



Introduction to FAST-41 and the Permitting Council



Introduction to FAST-41

- The Fixing America's Surface Transportation Act (FAST) Act was signed into law on December 4, 2015.
- Title 41 of this Act, referred to as "FAST-41" 42 U.S.C. 4370m et seq., created a new governance structure, set of procedures, and funding authorities to improve the Federal project review and permitting process for "covered" infrastructure projects.
- FAST-41 is intended to facilitate good project management practices, foster a high level of communication and collaboration, and provide transparency to achieve a high-quality, accountable, and effective project review and permitting process.

Major FAST-41 elements:

- Establishes procedures for coordinating Federal environmental reviews and authorizations for covered projects.
- Creates a Federal Permitting Council, including Deputy Secretary-level and higher officials, to help coordinate agency reviews and resolve permitting timetable disputes/issues.
- Establishes the Federal Permitting Dashboard to publicly track the status of project reviews and authorizations.
- Permitting Council issues recommendations for best practices related to infrastructure permitting.
- Permitting Council reports to Congress on implementation and serves as a "Federal center for permitting excellence."



Goals of FAST-41

Predictability

**Issue
Resolution**

**Transparency and
Accountability**

**Collaboration and
Coordination**



- Build a prosperous and innovative economy
- Build an inclusive economy that works for workers and impacted communities
- Build sustainable, job-creating infrastructure
- Build a more equitable nation



FAST-41 Policy Context

Year	Action
1995	Reinventing Environmental Regulation
2002	Executive Order on Environmental Stewardship and Transportation Infrastructure Project Reviews (Executive Order 13274)
2005	Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)
2011	Presidential Memorandum on Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review
2011	Interagency Rapid Response Teams launched
2012	Executive Order on Improving Performance of Federal Permitting and Review of Infrastructure Projects
2012	Moving Ahead for Progress in the 21st Century Act (MAP-21)
2015	Title 41 of the Fixing America's Surface Transportation Act (FAST-41) establishes the Permitting Council
2017	Executive Order 13766, Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects (rescinded)
2017	Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects (a.k.a., "One Federal Decision") (rescinded)
2021	Infrastructure Investment and Jobs Act Permanently reauthorizes Permitting Council, updates FAST-41



What does FAST-41 apply to?

Covered Projects

- FAST-41 applies to “covered projects,” which must meet several criteria.
- A covered project includes any activity in the U.S. that requires environmental review or authorization or by a Federal agency that involves construction of infrastructure in any one of the following 12 sectors:
 1. Renewable energy production
 2. Conventional energy production
 3. Electricity transmission
 4. Surface transportation
 5. Aviation
 6. Ports and waterways
 7. Water resource projects
 8. Broadband
 9. Pipelines
 10. Manufacturing
 11. Mining* (added by Permitting Council vote)
 12. Carbon capture



What does FAST-41 apply to?

Covered Projects – Definition

A covered project must fall within one of the 12 sectors, and also be subject to one of the following four criteria:

- Objective Criteria
- Discretionary Criteria
- Tribal Criteria
- Carbon Capture Criteria



What does FAST-41 apply to?

Covered Projects – Objective Criteria

A project must fall within one of the 12 sectors, and:

Be subject to the National Environmental Policy Act (NEPA);

Be likely to require a total investment of more than \$200,000,000; **and**

Not qualify for “abbreviated authorization or environmental review processes” under any applicable law.

Exclusion*

- Department of Transportation (DOT) led projects
- Army Water Resources Development Act (WRDA) projects

(*) *Savings clause in Section 11503(b) of the FAST Act, Pub. L. 114–94, div. A, title XI, §11503(b), 129 Stat. 1692 (Dec. 4, 2015).*



What does FAST-41 apply to?

Covered Projects – Discretionary Criteria

Projects that **do not meet** the FAST-41 objective criteria **may still be eligible for FAST-41 coverage** under any one of the other three criteria. The first of these is the **discretionary criteria**:

The project must fall within one of the 12 covered project sectors, and:

- Be subject to the National Environmental Policy Act (NEPA); **and**
- Be of a size and complexity that makes the project, in the opinion of the Permitting Council, likely to benefit from enhanced oversight and coordination, including (but not limited to) a project likely to require:
 - Authorization from or environmental review involving more than two Federal agencies; or
 - The preparation of an environmental impact statement (EIS) under NEPA.

The Permitting Council **votes** to cover projects under the discretionary criteria.



What does FAST-41 apply to?

Covered Projects – Tribal Sponsored Criteria

The IIJA created a new covered project criteria that makes it easier for Native American Tribal, Alaska Native Corporation, and Native Hawaiian project sponsors to obtain FAST-41 coverage:

Tribal Criteria

- Project is within one of the 12 sectors;
- Subject to NEPA;
- Sponsored by an Indian Tribe, an Alaska Native Corporation, a Native Hawaiian, the Department of Hawaiian Home Lands, or the Office of Hawaiian Affairs; and
- Located on land owned or under the jurisdiction of the entity that sponsors the activity.

Exempt from “***abbreviated authorization or environmental review***” limitation in the objective criteria.

Exempt from the ***\$200 million threshold*** in the objective criteria.



What does FAST-41 apply to?

Covered Projects: Carbon Capture Sector*

Sector:

Construction of infrastructure for “carbon capture” includes construction of:

- any facility, technology, or system that captures, utilizes, or sequesters carbon dioxide emissions, including projects for direct air capture; and
- carbon dioxide pipelines.

Criteria

- Project is covered by a programmatic plan or environmental review developed for the primary purpose of facilitating development of carbon dioxide pipelines.
- No NEPA requirement.



() Carbon Capture sector and criteria added to FAST-41 by the Consolidated Appropriations Act, 2021 (Nov. 2020).*



Permitting Council Composition

- The Permitting Council is a **Federal agency** comprised of 16 members:
- **Executive Director:** Council Chair, appointed by the President
- Deputy secretaries or equivalent from **13 Federal agencies** with responsibility for Federal environmental review and authorization of infrastructure projects
- **OMB Director** and **CEQ Chair**

Permitting Council Agencies

- Advisory Council on Historic Preservation
- Department of Agriculture
- Department of the Army
- Department of Commerce
- Department of Defense
- Department of Energy
- Department of Homeland Security
- Department of Housing and Urban Development
- Department of the Interior
- Department of Transportation
- Environmental Protection Agency
- Federal Energy Regulatory Commission
- Nuclear Regulatory Commission



FAST-41 Roles: Facilitating and Lead Agencies

Facilitating

- Receives the initial notice of the initiation of a proposed covered project (a.k.a. project "**FIN**").
- Identifies and invites Federal and non-Federal entities to act as cooperating and participating agencies.
- Responsible for producing the **Coordinated Project Plan (CPP)** in consultation with all cooperating and participating agencies.
- Responsible for producing the **permitting timetable** in consultation with the cooperating and participating agencies, the project sponsor, and any State in which the project is located.

Lead

- The Permitting Council agency with principal responsibility for environmental review of a covered project under NEPA.
- Once identified, the lead agency assumes the FAST-41 responsibilities of the facilitating agency.



FAST-41 Roles: Cooperating and Participating Agencies

Cooperating

- “Cooperating agency” is coextensive with same in NEPA.
- Any Federal agency (and State, Tribal, or local agency with agreement from the lead agency) that has jurisdiction by law or special expertise related to any environmental impact involved in proposal.
- Concurs on the CPP and permitting timetable.

Participating

- An agency participating in an environmental review or authorization for a FAST-41 covered project.
- Does not have authority or jurisdiction over covered project.
- Consults on the CPP and permitting timetable.



FAST-41 Roles: Participating State Agencies

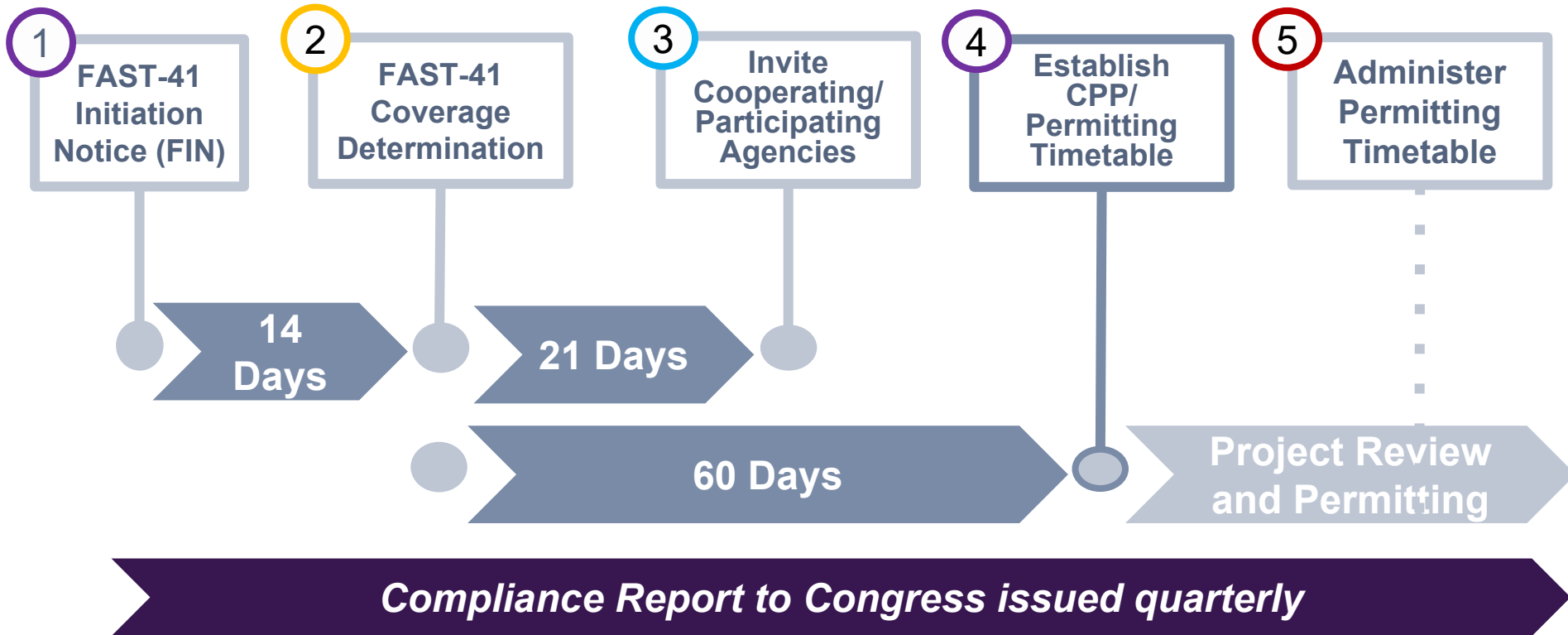
State Participation

- If a Federal environmental review is being implemented within a state, then the state may elect to participate in the environmental review and authorization process under FAST-41, and make subject to the FAST-41 process all state agencies involved in environmental review and authorization of the covered project, including permitting timetable development and implementation.
- State and facilitating/lead agency enter into an MOU for implementation.



FAST-41 Process

Covered project stages





FAST-41 Process

Coordinated Project Plan (CPP)

Not Public Facing

- FAST-41 requires the lead/facilitating agency, in coordination with participating and cooperating agencies, to **establish a CPP within 60 days of a project being added** to the Permitting Dashboard.
- The CPP is a concise plan for coordinating public and agency participation in, and completion of, **any required Federal environmental review and authorization for the project.**
- The CPP requires – among other things – **a plan and schedule for public and Tribal outreach and coordination**, to the extent required by applicable law, and a discussion of **potential avoidance, minimization, and mitigation strategies**, if required by applicable law and known.



FAST-41 Process Permitting Timetable

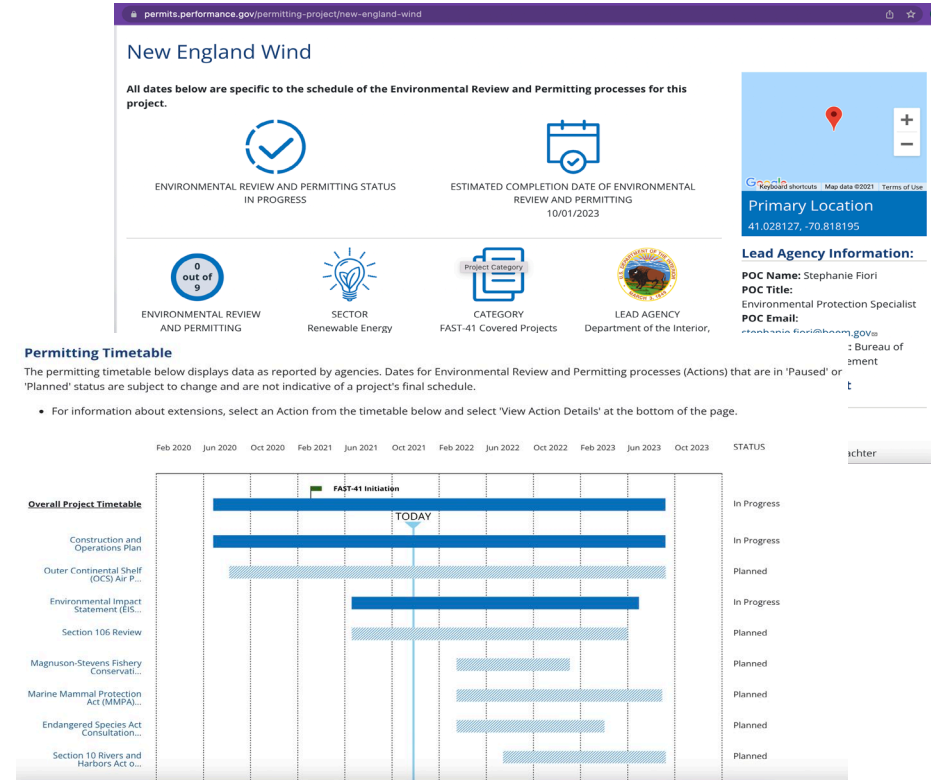
Public-facing on the Permitting Dashboard

- Permitting Timetable must contain **intermediate and final completion dates** for all Federal **environmental reviews and authorizations** for the covered project.
 - **Environmental Review** = NEPA (agency procedure for applying categorical exclusion or preparation of EA/EIS)
 - **Authorization** = any license, permit, approval, finding, determination, or other administrative decision issued by an agency and any interagency consultation that is required or authorized under Federal law in order to site, construct, reconstruct, or commence operations of a covered project administered by a Federal agency or, in the case of a state that chooses to participate in the environmental review and authorization process under FAST-41, a state agency.
- Must be **posted to the Permitting Dashboard within 60 days** of project coverage.
- Must be **maintained and modified pursuant to FAST-41** transparency and disclosure procedures.



FAST-41 Process Proactive Management of the Permitting Timetable

- The permitting timetable, posted publicly on the Permitting Dashboard, provides **transparency and predictability**.
- Executive Director plays a major role in **regular oversight, coordination, dispute resolution, elevation, and transparency** through the administration of the permitting timetable.
- Permitting timetables act as a mechanism to ensure **robust, complete reviews to support best possible economic, cultural, environmental, and community outcomes**.





FAST-41 MythBusting



FAST-41 does **not** :

- Cut corners or reduce the quality of project review and permitting processes.
- Dictate environmental or project outcomes or review processes.
- Reduce engagement with Tribes and other stakeholders.
- Prescribe deadlines.
- Modify or set rigid timeframes for NEPA or other processes.

The Office of the Executive Director does **not** play a role in:

- Substantive aspects or decision making in the project review and permitting processes.
- Selecting or prioritizing certain types of projects for FAST-41 coverage or agency review.
- Advocating for project approval.
- Underlying environmental review and authorization process, which is administered by the relevant agencies.



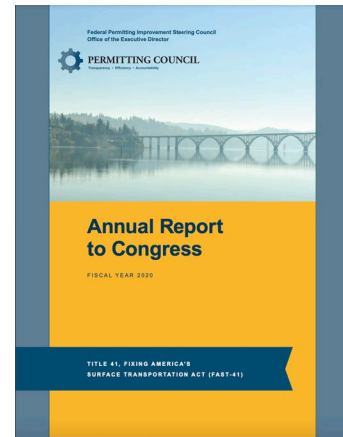
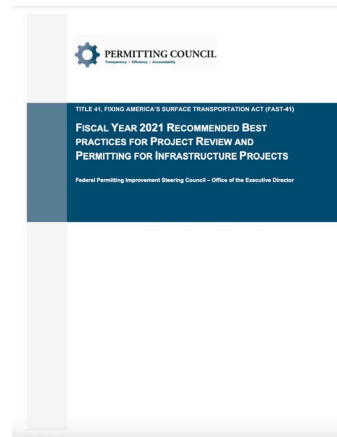
FAST-41 Best Practices Recommendations

At least annually, the Permitting Council issues recommendations for infrastructure permitting best practices in eleven categories, including:

- Enhancing early stakeholder engagement, including **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.
- Improving coordination between Federal and non-Federal government entities.
- Increasing transparency.
- **Creating and distributing training materials** useful to Federal, State, **Tribal**, and local permitting officials.

Implementation

Agencies must report to Congress annually re agency progress implementing Permitting Council best practices





FAST-41 Funding and Transfer Authority

- FAST-41 establishes the **Environmental Review Improvement Fund**, which is available to the Executive Director to administer, implement, and enforce FAST-41.
- IIJA expanded this authority to expressly include staffing the Office of the Executive Director (OED), and to support of the role of the Permitting Council as a “**Federal center for permitting excellence**,” including supporting interagency detailee and rotation opportunities, advanced training, enhanced support for agency project managers, and sharing information and lessons learned.
- The Executive Director also **may transfer funds to Federal agencies, and state, tribal, and local governments** to facilitate timely and efficient environmental reviews and authorizations for covered projects.



How to become a FAST-41 project?

Email Instructions

Interested project sponsors for potential covered projects should submit the following information required under FAST-41:

- Project Information: Title, Sector, Type, Location;
- Project Sponsor Name and Contact Information;
- Statement of the purposes and objectives of the project;
- Concise description including general location and/or a summary of geospatial information, if available, and the locations, if any, of environmental, cultural, and historic resources;
- Statement regarding the technical and financial ability of the project sponsor to construct the proposed project;
- Statement of any Federal Financing, environmental reviews, and authorizations anticipated to be required; and
- Assessment that the project meets the definition of a covered project as defined in 42 U.S.C. §4370m(6)(A) and a statement of reasons supporting the assessment.

The FIN should be emailed to both the Executive Director and the appropriate facilitating agency.

To determine the appropriate facilitating agency for a FIN, please see the table that establishes the various project types within each sector and assigns a facilitating agency to each type.

Executive Director Email: FAST.FortyOne@fpisc.gov

Online Submissions

Interested project sponsors for potential covered projects should submit the following information required on our online form

Happy to do pre-application consultations – simply email us at
FAST.FortyOne@fpisc.gov
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