

Memorandum of Understanding
between
The Federal Permitting Improvement Steering Council
and
The State of Nevada
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 Nevada (“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 efficiencies. 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 Executive Director of the Permitting Council (“Executive Director”) will act on behalf of the Permitting Council in implementing this MOU.

The State enters into this MOU under the following authorities, which includes but is not limited to: NRS 277.110 (2)

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 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 reviews¹ and authorizations² 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 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 Nevada

The State maintains direct and longstanding relationships with local communities, affording the State with a uniquely informed perspective and a critical role in projects within its borders and in neighboring states. As the state with the highest percentage of federally managed land, Nevada exercises primacy over numerous permitting activities and serves as a principal authority for wildlife management, taxation, and regulatory oversight. The State also maintains extensive, well-established relationships with federal partners and has a strong record of participation as a cooperating agency in environmental and regulatory reviews.

Nevada possesses substantial expertise across critical disciplines, including mining, geology, engineering, geothermal resources, sociocultural analysis, human health,

¹ 42 U.S.C. § 4370m(11) (defining “environmental review”).

² *Id.* § 4370m(3) (defining “authorization”).

wildlife management, energy systems, economic development, off-highway transportation, water resource management, tourism, and hospitality. The State's distinct landscape, mineral endowment, and prominence in energy development underscore the significant opportunities available when state and federal permitting authorities are effectively aligned.

Nevada continues to diversify and modernize its economy by strategically advancing targeted industries and fostering a business environment that supports sustainable growth, while also remaining dedicated to the responsible stewardship of its natural resources through effective protection and management practices.

The State is committed to maintaining a business-friendly regulatory framework, removing or reforming unnecessary and burdensome regulations, supporting small business expansion, and cultivating an innovation ecosystem defined by strong entrepreneurship and a dynamic, resilient economy. Nevada's indispensable contribution to advancing responsible development, economic growth, and national strategic priorities has been affirmed in executive orders, federal policy, and the Governor's Strategic Plan.

Consistent with the Governor Lombardo's Plan, which directs state regulatory agencies to collaborate across departments to streamline service delivery, enhance operational efficiency, and improve coordination, the State is committed to ensuring effective coordination and practical alignment with federal partners in order to facilitate permitting efficiency. These priorities reinforce Nevada's leadership in the production of raw materials and its continued advancement of responsible energy development.

The State's implementation of this MOU shall be carried out through the Office of the Governor, in coordination with the Nevada Division of Minerals and the Nevada Governor's Office of Energy.

IV. PRINCIPLES OF THE RELATIONSHIP

This MOU establishes a relationship between the Parties to coordinate permitting efforts to support projects the State and Permitting Council identify as FAST-41 qualified projects in Nevada. This relationship should provide mutually beneficial outcomes for projects selected in coordination with the State of Nevada by supporting federal environmental reviews and authorizations, as those terms are defined in FAST-41; and adherence to state permitting requirements. Sponsors of projects that seek and obtain FAST-41 coverage pursuant to the procedures prescribed in FAST-41³ and through the coordinated State and federal project selection process will receive the focused technical

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

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 federal or state permitting agencies, by virtue of becoming a covered FAST-41 project or transparency project.⁴

On a project-by-project basis, the Permitting Council will help the State and any appropriate facilitating or lead agency to evaluate 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.⁵

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, local, tribal, or other relevant entities.

V. ROLES AND RESPONSIBILITIES

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

1. Help the State determine the FAST-41 eligibility of projects in the State of Nevada and provide ongoing support for projects identified through a coordinated State and federal selection process that may be eligible for FAST-41 program benefits.
2. Engage with project sponsors of projects undergoing the permitting process in Nevada 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 See *Id.* § 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).

⁵ *Id.* § 4370m-2(c)(1)(B)(ii)

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 Permitting Liaison 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 federal permitting timetable to ensure no impact to a State agency's responsibilities or State requirements.
10. Work with federal agencies and the State to identify best practices, potential limitations, 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 regarding 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.⁶
12. Coordinate with the Governor's Office, or the chosen designee, 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), cultural analyses, and to avoid duplication of efforts and timeline extensions.

⁶ *Id.* § 4370m-2(c)(2)(F)(ii)

13. Engage in discussions, on a project-by-project basis, with Nevada 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.⁷
14. 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 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, inform eligible projects of the opportunity to pursue FAST-41 coverage.
3. Engage in regular meetings with the 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. Engage in regular meetings with the Federal Land Managers within the State of Nevada to assess future project potential. These meetings will occur at least once every quarter.
5. Coordinate with the 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.
6. Identify the need for practice tools to aid in the implementation of FAST-41, such as templates or fact sheets, and work with the Executive Director to develop such practice tools as appropriate.
7. Provide support to Permitting Council staff in communication and outreach efforts, when requested and appropriate.
8. Provide opportunities for the Permitting Council to present at events hosted by the State, to advance knowledge of FAST-41 and this MOU.
9. Require each state agency with a permitting action, when permissible under State law and regulation, 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.

⁷ *Id.* § 4370m-2(c)(1)(B)(ii)

10. Identify state permits commonly required for priority projects that are or will be eligible for FAST-41 coverage as well as State statutory requirements under those permit processes.
11. When permissible under State law and regulation, align State permitting timelines to ensure completion is consistent with the expected completion date for the final federal action for all FAST-41 projects within the State.
12. Coordinate with the 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
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Federal Permitting Improvement Steering Council
1800 G Street, NW, Suite 9100
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For the State:

In coordination with the Office of the Governor:
Mary Brillante
Natural Resource Liaison
mbrillante@minerals.nv.gov
Nevada Division of Minerals
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Carson City, NV 89703

With a courtesy copies of correspondence directed to:

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Natural Resources Policy Advisor to the Governor
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Carson City, NV 89701

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Robert Ghiglieri
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James Humm
Director
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Nevada Governor's Office of Energy
1 State of Nevada Way, 4th floor
Las Vegas, NV 89119

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] Nevada Public Records Act NRS 239, or from asserting privileges and exceptions in seeking to protect the information from discovery. A Party that receives a disclosure request under FOIA or Nevada Public Records Act NRS 239 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 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 or a project covered under the Nevada Division of Minerals and Nevada Governor's Office of Energy.

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 MOU 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.

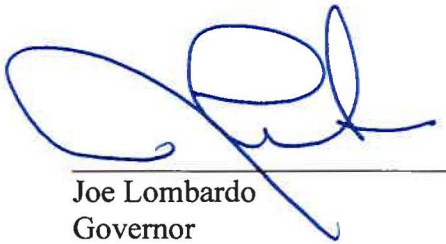
No provisions of this agreement shall be construed to preempt, supersede, or otherwise override any applicable laws or legally required permitting timelines of the State. Should the State need to modify any timelines for their responsible actions, they may do so by following the procedures described in the FAST-41 statute at 42 U.S.C. § 4370m-2(c)(2)(D), which requires a minimum of, cumulatively, 45 days' notice to the Executive Director.

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

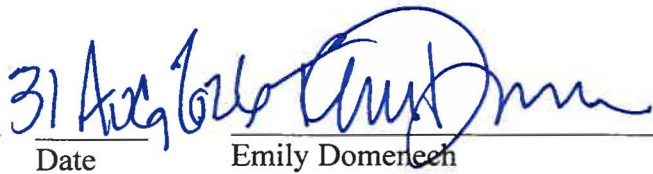
Either Party may request changes to this MOU. Any changes, modifications, or amendments to this MOU that must be mutually agreed upon by the Parties, and will be incorporated by written instrument, executed, and signed by the Parties.



Joe Lombardo
Governor
State of Nevada

31 Aug 2016

Date



Emily Domenech
Executive Director
Federal Permitting Improvement
Steering Council

8/31

Date