

ACORE Analysis:

The Bipartisan American Affordability and Jobs Act Reflects ACORE's 2025 Permitting Recommendations¹

October 2026

Over the last 50 years, we have seen tremendous progress in cleaning up our air and water, as well as supporting endangered species. Our economy and society have also changed substantially. The U.S. population has grown 67% since 1970, reaching 342 million people.² Over the same period, our economy grew from a GDP of just over \$1 trillion in 1970 to nearly \$33 trillion today.³ The economy has become more digital and consequently more electric. However, we are still relying on the same outdated and aging infrastructure. Just last year, according to the American Society of Civil Engineers (ASCE), the United States received a “D+” grade for our energy infrastructure.⁴

The introduction of the Bipartisan American Affordability and Jobs Act (BAAJA) represents a meaningful compromise that addresses greater efficiency and certainty for permitting, along with the critical need for transmission expansion and interconnection queue reforms. In the words of BAAJA's Senate sponsors, it “provides certainty that permitted energy and infrastructure projects will retain their permits absent extraordinary circumstances, violations of law, or court order, as well as targeted reforms for various energy projects.”⁵ Taken together, these reforms would better serve the economy, help unlock investments in clean, affordable, reliable electricity and provide a foundation for the future.

In November 2025, ACORE published its [2025 Permitting Principles and Policy Recommendations](#), outlining in detail ACORE's priorities for a permitting bill should one be released before the end of the 119th Congress. ACORE prioritized five overarching principles to guide policymakers toward sensible, bipartisan reform:

1. Predictability
2. Accountability
3. Efficiency
4. Transparency
5. Stakeholder Input

This resource identifies areas of alignment between ACORE's original recommendations and key provisions from BAAJA.

¹ NOTE: This issue brief is not an exhaustive list of all provisions contained in the BAAJA. It instead focuses on those provisions that align with what ACORE has already recommended. ACORE is supportive of additional provisions not highlighted here, particularly those related to transmission.

² “QuickFacts, United States,” U.S. Census Bureau, accessed Oct. 9, 2026, <https://www.census.gov/quickfacts/fact/table/US/PST045225>.

³ “U.S. GDP (1960-2026),” Macrotrends, accessed Oct. 9, 2026, <https://www.macrotrends.net/global-metrics/countries/usa/united-states/gdp-gross-domestic-product>.

⁴ “A Comprehensive Assessment of America's Infrastructure: 2025 Report Card for America's Infrastructure,” American Society of Civil Engineers, <https://infrastructurereportcard.org/wp-content/uploads/2025/03/Full-Report-2025-Natl-IRC-WEB.pdf>.

⁵ “Heinrich, Lee, Capito, and Whitehouse Introduce Bipartisan American Affordability and Jobs Act of 2026,” Democrat Press Releases, Senate Committee on Energy and Natural Resources, September 30, 2026, <https://www.energy.senate.gov/press/dem/heinrich-lee-capito-and-whitehouse-introduce-bipartisan-american-affordability-and-jobs-act-of-2026/>.

ACORE Policy Recommendations for Permitting & Corresponding BAAJA Provisions⁶

In May 2026, ACORE found that despite declining attractiveness of the United States as a venue for clean energy investment, surveyed companies plan to develop and finance more American clean energy projects in 2026 than they did in 2025. Despite this progress, project sponsors largely identify “federal regulatory and policy risks” and “interconnection uncertainty and costs” as the top risks facing future clean energy investments. Capital providers also consider transmission constraints to be a major risk, with 62% ranking it as either the first or second biggest risk for their clean energy portfolio in 2026.⁷

Moreover, according to a survey from Crux,⁸ more than 80% of clean energy developers said they intentionally site projects to avoid triggering federal permitting requirements, due to the resulting delays and cost increases, meaning that federal lands have ultimately lost out on development that would otherwise occur there. All respondents reported that permitting was a factor in at least some of their project delays.

Not only is the permitting process itself burdensome, but reforms have long been needed to reduce litigation delays. A recent analysis found that NEPA litigation added an average of almost four years to energy project development, with clean energy accounting for one-third of the litigated energy projects.⁹ Another study found that one-third of solar projects and half of wind projects completing an environmental impact statement (EIS) were then subject to litigation.¹⁰

However, in most cases, defendants prevail and are approved to continue developing their projects,¹¹ meaning that existing Federal laws designed to support our air, water, and endangered species do so effectively by allowing only legitimate projects to proceed. These laws, as well as BAAJA, are not designed to prevent projects from being halted where they do not comply with the law, but instead where extensive litigation slows down the overall project development process, preventing customers from receiving the benefits of affordable, reliable energy. BAAJA helps projects receive a “yes” or “no” faster.

Energy infrastructure has been increasingly politicized over the last decade, with different administrations promoting their “preferred” technologies, leading to easier or more difficult development processes depending on politics. For example, in July 2025, the

⁶ NOTE: For ease of reading, ACORE has truncated our original 2025 policy recommendations to highlight only the main points. To read the original recommendation in its entirety, please refer to the [2025 issue brief](#).

⁷ Lesley Hunter and Jeffrey Gorham, “Navigating Uncertainty: Expectations for Clean Energy Finance (2026-2029),” ACORE, May 2026, <https://acore.org/wp-content/uploads/2026/05/Report-Navigating-Uncertainty-ACORE-Investment-Survey.pdf>.

⁸ “The Impact of Federal Permitting on Clean Energy Development,” Crux, April 7, 2026, <https://www.crux.com/reports/impact-of-federal-permitting>.

⁹ “Understanding NEPA Litigation,” The Breakthrough Institute, July 11, 2024, <https://thebreakthrough.org/issues/energy/understanding-nepa-litigation>.

¹⁰ “Taking Green Energy Projects to Court: NEPA Review and Court Challenges to Renewable Energy,” Resources for the Future, October 2, 2025, <https://www.rff.org/publications/reports/taking-green-energy-projects-to-court-nepa-review-and-court-challenges-to-renewable-energy/>.

¹¹ Arthur G. Fraas, et al., “Taking Green Energy Projects to Court: NEPA Review and Court Challenges to Renewable Energy,” Resources for the Future, <https://www.rff.org/publications/reports/taking-green-energy-projects-to-court-nepa-review-and-court-challenges-to-renewable-energy/>.

Department of the Interior issued a memorandum¹² subjecting only wind and solar project authorizations to much more rigorous and time consuming reviews, which was also overturned by a district court. Later, in December 2025, the Department halted the construction of five fully permitted offshore wind projects. Each affected company successfully sued the Department and has since been allowed to resume work. Stakeholders and policymakers across the political spectrum agree: such discriminatory treatment and the prospect of permit revocation create significant uncertainty that can make financing, contracting, and equipment procurement more difficult.

Permitting certainty and technological neutrality, as well as other procedural provisions described below that seek to provide stability and predictability to the federal permitting process, will help prevent these trends in the future and restore confidence to investors and developers as they seek to build out the power grid.

ACORE Recommendation: Require permitting actions to be technologically neutral and avoid discriminatory policies and practices.

BAAJA Provision: Section 1402: Ensuring fairness for specific types of projects

- No policy may result in a “pattern of disparate treatment” against a single type of resource, as evidenced by that resource having a percentage of delays or denials that exceed the historical average over the past five years, and that such a pattern persists for 280 days after the enactment of the act. The burden of proof is on the agency.
- The plaintiff would be entitled to injunctive relief; reimbursement of reasonable attorney’s fees, litigation expenses, and costs incurred because of the delay; and punitive damages equal to 50-100% of the project's expected cost.
- The list of specific technologies that cannot be subject to "disparate treatment" includes onshore and offshore wind, solar, energy storage, transmission lines and other pipelines, as well as oil, natural gas and coal.

ACORE Recommendation: Prevent federal agencies from cancelling or suspending fully permitted projects, except under certain circumstances, such as the finding of a violation of law.

BAAJA Provision: Section 1401: Maintaining Federal authorizations or permits for projects with non-federal sponsors

- Agencies cannot reverse prior authorizations or permits or otherwise interfere with the construction of a permitted project unless an exception applies (court order, material breach, fraud or material misrepresentation, imminent threat to life, property, national security or defense, and request of permit holder). This applies to any project permitted or authorized on or after September 16, 2026.
- If a federal agency does violate this prohibition, then the project owner can sue, with the burden of proof being on the agency. If successful, the plaintiff is entitled to a

¹² Gregory Wischer, “Departmental Review Procedures for Decisions, Actions, Consultations, and Other Undertakings Related to Wind and Solar Energy Facilities,” U.S. Department of the Interior, July 2025, <https://www.doi.gov/libraries/pdf.js/web/viewer.html?file=https%3A%2F%2Fwww.doi.gov%2Fsites%2Fdefault%2Ffiles%2Fdocuments%2F2025-07%2Fdcos-pol-memo-doi-review-procedures-wind-and-solar-projects-2025-07-15-1-signed.pdf>.

reinstatement of the authorization or permit; injunction preventing further actions; reimbursement of reasonable attorney's fees, litigation costs and costs associated with the delay, and punitive damages of 25-50% of the project cost.

ACORE Recommendation: Ensure permitting agencies have sufficient resources and appropriately trained and experienced personnel.

BAAJA Provision: *Section 1133: Permitting Improvement Fund*

- Establishes a "Permitting Improvement Fund" within the Department of the Treasury that the Council on Environmental Quality (CEQ) can distribute to agencies to improve the performance of key permitting agencies with respect to NEPA reviews and authorizations. The Fund focuses on professional development of staff, detailee rotations, and support for regional and field offices, and similar efforts.

ACORE Recommendation: Ensure permitting agencies utilize electronic infrastructure to modernize and digitize the permitting process.

BAAJA Provision: *Section 1121: Council on Environmental Quality*

- This section directs the CEQ to create government-wide data standards, requiring agencies to adopt interoperable digital tools, and establishes an ePermit Unified Interagency Data System that allows agencies to share permitting information and coordinate reviews more efficiently. It also requires permitting agencies to assess their existing systems and begin deploying this technology, with the overall goals of reducing duplication, improving transparency and increasing interagency coordination.

ACORE Recommendation: Provide for meaningful community engagement conducted at a reasonably early stage of the process to maximize project success.

BAAJA Provisions: *Section 1102: Definitions: Record of Stakeholder Engagement; Section 1109: Applications for authorizations (b)(2); Section 1133: Permitting Improvement Fund (d)(5)*

- The bill requires a "Record of Stakeholder Engagement" that documents pre-application outreach to be submitted in the application for authorization. Specifically, the Record of Stakeholder Engagement must include:
 - A list of pre-application engagements with Federal agencies and the dates of those meetings;
 - A list of pre-application engagements with state, local, and Tribal officials and local community entities; and
 - A summary of feedback received and how that feedback was incorporated into the proposed action.
- The Permitting Improvement Fund may be used to improve opportunities for community engagement.

ACORE Recommendation: Provide accountability by identifying designated senior officials at the permitting agencies who can intervene to address and mediate delays or other project applicant concerns.

BAAJA Provisions: *Section 1106: Timely and unified Federal reviews (g)(1)(C) and (3)(A); Section 1132: Environmental Review and Permitting Tracker (d)(1)C and D); Section 2301: Historic preservation (c)(5)(B)(ii)*

- Provides for the chairman of the CEQ to facilitate the resolution of a dispute or delay of a project involving more than one agency. If it is not resolved, then the chairman may determine a resolution and order the relevant agencies to act.
- If a permitting agency fails to follow a resolution ordered by the chairman and the problem remains unresolved for 30 days, the CERPO, or Chief Environmental Review and Permitting Officer (an agency's senior permitting official), and other responsible senior managers must devote at least half of their work time to remedy the failure to meet the permitting deadline.
- The requirement to spend 50% of work time also applies to senior federal staff, as well as State and Tribal officials where deadlines for National Historic Preservation Act (NHPA) consultations are not met.
- The newly established Environmental Review and Permitting Tracker, covering all projects requiring an environmental assessment (EA) or EIS, among other data, would include the email address of a representative of the lead agency for the project. It would also include the status of compliance with each agency with respect to the applicable schedule and deadlines. The tracker is to be updated quarterly and would include each modification of the applicable schedule and the status of any litigation.

ACORE Recommendation: Reform the judicial review process and reduce litigation risk.

BAAJA Provisions: *Section 1110: Judicial review (NEPA); Section 1305: Judicial review (ESA)*

- Reduces the statute of limitations on the filing of a claim seeking judicial review from six years under the Administrative Procedure Act (APA) to 150 days from the date the authorization was published in the Federal Register for projects requiring an EIS or for other claims, when they were made public.
- Challenges go directly to the U.S. Court of Appeals in the circuit in which the project is located, eliminating U.S. District Court review and forum shopping. The Circuit Court has supplemental jurisdiction over all related claims, which consolidates all lawsuits related to the project in a single federal appeals court.
- Significantly narrows the circumstances for the Court to issue an injunction or vacatur only to occasions when there is a violation of federal law other than NEPA or NHPA; when one is needed to prevent irreparable harm to the plaintiff and when the balance of equities favors the plaintiff; and such injunction is in the public interest. In other cases, the only court remedy is a remand to the agency to correct errors or deficiencies within a timeline of no more than 180 days, with the authorization remaining in effect during the remand.

ACORE Recommendation: Expand the scope of FAST-41 coverage and encourage state participation by reducing the \$200 million project threshold and linking federal funds to state participation in the FAST-41 process.

BAAJA Provision: *Section 1132: Environmental Review and Permitting Tracker*

- Creates a government-wide Environmental Review and Permitting Tracker system (mentioned above) intended to provide transparency into project reviews and milestones, like the FAST-41 dashboard concept. The tracker covers all projects that require an EIS, or an EA that is behind schedule. Unlike the current dashboard, this tracker does not have a minimum cost threshold for project inclusion.

ACORE Recommendation: Obtain greater efficiency, transparency and certainty in the NEPA process by:

Avoiding duplication of processes and studies, such as through greater use of a Programmatic EIS.

BAAJA Provision: *Section 1107: Programmatic environmental document*

- A programmatic EIS or programmatic EA can remain valid for 10 years rather than five years, allowing agencies to extend the time frame for tiering project-specific reviews, thereby reducing repetitive environmental reviews.

Creating a thorough pre-application process to coordinate among relevant agencies and develop a comprehensive schedule with the applicant's input.

BAAJA Provision: *Section 1102: Definitions: Record of Stakeholder Engagement; Section 1109: Applications for authorizations (b)(2)*

- A "Record of Stakeholder Engagement" must be filed with the application and must include a description of the pre-application engagement with Federal agencies and/or state, local, and Tribal officials, as well as a description of how feedback from stakeholders was incorporated into the proposed agency action.¹³

Ensuring that the receipt of federal funding alone does not make a project subject to NEPA.

BAAJA Provision: *Section 1102: Definitions: Major Federal Action*

- Removes loans and grants from the definition of a "major Federal action," and changes the language for other funding from where a Federal agency does not exercise "sufficient" control and responsibility over the subsequent use and effects of such financial assistance to "predominant control" over the use and "environmental effects."

Only including alternatives in the environmental studies that are aligned with the goals and capabilities of the applicant.

BAAJA Provision: *Section 1106: Timely and unified Federal reviews*

- Eliminates from consideration any alternative (except for a no-action alternative) that does not fulfill the purpose and need of the proposed agency action, and meets the goals of an applicable non-federal project sponsor.

¹³ See discussion of the recommendation to provide meaningful community engagement at an early stage of the permitting process.

Expanding the use of categorical exclusions and establishing new categorical exclusions for low or no-impact activities, such as those on previously disturbed land.

BAAJA Provision: *Section 1106: Timely and unified Federal reviews; Section 1108: Use of categorical exclusions by other agencies*

- Section 1106 allows for the use of multiple categorical exclusions and categorical exclusions established by Congress.
- Section 1108 also requires the CEQ to maintain a government-wide public record of categorical exclusions.

ACORE Recommendation: Address delays that occur both before initiation of NEPA studies and after their completion by instituting clear deadlines. Ensure that agencies cannot require additional studies for minor changes or analyze impacts outside of the jurisdiction of their authority.

BAAJA Provision: *Section 1106: Timely and unified Federal reviews; Section 1109: Applications for authorizations*

- Completion timelines for EA's and EIS's remain the same as what was enacted in the Fiscal Responsibility Act of 2023: one year for EA's and two years for EIS's.
- Sections 1106 and 1109 add multiple other deadlines to key parts of the process that occur before and after the conduct of multiple studies, including the notification that an application is complete; the identification by the lead agency of all cooperating agencies; the determination of whether an environmental study is needed; and the issuance of a record of decision.

BAAJA Provision: *Section 1403: Avoiding unreasonable delays in permitting*

- For projects that do not trigger an EA or EIS but need other authorizations from more than one federal agency, there is a one-year timeline for a decision on all federal authorizations, starting from the date the last application is deemed complete.

ACORE Recommendation: Ensure appropriate coordination with other laws as directed under NEPA, such as the National Historic Preservation Act and the Endangered Species Act.

BAAJA Provision: *Section 1302: Timeline for Section 7 consultations; Section 1106: Timely and unified Federal reviews (g)(1)(B)(ii)(II)*

- Section 1302 shortens ESA Section 7 consultation from roughly 135 days to 100 days, creates a mechanism for applicants to challenge excessive delays, and requires Endangered Species Act (ESA) consultations to be completed within the timeline for the associated NEPA review.
- Section 1106 establishes a deadline of 90 days from the publication of the EA or EIS for participating agencies to issue a decision on outstanding authorizations, and 120 days for non-participating agencies.

2025 Policy Recommendations for Transmission & Corresponding BAAJA Provisions¹⁴

Interregional transmission lines require multiple state permits and can be held up by a single state, preventing the completion of lines that have widespread reliability and economic benefits. In 2025, only two miles of transmission above 500 kilovolts (kV) from a single project were constructed, and 400 miles of 345 kV and above,¹⁵ compared to an average of 942 new miles of these higher voltage lines from 2015-2019, and even further down from an average of 1,781 new miles from 2010-2014.¹⁶

This lack of progress contributed to serious consequences during Winter Storms Uri and Elliott, during which the grid couldn't transmit power from other regions to where it was needed. During Winter Storm Fern, by contrast, improved transmission prevented mass blackouts, even as the Midwest experienced spiking power demand.¹⁷

BAAJA requires regions to plan together and writes long-term interregional planning into law, so one region can back up its neighbor in a crisis. The bill also requires transmission owners to conduct evaluations of advanced transmission technologies (ATTs), promoting the use of existing lines while adding capacity and reducing congestion on the grid.¹⁸

ACORE Recommendation: Strengthen and streamline the Federal Energy Regulatory Commission's (FERC) backstop siting authority for transmission.

BAAJA Provision: *Section 2101: Transmission permitting*

- FERC backstop siting will no longer require the Department of Energy's approval of a National Interest Electric Transmission Corridor (NIETC).
- Provides that FERC "shall" issue a permit for construction or modification of a transmission line "necessary in the national interest."
- Maintains the one-year period for states to act on a transmission permit application but allows for the pre-application process to begin at FERC at any time before the state process and allows FERC to begin processing applications for any qualifying transmission project that is at least 345 kV simultaneously with the state processing.

ACORE Recommendation: Allow transmission developers of projects meeting a minimum voltage threshold and other characteristics to file a tariff for FERC cost allocation.

BAAJA Provision: *Section 2101: Transmission permitting*

¹⁴ NOTE: For ease of reading, ACORE has truncated our original 2025 policy recommendations to highlight only the main points. To read the original recommendation in its entirety, please refer to the [2025 issue brief](#).

¹⁵ "Energy Infrastructure Update for December 2025," FERC, April 9, 2026, <https://cms.ferc.gov/media/energy-infrastructure-update-december-2025-0>.

¹⁶ Nathan Shreve, et al., "Fewer New Miles," Grid Strategies LLC, July 2025, https://gridstrategiesllc.com/wp-content/uploads/ACEG_Grid-Strategies_Fewer-New-Miles-2025_Rev-1.pdf.

¹⁷ Katy Richards, "A Smarter, More Connected Grid: How BAAJA Helps Transmission," ACORE, October 5, 2026, <https://acore.org/resources/a-smarter-more-connected-grid-how-baaja-helps-transmission/>.

¹⁸ Ibid.

- Establishes tariff-based cost allocation for transmission facilities subject to FERC backstop siting, including a savings provision confirming that certain offshore transmission facilities may be eligible for that cost allocation framework.

ACORE Recommendation: Direct FERC to issue a rulemaking on comprehensive interregional transmission planning, recognizing the unique characteristics of each region.

BAAJA Provision: Section 2103: Transmission planning

- Directs FERC to issue a rulemaking within 180 days requiring the planning regions to file regional and interregional transmission planning processes two years after enactment of BAAJA.
- Transmission developers of such facilities also file for cost allocation at FERC.
- Facilities selected in these plans automatically meet the criteria for eligibility for backstop siting.

ACORE Recommendation: Promote the use of grid enhancing technologies and high-performance conductors, such as through shared savings incentives.

BAAJA Provision: Section 2109: Advanced Transmission Technologies

- FERC must issue a rule within one year of enactment on advanced transmission technologies (ATTs).
- FERC must establish rules under which transmission-owning utilities regularly evaluate where ATTs are cost-effective, deploy them when their benefits exceed costs, and report those analyses and decisions to FERC.

The Bipartisan American Affordability and Jobs Act of 2026 includes important provisions that will improve the efficiency and accountability of the permitting process and spur the development and modernization of much-needed transmission infrastructure. ACORE welcomes the introduction of this bill and the progress it could bring to project sponsors, American consumers and the broader economy.