

**Memorandum of Understanding**  
**between**  
**The Federal Permitting Improvement Steering Council**  
**and**  
**The State of Tennessee**  
**to Facilitate Implementation of FAST-41 for Covered Projects and Transparency Projects**

**I. PURPOSE**

The purpose of this Memorandum of Understanding (“MOU”) is to foster coordination and collaboration between the State of Tennessee (“State”) and the Federal Permitting Improvement Steering Council (“Permitting Council”) (the “Parties”) with regard to the permitting assistance provided to certain infrastructure projects pursuant to Title 41 of the Fixing America’s Surface Transportation Act (“FAST-41”) 42 U.S.C. § 4370m *et seq.* This document establishes the roles of the Parties and defines the principles of the working relationship. This MOU does not commit either Party to any particular action or expenditure of funds and instead reflects the Parties’ intention to work collaboratively to identify projects that are eligible to be a FAST-41 covered project or transparency project and provide corresponding FAST-41 benefits, or other permitting streamlining. This MOU is to be implemented in a manner that respects the State’s sovereignty, jurisdiction, and regulatory primacy.

**II. AUTHORITY**

The Permitting Council enters into this MOU pursuant to 42 U.S.C. § 4370m *et seq.* The Permitting Council Executive Director will act on behalf of the Permitting Council in implementing this MOU.

The State enters into this MOU pursuant to the Constitution of the State of Tennessee, Article III, § 1.

**III. STATEMENTS OF THE PARTIES**

**A. The Permitting Council**

Established in 2015 by FAST-41, the Permitting Council is a federal agency charged with improving the transparency, accountability, and predictability of the federal environmental review and authorization process for FAST-41 covered projects (as defined by 42 U.S.C. § 4370m(6)) and transparency projects (as authorized by 42 U.S.C. § 4370m-2(b)(2)(A)(iii)) (collectively, hereinafter referred to as “FAST-41 projects”). The Permitting Council is comprised of the Permitting Council Executive Director, who serves as the Council Chair; 13 federal agency council members (including deputy

secretary-level designees of the Secretaries of Agriculture, Army, Commerce, Interior, Energy, Transportation, Defense, Homeland Security, and Housing and Urban Development, the Administrator of the Environmental Protection Agency, and the Chairs of the Federal Energy Regulatory Commission, Nuclear Regulatory Commission, and the Advisory Council on Historic Preservation); and the Chair of the Council on Environmental Quality and the Director of the Office of Management and Budget.

The Permitting Council coordinates federal environmental reviews<sup>1</sup> and authorizations<sup>2</sup> for projects that seek and qualify for FAST-41 coverage. FAST-41 covered projects are entitled to comprehensive permitting timetables and transparent, collaborative management of those timetables on the Federal Permitting Dashboard. FAST-41 covered projects may be in energy production, electricity transmission, energy storage, surface transportation, aviation, ports and waterways, water resource, broadband, pipelines, manufacturing, mining, carbon capture, semiconductors, artificial intelligence and machine learning, high-performance computing and advanced computer hardware and software, quantum information science and technology, data storage and data management, and cybersecurity sectors. FAST-41 transparency projects are projects, in the above-mentioned sectors, that are directed by the Executive Director of the Permitting Council to be posted on the Dashboard in the interest of transparency. Transparency projects are not subject to all the requirements of covered projects but must have the permitting timetable and information about any public meetings posted and maintained on the Permitting Dashboard.

## B. The State of Tennessee

Tennessee has a long history of infrastructure innovation, from the Manhattan Project in Oak Ridge to today's position as the number one state for nuclear energy development—having recruited \$8 billion in investment from leading nuclear companies around the world—and home to BlueOval City, one of the largest advanced manufacturing projects in the nation. Backed by a triple-AAA bond rating held for the last decade and more than \$11 billion in economic development investment in 2025 alone, Tennessee has both the project pipeline and the fiscal foundation to be a strong FAST-41 partner.

To that end, it is the policy of the State to promote economic development in both urban and rural areas while preserving Tennessee's unique landscape for future generations, and to reduce unreasonable burdens, whether administrative or economic, on industry seeking to develop and invest in our great State. Tennessee believes that a strong partnership with federal agencies to ensure consistent, timely, and defensible permitting decisions will enhance both our State's economy and our citizens' quality of life. To accomplish these vital goals, the Chief Operating Officer of the State of Tennessee will coordinate with State agencies to ensure maximum collaboration with the Permitting Council.

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<sup>1</sup> 42 U.S.C. § 4370m(11) (defining "environmental review").

<sup>2</sup> *Id.* § 4370m(3) (defining "authorization").

#### **IV. PRINCIPLES OF THE RELATIONSHIP**

This MOU establishes a relationship between the Parties to coordinate federal permitting efforts to support projects the State and Permitting Council identify or are involved in that also may qualify as FAST-41 projects in the State of Tennessee. This relationship should provide mutually beneficial outcomes by supporting federal environmental reviews and authorizations, as those terms are defined in FAST-41, for projects in Tennessee while also expanding the FAST-41 portfolio of projects administered by the Permitting Council. Sponsors of projects identified by the State that seek and obtain FAST-41 coverage pursuant to the procedures prescribed in FAST-41<sup>3</sup> will receive the focused technical assistance, transparency, accountability, and predictability afforded to all FAST-41 covered projects or transparency projects, and State agencies will share in those responsibilities. This MOU does not modify or affect the FAST-41 covered project criteria or any other legal requirement for project coverage and review. Accordingly, projects identified pursuant to this MOU are not guaranteed status as a covered project or transparency project by virtue of this MOU, nor are any projects assured of any permit approval by virtue of becoming a covered FAST-41 project or transparency project.<sup>4</sup>

On a project-by-project basis, the Permitting Council will help the State and all appropriate facilitating or lead agencies to leverage the state “opt-in” provision at 42 U.S.C § 4370m-2(c)(3) and post state environmental reviews and authorizations to the Permitting Dashboard found at [www.permitting.gov](http://www.permitting.gov).

The State’s participation in this MOU is not an agreement as to federal jurisdiction over any particular project. This MOU should not be construed as State approval or disapproval of any project or its FAST-41 coverage. The State’s participation in this MOU is intended to facilitate cooperation and coordination. The State’s participation is supplemental and does not replace other requirements for cooperation, coordination, and consultation with the State.

#### **V. ROLES AND RESPONSIBILITIES**

A. Under this MOU, for projects in the State of Tennessee, the Permitting Council Executive Director intends to:

1. Help the State determine the FAST-41 eligibility of projects in the State of Tennessee and provide ongoing support as the State identifies new projects that may be eligible for FAST-41 program benefits.

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<sup>3</sup> *Id.* § 4370m-2(a)(1), (b)(2)(B) & (C).

<sup>4</sup> *See* 42 U.S.C. § 4370m-6(d)(2) (FAST-41 does not create a presumption that a covered project will be approved or favorably reviewed by any federal agency).

2. Engage with project sponsors of projects in the State's portfolio to provide FAST-41 briefings as requested and appropriate.
3. Engage in regular meetings with the State to assess potential future projects and update or modify strategy for engaging with project sponsors of potential FAST-41 projects. These meetings will occur at least once every quarter.
4. Coordinate with the State to develop a template for a Notice of the Initiation of a FAST-41 Notice (a.k.a., FAST-41 Initiation Notice, or FIN) that will support efficient application for FAST-41 coverage by project sponsors of projects in the State's portfolio.
5. Consult with the State about any relevant information that could impact the Permitting Council's evaluation of a FIN for project coverage and share that information with FAST-41 lead or facilitating agencies to inform the evaluation of a FIN.
6. Upon receipt of a FAST-41 FIN, identify and connect the State and the project sponsor with the appropriate FAST-41 facilitating agency and, if applicable, lead agency.
7. Provide dedicated Permitting Council staff contacts for each covered project in the State's portfolio and support regular coordination calls to occur at least once a month with the project sponsor and the participating agencies for the project.
8. Convene, as appropriate, federal agencies with equities in the State's projects covered under FAST-41 to support timely issue identification, resolution, and efficient and effective environmental review and permitting of covered projects.
9. Notify and communicate with the State prior to modifying any permitting timetable that affects a State agency's responsibilities.
10. Work with federal agencies and the State to identify best practices and recommendations relevant to the timely and efficient reviews of FAST-41 projects, including but not limited to technology improvements, concurrent reviews, and secure data and document sharing.
11. Notify and communicate with the State on an alternative completion date if a lead or facilitating agency submits to the Executive Director notice of a failure to conform with a completion date or a significant risk of failing to conform to the completion date.
12. Coordinate with the Chief Operating Officer of the State of Tennessee to hold targeted coordination and consultation meetings between relevant State agencies with regulatory responsibilities or authorities and federal counterparts to discuss the proposed scope, scale, and methods of

regulatory efforts including community outreach, environmental analyses (including fish, wildlife, and subsistence), and cultural analyses.

13. Coordinate with the Chief Operating Officer of the State of Tennessee to hold targeted coordination and consultation meetings between relevant State agencies with regulatory responsibilities or authorities and federal counterparts to avoid duplication of efforts and timeline extensions.
14. Engage in discussions, on a project-by-project basis, with Tennessee State agencies with regulatory responsibilities or authorities for covered projects to assist the State in executing the state “opt-in” provision at 42 U.S.C § 4370m-2(c)(3) and post state agency environmental reviews and authorizations to the permitting timetable.
15. Explore opportunities to support the improvement of state permitting processes, to include potential support through funding and access to technology designed to streamline state permit applications.

B. Under this MOU, the State intends to:

1. Coordinate with the Permitting Council Executive Director to assess and determine potential FAST-41 project eligibility of projects in the State’s portfolio.
2. Provide FAST-41 information to sponsors of projects in the State’s portfolio and, to the extent practicable, encourage eligible projects to pursue FAST-41 coverage.
3. Engage in regular meetings with the Permitting Council Executive Director to assess future project potential. The outcomes of such meetings can be used to inform the State’s or the Permitting Council’s respective strategies for engaging with project sponsors of potential FAST-41 projects. These meetings will occur at least once every quarter.
4. Coordinate with the Permitting Council Executive Director to develop a FAST-41 FIN template that will support efficient application for coverage by project sponsors of projects in the State’s portfolio.
5. Identify the need for practice tools to aid in the implementation of FAST-41, such as templates or fact sheets, and work with the Permitting Council Executive Director to develop such practice tools as appropriate.
6. Provide support to Permitting Council staff in communication and outreach efforts, when appropriate.
7. Provide an opportunity for the Permitting Council to present at the conferences hosted by the State, to advance knowledge of FAST-41 and this MOU.
8. Require each state agency with a permitting action to formally opt in and participate in the environmental review and authorization process required

by FAST-41 as described in 42 U.S.C. § 4370m-2(c)(3) for all FAST-41 projects identified as a result of this MOU.

9. Identify state permits commonly required for priority projects that are or will be eligible for FAST-41 coverage.
10. Commit to aligning permitting timelines for all state actions to complete no later than the expected completion date for the final federal action for all FAST-41 projects within the State.
11. Coordinate with the Permitting Council Executive Director to identify local permitting challenges and develop strategies to facilitate solutions for potential delays.

## **VI. POINTS OF CONTACT**

The following individuals will serve as the respective points of contact (“POC”) for each Party for implementing this MOU. A Party may change its POC by written notice to the other Party.

### **For the Permitting Council:**

J. Anderson Tran  
Chief Policy Counsel and Senior Advisor to the Executive Director  
[anderson.tran@permitting.gov](mailto:anderson.tran@permitting.gov)  
Federal Permitting Improvement Steering Council  
1800 G Street, NW, Suite 9100  
Washington, DC 20006

### **For the State:**

Brandon Gibson  
Chief Operating Officer, State of Tennessee  
[Brandon.O.Gibson@tn.gov](mailto:Brandon.O.Gibson@tn.gov)  
State Capitol, First Floor  
600 Dr. Martin Luther King, Jr. Blvd.  
Nashville, TN 37243

## **VII. CONFIDENTIALITY**

The Parties recognize that to implement this MOU, the Parties, their counsel, employees, and consultants may exchange documents and information that are subject to attorney-client privilege, attorney work product, other forms of privilege, and other confidential information. The Parties intend to keep confidential information shared under this MOU confidential to the extent allowed by their respective laws and regulations. This MOU does not mandate the sharing of confidential or privileged information.

Whenever sharing information deemed confidential or otherwise susceptible of protection from disclosure, the Party shall clearly mark any information to which it asserts a

privilege as "Privileged and Confidential Information Do Not Release, Subject to Permitting MOU."

Information that is generally available to the public other than as a result of a disclosure under this MOU or is available to a party from a source other than this MOU is not subject to the requirements of this MOU for confidential information.

The Party receiving information so marked will endeavor in good faith not to release, or allow to be released, such information to a non-party, to the extent permitted by law and without notifying the respective Party who marked the information. The Parties agree that failure to so mark information developed or shared under this MOU does not preclude the Parties from asserting the exemptions under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, or the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-504, et. seq., or from asserting privileges and exceptions in seeking to protect the information from discovery. A Party that receives a disclosure request under FOIA or the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-504, et. seq., or discovery in any administrative or judicial proceeding will notify the other Parties within 5 business days. Subject to the parties' respective retention policies and regulations if applicable, 30 days prior to the termination of this MOU, each Party agrees to return or destroy confidential information shared under this MOU.

#### **VIII. FUNDING**

The Parties acknowledge that coordination through this MOU is subject to the availability of Federal or State funds and each Party's budget priorities. Nothing in this MOU will require either Party to assume any obligation or expend any sum or funds in excess of authorization and appropriations available or in any other way act in violation of the Anti-Deficiency Act (31 U.S.C. § 1341). The participation of the State through the Chief Operating Officer of the State of Tennessee in this MOU and review of any project under this MOU is not an assertion by the State that the project is a FAST-41 covered project.

#### **IX. EFFECTIVE DATE; TERM**

The effective date of this MOU is the date of the signature last affixed to these pages. The Parties intend this MOU to remain in effect for a minimum period of five years after execution. If, during that time period, either Party desires to terminate the MOU, either Party may do so at any time by providing 60 days written notice to the other Party.

#### **X. SAVINGS PROVISION; LEGAL EFFECT**

Nothing in this MOU shall be construed to convey new authorities to either Party and all actions taken in furtherance of this agreement shall be consistent with each Party's authorities and applicable laws and regulations. This MOU does not create or alter any

legal rights, requirements, or causes of action. This MOU merely establishes a mechanism of cooperation, and coordination to achieve shared goals.

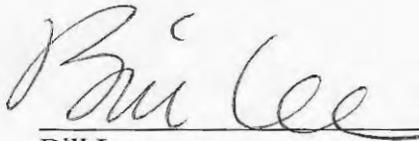
**XI. SEVERABILITY**

Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in effect, and the Parties may renegotiate the terms affected by the severance.

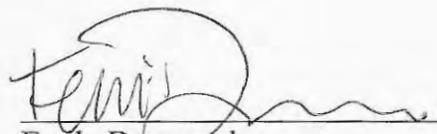
**XII. MODIFICATION**

Either Party may request changes to this MOU. Any changes, modifications, or amendments to this MOU that must be mutually agreed upon by the Parties, and will be incorporated by written instrument, executed, and signed by the Parties.

**XIII. SIGNATURES**

  
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Bill Lee  
Governor  
State of Tennessee

2.19.20  
Date

  
\_\_\_\_\_  
Emily Domenech  
Executive Director  
Federal Permitting Improvement  
Steering Council

2/19/20  
Date