly defined physical footprint and are generally subject to state and local siting authority. Federal approvals may still be required, however. Depending on the project's configuration and location, the related energy infrastructure may be subject to permits, authorizations, or reviews under a range of federal laws." ([link](#))

At the federal level, the focus is increasingly on speeding up the power infrastructure needed to support data centers. An executive order⁵ issued by the Trump administration in July 2025 directed agencies to facilitate not only qualifying data centers, but also the transmission lines, substations, pipelines, and generation facilities needed to operate them. In effect, the order recognized that winning the AI race requires more than approving the facilities themselves. It also requires a much broader expansion of energy infrastructure.

Permitting, however, is only one part of the problem. Utilities and developers also face long interconnection timelines, shortages of transformers and generation equipment, labor constraints, fuel-supply issues, and the cost of upgrading the grid. Permitting delays make it harder to plan equipment orders, staffing, financing, and interconnection. While a project is waiting, construction costs may rise and grid conditions may change, leading to additional studies or redesigns. That can weaken the project's economics and delay new capacity even further, prolonging existing shortages of equipment, labor, and transmission capacity.

The SunZia project shows the cost of a long federal process. The project combines a large wind facility in New Mexico with a transmission line running toward Arizona and California. It was first proposed in 2006, but construction did not begin until 2023, and full operations were delayed until June 2026. Senator Martin Heinrich, a Democrat from New Mexico, has pointed to the roughly 17 years between the project's conception and final federal approval, arguing that decisions of this kind should take five or six years, not nearly two decades.⁶

SunZia was conceived before the AI boom and was not built specifically for data centers. But the generation and transmission projects needed to support future hyperscale computing will have to pass through many of the same federal approvals. The success of the AI buildout will therefore depend not only on approving data centers themselves, but also on whether enough power supply can be added on time.

(2) Semiconductors and Advanced Manufacturing: A Sector-Specific Exception for a Strategic Industry

The CHIPS and Science Act⁷ is intended to rebuild the U.S. semiconductor manufacturing base. But semiconductor fabs are among the most infrastructure-intensive facilities in the economy. They require large and reliable supplies of electricity, as well as ultrapure water, wastewater treatment, air permits, and careful chemical handling. As a result, projects face a wide range of constraints between the planning stage and the start of operations, including permitting, power and water supply, construction costs, workforce availability, and equipment procurement.

⁵ Executive Order 14318, issued on July 23, 2025, explicitly covers related transmission lines, substations, pipelines, and power-generation facilities. ([link](#))

⁶ SunZia was first conceived by SouthWestern Power Group in 2006. Pattern Energy acquired the transmission project in 2022, began construction in 2023, and announced full operations in June 2026. The 3,650 MW figure refers to net summer capacity reported by the U.S. Energy Information Administration, while the developer's published nameplate capacity is 3,515 MW.

⁷ The CHIPS and Science Act, enacted in 2022, promotes semiconductor manufacturing in the United States and expands federal support for research and development and STEM workforce programs. It is intended to strengthen supply chains, industrial competitiveness, and national security by reducing U.S. dependence on semiconductor production overseas.

In 2024, Congress passed the Building CHIPS in America Act⁸ to address the risk that federal environmental review could slow semiconductor investment. The law exempted certain federally supported semiconductor projects from NEPA review and made it easier for the Department of Commerce to serve as the lead agency when review was still required. In other words, Congress decided that, for an industry considered essential to national strategy, it was better to streamline or waive parts of the normal environmental review process than to accept further delays.

That said, this was a sector-specific exception. It does not solve the other problems that determine whether a fab can actually be built, including electricity and water supply, labor, costs, and state and local approvals. It is also too early to know how much the changes will shorten actual construction timelines. The semiconductor example shows that Congress may be willing to create targeted fast-track measures when the strategic stakes are high enough, but that is not the same as reforming the permitting system as a whole.

(3) Critical Minerals: The Tension Between National Security and Rights Protection

Reducing U.S. dependence on China for critical minerals will require more mines, processing facilities, and supporting infrastructure at home. But these projects often sit at the intersection of competing national priorities. They may be important for national security, while also raising difficult questions about environmental protection, federal land, and the rights and cultural resources of Native American tribes. In practice, a project may need NEPA review, Clean Water Act permits, consultation over protected species, federal land decisions, tribal consultation, and state approvals.

Resolution Copper, a joint venture between Rio Tinto and BHP in Arizona, captures these competing interests. The proposed mine could become a major domestic source of copper for the power grid, data centers, and the defense sector. At the same time, it would affect land that Apache groups consider sacred and has been tied up in long-running litigation over environmental protection and religious freedom.

The effect of this conflict is visible in the project's timeline. The formal Environmental Impact Statement process began in 2016 and concluded with a Record of Decision in March 2026. That means the federal environmental review alone took about a decade. The broader development effort, including mine planning, litigation, and a congressionally mandated land exchange, has lasted more than 20 years.

In 2025, as part of the Trump administration's push to speed up critical-mineral development, the project was added to the Federal Permitting Dashboard following Executive Order 14241⁹. That made the schedule and progress of the remaining federal reviews more visible¹⁰. Even after the NEPA process was completed in March 2026, however, the project still faced state permits, detailed

⁸ The Building CHIPS in America Act of 2023 was enacted in October 2024. It exempted certain semiconductor projects receiving federal support under the CHIPS Act from NEPA review and streamlined the environmental review process for other covered projects. ([link](#))

⁹ Executive Order 14241, titled "Immediate Measures to Increase American Mineral Production," was signed by President Trump on March 20, 2025. ([link](#))

¹⁰ A FAST-41 Transparency Project is a project placed on the Federal Permitting Dashboard at the direction of the Executive Director of the Permitting Council to improve public visibility into the progress of federal permitting reviews. Placement on the dashboard alone does not make a project a formally covered FAST-41 project, and it does not automatically trigger the full set of statutory FAST-41 measures, such as a comprehensive permitting timetable or coordinated interagency review. Neither type of designation changes the underlying substantive requirements of applicable environmental or other laws.

engineering, financing, and ongoing litigation. The legal and commercial risks before construction therefore remained.

The Resolution Copper case shows that delays in critical-mineral development are not simply the result of administrative inefficiency. They also reflect the difficulty of balancing several legitimate national interests, including stronger domestic supply, tribal and cultural rights, and environmental protection.

Timeline of the Federal Environmental Review for the Resolution Copper Project

Year	Key Milestone	Significance
2004	Rio Tinto and BHP establish Resolution Copper and propose the project	Initial planning and exploration begin
2014	Congress authorizes the Oak Flat land exchange	Federal legislation establishes the framework for project development
2016	NEPA Environmental Impact Statement process begins	Formal federal environmental review starts
2019	Draft EIS released	Public comment and agency review continue
2025	Final EIS released	Federal environmental review enters its final stage
March 2026	Record of Decision issued and land exchange completed	NEPA process concludes, and the project moves to later permitting and development stages
2026 onward	State permits, engineering, financing, and litigation	Additional approvals and legal challenges remain before construction

Source: Prepared by the Washington Office based on publicly available information

(4) Pipelines: The Durability of Permitting Decisions

The 303-mile Mountain Valley Pipeline carries natural gas from West Virginia to southern Virginia. The project showed that even after a developer wins its initial approval, individual permits can still be challenged one after another, leading to repeated cancellations and restarts.

The developer applied to the Federal Energy Regulatory Commission, or FERC, in 2015 and received its initial approval in 2017. Over the next several years, environmental groups challenged a series of permits under the Clean Water Act, the National Forest Management Act, and other laws. Courts struck down some of those approvals. Each time one agency corrected a problem, another agency's decision was challenged and overturned. There was no general mechanism to stabilize the project's permits as a whole and bring the cycle of cancellation and renewed review to an end.

Congress eventually took the unusual step of intervening directly. The Fiscal Responsibility Act of 2023 ratified the remaining federal approvals by law, instructed agencies to issue any outstanding authorizations, and limited judicial review of those actions. Even then, the U.S. Court of Appeals for the Fourth Circuit temporarily halted construction in July 2023. The Supreme Court lifted that order later the same month and allowed work to resume. The episode set an important precedent by showing that, for a politically important project, Congress can step in through legislation to confirm the validity of permits and override the normal administrative and judicial process.

The case also shows that developers need more than faster initial reviews. They need confidence that once permits are issued, those decisions will remain stable enough to support a long-term investment. If permits can still be vacated, reopened, or suspended after construction begins, lenders are less likely to treat them as a reliable basis for financing. That raises both project risk and the cost of capital.

At the same time, the intervention exposed the limits of rescuing individual projects through legislation. Congress moved the Mountain Valley Pipeline forward, but it did not create a general

system to protect permits for other pipelines, transmission lines, or mining projects. A high-profile project can be saved, but that is not the same as creating a durable, cross-sector framework for issued permits.

(5) Ports and Shipyards: Interagency Coordination and Mismatched Infrastructure Timelines

Port and shipyard capacity is increasingly tied to competition with China, defense readiness, and supply-chain resilience. Maritime capacity depends on more than any single facility. Shipyards, repair facilities, port terminals, navigation channels, and dredging infrastructure all need to work together as part of the same system.

Projects involving dredging, wetlands, navigation channels, contaminated land, or protected species may require approvals from the U.S. Army Corps of Engineers, the Environmental Protection Agency, the Coast Guard, the U.S. Fish and Wildlife Service, and state and local authorities. Major navigation projects may also need separate congressional authorization and funding. Because these related assets move through different review, budget, and construction schedules, one component may be approved while the broader maritime system is still not ready to operate.

The Savannah Harbor Expansion Project shows how long this process can take. The feasibility study began in 1997, construction started in 2015, and the project was completed in 2022. Not all of that quarter-century was spent on permitting, but the overall process took so long that ship sizes outgrew the assumptions behind the original design. Less than two years after the expansion opened, Georgia officials were already asking Congress to authorize another study for further deepening.

New or expanded shipyards may also need reviews and approvals under NEPA, the Clean Water Act, and the Rivers and Harbors Act. The channels and port facilities serving those yards, however, may move through separate reviews, congressional authorizations, and funding processes. That creates a timing problem. A shipyard may be completed before the navigation channel it needs is ready, or a channel may be expanded before shipbuilding and repair capacity catches up.

The Trump administration's 2026 Maritime Action Plan¹¹ identified this fragmented regulatory and approval system as an obstacle to expanding maritime capacity. It called for streamlined NEPA procedures for maritime agencies, faster permits under the Clean Water Act and Rivers and Harbors Act, and priority treatment for shipyard expansions and dredging projects.

The plan also called for continuation of the Army Corps' Nationwide Permit Program¹². The Corps reissued those permits in January 2026, keeping them in effect from March 15, 2026, through March 15, 2031. Nationwide permits simplify approval for certain categories of work with limited environmental effects and can help routine port and shipyard projects move more quickly. They do not, however, resolve the multiple agency reviews, congressional authorizations, and funding decisions required for major shipyard expansions or navigation-channel projects.

¹¹ America's Maritime Action Plan, released on February 13, 2026, sets out the Trump administration's approach to rebuilding U.S. shipbuilding capacity and the U.S.-flagged merchant fleet. It was developed under Executive Order 14269, issued in April 2025. The plan calls for modernizing shipyards, developing the maritime workforce, encouraging domestic and foreign investment, reforming government vessel procurement, securing stable funding, and streamlining regulatory procedures. ([link](#))

¹² A Nationwide Permit is a general permit issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act for categories of activities expected to have only minimal individual and cumulative effects on federally regulated waters. Projects that meet the applicable terms and conditions may use a streamlined process instead of applying for an individual permit. Depending on the project, however, separate requirements may still apply, including pre-construction notification, mitigation measures, and state water-quality certification.

Congress is also considering a more coordinated approach. The bipartisan SHIPS for America Act would designate a single lead agency for environmental reviews of shipyards, ship-repair facilities, and port terminals that support the Navy or Merchant Marine, with a two-year deadline for completion. The difference is that nationwide permits simplify particular types of approval, while the bill would try to coordinate the full set of agency reviews for each project.

This does not mean permitting is the main reason U.S. shipbuilding is weak. Aging facilities, workforce shortages, inconsistent demand, and procurement practices often matter more. But unless the timing of approvals and investment for shipyards, ports, and navigation channels is aligned, subsidies and long-term vessel orders will not translate into actual maritime capacity.

These examples show that the permitting problem is not the same in every sector. For data-center infrastructure, state and local constraints remain outside the reach of federal reform. In semiconductors, Congress created a targeted exception for a strategically important industry. In critical minerals, supply security collides with tribal and cultural rights. For pipelines, the durability of issued permits can determine whether a project is financeable. In ports and shipyards, the main challenge is coordinating multiple agencies and related infrastructure.

The common point is that subsidies and political priority alone do not guarantee that the necessary facilities will be built on time. Yet Congress has not enacted a comprehensive reform that addresses these different problems through a common set of rules. The next section looks at why.

Why Comprehensive Reform Is So Difficult

As the examples above show, the government can ease permitting bottlenecks temporarily or in specific sectors when the president uses executive authority or when Congress agrees that a particular industry or project is strategically important. The current administration is using executive powers to speed up projects involving critical minerals, nuclear energy, and data-center infrastructure. Congress has also stepped in on individual cases. It ratified the permits for the Mountain Valley Pipeline by law and exempted some federally supported semiconductor projects from NEPA review.

What is still missing is a common set of rules that applies across industries, rather than special treatment for selected sectors or projects. The United States does not have a comprehensive framework that sets review deadlines, coordinates agencies, limits the time for filing lawsuits, defines the remedies courts can impose, and protects permits that have already been issued. There are two main reasons why such a framework has been so hard to create.

(1) Existing protections have strong supporters and many ways to block reform

The current permitting system serves widely accepted goals. It protects air and water, preserves historic and cultural resources, requires consultation with Native American tribes, gives affected communities a voice, and allows courts to review government decisions. These are not just abstract principles. Each is backed by political constituencies, legal rights, and institutional authority.

Tribes often view consultation and the protection of sacred sites not simply as policy interests, but as questions of tribal sovereignty, treaty rights, and their government-to-government relationship with the federal government. Environmental groups, environmental justice organizations, local communities, and their allies in Congress worry that shorter reviews and tighter limits on lawsuits would weaken public participation, environmental protections, and access to the courts.

Opposition does not come only from environmental groups. State and local governments may resist efforts to expand federal authority over the siting of transmission lines or other infrastructure because they see them as intrusions on state power. In the transmission sector, permitting reform is often tied to broader debates over siting authority and cost allocation. Public power utilities and electric cooperatives may support faster approvals in principle, but oppose giving more authority to the Federal Energy Regulatory Commission, or requiring their customers to help pay for regional transmission projects that they believe provide too little local benefit.

Comprehensive reform is therefore about more than making procedures more efficient. It would redistribute power among tribes, local communities, states, federal agencies, and courts. It would change who has a voice, who controls the review process, and who can influence whether and how a project moves forward. The broader the reform, the more groups may feel that they are losing rights or authority, and the more opportunities there are to block or narrow the legislation.

(2) Parties disagree over which sectors should benefit and how approvals should be sped up

Republicans and Democrats broadly agree that permitting delays are holding back infrastructure investment and industrial policy. But they do not agree on which projects should receive the greatest benefit from reform.

Republicans generally put more emphasis on speeding up oil and gas projects, LNG facilities, mining, and nuclear energy. Democrats are more likely to prioritize transmission, renewable energy, public infrastructure, and housing. Those different priorities quickly turn into disagreements over the rules themselves.

Republicans are often more willing to narrow the scope of NEPA review and limit litigation. Democrats worry that those changes would mainly benefit fossil-fuel and mining projects while weakening protections for the environment and local communities. Democrats, meanwhile, often support stronger federal or FERC authority to speed up interstate transmission. Republicans and some state and local officials may oppose that as an intrusion on state authority.

A comprehensive bill would require each side to accept changes that help the other side's preferred projects. That makes the dispute about more than what should move faster. It also involves how much environmental review should be reduced, whether power should shift toward the federal government or remain with the states, who should pay for new infrastructure, and how easily communities and environmental groups should be able to challenge government decisions in court.

Because the parties favor different types of projects and different distributions of authority, designing one set of rules that works across sectors has proved extremely difficult.

How Congress, the Executive Branch, and the Courts Have Responded, and Where Each Falls Short

The political conflicts described in the previous section have not stopped permitting reform altogether. Congress, the executive branch, and the courts have all tried to address long review timelines, litigation risk, and uncertainty over whether permitting decisions will hold. But each branch has a different role, and each faces its own limits.

Congress can create stable, nationwide rules that apply across sectors, but doing so requires political agreement. The executive branch can change agency procedures and regulations more quickly, but those policies can be reversed by a future administration. Courts can review whether agency

decisions are lawful and clarify how statutes should be interpreted, but they cannot redesign the permitting system as a whole through individual cases.

(1) Congress: It Can Create Durable Common Rules, but the Area of Agreement Is Narrow

Congress is in the best position to make permitting reform durable. Through legislation, it can define the scope of environmental review, assign lead-agency responsibility, set review deadlines, limit the time for filing lawsuits, specify the remedies courts may impose, and protect permits that have already been issued. That would create a nationwide framework less vulnerable to shifts in policy from one administration to the next.

Congress has shown that some agreement is possible. FAST-41¹³, enacted in 2015, created a system for coordinating federal review schedules for major infrastructure projects and making progress public through the Federal Permitting Dashboard. The Fiscal Responsibility Act of 2023 set page limits for NEPA documents, clarified the responsibilities of lead agencies, and established presumptive deadlines of one year for Environmental Assessments and two years for Environmental Impact Statements. These measures suggest that bipartisan agreement is possible on relatively limited reforms such as better agency coordination, greater transparency, and clearer timelines.

Congress has also been willing to go further for projects or industries viewed as especially important. The Fiscal Responsibility Act of 2023 ratified the federal permits needed for the Mountain Valley Pipeline and limited judicial review. The Building CHIPS in America Act of 2024 exempted certain federally supported semiconductor projects from NEPA review. These examples show that Congress can create special rules when it sees a strong strategic case for doing so.

But measures aimed at one project or one industry do not amount to system-wide reform. The intervention for Mountain Valley did not create a general framework to protect permits for other pipelines, transmission lines, or mines. The semiconductor exemption did not change the review process for data centers, power plants, transmission infrastructure, or shipyards.

The 2024 Energy Permitting Reform Act, sponsored by Senators Joe Manchin of West Virginia and John Barrasso of Wyoming, tried to strike a broader bargain. It combined measures to support transmission and renewable-energy development with provisions on mining, LNG exports, and oil and gas production. The bill passed the Senate Energy and Natural Resources Committee by a bipartisan vote of 15 to 4. But it never reached the Senate floor and expired at the end of the 118th Congress.

The bill showed that a cross-sector bipartisan compromise can come together at the committee level. It also showed how difficult it is to move such a package through floor consideration, negotiations with the House, and final enactment. Congress can produce the most durable form of reform, but the broader the package becomes, the more it runs into disputes over rights, authority, and how the benefits are divided across industries. As a result, its chances of passage tend to fall as its scope expands.

¹³ FAST-41 was established under Title 41 of the Fixing America's Surface Transportation Act of 2015. It created a framework for coordinating federal environmental reviews and permitting across agencies for qualifying major infrastructure projects, as well as the Federal Permitting Improvement Steering Council. Covered projects receive a coordinated project plan and review schedule, and key milestones are published on the Federal Permitting Dashboard. (link) Designation does not mean that the federal government endorses the project or guarantee that it will be approved.

(2) The Executive Branch: Able to Move Quickly, but Selective and Reversible

The executive branch can change agency policies, review procedures, regulations, and project priorities without waiting for Congress to pass a new law. That ability to act quickly is its greatest advantage.

The first Trump administration promoted “One Federal Decision,” seeking to streamline multi-agency reviews and narrow the scope of NEPA analysis. The Biden administration reversed some of those changes and strengthened environmental protections. At the same time, it developed its own Permitting Action Plan because faster approvals were necessary to carry out investments under the Bipartisan Infrastructure Law and the Inflation Reduction Act. Both administrations saw permitting delays as a problem, but they differed over the solution and which sectors should benefit.

The second Trump administration has gone further. It rescinded CEQ’s NEPA regulations, directed agencies to develop their own review procedures, and moved to speed up reviews for critical minerals, nuclear energy, data centers, water infrastructure, and other priority areas. It placed critical-mineral projects on the Federal Permitting Dashboard, encouraged the use of categorical exclusions for data centers and related energy infrastructure, and called for shorter licensing timelines for nuclear projects.

These actions can move selected projects forward quickly. But they are not necessarily neutral. The current administration has favored oil, natural gas, coal, mining, nuclear energy, and certain data-center projects, while treating wind and solar differently.

Offshore wind provides the clearest example. In January 2025, the administration froze new wind leasing and approvals. In December of that year, it also halted five Atlantic wind projects that had already received all required federal permits and were under construction, citing national security concerns. Federal courts found that the government had not provided an adequate basis for either action and blocked the orders, allowing construction to resume. Even after securing their permits, the developers had to seek emergency relief in court simply to keep the projects moving.

The case highlights the two sides of executive discretion. An administration can speed up projects it supports, but it can also stop, reopen, or impose new conditions on projects it does not. None of those decisions binds a future administration. Because major industrial and energy projects often span several presidential terms, a fast track today does not guarantee that the project will remain on track a few years later.

Investors therefore face not only delay risk, meaning that reviews take longer than expected, but also reversal risk, meaning that permits already issued may be suspended or reopened after a change in political direction. Executive action is fast, but it cannot fully provide neutrality across sectors or long-term stability.

Some administrative improvements may outlast a change in government. These include digitization, standardized application forms, interoperable data, and online project tracking. The Permitting Technology Action Plan is a leading example. But technical improvements alone cannot resolve legal questions involving litigation, judicial remedies, or the protection of permits that have already been issued.

(3) The Courts: Able to Check Executive Overreach and Clarify the Law, but Only After the Fact and Case by Case

The courts have also reduced some of the uncertainty in the permitting system. When an agency fails to follow required procedures or stops a project without a reasoned basis, a court can set aside the decision or block the stop-work order. The offshore wind cases showed that even a politically driven policy change remains subject to limits under administrative law.

The Supreme Court also issued an important NEPA ruling in May 2025 in *Seven County Infrastructure Coalition v. Eagle County*¹⁴. The Court reversed the lower court and reaffirmed that NEPA is a procedural law. It does not require an agency to reach any particular environmental outcome. The Court also said that lower courts should give substantial deference to an agency's judgment about the scope and level of detail of an Environmental Impact Statement. Agencies are not automatically required to study the effects of separate upstream or downstream projects that are not themselves before the agency for approval.

The ruling should make it easier for agencies to defend NEPA reviews and reduce some litigation risk. But judicial relief is still mostly reactive and limited to individual disputes. Developers must bear legal costs and the risk of a construction halt while a case is pending, and the outcome may remain uncertain until the court rules.

Courts also cannot redesign the permitting system as a whole. They cannot create a comprehensive framework covering filing deadlines, available remedies, whether work may continue during litigation, and protection for lawfully issued permits. *Seven County* did not resolve those issues. And because it is a judicial interpretation, it could be narrowed or changed by future case law. It does not offer the same institutional durability as legislation.

The courts can therefore check unlawful executive action and narrow the legal questions in dispute, but they cannot replace a system that gives investors predictable answers in advance.

Each branch has improved a different part of the permitting process. Congress has written procedural reforms and project-specific exceptions into law. The executive branch has changed regulations and agency practices quickly and pushed priority projects forward. The courts have checked arbitrary government action and clarified how NEPA should be interpreted.

None of the three, acting alone, can provide both faster decisions and durable permits across sectors and over time. Legislation is the most stable option, but political agreement is hard to reach. Executive action is faster, but it is selective and can be reversed by a future administration. Court rulings can constrain agencies, but they come only after a dispute has arisen and cannot redesign the system as a whole.

For investors, the value of permitting reform is not that every project will be approved. It is that, after the required review and public participation, the government reaches a clear yes-or-no decision

¹⁴ The case arose from the Surface Transportation Board's approval of an 88-mile railway connecting Utah's Uinta Basin to the national rail network, mainly to support crude-oil shipments. Eagle County, Colorado, and several environmental groups challenged the approval, arguing that the environmental review had not adequately considered the effects of increased oil drilling in Utah, expanded refining on the Gulf Coast, and additional rail traffic through Colorado.

After the federal court of appeals vacated the approval, the project sponsors, the Seven County Infrastructure Coalition and Uinta Basin Railway, LLC, appealed to the Supreme Court. The Court reversed, holding that NEPA did not require the Board to evaluate the effects of separate upstream and downstream projects beyond the railway project itself.

within a reasonable period of time, and that the decision can be trusted as the basis for a long-term investment. The bills now before Congress approach that unresolved problem from different angles.

Reform Proposals Before Congress

Congress is considering several different models of permitting reform rather than a single agreed package.

Permitting Reform Bills Under Consideration in the 119th Congress

Bill	Main Purpose	Status	Outlook
SPEED Act (H.R. 4776)	Narrows and clarifies the scope of NEPA review, strengthens judicial deference to agency decisions, limits remedies, and shortens the deadline for filing lawsuits	Passed the House 221 to 196 in December 2025; awaiting Senate action	The most advanced NEPA reform bill, but unlikely to attract bipartisan support in the Senate in its current form
PERMIT Act (H.R. 3898)	Reforms Clean Water Act permitting, jurisdiction, nationwide permits, intergovernmental coordination, and judicial-review timelines	Passed the House 221 to 205 in December 2025; referred to the Senate Environment and Public Works Committee	Strong business support, but major disagreements remain over water-quality protections and the authority of states and local communities
CERTAIN Act (H.R. 8308)	Strengthens interagency coordination, transparency, modernization, and accountability across the federal permitting system, while protecting lawfully issued permits from arbitrary revocation	Introduced on a bipartisan basis in April 2026	A government-wide process and governance reform proposal that could serve as a foundation for a broader negotiated package
FREEDOM Act (H.R. 7329)	Establishes enforceable review deadlines for energy and related infrastructure projects and protects projects that have secured most required permits from unjustified suspension or revocation	Introduced on a bipartisan basis in February 2026	Directly addresses investor concerns about permit stability, but faces significant political and legal hurdles because it would constrain executive authority

Source: Congress.gov

(1) Four Different Reform Models

These bills are not simply competing solutions to the same problem. Each targets a different part of the permitting system.

The SPEED Act is the main NEPA reform bill to have passed the House. It defines NEPA as a procedural statute, narrows the range of environmental effects agencies must consider, and codifies the judicial deference standard set out in the **Seven County** decision. On judicial remedies, it generally favors sending a case back to the agency rather than vacating a permit or issuing an injunction. It also sets a 150-day deadline for filing challenges.

During House consideration, however, lawmakers added a provision preserving presidential discretion over offshore wind projects. Clean-energy groups withdrew their support, weakening the bill's bipartisan appeal. The SPEED Act remains the most advanced NEPA reform vehicle, but it is unlikely to pass the Senate without major changes.

The PERMIT Act focuses on approvals under the Clean Water Act. Supporters say it would clarify which waters are subject to federal regulation, expand the use of nationwide permits, improve coordination between federal and state governments, and reduce delays caused by litigation.

Environmental groups and some Democrats oppose the bill, arguing that it would weaken water-quality protections and reduce the authority of states and local communities.

The CERTAIN Act and the FREEDOM Act are both bipartisan, but they differ in scope and approach.

The CERTAIN Act is a government-wide modernization bill. It is not limited to a particular industry. Instead, it seeks to improve the operation of the federal permitting system as a whole through stronger interagency coordination, greater transparency, clearer agency accountability, digitization, and more efficient reviews. Its focus is on reforming the governance of the permitting process itself.

The FREEDOM Act is aimed mainly at energy and related infrastructure projects. It would establish legally enforceable deadlines, provide faster judicial remedies for unreasonable delays or stop-work actions, and protect projects that have already secured most of the permits they need.

The difference is one of emphasis. The CERTAIN Act focuses on improving how the permitting system works across government. The FREEDOM Act focuses more directly on keeping covered projects from getting stuck in review and on giving developers the timelines and certainty needed to move into construction.

(2) Focus of Senate Negotiations

Based on interviews conducted for this report and recent developments in Congress, it appears more realistic that parts of the CERTAIN Act and FREEDOM Act will be folded into a broader permitting package now under negotiation in the Senate than that either bill will pass on its own.

As of mid-July, Democratic and Republican staff on the Senate Energy and Natural Resources Committee and the Environment and Public Works Committee were continuing talks, with the goal of reaching a political agreement before the August recess. There appears to be some common ground around streamlining environmental review and historic-preservation review, limiting project-related litigation, and including certain measures to support transmission development.

Major differences remain, however, over the details. The main unresolved issues include protections for permits that have already been issued, Section 106 of the National Historic Preservation Act, and the siting and cost allocation of transmission lines.

(3) Protecting Permits That Have Already Been Issued

For Democrats, protecting permits that have already been issued has effectively become a condition for staying engaged in the negotiations. Senators Martin Heinrich and Sheldon Whitehouse, a Democrat from Rhode Island, stepped back from active participation in December 2025 after the Interior Department ordered work to stop on five offshore wind projects already under construction.

They returned to the talks in March 2026 after the administration resumed processing permits for solar and wind projects on public land and the Justice Department chose not to appeal an injunction allowing construction to restart on the Revolution Wind project¹⁵.

¹⁵ Revolution Wind is a 704 MW offshore wind project being developed by Ørsted and Skyborn Renewables off the coast of Rhode Island. The project is expected to supply 400 MW of power to Rhode Island and 304 MW to Connecticut. On December 22, 2025, the Interior Department suspended the project's lease, citing national security concerns. On January 12, 2026, the U.S. District Court for the District of Columbia issued a preliminary injunction allowing construction to resume. Because the Justice Department did not appeal the ruling within the required period, the injunction remained in place and the project was allowed to continue construction. This did not resolve the case on the merits or mean that the administration had fully accepted the project's legality. It did, however, indicate that the government would not, at least for the time being, renew its challenge to the restart of construction.

This does not mean Democrats have rejected permitting reform itself. They are willing to support faster reviews, but they also want limits on the president's ability to suspend or revoke permits that have already been issued for political reasons. The talks could still break down if the administration again steps up its selective intervention in wind and solar projects.

There are also signs of bipartisan support, including among Republicans, for limiting arbitrary executive interference in permitting. The Senate Armed Services Committee's version of the FY2027 National Defense Authorization Act includes a provision requiring the Defense Department, in most cases, to complete security reviews of delayed wind projects within 180 days and explain the basis for its decision.

This suggests that the debate is no longer only about speeding up reviews. The stability of decisions once they have been made is also becoming a bipartisan concern.

(4) Disputes over Section 106 and Transmission

The treatment of the National Historic Preservation Act, especially the Section 106¹⁶ process for considering the effects of federal projects on historic and cultural resources, has become one of the biggest points of contention.

Senator Mike Lee of Utah, the Republican chairman of the Senate Energy and Natural Resources Committee, argues that reviews and litigation can delay projects for years. He has called for limits on both the scope of the process and the judicial remedies available. Many Democrats, however, worry that such changes would weaken the ability of Native American tribes and local communities to raise concerns about impacts on cultural resources. Some Democrats agree that the process needs clearer timelines and greater predictability, but the two sides have not reached agreement on how much consultation and access to the courts should be preserved.

Transmission policy is another major sticking point. Democrats are using the 2024 Manchin-Barrasso bill as a starting point and are seeking stronger measures to support regional transmission development, improve grid interconnection, and expand federal siting authority.

Public power utilities and electric cooperatives, however, have pushed back against both an expansion of FERC's authority and cost-allocation rules that could require utilities and customers in other states or regions to help pay for long-distance transmission lines based on projected benefits. Transmission projects cannot move forward through faster permitting alone. Siting authority and cost allocation also have to be resolved, which makes compromise more difficult.

There is some movement, however. As electricity demand rises sharply, especially from data centers, more Republican lawmakers are beginning to view transmission expansion not mainly as a renewable-energy issue, but as a matter of grid reliability, industrial development, and economic growth. That shift has created more room for compromise than in the past, but major disagreements over FERC's authority and who should pay for new transmission remain.

¹⁶ Section 106 of the National Historic Preservation Act is a procedural requirement that applies to projects carried out, funded, permitted, or approved by a federal agency. Before making a final decision, the agency must consider the project's effects on historic and cultural resources that are listed in, or eligible for listing in, the National Register of Historic Places. The agency must consult with state and tribal historic preservation offices, Native American tribes, local governments, project sponsors, local residents, and other interested parties. If the project is expected to have adverse effects, the agency must consider ways to avoid, minimize, or mitigate them. Section 106 does not prohibit approval of a project or always require historic resources to be preserved. It does, however, guarantee affected parties an opportunity to participate in the consultation process and express their views.

(5) Congressional Calendar and Prospects for Passage

The biggest remaining constraint on comprehensive reform is the congressional calendar. Negotiators are aiming for an agreement before the August recess, but no bill text had been released as of mid-July. That means the most realistic outcome before the recess is not final passage, but either a political agreement on the main issues or the release of draft legislation.

The Senate could take up the issue in September, but Congress is scheduled to recess again in October ahead of the midterm elections. If negotiations slip into the post-election lame-duck session, must-pass legislation such as appropriations bills, a continuing resolution to avoid a government shutdown, and the National Defense Authorization Act will take priority on the floor. That would leave even less time to review a complex permitting package, secure the necessary votes, and negotiate with the House.

Even if the Senate passes a compromise, there is no guarantee that the House, which has played only a limited role in the negotiations, would approve the same package before the end of the current Congress. Any bill that is not enacted by the close of the 119th Congress will expire and would have to be reintroduced and considered again after the 120th Congress begins on January 3, 2027.

Comprehensive reform is therefore not impossible, but passing it this Congress would require the Senate to reach agreement, finalize the legislative text, secure floor time, and coordinate with the House in a very short period. At this stage, a limited compromise drawing selected provisions from several bills, or the inclusion of individual measures in other legislation such as the National Defense Authorization Act, appears more realistic than the enactment of any one proposal in its current form.

What Matters Is Not Just Speed, but a Timely and Durable Decision

In recent years, a broad political consensus has emerged around the need to rebuild America's domestic industrial base. But there is no comparable agreement on the standards projects should have to meet, how long reviews should take, or how much protection lawfully issued permits should receive once they are granted.

For now, sector-specific exceptions, executive action, and limited procedural reforms are likely to move faster than comprehensive legislation. These measures can help individual projects move forward, but they do not create a predictable system that applies across industries. Even if one administration speeds up a favored project, long-term stability is still missing if a future administration can stop it, reopen the review, or change the terms of its permits.

The goal of permitting reform should not be to guarantee approval for every project. It should be to preserve necessary environmental review, consultation with tribes and local communities, and public participation, while still reaching a clear yes-or-no decision within a reasonable period of time. Once that decision has been made lawfully, investors should be able to rely on it as the basis for a long-term commitment.

Whether U.S. reindustrialization produces actual factories, power plants, transmission lines, mines, ports, and other productive capacity will not depend only on the size of subsidies, tax incentives, or tariffs. It will also depend on whether the investment those policies encourage can be turned into projects that are actually buildable on a workable timetable. In that sense, permitting is not a secondary administrative issue. It is part of the core institutional foundation on which industrial policy succeeds or fails.

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