Memorandum of Understanding
between
The Federal Permitting Improvement Steering Council
and
The State of Montana
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 Montana ("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 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 include but are not limited to:

(a) Montana Constitution Art. VI, § 4, vesting the supreme executive power of the state in the Governor;
(b) MCA § 2-15-103, providing the Governor full powers of supervision, direction, and administration over all departments and their units within the executive branch;
(c) MCA § 2-15-201, prescribing the general powers and duties of the Governor, including the power to require reports from state officers and to take care that the laws are faithfully executed;
(d) Executive Order No. 6-2025, creating the Energy Advisory Council and authorizing coordination with federal agencies on energy permitting and policy development.

The Governor of Montana, or her/his designated representative, will implement this MOU on behalf of the State.

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 reviews[1] and authorizations[2] 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 Montana

Montana occupies a distinctive position among the states: it shares borders with, and in many places is interwoven with, millions of acres of federally administered land, and its government functions simultaneously as wildlife trustee, tax authority, land-use regulator,

[1] 42 U.S.C. § 4370m(11) (defining "environmental review").

[2] *Id.* § 4370m(3) (defining "authorization").

and steward of natural resource development across its territory. That combination of roles gives the State a direct and continuing stake in how federal permitting decisions affecting Montana land and resources are made.

That stake is reflected in decades of practical cooperation between Montana and federal agencies. The Governor's office, working alongside state agencies such as the Department of Natural Resources and Conservation ("DNRC"), the Department of Environmental Quality ("DEQ"), the Department of Fish, Wildlife and Parks ("FWP"), and the Montana Department of Transportation ("MDT"), regularly coordinates with federal counterparts on permitting, land-use planning, and environmental review under statutes including the National Environmental Policy Act ("NEPA"), the National Historic Preservation Act ("NHPA"), the Federal Land Policy and Management Act ("FLPMA"), and the National Forest Management Act ("NFMA").

This cooperative posture is backed by substantive expertise. State agencies and personnel bring deep technical knowledge to natural resource matters, including mining, wildlife management, water administration, oil and gas development, coal production, hydroelectric and renewable energy, engineering, and public health and safety, and that expertise informs the State's economic development efforts as well. The Montana Constitution, state and federal statutes, and case law all recognize the State's standing as a co-regulator and genuine partner in federal permitting, not merely a bystander to it. Montana's resource base underscores why that partnership matters. The State holds substantial coal, copper, gold, silver, and other hard-rock mineral deposits, extensive federal and state land holdings, considerable hydroelectric, oil, natural gas, and renewable energy potential, and water resources administered under Montana's prior-appropriation system. Together, these assets position Montana to contribute meaningfully to national and allied energy and resource security, provided that development proceeds efficiently and responsibly, in a way that protects Montanans' quality of life and strengthens the state economy.

Consistent with that policy, Montana favors making its resources available for their maximum beneficial use in the public interest and minimizing administrative and economic friction, while still engaging stakeholders and meeting every applicable legal obligation. The Governor, or the Governor's designee, will carry out the State's role under this MOU, coordinating with relevant state agencies as needed.

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 or are involved in that may

also qualify as FAST-41 projects in the State of Montana. 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 Montana 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[3] 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.[4]

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

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 Montana, the Executive Director intends to:

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

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

[4] *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).

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 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), and cultural analyses.
13. 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 avoid duplication of efforts and timeline extensions.

14. Engage in discussions, on a project-by-project basis, with 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 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 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 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 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 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
Federal Permitting Improvement Steering Council
1800 G Street, NW, Suite 9100
Washington, DC 20006

For the State:

Christian Bray
Policy Advisor
Office of Governor Greg Gianforte
Montana State Capitol, Room 204
P.O. Box 200801
Helena, MT 59620-0801

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 Montana Public Information Act ("MPIA"), Mont. Const. Art. II, § 9, and MCA § 2-6-1003 *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 MPIA 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. Nothing in this MOU requires destruction or return of records that must be retained under Montana's records retention laws and/or policies.

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. Nothing in this MOU obligates the State or any state agency to expend funds or incur obligations beyond those authorized and appropriated under State law.

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.

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. NO THIRD-PARTY BENEFICIARY

This MOU is entered into solely for the benefit of the Parties hereto and nothing contained herein shall be construed to confer any right, benefit, claim, or remedy of any nature upon any person or entity who is not a Party to the MOU.

XIII. 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.

XIV. SIGNATURES

Greg Gianforte Governor State of Montana	10/28/26 Date	Emily Domenech Executive Director Federal Permitting Improvement Steering Council	10/28/26 Date