



FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

# Quarterly Agency Performance Report

Fiscal Q3 April-June 2022

## Acknowledgements

The Federal Permitting Improvement Steering Council (Permitting Council) Executive Director submits this report pursuant to 42 U.S.C. § 4370m-7(a)(2).

The Permitting Council comprises the Executive Director, who serves as the Permitting Council Chair, and 15 members, including the Deputy Secretary (or equivalent) from 13 Federal agencies, the Chair of the Council on Environmental Quality, and the Director of the Office of Management and Budget.



Department of Agriculture



Department of the Army



Department of Commerce



Department of Energy



Department of Transportation



Department of Defense



Federal Energy Regulatory Commission



Department of Homeland Security



Nuclear Regulatory Commission



Department of Housing and Urban Development



Advisory Council on Historic Preservation



Office of Management and Budget



Council on Environmental Quality



Environmental Protection Agency



Department of the Interior

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### Introduction

On November 15, 2021, the President signed the Infrastructure Investment and Jobs Act (IIJA), which reauthorized Title 41 of the Fixing America's Surface Transportation Act (FAST-41), 42 U.S.C. §§ 4370m *et seq.*<sup>1</sup> The IIJA amendments to FAST-41 include a requirement for the Executive Director of the Permitting Council to submit to Congress:

a quarterly report evaluating agency compliance with the provisions of [FAST-41], which shall include a description of the implementation and adherence of each agency to the coordinated project plan and permitting timetable requirements under [42 U.S.C. § 4370m-2(c)].<sup>2</sup>

IIJA also substantively revised the referenced coordinated project plan (CPP) and permitting timetable requirements at 42 U.S.C. § 4370m-2.<sup>3</sup>

On March 28, 2022, the Executive Director, in coordination with the Permitting Council members, completed comprehensive revisions of the FAST-41 Data Management Guide (DMG). The DMG provides a standard operating procedure for implementing the IIJA-amended FAST-41 requirements related to establishing, maintaining, modifying, and completing permitting timetables and maintaining CPP information on the Permitting Dashboard.<sup>4</sup> Implementation of the DMG revisions is essential to facilitating the Executive Director's new IIJA obligation to evaluate agency compliance with FAST-41, including the revised CPP and permitting timetable requirements.

As described in the Quarterly Agency Performance Report for January - March 2022, the second fiscal quarter of 2022,<sup>5</sup> the Executive Director will provide a more comprehensive Quarterly Agency Performance Report beginning with the fourth fiscal quarter of 2022 after agencies have had a full reporting period following updates to the Permitting Dashboard functionality to implement the IIJA-amended FAST-41 requirements and concomitant revisions to the DMG. This Quarterly Agency Performance Report, which covers the third fiscal quarter of 2022, summarizes agency compliance with

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<sup>1</sup> Pub. L. No. 117-58, § 70801, 135 Stat. 429, 1287-1294 (Nov. 15, 2021).

<sup>2</sup> *Id.* § 70801(f), 135 Stat. at 1293, codified at 42 U.S.C. § 4370m-7(a)(2).

<sup>3</sup> *Id.* § 70801(c), 135 Stat. at 1289.

<sup>4</sup> The Permitting Dashboard is administered by DOT and is used as a transparency and compliance tool for many types of infrastructure projects in which the Federal government is involved. A small minority of the projects on the Permitting Dashboard are FAST-41 covered projects. The Permitting Dashboard is available at <https://www.permits.performance.gov/projects>.

<sup>5</sup> [[Link](#) to Quarterly Agency Performance Report Q1 Jan-Mar 2022]. The previous Quarterly Agency Performance Report used a naming convention based on the calendar year rather than the fiscal year. To align with the Permitting Council's Annual Report to Congress (ARC), which is based on a fiscal year reporting period, the Permitting Council Executive Director is modifying the naming convention of the Quarterly Agency Performance Reports to align with the ARC. As such, the April 1 - June 30, 2022, Quarterly Agency Performance Report is named the Q3 2022 Quarterly Agency Performance Report to reflect that it covers the third quarter of the fiscal year, which is the equivalent of the second quarter of the calendar year.

FAST-41 and concludes with a description of the FAST-41 requirements that will be the focus of future Quarterly Agency Performance Reports.

### Agency Compliance with FAST-41 for Fiscal Year (FY) Q3 2022

Agency compliance with FAST-41 continues to improve as the Executive Director works to enhance FAST-41 implementation functionality on the Permitting Dashboard and agencies become more familiar with inputting information into the Permitting Dashboard to comply with the new FAST-41 requirements. No agency missed a permitting timetable completion date during the third fiscal quarter of 2022. In contrast, instances of agencies missing dates on their permitting timetables used to be fairly common. This improvement is due to agencies more actively managing their permitting timetables on the Permitting Dashboard and better utilizing the flexibilities afforded by FAST-41 to modify dates on their permitting timetables when necessary to reflect changes in project parameters, data collection and analyses, or other circumstances that arise during the environmental review and authorization process. Agencies' active management of the Permitting Dashboard also supports the Permitting Council's ability to identify permitting issues for resolution.

FAST-41 requires the facilitating or lead agency<sup>6</sup> to update the CPP at least once per quarter.<sup>7</sup> The CPP is central to the administration of the environmental review and authorization process for a FAST-41 covered project. The CPP is a living document that includes a list of all entities with an environmental review or authorization responsibility for a project; their respective roles and responsibilities; a discussion of potential avoidance, minimization, and mitigation strategies; plans and a schedule for public and tribal outreach and coordination; and the permitting timetable.<sup>8</sup> The permitting timetable is posted on the Permitting Dashboard and guides the entire Federal review and authorization effort for a covered project. To implement the statutory requirement for quarterly CPP updates, the DMG directs agencies to certify that they have reviewed and updated their CPPs every quarter.

In the third fiscal quarter of 2022, there were six instances of agencies failing to certify CPP review and updates. Those agencies and the associated projects are the U.S. Army Corps of Engineers (Port of Corpus Christi Channel Deepening Project); U.S. Department of Agriculture (Cardinal Hickory Creek Project); U.S. Department of Energy (Alaska LNG Project); U.S. Department of the Interior-Bureau of Land Management (Kulning Wind Energy Project and Bonanza Solar Project); and U.S. Department of the Interior-Bureau of Ocean Energy Management (Kitty Hawk North Wind Project).

Although the agencies identified above failed to make the certification directed in the DMG, each agency did, in fact, update their CPP as required by statute, primarily through active management of the project's permitting timetable. Nevertheless, certification of compliance with the FAST-41 requirement is an important metric because it provides the Executive Director with confirmation that agencies are

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<sup>6</sup> Under FAST-41, a "facilitating agency" is responsible for carrying out most Federal agency responsibilities with respect to prospective and actual covered projects until a "lead agency" is identified pursuant to the National Environmental Policy Act. *See id.* § 4370m-2(a)(5).

<sup>7</sup> 42 U.S.C. § 4370m-2(c)(1)(B).

<sup>8</sup> *Id.*

timely reviewing and updating project CPPs. Therefore, the Executive Director has advised agencies to ensure that CPP update certifications are timely submitted and will continue to report on this metric in future Quarterly Agency Performance Reports.

### Assessment of Agency Compliance in Future Quarterly Agency Performance Reports

Agency adherence to the DMG will provide the Executive Director with the data needed to assess each agency's compliance with FAST-41 requirements, as revised by IIJA. These requirements include:

1. CPP establishment, updates, and content requirements (42 U.S.C. §§ 4370m-2(c)(1)(A) & (B));
2. Permitting timetable consultation and content requirements (42 U.S.C. §§ 4370m-2(c)(2)(A) & (B));
3. Prerequisites for modifying the permitting timetable after establishment, and the limitation on total length of all modifications (42 U.S.C. § 4370m-2(c)(2)(D)); and
4. Conformance with the permitting timetable and, when applicable, fulfillment of nonconformance requirements (42 U.S.C. § 4370m-2(c)(2)(F)).

The Executive Director will assess each of these requirements in future Quarterly Agency Performance Reports.

# APPENDIX

## Description of Project Portfolio

FAST-41 is a voluntary program for qualifying infrastructure projects; project sponsors must apply for and obtain FAST-41 coverage for their projects.<sup>1</sup> The FAST-41 program provides oversight, strengthens cooperation and communication among agencies, enhances transparency, and emphasizes efficient processing of environmental reviews and authorizations. FAST-41 does not modify any underlying Federal statute, regulation, or mandatory environmental reviews.

The FAST-41 project portfolio consists of “covered projects,” as defined at 42 U.S.C. § 4370m(6). This report focuses on a subset of covered projects, those undergoing active Federal review during FYQ3 2022. Projects undergoing active review are projects that were, at any time in FYQ3 2022, not canceled, complete, or paused.<sup>2</sup> There were 23 active FAST-41 covered projects in FYQ3 2022, organized below by sector:<sup>3</sup>



Figure 1: List of covered projects undergoing active Federal review in FYQ3 2022.

<sup>1</sup> See 42 U.S.C. §§ 4370m-2(a)(1), (b)(2)(A)(ii).

<sup>2</sup> The set of projects undergoing active Federal review was derived from analysis of the Dashboard’s non-public revision history dataset.

<sup>3</sup> The Renewable Energy Production sector is depicted as three sub-sectors: offshore wind, solar, and other renewable energy.

Figure 2 summarizes the status, as of June 30, 2022 (the end of FYQ3 2022), of FAST-41 covered projects undergoing active Federal review.<sup>4</sup>

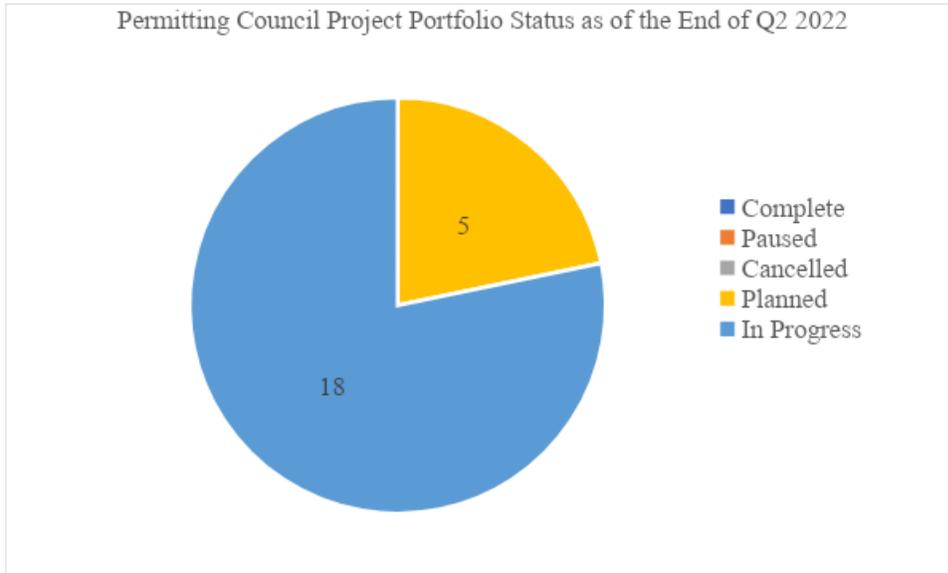


Figure 2: Graph showing the status of each project in the Permitting Council portfolio as of the end of FYQ3 (CYQ2) 2022.

Some projects are no longer considered to be under active review during the quarter. These include:

- Plains Pipeline, L.P. Lines 901 and 903 Replacement Project, which was paused at the end of FYQ2 (on March 30, 2022) and did not resume during the second quarter.
- South Fork Wind Farm and South Fork Export Cable were completed in the prior quarter (on January 18, 2022).

During FYQ3 2022:

- The Kitty Hawk Offshore Wind Project has been segmented into two projects. The original project is now called Kitty Hawk North. Kitty Hawk South was added to the Dashboard as a new “Planned” project.
- One project, Maryland Offshore Wind, advanced from “Planned” to “In Progress” during the quarter. As of the end of FYQ3, there are five planned projects in total: Bay State Wind Project, Bonanza Solar Project, Kitty Hawk South, Kulning Wind, and Skipjack Wind Farm.
- No projects were newly completed, paused, or canceled during FYQ3.

<sup>4</sup> Project status was derived from analysis of the Dashboard’s non-public revision history dataset.

Below is a map showing FAST-41 covered projects undergoing active Federal review in FYQ3 2022.

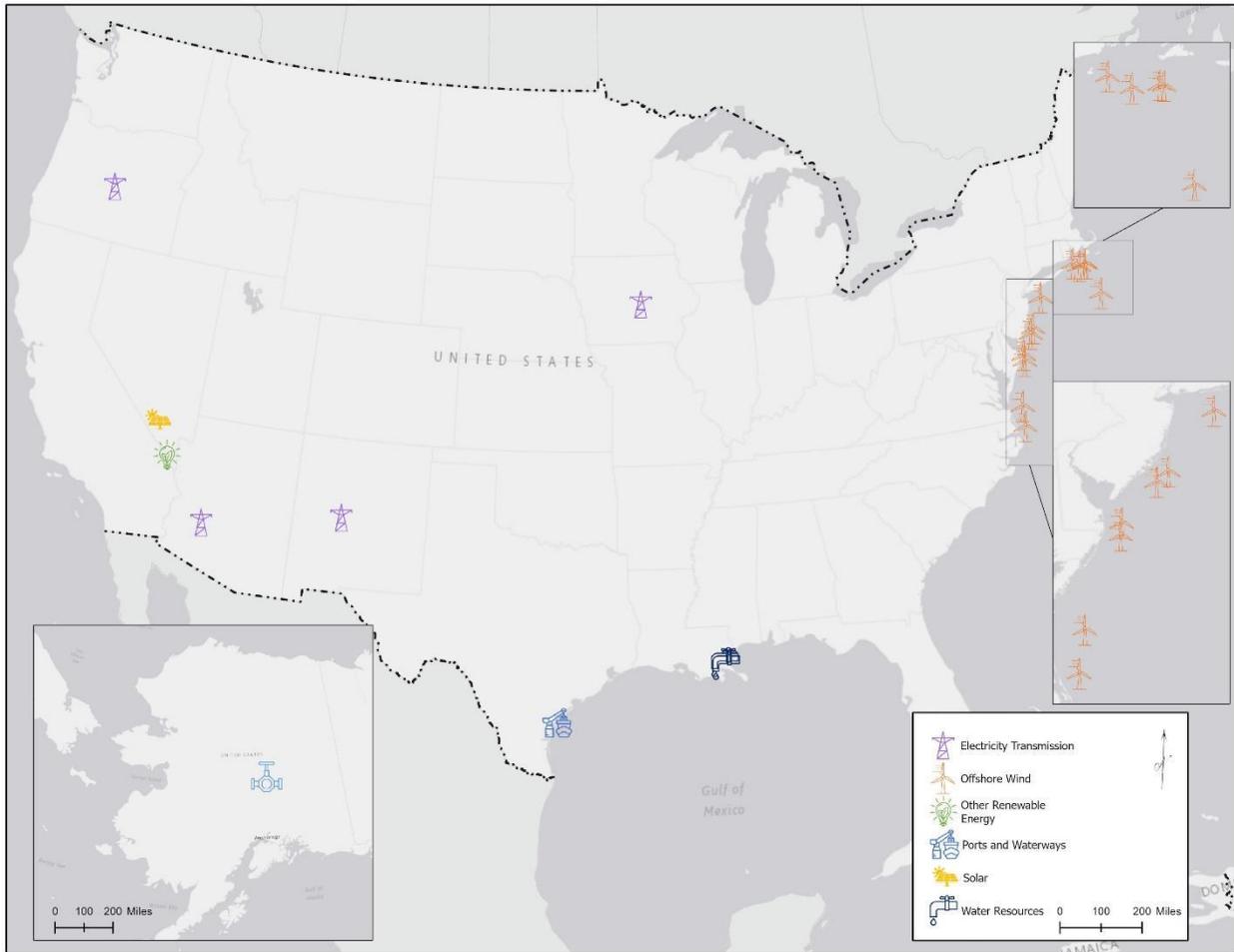


Figure 5: Map of covered projects undergoing active Federal review in FYQ3 2022.