

TRANSPORTATION RESEARCH BOARD

# **One Federal Decision: Requirements and Tips for Achieving This Goal**

**Wednesday, March 27, 2019  
2:00-3:30 PM ET**

***The Transportation Research Board has met the standards and requirements of the Registered Continuing Education Providers Program. Credit earned on completion of this program will be reported to RCEP. A certificate of completion will be issued to participants that have registered and attended the entire session. As such, it does not include content that may be deemed or construed to be an approval or endorsement by RCEP.***



**REGISTERED CONTINUING EDUCATION PROGRAM**



## Learning Objectives

At the end of this webinar, you will be able to:

- Describe the requirements of EO 13807/OFD and any subsequent policy documents for federal agencies and project proponents
  - Identify practical and legal stumbling blocks to accomplishing the goals of EO 13807
  - Describe potential practices to facilitate the goals of EO 13807 from the perspective of the technical consultant, agency decision-maker, and project proponent
  - Identify future policy actions that may be taken to effectuate EO 13807
- 

# Continuing Legal Education (CLE) Credits

1.25 Continuing Legal Education (CLE) credits  
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their board

# One Federal Decision: Requirements & Tips for Achieving this Goal

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Ted Boling – CEQ

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Fred Wagner – Venable

# Council on Environmental Quality

Council on Environmental Quality

## *NEPA for Infrastructure*

*Ted Boling*

*Associate Director for the National Environmental Policy Act  
Council on Environmental Quality*

# NEPA - Infrastructure

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- Federal Permitting Improvement Steering Council and the Fixing America's Surface Transportation (FAST) Act
- Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects
- Environmental Impact Statement Timelines
- Categorical Exclusions

# FAST Act Title 41 (FAST-41)

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- FAST-41, 42 U.S.C. §§ 4370m *et seq.*, created a governance structure (the “Permitting Council” and Chief Environmental Review and Permitting Officers) to improve the environmental review and authorization process for covered projects. <https://www.permits.performance.gov/projects>.
- The Permitting Council promotes early, formalized coordination on covered projects and encourages early outreach to States, tribes, and local governments as part of that effort.
- Alex Herrgott, Executive Director of the Federal Permitting Improvement Steering Council, appointed by the President.

# FAST-41 Interagency Governance Structure

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FAST-41 establishes a set of roles and responsibilities for the new Executive Director, FPISC, agency CERPOs, OMB and CEQ:

## Executive Director:

- Chair Council
- Develop and maintain inventory of “covered projects”
- Designate facilitating agencies
- Develop model performance schedules
- Submit annual progress report to Congress on agencies’ compliance with best practices/review timelines
- Adjudicate requests for timeline extensions of >30 days
- Facilitate resolution of disputes regarding timelines

## Federal Permitting Improvement Steering Council (FPISC):

- Advise ED on facilitating agency designations
- Meet at least annually with State, tribal and local government stakeholders
- Develop “best practices” for a range of permitting activities
- Develop best practices and recommendations for State-delegated programs

## Chief Environmental Review and Permitting Officers (CERPOs)

- Advise their agency’s Councilmember
- Provide TA to facilitate timely reviews
- Analyze agency policies, processes, and authorities and recommend improvements

## OMB Director:

- Serve as member of Council
- Provide guidance on recommendation of E.D. in consultation w/Council & CEQ
- *Facilitate resolution of disputes regarding timelines with CEQ*
- *Adjudicate requests for timeline extensions that exceed 50% of total schedule*
- Provide guidance on fee regulations
- Approve funding transfers from Fund to agencies

## CEQ Chair:

- Serve as member of Council
- Issue guidance to effectuate adoption of NEPA-related provisions
- Resolve disputes over lead and “facilitating agency” designation

# FAST Act Title 41: Covered Projects

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- Any activity in the U.S. that requires authorization or environmental review by a Federal agency ...  
Involving construction of infrastructure in a designated sector:

- Renewable or conventional energy - production
- Electricity transmission
- Surface transportation\*
- Aviation
- Ports and waterways\*
- Water resource projects\*
- Broadband
- Pipelines
- Manufacturing
- Any other sector as determined by a majority vote of the Council

- ...that is subject to NEPA, and
  - Does not qualify for an abbreviated review process and is likely to cost more than \$200M; or
  - Is of a size/complexity likely to benefit from enhanced oversight/coordination in the opinion of the Council, including:
    - Projects likely to require an Environmental Impact Statement
    - Projects likely to require reviews from more than 2 Federal agencies

\***Exemption:** Does not include projects subject to Section 139 of MAP-21 or Section 2045 of WRDA (2007)

# Permitting Dashboard – Mapping Page



Home » Projects

## Project Map

Click on the dots below to display individual projects. Use the 'Overlay' box at the bottom of the map to reveal or hide projects based on their classification. Learn more about Permitting Dashboard projects' classification categories here: <https://www.permits.performance.gov/projects>.



# Permitting Dashboard – List of Covered Projects

FAST-41 Covered Projects

DOT Projects

Other Tracked Projects

Legacy Projects

The infrastructure projects below are identified as Covered Projects under Title 41 of the Fixing America's Surface Transportation (FAST) Act.

- Any -
  - Any -
 
 - Any -

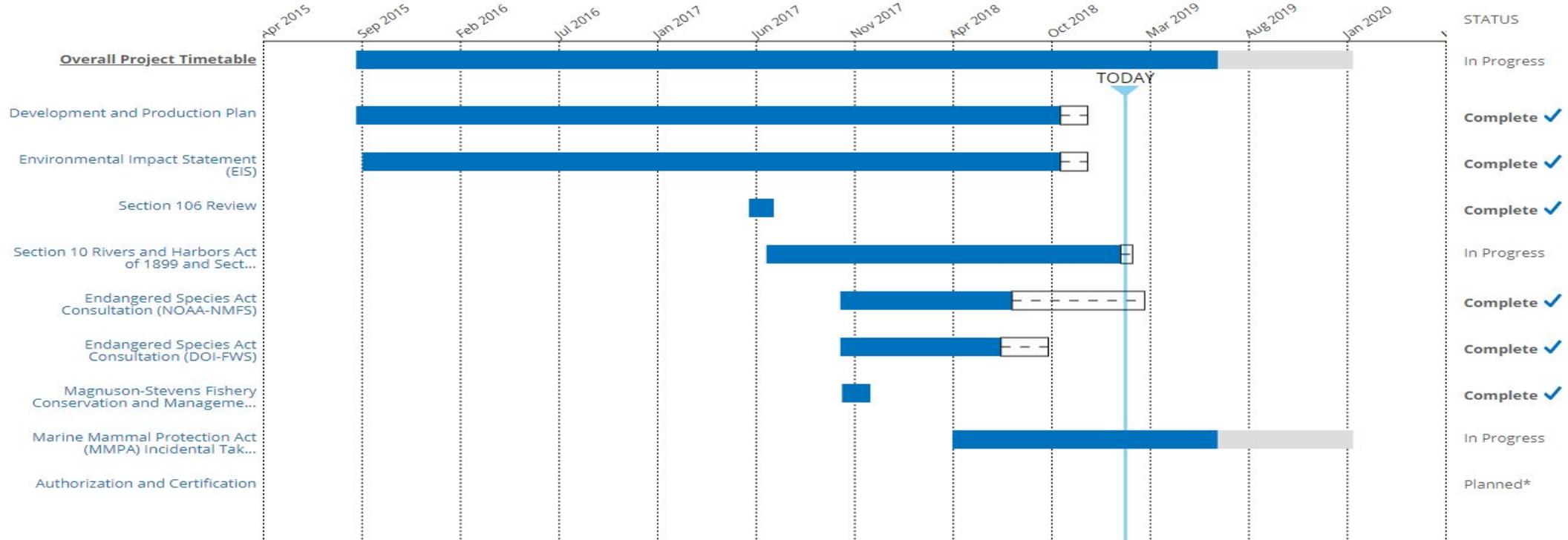
Title▲	Lead Agency	Bureau/Mode	Sector	Project Type	Status
Aiya Solar Project (Moapa)	Department of Interior	Bureau of Indian Affairs	Renewable Energy Production	Solar	Paused
Alaska LNG Project	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	Pipelines	Liquefied Natural Gas Terminal Facilities (Onshore or in State Water), and associated Natural Gas Pipelines	In Progress
Atlantic Coast Pipeline, Atlantic Coast Pipeline Amendment, Supply Header, and ACP-Piedmont Lease	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	Pipelines	Interstate Natural Gas Pipelines	Complete
Atlantic Sunrise	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	Pipelines	Interstate Natural Gas Pipelines	Complete
Bay State Wind Project	Department of Interior	Bureau of Ocean Energy Management	Renewable Energy Production	Wind: Federal Offshore	Planned
Boardman to Hemingway Transmission Line	Department of Interior	Bureau of Land Management	Electricity Transmission	Electricity Transmission (all)	In Progress
Cardinal-Hickory Creek 345 kV Transmission Line Project	Department of Agriculture	Rural Development	Electricity Transmission	Rural Transmission	In Progress
Chokecherry-Sierra Madre Wind Energy (Phase 1)	Department of Interior	Bureau of Land Management	Renewable Energy Production	Wind: Other than Federal Offshore	Complete
Chokecherry/Sierra Madre Wind, Phase II	Department of Interior	Bureau of Land Management	Renewable Energy Production	Wind: Other than Federal Offshore	In Progress

# Permitting Dashboard – Project Timetable

## Permitting Timetable

The permitting timetable below displays data as reported by agencies. Dates for Environmental Review and Permitting processes (Actions) that are in 'Paused' or 'Planned' status are subject to change and are not indicative of a project's final schedule.

- For information about extensions, select an Action from the timetable below and select 'View Action Details' at the bottom of the page.



■ Schedule   
 ■ Extension   
  Ahead of Schedule   
  Paused

\*Planned dates are not represented in the timetable above.

# Authorization Actions and Target Completion Dates



## Marine Mammal Protection Act (MMPA) Incidental Take Authorization – DOC - NOAA/NMFS

**Project Name:** Liberty Development and Production Plan

**Target Completion:** 02/01/2020

**Status:** In Progress

**Point of Contact:** [Jaclyn Daly](#) , Fisheries Biologist

**Responsible Agency:** National Oceanic and Atmospheric Administration

**Agency Status:** Cooperating under NEPA

**Reason(s):**

Description:

Marine Mammal Protection Act (MMPA) Consultation 101(1)(5)(A) reulmaking and Letter of Authorization (LOA)

The MMPA prohibits, with certain exceptions, the "take" of marine mammals in U.S. waters by U.S. citizens. However, the MMPA allows, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region. "Take" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. NMFS may issue an incidental take authorization if, after public comment, they find the taking will have no more than a "negligible impact" on those marine mammal species or stocks, and not have an "unmitigable adverse impact" on the availability of the species or stock for "subsistence" uses. Incidental take authorizations prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on a species or stock and their habitat, paying particular attention to rookeries, mating grounds, and other areas of similar significance.

### Milestones:

#### Complete Application Received

NOAA's ability to meet this schedule is contingent upon receipt of information required to deem the application adequate and complete.

Completed: 04/26/2018

#### Publish Notice of Receipt in the Federal Register (FR)

Publish Notice of Receipt of MMPA application for Letter of Authorization (LOA) in the Federal Register for public comment period. The rulemaking and authorization target dates are contingent upon NMFS receiving sufficient information to initiate those processes. Milestone status was paused from 3/30/2018 to 5/9/2018 because NOAA did not receive adequate and complete application information by the 03/30/2018 target completion date.

Completed: 05/09/2018

#### Publish Proposed Incidental Take Authorization in the FR

# ***EO 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects***

Signed August 15, 2017, and published on August 24, 2017. 82 Fed. Reg. 40463.

Purpose:

. . . . **Inefficiencies in current infrastructure project decisions, including management of environmental reviews and permit decisions or authorizations, have delayed infrastructure investments, increased project costs, and blocked the American people from enjoying improved infrastructure that would benefit our economy, society, and environment.** More efficient and effective Federal infrastructure decisions can transform our economy, so the **Federal Government, as a whole, must change the way it processes environmental reviews and authorization decisions.**

# E.O.13807

## Infrastructure Policy

Council on Environmental Quality

- (a) **safeguard our communities and maintain a healthy environment;**
- (b) ensure that Federal authorities make **informed decisions** concerning the environmental impacts of infrastructure projects;
- (c) develop infrastructure in an **environmentally sensitive** manner;
- (d) provide **transparency and accountability** to the public regarding environmental review and authorization decisions;
- (e) be good stewards of public funds, including those used to develop infrastructure projects, and **avoid duplicative and wasteful processes;**
- (f) **conduct environmental reviews and authorization processes in a coordinated, consistent, predictable, and timely manner** in order to give public and private investors the confidence necessary to make funding decisions for new infrastructure projects;
- (g) **speak with a coordinated voice** when conducting environmental reviews and making authorization decisions; and
- (h) **make timely decisions with the goal of** completing all Federal environmental reviews and authorization **decisions for major infrastructure projects within 2 years.**

# E.O.13807 Process for Major Infrastructure Projects

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Federal agencies shall:

- (i) use **"One Federal Decision;"**
- (ii) develop and follow a **permitting timetable**, reviewed and updated at least quarterly by the lead Federal agency in consultation with Federal cooperating and participating agencies; and
- (iii) **elevate issues that may cause delays or missed milestones to appropriate senior agency officials** of the lead Federal agency and the relevant Federal cooperating and participating agencies.

OMB/CEQ Memorandum established a "One Federal Decision Framework" implemented by a memorandum of understanding between 7 Departments, EPA, USACE, FERC, ACHP and the Permitting Council.

<https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2-1.pdf>

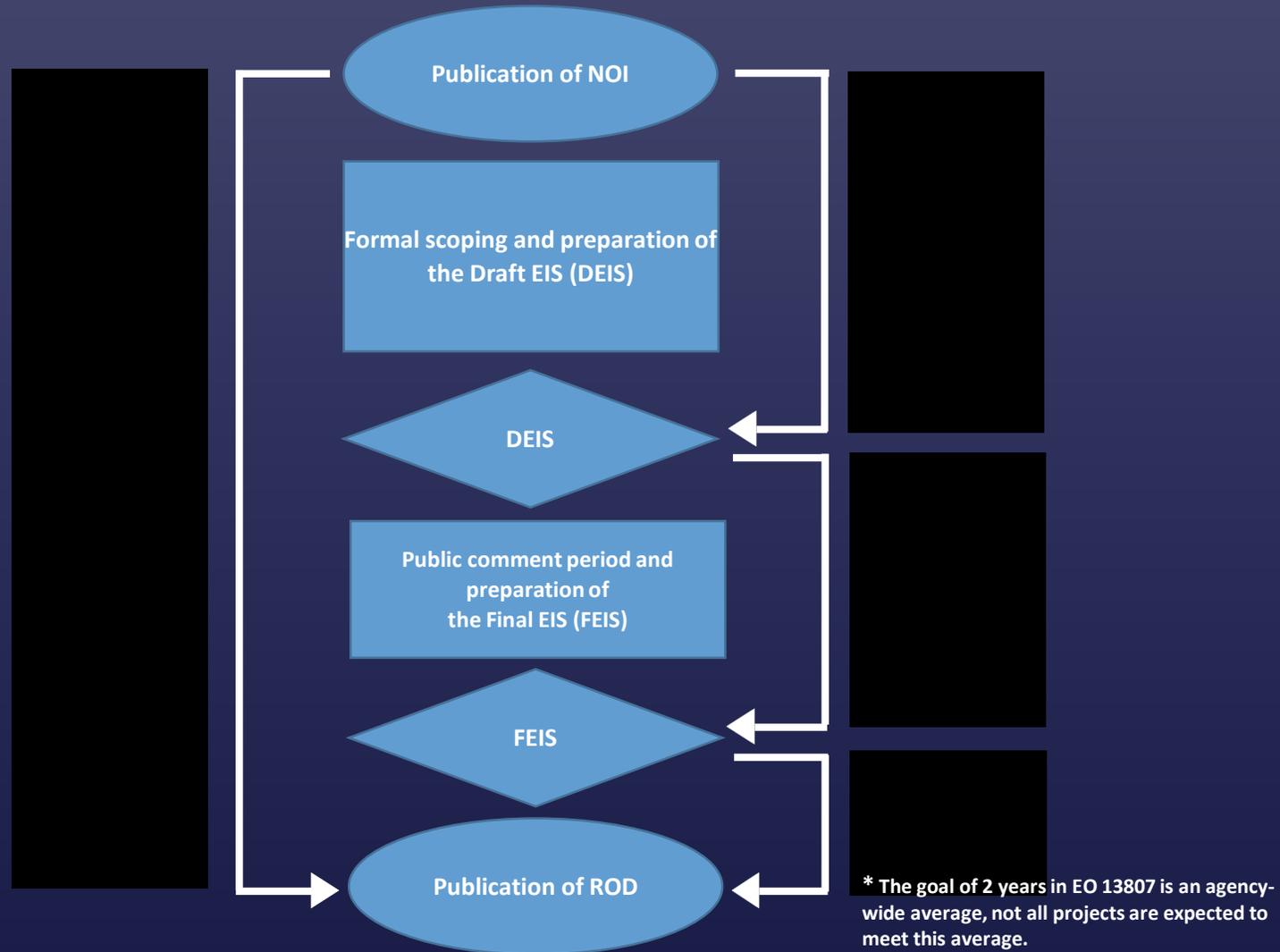
# Key Elements of the One Federal Decision MOU

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- **Permitting Timetable:** Lead Federal agency to develop a “Permitting Timetable” which will include milestones for applicable environmental reviews and authorizations and be publicly available.
- **Concurrence Points:** Lead Federal agency to request written concurrence from cooperating agencies for 1) Purpose and Need statement; 2) Range of Alternatives; and 3) Preferred Alternative.
- **Single EIS / Single ROD:** Agencies will work with the lead Federal agency to develop a single EIS and ROD, with exceptions when impracticable or inconsistent with applicable law.
- **Issue Resolution:** Agencies will elevate interagency issues or disputes that may cause delays to higher-level officials (including senior leadership) for timely resolution.
- **Two-Year Goal:** Agencies will seek to reduce the time it takes for each agency to complete environmental reviews and authorization decisions to an average of two years.
- **Preserves Statutory Authorities:** MOU designed to coordinate agency processes while fully preserving each agency’s statutory authority, independence, and ability to comply fully with NEPA and related statutes.

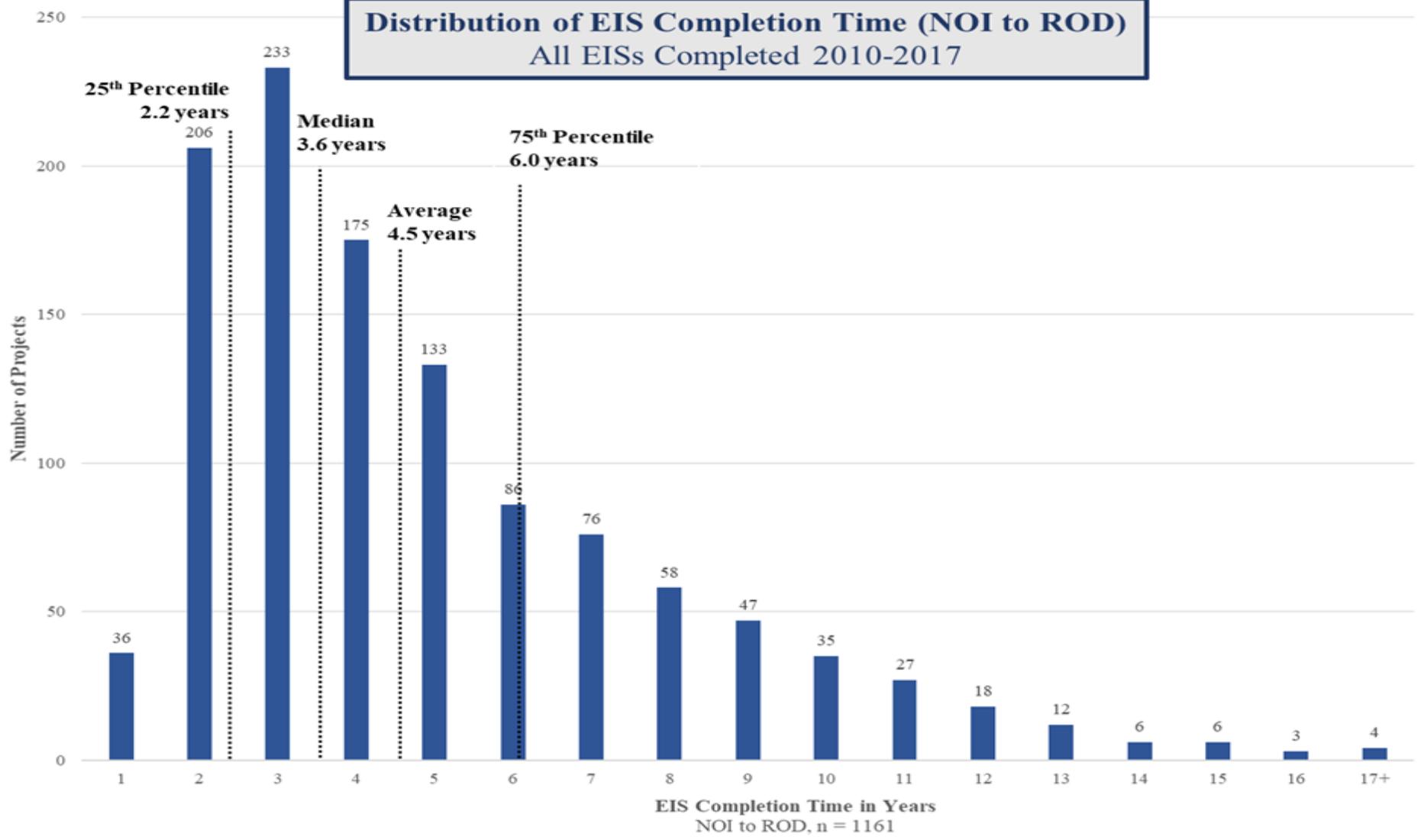
# Sample Timeline for a Project Subject to EO 13807

Council on Environmental Quality



# EIS Timeline Data

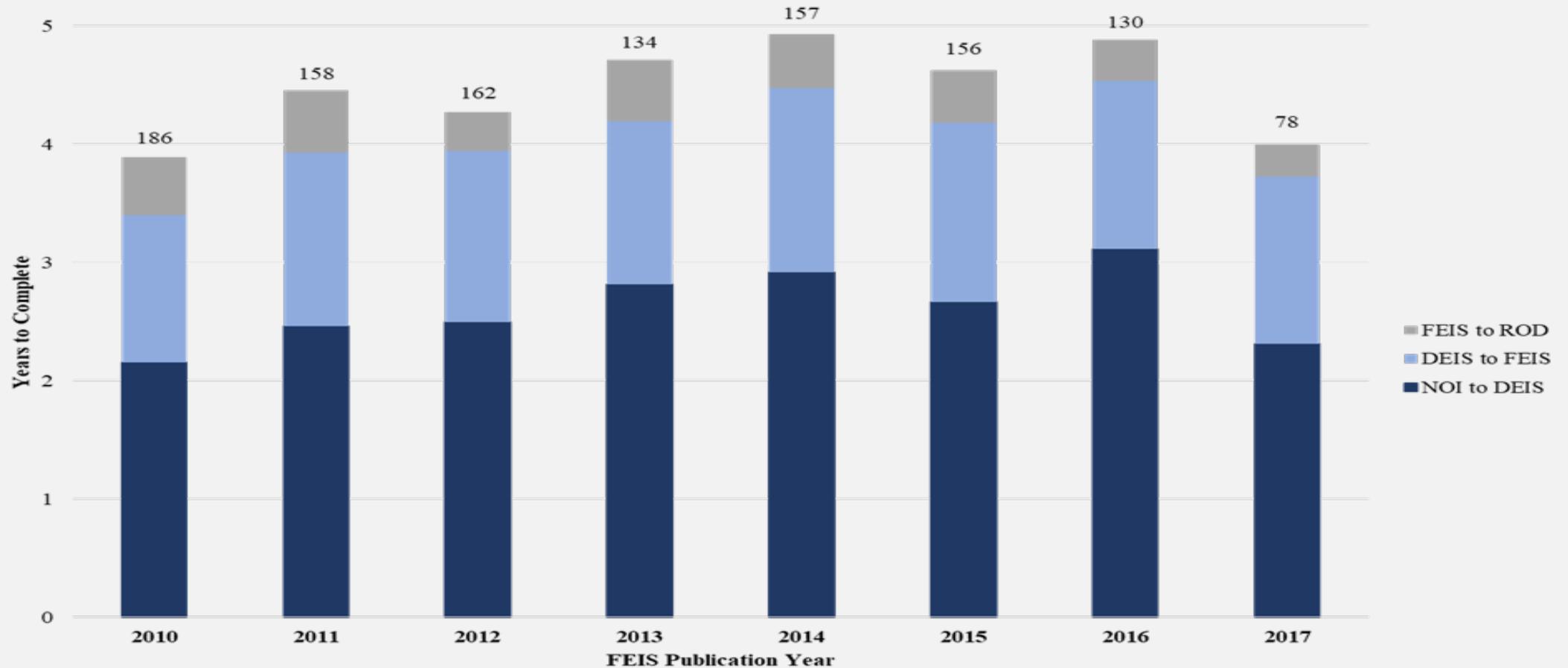
Council on Environmental Quality



# EIS Timeline Data

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**Average EIS Process Completion Time (NOI to ROD)**  
All EISs completed 2010-2017

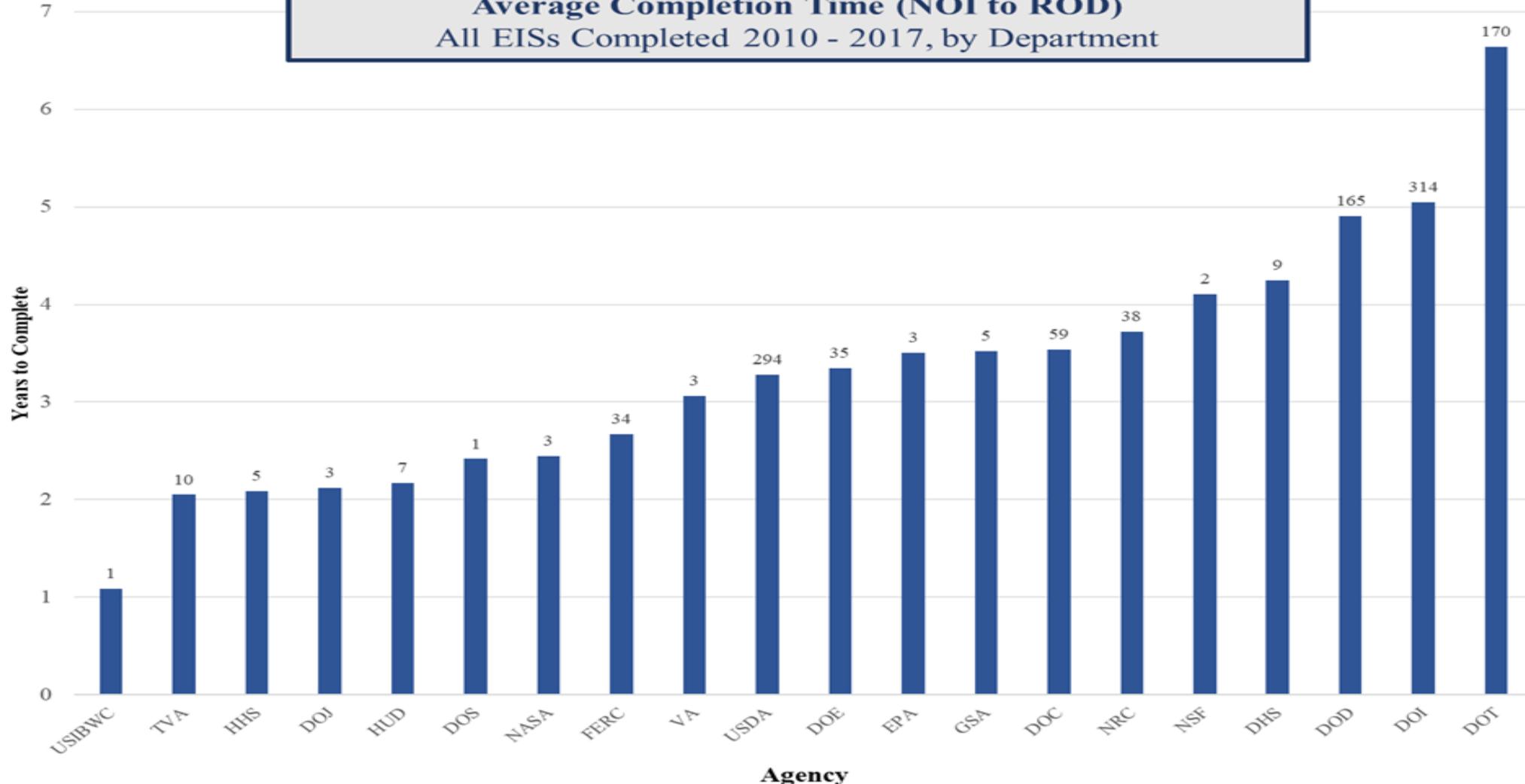


The number of Final EISs published each year, for which a ROD has been issued, is shown at the top of each bar.

# EIS Timeline Data

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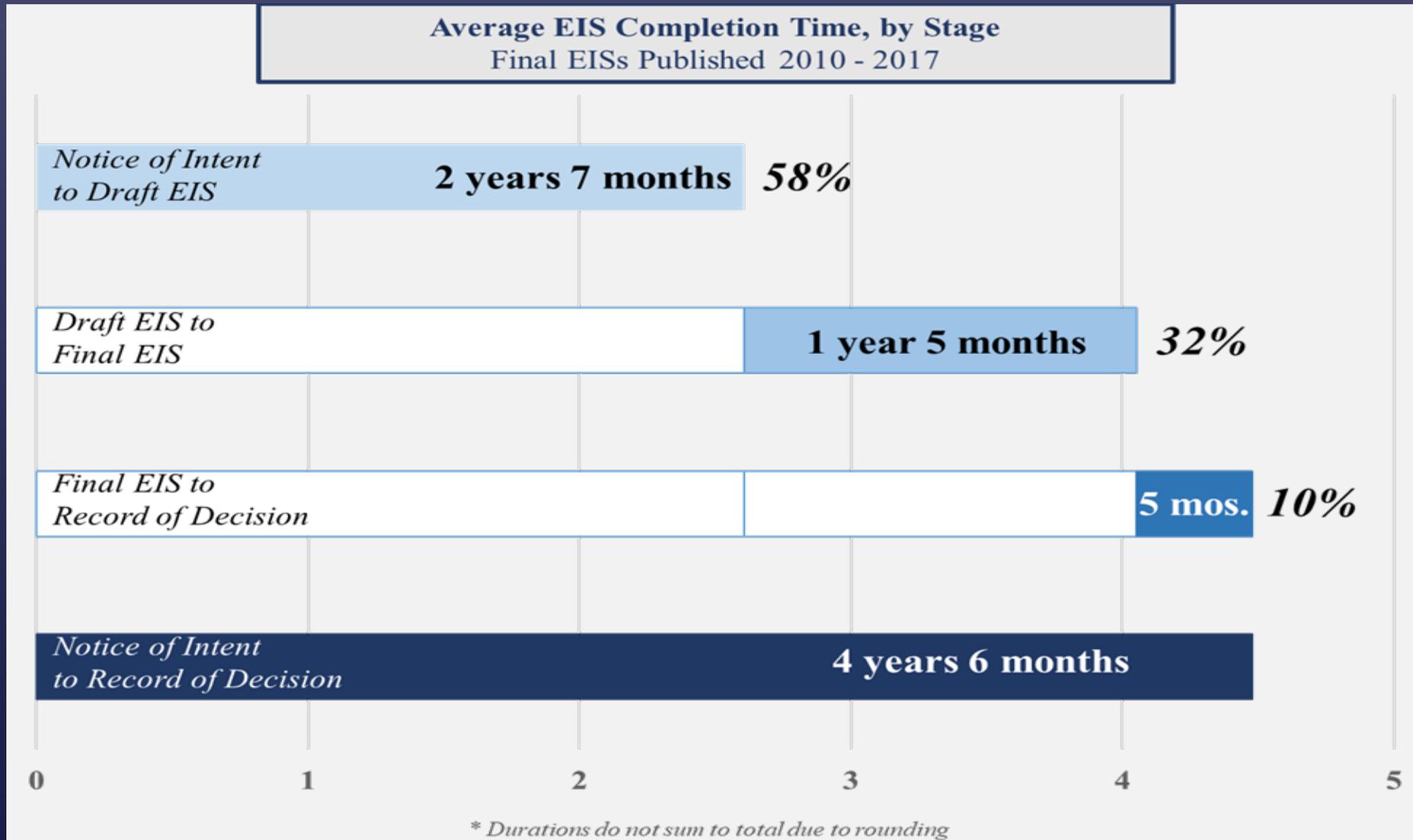
**Average Completion Time (NOI to ROD)**  
All EISs Completed 2010 - 2017, by Department



The number of Final EISs published, for which a ROD has been issued, is shown at the top of each bar.

# EIS Timeline Data

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# EIS Timeline Data

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Agency	EISs Completed	Average NOI to Draft	Average Draft to Final	Average Final to ROD	Average NOI to ROD
<b>Department of Agriculture (USDA)</b>	1	2.80	0.38	0.09	3.27
Animal and Plant Health Inspection Service (APHIS)	8	1.30	0.51	0.19	1.99
Farm Service Agency (FSA)	2	0.96	0.68	0.17	1.81
Natural Resources Conservation Service (NRCS)	3	0.96	0.34	0.34	1.64
Rural Utilities Service (RUS)	4	1.77	0.82	0.60	3.18
United States Forest Service (USFS)	276	1.80	1.28	0.27	3.35

Agency	EISs Completed	Median NOI to Draft	Median Draft to Final	Median Final to ROD	Median NOI to ROD
<b>Department of Agriculture (USDA)</b>	1	2.80	0.38	0.09	3.27
Animal and Plant Health Inspection Service (APHIS)	8	1.48	0.49	0.11	2.20
Farm Service Agency (FSA)	2	0.96	0.68	0.17	1.81
Natural Resources Conservation Service (NRCS)	3	0.78	0.29	0.10	1.81
Rural Utilities Service (RUS)	4	1.72	0.62	0.40	3.26
United States Forest Service (USFS)	276	1.40	0.92	0.10	2.92

# Categorical Exclusion List

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## U.S. Department of Agriculture (USDA) Categorical Exclusions (CE)

### Forest Service (USFS)

#### [§220.6 Categorical exclusions.](#)

(a) *General.* A proposed action may be categorically excluded from further analysis and documentation in an EIS or EA only if there are no extraordinary circumstances related to the proposed action and if:

- (1) The proposed action is within one of the categories established by the Secretary at 7 CFR part 1b.3; or
- (2) The proposed action is within a category listed in §220.6(d) and (e).

(b) *Resource conditions.* (1) Resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS are:

- (i) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;
- (ii) Flood plains, wetlands, or municipal watersheds;
- (iii) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas;
- (iv) Inventoried roadless area or potential wilderness area;
- (v) Research natural areas;
- (vi) American Indians and Alaska Native religious or cultural sites; and
- (vii) Archaeological sites, or historic properties or areas.

(2) The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion (CE). It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist

# Categorical Exclusion List

Council on Environmental Quality

Find what:  No Format Set Format...

Within:   Match case

Search:   Match entire cell contents

Look in:  Options <<

Find All Find Next Close

Book	Sheet	Name	Cell	Value
CE List_2018-11-20.xlsx	FSA		\$A\$70	(i) Conservation easement purchases with no construction planned;
CE List_2018-11-20.xlsx	FSA		\$A\$74	(v) Inventory property disposal or lease with protective easements or covenants;
CE List_2018-11-20.xlsx	FSA		\$A\$110	(iv) Inventory property disposal or lease without protective easements or covenants (this proposed action, in particular
CE List_2018-11-20.xlsx	USFS		\$A\$46	(ii) Purchasing fee, conservation easement, reserved interest deed, or other interests in lands.
CE List_2018-11-20.xlsx	USFS		\$A\$62	(ii) Issuance of a new special use authorization to reflect administrative changes such as, a change of ownership or con
CE List_2018-11-20.xlsx	RD		\$A\$80	(3) Replacement of utility lines where road reconstruction undertaken by non-Agency applicants requires the relocatio
CE List_2018-11-20.xlsx	FirstNet		\$A\$25	(D) Involve excavation outside the current site, defined as the area that is within the boundaries of the leased or owned
CE List_2018-11-20.xlsx	FirstNet		\$A\$40	[B.12.] Rebuilding of power lines or telecommunications cables where road or highway reconstruction requires the App
CE List_2018-11-20.xlsx	NOAA		\$A\$77	[H4.] "Acquisition of real property (including fee simple estates, leaseholds, and easements) that is not acquired throug
CE List_2018-11-20.xlsx	NOAA		\$A\$78	[H5.] "Granting easements or rights of entry to use NOAA controlled property for activities that, if conducted by NOAA
CE List_2018-11-20.xlsx	DLA		\$A\$55	29. Acquisition, installation, operation or privatization of utility (e.g. water, sewer, electrical) and communication system
CE List_2018-11-20.xlsx	DLA		\$A\$56	30. Grants of easements for the use of existing rights-of-way for roads, electrical power, telephone, and other transmis
CE List_2018-11-20.xlsx	DTRA		\$A\$26	13. Acquisition, installation, modification, routine repair and replacement, and operation of utility (e.g., water, sewer, an
CE List_2018-11-20.xlsx	MDA		\$A\$27	B-13. Acquisition, installation, modification, routine repair and replacement, and operation of utility (e.g., water, sewer,
CE List_2018-11-20.xlsx	USAF		\$A\$29	A2.3.12. Installing, operating, modifying, and routinely repairing and replacing utility and communications systems, da
CE List_2018-11-20.xlsx	USAF		\$A\$36	A2.3.19. Granting easements, leases, licenses, rights of entry, and permits to use Air Force controlled property for activi
CE List_2018-11-20.xlsx	DA		\$A\$51	(2) Acquisition, installation, and operation of utility and communication systems, mobile antennas, data processing cab
CE List_2018-11-20.xlsx	DA		\$A\$59	(1) Grants or acquisitions of leases, licenses, easements, and permits for use of real property or facilities in which there
CE List_2018-11-20.xlsx	DA		\$A\$60	(2) Disposal of excess easement areas to the underlying fee owner (REC required).
CE List_2018-11-20.xlsx	DON		\$A\$44	(29) Disposal of excess easement interests to the underlying fee owner;
CE List_2018-11-20.xlsx	DON		\$A\$48	(33) Grants of license, easement, or similar arrangements for the use of existing rights-of-way or incidental easements

63 cell(s) found

# Categorical Exclusion List

Council on Environmental Quality

Find what:  No Format Set Format...

Within:   Match case

Search:   Match entire cell contents

Look in:  Options <<

Find All Find Next Close

Book	Sheet	Name	Cell	Value
CE List_2018-11-20.xlsx	FMCSA		\$A\$136	cc. Special local regulations issued in conjunction with a motor vehicle rodeo or motor vehicle parade; provided that, if a per
CE List_2018-11-20.xlsx	FMCSA		\$A\$140	b. Approvals of motor vehicle rodeo and motor vehicle parade event permits for the following events:

<  >

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# Questions? Go to NEPA.gov

The screenshot shows the NEPA.gov website homepage. At the top, there is a navigation bar with the NEPA logo and the text "NEPA.GOV NATIONAL ENVIRONMENTAL POLICY ACT". To the right of the logo is a search bar with the placeholder text "Enter search request". Below the navigation bar is a horizontal menu with the following items: HOME, LAWS & REGULATIONS, GUIDANCE, GET INVOLVED, NEPA PRACTICE, CEQ PUBLICATIONS, and CEQ REPORTS. The main content area features a large blue banner with the text "INFRASTRUCTURE PERMITTING IMPROVEMENTS" and a "READ MORE" button. Below the banner, there is a "Welcome" section with a horizontal line. The text in the "Welcome" section reads: "The National Environmental Policy Act (NEPA) was enacted to: declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality. Sec. 2 [42 U.S. Code § 4321]. NEPA is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102 (2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. President Nixon signed NEPA into law on January 1, 1970. NEPA set forth a bold new vision for America. Acknowledging the decades of environmental neglect that had significantly degraded the nation's landscape and damaged the human environment, the law was established to foster and promote the general welfare, to create and maintain conditions under which

<https://ceq.doe.gov/index.html>

# Potential Roadblocks



# Factors That Can Extend the NEPA Timeline

- Project Complexity
- Public/Agency Controversy
- Workloads (DOT, consultant, agencies)
- Changes (design, staff turnover, scope)
- Project Management/Communication
- Indecision
- Contractual Issues
- Politics
- Funding



# Potential Challenges to Successful Execution of the EO

- Focus on Time vs Quality of NEPA documents
- Quality of decisions – fully informed?
- Shotgun approach to field analyses
- More detailed design during NEPA (for permits)
- State and Local Agencies



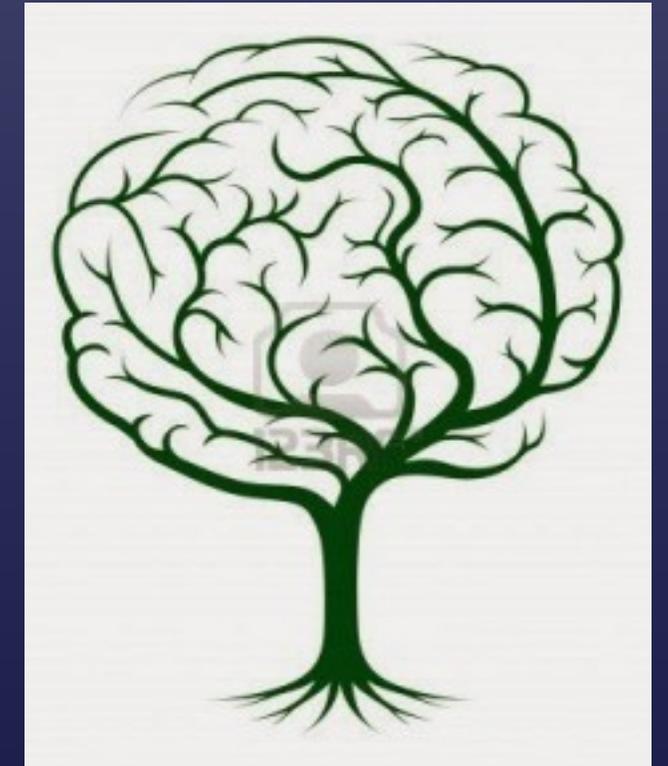
# OFD – Pre-NOI Checklist

- Identify Cooperating & Participating Agencies
- Draft Purpose and Need
- Draft Coordination Plan with permitting timetable
- Identify stakeholders & develop Public Involvement Plan
- Identify preliminary Range of Alternatives
- Determine the extent of analysis needed for each resource
- Initiate applicable resource surveys/studies
- Identify significant environmental issues
- Identify mitigation strategies
- Initiate permit activities ASAP



# So What Will it Take?

- Commitment
- Management
- Scheduling
- Communication/  
Collaboration
- Process Knowledge
- Risk Assessment
- Time



# Project Management & Teamwork

- Strong Leader
- “A Team”
- Commitment
- “All for one” atmosphere
- Partnerships



# Communication



- Regular Meetings
- Detailed Schedules/Deadlines
- Track Follow Ups
  
- Concurrent Reviews
- Attorney Engagement

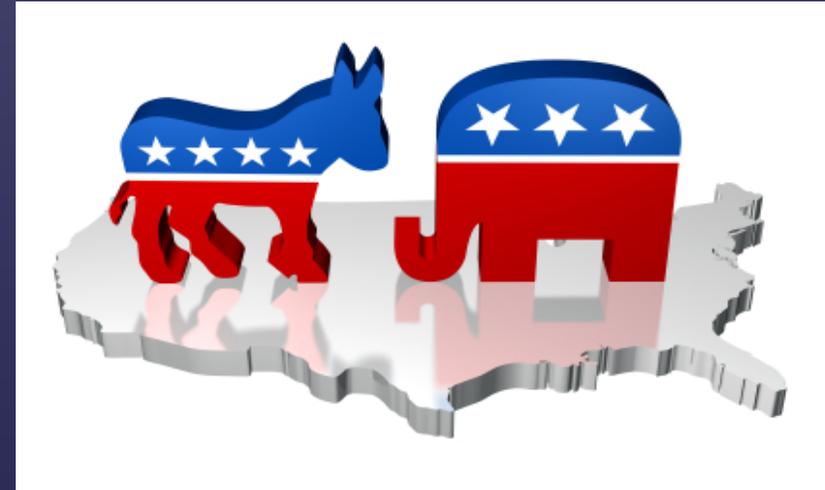
# Stakeholder Engagement

- Early and Often!
- ID issues early/innovative solutions
- EJ/Title VI
- Ask Why?
- Facilitators/Elevation process
- Sign agreements
- CSS/Stewardship



# Motivated Decision-Making

- Political pressure
- Grant deadline
- Letting schedule



# Environmental Issues Potters Mills Gap

- Federally Endangered bats
- High Quality Cold Water Stream; EV Wetlands
- State Forest lands/State operated nursery
- Wildlife crossing concerns
- Rural Historic District / Section 4(f)
- Productive agricultural land (PA Issue)
- Displacements
- Campground impacts



# Innovative Solutions – Section 4(f)

## Rural Historic District

- Programmatic Agreement - Mitigate adverse effect on the district
- Web link Story Map



# Innovative Solutions - Conference Opinion/In-Lieu Fee



Federally Endangered Indiana & Northern long-eared bats

- USFWS's on-line Biological Assessment (BA) tool
- Conference Opinion NLE bat
- In-Lieu fee

# Innovative Solutions – Wildlife Passage



## Wildlife Passage

- Replaced 185-foot arch culvert with a bridge to provide a wildlife crossing

# Innovative Solutions – Streams and Wetlands

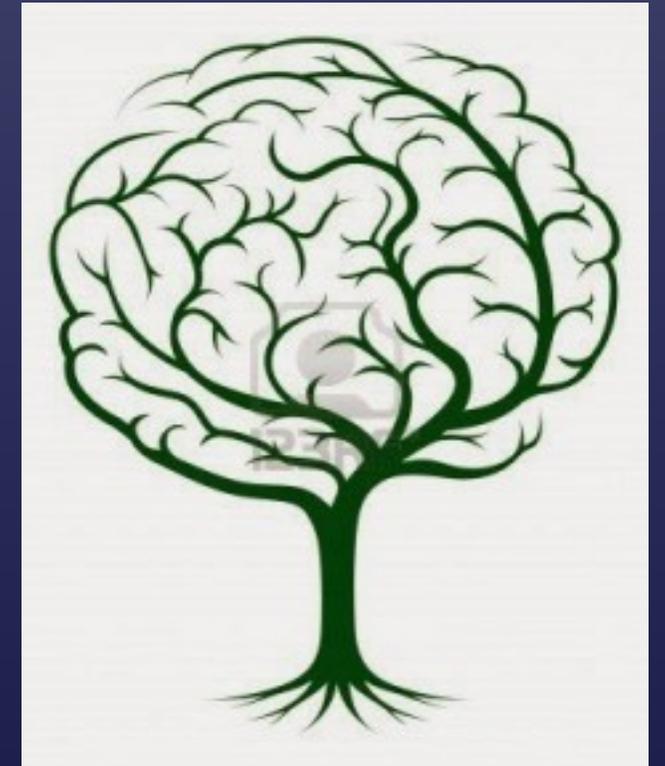


Collaborated with USACE, DEP, DCNR to:

- Restore old fire pond to a stream/wetland complex
- Remove dam; eliminate 1.5-acre heat sink

# So What Will it Take?

- Commitment
- Management
- Scheduling
- Communication/  
Collaboration
- Process Knowledge
- Risk Assessment
- Time



# ONE FEDERAL DECISION/INFRASTRUCTURE EXECUTIVE ORDERS: THE LEGAL PERSPECTIVE

## NEPA Compliance Is a Creature of Common Law

- Short statute; very few regulations; LOTS of litigation.
- An adequate process is what a judge (or three, or nine) says it is.
- Crucial legal assessments: getting beyond “I’ll know it when I see it.”

“The thing that hath been, it is that which shall be; and that which is done  
is that which shall be done: and there is no new thing under the sun.”  
Ecclesiastes 1:9 (King James version)

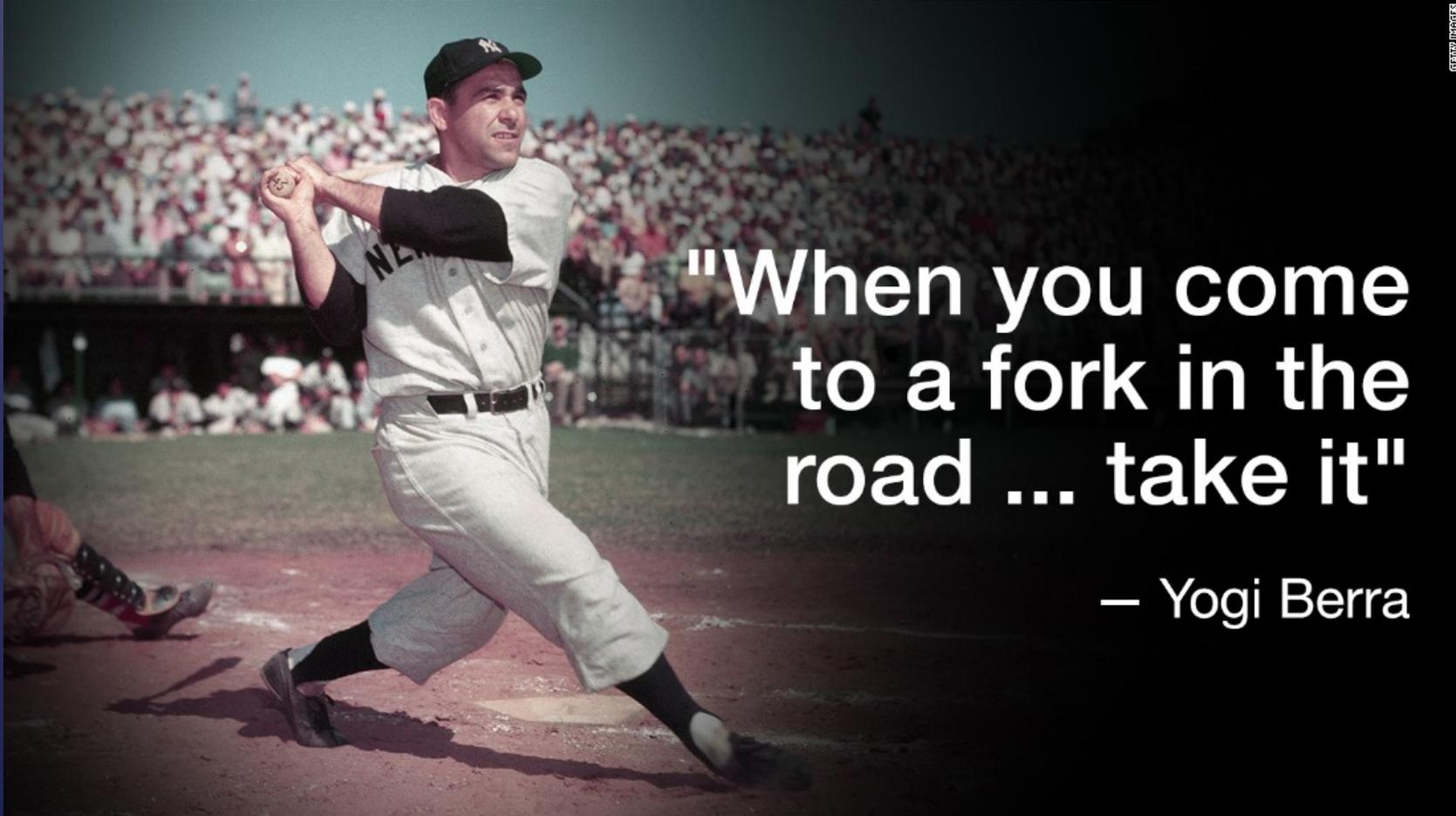


## WITH NOTABLE EXCEPTIONS, STREAMLINING AUTHORITY HAS BEEN HIDING IN PLAIN SIGHT

- Combining/adopting NEPA analyses?
- Issuing contemporaneous NEPA decision and permitting decision?
- Writing shorter, concise documents?
- Narrowing issues for consideration?
- Focusing on preferred alternative?

# SLOW, BUT STEADY PATH TOWARDS NEPA LEGAL REFORMS

- Original CEQ Regulations/“Forty Most Asked Questions”
- Consistent and Bi-Partisan Executive Orders
- Surface Transportation Reauthorization Statutes
- ANPRM for Revision of CEQ Regulations

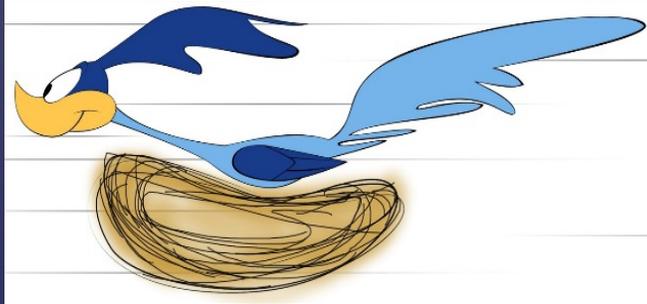


"When you come  
to a fork in the  
road ... take it"

— Yogi Berra

# KEY LEGAL CONCERNS WITH OFD/STREAMLINING

- How fast is too fast?



- How short is too short?



- How much is enough?



- When/how can the lead agency properly narrow the scope of analysis?
- How does one project decision/analysis honor separate and distinct legal authorities?
- How to balance public involvement with simplifying the decision-making process?

- When does good project planning permit issuing a FONSI?



- How to anticipate likely challenges in your administrative record?

- What litigation strategies can be employed to accompany administrative streamlining efforts?



# QUESTIONS?



# Today's Speakers

- Diane Nulton, *HDR, Inc.*,  
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- Ted Boling, *Council on Environmental Quality*, [Edward\\_A\\_Boling@ceq.eop.gov](mailto:Edward_A_Boling@ceq.eop.gov)
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