Permitting Council

Federal Permitting Improvement Steering Council
Recommended Best Practices

Fiscal Year 2024

Contents

Federal Permitting Improvement Steering Council

Acknowledgments

The Federal Permitting Improvement Steering Council (Permitting Council) issues these recommended Best Practices pursuant to 42 U.S.C. § 4370m-1(c)(2)(B).

The Permitting Council is comprised of the Executive Director (Permitting Council Chair), the Deputy Secretaries (or equivalent) from 13 Federal agencies, the Chair of the Council on Environmental Quality, and the Director of the Office of Management and Budget.

Department of Agriculture

Department of the Army

Department of Commerce

Department of Energy

Department of Transportation

Department of Defense

Federal Energy Regulatory Commission

Department of Homeland Security

Nuclear Regulatory Commission

Department of Housing and Urban Development

Advisory Council on Historic Preservation

Office of Management and Budget

Council on Environmental Quality

Environmental Protection Agency

Department of the Interior

Background

The Federal Permitting Improvement Steering Council (Permitting Council) is required to issue annual recommendations on best practices for improving the Federal permitting process for "covered projects" under Title 41 of the Fixing America's Surface Transportation Act (FAST-41)[1]. Each lead agency and participating agency for FAST-41 covered projects must submit to Congress and the Director of the Office of Management and Budget (OMB) an annual report assessing agency performance in implementing these best practice recommendations.[2]

FAST-41 provides that the Permitting Council's best practice recommendations may include the following categories:[3]

i.   enhancing early stakeholder engagement, including—

    I.   engaging with Native American stakeholders to ensure that project sponsors and agencies identify potential natural, archeological, and cultural resources and locations of historic and religious significance in the area of the covered project; and

    II. fully considering and, as appropriate, incorporating recommendations provided in public comments on any proposed covered project;

ii. ensuring timely decisions regarding environmental reviews and authorizations, including through the development of performance metrics;

iii. improving coordination between Federal and non-Federal governmental entities, including through the development of common data standards and terminology across agencies;

iv. increasing transparency;

v.   reducing information collection requirements and other administrative burdens on agencies, project sponsors, and other interested parties;

vi. developing and making available to applicants appropriate geographic information systems and other tools;

vii. creating and distributing training materials useful to Federal, State, tribal, and local permitting officials;

viii. in coordination with the Executive Director, improving preliminary engagement with project sponsors in developing coordinated project plans;

ix. using programmatic assessments, templates, and other tools based on the best available science and data; and

x.   addressing other aspects of infrastructure permitting, as determined by the Council.[4]

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1 42 U.S.C. § 4370m-1(c)(2)(B).
2 42 U.S.C. § 4370m-7(a)(3).
3 42 U.S.C. § 4370m-1(c)(2)(B).
4 42 U.S.C. § 4370m-1(c)(2)(B)

Best Practices Prior to FY 2024

The Permitting Council has issued best practices annually since 2017. Prior to the passage of Infrastructure Investment and Jobs Act (IIJA)[5], FAST-41 required the Executive Director to evaluate each Permitting Council member agency's progress in implementing the best practices. The Executive Director reported on agency progress in its Annual Report to Congress. Annual Reports to Congress for Fiscal Years (FY) 2016-2021 can be found [here](#).

With the passage of IIJA in November 2021, Congress added three categories to the statutory list of best practice recommendations at 42 U.S.C. § 4370m−1(c)(2)(B):

(i)(I) engaging with Native American stakeholders to ensure that project sponsors and agencies identify potential natural, archeological, and cultural resources and locations of historic and religious significance in the area of the covered project;

(viii) in coordination with the Executive Director, improving preliminary engagement with project sponsors in developing coordinated project plans; and

(ix) using programmatic assessments, templates, and other tools based on the best available science and data.

The Permitting Council issued best practices for FY 2022 solely in the three new categories. This allowed agencies to focus on implementing the new categories highlighted by Congress without precluding agencies from continuing to implement and report on previously issued best practices.

For FY 2023, the Permitting Council republished all best practices from FY 2018-2022, providing an opportunity for Permitting Council agencies to revisit established best practices, identify redundancies, and reflect on which best practices have been the most successful in improving the Federal permitting process for covered projects. It also allowed agencies to evaluate their progress toward implementation of the suite of best practices published since 2018 and identify their priority areas for future best practice development and implementation.

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5 Pub. L. No. 117-58, Infrastructure Investment and Jobs Act (IIJA) 135 Stat. 429 (Nov. 15, 2021).

FY 2024 Best Practices Approach

While FAST-41 sets forth ten best practice categories, it does not require that the Permitting Council issue best practices in all ten categories each year. For FY 2024, the Permitting Council is issuing best practices under a subset of the ten categories identified in the statute. Issuing best practices under only selected categories will allow affected agencies to focus their efforts in these target areas, and collect data and information needed to meaningfully assess the impacts of the implementation of these best practices.[6] Agencies may continue implementing and reporting on best practices from prior years and may report on other best practices self-identified as priorities for the agency, if desired, but must report on the best practices issued in this document. The best practices for FY 2024 are intended to be actionable and measurable by each agency, which will assist the Permitting Council in assessing impacts of best practices across the Federal agencies and moving toward a set of meaningful, transformative, and evidence-based best practices that will drive improvements that lead to timely and efficient environmental reviews and authorizations.

In its review of Agency Permitting Action Plans, the Permitting Council – in coordination with OMB and the Council on Environmental Quality (CEQ) – identified three key elements for agencies to implement as best practices: (1) tracking and reporting environmental and community outcomes; (2) tracking and reporting the status of reviews and permitting; and (3) establishing and implementing issue elevation procedures. By identifying these Permitting Action Plan elements as FAST-41 best practices, the Permitting Council seeks to encourage baseline practices and activities across agencies to foster continual improvement in the Federal environmental review and authorization process.

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6 Any agency that is a lead or facilitating agency for a FAST-41 covered project must annually report on its implementation of the FAST-41 best practices, regardless of whether the agency is represented by a Permitting Council Member.

FY 2024 Best Practices

1. Tracking and Reporting Environmental and Community Outcomes

Develop and implement systems to track and report qualitative and quantitative environmental and community outcomes resulting from the environmental review and authorization process.
This best practice implements Category ii: ensuring timely decisions regarding environmental reviews and authorizations, including through the development of performance metrics; and Category x: addressing other aspects of infrastructure permitting, as determined by the Council.

Agencies use the environmental review process to assess reasonably foreseeable environmental (e.g., ecological resources, cultural resources, and public health) and community (e.g., employment, community cohesion, and displacement) outcomes of a project. Consistent with applicable statutes and informed by community-based processes (e.g., public comment and community engagement), agencies may request that project sponsors make project design modifications or implement other features such as avoidance, minimization, and compensatory mitigation measures to yield positive outcomes through the environmental review and authorization process. Agencies may place conditions on approvals that require project sponsors to mitigate potential adverse effects of a project on the environment and communities in the affected area, particularly disproportionately high and adverse effects on communities with environmental justice concerns, including communities of color, Tribal and Indigenous communities, low-income communities, and other vulnerable populations. Tracking and reporting environmental and community outcomes is a critical element of an agency's accountability and transparency to the public.

When agencies are currently unable to report on this best practice, they should provide a narrative explaining why reporting is not possible with steps the agency will take to work towards the ability to report on this metric in the future.

Effective systems for tracking and reporting environmental and community outcomes should:

A.   be used consistently across agency staff involved in the environmental review process;

B.   include qualitative and quantitative descriptions of a project's environmental and community effects over the lifetime of the project;

C.   include processes and mitigation measures developed to address a project's effects, including measures that are community-led or based;

D.   demonstrate how agencies modify projects or implement mitigation measures in response to assessments;

E.   document how community input has been incorporated in projects design changes or the development of mitigation measures;

F.   include monitoring to ensure the agency follows through on minimization and mitigation commitments made during environmental review and authorizations;

G.   be regularly reported and updated on the Permitting Dashboard to ensure transparency for the public;

H.   provide summary data on key indicators of environmental quality and, community impact; and

I.   summarize outcomes in plain language.

2. Tracking and Reporting the Status of Reviews and Permitting

Establish or improve internal project management systems to support effective monitoring of environmental review and permitting status. This best practice implements Category ii: ensuring timely decisions regarding environmental reviews and authorizations, including through the development of performance metrics.

Effective tracking and monitoring drives continuous improvement of the timeliness of environmental review and authorization decisions. Monitoring systems and processes should track project and timeline information for environmental reviews and authorizations. Critical data that agencies should track include indicators related to the timely completion of environmental reviews and authorization decisions. Agency tracking and monitoring approaches should:

A. Assign clear roles and responsibilities;

B. Include feedback loops so data informs decision making;

C. Define and track the duration between an agency's engagement with and/or initiation of a project and the final approval/decision on the project's review/authorization;

D. Identify how many reviews under the National Environmental Policy Act (NEPA) are in active review and other salient NEPA information such as changes in Class of Action (to provide context for the FAST-41 covered projects under review);

E. Be visible and accessible to internal staff as well as across other Federal agencies to advance consistency and shared learning, including by:

    a. Consistently training employees on the use of tracking and monitoring systems; for example, as part of onboarding programs.

    b. Connecting tracking and monitoring systems across Federal agencies, including application programming interfaces (APIs) and GIS layers;

    c. Creating pathways for shared learning and improvement across Federal agencies;

F. Contribute to tracking and management of internal workloads related to environmental reviews and authorizations, including by:

    a. Tracking level of effort (staff hours) to meet environmental review/authorization requirements (e.g., how much staff time does it take to complete a Section 106 consultation for a project).

    b. Identifying where in the review process different staff expertise and skill sets are needed and where bottlenecks may be occurring;

G. Leverage Executive Director Quarterly Performance Reports to identify and troubleshoot issues and implement process improvements; and

H. Demonstrate benefits of any resources or other expenditures supported by the Environmental Review and Improvement Fund (ERIF), including tracking of interagency agreements and impacts of work undertaken using ERIF funds.
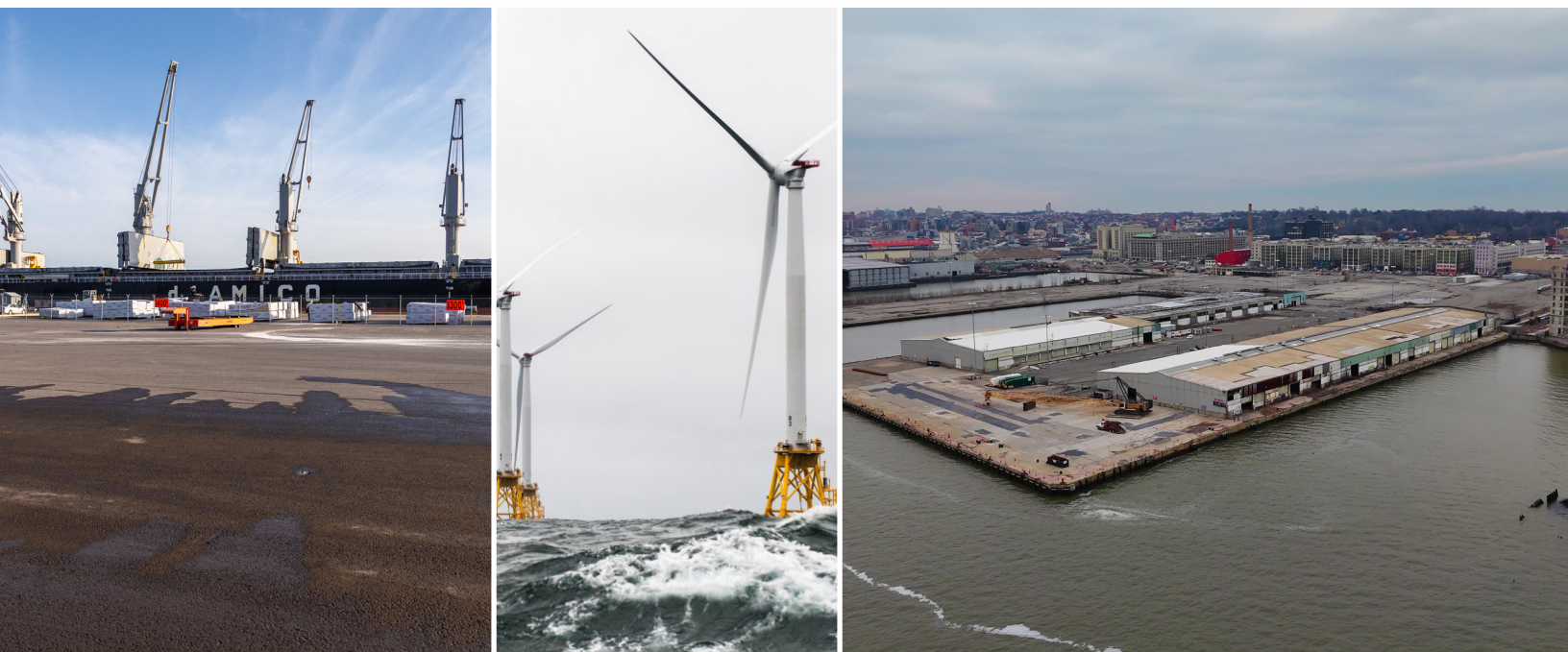
This best practice aligns with the direction in the OMB Circular No. A-11 on Preparation, Submission, and Execution of the Budget that:

Agencies should identify performance indicators and data that are meaningful for analyzing progress in advancing the environmental review and permitting process for infrastructure projects. Performance indicators and data should be accurate and timely, help inform decision making, identify areas for process improvements and increased collaboration, identify resource needs, and drive progress towards improved outcomes. Agencies should establish performance indicators and targets related to the timely completion of environmental reviews and authorization decisions, increased coordination and transparency, and improved environmental and community outcomes, including public engagement opportunities and implemented mitigation measures.

Agency Best Practice Example

OMB, CEQ, and the Executive Director engaged in an iterative process with agencies to review and assess agency permitting action plans. Among various strategies and elements assessed through this review, OMB, CEQ, and the Executive Director reviewed the tracking systems and key performance indicators identified by agencies as practices used to monitor performance. The Permitting Council recommends that agencies review the following example from an agency with relatively mature tracking and monitoring processes and consider adapting and integrating a similar approach into their own tracking and monitoring, as appropriate. Based on this example, a mature tracking and monitoring process might include a list of broad goals the program should achieve. For each goal, the agency may define specific criteria that, if achieved, indicate successful accomplishment of that goal.

Figure 1. Highlights of United States Army Corps of Engineers' (USACE) Tracking and Monitoring Approach

The USACE Regulatory Program uses "Mission Success Criteria" to serve as indicators of program performance. These Mission Success Criteria consist of five mission goals that each have one or more success criteria with targets that may vary annually based on program funding levels. The mission goals include:

1. Transparent Practices and Engagements with Applicants/Consultants and Stakeholders

2. Implementation of the Regulatory Development Plan (i.e., the training plan)

3. Timely Permit Decisions

4. An Effective Compliance Program

5. Third-Party Mitigation Evaluation (including mitigation banks and in-lieu fee programs)

The USACE Regulatory Program uses a database called Operations and Maintenance Business Information Link Regulatory Module (ORM) to track Regulatory permit actions and associated actions. The Section 408 program uses a similar database to track 408 actions. These databases are used to inform a public-facing site ("USACE Permit Finder") that includes information about final and pending individual permits, 408 permission decisions, and approved jurisdictional determinations, among other actions. ORM also allows the Regulatory Program to track performance relative to the Mission Success Criteria.

3. Establishing and Implementing Issue Elevation Procedures

Establish or improve and implement internal processes for issue identification, elevation, and resolution. This best practice implements Category ii: ensuring timely decisions regarding environmental reviews and authorizations, including through the development of performance metrics.

Effective issue elevation procedures can improve the timeliness of environmental review and authorization decisions. FAST-41 establishes dispute resolution procedures for the Executive Director, in consultation with appropriate agency CERPOs and the project sponsor, to, as necessary, mediate any disputes regarding the permitting timetable.[7] Agency internal issue elevation procedures are distinct from and complement the FAST-41 dispute resolution process.

Internal agency issue elevation procedures should address schedule delays, disputes, and other issues; elevate issues to senior officials internally; and, as needed, elevate issues to the Permitting Council. Agency issue elevation procedures should:

    A.   Assign clear roles and responsibilities;

    B.   Establish well-defined triggers and timelines for action;

    C.   Strive for resolution at the lowest organizational level; and

    D.   Define communications protocols.

Agency Best Practice Examples

OMB, CEQ, and the Executive Director engaged in an iterative process with agencies to review and assess agency Permitting Action Plans. Agency elevation procedures are among the various strategies and elements assessed through this review. The Permitting Council recommends that agencies review the following two examples from agencies with mature issue elevation processes and consider adapting and integrating these approaches into their own issue elevation processes, as appropriate.

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7 42 U.S.C. §4370m–2(c)(2)(C).

Figure 1. United States Department of Transportation (USDOT) Issue Elevation Process[8]

1. Identification & Determination

- Identify milestone delay[1]
- The Lead Federal Agency determines whether: (1) the milestone delay leads to a delay of the final action by more than 30 days, and (2) the milestone delay is within the Federal Government's control.
- If yes to both, the elevation process has been triggered.

2. Notification

- The Lead Federal Agency should reflect that the elevation process has been triggered in the back end of the Permitting Dashboard within seven days
- Notification should be made to the OA's Headquarters Environmental Office that the elevation process has been triggered.
- The OA's Headquarters Environmental Office will provide an update on the status of the elevation process during the next OST - OA coordination meeting and Transportation Rapid Response Team (TRRT) meeting.

3. OA Elevation

- Within 14 days of triggering the elevation process, the Lead Federal Agency shall develop a project-level plan to remedy the delay with the affected agencies.
- Use OA Elevation processes[2] as needed to address any disputes and remedy the delay.
- Report the delay of the milestone, the remedy, the impact the delay has on completing the action, and the effect on the overall project timeline in the next OST - OA coordination meeting and TRRT meeting.

4. OST Elevation

- Within 14 days of triggering the elevation process, the Lead Federal Agency shall develop a project-level plan to remedy the delay with the affected agencies.
- Use OA Elevation processes[2] as needed to address any disputes and remedy the delay.
- Report the delay of the milestone, the remedy, the impact the delay has on completing the action, and the effect on the overall project timeline in the next OST - OA coordination meeting and TRRT meeting.

5. Permitting Council Elevation

- If DOT's CERPO is unable to resolve the issue within 14 days, the CERPO will notify DOT's Permitting Council member who will contact relevant Permitting Council members at the affected agencies.

[1] A milestone delay may be a missed milestone date or a delay to a future milestone target date.

[2] The DOT Issue Elevation Process does not supersede the issue identification and resolution process in 23 U.S.C. 139(h) for certain surface transportation projects.

8 OA - Operating Administration; OST - Office of the Secretary of Transportation

Figure 2. USACE's Elevation Procedures for Dispute Resolution and Schedule Delays for FAST-41 Covered Projects and Transparency Projects *(cont. on next page)*

For Dashboard projects that are not transportation projects subject to 23 U.S.C. 139, the Corps will use the following procedures:

In General:

Districts should strive to resolve all issues and disputes at the earliest time and lowest level possible, including issues and disputes raised by other agencies.

EIS Timeline Extensions:

When the Corps is the lead agency and a district determines it cannot complete an EIS within two years, as measured from the date of issuance of the NOI to the date of the ROD, the district will request written approval for a longer time period from the ASA(CW) through existing HQ procedures, as required by 40 CFR § 1501.10(b)(2).

The Corps CERPO must be made aware of the following:

1. Any instance where a known dispute is to be elevated to another CERPO, senior agency official, or the FPISC Executive Director for resolution.

2. Any schedule delay that would result in a Corps milestone(s) being missed or extended such that the final target completion date for the associated Corps action would be delayed by more than 30 calendar days. For FAST-41 covered projects, the rationale for delay will be documented in a justification memo for the FPISC Executive Director that is coordinated with the CERPO prior to submittal to FPISC by Corps HQ. For FAST-41 transparency projects, when the delay to final Corps milestone(s) is due to applicant actions or delays (e.g., the applicant has delayed submittal of their permit application or has not provided information needed for the Corps application) or other reasons outside the control of the Corps, the CERPO may be informed by HQ staff. Delays to final Corps milestones by more than 30 calendar days due to Corps internal reasons will require a briefing to the CERPO from the relevant division/district for FAST-41 covered and transparency projects. The CERPO may request a briefing for other schedule delays, as appropriate. District and division staff should refer to the Corps' internal FAST-41 date change coordination procedure for additional details on coordination requirements amongst the vertical chain regarding milestone date changes for FAST-41 covered and transparency projects.[9]

3. Any issues pertaining to the purpose and need, alternatives, or other issues that, when the Corps is the lead agency, cooperating agencies plan to elevate to the Corps senior agency official pursuant to 40 CFR § 1501.8(b)(6). If possible, such issues should be resolved at the lowest level possible through the "Elevation Procedures for Disputes", outlined below; however, if districts become aware of a cooperating agency's intent to immediately notify the Corps senior agency official, the Corps CERPO should be informed as soon as possible.

4. District POCs should inform the Corps CERPO of instances outlined in paragraphs (1)-(3) through the appropriate Regulatory and/or 408 Division and HQ POCs, as applicable. District and Division Regulatory/408 staff should also ensure that the District Commander and an appropriate Division senior official are informed of such instances prior to CERPO notification (with one exception – District and Division Regulatory/408 staff have discretion on whether to inform the District Commander and Division senior official of date changes to final milestones in transparency project timetables of over 30 calendar days that would be made for reasons outside of Corps control). Elevation beyond the CERPO level will be facilitated by the CERPO and Corps HQ.

Elevation Procedure for Disputes:

a. Should district staff identify a dispute that, if not resolved, may result in missing a Corps-responsible milestone in a permitting timetable and/or a decision inconsistent with law, regulation, or agency policy, the district Regulatory and/or district 408 project manager(s) and the project managers' district Regulatory/408 supervisory chain of command will have 21 calendar days from identification of the dispute to resolve the matter at the staff level before the issue must be elevated. If the dispute cannot be resolved, district Regulatory and/or district 408 program staff must notify the District Commander or his/her designee within 21 days of identification of the dispute. This written notice should consist of a fact sheet that clearly states in detail the specific dispute identified by Corps staff; the consequence, including potential delay, of failing to resolve the dispute; and the recommended resolution.

[9] As discussed above, this coordination procedure is under development and will be completed by Corps HQ shortly after finalization of our Agency Action Plan.

Figure 2. USACE's Elevation Procedures for Dispute Resolution and Schedule Delays for FAST-41 Covered Projects and Transparency Projects *(cont.)*

b.   *When the Corps is the lead agency:*

The District Commander or his/her designee will coordinate with entity(ies) involved in the dispute (i.e., the cooperating or other agency's locally responsible senior official (e.g., Department of the Interior Regional Administrator) or designee, or the project applicant), and decide whether the issue can be expeditiously resolved. For disputes involving other agencies, coordination of the dispute with the cooperating or other agency's locally responsible senior official shall consist of a written notice describing in detail the specific issue or dispute, the initial dispute notification, any formal written correspondence between the disputing agency and the Corps, the consequence(s) to the project schedule of failing to resolve the issue or dispute, and the recommended resolution. Discussion may occur with the relevant cooperating or other agency via a meeting. Coordination of disputes with applicants may occur via a meeting with the applicant and any involved agencies.

If the dispute is not resolved within 21 days from the written coordination with the cooperating/other agency or the meeting with the applicant, the District Commander will notify an appropriate Division senior official. Depending on the nature of the dispute, the District Commander may notify the Division senior official of the dispute prior to 21 days, particularly if a milestone is near. If the dispute is not resolved within 21 days following notification of the Division senior official, the Corps CERPO must be notified. Where necessary, the CERPO will facilitate interagency coordination at the headquarters level. Such coordination may include discussion with the relevant sector team, where applicable and appropriate.

c.   *When the Corps is a cooperating agency:*

The same procedure described for the Corps as lead agency should be used (unless the Corps has agreed to use the lead agency's dispute resolution procedure, or the Corps and the lead agency have agreed to follow a project-specific dispute resolution process that achieves the same goal), with the following additional step:

(1) When a dispute elevated to the Corps CERPO as described above pertains to the purpose and need, alternatives, or other issues that may affect the district's ability to meet the schedule in the permitting timetable per 40 CFR § 1501.8(b)(6), the Corps CERPO will coordinate the issue with the lead agency's CERPO. If the dispute is not resolved within 21 days following notification of the Corps CERPO, the Corps CERPO will notify our Permitting Council member, deputy ASA(CW), to facilitate coordination with the lead agency's senior agency official.

d.   Other disputes that do not impact the ability of the Corps to meet a permitting timetable/Dashboard schedule milestone or would not result in a decision inconsistent with law, regulation, or policy may also follow this elevation process, as necessary.