



## **RED TAPE, NOT PROGRESS: THE CENTER FOR AMERICAN PROGRESS DEFENDS BUREAUCRATIC PARALYSIS**

JUNE 2017

America's infrastructure permitting process is notoriously slow – sometimes resulting in delays of a decade or longer as project proponents trudge through multiple levels of review, with permits required from dozens of agencies, followed by years of litigation.

In September 2015, Common Good issued a white paper – “[Two Years, Not Ten Years: Redesigning Infrastructure Approvals](#)”<sup>i</sup> – which called for streamlining review and approvals to two years – consistent with practice in greener countries such as Germany and Canada. This would allow “America...[to] modernize its infrastructure, at half the cost, while dramatically enhancing environmental benefits.” Our 3-page legislative proposal would create clear lines of authority to resolve issues needed to give permits on a timely basis.<sup>ii</sup>

Creating clear deadlines, we found, is an environmental imperative. Lengthy environmental review is generally harmful to the environment because it prolongs bottlenecks. Multi-thousand-page environmental review statements do not highlight important environmental choices but obscure them. Our call for a streamlined approval process has been embraced by political leaders from all sides, including the Obama and Trump<sup>iii</sup> administrations, presidential candidate Hillary Clinton,<sup>iv</sup> and leaders of Congress, by experts in infrastructure, and by policy leaders from all sides, including the Progressive Policy Institute<sup>v</sup> and the Bipartisan Policy Center.<sup>vi</sup>

Now comes a report from the Center for American Progress (CAP), 20 months later, “[Debunking the False Claims of Environmental Review Opponents](#),”<sup>vii</sup> which asserts that efforts to reduce infrastructure red tape should be resisted because Common Good's paper is “wildly inaccurate.” As is often the case in Washington, the attack reflects partisan motives, not a good-faith argument for improving the cost, quality, and timeliness of fixing infrastructure. In July 2016, the same author called for “expedited environmental review and permitting for infrastructure projects of regional or national significance.”<sup>viii</sup> Here CAP argues just the opposite:

1. The truth, according to CAP, is that federal environmental impact statements (EIS) take an average of only (!) 4.6 years. While this time period for review is absurdly long, CAP fails to disclose that it is only the tip of the massive permitting iceberg:
  - Environmental review is only one step in the approval process. Permitting is also a major cause of delay. CAP completely ignores the years required to then get permits from multiple federal, state, and local agencies – 47 permits

from 19 different agencies, in the case of a project to raise the roadway of the Bayonne Bridge.<sup>ix</sup>

- The figure of 4.6 years, according to the Government Accountability Office (GAO), is an artificial number calculated as the time between the initial notice for review and final publication of review in the Federal Register. According to the GAO report, it “may not account for up-front work” or delays due to “changes in agency priorities, delays in obtaining nonfederal approvals, or community opposition to the project, to name a few.”<sup>x</sup>
- The 4.6 years figure does not include time spent in litigation, including administrative appeals. The Carlsbad desalination plant, for example, survived 14 lawsuits and appeals, opening 12 years after permitting began in 2003 (and 17 years after it was first proposed in 1998).<sup>xi</sup> Most major infrastructure projects are slowed down by lawsuits or the threat of them. The fact that a fraction of other federal EISs result in litigation says nothing about the number of non-federal infrastructure projects that are bogged down in litigation. For example, the rail intermodal facility in Long Beach, California – a project that would eliminate over one million truck trips annually in the area around the port, is now in its 11<sup>th</sup> year of study, and was recently sent back to the drawing board by a judge who found that the three environmental studies already completed on the project were insufficient.<sup>xii</sup>

2. CAP characterizes the Common Good paper as an attack on the idea of environmental review by “hardcore opponents of environmental review.”

To the contrary, our paper recommends improving the effectiveness of environmental review by focusing it on material impacts and alternatives – not impenetrable scientific encyclopedias of thousands of pages. The point of environmental review was to aid evaluation by citizens and decision-makers regarding potential major issues with projects. That is why existing rules from the Council on Environmental Quality suggest that final EISs “shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.”<sup>xiii</sup>

CAP casts itself as the protector of community input, stating that one of NEPA’s two goals is “to empower local communities through greater transparency.” But the status quo that CAP defends is virtually impenetrable to real people – and is the exclusive domain of experts and special interests who use the dense process to advance their own agendas. That’s why Common Good emphasized the desirability of citizen input early in the process, “even before formal plans are finalized” – not after a project has been fully baked after years of environmental review. A recent Stanford University report concurred, finding that “processes must be overhauled so that public input is solicited early in the planning, not after a project is cast in stone.”<sup>xiv</sup>

3. CAP suggests that funding, not permits, is the only hold-up to new infrastructure. Indeed, the Common Good paper states up front: “There are two components to [modernizing America’s aging infrastructure]: money and permits.” But President Obama had successfully advocated for a massive \$831 billion public stimulus,<sup>xv</sup> which he promised would be used in large part for infrastructure.<sup>xvi</sup> And then he discovered, as he put it, that “there’s no such thing as shovel-ready projects.”<sup>xvii</sup> He abandoned a plan to build a “smart grid,” for example, when he discovered that the project required approvals from 231 different regulators.<sup>xviii</sup> At the end of the day, only \$30 billion, or 3.6% of the stimulus, was spent on transportation infrastructure.<sup>xix xx</sup>
  
4. CAP disputes significant delay in highway, rail, and transmission projects. Leaving aside the fact that the infrastructure in each area is deficient – receiving grades of D, B, and D+, respectively, in the American Society of Civil Engineers latest report card<sup>xxi</sup> – CAP’s argument in each area uses partial facts to obscure the reality of a red tape logjam:
  - Railroad infrastructure. CAP here argues that because railroad infrastructure is financed by the railroad companies, federal environmental review is irrelevant. But the Common Good paper focuses on all government approvals needed to actually fix infrastructure, not just federal environmental review. Like an ostrich, CAP ignores altogether that federal permits from multiple agencies are required for new railroad infrastructure – from the Department of Transportation, EPA, Fish and Wildlife, and other agencies – as are state and local permits. New rail lines and facilities typically require multi-thousand page environmental reviews from state and municipal government. The decade-long process (and counting) at the Long Beach intermodal facility is an example. It is disingenuous to suggest, as CAP does, that there’s no environmental review or other red tape for railroad projects. Because of the need for clear lines of authority to make these decisions, Common Good’s proposed legislation would preempt state and local approvals if they extend beyond federal deadlines.
  
  - Transmission. In certain regions, America’s electric grid is antiquated, wasting electricity and causing interrupted service during extreme weather. Here as well, CAP responds by saying that replacing or upgrading lines requires no federal environmental review. But federal agencies still require multiple permits, and state and local governments require extensive review and permitting. A power line from Wyoming wind farms to urban areas in Oregon and Washington, for example, required approval from each county in Idaho which the line traversed. CAP also touts the fact that federal law specifically grants a “categorical exclusion” from federal environmental review to certain transmission lines. But this proves too much: Environmental review is so onerous that important projects are exempted

from it altogether. Far better to have a practical process, with reliable time limits, so that all projects can be reviewed and improved by transparency and public input.

- Highways. America's highways and bridges are in desperate need of upgrade. CAP here attacks the Common Good paper in three principal ways: 1) It asserts that many highway projects require no review. But our paper specifically assumed that half of all highway infrastructure projects require no significant red tape delays. 2) CAP claims that highway infrastructure investment would only improve average vehicle speeds by 1.4 mph, citing a 2016 Federal Highway Administration report. But our analysis assumed more than twice as much annual investment, including expanding roads, using new technologies and other projects to significantly reduce congestion. 3) CAP argues that the average length of review for highway projects has been reduced to an average of 3.6 years, citing recent data that does not appear to be publicly available. This does not refute the assumption that highway projects would be subject to years of delay from environmental review *and other complex permitting*, an aspect of the process that CAP once again ignores.

5. CAP reveals its lack of real-world knowledge when disputing Common Good's cost analyses.

For calculating the costs of delay, we used a rule of thumb in industry: i) that hard costs of construction constitute about 70% of the costs, and increase at about 3% per year, and ii) that overhead (management, consultants, lawyers, and such) comprises about 30% of total project costs, with 10% of this incurred every year. With delay of a year, hard costs increase 2.1% (3% inflation x 70%) and overhead expense for that year totals 3% (10% x 30%). The total cost increase from a year of delay is thus 5.1%. We also calculated opportunity costs and environmental costs from delay, in the manner typically followed in EISs.

CAP confuses the concept of hard costs and overhead costs with the cost of materials and labor – thereby ignoring overhead altogether – and then proceeds to challenge Common Good's assumptions (meant to apply across all infrastructure categories) using data specific to highways.

6. Conclusion. Only in the artificial world of Washington politics could an otherwise respectable organization such as the Center for American Progress defend the indefensible – a jungle of red tape that has prevented several generations of political leaders from fixing America's aging and inadequate infrastructure. No one designed the system to work like this – certainly not the environmentalists who sponsored the National Environmental Policy Act. The important innovation of environmental review was intended to improve projects, not block them or double their costs. The process needed to approve American infrastructure projects is more like a running joke than a serious governance

framework. America's infrastructure will never be fixed, at least not on any timely basis, until Congress creates clear lines of authority to focus environmental review on important issues, and to resolve disputes among bickering agencies.

CAP highlights the \$23 billion Gateway Rail Tunnel Project (building two desperately-needed rail tunnels into Manhattan) as proof of the need for funding. Common Good has proposals for funding as well – for example, a 25 cent increase in the gas tax would raise about \$40 billion per year.<sup>xxii</sup> What CAP omits to note is that Common Good's white paper on streamlining the process for Gateway ("Billions for Red Tape")<sup>xxiii</sup> was influential in accelerating the timetable to two years<sup>xxiv</sup> – with dramatic environmental benefits as well as saving taxpayers several billion dollars. As we say in "Two Years, Not Ten Years," "Red tape is not the price of good government; it is the enemy of good government."

---

<sup>i</sup> Philip K. Howard, "[Two Years, Not Ten Years: Redesigning Infrastructure Approvals](#)," Common Good, September 2015.

<sup>ii</sup> Common Good, "[Accelerate Infrastructure Permitting](#)," March 2017.

<sup>iii</sup> The White House, Office of the Press Secretary, "[President Trump Takes Action to Expedite Priority Energy and Infrastructure Projects](#)," January 24, 2017.

<sup>iv</sup> Hillary for America, "[Hillary Clinton's Infrastructure Plan: Building Tomorrow's Economy Today](#)," p. 4, last accessed May 2017.

<sup>v</sup> Progressive Policy Institute, "[Unleashing Innovation and Growth: A Progressive Alternative to Populism](#)," March 2016, pp. 11-12.

<sup>vi</sup> Andy Winkler, "[Accelerate the Permitting Process](#)," Bipartisan Policy Center, February 2, 2017.

<sup>vii</sup> Kevin DeGood, "[Debunking the False Claims of Environmental Review Opponents](#)," Center for American Progress, May 2017.

<sup>viii</sup> Kevin DeGood, et al., "[An Infrastructure Plan for America](#)," Center for American Progress, July 14, 2016.

<sup>ix</sup> Sam Roberts, "[High Above the Water, but Awash in Red Tape](#)," *New York Times*, January 2, 2014.

---

<sup>x</sup> Government Accountability Office, "[National Environmental Policy Act: Little Information Exists on NEPA Analyses](#)," GAO-14-369, April 2014, p. 14.

<sup>xi</sup> Editorial, "[For Coast Commission, a Little History Is in Order](#)," *San Diego Union-Tribune*, August 12, 2014, and Bradley J. Fikes, "[Desalination Boosts CA Water Outlook](#)," *San Diego Union-Tribune*, December 14, 2015, and James Nash, "[San Diego's 18-Year Wait to Drink Sea Water May Hinder Deals](#)," Bloomberg News, December 14, 2015.

<sup>xii</sup> Bill Mongelluzzo, "[Judge Rejects Environmental Review of Proposed LA-LB Intermodal Yard](#)," *Journal of Commerce*, March 30, 2016. See also, Jim Newton, "[How Good Environmental Legislation Goes Wrong](#)," *Los Angeles Times*, April 21, 2016.

<sup>xiii</sup> [40 CFR §1502.7](#).

<sup>xiv</sup> Stanford University, Center on Democracy, Development, and the Rule of Law, "[Renewing American Infrastructure](#)," March 1, 2017.

<sup>xv</sup> Congressional Budget Office, "[Estimated Impact of the American Recovery and Reinvestment Act on Employment and Economic Output from October 2011 Through December 2011](#)," Pub. No. 4435, February 2012, p. 1.

<sup>xvi</sup> In a December 6, 2008 address, for instance, President-elect Obama stated that one goal of his stimulus plan was to "create millions of jobs by making the single largest new investment in our national infrastructure since the creation of the federal highway system in the 1950s." He continued: "We'll invest your precious tax dollars in new and smarter ways, and we'll set a simple rule – use it or lose it. If a state doesn't act quickly to invest in roads and bridges in their communities, they'll lose the money." Two weeks later he again likened his infrastructure proposal to the investment in the Interstate Highway System, saying: "Our economy boomed in the 20th Century when President Eisenhower remade the American landscape by building the interstate highway system. Now we need to remake our transportation system for the 21st Century. Doing so will not only help us meet our energy challenge by building more efficient cars, buses, and subways or make Americans safer by rebuilding our crumbling roads and bridges – it will create millions of new jobs in the process." Barack Obama, "[The President-Elect's Radio Address](#)," The American Presidency Project, December 6, 2008, and Barack Obama, "[Remarks in Chicago Announcing Nominations for the Departments of Labor, Transportation, United States Trade Representative, and Small Business Administration](#)," The American Presidency Project, December 19, 2008.

<sup>xvii</sup> Michael D. Shear, "[Obama Lesson: 'Shovel Ready' Not So Ready](#)," *New York Times*, October 15, 2010.

---

<sup>xviii</sup> Jonathan Alter, *The Promise: President Obama, Year One* (Simon & Schuster, 2010), pp. 89-90.

<sup>xix</sup> Executive Office of the President, Council of Economic Advisers, "[The Economic Impact of the American Recovery and Reinvestment Act Five Years Later](#)," February 2014, p. 34.

<sup>xx</sup> CAP suggests that this number is misleading because the spending reflects 60% of the \$48 billion that Congress allocated in the bill to the Department of Transportation. The inability to spend almost half the allocated funds is hardly an endorsement of the permitting process. Moreover, the relatively small allocation to the Department of Transportation – particularly after the many public statements by President Obama and congressional leaders about rebuilding America's decrepit infrastructure – more likely reflects the realization that red tape would prevent the department from spending any more. See, e.g., Alec MacGillis, "[Democrats Among Stimulus Skeptics](#)," *Washington Post*, January 28, 2009.

<sup>xxi</sup> American Society of Civil Engineers, "[2017 Infrastructure Report Card](#)," p. 6.

<sup>xxii</sup> A one cent increase in the federal gas tax is estimated to add anywhere from \$1.5 billion to \$1.8 billion a year to the Highway Trust Fund. Robert S. Kirk and William J. Mallett, "[Funding and Financing Highways and Public Transportation](#)," Congressional Research Service, September 23, 2015, p. 3, and Larry Copeland, "[Gas Tax Falling Short in Paying for Transportation Needs](#)," *USA Today*, February 24, 2012.

<sup>xxiii</sup> Philip K. Howard, "[Billions for Red Tape: Focusing on the Approval Process for the Gateway Rail Tunnel Project](#)," Common Good, May 2016.

<sup>xxiv</sup> HudsonTunnelProject.com, "[Frequently Asked Questions](#)," last accessed June 2017. See also, Daniel Geiger, "[Tunnel Mega Project Hinges on Fate of Aging Bridge](#)," *Crain's New York Business*, May 22, 2017, and Hillary Russ, "[Hudson Train Tunnel Between NY, NJ Gets Fast Environmental Review](#)," Reuters, October 14, 2016.