MEMORANDUM

To: Federal Permitting Improvement Steering Council (Permitting Council)
    Agency Chief Environmental Review and Permitting Officers (Agency CERPOs)

From: Alexander Hergott, Permitting Council Executive Director

Date: January 12, 2021

Re: Ensuring that Permitting Council Member Agencies and Covered Project Sponsors
    Receive Full Benefit of 2-Year Limitations Period Provided in Title 41 of the Fixing
    America’s Surface Transportation Act (FAST-41)

FAST-41 places a 2-year limitations period on any judicial claim that challenges the
validity of a Federal agency decision to issue or deny an authorization for a FAST-41 covered
project. 42 U.S.C. § 4370m-6(a)(1)(A). Section 6 of OMB M-17-14, Guidance to Federal
Agenes Regarding the Environmental Review and Authorization Process for Infrastructure
Projects (Jan. 13, 2017) (FAST-41 Guidance), implements this statutory provision and requires
Permitting Council member agencies to publish in the Federal Register all decisions subject to
the FAST-41 2-year limitations period with a note informing the public that the limitations
period applies. FAST-41 Guidance Secs. 6.1 & 6.3, at 57.

It has come to the attention of the Permitting Council Executive Director that Permitting
Council member agencies generally are not implementing the provisions of the 2017 Guidance
related to the 2-year limitations period. Because the 2-year limitations period is an important
benefit of FAST-41 coverage that Permitting Council member agencies and covered project
sponsors alike are statutorily entitled to receive, Agency CERPOs should ensure that all
Permitting Council member agencies fully implement the 2017 Guidance provisions related to
the limitations period, and that implementation of the limitations period is provided for in all
applicable agency guidance and FAST-41 internal control procedures.

Please contact the Permitting Council Office of the Executive Director with any questions
related to the 2-year limitations period or implementation of related 2017 Guidance provisions.

Date: 01/12/2021

Alexander Herrgott
Executive Director
Federal Permitting Improvement Steering Council