



Tribal Consultation Policy and Plan

August 2024



The Federal Permitting Improvement Steering Council

The Permitting Council plays a leading role in creating a clean energy future and modernized infrastructure.

We offer a path for transparency and predictability for all FAST-41-covered projects and serve as a center for permitting excellence for infrastructure projects across the nation.

We are uniquely positioned to proactively and efficiently assist with the completion of environmental reviews and permitting processes.

We bring coordination and collaboration to the permitting process across all stakeholders.



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Executive Summary

This Federal Permitting Improvement Steering Council (Permitting Council) Tribal Consultation Policy and Plan (Policy) addresses Permitting Council interactions with federally recognized Tribes and agency activities that may affect Tribal interests. Guided by Executive Order (E.O.) 13175 “Consultation and Coordination with Indian Tribal Governments” and other federal directives, the Permitting Council recognizes Tribal sovereignty and self-governance. This Policy specifically applies to Permitting Council activities, outlines consultation principles, responsibilities, and procedures, and provides for working groups and other efforts to facilitate meaningful dialogue and collaboration.

Permitting Council interactions with Tribes include funding assistance through the Tribal Assistance Program to facilitate timely and efficient environmental review and authorization of one or more FAST-41 covered projects. The Permitting Council also may consult with Tribes when developing Permitting Council policies and practices, including the Permitting Council’s best practices for environmental reviews and authorizations for FAST-41 covered projects. Although Tribes may be sponsors of FAST-41 covered projects, this Policy does not apply to consultations on the issuance of FAST-41 covered project environmental reviews and authorizations, because those activities are undertaken by other federal agencies and are subject to each reviewing agency’s own tribal consultation policies.

This Policy emphasizes Nation-to-Nation consultation, respecting Tribal sovereignty and ensuring meaningful consideration of Tribal input. Consultation processes are structured to foster consensus where possible and provide adequate time and information for Tribes to engage effectively. The Policy also describes training initiatives that will ensure that Permitting Council staff are equipped to engage respectfully and effectively with Tribes on policy matters.

This Policy describes agency roles and processes for consultation. The Permitting Council will have a Tribal Governance Officer (TGO) and a Tribal Liaison Officer (TLO) to oversee consultation efforts, ensuring early notification and robust engagement with Tribes potentially affected by Permitting Council actions and initiatives. Consultation sessions may include in-person meetings, teleconferences, or written correspondence, as appropriate. The Permitting Council will document all consultation activities, detail Tribal input, and ensure transparency and accountability in how Tribal input influences Permitting Council actions.

This Policy underscores the Permitting Council's commitment to upholding federal trust responsibilities to Tribes and fostering collaborative relationships through structured, respectful consultation processes. By adhering to these guidelines, the Permitting Council aims to enhance understanding, promote fairness, and ensure Tribes have a meaningful role in relevant Permitting Council activities.





Section 1: Background

Established in 2015, the Federal Permitting Improvement Steering Council (Permitting Council) is a unique federal agency charged with implementing and enforcing Title 41 of the Fixing America's Surface Transportation Act (FAST-41).¹ The requirements of FAST-41 apply to federal agencies engaged in the environmental review² and authorization³ of FAST-41 covered infrastructure projects, and are intended to improve the transparency, predictability, accountability, and timeliness of the federal permitting process for FAST-41 "covered" projects. FAST-41 charges the Permitting Council with making recommendations for agencies to improve their project management practices, including managing permitting timetables for FAST-41 covered projects on the federal Permitting Dashboard (Dashboard), and with acting as a "Federal center for permitting excellence," that, among other things, supports interagency detailee and rotation opportunities, advanced training, enhanced support for agency project managers, and fora for sharing information and lessons learned.

The Permitting Council is comprised of 16 individuals: the Executive Director, who serves as the Council Chair; **13 members who represent federal permitting agencies** (including deputy secretary-level designees of the Secretaries of Agriculture, Army, Commerce, the 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 additional members, the Chair of the Council on Environmental Quality (CEQ) and the Director of the Office of Management and Budget (OMB).⁴

FAST-41 authorizes the Executive Director to hire staff to help implement the Executive Director's FAST-41 responsibilities.⁵ FAST-41 additionally requires the heads of the 13 permitting agencies that are represented by Permitting Council members to designate agency Chief Environmental Review and Permitting Officers, who, among other things, help their respective agencies comply with the requirements of FAST-41 and implement

¹ 42 U.S.C. §§ 4370m *et seq.*

² *Id.* § 4370m(11) (defining "environmental review" as "agency procedures and processes for applying a categorical exclusion or for preparing an environmental assessment, an environmental impact statement, or other document required under [the National Environmental Policy Act (NEPA)].").

³ *Id.* § 4370m(3) (defining "authorization" as "any license, permit, approval, finding, determination, or other administrative decision issued by an agency and any interagency consultation that is required or authorized under Federal law in order to site, construct, reconstruct, or commence operations of a covered project administered by a Federal agency or, in the case of a State that chooses to participate in the environmental review and authorization process in accordance with [42 U.S.C. §] 4370m–2(c)(3)(A) . . . , a State agency.")

⁴ *Id.* § 4370m-1(b)(2).

⁵ *Id.* § 4370m-1(c)(1)(E).

project management improvements.⁶ The 15 Permitting Council members other than the Executive Director represent their respective agencies on the Permitting Council; the 15 agencies themselves are not a part of the Permitting Council.

This Policy applies only to activities undertaken by the Permitting Council and not by the federal agencies that are responsible for the environmental review and authorization of FAST-41 covered projects, each of which have their own Tribal consultation policies and plans.

The Permitting Council administers FAST-41 and, in so doing, helps facilitate improved project management practices by agencies in coordinating and performing their environmental review and authorization responsibilities for FAST-41 covered projects. Pursuant to FAST-41, projects that seek and qualify for FAST-41 coverage⁷ are entitled to comprehensive permitting timetables and transparent, collaborative management of those timetables on the Dashboard in compliance with FAST-41's procedural and public disclosure requirements.⁸ Each permitting timetable must be actively managed by the relevant facilitating or lead federal agency in coordination with the project sponsor and other cooperating federal agencies. The Executive Director and the other Permitting Council members help facilitate agency compliance with the FAST-41 permitting timetable management and disclosure requirements, help resolve permitting timetable disputes, elevate project permitting issues to senior policy officials for resolution, help improve agency project management and coordination practices, and report on agency compliance with FAST-41 requirements.

By statute, FAST-41 does not affect the underlying laws, regulations, or requirements for reviewing or authorizing an infrastructure project. FAST-41 covered project reviews and authorizations—including tribal consultation and involvement in the permitting process—remain solely the responsibility of the relevant lead and cooperating agencies pursuant to existing federal law, which FAST-41 does not modify.⁹ Participation in the FAST-41 federal environmental review and authorization process also does not create a presumption that a covered project will be approved or favorably reviewed by any agency.¹⁰ Accordingly, though the Permitting Council helps implement FAST-41 permitting timetable and process improvement requirements for covered projects, the Permitting

⁶ *Id.* §§ 4370m-1(b)(2)(A)(iii) & (c)(3).

⁷ *See id.* §§ 4370m(6) (identifying the criteria that a project must meet to become a FAST-41 covered project); 4370m-2(a) (process to apply for FAST-41 coverage).

⁸ *See id.* § 4370m-2(c).

⁹ *See id.* §§ 4370m-(6)(d)(1) (FAST-41 does not supersede, amend, or modify any federal statute of affect the responsibility of any federal officer to comply with or enforce any statute); 4370m(6)(e)(2) (FAST-41 does not preempt, limit, or interfere with any power, jurisdiction, responsibility, or authority that a federal, state, or local government agency, metropolitan planning organization, Tribe, or project sponsor has with respect to carrying out a project or any other provision of law applicable to any project, plan, or program).

¹⁰ *See id.* §§ 4370m-6(d)(2).

Council does not itself conduct environmental reviews or issue any authorization for infrastructure projects.

This document comprises the Permitting Council's Policy for consulting with sovereign Tribal Nations with respect to those activities undertaken by the Permitting Council that may affect Tribal interests and equities. The Permitting Council held four Tribal consultation sessions in 2021 to discuss approaches to Tribal engagement in infrastructure permitting and has considered the comments provided in those sessions in developing this Policy. The Permitting Council held a consultation session in 2024 to seek input on a draft version of this Policy. This document reflects the outcomes of those consultations.





Section 2: Authority

The United States government has a unique relationship with federally recognized American Indian and Alaska Native Tribes (Tribes) as set forth in the Constitution of the United States, treaties, statutes, and court decisions. The Federal Government recognizes the right of self-determination and self-governance for Tribes and the obligation to work with federally recognized Tribes in a Nation-to-Nation relationship.

On January 26, 2021, President Biden issued a “[Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#)” directing Federal agencies to adopt action plans to implement [Executive Order \(E.O.\) 13175, “Consultation and Coordination with Indian Tribal Governments](#),” and noting that “Tribal consultation under this order strengthens the Nation-to-Nation relationship between the United States and Tribes.” This Presidential Memorandum also reaffirms the policy announced in the November 5, 2009, “[Presidential Memorandum on Tribal Consultation](#)”. This Policy implements E.O. 13175 and the Presidential memoranda that implement that order, including the November 30, 2022 “[Presidential Memorandum on Uniform Standards for Tribal Consultation](#).” The Permitting Council affirms and respects Tribal sovereignty and self-governance, and is committed to fulfilling federal trust and treaty responsibilities to Tribes, and to regular, meaningful, and robust consultation with Tribes as described herein.



Section 3: Scope

This Policy applies to consultations between the Permitting Council and sovereign Tribal Nations with respect to those activities undertaken by the Permitting Council that may affect Tribal interests and equities. Because the Permitting Council does not review or authorize infrastructure projects, this policy will not apply to FAST-41 covered project reviews or authorizations. For consultations on a FAST-41 covered project, please refer to the consultation policies of the relevant federal agencies that are involved in the project's review and authorization.

Activities undertaken by the Permitting Council that may be subject to this Policy include, but are not limited to:

1. Establishing recommendations on the best practices for improving the federal permitting process for covered projects pursuant to 42 U.S.C. § 4370m-1(c)(2)(B);
2. Determining additional sectors of projects that may be eligible for FAST-41 coverage pursuant to 42 U.S.C. § 4370m(6)(A);¹¹
3. Establishing and modifying programs for transferring funds to Tribal governments to facilitate timely and efficient environmental reviews and authorizations for FAST-41 covered projects pursuant to 42 U.S.C. § 4370m-8(d)(3);
4. Establishing a FAST-41 fees rule pursuant to 42 U.S.C. § 4370m-8(a) & (c); and
5. Establishing or substantially modifying Permitting Council policies or procedures (such as this Policy) that may affect Tribal interests.

¹¹ Current FAST-41 sectors include renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, 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, cybersecurity, carbon capture, energy storage, and mining.



Section 4: Responsibilities

Tribal Governance Officer (TGO). The TGO is the Executive Director or the Executive Director's delegee. The TGO is responsible for:

- ▶ Attending consultation sessions.
- ▶ Ensuring coordination with the Tribal Liaison Officer (TLO) to determine whether Tribal consultation is required or appropriate in any given circumstance, consistent with FAST-41 and E.O. 13175.
- ▶ Overseeing the Permitting Council's compliance with this Policy, E.O. 13175, and other Nation-to-Nation consultation requirements and policies.
- ▶ Approving the Record of the Consultation (See Section 9).

Tribal Liaison Officer. The TLO will be identified by the Executive Director, and is responsible for:

- ▶ Serving as the Permitting Council's principal point of contact for Tribal consultation.
- ▶ Leading and managing the Permitting Council's consultation efforts to ensure effective Nation-to-Nation relationships with federally recognized Tribes.
- ▶ Helping determine whether Tribal consultation is required pursuant to E.O. 13175 and other Nation-to-Nation consultation requirements and policies, and identifying Tribes that may be impacted or affected by the Permitting Council policy or action at issue.
- ▶ Promoting and facilitating consultation and collaboration between Tribes and the Permitting Council.
- ▶ Identifying any new consultations that may be needed with any federally recognized Tribe, and notifying the TGO.
- ▶ Maintaining consultation documentation and internal reporting, including development and distribution of the Record of the Consultation.
- ▶ Submitting any progress reports on implementation of this Policy if required by Executive Order or Presidential memoranda.

Joint Federal-Tribal Working Group (Working Group). As necessary, the TLO may convene a Working Group to support implementation, monitoring, reporting, and modifications to this Policy. If convened, the Working Group would be responsible for making recommendations to the Permitting Council on the implementation of this Policy. The Working Group members would include the Executive Director or the Executive Director's designee, along with at least one representative designated by a Permitting Council member other than the Executive Director, and representatives from a representative group of relevant Tribes. The TLO will identify Tribes to be represented on the Working Group. Invited Tribes will include a representative cross-section of Tribes involved in relevant Permitting Council business, including, if appropriate, those involved in FAST-41 covered projects. Tribal Working Group members will be authorized representatives or Tribal employees designated by the Tribe with authority to provide input on the Tribe's behalf. Tribal Working Group members will act in an official capacity on behalf of the Tribe they represent. The Executive Director will have final decision making with respect to the composition, duration, and meeting frequency of the Working Group. Working Group meetings do not replace required Nation-to-Nation consultations.

Training. The Permitting Council requires annual Tribal consultation training for Permitting Council employees who work with Tribes or on Permitting Council actions or policies that have Tribal implications. The TLO will coordinate training opportunities and administration. Annual Tribal consultation training for agency employees will include sections on Tribal sovereignty and U.S.-Tribal relations. To the extent practicable and permissible by law, the Permitting Council may offer opportunities to the staff of other agencies that are represented by Permitting Council members to participate in the Permitting Council's annual trainings.



Section 5: Consultation Principles

Tribal consultation is a two-way, Nation-to-Nation exchange of information and dialogue between official representatives of the United States and of a Tribe regarding federal policies and actions that have Tribal implications. Consultation recognizes Tribal sovereignty and the Nation-to-Nation relationship between the United States and a Tribe and acknowledges that the United States maintains certain treaty and trust responsibilities with respect to a Tribe.

Consultation requires the United States to give meaningful consideration to information provided by Tribes. Federal agencies, such as the Permitting Council, should strive for consensus with Tribes or a mutually desired outcome. Consultation should include both federal and Tribal officials who have decision-making authority regarding the proposed policy or action that has Tribal implications. Consultation will help ensure that relevant information is readily available to all parties, that federal and Tribal officials have adequate time to communicate, and that there is ongoing dialogue for Tribes to understand how their input has influenced federal decision-making. All these principles, including the principles that the Permitting Council intends to follow with respect to Tribal consultations and engagement (see Addendum), will be applied to the extent practicable and permitted by law.



Section 6: Determining Whether Consultation Is Appropriate

The TGO will ensure that the Permitting Council undertakes an analysis as early as possible to determine whether Tribal consultation is required or appropriate for any action undertaken pursuant to FAST-41, consistent with E. O. 13175. This analysis should occur regardless of whether a Tribal government requests consultation.

When a Tribal government requests consultation, the TGO will conduct that analysis as soon as possible and respond to the Tribe within a reasonable time. The analysis will take into consideration Section 3 of this Policy. If there is a reasonable basis to believe that a Permitting Council policy or action may have Tribal implications, consistent with E.O. 13175, the TGO will initiate consultation, consistent with this Policy.





Section 7: Notice of Consultation

The TGO, working with the TLO, will provide notice to, and begin consultation with, Tribes as early as possible when considering a policy or action with Tribal implications, and provide Tribes a meaningful opportunity to participate in the consultation process. Simply providing notification to one or more Tribes of a potential or pending Permitting Council action or policy is not considered consultation.

Notification of consultation will be provided in the form of a letter from the TGO. The letter will include sufficient detail on the topic to be discussed to allow Tribal leaders an opportunity to fully engage in the consultation. Adequate notification entails providing a description of the topics to be discussed, a timeline of the process, and possible outcomes. The notification should also give Tribal leaders the opportunity to provide feedback prior to the consultation, including time to request technical assistance and/or clarification on how the consultation process conforms to the requirements in this Policy. To the extent feasible, notification of consultation should also include available technical data or information necessary to support Tribal leaders' feedback.

The TGO will ensure that staff responsible for sending the notice of consultation to interested or potentially affected Tribes (which will consist of the TLO or other staff supervised by the TLO) use available tools, databases, and agency documentation to identify and send the notice to Tribes that would be implicated by a Permitting Council policy or action. Such efforts should account for the fact that many Tribes have connections to, or legally protected rights in, locations and resources beyond their current Tribal lands and the locations of Tribal government offices, including ancestral homelands and off-reservation fishing, hunting, gathering, or other rights.

The TGO will ensure that notification is given at least 30 days prior to a consultation meeting unless exceptional circumstances require a consultation to occur with less than 30 days' notification, in which case an explanation for less than 30 days' notification will be provided in the notice. A Tribe may request that the Permitting Council provide more than 30 days' notice prior to a consultation meeting, and, at its discretion, the Permitting Council may grant such a request.

The Permitting Council will make at least three attempts to notify Tribes through various modes of communication of a consultation meeting. The TLO also should make reasonable and periodic efforts to repeat the invitation to consult and, when feasible, will allow a Tribe to join an ongoing consultation.

A Tribe may request that the Permitting Council initiate consultation when the Tribe believes that the Permitting Council is considering or pursuing a policy or action with Tribal implications. The TGO and TLO will treat a request for consultation from an authorized representative of a Tribe in an expedited fashion, and respond in writing that the Permitting Council has received the request using the most expedient methods to communicate to the Tribe.





Section 8: Conducting the Consultation

The Tribal consultation process includes iterative and ongoing dialogue between the Permitting Council and the Tribe or Tribes. Throughout consultation, the Permitting Council Executive Director, TGO, TLO, and other Permitting Council representatives, as appropriate, will recognize and respect Tribal self-government and sovereignty; identify and consider Tribal treaty rights, reserved rights, and other rights; respect and elevate Indigenous Knowledge, including cultural norms and practices relevant to such consultations; and meet the responsibilities that arise from the unique legal relationship between the Federal Government and Tribal governments. The Permitting Council will ensure, to the extent practicable, that the Executive Director, TGO, TLO, and relevant staff with decision-making authority regarding the proposed policy are present at the Tribal consultation.

A consultation session includes, but is not limited to, in-person meetings, videoconferences, teleconferences, and correspondence to discuss a specific issue or set of issues. In the case of in-person meetings, videoconferences, and teleconferences, the consultation may be expanded upon through subsequent correspondence after consultation is initiated. On a case-by-case basis, consultation may be held through a series of written correspondence with the Tribal leadership, but the process of utilizing written correspondence will only be used when other methods of dialogue are not practicable, or when the Tribe prefers this method of consultation.

The TLO will solicit the views of affected Tribes regarding the consultation process and timeline. The TLO should work with Tribes to structure a process, to the extent practicable, that considers specific Tribal structures, cultural and traditional needs, and schedules of the Tribes.

Where appropriate, the TLO will work with other federal agencies to coordinate consultations. To minimize duplication and burden on Tribal officials, the Permitting Council will strive to engage in consultation with Tribes at a time and location coordinated with existing meetings of Tribal governments or in collaboration with other federal agencies.



Section 9: Record of the Consultation

The consultation process, including engagement efforts and meetings, will be appropriately documented, and records maintained. The TGO, supported by the TLO, will follow-up on Tribal input relating to relevant matters within the Permitting Council Scope and Authority (see Sections 2 & 3), as appropriate. The TGO will communicate how Tribal input was considered in the decision-making process, explore alternatives and additional data as needed, and work to create shared understanding with Tribes through the consultation process.

Upon completion of the consultation, the TLO will prepare a Record of the Consultation, which summarizes the consultation activities, and which the TGO will approve. When appropriate, the TGO or TLO may implement a post-consultation review process that invites Tribal feedback or considers the need for training or technical assistance concerning the Permitting Council's action

When the matter under consultation involves confidential or culturally sensitive information, the Permitting Council will inform the Tribe in advance of any limitations on the Permitting Council's ability to maintain the confidentiality of this information, and will work with the Tribe to develop a consultation process that addresses the sensitivity of the information and will protect Tribal information to the extent permitted by federal law. If applicable, the consultation process will also clarify distribution of the record of consultation to protect Tribal information to the extent permitted by federal law, while ensuring the Record of the Consultation is available to the Tribe. If litigation or legal requirements impact the Permitting Council's ability to conduct consultation, the Permitting Council will explain the constraints to the Tribe. If the Permitting Council determines that federal law or regulation prohibits continued discussion at a specified point in the decision-making process, the Permitting Council will inform the Tribe(s) at the earliest opportunity.



Addendum

Frequently Asked Questions

1. What role does the Permitting Council have in environmental reviews and permitting authorizations for FAST-41 covered projects?

Generally, the Permitting Council does not play a direct role in the environmental review and authorization of FAST-41 covered projects. Under FAST-41, project review and authorization remains the responsibility of the relevant permitting agencies under existing federal law.

Instead, FAST-41 requires the Permitting Council and individual Permitting Council members to play specific roles in implementing FAST-41, including helping agencies to coordinate, create, and manage comprehensive permitting timetables for FAST-41 covered projects, establish best practices for environmental reviews and authorizations for FAST-41 covered projects, and improve interagency coordination, accountability, and transparency in permitting FAST-41 covered projects.

For example, the Executive Director helps facilitate the interagency coordination needed to establish FAST-41 covered project Coordinated Project Plans¹² and permitting timetables, mediates permitting timetable disputes, elevates issues to senior decision-makers at the permitting agencies, authorizes agencies to make certain permitting timetable extensions (or else subjects them to the permitting timetable “nonconformance” reporting requirements of FAST-41),¹³ and reports to Congress on permitting agency compliance with FAST-41 permitting timetable management requirements. The OMB Director, a Permitting Council member, is responsible for authorizing certain agency permitting timetable extension requests, resolving permitting timetable disputes, and, in cooperation with Permitting Council member CEQ Chair, issuing guidance to agencies for implementing their FAST-41 responsibilities. Each of the 13 Permitting Council members that represents a federal permitting agency is responsible for helping improve their respective agency’s permitting processes, including implementing the Permitting Council’s recommendations for best practices for FAST-41 projects, which include best practices for Tribal consultations.

¹² See 42 U.S.C. § 4370m-2(c)(1).

¹³ See *id.* § 4370m-2(c)(2)(F).

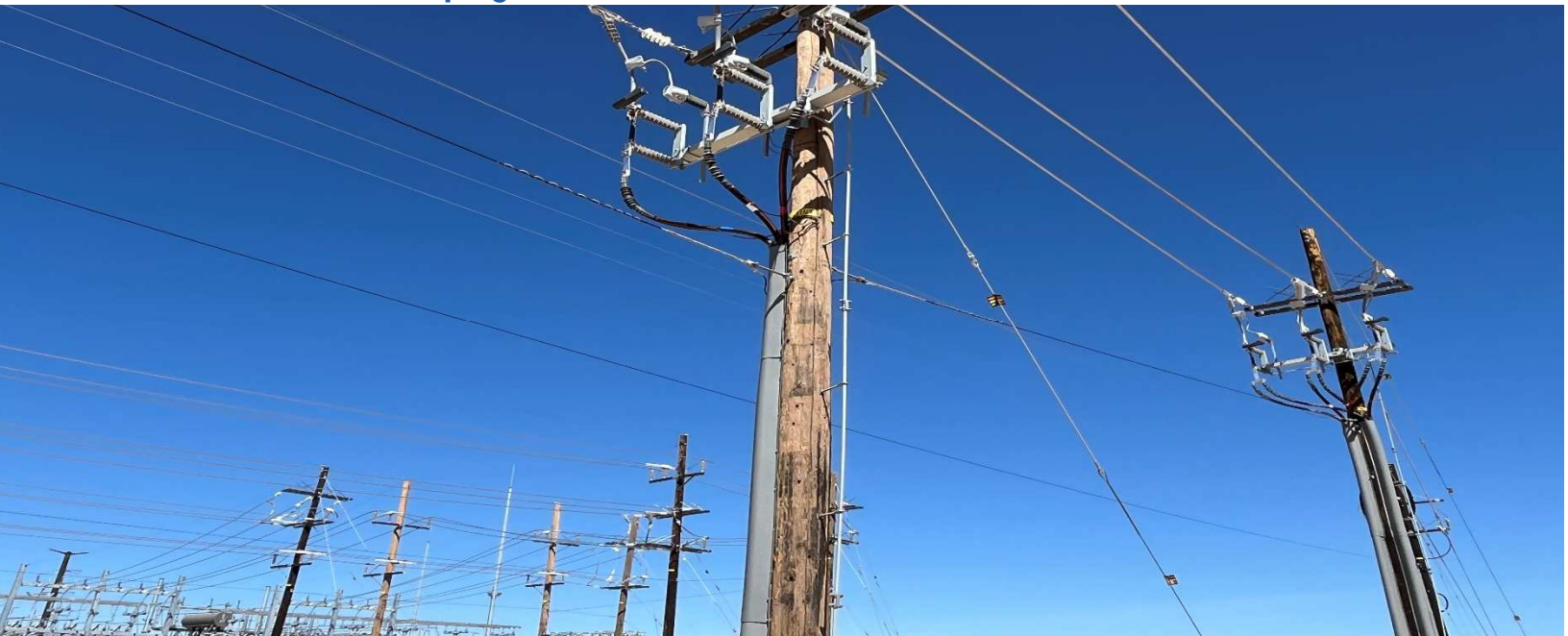
2. Can the Permitting Council require federal agencies to conduct Nation-to-Nation consultation or ensure that best practices are followed?

No. Each agency is independently responsible for complying with Nation-to-Nation consultation requirements. The Executive Director may help facilitate coordinated or consolidated Nation-to-Nation consultation for authorizations on a FAST-41 covered project if the agencies participating in the project review are inclined and authorized to do so.

Each agency involved in the environmental review and authorization of a FAST-41 covered project is expected to follow any guidance issued by the OMB Director for implementing the Permitting Council's recommendations for best practices, and must report annually to Congress and OMB a report assessing the performance of the agency in implementing the Permitting Council's recommendations for best practices.¹⁴

3. How can my Tribe access funding from the Environmental Review and Improvement Fund (ERIF) to support timely and efficient environmental review and authorization of a FAST-41 covered project?

A Tribe may be eligible to receive ERIF funds if the funding would facilitate timely and efficient environmental review and authorization of one or more FAST-41 covered projects.¹⁵ The instructions for seeking ERIF funding is available on the Dashboard at <https://www.permits.performance.gov/fpisc-content/erif-tribal-assistance-program>.



¹⁴ See *id.* §§ 4370m-1(c)(3)(C), 4370m-7(a)(3).

¹⁵ *Id.* § 4370m-8(d)(3).

4. What types of projects can be FAST-41 covered projects (e.g., renewable energy, oil and natural gas pipelines)?

Project sponsors submit to the Executive Director and the designated FAST-41 facilitating agency a notice of the initiation of a FAST-41 covered project (a.k.a., FAST-41 Initiation Notice, or “FIN”).¹⁶ The FIN must include:

- (i) A statement of project purpose/objective;
- (ii) A project description and location of potentially affected environmental and cultural resources;
- (iii) A statement regarding technical and financial ability of the project sponsor to construct the project;
- (iv) A statement regarding federal funding, environmental review and authorization needed for the project; and
- (v) An assessment that the project is a covered project.

A project can be a FAST-41 covered project if it:

- (i) Is located in the United States;
- (ii) Requires environmental review or authorization by a federal agency;
- (iii) Involves the construction of infrastructure in a **FAST-41 sector (see below)**;
- (iv) Meets at least one of the **FAST-41 covered project criteria (see below)**; and
- (v) Is not subject to funding and review under the Water Resources Development Act (33 U.S.C. § 2348), led by the U.S. Department of Transportation, or led by any agency pursuant to Title 49 of the U.S. Code.¹⁷

¹⁶ *Id.* § 4370m-2(a)(1).

¹⁷ *Id.* § 4370m(6); FAST Act § 11503(b), Pub. L. No. 114-94, 128 Stat. 1312, 1692 (Dec. 5, 2015).

Current **FAST-41 sectors** include: renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, 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, cybersecurity, carbon capture, energy storage, and mining.

The **FAST-41 covered project criteria** are:

- (i) “Objective”—Minimum investment of \$200 million, subject to NEPA, not subject to “abbreviated environmental review or authorization under federal law.”
- (ii) “Tribal”—Sponsored by a Tribe, located on Tribal land, subject to NEPA.
- (iii) “Carbon Capture”—Involves construction of infrastructure for capture, utilization, and sequestration of carbon dioxide, carbon dioxide pipelines.
- (iv) “Discretionary”—Project is of size and complexity which, in the opinion of the Council, makes it likely to benefit from FAST-41 coverage.¹⁸

5. How do I know if a project is a FAST-41 covered project?

FAST-41 covered projects are posted on the Dashboard within 14 days of Permitting Council receipt of a compliant FIN that describes a FAST-41 covered project.

FAST-41 covered projects can be found under the “FAST-41” tab on the Dashboard. Each FAST-41 covered project page will indicate that the project is a FAST-41 covered project. Projects under the “DOT Projects” tab on the Dashboard are projects managed by the U.S. Department of Transportation pursuant to a separate authority and are not FAST-41 covered projects.

¹⁸ *Id.* § 4370m(6).

6. Can a Tribe request that a project become a FAST-41 project?

Yes. A Tribal project sponsor can submit a FAST-41 FIN per the FAST-41 requirements outlined above. To submit a FIN electronically, click the red “become a FAST-41 project” in the upper right-hand corner of the Permitting Dashboard landing page: <https://www.permits.performance.gov/>.

7. What benefits are there for a Tribe that is involved in the environmental review and authorization a FAST-41 project?

Tribes that are involved in the environmental review and authorization of a FAST-41 covered project, including in a consultative capacity, may be eligible to receive funding from the ERIF Tribal Assistance Program if the transfer of funding to the Tribe would facilitate timely and efficient environmental review and authorization of the covered project. The instructions for seeking ERIF funding can be found at <https://www.permits.performance.gov/fpisc-content/erif-tribal-assistance-program>.

Application of Policy

This Policy applies to consultations with Tribes that the United States Government acknowledges to exist as Indian Tribes pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 5130. The Permitting Council may seek input from Indigenous communities and groups that are not defined as Tribes. To the extent practicable, the Permitting Council will meet and seek input with non-federally recognized Indigenous communities, and may follow similar procedures as outlined in this Policy when doing so.

ANCSA Corporations. If the Permitting Council proposes a policy or action that may affect Alaska Native Corporations Settlement Act of 1971 Corporations (ANCSA Corporations), this Policy will apply.

Native Hawaiian Community and Native Hawaiian Organizations. Congress recognizes the Native Hawaiian Community (NHC) by establishing a special political and trust relationship through over 150 enactments. This political and trust relationship exists even though there is currently no NHC government formally recognized by the United States. To ensure that the requirements of the United States’ relationship with the NHC are met, Congress requires federal agencies conducting consultation pursuant to the National Historic Preservation Act and the Native American Graves Protection and Repatriation Act to consult with Native Hawaiian Organizations (NHO) as the informal representatives of the NHC. The Permitting Council will follow the procedures in this Policy, as practicable, to seek input from the Native Hawaiian Community for policies and actions that may impact the NHC.

Definitions

The terms “Tribal officials,” “policies that have Tribal implications,” and “agency” as used in this Policy are as defined in E.O. 13175.

Tribes or Tribal Nation. Any American Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the United States Government acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 5130.

ANCSA Corporation. Any Alaska Native village corporation, urban corporation, or regional corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act, 43 U.S.C. § § 1601 *et seq.*

Tribal Governance Officer (TGO). The Executive Director or other individual designated by the Executive Director to carry out the TGO responsibilities described in this Policy.

Tribal Liaison Officer (TLO). One or more individuals designated by the Executive Director to carry out the TLO responsibilities described in this Policy. The TLO name and contact information is available here: <https://www.permits.performance.gov/about/office-executive-director>.

The Federal Permitting Improvement Steering Council (Permitting Council). The federal agency established pursuant to Title 41 of the Fixing America’s Surface Transportation Act, 42 U.S.C. §§ 4370m-1(a) & (b).

The Federal Permitting Improvement Steering Council Executive Director (Executive Director). The Executive Director of the Permitting Council identified at 42 U.S.C. § 4370m-1(b)(1)(A).



Permitting Council Recommendations on Best Practices

The Permitting Council must annually issue recommendations on best practices for improving the federal permitting process for FAST-41 covered projects. [42 U.S.C. § 4370m-1\(c\)\(2\)\(B\)](#). The Executive Director facilitates the development of these best practices. Pursuant to [42 U.S.C. § 4370m-7\(a\)\(3\)](#), each federal agency that participates in the environmental review and authorization of a FAST-41 covered project must submit to Congress and the OMB Director an annual report self-assessing the agency's performance in implementing the Permitting Council's recommendations on best practices. FAST-41 contains a best practice category for improving early Tribal engagement for FAST-41 covered projects.

The Permitting Council periodically will seek to amend and update the FAST-41 Tribal best practices, <https://www.permits.performance.gov/fpisc-content/reports-and-publications>, and may consult with Tribal governments during the amendment process pursuant to this Policy. The Permitting Council will consult with Tribes in the event of proposed changes to the best practices for early Tribal engagement.

Permitting Council Consultation Principles

The Permitting Council intends to follow the following principles with respect to all Tribal consultations and engagement.

- Identify Tribes that may be impacted by the proposed Permitting Council policy or action or may have unique knowledge and expertise related to the Permitting Council policy or action by using multiple tools or sources (e.g., the [Bureau of Indian Affairs' Tribal Leaders Directory](#), the [Tribal Directory Assistance Tool](#), [National Association of Tribal Historic Preservation Officers' Directory](#), etc.) to verify the accuracy of contact information. Include multiple relevant contacts (e.g., Tribal Government leadership, Tribal administrators, cultural resources staff, natural resources staff, Tribal Historic Preservation Officers, etc.) when conducting outreach to increase chances that the appropriate member(s) of a Tribe receives and can respond to the request to consult on the Permitting Council policy or action.
- Invite identified Tribes to participate in Nation-to-Nation consultation as early as practicable. Clearly discuss timelines with Tribes and incorporate feedback to the extent possible to proactively extend timetables as needed for meaningful consultation.
- Build relationships with Tribes by engaging with them on an ongoing basis outside of specific Permitting Council actions and initiatives and as early as possible.

Foster Tribal relationships by informing Tribes of how Tribal input was considered by Permitting Council decision-makers.

- Be mindful of Tribes' capacity for engagement and, to the extent possible, coordinate with other agencies with Tribal consultation requirements to consolidate requests and avoid overlapping timeframes.
- If applicable and consistent with Permitting Council Scope and Authority, (see Sections 2 & 3), identify opportunities to work with Tribes, including working closely with Tribes to understand and incorporate Indigenous Traditional Ecological Knowledge in developing Permitting Council policies and actions that affect Tribes.
- Ensure Permitting Council staff have knowledge of and access to internal and/or external agency resources and training available for Tribal engagement to ensure staff understand unique Nation-to-Nation relationships and requirements to facilitate proactive engagement and relationship building.