



FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

Quarterly Agency Performance Report

Q1 January-March 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 is comprised of 16 members, including the Executive Director (Permitting Council Chair), 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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On November 15, 2021, the President signed the Infrastructure Investment and Jobs Act (IIJA), which re-authorized FAST-41 and established the Permitting Council—which previously was scheduled to sunset and terminate operations on December 5, 2022—as a permanent Independent Executive Branch agency.¹ IIJA made numerous amendments to FAST-41, including requiring the Permitting Council Executive Director 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 [42 U.S.C. § 4370m-2].

Pub. L. No. 117-58, § 70801(f), 135 Stat. at 1293, codified at 42 U.S.C. § 4370m-7(a)(2). IIJA also substantively revised the referenced coordinated project plan [CPP] and permitting timetable requirements at 42 U.S.C. § 4370m-2.²

The Executive Director will provide a more comprehensive Quarterly Agency Performance Report beginning with the third quarter of 2022, after the necessary revisions to the FAST-41 Data Management Guide (DMG), which were completed in March 2022, are fully implemented by the Executive Director and Permitting Council member agencies. The DMG provides a standard operating procedure for implementing the IIJA-amended FAST-41 requirements related to establishing, maintaining, modifying, and completing FAST-41 covered project permitting timetables, and maintaining CPP information on the Federal Permitting Dashboard.

Compliance Highlights and Challenges, Q1 2022

Though a data-driven system for assessing agency compliance with FAST-41 only will be available after DMG implementation is complete, based on experience administering FAST-41, general agency compliance with FAST-41 has improved greatly over the years. So-called “missed” permitting timetable milestones (i.e., a milestone that an agency failed to either meet or modify in accordance with FAST-41 requirements)³ was a fairly common occurrence in the past. But as agencies began taking a more active role in managing their FAST-41 covered project permitting timetables, instances of “missed dates” became rare. In 2021, only two milestones across the entire FAST-41 portfolio were “missed.” No new instances of “missed” milestones were recorded in the first quarter of 2022.

Relatedly, internal agency environmental review and authorization procedures have evolved over time to integrate important FAST-41 elements, such as defining issue escalation paths within agency management structures, and establishing measures to facilitate interagency and project sponsor consultation and engagement

¹ Pub. L. No. 117-58, § 70801(h), 135 Stat. 429, 1294 (Nov. 15, 2021).

² *Id.* § 70801(c), 135 Stat. at 1289.

³ 42 U.S.C. §§ 4370m-2(C)(2)(D)(i) & (ii).



as required by statute.⁴ Many agencies also have instituted internal permitting timetable management practices that facilitate frequent interagency communication and collaboration at various institutional levels to ensure coordinated effort and resource allocation on shared permitting efforts. Accordingly, compliance with the FAST-41 permitting timetable modification procedures—particularly the interagency and project sponsor consultation requirements—is greatly improved from past periods. This includes timely consultation with the Executive Director. Agencies now regularly seek and obtain in advance Executive Director approvals on the record for substantial permitting timetable modifications, rather than failing to comply with posted permitting timetable completion dates.⁵ All such Executive Director approvals were requested and obtained by agencies in 2021 and 2022.

FAST-41 facilitating and lead agencies⁶ also now are in near-universal compliance with the FAST-41 requirement to establish a CPP and permitting timetable within 60 days of the date on which the Executive Director posts a covered project to the Permitting Dashboard.⁷ The only exceptions are the Bay State Wind Project and the Skipjack Wind Farm, which were added to the Permitting Dashboard in 2018 and 2020, respectively.⁸ These projects lack a complete CPP and permitting timetable primarily because, at the time, agencies were unsure how to apply FAST-41 requirements in circumstances where:

- (i) a project sponsor applies for FAST-41 coverage before submitting to the relevant agency a complete application for project approval; or
- (ii) a sponsor of a FAST-41 covered project that already is on the Permitting Dashboard withdraws an application for project approval to re-work and re-submit it to the relevant agency.

Agencies now have the guidance they require to address such circumstances, and the Executive Director does not anticipate the issue of absent CPPs or permitting timetables to recur.

Although the FAST-41 implementation guidance issued by the Office of Management and Budget and the Council on Environmental Quality in January 2017 (FAST-41 Guidance) explains that insufficiently articulated projects are not covered “projects” for the purpose of FAST-41,⁹ the Department of the Interior (DOI), Bureau of Ocean Energy Management (BOEM), the facilitating agency for offshore wind projects,¹⁰ agreed to add the Skipjack Wind Farm Project to the Permitting Dashboard despite not having received from the project sponsor a complete construction and operations plan (COP), which is the proposal to construct and operate a wind project on the Federal Outer Continental Shelf. However, BOEM prefers to keep the project entry on the Permitting Dashboard

⁴ 42 U.S.C. § 4370m-2(c)(2)(D)(i)(II).

⁵ [South Fork Wind Farm OCS Air Permit](#); [Mid-Barataria Sediment Diversion Project Fish and Wildlife Coordination Act Review](#)

⁶ Pursuant to FAST-41, the facilitating agency is responsible for coordinating Federal environmental review and authorization efforts on FAST-41 covered projects until a lead agency is identified pursuant to the National Environmental Policy Act. *See* 42 U.S.C. § 4370m-2(a)(5).

⁷ 42 U.S.C. § 4370m-2(c)(1)(A).

⁸ *See* <https://www.permits.performance.gov/permitting-projects/bay-state-wind-project>; <https://www.permits.performance.gov/permitting-project/skipjack-wind-farm>.

⁹ *See* OMB M-17-14, Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects (FAST-41 Guidance) at 31-33 (Jan. 13, 2017).

¹⁰ *See id.* at 20 (DOI facilitating agency for offshore wind FINs).



because it anticipates that the project sponsor will submit a complete COP in the very near future. BOEM will create a CPP and comprehensive permitting timetable for the project within 60 days of deeming the COP complete.

This situation likely will not arise again because agencies now are aware that insufficiently articulated project proposals do not meet the requirements for becoming a FAST-41 covered project. The FAST-41 Guidance currently is undergoing comprehensive revision, and will further clarify that a project application for FAST-41 coverage (a.k.a. FAST-41 Initiation Notice, or “FIN”) that is too vague to facilitate the creation of a comprehensive permitting timetable within 60 days does not meet the statutory FIN requirements or covered project criteria.¹¹ Additionally, and consistent with the FAST-41 Guidance,¹² there currently is better pre-FIN coordination among the Permitting Council Executive Director, the facilitating agencies, and prospective project sponsors than in the past. Additionally, agency requirements and preferences for the timing of FIN submission are more clearly communicated to project sponsors up front to ensure FIN submissions are properly timed.

Unlike the Skipjack Wind Farm, the Bay State Wind Project had a complete project COP submitted to BOEM when the project was initially added to the Permitting Dashboard in 2018. However, the project sponsor subsequently withdrew the COP from BOEM review pending project redesign and COP resubmission. Rather than off-board the project from the Permitting Dashboard and require the project sponsor to re-apply for FAST-41 coverage once the new project design has been established, BOEM elected to keep the project entry on the Dashboard without the required CPP or permitting timetable. BOEM anticipates that the project sponsor will provide a revised COP in the near future, and prefers to keep a Permitting Dashboard entry open for this project pending revised COP submission. BOEM will create a CPP and comprehensive permitting timetable for the project within 60 days of determining that the revised project COP is complete.

The revised DMG clarifies that that a facilitating or lead agency may “cancel” FAST-41 covered projects where project sponsors withdraw underlying applications for project approval, such as a COP. Revisions to the FAST-41 guidance will further clarify that, in circumstances where a CPP and permitting timetable have already been created, a facilitating or lead agency alternatively may “pause” project review pending resubmission of a withdrawn underlying project application.

Progress Implementing New Dashboard Management System to Facilitate Required Reporting

On March 28, 2022, the Executive Director, in coordination with the other Permitting Council members, completed comprehensive revisions of the FAST-41 DMG, and full implementation of the DMG is expected to be completed in June 2022. Implementation of the DMG revisions is essential to facilitating the Executive Director’s new IJA obligation to assess agency compliance with FAST-41, including the revised CPP and permitting timetable requirements.¹³ The first auditing period that will be subject to the new assessment protocols will be the third quarter of 2022.

¹¹ See 42 U.S.C. §§ 4370m-2(a)(1)(C)(ii), (iv), & (v).

¹² See FAST-41 Guidance at 28-30 (recommendations for early pre-FIN consultation).

¹³ In the time since IJA enactment, the Permitting Council has been working to implement all the FAST-41 IJA amendments, including other congressional reporting obligations. On April 15, 2022, the Permitting Council Executive Director submitted an



Among other things, implementation on the Permitting Dashboard of the new DMG provisions will provide the Executive Director with the verifiable baseline data needed to assess each agency’s compliance with following FAST-41 requirements, as revised by IJA:

1. CPP timing and content requirements (42 U.S.C. § 4370m-2(c)(1));
2. Permitting timetable consultation, establishment, content, and overall length requirements (42 U.S.C. §§ 4370m-2(c)(2)(A) & (B));
3. Permitting timetable “modification after approval” requirements, including interagency and project sponsor consultation requirements (42 U.S.C. § 4370m-2(c)(2)(D)); and
4. “Conforming to permitting timetables” provisions of (42 U.S.C. § 4370m-2(c)(2)(F)).

DMG implementation also will allow the Executive Director to more easily and transparently determine when a project CPP and permitting timetable must be posted to the Permitting Dashboard, and when the total extended length of a FAST-41 permitting timetable is approaching the statutory limit, and, therefore, when to consider initiating FAST-41’s requirements for additional extensions.¹⁴

The Permitting Council Executive Director is working closely with the Department of Transportation’s (DOT) Dashboard Team, which manages the Permitting Dashboard and related information systems, to implement the extensive revisions contained in the revised DMG and to provide training to the Permitting Council member agencies on using the new features.¹⁵

In the meantime, implementation of the new DMG is underway and the Office of the Executive Director is developing the format and content for the Quarterly Agency Performance Report based on DMG implementation. The next Quarterly Agency Performance Report (second quarter, 2022) will explain the metrics that will be used to assess agency compliance and describe the format and content that will be used for the Quarterly Agency Performance Report. The following Quarterly Performance Report (third quarter, 2022) and subsequent Quarterly Agency Performance Reports will provide a comprehensive assessment of agency compliance with FAST-41 consistent with the metrics and procedures identified in the DMG and the second quarter, 2022, Quarterly Agency Performance Report.

Annual Report to Congress that was revised in scope to reflect new IJA Congressional reporting requirements, and the Permitting Council member agencies each submitted to Congress a newly required Agency Best Practices Report, in which each agency self-assessed their performance in implementing FAST-41 best practices. *See* 42 U.S.C. §§ 4370m-7(a)(1)(A) & (a)(3).

¹⁴ 42 U.S.C. § 4370m-2(c)(2)(D)(iii).

¹⁵ 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 Executive Director and DOT Dashboard Team are ensuring that the revised DMG provisions are applied exclusively to FAST-41 covered projects.



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.¹⁶ 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 review.

The FAST-41 project portfolio consists of “covered projects,” as defined at 42 U.S.C. § 4370m(6). The following figures focus on a subset of covered projects: those undergoing active Federal review during the first quarter of 2022. Projects undergoing active review are projects that were, at any time in the first quarter of 2022, not canceled, complete, or paused.¹⁷ There were 24 active FAST-41 covered projects in the first quarter of 2022, organized below by sector:¹⁸

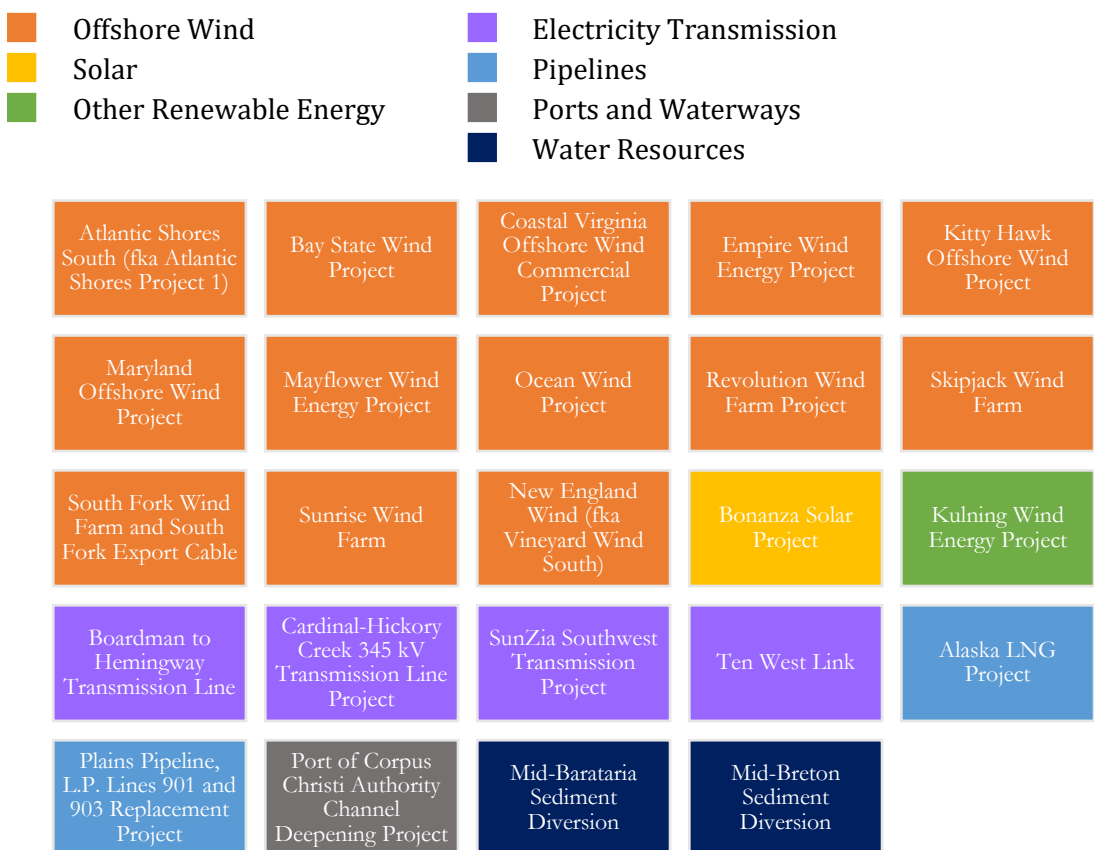


Figure 1: List of covered projects undergoing active Federal review in the first quarter of 2022.

¹⁶ See 42 U.S.C. §§ 4370m-2(a)(1), (b)(2)(A)(ii).

¹⁷ The set of projects undergoing active Federal review was derived from analysis of the Dashboard’s non-public revision history dataset.

¹⁸ The Renewable Energy Production sector is depicted as three sub-sectors: offshore wind, solar, and other renewable energy.



There is one new project undergoing active review during the first quarter of 2022, Maryland Offshore Wind, which was added to the Dashboard on March 28, 2022.

Three projects undergoing active review during the last reporting period (FY21) were no longer under active review during the first quarter of 2022. These include Aiya Solar Project and Battle Born Solar Project, which were both canceled prior to the start of the quarter, and Yellow Pine Solar, which was completed prior to the start of the quarter.

Three projects paused during the previous reporting period were canceled during the first quarter of 2022.

- On March 24, 2022, the Federal Energy Regulatory Commission (FERC) issued an order sustaining the result of a December 9, 2021 order that dismissed the license application for the Lake Elsinore Advanced Pumped Storage Project.
- On December 16, 2021, FERC issued an order vacating the authorizations under sections 3 and 7 of the Natural Gas Act for the Jordan Cove LNG Terminal and Pacific Connector Gas Pipeline. No parties filed a request for a rehearing of FERC’s order by the deadline in the first quarter of 2022.
- On December 16, 2021, FERC issued an order vacating the certificate authorization for the PennEast Pipeline. No parties filed a request for a rehearing of FERC’s order by the deadline in the first quarter of 2022.

Figure 2 summarizes the status, as of March 31, 2022 (the end of the first quarter, 2022), of FAST-41 covered projects undergoing active Federal review.¹⁹

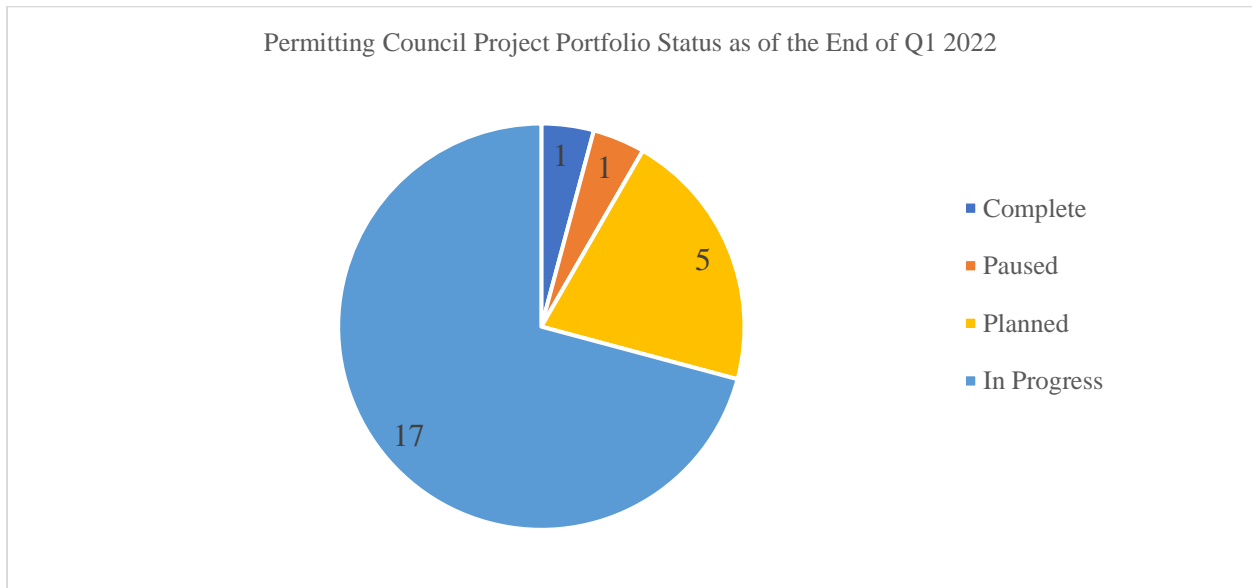


Figure 2: Graph showing the status of each project undergoing active Federal review in the Permitting Council portfolio as of the end of the first quarter of 2022.

¹⁹ Project status was derived from analysis of the Dashboard’s non-public revision history dataset.



- South Fork Wind Farm and South Fork Export Cable **completed** the environmental review and authorization process in January 2022.
- Plains Pipeline, L.P. Lines 901 and 903 Replacement Project was **paused** at the end of the quarter, on March 30, 2022, because the project sponsor is continuing to work on developing a new schedule for completion of the project’s environmental impact statement.
- There were five projects in **planned** status: Bay State Wind Project, Bonanza Solar Project, Kulning Wind Energy Project, Skipjack Wind Farm, and Maryland Offshore Wind.²⁰

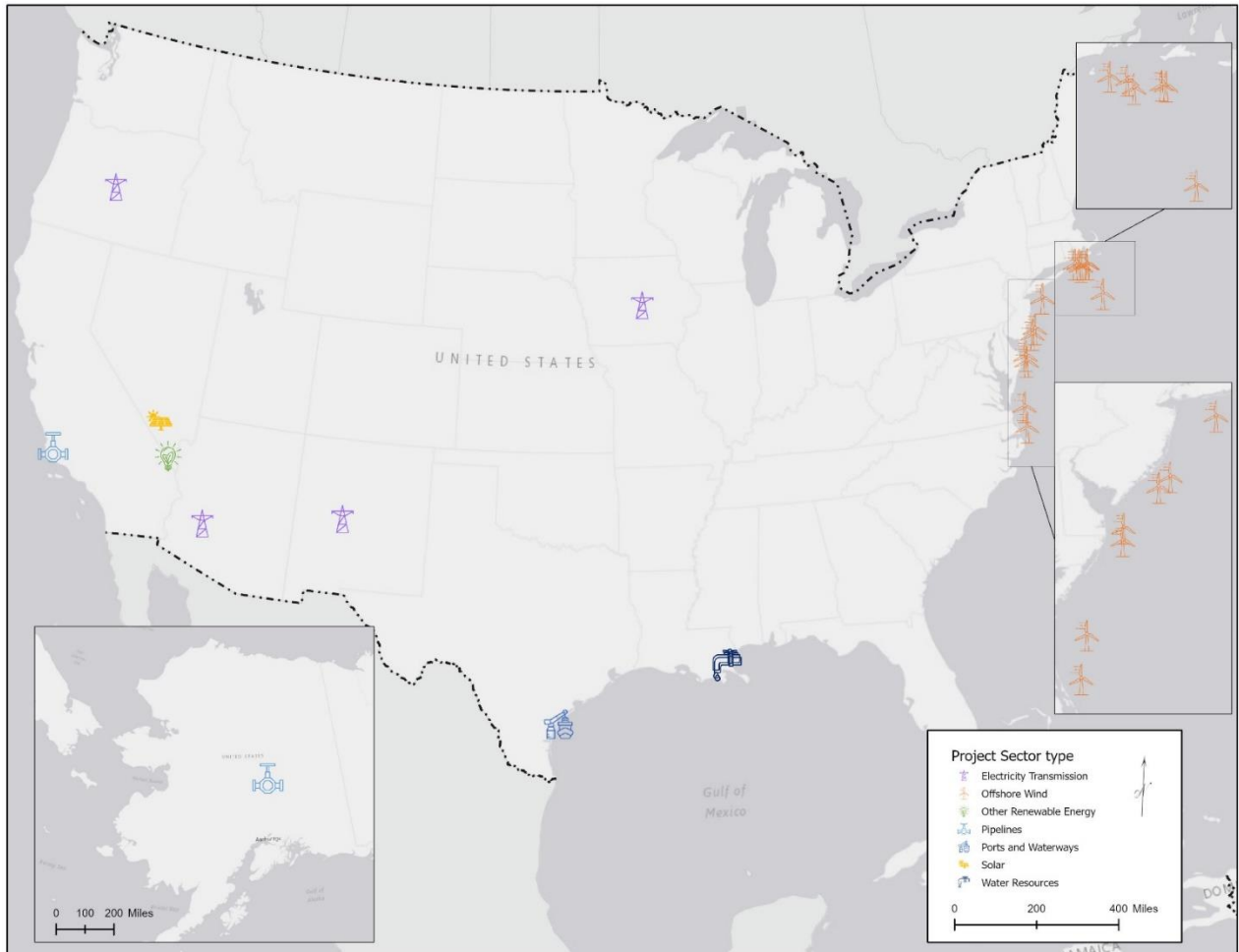


Figure 3: Map of covered projects undergoing active Federal review in the first quarter of 2022.

²⁰ For the purposes of this report, “planned” project status applies to any project posted to the Permitting Dashboard before the Notice of Intent is issued. The revised DMG will modify the conditions under which a project is in “planned” status to include only those projects for which the Executive Director has not yet posted a permitting timetable.

