HUSCH BLACKWELL

Project Perspectives

Exploring Trends and Developments in Alternative Project Delivery

September 2025

Introduction

ASCE Grades by Infrastructure Category

Aviation	D+
Bridges	C
Broadband	C+
Dams	D+
Drinking Water	C-
Energy	D+
Hazardous Waste	C
Inland Waterways	C-
Levees	D+
Ports	B
Public Parks	C-
Rail	B-
Roads	D+
Schools	D+
Solid Waste	C+
Stormwater	D
Transit	D
Wastewater	D+

Source: American Society of Civil Engineers, 2025 Report Card for America's Infrastructure,

This year marks Husch Blackwell's eighth annual report on alternative project delivery, and during that span, we have confronted developments that, once upon a time, would have strained credulity, including global public health crises, soaring inflation, supply chain vulnerabilities, and an end to the era of globalization. Through it all, there has been a constant: the necessity of building new infrastructure, either to replace aging assets or to facilitate the emergence of newer technologies, like autonomous vehicles and artificial intelligence.

In March 2025, the American Society of Civil Engineers (ASCE) released its quadrennial report card on U.S. infrastructure. It contained an overall—and somewhat underwhelming—grade of C; however, it is the highest grade achieved since the ASCE began publishing its report in 1998. The report credits the 2021 Infrastructure Investment and Jobs Act (IIJA) with the modest improvements seen over the past four years but also cites a persistent investment gap in infrastructure that the IIJA cannot close on its own. The ASCE estimates that an additional $9.1 trillion over the next decade is needed to return U.S. infrastructure "to a state of good repair," a figure that far exceeds the IIJA's commitment of $1.2 trillion.

Many current and prospective project participants are still digesting the changes witnessed over the past decade, even as more changes are in the offing. During the second Trump administration's first 100 days in office, there was a wave of executive actions that greatly reconfigured federal policies on matters of importance to infrastructure development. That pace has slowed very little during the summer months, as new developments continue to emerge impacting infrastructure across numerous project categories.

These policy developments form a key theme for this year's report. Some policies, such as the extensive use of tariffs, will have an impact on all project participants, while other policies rearrange priorities in a way that creates incentives—or disincentives—depending on the project type. We will explore some of these developments in the following pages.

The overall theme that emerges, however, is uncertainty. There is a degree of uncertainty that reigns over business enterprises as a matter of course, but it is uncommon to experience uncertainty across multiple major areas of concern—macroeconomic, political, geopolitical, financial—all at once. We hope the perspectives in this year's report can assist decision makers in crafting approaches that overcome uncertainty and that lead to progress.

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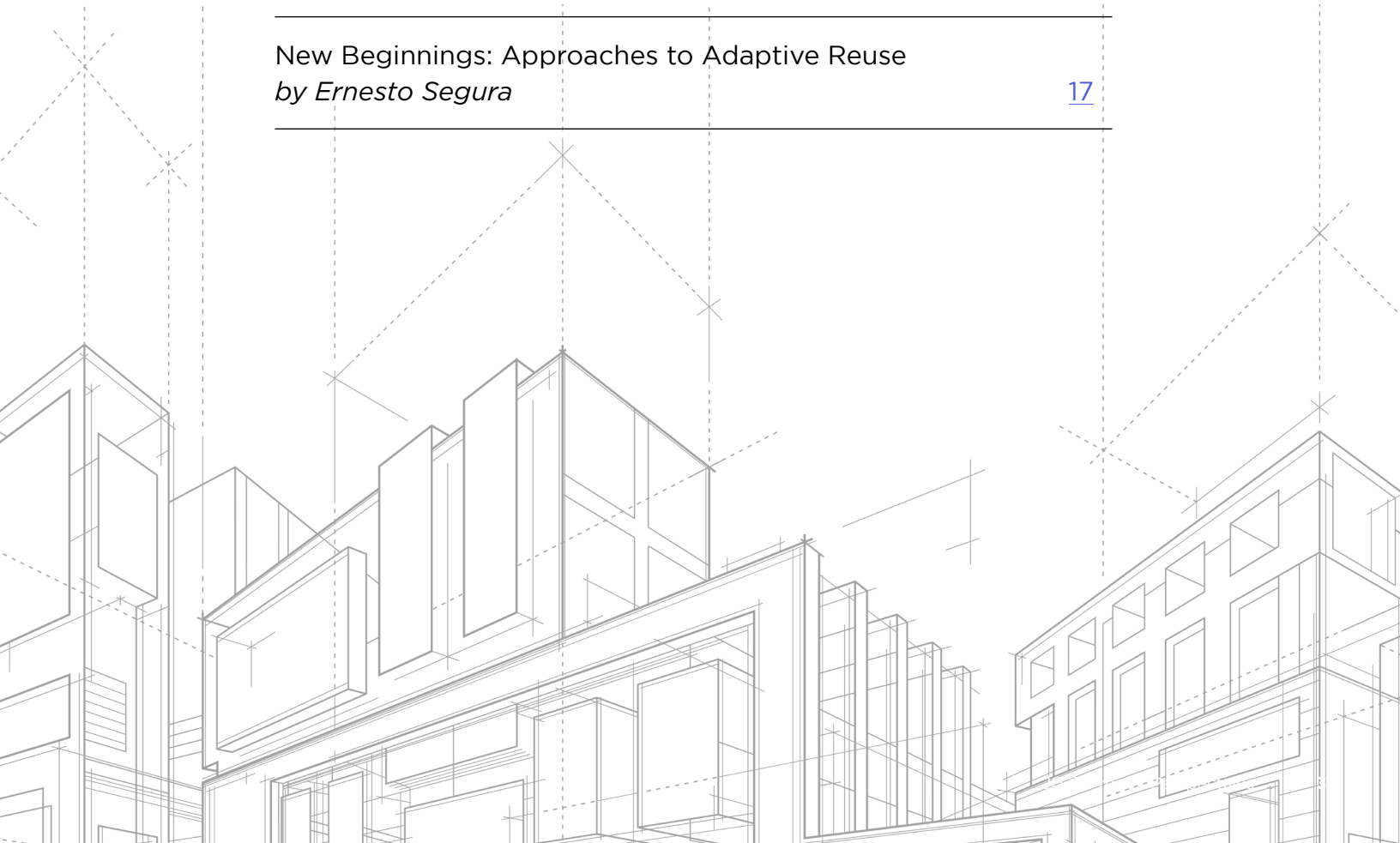


Trump 2.0: Recent Federal Actions & Large Infrastructure Projects

By Kyle Gilster & Cortney Morgan

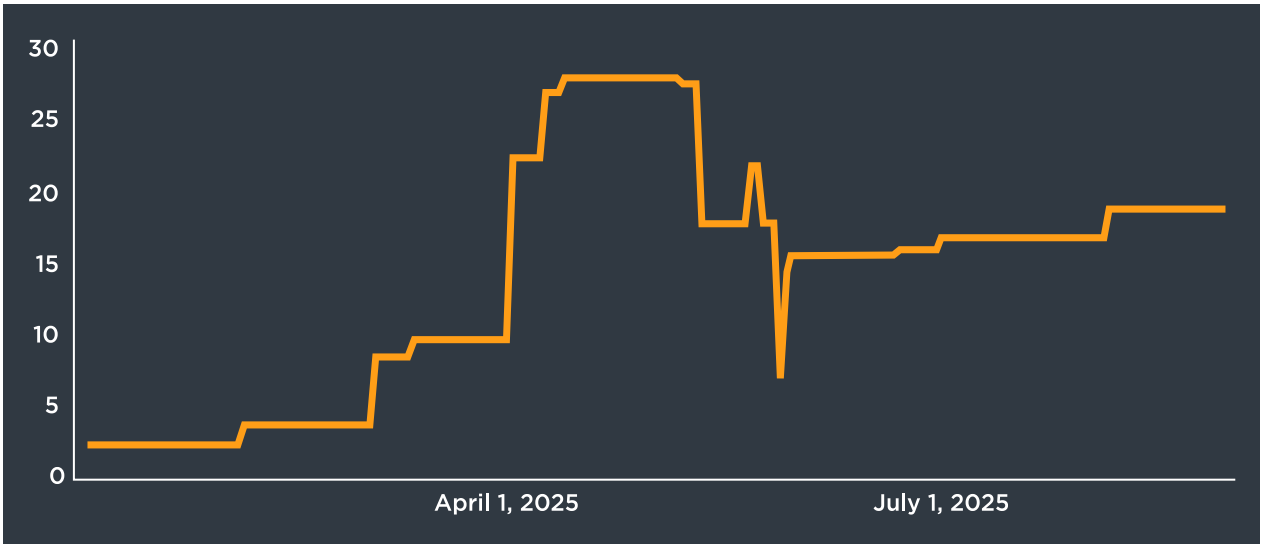
The second Trump administration has been a whirlwind of activity, reconfiguring public policy across numerous areas affecting infrastructure and other large development projects.

Immediately upon assuming office, President Donald Trump signaled to policymakers and industry leaders a sharp change in direction. The administration issued some 143 executive orders in its first 100 days, easily the most prolific use of EOs in history. Many of the EOs and other executive actions significantly shifted prior policies across a number of policy areas, including international trade, foreign policy, and energy. While teasing out a coherent thread from the administration's many actions can be challenging, there are a few consistent themes that project owners and contractors should be aware of as they launch or manage large infrastructure projects throughout the remainder of 2025.

TARIFFS AND TRADE POLICY

Of the changes brought about since January 2025, the administration's tariff and trade policies have garnered by far the most attention due to their historically aggressive posture, wide-ranging impacts, and novel legal premises; furthermore, the on-again, off-again nature of the tariffs—including their reversals, extensions, exceptions, and various court challenges—add to the underlying uncertainty project planners are struggling to manage.

U.S. Average Tariff Rate, January-August 2025



Source: The Budget Lab, Yale University, through August 6, 2025. https://budgetlab.yale.edu/research/state-us-tariffs-august-7-2025

Following the course of tariff policy has become an almost-daily ritual for businesses with large exposures to supply chain and trade risks. Amid the uncertainty, however, there is a strong perception in the marketplace that increased tariffs will translate into greater inflation for key project inputs, several of which have been the subject of specific actions. For instance, on March 1, 2025, the administration issued Executive Order 14223, initiating a Section 232 investigation into imports of timber, lumber, and their derivative products. This action followed similar Section 232 investigations in connection with copper, steel, and aluminum imports (see Executive Order 14220, Proclamation 10896, and Proclamation 10895). Collectively, these executive actions affect approximately $125 billion of imports across these four categories of inputs, according to the Tax Foundation. It is easy to understand, therefore, how project participants are concerned about the aggregate impact of tariffs on their project costs, not just from a nominal cost basis but also from the standpoint of price volatility that makes it difficult to plan or budget.

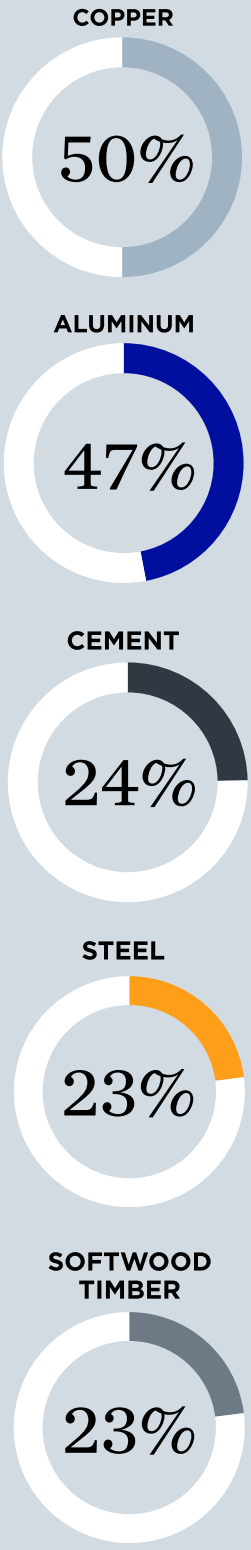
But inflation is not the only concern for project owners and other participants. Tariffs could disrupt the supply chains for key inputs, making it difficult to procure key inputs at any price. This can set off a chain reaction of events leading to project delays and considerable uncertainty over who bears the additional cost (see also "Tackling Tariffs from a Project Perspective," beginning on page 15).

To date, the tariffs have had a modest impact on current projects. The ENR Materials Index has been flat through the first half of 2025; however, it is reasonable to expect a lag between the tariffs' effective dates and the time at which increased costs show up in statistical abstracts. Time will tell whether and how much trade policy adds to the aggregate cost of doing business.

PROJECT INCENTIVES (AND DISINCENTIVES)

The Trump administration has used executive actions to advance favored project types. Many of the individual actions trace back to the administration's unambiguous desire to recalibrate federal energy policy, promoting the development of fossil fuel projects and deemphasizing renewable energy. On its first day in office, the administration issued no fewer than five executive orders with implications for energy and natural resources infrastructure projects, including the U.S. withdrawal from the Paris Climate Agreement, the recission of prior climate-change policies, the boosting of energy exploration and production on federal lands and waters, and perhaps most significantly, the declaration of a "national energy emergency," which purportedly would allow the administration to merge energy initiatives into a permissive national security and emergency powers framework.

Imports as a Percentage of Overall U.S. Consumption of Key Inputs



Sources: ING Bank N.V., American Iron and Steel Institute, The Aluminum Association, U.S. Geological Survey, and CNN.

Also on day one, the administration attempted to freeze funding previously authorized under the Inflation Reduction Act (IRA) and the Infrastructure Investment and Jobs Act (IIJA), two signature pieces of legislation from the Biden administration that aimed to increase clean energy adoption and infrastructure. The freeze created significant uncertainty for those projects reliant on federal funds and gave rise to further clarification of the order, as well as litigation challenging the executive's authority to institute the freeze. In one of those lawsuits, a federal judge in Rhode Island on April 15, 2025, ordered the immediate reinstatement of funds at suit that were already awarded under the IRA and IIJA; however, a portion of funds—some $760 million—remained inaccessible well into August 2025 in contravention of the court order.

This saga illustrates some of the challenges concerning the $200 billion-plus already disbursed under the IRA and IIJA, but the question remains: what about the other hundreds of billions authorized by those laws that remain unspent? The administration could consider a range of actions if it seeks to eliminate or re-obligate funding, some of which would be on solid legal ground, while others stray into murky waters. Solutions involving congressional action would be the least controversial way forward, but there are non-legislative options that could be implemented. Project owners and participants who depend on IRA or IIJA commitments should pay close attention in the coming weeks and months to the administration's communications and seek to work closely with the funding agencies to stay on top of developments

OPPORTUNITIES FOR ALTERNATIVE PROJECT DELIVERY

Another theme that consistently appears in Trump administration actions is its desire to see more participation from private industry in pursuing the administration's policy objectives. This approach dates back to the first Trump administration, which included the 2018 launch of the U.S. Army Corps of Engineers (USACE) Civil Works Public Private Partnerships Pilot Program. The pilot program represented USACE's first foray into public-private partnerships (P3), and although the program is currently winding down, the experience gathered from the program will undoubtedly inform new programs and new legislation, such as the Water Resources Development Act (WRDA) that was signed into law during the final days of the Biden administration.

Eye of the Beholder: Renewable Energy Projects & the OBBBA

In addition to executive branch actions, the passage of the "One Big Beautiful Bill Act" has upended the tax capital framework on which many renewable energy projects depend. Key provisions include the accelerated termination of wind and solar credits, as well as restrictions with respect to foreign entities of concern. For the majority of renewable energy companies, the most onerous of the restrictions will begin to take effect for projects that have not started construction by January 1, 2026.

Project participants should act now to consider the diminishing lead time to secure safe harbored clean energy equipment and nurture relationships with contractors, suppliers, lenders, investors, and other stakeholders critical for expedited project execution.

We expect the WRDA's momentum to carry over into the Trump administration. Several Trump EOs specifically mention drawing private capital into public policy solutions. For instance, Executive Order 14255 created the United States Investment Accelerator, an office inside of the Department of Commerce that, according to the order, aims to:

- facilitate and accelerate investments above $1 billion in the U.S.
- assist investors as they navigate federal regulatory processes efficiently
- reduce regulatory burdens where consistent with applicable law
- increase access to and use of U.S. national resources
- facilitate research collaborations with our national labs
- work with State governments to reduce state regulatory barriers
- increase domestic and foreign investment in the United States

Likewise, Section 6 of Executive Order 14241, issued March 20, 2025, contains provisions to accelerate the deployment of private capital in the production of mineral resources. These provisions range from the establishment of a "dedicated mineral and mineral production fund for domestic investments" to streamlining mechanisms aimed at putting federal loan authority to use in mineral production. The order also mandates the Small Business Administration to develop "recommendations for legislation to enhance private-public capital activities to support financings to domestic small businesses engaged in mineral production."

Clearly, the desire to increase the use of private capital—and by extension alternative project delivery models—is there, although the mix of project types to benefit will likely change to align with the administration's vastly different policy objectives. For instance, the Greenhouse Gas Reduction Fund (GGRF), a $27 billion program created by the IRA within the Environmental Protection Agency to finance the widescale deployment of mature clean energy technologies, has been an early target of Trump administration executive actions. Among other things, as mentioned previously, Executive Order 14154 sought to freeze disbursement of IRA-related funds. Shortly thereafter, the EPA attempted to terminate $20 billion in National Clean Investment Fund (NCIF) and Clean Communities Investment Accelerator (CCIA) grants, leading to widespread litigation over the fate of those funds. In a release dated March 11, 2025, EPA administrator Lee Zeldin detailed the agency's actions, noting that "EPA will work to re-obligate lawfully appropriated funds in the GGRF with enhanced controls to ensure adequate governance, transparency, and accountability, consistent with statutory requirements."

Pending litigation notwithstanding, the administration has been clear in both its hostility toward certain legacy programs and its embrace of public-private partnerships. Investors, grantors, and contractors should carefully review their project pipelines and determine if and how prospective projects might take advantage of this policy reconfiguration.

USACE Civil Works P3 Pilot Program: Participating Projects

BRAZOS ISLAND HARBOR CHANNEL IMPROVEMENT PROJECT

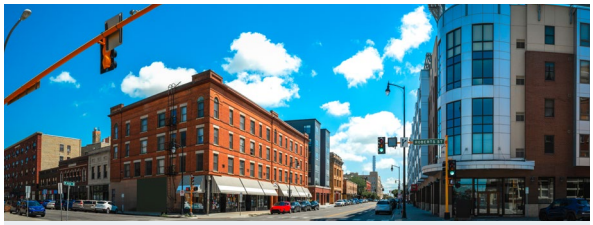
Deepened the Port of Brownsville ship channel, in addition to dredging berthing areas, constructing dredged material placement area capacity, raising levees, and providing aids to navigation.

Investment Size: $288 million

Non-Federal Sponsor(s): Brownsville Navigation District, acting as the financial representative for the Port of Brownsville

P3 Elements: Design, Build, Finance, and possible Operate/Maintain

Non-federal Revenue Source(s): Private entities



FARGO-MOORHEAD METROPOLITAN AREA RISK MANAGEMENT PROJECT

Designed to protect the Fargo-Moorhead-West Fargo metro area during times of extreme flooding using river control structures, floodwalls, levees, and other flood protection measures.

Investment Size: $2.84 billion

Non-Federal Sponsor(s): Metro Flood Diversion Authority; City of Fargo, North Dakota; and City of Moorhead, Minnesota

P3 Elements: Design, Build, Finance, and possible Operate/Maintain

Non-federal Revenue Source(s): Private entities

SOUTH PLATTE RIVER ECOSYSTEM RESTORATION AND FLOOD RISK MANAGEMENT PROJECT

Designed to address the loss of riparian, wetland and in-channel habitat associated with urban development along the South Platte, while providing for ancillary flood risk management.

Investment Size: $550 million

Non-Federal Sponsor(s): City and County of Denver

P3 Elements: Design, Build, Adaptive Management

Non-federal Revenue Source(s): Tax assessments, state funding, and grants

LOUISVILLE METRO FLOOD RISK MANAGEMENT PROJECT

Designed to provide greater reliability by bringing 1950s-era components (pump stations, road closure structures, flood walls and gates) up to 2020 standards.

Investment Size: $206 million

Non-Federal Sponsor(s): Louisville Metropolitan Sewer District

P3 Elements: Design & Build

Non-federal Revenue Source(s): Stormwater and wastewater fees from their customer base

Trump 2.0: Outlook by Infrastructure Project Type

PROJECT TYPE	FAVORED	DISFAVORED
Roads and Highways	Increased funding and streamlined permitting	
Bridges	Significant investments	
Data Centers	Rapid growth and support for AI infrastructure	
Manufacturing	Boosted by regulatory rollbacks	
Energy Projects	Support for traditional energy sources	Wind and solar energy projects
High-Speed Rail		Reduced federal support
Clean Energy Projects		Federal support dwindling
Broadband Expansion	Mixed outlook, with some support	
Waterways	Investments in improving infrastructure	
Public Lands Infrastructure	New fund for capital and maintenance needs	

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The State(s) of P3

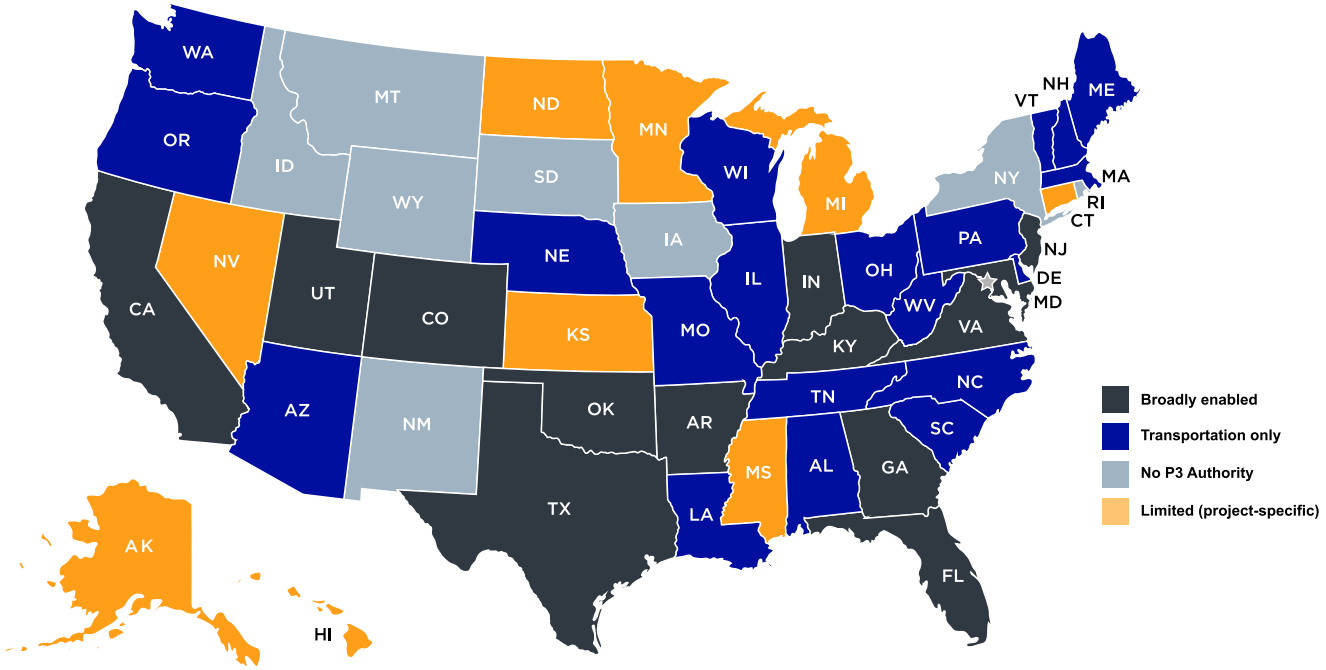
By Charles Renner

Despite softness in the marketplace for public-private partnership projects, federal, state, and local authorities continue to promote P3 through legislative efforts and other policymaking initiatives.

As one might expect, "higher-for-longer" interest rates, changing loan-to-value metrics, and macroeconomic and political uncertainty have dampened private sector enthusiasm for P3 agreements. As we highlighted in last year's report, some industries and project types have also experienced a kind of Long Covid. In these instances (campus housing, for example), projects are still moving forward but at a reduced rate than in the pre-Covid era. Meanwhile, other areas of P3 activity have reached or exceeded their pre-Covid levels, notably surface transportation. According to the Reason Foundation, there were 42 surface transportation P3 projects of at least $100,000 that have reached financial close in the U.S. in 2024, a 24% increase from just seven years ago.

Different project types will wax and wane over time, but the long-term trend toward making P3 and alternative project delivery widely available remains unaltered. To date, only eight states have failed to implement legislation enabling some kind of P3. State P3 laws vary in terms of permissiveness and the breadth of authorized project types. According to the Association for the Improvement of American Infrastructure (AIAI), 13 states have "broadly enabled" P3 via legislation—it is no surprise that these states sponsor a disproportionate share of state-level P3 projects and that those projects encompass a wider range of types.

P3 Legislation by State

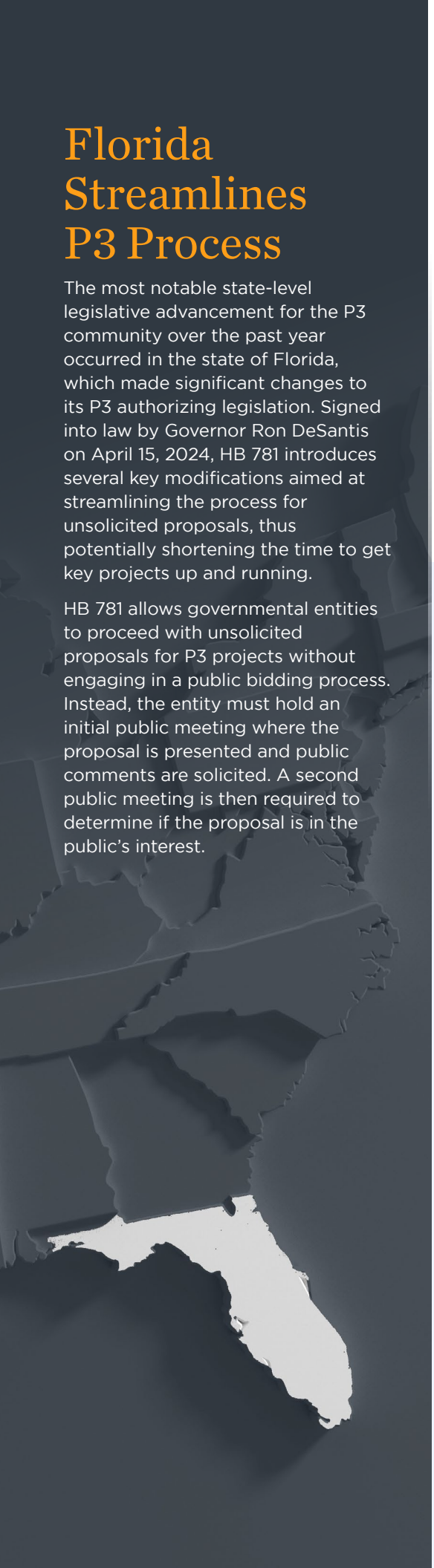


Source: Association for the Improvement of American Infrastructure (AIAI).

Florida Streamlines P3 Process

The most notable state-level legislative advancement for the P3 community over the past year occurred in the state of Florida, which made significant changes to its P3 authorizing legislation. Signed into law by Governor Ron DeSantis on April 15, 2024, HB 781 introduces several key modifications aimed at streamlining the process for unsolicited proposals, thus potentially shortening the time to get key projects up and running.

HB 781 allows governmental entities to proceed with unsolicited proposals for P3 projects without engaging in a public bidding process. Instead, the entity must hold an initial public meeting where the proposal is presented and public comments are solicited. A second public meeting is then required to determine if the proposal is in the public's interest.



Despite recent headwinds related to financial markets, P3 continues to make inroads across the country. The first use of P3 in many states is a surface transportation or related project. For instance, in March 2025, Louisiana opened the Belle Chasse Bridge, the state's first P3 project. The state's second P3—the $2.1 billion Interstate 10 Calcasieu River Bridge Replacement project—reached financial close in August 2024 and is currently underway. Traditionally, surface transportation has comprised the core project type for P3s in the U.S., but it has also served as something of a gateway leading eventually to broader and more extensive use of alternative project deliveries to build a variety of projects across infrastructure types. This may be the case in Louisiana in the future, where the $1.8 billion Louisiana International Terminal P3 project, the Port of New Orleans' proposed downriver container terminal, received funding commitments from the Louisiana legislature in June 2024.

EMERGING PROJECT TYPES

Once states gain familiarity with alternative project delivery methodologies like P3 and put into place legislation authorizing a broader set of project types, there have been some innovative applications of P3 solving for urgent gaps in infrastructure investment. Below, we have noted a select list of P3 project types that state and local governments have moved forward over the past few years.

K-12 Public Schools. Rapid changes in demographics and/or tax revenue can significantly hamper public school districts' ability to plan for the future or maintain their current portfolio. Some districts are embracing P3 agreements in order to access alternative project finance structures and to better budget and manage the cost of deferred maintenance. Proponents of APD solutions to public schools are closely watching the Prince George's County Public Schools (PGCPS) Blueprint Schools Program, an $880 million, first-of-its-kind P3 project in Maryland that bundled design/build, finance, and operations/maintenance phases into a master agreement. The initial project phase received many accolades, and the attention of project owners and private partners is now turning to the "services" phase of the project, which includes a Phase II 30-year site and facility maintenance agreement which reached financial close in August 2024. We expect this project to be studied extensively and to serve as a template for public school districts around the country that struggle with similar challenges.

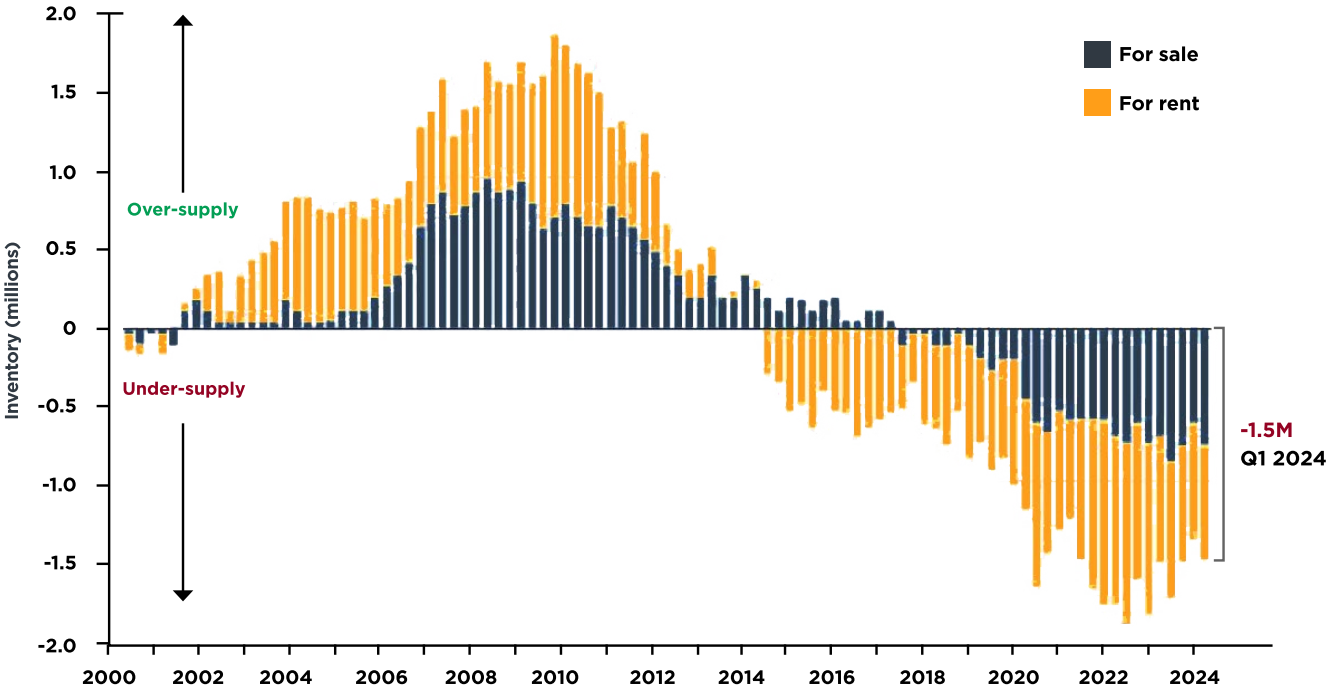
Courthouses and Civic Buildings. Many localities, particularly those in fast-growing exurban areas, are providing government services from facilities that were constructed decades ago for populations that were much smaller in size. When the tipping point is reached, sometimes those localities struggle to access the capital needed for upgrades. It is in these cases that P3 and P3-like structures can help bridge the gap.

A similar circumstance led to the first use of P3 in Oregon history to build a courthouse, as well as the first in state history to employ availability payments. Clackamas County is an immense county—larger than the state of Rhode Island—stretching from the Portland suburbs into the vast wilderness of central Oregon with a population nearly equal to the state of Wyoming. Its existing courthouse dated from 1936, and the county desperately needed an upgrade—and fast. This project moved from RFQ to financial close in 14 months and successfully navigated complex state and local P3 law, delivering a key piece of social infrastructure that opened in May 2025. It also demonstrated approaches local governments can take when a state's authorizing legislation is limited in scope.

Workforce Housing. An emerging area of focus for P3 agreements is aimed at improving and increasing the stock of housing for middle- and lower-income families, an area of dire need in many localities across the U.S. This heightened demand coincides with escalating cost structures for building and operating housing assets—owing to spikes in the cost of insurance, financing, and labor—that have constrained supply. The McKinsey Global Institute estimates that closing the U.S. "housing gap" would require an additional $2.7 trillion over the next ten years.

Alternative project delivery is increasingly being explored as a solution. The mix of financing for these workforce housing projects is evolving and complex, tapping into an array of federal, state, and local incentives, such as lower-cost loans and tax-exempt bonds, that can lower the cost of money and make projects more attractive for private businesses. Additionally, there are potential creative uses of existing federal programs, including IIJA and Department of Transportation funds, that could fill out the capital stack.

U.S. Housing Market Supply, 2000-2024



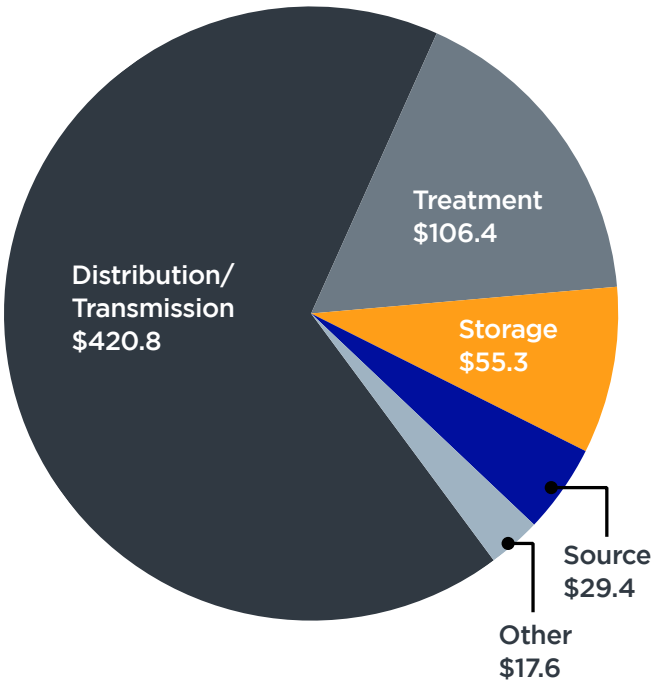
Source: Realtor.com. Freddie Mac analysis of U.S. Census Bureau Data.

Water Infrastructure. There have been several major water infrastructure projects incorporate elements of alternative project delivery over the past decade, and we believe the stage is set for an increase in the coming years. The need is well established—drinking water, stormwater, flood control, and wastewater all posted scores among the worst in the 2025 ASCE quadrennial report cited in our introduction. Furthermore, the federal funds aimed at water infrastructure via the IIJA still fall far short of satisfying the needed capital. According to a McKinsey & Co. report, the anticipated system-wide shortfall will exceed $50 billion by 2026. Additionally, the price tag associated with system build-out and upkeep continues to soar. The ASCE estimates that the infrastructure supporting drinking water alone will require $625 billion over the next 20 years.

Lower-cost financing made available by the federal government, such as programs administered via the Water Infrastructure Finance and Innovation Act (WIFIA) or other legislation, have given local governments flexibility in pursuing water projects. For instance, the city of Lake Oswego, Oregon, launched a P3 process for a new wastewater treatment facility in 2021, only to change course in 2024, opting for a design-build-operate-maintain (DBOM) delivery method that eliminated the private equity component of the P3; however, the early phases of the project demonstrated the utility of a P3 procurement process by providing stakeholders with great insights into advanced cost and risk models over the proposed 30-year agreement term.

Anticipated Capital Investment Requirements for U.S. Drinking Water, 2025-2045

(In billions)



Source: American Society of Civil Engineers; U.S. Environmental Protection Agency.

Maritime and Port Facilities. Applying modern P3 and P3-like approaches to seaports is not necessarily new, extending back well over a decade. Those earlier efforts often focused on the port facilities themselves, the wharves, berths, cranes, and other infrastructure that relate to a port's core operations; however, ports are changing rapidly, and many are exploring how alternative project delivery can get a wider scope of projects into action on a faster track and with less risk.

This new generation of port-related projects include digital port community systems, such as those enabled through the Department of Transportation's Freight Logistics Optimization Works (FLOW) program, a P3 project that provides its members with real-time supply chain information. Additional project types also include innovative uses of port-adjacent real estate, either as part of a larger urban regeneration program or in order to spur greater economic activity, such as the Port of Jacksonville's P3 agreement involving construction of a 250,000-square-foot auto processing facility and two expanding two vehicle berths. Similarly, as smart-port technology and approaches to resilience have advanced over the past decade, many earlier projects did not contemplate or fully implement the newer technologies and seek to do so now.

FLEXING INTO THE FUTURE

Indeed, flexibility is the watchword across the many emerging project types associated with alternative project delivery. A key feature of APD is its methodology for assigning various project risks to the partners best able to manage them, but as with all things, managing risk—be it financial, operational, or otherwise—comes at a cost or an expected rate of return. It's a far better thing when prospective partners can make assessments early in the project and pivot to another model when the math doesn't work. APD—done right—provides that kind of clarity, allows for better decision making, and has the flexibility needed to move projects into action, especially when macroeconomic conditions are in flux.

Charles Renner

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SPOTLIGHT ISSUE

Tackling Tariffs from a Project Perspective

By Joshua Levy

The Trump administration has established tariffs for materials frequently used in the construction of large infrastructure projects. The uncertain timing, extent, and duration of the tariffs will affect existing projects as well as the planning for future projects

Contractors are well versed in managing the volatility associated with project costs; however, occasionally, they are confronted by events that strain the capabilities of even the most sophisticated project managers. Unfortunately, these kinds of events have occurred with increasing frequency, and given the prevailing economic and geopolitical uncertainties, wildcard events that exert broad—and unpredictable—influence on project costs are likely to be a constant concern for both existing and future projects.

TARIFFS & FINANCIAL RISK

As with his first term in office, President Donald Trump has made trade policy a key priority and has sought to apply new tariffs affecting a swathe of product classes important to the construction industry, like steel, aluminum, and lumber. To the extent the new tariffs are having an impact, they have been modestly inflationary to date. For instance, according to *Engineering News-Record's* Construction Cost Index, general industry costs have been virtually flat during the trailing 12 months ending in July 2025; however, that disguises more volatile movements from item to item. Concrete sand, for example, is up over 28 percent, while fabricated steel and plywood have declined by nearly six percent since July 2024.

It is important to remember that we are still in the early days of President Trump's second term. The costs associated with the new tariffs are still working their way through the economy, and there is no guarantee that the administration's imposition of tariffs is a fait accompli. There are any number of factors that could delay or blunt the impacts of the tariffs (supply-chain adjustments, work-offs of existing inventory, macroeconomic weakness leading to decreases in demand, etc.), but the general sentiment is that the tariffs will eventually translate into higher material prices, or as a recent blog post from Dodge Construction Network framed it, "The U.S. construction industry will face higher input costs if producers are unable to find alternative products or inputs, pivot their supply chain, or receive an exemption on specific goods. Goods from Canada, Mexico, and China make up about 41% of U.S. imports."

EXISTING PROJECTS

The impact of Material Price Escalation (MPE) on existing projects will depend on existing contract clauses. The COVID pandemic presented the last example of industry-wide MPE. At that time the evaluation of risk and responsibility generally focused first on whether *force majeure* clauses applied to COVID, as we explained in last year's Project Perspectives report. Beyond the shared challenge COVID presented, the pandemic also resulted in "government shutdowns." While government shutdowns often fell within the language of *force majeure* clauses, tariffs present a different root cause.

The most widespread set of terms and conditions between owners and contractors is included in the AIA A201 General Conditions. These provisions do not include a specific *force majeure* clause; however, the A201 instructs contractors to present any claim for an increase in the contract sum within 21 days of the events giving rise to the claim, or when the contractor could reasonably realize a claim may exist. Contractors should evaluate the contract sum and their schedule of values for potential MPE and provide a written Notice of Claim under whatever agreement is in place as soon as possible.

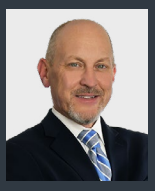
FUTURE PROJECTS & BIDS

The first step to managing the risk of MPE on future projects is for the owner and the contractor to address the issue specifically during contract formation. Owners must accept the fact that contractors are not equipped to absorb large percentages of MPE that the contractors were not able to control. If the contract has a *force majeure* clause, parties need to add "tariffs" to the definition of *force majeure* in the applicable contract clause.

The best practice for owners and contractors to address tariffs or other possible MPE is to establish a threshold for compensable MPE that will result in a change order to the contractor. Parties may use a cost index such as the Building Cost Index (BCI), the Construction Cost Index (CCI), or the Turner Cost Index (TCI). The contractor should identify the cost-index value for specific materials included in its bid or contract sum as reflected. That value should be identified in the contract, for instance, as a unit price.

The timing of the purchase of the materials should also be discussed and managed. Parties may be able to purchase materials as soon as they are under contract. In that case the owner and contractor will negotiate for the cost of storage and insurance to protect the materials until installation. If early purchase is not an option, the parties can identify the anticipated date for a purchase order and determine whether a MPE has occurred based on the cost index. The future project contract clause can require a change order if the MPE exceeds a set value, such as five percent.

To mitigate the risk of price escalation while bids are pending, contractors and suppliers may, in some cases, include a Bid Limitation; however, bid flexibility is limited in the case of public work projects that require statutory or similar forms of open bidding. Members must review public bid solicitations closely to determine whether the open bidding rules provide any basis for relief in the case of tariffs or other MPE.



Joshua Levy

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New Beginnings: Approaches to Adaptive Reuse

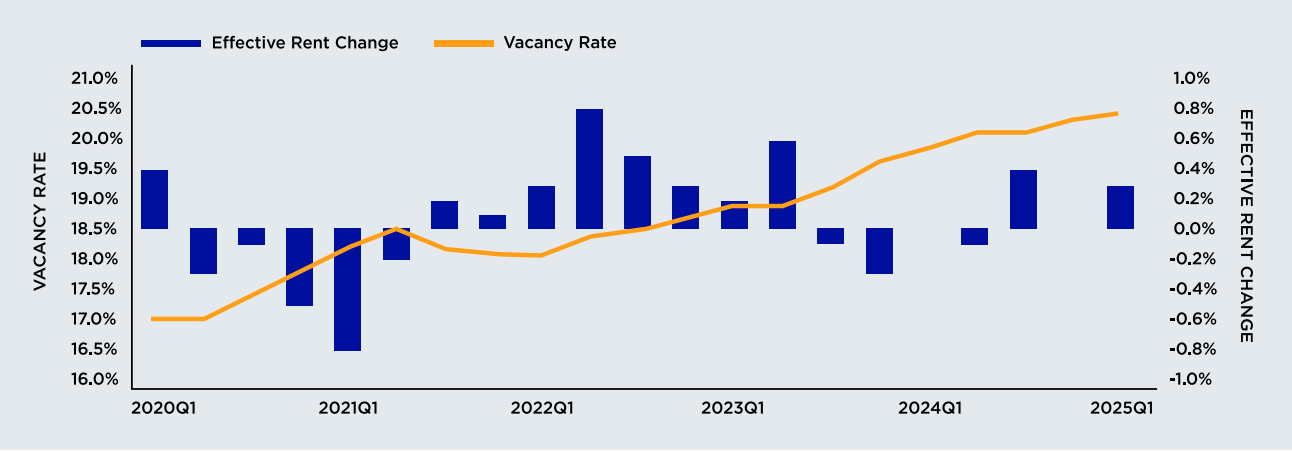
By Ernesto Segura

Adaptive reuse—the practice of repurposing existing buildings for new uses—has long been a significant part of the real estate development world, offering an attractive alternative to new construction. Alternative project delivery can assist in bringing these projects to life.

Real estate market participants have long found creative ways to take properties that have outlived their original uses and reinvent them into new, vibrant (and more profitable) anchors in their communities, and given the scarcity in many localities of housing and related infrastructure, never has adaptive reuse been more relevant to the continuing revitalization of urban and suburban spaces.

Older cities have attempted to steer developers toward adaptive reuse for decades; however, nationwide data reveal some shorter-term trends driving the expansion of adaptive reuse projects. For example, shifting post-pandemic demand for commercial real estate has forced the real estate market to become more creative in handling vacant office space. Office leasing activity was strong in Q1 2025 with a 15% increase year over year, yet occupancy losses continued to linger despite the increasing leasing activity. Net absorption fell to -8.1 million square feet in Q1 2025 as the national office vacancy rate established yet another record high during the first quarter, reaching 20.5% and climbing 60 basis points year over year according to Moody's, a ratings agency.

U.S. Office Vacancy Rate



Source: Moody's Analytics, Inc.

Facing these occupancy headwinds, office owners have "doubled down" on using adaptive reuse of vacant offices. According to CBRE, by the end of 2025, upwards of 23.3 million square feet of office space is on track for conversion to other uses (12.8 million) or demolition (10.5 million) this year, compared to only 12.7 million square feet of expected new office supply. This inversion of adaptive reuse (excluding demolition) exceeding new office supply is a post-pandemic trend that continues to accelerate even as the pandemic recedes into the background. By 2027 CBRE estimates over 60 million square feet of office space will be adapted to new uses, with around 76% of those conversions going from office to multifamily.

Nationally, the impact of adaptive reuse strategies is growing in other real estate sectors beyond office buildings. The long-term trend of large retail store closures, historically low retail development, and a softening of retail occupancy marked the first quarter of this year. According to CBRE, the overall retail availability rate increased slightly in Q1 to a still relatively low 4.8%, marking the first uptick in five quarters, owing mostly to the abundance of obsolete retail space, which has tripled since 2020. While many retailers often look to repurpose their space rather than change the use, adaptive reuse has continued to grow in helping owners convert aging retail spaces like large shopping malls into more modern office, industrial, or e-commerce sites. While mall conversions remain particularly challenging for a number of reasons, developers and investors do continue to push retail-to-industrial conversions forward, particularly in markets where land availability is limited. A recent report from CBRE found that over 10% of the former retail space in key metros has been repurposed for industrial use, with cities like Chicago, Atlanta, and Dallas leading the way. Growing numbers of examples of retail adaptive reuse result in last-mile fulfillment centers, micro-warehousing, and urban logistics hubs, all of which cater to the modern supply chain.

On a regional level, the popularity of adaptive reuse varies, as does the frequency of its deployment. In the Northeast, adaptive reuse projects are particularly prevalent in cities with rich historical backgrounds, such as Boston and Philadelphia. These projects often involve the conversion of century-old buildings into modern, functional spaces while preserving their architectural heritage. New York is seeing the largest boom in the office conversion sector, with around 10.3 million square feet of office space currently being converted or planned to be converted.

Advantages of Retail-to-Industrial Conversions

PRIME LOCATIONS

Retail near major roadways makes ideal last-mile distribution centers

EXISTING INFRASTRUCTURE

Parking lots, loading docks, and open layouts can be repurposed for industrial use with minimal renovations

ZONING FLEXIBILITY

Local governments are increasingly open to rezoning retail for industrial use

FASTER MARKET ENTRY

Repurposing can significantly reduce time and costs for developers versus ground-up development

Source: Adapted from Coldwell Banker, Inc.

In contrast, the Sun Belt and Midwest are witnessing slower adoption rates across industry sectors, primarily due to the broader availability of land for new construction. Yet large urban markets like Houston, Dallas, Cleveland, and Minneapolis increase office conversions on par with what we have seen nationally. Some larger cities, such as Chicago, have also looked for unique asset classes to find opportunities with adaptive reuse. For example, Chicago leads the nation in conversions of properties into self-storage facilities. Other cities, like St. Louis, Atlanta, and Detroit, are continuing to embrace adaptive reuse to revitalize their urban centers.

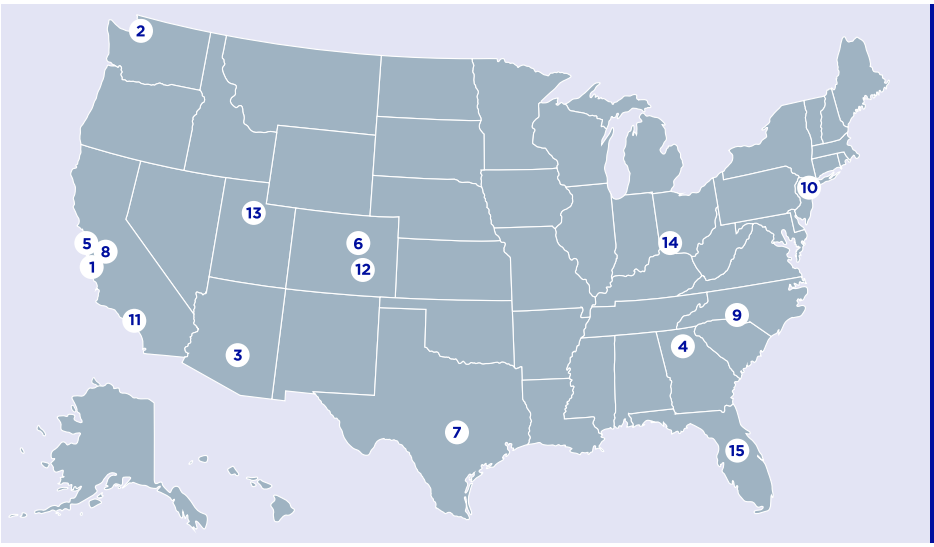
The Mountain West and Pacific Coast have not yet seen the same scale of adaptive reuse projects, as newer development prevails in expanding areas outside city centers. Yet in some mature cities, such as Seattle, Denver, or San Francisco, with an abundance of older building stock and increasingly critical affordable housing issues, office-to-multifamily conversions are seen by some as a tool to address these urban concerns. All those cities have within the last two years ramped up programs designed to aid in adaptive reuse. For example, San Francisco has waived certain planning and building code requirements and real estate transfer taxes for downtown conversions that are approved before 2030, Seattle has approved exemptions for commercial-to-residential conversions from certain design development standards and from housing affordability requirements, and Denver launched an adaptive reuse pilot program to enhance speed and efficiency for conversions approved by the city.

KEEPING IT REAL: EXAMPLES AND APPROACHES

Taking on the task of converting an existing structure into a new use certainly does not come without its difficulties. Beyond the not-so-uncommon considerations of needing to deal with existing debt and financing the conversion, there are a number of other factors to consider in undertaking such a project. For example, existing tenants, remaining time on leases in the building, and move-out processes, among other things, need to be factored into a timeline.

Zoning issues are also often major hurdles to adaptive reuse. Conversions from office to multifamily, which we noted above are increasing across the country, typically require significant effort by developers and their attorneys in analyzing and modifying the zoning for the property to the new use. Along with zoning issues, we often see older building conversions identify issues with building codes that have been updated since the construction of older buildings or that differ in requirements from the existing use to the new use. For example, the floorplate of an

U.S. Real Estate Markets Best Positioned for Office-to-Multifamily Conversions



1. Redwood City, CA
2. Seattle, WA
3. Phoenix, AZ
4. Atlanta, GA
5. San Francisco, CA
6. Denver, CO
7. Austin, TX
8. Oakland, CA
9. Charlotte, NC
10. Newark, NJ
11. Los Angeles, CA
12. Colo. Springs CO
13. Salt Lake City, UT
14. Cincinnati, OH
15. Orlando, FL

Source: Urban Institute, "Which Cities Would Benefit Most from Converting Offices into Housing?" June 5, 2024. https://www.urban.org/urban-wire/which-cities-would-benefit-most-converting-offices-housing.

existing building may not work when it comes to proper circulation or access to windows in a reconfigured space. In one recent mall conversion, the developer found that the floor plan of the large box stores was ideal for adapting to an industrial use, but that the ceiling heights were too low. The budget had to be reworked to account for the cost of raising the roof to make the site usable. And as developers in cities with high numbers of historic buildings— like St. Louis, Chicago, New York, or Boston—have found, adaptive reuse of an historic building is often a regulatory slog, dealing with multiple agencies over many years to ensure that all regulatory requirements are met.

Timing and market trends are also critical factors to consider. Usually, adaptive reuse projects take several years to complete, which demands that developers assess the trajectory of the local economy, and many do market studies to determine whether the proposed use will be viable. To address some of these challenges, cities across the nation are creating new incentives designed specifically for property conversions or proactively modifying zoning codes to better fit changing uses in the city. Beyond the examples already cited, cities like Washington, D.C. have created new tax programs designed to facilitate new conversions of buildings. D.C.'s new Office to Anything program offers a 15-year tax freeze to developers who turn offices into other commercial spaces and the Housing in Downtown incentive offers a 20-year tax abatement for office-to-residential conversions.

While some of these municipal efforts may be new, adaptive reuse projects have always required innovative financing and development solutions. Developers have realized the value of organizing teams of professionals that can navigate project finance and land use/construction details in a coordinated fashion, exactly the kind of sophisticated approach that alternative project delivery solutions help in fostering. Given the crucial role that financing plays in these projects—and given how complex the capital stack can be with tax increment financing, tax abatements and tax credits—it is a tremendous advantage to align parties dedicated to design, build, and financing at the commencement of the project.

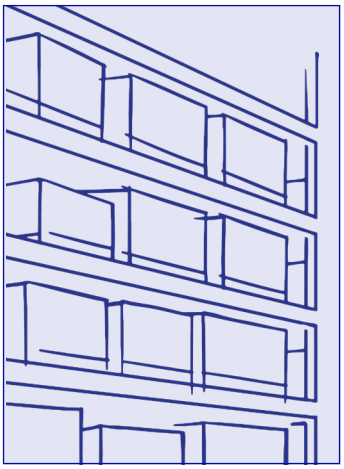
PROJECT TRANSFORMATION

Adaptive reuse projects are emblematic of resilience, creativity, and collaboration, turning challenges into opportunities for communities. Whether navigating financial hurdles, historical preservation complexities, or unexpected ownership changes, these projects highlight the importance of innovative problem-solving and steadfast partnerships. From repurposing historic landmarks to revitalizing struggling commercial spaces, adaptive reuse not only breathes new life into the built environment but also fosters economic growth, environmental sustainability, and community engagement—proving that even the most daunting examples of one property owner's loss can be transformed into someone else's gain.

Ernesto Segura

Ernesto Segura is a partner in Husch Blackwell's St. Louis office and a member of the firm's Real Estate, Development & Construction industry team.

Profiles in Adaptive Reuse: Three Representative Projects from St. Louis*

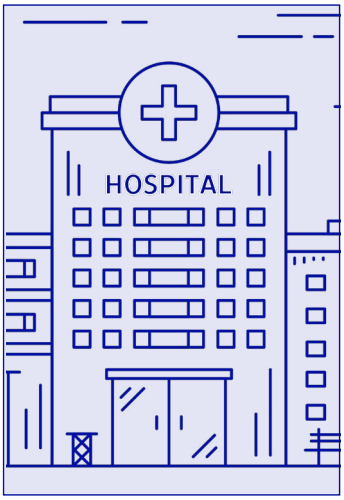


THE VICTOR

The Butler Brothers Building was among the first distribution warehouses in the U.S. Built in 1906, the building encompasses and entire city block, containing over 700,000 square feet of warehouse space that served the St. Louis Garment District. The building had been vacant for decades and was the subject of numerous redevelopment attempts, many of which secured public incentives but could never complete their capital stack. Memphis-based developer Development Services Group transformed the site into The Victor, a mixed-used destination with 385 apartment units, a 385-parking space garage and 16,000 sq. ft. of retail/commercial space. With an estimated total project cost of $119 million, the project featured a creative project financing effort that included private equity/debt, Missouri Historic tax credits, real property tax abatement, and a sales tax exemption on construction via a separate tax abatement program.

ST. LOUIS COUNTY MILLS MALL

This project involved the conversion of a failed shopping mall originally built in 2003 in north St. Louis County that included nearly 1.2 million square feet under roof and around 5,000 parking spaces. Additional to its operational woes, the mall was saddled with nearly $30 million in defaulted bonds issued by a special taxing district as part of its original construction. The defaulted bonds, which were secured with tax assessments on the site, had long scared off potential developers. After an experiment with a youth sports concept that succumbed to the debt load, the property was ultimately sold to Ohio-based Industrial Commercial Properties, who adapted the parcel into industrial space. This involved a second zoning modification and the conversion of existing special taxing districts to a new purpose, but finally, the project came to fruition, turning a large vacant parcel into productive real estate once again.



DELMAR DIVINE

St. Luke's Hospital in St. Louis left its longtime West End neighborhood location in the 1980s, and after a series of healthcare entities occupied the space, it closed permanently in 2013, leaving over 500,000 square feet vacant along Delmar Boulevard. A private businessperson purchased the site and then partnered with Clayco Realty Group to adapt the property into a mixed-use anchor for the neighborhood. The project's capital stack was complex and included New Market Tax Credit allocations, a 15-year, 95% tax abatement, municipal carry-back financing, a HUD-insured loan, Missouri Historic Tax Credits, and multiple bridge loans. The project's first development phase culminated in two sequenced closings with sixteen separate transactions, but the project proceeded, opening in 2022 with apartments, office space and retail. The second phase is underway and is expected to add additional apartments, conversion of the gymnasium into a community meeting space and additional office space.

*Husch Blackwell's Real Estate, Development & Construction team represented parties in each of these projects.

About Husch Blackwell's P3 Team

Husch Blackwell knows the P3 industry inside and out. We help private businesses and public agencies form partnerships and share the resources, risks and rewards of P3 projects. We guide clients through the negotiations, coordination and closings of contracts involving design-build, finance, operations, maintenance and transfer covenants. Our team has extensive experience and deep understanding of how to manage the legal, political and commercial complexities of P3s. Our representative projects include:

- Higher ed facilities
- Courthouses and social infrastructure
- Professional sports facilities
- Broadband
- Airport renovation/expansion
- Energy districts
- Water/wastewater facilities
- Transit-based mixed-use development

Project Delivery Continuum