

The Honorable Maria Cantwell  
U.S. Senate  
Chair  
Senate Committee on Commerce, Science,  
and Transportation  
254 Russell Senate Office Building  
Washington, DC 20510

The Honorable Ted Cruz  
U.S. Senate  
Ranking Member  
Senate Committee on Commerce, Science,  
and Transportation  
512 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Sam Graves  
U.S. House of Representatives  
Chair  
House Committee on Transportation &  
Infrastructure  
2164 Rayburn House Office Building  
Washington, DC 20515

The Honorable Rick Larsen  
U.S. House of Representatives  
Ranking Member  
House Committee on Transportation &  
Infrastructure  
2165 Rayburn House Office Building  
Washington, DC 20515

Dear Chairs Cantwell and Graves and Ranking Members Cruz and Larsen,

America's seaports, represented by the American Association of Port Authorities (AAPA), are the center of our nation's trade and transportation systems. International trade through seaports accounts for over a quarter of the U.S. gross domestic product (GDP). Seaports handle approximately \$6 billion worth of import and export goods daily, generate nearly 31 million jobs, and provide more than \$378 billion annually in federal, state and local tax revenues. As Congress begins its new session in 2023, we would like to thank you for your work in 2021 and 2022 on legislation that delivered billions of dollars in new funding to the port industry. This funding will bolster maritime infrastructure through funding for the Army Corps of Engineers, the Port Infrastructure Development Program, and more.

Now that the Federal Agencies are tasked with spending these funds efficiently and effectively, it is more critical than ever that Congress pass improvements to permitting policy that help project sponsors avoid long delays and initiate projects that deliver critical exports and imports to and from American consumers and manufacturers. AAPA is supportive of legislative proposals to speed up the National Environmental Policy Act (NEPA) process, including by setting time limits for Agencies to complete their reviews.



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In addition to those proposals, we also have two proposals that will specifically help the port and maritime industry get shovels in the ground faster, without sacrificing environmental protection. In any proposal to make permitting more efficient, it is crucial that changes not sacrifice environmental protection. Ports are stewards of their land and marine environments, and do not seek changes that allow construction to cut corners. Rather, AAPA believes there are bipartisan, reasonable changes that can be made to federal permitting processes that ease administrative burdens and provide more clarity to project sponsors.

### **Allow Port Projects to Come under Federal Permitting Improvement Steering Council (FPISC) Jurisdiction**

The creation of FPISC was smart policy, and the Agency was created by a bipartisan coalition of lawmakers. FPISC aids project sponsors by bringing various Federal Agencies together and smoothing out bureaucratic delays. One AAPA member port currently has a project in FPISC's portfolio, and we look forward to seeing this case study yield great results in the form of an expeditious permitting process. Unfortunately, there is a minimum project size of \$200 million for FPISC to take on a project. Most port projects do not meet this threshold, despite their critical importance to the national supply chain. We respectfully ask that Congress pass an exemption to this \$200 million threshold to allow projects *critical to the national freight transportation supply chain* to come under FPISC's "covered project" jurisdiction.

### **Require the Department of Transportation (DOT) to Update the Maritime Administration's (MARAD) List of Categorical Exclusions (CEs)**

When a Federal Agency deems that a project will have no significant impact on the environment, a CE is granted as the result of a NEPA review. This can occur when a project sponsor is simply realigning roads or railways on existing property or renovating existing buildings. Unfortunately, MARAD's list of CEs is woefully out of date and does not reflect



ports' modern role as multimodal hubs. [MARAD's list of CEs](#) was written in 1985, 38 years ago. The document was written on a *typewriter*. It is past time that DOT and MARAD issue a notice of proposed rulemaking to update MARAD's CEs for the modern age.

There is recent precedent for this rulemaking, in the form of a [rule issued for the Federal Railroad Administration \(FRA\)](#), finalized in 2018. This rule was required by [Section 11503 of the FAST Act](#), which read, in part, as follows:

“(b) ADDITIONAL CATEGORICAL EXCLUSIONS.—Not later than 6 months after the date of enactment of the Passenger Rail Reform and Investment Act of 2015, the Secretary shall—

“(1) survey the use by the Federal Railroad Administration of categorical exclusions in transportation projects since 2005; and “(2) publish in the Federal Register for notice and public comment a review of the survey that includes a description of— “(A) the types of actions categorically excluded; and “(B) any actions the Secretary is considering for new categorical exclusions, including those that would conform to those of other modal administrations. “(c) NEW CATEGORICAL EXCLUSIONS.—Not later than 1 year after the date of enactment of the Passenger Rail Reform and Investment Act of 2015, the Secretary shall publish a notice of proposed rulemaking to propose new and existing categorical exclusions for railroad projects that require the approval of the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including those identified under subsection (b), and develop a process for considering new categorical exclusions to the extent that the categorical exclusions meet the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations.

Congress should pass a law with a similar directive to DOT to study the use of CEs for MARAD-sponsored projects and update MARAD's CEs, including through the adoption of CEs currently in use by FRA and Federal Highway Administration (FHWA). Ports, as multimodal hubs, have jurisdiction over roadway and railroad projects, in addition to waterways. Allowing ports to utilize roadway and railroad CEs will get projects constructed faster, without sacrificing environmental protection.

This is not simply an academic exercise. AAPA members have been in this situation, with projects overseen by MARAD that employ road and rail components. In one example, a port was seeking to realign roadways on existing port property to reduce truck congestion, which would result in more efficient movement and reduce fumes from idled trucks. This project was



overseen by MARAD but required a FHWA CE. MARAD instructed the port to ask FHWA to apply its CE, and FHWA denied the request. The result was a year long NEPA review by MARAD that ultimately resulted in a Finding of No Significant Impact (FONSI), allowing the project to proceed. The port ultimately had to bring on a consultant and subcontractor, at substantial cost, in order to move the project forward. If the above request were law, this project could have proceeded with a CE in three months or fewer, resulting in healthier air and more efficient movement at the port.

AAPA thanks Congressional leaders for rightly recognizing the importance of ports to our national supply chain. Historic levels of funding finally will allow ports to fund much needed improvements to infrastructure that moves American exports, the food that stocks grocery shelves, medical supplies, holiday gifts, and nearly everything else consumers and businesses use on a day-to-day basis. To make the best use of these funds, simple adjustments to permitting rules can allow these projects to make a difference for all Americans in the short term.

Both of the above policy proposals can be included in the Fiscal Year 2024 Maritime Reauthorization Bill. The original authorization of FPISC and the quoted language expanding FRA CEs were included in the FAST Act and were passed on a bipartisan basis. FPISC was also permanently authorized in the Bipartisan Infrastructure Law on with support from both parties. It is our belief that these proposals can also be passed on a bipartisan basis, allowing historic levels of infrastructure funding to go benefit Americans of all political stripes. As the 118<sup>th</sup> Congress begins its mission, AAPA welcomes continued work on permitting and infrastructure policy. Please do not hesitate to reach out with questions or proposals about the policies mentioned in this letter or about any other matter we can assist with.

Sincerely,



Christopher J. Connor  
President & CEO  
American Association of Port Authorities



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