

Permitting Reform and Environmental Review

Endangered Species Act

Issue Overview

In many areas of the country, land development and construction activities are impacted by the Endangered Species Act (ESA) due to their potential to affect federally listed species or their designated critical habitat. As the list of protected species grows, more private land is being designated as critical habitat and more housing projects trigger the ESA's cumbersome federal permitting processes.

Obtaining required ESA authorizations is neither easy nor fast, as it typically entails conducting species surveys, preparing biological assessments or habitat conservation plans, modifying planned projects to comply with species conservation measures, and providing compensatory habitat mitigation – each of which can result in significant delays and cost increases for project proponents. Furthermore, the innate uncertainty associated with many aspects of the ESA, coupled with the increasing number of other authorizations needed to construct new housing create additional challenges, delays and compliance costs that are difficult to recoup. Land owners are increasingly finding that the ESA permitting process is too expensive and difficult to navigate to provide needed affordable housing, which invariably translates into fewer projects being built and higher home prices.

Solutions

Restore the regulatory reforms put in place during the first Trump administration, including finalizing a regulatory definition for the term “habitat,” restoring the 4(d) rule to authorize unavoidable impacts to “threatened” species, requiring full consideration of potential economic impacts from proposed critical habitat designations, and streamlining the ESA's interagency Section 7 Consultation process.

Rescind the U.S. Fish and Wildlife Service's Mitigation Policy and Endangered Species Compensatory Mitigation Policy.

Support language in H.R. 9533, the ESA Amendments Act of 2024, that amends the ESA's Section 7 consultation provisions to clarify the purpose of formal consultations is minimization of potential

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Waters of the United States (WOTUS)

Issue Overview

The regulatory phrase “waters of the United States” (WOTUS) determines the extent of federal jurisdiction under the Clean Water Act (CWA). This regulation directly impacts builders and developers who must obtain CWA permits for their land development or construction activities if those activities result in either a discharge of pollutants or the placement of dredged or fill material into CWA jurisdictional waters or wetlands.

Unfortunately, the WOTUS definition has changed numerous times over the past two decades due to Supreme Court cases and executive branch interpretations and it is now nearly impossible for land owners to know for certain if their properties contain WOTUS. Even the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) –

