

Title 41 of the FAST Act (FAST-41) Federal Permitting Improvement

Panel Discussion: National Tribal Preservation Conference
August 8, 2017



Federal Permitting Improvement Steering Council

FAST-41: Overview

Improve Authorization and Environmental Review Processes through:

- High level oversight for covered projects
- Environmental review and authorization process improvement
 - Early consultation
 - Coordinated project plans
- Public Dashboard tracking (project timetables)
- Dispute resolution procedures
- Recommended best practices and recommended performance schedules

Central Point of Contact for Entire Federal Process

- Federal Permitting Improvement Steering Council (Deputy Secretary level) led by an Executive Director (ED) appointed by the President
- Created agency Chief Environmental Review and Permitting Officers (CERPOs)

Clarifies or Changes Some Existing NEPA Provisions:

- Reduces statute of limitations from 6 years to 2 years for covered projects (under the APA)
 - Encourages state participation and adoption/incorporation of state reviews
 - Allows formation of interstate compacts
 - Provides direction on determination of range of alternatives and treatment of preferred alternative
-

FAST-41: Overview

FAST-41 does not (42 U.S.C. § 4370m-6(d)):

- Supersede, amend, or modify any Federal statute or affect the responsibility of any Federal officer to comply with or enforce any statute; or
- Create a presumption that a covered project will be approved or favorably reviewed by any agency.

FAST-41 does not preempt, limit, or interfere with (42 U.S.C. § 4370m-6(e)):

- Any practice of seeking, considering, or responding to public comment; or
- Any power, jurisdiction, responsibility, or authority that a Federal, State, or local governmental agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to any project, plan, or program.

Covered Project Definition

FAST-41 Covered Project:

Any activity in the United States that requires authorization or environmental review by a Federal agency ...

- ...Involving construction of infrastructure in a designated sector
- ...that **is** subject to NEPA, and
 - Does not qualify for an abbreviated review process and is likely to cost more than \$200M; or
 - Is of a size/complexity likely to benefit from enhanced oversight/coordination in the opinion of the Council, including:
 - Projects likely to require an Environmental Impact Statement
 - Projects likely to require reviews from more than 2 Federal agencies

FAST-41 Agencies and Sectors

FPISC Council Agencies:

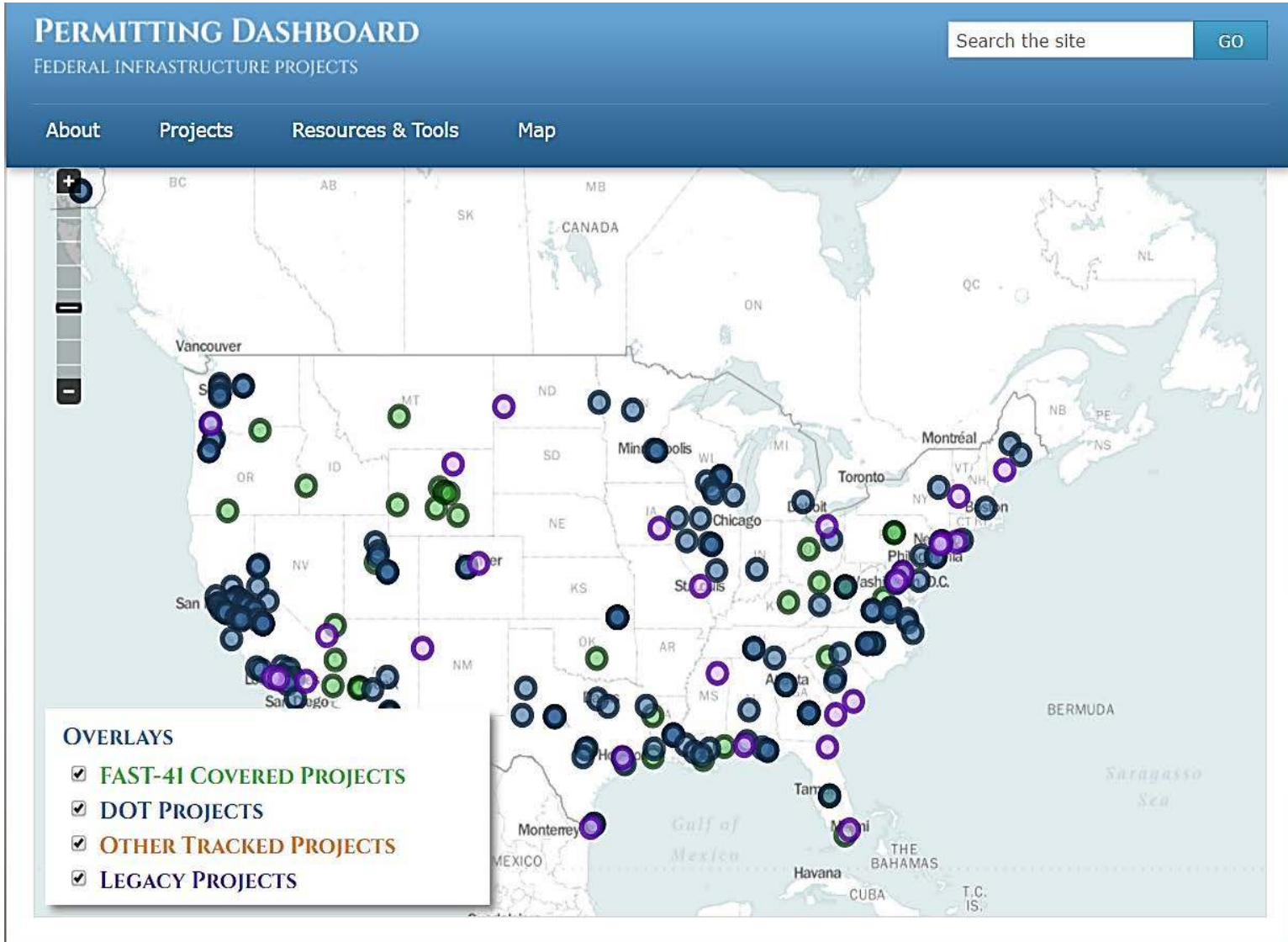
- Advisory Council on Historic Preservation
- Department of Agriculture
- Department of the Army
- Department of Commerce
- Department of the Interior
- Department of Energy
- Department of Transportation
- Department of Defense
- Environmental Protection Agency
- Federal Energy Regulatory Commission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

FAST-41 Infrastructure Sectors:

- Renewable Energy Production
- Conventional Energy Production
- Electricity Transmission
- Surface Transportation*
- Aviation
- Ports and Waterways*
- Water Resource Projects*
- Broadband
- Pipelines
- Manufacturing
- Any other sector determined by majority vote of the Council

***Exemption:** Does not include projects subject to Section 139 of Title (MAP-21) or Section 2045 of WRDA (2007)

Permitting Dashboard – Mapping Page



Permitting Dashboard – List of Covered Projects

PERMITTING DASHBOARD

FEDERAL INFRASTRUCTURE PROJECTS

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Title▲	Lead Agency	Bureau/Mode	Sector	Project Type	Status
Aiya Solar Project (Moapa)	Department of Interior	Bureau of Indian Affairs	Renewable Energy Production	Solar	Complete
Atlantic Coast Pipeline, Atlantic Coast Pipeline Amendment, Supply Header, and ACP-Piedmont Lease	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	Pipelines	Interstate Natural Gas Pipelines	In Progress
Atlantic Sunrise	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	Pipelines	Interstate Natural Gas Pipelines	In Progress
Denbury Riley Ridge to Natrona	Department of Interior	Bureau of Land Management	Pipelines	Land-based Oil & Gas - Production/Extraction	In Progress

Authorization Actions and Target Completion Dates

PERMITTING DASHBOARD

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PERMITTING TIMELINE

Action	Agency	Target Completion	Status
▶ Certificate of Public Convenience and Necessity for Interstate Natural Gas Pipelines	Federal Energy Regulatory Commission		In Progress
▶ Environmental Impact Statement (EIS)	Federal Energy Regulatory Commission	06/30/2017	In Progress
▶ Endangered Species Act Consultation - NOAA-NMFS	National Oceanic and Atmospheric Administration	11/12/2017	In Progress
▶ NPS Permit	National Park Service	09/28/2017	In Progress
▶ Clean Water Act Section 404 Permit	US Army Corps of Engineers - Regulatory (Cooperating under NEPA)	12/27/2017	In Progress
▶ Section 10 Permit	US Army Corps of Engineers - Regulatory (Cooperating under NEPA)	12/27/2017	In Progress
▶ Clean Water Act Section 404 Permit	US Army Corps of Engineers - Regulatory (Cooperating under NEPA)	11/12/2017	In Progress
▶ Section 10 Permit	US Army Corps of Engineers - Regulatory (Cooperating under NEPA)	11/12/2017	In Progress
▶ Clean Water Act Section 404 Permit	US Army Corps of Engineers - Regulatory (Cooperating under NEPA)	12/27/2017	In Progress
▶ Section 10 Permit	US Army Corps of Engineers - Regulatory	12/27/2017	In Progress

Permitting Dashboard – Milestones

PERMITTING DASHBOARD

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PERMITTING TIMELINE

Action	Agency	Target Completion	Status
▼ Certificate of Public Convenience and Necessity for Interstate Natural Gas Pipelines	Federal Energy Regulatory Commission		In Progress
Milestones:			
	Initial application received	Complete 10/02/2015	
	Completed application received	In Progress	
View Full Details	Issuance of decision for permit/approval.		
	Notice to proceed		
	Review Terminated with no decision		
▶ Environmental Impact Statement (EIS)	Federal Energy Regulatory Commission	06/30/2017	In Progress
▶ Endangered Species Act Consultation - NOAA-NMFS	National Oceanic and Atmospheric Administration	11/12/2017	In Progress
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Environmental & Community Outcomes on Dashboard

- Agencies can use the Permitting Dashboard to identify individual resource impacts (i.e., indicators) and their broader environmental and community outcomes (i.e., value) in nine general reporting categories:
 - Air Quality,
 - Climate Change,
 - Historic and Cultural Resources,
 - Land,
 - Procedural Enhancements,
 - Social and Economic Impacts (e.g., environmental justice, displacements),
 - Water Resources and Wetlands,
 - Wildlife and Biological Resources, and
 - Other (e.g., public health improvements).

Agencies have the ability to provide summaries for any of reporting areas at the project level and on an ongoing basis, with specific measures of:

- o Avoidance of resources
- o Minimization of impacts
- o Incorporation of mitigation measures, including compensatory mitigation

Cooperating Agencies under FAST-41

- Under FAST-41, the universe of cooperating agencies is the same as NEPA with respect to Federal agencies (those with jurisdiction or special expertise), but only includes State, tribal and local governments that choose to participate in the FAST-41 process and apply the requirements under FAST-41 to State, tribal and local authorizations.
- FAST-41 “cooperating agency” has a concurrence role for the permitting timetable, a heightened role for modification of schedules and decisions to extend public comment periods, a specific role in alternatives analyses and selection of methodologies for environmental review of the covered project, and a concurrence role in decisions to develop the preferred alternative to a higher level of detail.
- An MOU, 42 U.S.C. § 4370m-2(c)(3)(C), assures that a State, local, or tribal Government that chooses to participate has acknowledged and accepted its assigned authorities and responsibilities as a FAST-41 cooperating agency.
- State, local, or tribal agencies can still be a cooperating agency under NEPA for covered projects without being a cooperating agency subject to FAST-41 requirements.

BACKGROUND

Funding / Cost-Recovery

Creates new authority for agencies to issue fee-collection regulations

Allows agencies to establish a fee structure to recover reasonable costs for conducting reviews and authorizations for covered projects. Fees will be:

- Developed with affected project proponents and stakeholders
- Identify parties for which fees would be inappropriate or impose an undue burden
- Limited to no more than 20% of total estimated costs

Collected fees will go into a centralized Environmental Review & Permitting Improvement Fund

- Available as non-appropriated/no-year funds
- Expenditures limited to administering, implementing, and enforcing this title (including costs to agencies and costs of operating the Council)
- Exec. Director may transfer funds to agencies to facilitate timely & efficient reviews

Also creates new transfer authority for agencies to transfer appropriated funds for the purposes of implementing the provisions in this title