NOTE

Is FAST-41 Permitting All that Fast? Why Congress Must Take a More Serious Approach to Streamlining Federal Permitting

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ABSTRACT

Meeting the nation's climate goals is not achievable under the current federal permitting process. Title 41 of the Fixing America's Surface Transportation Act ("FAST-41"), signed into law in December 2015, was the most recent major legislation aimed at streamlining the federal permitting process, and has been the subject of high praise leading up to the Infrastructure Investment and Jobs Act ("IIJA"). In November 2021, Congress eliminated FAST-41's sunset through the IIJA, making the program, as well as the permitting council and office it created, permanent. However, an in-depth review of the permitting council's 2020 Annual Report to Congress finds that FAST-41 high praise is ill warranted – it neither speeds up the National Environmental Policy Act ("NEPA") review process as fast as it appears, nor is it as popular as it is made out to be. Given these findings, an extension, rather than elimination, of FAST-41's sunset would be a more prudent decision, giving Congress more time to assess the fledgling program's efficacy in streamlining the permitting process.

Attempts to streamline the permitting process by improving the interagency coordination and inefficiencies of the review process, rather than modifying any federal statute or mandatory environmental review, like FAST-41, do not provide the teeth required to fix the nation's delay-prone permitting system. Indeed, FAST-41 thus far seems to have added another layer of procedures and points of contact to an already complex and confusing permitting process. Nonetheless, to adequately access and increase accountability within FAST-41, this Note calls for a Congressional oversight hearing and specific improvements to the FAST-41 recommended performance schedules and online database.

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* This Note is current as of December 2021. As such, this Note does not discuss subsequently enacted legislation relevant to this discussion or subsequently issued annual reports to Congress by the Federal Permitting Improvement Council. Georgetown Law, J.D. 2022; Gonzaga University, B.S.M.E. 2018. © 2023, David Stepovich.

However, what is required to fix the nation's permitting system is to modify NEPA Act or expand and make uniform categorical exclusions under the current NEPA framework.

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INTRODUCTION

It is no secret that the United States' federal permitting system for infrastructure and energy projects ranks as one of the most time-consuming, complex, and costly in the world.[1] A large extent to which is due to the environmental review process required under the National Environmental Policy Act ("NEPA").[2] NEPA requires federal agencies to evaluate the potential environmental effects of any project they permit or otherwise approve,[3] in addition to other environmental review and permitting processes conducted under various other federal and state

1. Mario Loyola, *It Takes Lots of Permits to Save the Planet*, WSJ (Apr. 4, 2021), https://www.wsj.com/articles/it-takes-lots-of-permits-to-save-the-planet-11617567295 [https://perma.cc/65LK-HS2G] ("Competitors like Germany, Canada and Australia routinely complete reviews of infrastructure proposals in under two years while often doing a better job of protecting the environment.")

2. Andy Winkler, *More Room for Improvement in the Permitting Process*, BIPARTISAN POLICY CENTER (Apr. 15, 2019), https://bipartisanpolicy.org/blog/more-room-for-improvement-in-the-permitting-process/ [https://perma.cc/65LK-HS2G].

3. 42 U.S.C. § 4332(C)

laws.[4] In particular, NEPA requires a federal agency to prepare an environmental impact statement ("EIS") if a federal agency finds that the potential environmental impact of a project is significant.[5]

Although there are many problems plaguing the federal permitting process, there are three issues that stand out the most. The first and largest contributor to the delayed permitting process is the time and expense required to draft and finalize an EIS, which may take several years to complete and comprise of hundreds to thousands of pages.[6] The Council on Environmental Quality's ("CEQ") latest EIS report found that from 2010–2017, the average time it took to complete an EIS, across all federal agencies, was 4.5 years.[7] The time and page-lengths needed to complete an EIS continue to increase due to agencies' fear of litigation.[8] Because federal courts often find EISs inadequate, agencies are trained to make their EISs longer to anticipate any possible questions potential litigants might have.[9] The second contributor is the litigation itself.[10] Once an EIS is finalized and a record of decision is made, litigation, often initiated by advocacy groups, will cause significant delays as district and appellant courts consider whether the agency complied with NEPA procedures.[11] A third contributor to the lengthy permitting process is the lack of cooperation among the designated lead agency, who is responsible for preparing the EIS, and the various other

4. Laura Zagar, William Malley & Stephanie Regenold, *Environmental Streamlining Measures in Title 41 of the FAST Act: What Will They Mean for Infrastructure Project Developers?* 25 ENV. L. NEWS 27, 26–33 (2016), https://www.perkinscoie.com/images/content/1/5/v2/157608/Environmental-Streamlining-Measures-in-Title-41-of-the-FAST-Act.pdf (These federal laws include "Section 404 of the Clean Water Act, Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, and many others.")

5. LINDA LUTHER, STREAMLINING NEPA, CRS 5, 6 (2007), http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RL33267.pdf [perma.cc/FA8Q-FBWT].

6. *National Environmental Policy Act Review Process*, EPA (last visited Dec. 20, 2021), https://www.epa.gov/nepa/national-environmental-policy-act-review-process [https://perma.cc/E4ZY-Y286]; *Biden Administration Defends Alaska's Willow Project in Court,* U.S. SENATOR LISA MURKOWSKI (Jun. 5, 2021), https://www.murkowski.senate.gov/press/release/biden-administration-defends-alaskas-willow-project-in-court (Alaska's Willow Project required a 2,600-page EIS).

7. COUNCIL ON ENV'T QUALITY, ENVIRONMENTAL IMPACT STATEMENT TIMELINES (2010–2018) 7-11 (2020), https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2020-6-12.pdf [perma.cc/8HKK-8BDN] [hereinafter "CEQ EIS TIMELINES"].

8. Luther, s*upra* note 5, at 10. For example, courts may find that an EIS is inadequate if it does not sufficiently analyze or consider all project alternatives or did not analyze all cumulative or indirect environmental impacts. *Id.*

9. *Full Committee hearing to Examine the Permitting Processes at DOI and FERC for Energy and Resource Infrastructure Projects Before the S. Comm. On Energy & Nat. Res.*, 115th Cong. 1:01–1:05 (2017), https://www.energy.senate.gov/hearings/2017/12/full-committee-hearing-to-examine-the-permitting-processes-at-doi-and-ferc-for-energy-and-resource-infrastructure-projects [https://perma.cc/Y3EZ-DFQ3] (Statement of Jim Cason, Associate Deputy Secretary, DOI) (An EIS may range from "5,000 to 10,000 pages").

10. Luther, s*upra* note 5, at 10.

11. *Id.*

participating agencies involved.[12] Agencies may often perform duplicative analysis, one after the other, rather than working together simultaneously.[13]

It is for these reasons that permitting reform has been a bipartisan topic for quite some time.[14] Uncertainty in the permitting process not only reduces the amount of investment in the country's energy production infrastructure, but also reduces American jobs and energy security.[15] It is also important to note that the broken permitting system delays both conventional energy and renewable energy projects.[16] Although not subject to much attention in the media, permitting reform is essential to adequately address climate change.[17] The number of years it takes for nuclear and renewable energy projects to receive permitting under the current permitting regime does not give the country enough time to meet President Biden's energy goal of a carbon-free power sector by 2035.[18] Permitting reform is equally important for Republican climate plans, which, call on increased U.S. natural gas production and carbon capture to offset coal and higher carbon-emitting energy use abroad.[19]

For these reasons, streamlining the environmental compliance process for energy projects has been the subject of numerous administrative and legislative efforts.[20] The Fixing America's Surface Transportation ("FAST") Act, signed into law in December 2015, was the most recent major legislation aimed at

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12. Philip Rossetti, *Addressing Delays Associated with NEPA Compliance*, AM. ACTION F. (Mar. 20, 2017) https://www.americanactionforum.org/research/addressing-delays-associated-nepa-compliance/ [https://perma.cc/CR3B-5KYC] ("In 2015, 93 percent of DOE's EISs were done in coordination with other agencies"); Luther, *supra* note 5, at 11, 12.

13. Luther, *supra* note 5, at 7, 21, 31.

14. *Winkler*, *supra* note 2.

15. *Portman, Sinema, Sullivan, Manchin Introduce Bill to Improve Federal Permitting Process, Create Jobs*, U.S. S. COMM. ON HOMELAND SEC (July 13, 2021), https://www.hsgac.senate.gov/media/minority-media/portman-sinema-sullivan-manchin-introduce-bill-to-improve-federal-permitting-process-create-jobs [https://perma.cc/EAV7-KJKC].

16. Jena Lococo, *The Unsexy but Incredibly Powerful Key to Fight Climate Change: Reform Permitting*, THE HILL (Oct. 4, 2021), https://thehill.com/opinion/energy-environment/575203-the-unsexy-but-incredibly-powerful-key-to-fight-climate-change/ [https://perma.cc/RX3F-MUSN].

17. THE ASPEN INSTITUTE, ENERGY & ENV. PROGRAM, BUILDING CLEANER, FASTER REPORT 1 (2021) (2021) ("Achieving net-zero emissions by 2050 is ecologically essential, technologically feasible, economically achievable, but procedurally impossible."), https://www.aspeninstitute.org/publications/building-cleaner-faster-report/ [https://perma.cc/EBK3-2T2M].

18. *FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies*, THE WHITE HOUSE (Apr. 22, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/ [https://perma.cc/N6DB-MYRS]; Loyola, *supra* note 1.

19. Josh Siegel & Jeremy Beaman, *Alaska's Dan Sullivan Promises More from Senate Republican Climate Plan*, WASHINGTON EXAMINER: DAILY ON ENERGY (Nov. 4, 2021, 12:33 PM), https://www.washingtonexaminer.com/policy/energy-environment/daily-on-energy-alaskas-dan-sullivan-promises-more-from-senate-republican-climate-plan [https://perma.cc/CK6N-SAFM] (Republican climate plan pledging to cut global emission by 40% by 2050).

20. *See generally* Luther, *supra* note 5.

streamlining permitting for major infrastructure projects.[21] Most notably, Title 41 of the FAST Act ("FAST-41") established a Federal Permitting Improvement Steering Council ("Permitting Council") within the White House tasked with increasing coordination and oversight between agencies for certain covered infrastructure projects. Although the FAST Act is relatively new, there has been debate as to whether the Act actually improves the permitting process or adds another layer of procedural bureaucracy.[22]

This Note will provide an overview of FAST-41, scrutinize its effectiveness and popularity in streamlining permitting for energy projects, and recommend improvements to FAST-41 and propose solutions to permitting in general. Part I of this Note will outline the key provisions of FAST-41 and its subsequent changes in the Infrastructure Investment and Jobs Act ("IIJA"). Part II will provide an objective analysis of FAST-41's progress and effectiveness, with an in-depth study of FAST-41's 2020 Report to Congress. Finally, Part III will provide specific recommendations to improve accountability and assessment of the FAST-41 program, and better address the country's broken permitting system.

I. BRIEF OVERVIEW OF TITLE 41 OF THE FAST ACT

When introduced, the FAST Act's initial goal was to provide long-term funding guarantees for the transportation sector, enabling States and local governments to move forward with critical transportation projects such as highways and transit lines.[23] However, the FAST Act was expanded to include Title 41 which provides initiatives to cut the environmental review and permit decision-making timelines for covered projects in ten sectors.[24] Importantly, in passing the FAST Act with Title 41, Congress sought to streamline approval of large-scale infrastructure projects by reducing inefficiencies in the review and permitting process, rather than modifying any underlying federal statute (such as NEPA), regulation, or mandatory environmental review.[25] This part of the Note will examine FAST-41 and its subsequent changes in more detail.

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21. Fixing America's Surface Transportation Act, Pub. L. No. 114–94, 129 Stat. 1312 (codified as amended in scattered sections of 42 U.S.C.) (signed into law December 2015).

22. PERKINS COIE, *Should Infrastructure Project Developers Invoke Streamlined Environmental Review Under FAST-41?* (Aug. 1, 2017) https://www.perkinscoie.com/en/news-insights/what-infrastructure-project-developers-need-to-know-about-fast.html [https://perma.cc/9KP8-XMDW] ("Project sponsors may find that FAST-41 adds new procedural requirements without actually reducing the time needed to complete the process.").

23. *Id.*

24. PERMITTING COUNCIL, FAST-41 FOR INFRASTRUCTURE PERMITTING, (last updated May 18, 2020), https://www.permits.performance.gov/sites/permits.dot.gov/files/2020-05/FAST_41_FS_20200325.pdf [https://perma.cc/TXS3-4BTV].

25. *Environmental Streamlining Measures in Title 41 of the FAST Act*, *supra* note 4, at 31.

A. KEY FAST-41 INITIATIVES[26]

To receive the benefits of the FAST-41 program, project sponsors must voluntarily apply for its coverage, provided the project qualifies as a covered project.[27] To qualify, the project must first involve the construction of infrastructure in one of ten sectors: conventional energy production, renewable energy production (which includes solar, wind, geothermal, and hydropower), electricity transmission, ports and waterways, water resource projects, broadband, pipelines, manufacturing, mining, and carbon capture, utilization, and sequestration ("CCUS").[28] Additionally, the project must be subject to NEPA, likely require a total investment of over $200 million, and not qualify for abbreviated review or authorization.[29] Once a project sponsor's application for FAST-41 coverage has been approved it will enjoy the intended benefits provided below.

FAST-41 provides several key initiatives to support its permit streamlining efforts: (i) it creates the Permitting Council tasked with overseeing the cross-agency environmental review process, (ii) it implements procedures to enhance interagency coordination and accountability, (iii) it creates an online permitting dashboard ("Dashboard") to track the status of project permitting activities, (iv) it creates a new authority for the Government to collect fees from project sponsors for the purposes of providing needed resources in the review process, (v) provides limits to legal challenges, and (vi) requires the Permitting Council to submit an annual report to Congress.[30]

(i) Permitting Council: The Permitting Council is composed of thirteen agency Deputy Secretary-level members and is chaired by an Executive Director appointed by the President.[31] While the federal agencies are ultimately

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26. The discussion of the following initiatives is meant to serve as only a brief overview.

27. 42 U.S.C. § 4370m(6) (indicating a project sponsor must submit a FAST-41 Initiation Notice ("FIN") of a proposed project); FED. PERMITTING IMPROVEMENT STEERING COUNCIL, APPLYING THE DISCRETIONARY STANDARD FOR FAST-41 COVERED PROJECTS, (2018), https://www.permits.performance.gov/sites/permits.dot.gov/files/2019-11/FPISC-SOP-Discretionary%20Standard%20signed%204.30.2018.pdf [https://perma.cc/ND2F-BQ32].

28. 42 U.S.C. § 4370m(6). Projects in other sectors may qualify if determined by majority vote of the Permitting Council. Although the sectors of surface transportation and aviation are included, they are excluded due to the savings clause found at 42 U.S.C. § 4370m(6)(B). In addition, the sectors of mining and carbon capture, utilization, and sequestration were later added to eligible FAST-41 covered projects. *Murkowski Welcomes Decision that Recognizes Mining's Importance to Infrastructure*, U.S. S. COMM. ON ENERGY & NAT. RESOURCES (Jan. 16, 2020), https://www.energy.senate.gov/2020/1/murkowski-welcomes-decision-that-recognizes; REPORT ON CCUS, CEQ (2021), https://www.whitehouse.gov/wp-content/uploads/2021/06/CEQ-CCUS-Permitting-Report.pdf.

29. 42 U.S.C. § 4370m(6). Alternatively, the project may qualify if it subject to NEPA, the size and complexity of which the Permitting Council decides would likely benefit from FAST-41 and is likely to require an EIS or an environmental review from multiple agencies.

30. FAST-41 FOR INFRASTRUCTURE PERMITTING, *supra* note 24.

31. *Congress Expands Power of Agency That Reformed Infrastructure Permitting*, PERMITTING DASHBOARD (last updated Nov. 8, 2021), https://www.permits.performance.gov/fpisc-content/congress-expands-power-agency-reformed-infrastructure-permitting.

responsible for moving projects through the permitting process, the Office of the Executive Director ("OED") provides assistance and resources.[32] This includes coordinating with agencies to develop project plans with accurate and realistic timetables, promptly resolving issues, identifying key points of contact, ensuring decision-makers have the necessary information, and annually recommending best practices in a variety of categories.[33]

(ii) Streamlining Procedures: As mentioned above, rather than modifying the structure, FAST-41 seeks to improve the permitting process within the existing structure of federal environmental reviews and authorizations.[34] In doing so, FAST-41 requires a variety of streamlining procedures.[35] To initiate the process the project's sponsor must submit a "notice of initiation" to the Executive Director and the initiating agency.[36] The Executive Director must then respond within fourteen days by either listing the project on the Dashboard or determining it is not a covered project.[37] If the project is listed on the Dashboard, the designated lead agency has twenty-one days after the initial fourteen-day deadline to identify and invite other agencies to be participating or cooperating agencies.[38]

Additionally, to ensure the early communication and coordination of project goals, the designated lead agency must adopt a coordinated project plan ("CPP") within sixty days of the initial 14-day deadline.[39] The CPP includes a "permitting timetable" with interim and final deadlines for all federal reviews and

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32. FY 2020 ANNUAL REPORT TO CONGRESS, FPISC 21 (2020), https://www.permits.performance.gov/sites/permits.dot.gov/files/2021-01/FY%202020%20FPISC%20Annual%20Report%20to%20Congress.pdf.

33. *Id*. at 37.

34. FAST-41 FOR INFRASTRUCTURE PERMITTING, *supra* note 24.

35. *Environmental Streamlining Measures in Title 41 of the FAST Act*, *supra* note 4, at 29–31.

36. FED. PERMITTING IMPROVEMENT STEERING COUNCIL, *supra* note 27, at 3.

37. 42 U.S.C. § 4370m-2(b)(2)(A)(ii). More specifically, project approval is judged under an objective and subjective standard. FED. PERMITTING IMPROVEMENT STEERING COUNCIL, *supra* note 27, at 2, 3. Under the objective standard, a project must be approved if the project qualifies as a covered project (i.e., subject to NEPA, requires investment of more than $200 million, and does not qualify for abbreviated authorization or environmental review). *Id*. However, under the discretionary standard, projects that do not meet the objective standard, may still be approved if they meet the baseline requirements (i.e., more than two federal agencies involved, will likely require and EIS, and fall under one of the covered sectors), the lead agency recommends designation, and the Permitting Council approves FAST-41 coverage. *Id*.

38. 42 U.S.C. § 4370m-2(a)(2)(A). This deadline was originally 45 days after initial 14-day deadline but was modified to 21 days in the IIJA. Edward Boling, Jacob E. Aronson & Megan McLean, *FAST-41 Environmental Review and Permitting Process Changes in the Senate Infrastructure Bill*, PERKINS COIE (Aug. 19, 2021), https://www.perkinscoie.com/en/news-insights/fast-41-environmental-review-and-permitting-process-changes-in-the-senate-infrastructure-bill.html [perma.cc/ZVC8-H56W]. The roles and responsibilities of cooperating and participating agencies are similar, but cooperating agencies have a higher degree of authority, responsibility, and involvement in the environmental review process. *Frequently Asked Questions on the Environmental Review Process*, DOT (last visited Oct 1, 2022) https://www.environment.fhwa.dot.gov/legislation/authorizations/safetealu/reviewProcess_faq.aspx [https://perma.cc/U57H-JUJL].

39. 42 U.S.C. § 4370m-2(c)(1)(A).

approvals.[40] In developing a permitting timetable, the total duration of the timetable must not exceed the average time needed to complete the environmental review process for similar projects in a given sector during the past two years.[41] These average times are detailed in a "recommended performance schedules" document, which the Executive Director is tasked with developing every two years.[42] The statute further prohibits the extension of the established deadlines within thirty days of each deadline date unless it is granted by the Office of Management and Budget and reported to Congress.[43] Moreover, all federal agencies must carry out their obligations regarding a covered project "concurrently, and in conjunction with" all other environmental reviews being conducted by other federal agencies to the maximum extent practicable.[44]

(iii) Permitting Dashboard: The online Dashboard is a publicly accessible online database that includes the status of each project, detailing the project's permitting timetable, each agency's compliance with the timetable, and explanations for any delayed decisions or actions.[45] The Executive Director is responsible for creating and maintaining the Dashboard while individual agencies are responsible for uploading additional information and documents to the Dashboard.[46] The Dashboard is intended to allow stakeholders to track the status of permitting activities and to provide agencies with consistent data that can be used to identify ways to improve the review and authorization process.[47]

(iv) Fee Collecting Authority: Federal agencies can charge fees to applicants for the "Environmental Review Improvement Fund" to support federal environmental review activities.[48] To collect such fees, agencies participating on the Permitting Council must issue regulations that establish a fee structure for reimbursing the reasonable costs incurred as part of the environmental review and approval process for covered projects.[49]

(v) Limits on Judicial Review: In an effort to reduce litigation-related risks, the statute of limitations was shortened, limiting the claims plaintiffs can raise in litigation, and providing direction to federal courts regarding the standards for

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40. 42 U.S.C. § 4370m-2(c)(1)(B)(II).

41. 42 U.S.C. § 4370m-2(c)(2)(B).

42. 42 U.S.C. § 4370m-1(c)(1)(C)(i); *See e.g.*, BASELINE PERFORMANCE SCHEDULES FOR ENVIRONMENTAL REVIEWS AND AUTHORIZATIONS, FPISC, 18-20, (2019), https://www.permits.performance.gov/sites/permits.dot.gov/files/2020-04/FPISCRecommendedPerformanceSchedules2020_04062020.pdf. [https://perma.cc/6W8D-BED4] [hereinafter "2020 RPS"].

43. 42 U.S.C. § 4370m-2(c)(2)(D)(iii).

44. 42 U.S.C. § 4370m-4(a).

45. *Environmental Streamlining Measures in Title 41 of the FAST Act*, *supra* note 4, at 28.

46. *Id.*

47. *About the Federal Infrastructure Permitting Dashboard*, DOT (last updated Aug. 27, 2019), https://www.permits.performance.gov/sites/permits.dot.gov/files/2020-05/FAST_41_FS_20200325.pdfl [https://perma.cc/5LDD-JYKY].

48. 42 U.S.C. § 4370m-8(a), (d).

49. *Id.* § 4370m-8(a).

injunctive relief.[50] The statute of limitations for challenging authorization of covered projects is reduced from six years to two years after the publication of a final approved decision.[51] However, shortening the statute of limitations likely does not have a material impact on litigation risks because project opponents often file ligation shortly after project approval.[52] Further, judicial review under NEPA is barred unless the lawsuit is filed by a party that submitted a comment during the environmental review process.[53] Lastly, as a new standard for preliminary injunctive relief, courts must consider the potential effects on public health, safety and the environment, and the potential for significant negative effects on jobs resulting from an order or injunction, without presuming that these negative effects are reparable.[54]

(vi) Annual Reports to Congress: The Permitting Council is required to submit an annual report to Congress detailing its progress in accomplishing the FAST-41 streamlining goals.[55] The contents of the report must assess the performance of each lead and participating agency based on their recommended best practices and compliance with the recommended performance schedules.[56]

B. NEW FAST-41 PROVISIONS IN THE INFRASTRUCTURE INVESTMENT AND ACT

The IIJA, signed into law on November 15, 2021, includes several important changes to FAST-41.[57] Perhaps the most important is the elimination of FAST-41's initial seven-year sunset ending December 2022, making the program permanent.[58] The IIJA also gives the Executive Director, instead of just the federal agencies Permitting Council members, the authority to establish fee schedules.[59] Although no fees have been collected from project sponsors since FAST-41's enactment,[60] a recent discussion with the OED revealed that, with the office's new authority, the OED is in the process of establishing fee schedules. This raises the question of whether implementing such a fee will deter project sponsors, who already bear all the costs of NEPA compliance, from receiving FAST-41 coverage.

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50. 42 U.S.C. § 4370m-6(a)(1).
51. *Id.* § 4370m-6(a)(1)(A).
52. *Environmental Streamlining Measures in Title 41 of the FAST Act*, *supra* note 4, at 30.
53. 42 U.S.C. § 4370m-6(a)(1)(B)(i).
54. 42 U.S.C. § 4370m-6(b).
55. 42 U.S.C. § 4370m-7(a)(1).
56. 42 U.S.C. § 4370m-7(a)(2) (2018 & Supp. II 2020).
57. Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021) [hereinafter "IIJA"] (note that the U.S.C. has not yet been updated to include the IIJA); *Environmental Review and Permitting Process Changes in the Senate Infrastructure Bill*, *supra* note 39.
58. IIJA § 70801(h) (2021).
59. IIJA § 70801(g).
60. *Environmental Review and Permitting Process Changes in the Senate Infrastructure Bill*, *supra* note 39. Possible reasons for no fees being issued as of yet are that before IIJA, the participating agencies were required to issue regulations (now the Executive Director has authority) establishing fee structures, and the Permitting Council wanted to encourage project sponsor participation to demonstrate FAST-41's streamlining effectiveness.

The IIJA also calls for more aggressive timelines. The Permitting Council must aim to develop recommended performance schedules that do not exceed two years "to the maximum extent possible" under applicable Federal law, or provide an explanation if otherwise.[61] Federal agencies must also issue a record of decision within ninety days of issuance of a final EIS "to the maximum extent practicable."[62] Lastly, the original forty-five-day timeframe for which the lead agency must identify and invite other agencies to be participating or cooperating agencies was shortened to twenty-one days.[63]

Other changes to FAST-41 found in the IIJA increase transparency on the Dashboard and expand covered project eligibility to Native American Tribes, Alaska Native Corporations, and Native Hawaiians. [64]

In overview, FAST-41 and its subsequent changes in the IIJA attempt to improve the efficiency of the permitting process rather than modifying any existing law, such as NEPA. The Permitting Council and the OED were established to increase coordination between agencies, eliminate duplicative analysis, promote concurrent review, and set reasonable deadlines for agency review. However, because FAST-41 does not modify any underlying law or regulation, the Executive Director does not have any authority to hold participating agencies to these deadlines. For these reasons, FAST-41 may lack the teeth required to streamline permitting in any meaningful way. In fact, it may even add more procedures and points of contact to an already complex framework, resulting in a more delay-prone federal permitting process.

II. THE GROSSLY INFLATED EFFICACY OF FAST-41 IN STREAMLINING FEDERAL PERMITTING

In the early years of FAST-41's implementation, there was the question as to whether the new procedural requirements and complexity would actually reduce the time needed to complete the permitting process.[65] However, leading up to the passage of the recent IIJA, these doubts seemed to have been proven wrong as FAST-41's progress has been the subject of high praise from both parties in Congress.[66] For instance, the IIJA summary declares that FAST-41 has "helped more than fifty projects with their permitting processes, saved projects more than a billion dollars, reduced permitting timelines substantially, helped project sponsors create more than

61. IIJA § 70801(b)(3)(A)(iii).
62. IIJA § 70801(f).
63. IIJA § 70801(c)(1)(B)(i).
64. IIJA § 70801(a)(4)(C).
65. *Should Infrastructure Project Developers Invoke Streamlined Environmental Review Under FAST-41? supra* note 22.
66. *Portman, Sinema, Sullivan, Manchin Introduce Bill to Improve Federal Permitting Process*, *supra* note 15.

a hundred thousand jobs, and resolved numerous interagency conflict."[67] FAST-41 has also been applauded in the Senate for "[reducing] the environmental impact statement process for covered projects from 4.5 years to 2.5 years."[68]

The program's recent praise points to the findings in the Permitting Council's 2020 Annual Report to Congress ("2020 Annual Report").[69] In particular, the 2020 Annual Report found that projects completed under full implementation of FAST-41 "reflect an average time savings of two years in the NEPA process,"[70] and that the increasing number of "voluntary requests for FAST-41 coverage by project sponsors illustrates the continued demand for OED services and FAST-41 benefits."[71] Because it appears that Congressional inclusion of the FAST-41 changes in the IIJA, especially the move to make it a permanent federal agency, was motivated by findings from the 2020 Annual Report, an in-depth analysis of the report is useful to determine whether Congress' reliance was justified. This part of the Note will take a deeper look at the 2020 Annual Report's assessment of the FAST-41 program by comparing its findings to the Permitting Council's recommended performance schedules and the Dashboard database. In summary, an in depth look at the 2020 Annual Report will show that FAST-41 is neither as fast or popular as it has been made out to be.

A. A DEEPER LOOK AT FAST-41'S ANNUAL REPORT TO CONGRESS

As previously mentioned, the Permitting Council is required to submit an annual report to Congress detailing its progress by assessing the performance of each lead and participating agency based on their recommended best practices, and their compliance with recommended performance schedules set forth by statute.[72] The Permitting Council's 2020 Annual Report was the first annual report to provide results for projects that were voluntarily covered under FAST-41 and that have completed the permitting process.[73]

As a precursor, when FAST-41 was first enacted, Congress instructed the Permitting Council to establish an inventory of projects that had pending environmental review or authorizations with federal agencies.[74] Shortly after enactment, thirty-three of these "inventory projects" were covered under FAST-41, many of

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67. *See id*.; BIPARTISAN INFRASTRUCTURE INVESTMENT AND JOBS ACT SUMMARY, U.S. SENATOR MARIA CANTWELL 124 (2021), https://www.cantwell.senate.gov/imo/media/doc/Infrastructure%20Investment%20and%20Jobs%20Act%20-%20Section%20by%20Section%20Summary.pdf [https://perma.cc/4LVF-JP8H].

68. *Alaska to Receive Big Benefits from Infrastructure Package*, U.S. SENATOR LISA MURKOWSKI (Aug. 10, 2021), https://www.murkowski.senate.gov/press/release/alaska-to-receive-big-benefits-from-infrastructure-package [https://perma.cc/K537-U8WQ].

69. *See generally* FY 2020 ANNUAL REPORT TO CONGRESS, *supra* note 32.

70. *Id*. at 20.

71. *Id*. at 11.

72. 42 U.S.C. §4370m-7(a)(2).

73. FY 2020 ANNUAL REPORT TO CONGRESS, *supra* note 32 at vii.

74. 42 U.S.C. §4370m-1(c)(1)(A).

which were falling behind in the permitting process.[75] Because these "inventory projects" were seeking permits before FAST-41 was enacted in 2015, examining these projects in the Permitting Council's annual reports would not give a fair assessment of FAST-41's utility. The 2020 Annual Report was unique in that it was the first annual report since FAST-41's enactment to provide information on covered projects that were voluntarily applied for and that have completed the permitting process while receiving the full benefits of FAST-41 ("voluntary projects").[76] Thus, the 2020 Annual Report was the first report in which Congress could fairly assess FAST-41's efficacy in streamlining the permitting process.

The 2020 Annual Report and its findings were based on the only four voluntary projects that had completed the permitting process under FAST-41 at that time: Gemini Solar, Borderlands Wind, Cardinal-Hickory Creek 345 kV Transmission Line, and Alaska LNG.[77] In summary, the 2020 Annual Report claims that the four voluntary projects represented a total of ten years in permitting time savings compared to similar non-FAST-41 projects, tens of millions of dollars in cost savings for project sponsors based on the time saved,[78] and a forty-five percent time savings compared to the average duration to complete an EIS.[79] Further, the 2020 Annual Report claims that the demand for FAST-41 coverage "is evidenced by a thirty-three percent expansion in the FAST-41 active covered project portfolio in Fiscal Year ("FY") 2020, and by nearly a sixty percent expansion of covered projects since the establishment of the initial project inventory."[80]

At face value, it would seem that FAST-41 is extremely effective in streamlining the permitting process for covered projects and that it would have been an easy decision for Congress to make the fledgling program permanent. However, as will be shown below, these findings are grossly inflated.

1. The Average Time Savings of the NEPA Process

The 2020 Annual Report's time-saving analysis is focused on that of the EIS process. Focusing on NEPA is appropriate because, as noted before, the time required to complete the EIS process under NEPA is the main contributor to the delayed permitting process – and hence the time taken to complete an EIS is a good indicator of streamlining efforts. If an environmental assessment finds that a proposed action will have a significant environmental effect, the EIS process begins, comprising of four steps: (1) the lead agency publishes a Notice of Intent ("NOI") in the Federal Register; (2) the lead agency publishes a draft EIS for public review; (3) a final EIS is published; and (4) the lead agency issues a Record of

75. FY 2020 ANNUAL REPORT TO CONGRESS, *supra* note 32, at 11.
76. *Id*. at vii.
77. *Id*. at 4.
78. *Id*. at 2.
79. *Id*. at 12.
80. *Id*. at 11. The Federal Government fiscal year runs from October 1 of one calendar year through September 30 of the next.

Decision ("ROD") explaining its decision, alternative considerations, and plans for mitigation and monitoring.[81] The following analysis will consider the timeline it took for each of the four voluntary projects to issue an NOI and receive a ROD on an EIS: (i) Gemini Solar, (ii) Borderlands Wind, (iii) Cardinal-Hickory Creek 345 kV Transmission Line, and (iv) Alaska LNG.

(i) Gemini Solar Project: The Gemini Solar Project, located near Las Vegas, Nevada, is said to be the largest solar project in U.S. history and the eighth largest solar project in the world.[82] It took 1.83 years to complete the EIS process (from NOI to ROD).[83] The 2020 Annual Report claims that the 1.83-year EIS process represents a 3.7-year time-savings under the FAST-41 process.[84] The 2020 Annual Report calculated the alleged 3.7-year time-savings by comparing the 1.83 years needed for the Gemini Solar project to the 5.58-year maximum EIS timeline for renewable energy production projects found in the Permitting Council's 2020 Recommended Performance Schedules ("2020 RPS").[85]

As stated earlier, the "recommended performance schedules" is a document developed every two years by the Executive Director and provides the average EIS timelines for covered projects and those of similar size and complexity in a given sector during the past two years.[86] Because only one renewable energy project had been completed under FAST-41 at the time of the 2020 RPS, the document included nineteen other non-FAST-41 renewable energy projects of similar size and complexity in calculating the average EIS timelines for the renewable energy production sector.[87] Table 1 below provides the average EIS timelines for the renewable energy production sector found in the 2020 RPS.[88]

Table 1: 2020 RPS for Renewable Energy Production Projects[89]

ACTION	SAMPLE SIZE	MEAN (YEARS)	MEDIAN (YEARS)	MINIMUM (YEARS)	MAXIMUM (YEARS)	PERCENTILES (YEARS)	
						25TH	75TH
NEPA							
NOI to ROD	20	2.30	1.98	0.93	5.58	1.39	3.08
NOI to DEIS	20	1.19	0.80	0.32	3.19	0.59	1.71
DEIS to FEIS	20	0.72	0.60	0.21	1.91	0.40	1.04
FEIS to ROD	20	0.40	0.20	0.09	2.39	0.17	0.33

As illustrated in Table 1, the 2020 RPS EIS timelines (from NOI to ROD) for renewable energy projects provide an average of 2.30 years, a median of 1.98

81. *National Environmental Policy Act Review Process*, *supra* note 6.
82. FY 2020 ANNUAL REPORT TO CONGRESS, *supra* note 32, at 5.
83. *Id.*
84. *Id.* at 5.
85. *Id.* at n.13.
86. 2020 RPS, *supra* note 44, at iv.
87. *Id.* app. C at 20 (the nineteen other projects were selected randomly using an online random number generator).
88. *Id.* at 12.
89. *Id.*

years, a minimum of 0.93 years, and a maximum of 5.58 years.[90] The 5.58 years maximum EIS timeline represents the longest time it took for a renewable energy project in the 2020 RPS to complete the EIS process. However, knowing that the average EIS timeline is 2.30 years, there is no question that the maximum EIS timeline of 5.58 years is an outlier. Using an outlier data point as a baseline to determine the amount of time saved on a given covered project is not a fair representation of how much time-savings FAST-41 coverage accomplished. Instead, a more fair and honest assessment would be to compare the Gemini Solar project's 1.83-year EIS timeline to the average or median EIS timeline of 2.30 or 1.98 years, respectively, as found in the 2020 RPS. Doing so would demonstrate that the Gemini Solar project saved 5.64 months compared to the average or 1.8 months compared to the median under FAST-41 coverage.

One may argue that because the Gemini Solar project is the largest solar project in the U.S., it would be an injustice to compare its EIS timeline to the average EIS timeline found in the 2020 RPS. However, the project information found in the 2020 RPS includes the EIS timelines for all projects of similar size and complexity in the renewable energy sector, which includes wind, solar, and hydropower project timelines.[91] The potential environmental impacts caused by solar projects are typically much lower than those caused by hydropower projects.[92] In fact, the outlier project that produced a maximum EIS timeline of 5.58 years in the 2020 RPS was a hydroelectric project, not solar.[93]

(ii) Borderlands Wind Project: The Borderlands Wind project is a 100-megawatt wind project located on 17,000 acres of mixed-use land in western Catron County, New Mexico.[94] It took 1.73 years to complete the EIS process (from NOI to ROD).[95] However, the 2020 Annual Report failed to make any assertion that the Borderlands Wind project had saved any time in the EIS process under FAST-41 coverage.[96] When referencing the average EIS times for renewable energy projects found in the 2020 RPS (see Table 1 above), the Borderland Wind project represented a 6.84 or 3 month time saving when comparing to either the average or median EIS timelines, respectively.

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90. *Id*.
91. *Id*. at 20.
92. Leah Burrows, *Large-scale wind power would require more land and cause more environmental impact than previously thought*, HARV. SCH. APPLIED SCI. (Oct. 30, 2018), https://www.seas.harvard.edu/news/2018/10/large-scale-wind-power-would-require-more-land-and-cause-more-environmental-impact ("Miller and Keith repeated the calculation for solar power and found that its climate impacts are about ten times smaller than wind's."); Emily Beach, *Hydro Power Vs. Solar Power Advantages*, SCIENCING (Mar. 20, 2018), https://sciencing.com/hydro-power-vs-solar-power-advantages-6513.html ("Solar power production poses few risks to the environment . . . Hydroelectric power generation, on the other hand, often comes with significant impact to the environment.").
93. 2020 RPS, *supra* note 44, at app C. at 20.
94. FY 2020 ANNUAL REPORT TO CONGRESS, *supra* note 32, at 6.
95. *Id*.
96. *Id*.

(iii) Cardinal-Hickory Project: The Cardinal-Hickory Creek 345 kV Transmission Line project ("Cardinal-Hickory project") is a 102-mile transmission line that will connect facilities in northwest Iowa and south-central Wisconsin.[97] The lead agency on the Cardinal-Hickory project is the Rural Development office within the U.S. Department of Agriculture ("USDA").[98] It took 3.3 years to complete the EIS process (from NOI to ROD).[99] The 2020 Annual Report states that FAST-41 coverage saved a total of 1.2 years because the average time needed to complete an EIS is 4.5 years, as reported in CEQ's "Environmental Impact Statement Timelines" ("CEQ EIS Report").[100] It is unclear why the 2020 Annual Report, in calculating the amount of time saved for a given project, chose to compare the Cardinal-Hickory project EIS timeline to the information found in the CEQ EIS Report, while comparing the Gemini Solar project EIS timeline to the information found in the 2020 RPS.

The CEQ EIS Report comprises of EIS timelines (from NOI to ROD) that were issued *across all federal agencies* from 2010–2017.[101] The CEQ EIS Report found that the average timeline for every EIS completed between fifty-six different federal agencies was 4.5 years.[102] For instance, the average EIS timeline for 111 EISs completed by the U.S. Army Corps of Engineers was 6.04 years, and the average EIS timeline for 124 EISs completed by the Federal Highway Administration was 7.37 years.[103] On the other hand, the average EIS timeline for 319 EISs completed within the USDA was 3.28 years.[104] Noticeably, the average EIS timeline varies widely between different agencies because each agency is responsible for reviewing different types of projects, some requiring more environmental review than others.

As such, comparing the 4.5-year average EIS timeline found in the CEQ EIS Report, which represents EISs completed across all agencies, to the EIS timeline for the Cardinal-Hickory project, which was completed by the Rural Development Agency, does not provide any reliable assessment of time saved. Instead, a more fair and more accurate assessment of FAST-41's benefit in streamlining the Cardinal-Hickory project would be to compare it to the average EIS timelines for projects completed within the same department - the USDA. In that case, comparing the Cardinal-Hickory 3.3-year EIS timeline to the USDA 3.28-year average

97. *Id*. at 8.

98. *Cardinal-Hickory Creek 345 kV Transmission Line Project*, PERMITTING DASHBOARD (Dec. 20, 2021), https://www.permits.performance.gov/permitting-projects/cardinal-hickory-creek-345-kv-transmission-line-project.

99. FY 2020 ANNUAL REPORT TO CONGRESS, *supra* note 32, at 8.

100. *Id*.

101. *See generally* CEQ EIS TIMELINES, *supra* note 7.

102. *Id*. at 7–11.

103. *Id*, at 8, 10.

104. *Id* at 8. The U.S. Forest Service, within the USDA, completed 299 EIS statements for an average EIS timeline of 3.31 years.

would show the Cardinal-Hickory project slightly under performed with FAST-41 coverage.

However, it is important to note that the CEQ EIS Report includes EIS timelines for all sizes of projects, which is unrepresentative of the larger infrastructure projects eligible for FAST-41 coverage. This is because it would presumably take longer for larger projects, as covered under FAST-41, to complete NEPA review. Nonetheless, the comparison above was used to show the 2020 Annual Report's flawed method of determining EIS time savings. A comparison of the Cardinal-Hickory project EIS timeline to the 2020 RPS average EIS timelines for the electricity transmission sector would provide for a more accurate assessment of FAST-41's streamlining efficacy because the 2020 RPS considers only projects of similar size and complexity. Table 2 below provides the 2020 RPS average EIS timelines for the electricity transmission sector.[105]

Table 2: 2020 RPS for Electricity Transmission Projects[106]

ACTION	SAMPLE SIZE	MEAN (YEARS)	MEDIAN (YEARS)	MINIMUM (YEARS)	MAXIMUM (YEARS)	PERCENTILES (YEARS)[12]	
						25TH	75TH
NEPA							
NOI to ROD	19	3.31	2.96	1.50	6.03	2.34	4.05
NOI to DEIS	19	1.74	1.67	0.20	3.43	1.11	2.52
DEIS to FEIS	19	1.09	0.97	0.10	2.26	0.62	1.54
FEIS to ROD	19	0.49	0.39	0.03	1.64	0.18	0.59

As illustrated in Table 2, the 2020 RPS EIS timelines (from NOI to ROD) for electricity transmission projects provides an average of 3.31 years, a median of 2.96 years, a minimum of 1.50 years, and a maximum of 6.03 years.[107] When comparing the Cardinal-Hickory project EIS timeline of 3.30 years to the 2020 RPS's average timeline of 3.31 years for electricity transmission projects, it would appear that FAST-41 did not provide much benefit in streamlining the NEPA review process. If compared to the median EIS timeline of 2.96 years, FAST-41 coverage would have been shown to delay the EIS process by 4.2 months.

(iv) Alaska LNG: The Alaska LNG project, one of the largest liquified natural gas projects in the country, is an 800-mile pipeline project that includes a natural gas treatment and liquefaction facility.[108] The EIS process, from NOI to ROD, took 3.06 years.[109] The 2020 Annual Report claims that the FAST-41 coverage saved the project 4.8 years in EIS review when compared with the maximum EIS

105. 2020 RPS, *supra* note 44, at 12.
106. *Id*. at 10.
107. *Id*.
108. FY 2020 ANNUAL REPORT TO CONGRESS, *supra* note 32, at 7.
109. *Alaska LNG Project*, PERMITTING DASHBOARD (last visited Dec. 20, 2021), https://www.permits.performance.gov/permitting-projects/alaska-lng-project.

timeline of 7.83 years found in the 2020 RPS for the pipeline sector.[110] Table 3 below provides the 2020 RPS average EIS timelines for the pipeline sector.[111]

Table 3: 2020 RPS for Pipeline Projects[112]

ACTION	SAMPLE SIZE	MEAN (YEARS)	MEDIAN (YEARS)	MINIMUM (YEARS)	MAXIMUM (YEARS)	PERCENTILES (YEARS)[18]	
						25TH	75TH
NEPA							
NOI to ROD	20	2.42	2.08	1.33	7.83	1.82	2.59
NOI to DEIS	20	1.59	1.34	0.63	6.26	1.18	1.65
DEIS to FEIS	20	0.56	0.46	0.27	1.34	0.34	0.69
FEIS to ROD	20	0.28	0.21	0.08	0.78	0.11	0.40

As shown in Table 3, the 2020 RPS EIS timelines (from NOI to ROD) for pipeline projects provides an average of 2.42 years, a median of 2.08 years, a minimum of 1.33 years, and a maximum of 7.83 years.[113] The 7.83 years maximum EIS timeline represents the longest time it took for a pipeline project in the 2020 RPS to complete the EIS process. However, knowing that the average EIS timeline is 2.42 years, there is no question that the maximum EIS timeline of 7.83 years is an outlier. As such, the 7.83-year maximum does not provide a representative baseline for how long it would take a pipeline project to receive a full EIS review, regardless of its size. Had the 2020 Annual Report used a commonsense baseline, such as the average or median EIS timeline for pipeline projects of similar size and complexity, it would have found the Alaska LNG project resulted in a delay of 7.5 months or one year, respectively, under FAST-41 coverage.

In summary, the 2020 Annual Report claimed that FAST-41 coverage saved the four voluntary projects a total of about ten years in permitting time - a time-savings of 3.7 years for the Gemini Solar project, 1.2 years for the Cardinal-Hickory Project, and 4.8 years for the Alaska LNG project.[114] However, had the 2020 Annual Report used a more honest and representative baseline, either the 2020 RPS mean or median EIS timelines for a given sector, the report would have concluded that FAST-41 coverage either saved the four voluntary projects a total of about five months,[115] or actually delayed the four voluntary projects a total of 11.4 months,[116] respectively. By not using the commonsense 2020 RPS average EIS timelines as a baseline, the 2020 annual report grossly inflated the

110. FY 2020 ANNUAL REPORT TO CONGRESS, *supra* note 32, at 8.
111. 2020 RPS, *supra* note 44, at 11.
112. *Id.*
113. *Id.*
114. FY 2020 ANNUAL REPORT TO CONGRESS, *supra* note 32, at 2.
115. A savings of 5.64 months for the Gemini Solar project and 6.84 months for the Borderlands Wind project, and a delay of 7.5 months for the Alaska LNG project.
116. A savings of 1.8 months for the Gemini Solar project and 3 months for the Borderlands Wind project, and a delay of 4.2 months for the Cardinal-Hickory Project, and 1 year for the Alaska LNG project.

time savings of the four voluntary projects by 9.4 years or 2300 percent. There is no question that the 2020 Annual Report manipulated the data found in both the CEQ EIS Report and the 2020 RPS to make it appear that FAST-41 was more effective than it is, or effective at all for that matter.

The 2020 Annual Report also claimed that, given the average EIS timeline for the four voluntary projects is 2.5 years and the average EIS timelines in the CEQ EIS Report is 4.5 years, FAST-41 saved, on average, two years in the NEPA process for each covered project.[117] However, as previously mentioned, the use of the average timelines found in the CEQ EIS Report is not representative of the type of project FAST-41 covers because the report comprises the EIS timelines by fifty-six different federal agencies, with the average EIS timeline varying widely between different agencies.[118] For example, the CEQ EIS Report factors in the 7.37-year average EIS timeline of the Federal Highway Administration,[119] but highway projects are specifically excluded from FAST-41 coverage.[120]

Given these findings, FAST-41 has provided little to no benefit to covered projects since its enactment. Indeed, it may have just added another layer of procedural bureaucracy. Had Congress known about these findings, it may have postponed making FAST-41 permanent, and instead extended the sunset until there was additional data available to make a more informed decision. However, if FAST-41 did create more of an obstacle to permitting, then its increasing popularity, as claimed in the 2020 Annual Report, would not make much sense. Why would project sponsors apply for FAST-41 if it is not helpful? The following section will address FAST-41's overall popularity among project sponsors.

2. The Overall Popularity of FAST-41

The 2020 Annual Report asserts that the demand for FAST-41 coverage "is evidenced by a thirty-three percent expansion in the FAST-41 active covered project portfolio in FY 2020, and by nearly a sixty percent expansion of covered projects since the establishment of the initial project inventory."[121] The report also states that "[t]he increased voluntary application for FAST-41 coverage and OED services . . . demonstrates success of the FAST-41 program."[122] Notably, in making the broad assertion that "voluntary requests for FAST-41 coverage by project sponsors illustrates the continued demand for OED services and FAST-41 benefits," the report avoids discussing whether some projects demand FAST-41 coverage more than others.[123] Looking solely at the 2020 Annual Report, it would

117. FY 2020 ANNUAL REPORT TO CONGRESS, *supra* note 32, at 12.

118. CEQ EIS TIMELINES, *supra* note 7, at 7–11.

119. *Id*. at 10.

120. Although the surface transportation sector is initially included in FAST-41 covered projects at 42 U.S.C. § 4370m(6), it is specifically excluded due to the savings clause at 42 U.S.C. § 4370m(6)(B).

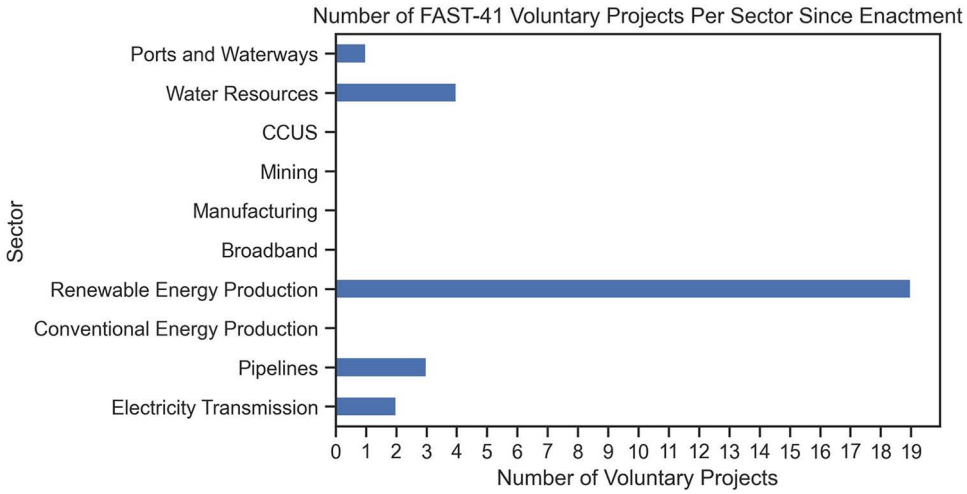
121. FY 2020 ANNUAL REPORT TO CONGRESS, *supra* note 32, at 11.

122. *Id*.

123. *Id*. at 2.

seem that there is a demand for FAST-41 coverage by all projects. However, as shown below in Figure 1, it is quite the opposite.

FIGURE 1[124]



As mentioned earlier, upon FAST-41's enactment into law, thirty-three initial inventory projects were added to the Dashboard as covered projects.[125] Since its enactment, twenty-nine voluntary projects have been added to the Dashboard.[126] Figure 1 provides the number of FAST-41 voluntary projects per sector: nineteen renewable energy production, three pipeline, two electricity transmission, four water resource, and one ports and waterways projects. The glaring takeaway from Figure 1 is that, in large part, only renewable energy project sponsors are using FAST-41. In fact, of the twenty new voluntary projects added to the Dashboard since the start of 2019, seventeen were renewable energy production projects, and the other three were an electric transmission line, a water resource project, and a ports and waterways project.[127] This lack of applicant interest is surprising because one would presume that the projects most likely to require interagency environmental review, such as pipelines and electric transmission lines, would most benefit from FAST-41's supposed increased coordination. Yet,

124. *See* Appendix 1.

125. *See* Appendix 2. Although the 2020 Annual Report states that there are 33 inventory projects, a 2016 Memorandum for the Permitting Council holds that 34 projects were initially designated as inventory projects, while two Housing and Urban Development projects were not listed on the Dashboard. *Establishment of Covered Project Inventory*, FPISC (Sept. 22, 2016), https://www.permits.performance.gov/about/memorandum-federal-infrastructure-permitting-improvement-steering-council-fpisc. Thus, Appendix 2 shows data for the 32 inventory projects found on the Dashboard.

126. Appendix 1.

127. Appendix 1.

pipeline and electric transmission line projects are not voluntarily seeking FAST-41 coverage.

It is also unclear why there has yet to be one single conventional energy production project to apply for FAST-41 coverage, while nineteen renewable energy productions projects have gained coverage. There are two reasons why the policy shift under the Biden Administration does not provide an adequate explanation. First, there was not one conventional energy production project to voluntarily receive FAST-41 coverage under the Trump Administration. Second, the current Executive Director, although appointed by President Biden, could not prevent conventional energy production project sponsors from receiving FAST-41 coverage if their projects meet the covered project criteria because the Executive Director does not have discretion in determining whether a project that qualifies as a covered project receives FAST-41 coverage.[128]

Projects that do not meet the covered projects qualification because the expected investment is not at least a $200 million may still receive coverage subject to the discretion of the Permitting Council and lead agency.[129] However, the Dashboard database does not provide any indication as to which projects were approved at the Permitting Council's discretion because the database rarely provides a projects expected cost.[130] For instance, the database provides estimated project costs for only fourteen of the database's total sixty-one FAST-41 projects (both voluntary and inventory).[131] Of the voluntary projects that do provide estimated costs, none of the estimated costs were less than the $200 million threshold.[132] If the database were to provide estimated project costs for every project (information received when the project sponsor applies), or simply provide whether the project was approved under the objective or discretionary standard, it would be possible to determine the amount and type of projects that receive FAST-41 coverage at the discretion of the Permitting Council and federal agencies.

Perhaps one explanation for the lack of applicants is that project sponsors did not want to seek FAST-41 coverage with the risk that the 2022 FAST-41 sunset would expire during their permitting process which typically takes several years. However, this explanation does not explain why so many renewable energy production projects have applied for coverage in the last three years.

The only reasonable explanation is that project sponsors simply do not think that they would receive much benefit from the FAST-41 process. In a recent conversation with a representative of one of the nation's leading energy producers, the representative stated that FAST-41 has never been mentioned in

128. APPLYING THE DISCRETIONARY STANDARD FOR FAST-41 COVERED PROJECTS, *supra* note 27, at 2-3.

129. *Id.*

130. *See* Appendices 1, 2.

131. *Id.*

132. *Id.*

conversations regarding NEPA review for major projects, and that even if it did come up, the representative believed that given the company's strong communications and relationships with applicable federal agencies, there would not be much added benefit from FAST-41 coverage. In this way, project sponsors may see FAST-41 as creating more procedures and points of contact, resulting in more burdens than benefits. Further, this explanation may also be able to explain why only renewable energy production project sponsors are seeking FAST-41 coverage. This is because, based on the limited data, renewable energy production projects are the only voluntary projects that are receiving a non-negligible benefit from FAST-41 coverage.[133]

In summary, although the 2020 Annual Report gave the strong impression that there is an increasing demand for FAST-41 coverage in all project sectors, renewable energy production projects, in large part, seem to be the only sector utilizing the FAST-41 program. This is surprising because projects in the pipeline and electricity sectors would presumably benefit the most from FAST-41 coverage and, thus, would request FAST-41 coverage the most out of all other types of projects. A possible explanation may be that coverage does not provide much benefit to projects other than renewable energy production projects, but a more detailed analysis and inquiry would be needed to know for sure. It would be ideal for Congress to address this discrepancy. However, Congress would have to be aware of this discrepancy, which the 2020 Annual Review fails to identify, in order to address the issue.

B. IIJA'S FAILURE TO REMEDY FAST-41'S DEFICIENCIES

As with the FAST-41 program in general, the streamlining provisions found in the IIJA do not call for any increased obligation on the part of the agencies to streamline their review, and as a result, will not provide much improvement over what was in place previously.[134] The most significant change to FAST-41 found in the IIJA, other than eliminating the sunset, is that the Permitting Council must aim to develop recommended performance schedules that do not exceed two years "to the maximum extent possible."[135] This change does not place much obligation on the Permitting Council to create performance schedules of two years other than telling agencies to do their best. However, there is still no penalty for delaying the timetable deadlines and imposing firm two-year performance schedules across all sectors is likely not possible under existing environmental review laws (which FAST-41 does not modify).[136] Meeting the timetable deadlines with the

133. *See infra* Figure 2.

134. *See generally* IIJA § 70801.

135. *See* IIJA § 70801(b)(3)(A)(iii).

136. *Should Infrastructure Project Developers Invoke Streamlined Environmental Review Under FAST-41? supra* note 22 ("[W]hat has not changed: FAST-41 does not amend NEPA or any other federal environmental review laws. Therefore, the existing procedural and substantive requirements of

current recommended performance schedules has "been challenging for projects involving complex environmental issues or strong disagreements among agencies," and most projects under FAST-41 coverage have complex environmental issues.[137]

In addition, a recent conversation with a senior environmental planner brought to attention the concern that when Congress sets a two-year EIS deadline, agencies are forced to complete work that is usually performed in the NEPA phase ahead of time so that the two-year EIS deadline is achievable. This is to say that agencies must push work usually done in the NEPA phase to the earlier planning phase, which would allow for an achievable two-year EIS deadline, but does not actually shorten the permitting timeline as a whole because the NEPA phase will have to be delayed so that the initial work can be finished beforehand.

As such, it is foreseeable that given the IIJA's new two-year EIS deadline, there will soon be reports in which it appears that EIS timelines are being reduced, but in actuality, the timelines for the entire permitting process remain the same. The FAST-41 database does not currently provide consistent data on the entire permitting timeline, just the NEPA timelines. This data seems to be readily available when searching an individual project on the FAST-41 Dashboard, however, it is not included in the database. This data must be explicitly included in the FAST-41 database to assure accurate future assessment of the FAST-41 program.

III. PROPOSED ACTIONS TO ADDRESS FAST-41 AND FEDERAL PERMITTING IN GENERAL

There are three main contributors to the broken federal permitting process under NEPA: the time, expense, and uncertainty required to complete the EIS process from start to finish,[138] the delay of subsequent litigation following a record of decision that often finds the EIS inadequate,[139] and the lack of interagency coordination during environmental review.[140] FAST-41 mainly addresses the third problem by attempting to increase efficiency in the permitting process by improving management, consolidating decision-making, and coordinating interagency review.[141] However, as demonstrated by every effort to streamline federal permitting since the Carter administration, efforts like those found in FAST-41

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all of those laws remain in effect. In this fundamental sense, the process remains as complex and potentially delay-prone after the FAST Act as it was before.").

137. *Environmental Review and Permitting Process Changes in the Senate Infrastructure Bill*, *supra* note 39.

138. *National Environmental Policy Act Review Process*, *supra* note 6; *Biden Administration Defends Alaska's Willow Project in Court supra* note 6 (2,600-page EIS for Willow Project).

139. *Full Committee Hearing to Examine the Permitting Processes at DOI and FERC for Energy and Resource Infrastructure Projects*, *supra* note 9, at 1:01–1:05 (an EIS may range from "5,000 to 10,000 pages"); Luther, s*upra* note 5, at 10.

140. Rosetti, *supra* note 12 ("In 2015, 93 percent of DOE's EISs were done in coordination with other agencies"); Luther, s*upra* note 5, at 11, 12.

141. *See generally* IIJA § 70801.

do not result in any lasting, meaningful improvements to the permitting process.[142] To adequately address America's broken permitting system, bold action by Congress is required.

Given that FAST-41 was made permanent in the IIJA, this part of the Note will first recommend action to help improve assessment and accountability of the program, including holding a Congressional oversight hearing and making improvements to future recommended performance schedules and the FAST-41 database. Next, this Note will provide specific recommendations to address the prolonged NEPA review process, including amending NEPA and expanding and making more uniform categorical exclusions under NEPA.

A. CONGRESSIONAL OVERSIGHT HEARING

First, Congress must hold an oversight hearing to adequately address the findings above regarding FAST-41's effectiveness and popularity. As made apparent throughout this Note, there are many questions that have not been answered and which Congress can address, such as: why the FAST-41 coverage does not provide many EIS streamlining benefits when compared to the 2020 RPS averages, why renewable energy projects are receiving FAST-41 coverage while projects in the conventional energy production sector are not, and whether any projects are approved at the discretion of the Permitting Council and lead agency. Further, a Congressional oversight hearing may establish more accountability within the Permitting Council so that future reports to Congress provide an accurate accounting of FAST-41's progress. By doing so, Congress can help ensure that its future decision-making regarding permitting legislation is made on an informed basis. For instance, had the 2020 Annual Report provided a realistic accounting of FAST-41's progress, Congress may have chosen to extend its sunset to provide for more time to measure its efficacy instead of creating a permanent program and agency.

B. NECESSARY CHANGES TO IMPROVE ASSESSMENT AND ACCOUNTABILITY OF THE FAST-41 PROGRAM

Second, certain improvements must be made to the Permitting Council's recommended performance schedules and FAST-41 database to provide for a more adequate assessment of FAST-41's progress in the future. In crafting the 2020 RPS, the OED stated that it selected, for each of the renewable energy production, electricity transmission, and pipeline sectors, thirty non-covered projects from CEQ's EIS database through use of an online random number generator.[143] Taking a sample from the CEQ's EIS database was necessary because not enough projects have completed the permitting process under FAST-41 coverage.[144] The

142. THE ASPEN INSTITUTE, ENERGY & ENV. PROGRAM, *supra* note 17, at 4.
143. 2020 RPS, *supra* note 44, at 6.
144. *Id*. at 4.

OED then screened the thirty projects from each sector for those that met or exceeded the $200 million dollar covered project requirement.[145] After this screening, the OED came up with twenty, nineteen, and twenty projects from the renewable energy production, electricity transmission, and pipeline sectors, respectively, to base the 2020 RPS on. However, to provide for a more adequate baseline to measure FAST-41's streamlining efficacy, future recommended performance schedules must take a larger sample for each sector from the CEQ EIS database, rather than only thirty projects.

Next, the FAST-41 should provide clear data on the permitting process start and end dates for each project.[146] Providing this information is valuable because there is a concern that the NEPA phase is being delayed so that work usually done in the NEPA phase can be completed beforehand to comply with the two-year requirement for issuing an EIS. Moving the work usually performed in the NEPA phase to an earlier planning phase would make it appear that a project's NEPA review process was shortened, but in actuality, the time required to complete the permitting process as a whole (from start to finish) would stay the same. Thus, having readily available access to each project's overall permitting timelines would provide the information needed to determine whether permitting timelines as a whole are actually being shortened under the new two-year EIS timeline limitation.

In addition, the FAST-41 database should provide information regarding whether a project was approved under the discretionary or objective standard. This would provide a much-needed datapoint to determine whether the Permitting Council is exercising its discretion, whether there is a pattern of projects that receive approval under such discretion, and whether FAST-41 is popular among not just large infrastructure projects (that is, those expecting over $200 million in investment), but smaller projects as well.

C. MODIFY NEPA

Third, NEPA must be modified to provide for a more streamlined and applicable federal permitting process. NEPA holds that federal agencies must provide an EIS for "major Federal actions significantly affecting the quality of the human environment."[147] However, there should be a more comprehensive approach to defining which projects require an EIS. Merely holding that an EIS is required for any and all federal actions "significantly affecting" the human environment does not create a comprehensive framework necessary to address the various types and sizes of infrastructure projects requiring federal permits. By codifying NEPA as it now stands, Congress left its interpretation to the federal courts, opening the

145. *See id*. at 6.

146. Currently, this information can be calculated by individually searching each project on the Dashboard, but this is monotonous and not practical.

147. National Environmental Policy Act, 42 U.S.C.A. § 4332(C) (West).

door to judicial activism and creating uncertainty in the permitting process. Instead of holding that either a project requires an EIS or not, Congress should take a layered approach to environmental review which provides for different levels of scrutiny depending upon criteria such as type, size, and purpose of a particular project.

D. CATEGORICAL EXCLUSIONS MUST BE EXPANDED AND MADE MORE CONSISTENT ACROSS AGENCIES

Fourth, categorical exclusions under NEPA must be expanded, through legislative action, and made more consistent across federal agencies. As mentioned previously, before requiring an EIS for a given project, an environmental assessment ("EA") must first be completed and identify that the environmental effects of a proposed action are significant.[148] If the EA concludes that the environmental effects are not significant, no EIS is required.[149] However, a project may avoid both an EA and an EIS if it falls within a categorical exclusion ("CE").[150] CEs are categories of actions that each federal agency has determined, and reviewed by the Council on Environmental Quality, do not have a significant effect on the human environment.[151] CEs have the potential to drastically reduce the paperwork, time, and resources by allowing an action to bypass the environmental review process. For instance, the CEQ commented in 2013 stating that "by using the NEPA process in place by the Federal Highway Administration – over 95 percent of the reviews resulted in a Categorical Exclusion, not an EIS."[152]

If America is to reach its climate plan goals, CEs must be expanded to significantly streamline the federal permitting process for major infrastructure projects. Expanding CEs through legislative action for major infrastructure projects has been done before.[153] In 2005, Congress instituted CEs for activities such as drilling for oil and gas on a site that has hosted similar efforts in the past five years, and placement of pipeline in an approved right-of-way corridor that was approved within the last five years.[154]

Next, CEs must be applied uniformly across agencies. Because CEs are determined on an agency-specific basis, CEs are not applied consistently across

148. *National Environmental Policy Act*, BLM (last visited Dec. 20, 2021), https://www.blm.gov/programs/planning-and-nepa/what-informs-our-plans/nepa [https://perma.cc/2RWE-HHJA] (The lead agency may skip the EA and prepare an EIS if it is likely that there will be a significant environmental impact).

149. *Id.*

150. *Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act*, COUNCIL ON ENV'T QUALITY (2010) https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CE_Guidance_Nov232010.pdf [https://perma.cc/F72P-CVB4].

151. *Id.*

152. ANNUAL NEPA REPORT, NATIONAL ASS'N OF ENV'T. PROS. 35 (2018), https://naep.memberclicks.net/assets/documents/2019/NEPA_Annual_Report_2018.pdf [https://perma.cc/Y8CW-F9H3].

153. 42 U.S.C. § 15942.

154. *Id.*

agencies.[155] Rather, each agency has its own list of CEs that apply specifically to decisions made by that agency.[156] To avoid duplicative, timely, and unnecessary studies for projects undertaking an interagency NEPA review, Congress must either legislate a comprehensive CE framework or require participating agencies to defer to the lead agency when determining whether a particular project falls under CE. For example, the Army Corps of Engineers issued a general Nationwide Permit in 2017 (expiring in 2022) to approve CEs for activities in which the lead agency has determined that the activity is categorically excluded.[157]

CONCLUSION

Meeting the nation's climate goals is not achievable under the current federal permitting process. Title 41 of the FAST Act was the most recent major legislation aimed at streamlining the federal permitting process and has been the subject of high praise leading up to the IIJA. Congress eliminated FAST-41's sunset in the IIJA, making the program, as well as the Permitting Council and the OED, permanent. However, an in-depth review of the Permitting Council's 2020 Annual Report to Congress finds that FAST-41 high praise is ill warranted – it neither speeds up the NEPA review process as fast as it appears nor is it as popular as it is made out to be. Given these findings, an extension, rather than elimination, of FAST-41's sunset would be a more prudent decision, giving Congress more time to assess the fledgling program's efficacy in streamlining the permitting process.

Attempts, like FAST-41, to streamline the permitting process by improving the interagency coordination and inefficiencies of the review process, rather than modifying any federal statute or mandatory environmental review, do not provide the teeth required to fix the nation's delay-prone permitting system. Indeed, FAST-41 thus far seems to add another layer of procedures and points of contact to an already complex and confusing permitting process. Nonetheless, to adequately access and increase accountability within FAST-41 for years to come, this Note calls for a Congressional oversight hearing and specific improvements to the FAST-41 recommended performance schedules and online database. However, what is required to fix the nation's permitting system is to modify NEPA or expand and make uniform categorical exclusions under the current NEPA framework.

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155. *See e.g., Categorical Exclusions*, NEPA.gov at CE LIST (last visited, Dec. 20, 2021), https://ceq.doe.gov/nepa-practice/categorical-exclusions.html [https://ceq.doe.gov/docs/nepa-practice/CEQ_CE_List_2020-6-18.xlsx].

156. *Id.*

157. Nationwide Permit 23: Approved Categorical Exclusions, 82 Fed. Reg. 1988, USACE (Jan. 6, 2017) (This Nationwide Permit expires on March 18, 2022).

APPENDIX 1: FAST-41 VOLUNTARY PROJECT DATA

	Project ID	Project	Location	Project Lead Agency	Project Lead Agency Bureau	Project Category	Project Sector	Project Sector Type	Inventory/ Vo	Project Status	Estimated Cost	FIN Date	NOI Date	ROD Date	NOI to ROD (years)
1	71091	East Side Coastal Resiliency	NY	Housing and Urban Development	Community Planning and Development/ Community	FAST-41 Covered Projects	Water Resources	Other Water Resource Projects (incl.)	Voluntary	Complete	$1,450,000,000.00	2016-09-22	11/17/2015	12/06/2019	4.05
2	71856	Mid-Barataria Sediment Diversion	LA	Department of the Army	US Army Corps of Engineers - Regulatory	FAST-41 Covered Projects	Water Resources	Other Water Resource Projects (incl.)	Voluntary	In Progress	$1,400,000,000.00	2017-01-28	10/04/2013	N/A	N/A
3	73631	Mid-Breton Sediment Diversion	N/A	Department of the Army	US Army Corps of Engineers -Regulatory	FAST-41 Covered Projects	Water Resources	Other Water Resource Projects (incl.)	Voluntary	In Progress	$792,000,000.00	2019-02-11	07/02/2020	N/A	N/A
4	71146	Hudson River Rebuild by Design Project : Resist, Delay, Store,	NJ	Housing and Urban Development	Community Planning and Development/ Community	FAST-41 Covered Projects	Water Resources	Other Water Resource Projects (incl.)	Voluntary	Complete	$230,000,000.00	2016-09-22	09/04/2015	09/07/2017	2.01
5	92756	Vineyard Wind South	MA	Department of the Interior	Bureau of Ocean Energy Management	FAST-41 Covered Projects	Renewable Energy Production	Wind: Federal Offshore	Voluntary	In Progress	Not Provided	2021-03-15	06/30/2021	N/A	N/A
6	72901	Bay State Wind Project	N/A	Department of the Interior	Bureau of Ocean Energy Management	FAST-41 Covered Projects	Renewable Energy Production	Wind: Federal Offshore	Voluntary	Planned	Not Provided	2018-03-07	N/A	N/A	N/A

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	Project ID	Project	Location	Project Lead Agency	Project Lead Agency Bureau	Project Category	Project Sector	Project Sector Type	Inventory/ Vo	Project Status	Estimated Cost	FIN Date	NOI Date	ROD Date	NOI to ROD (years)
7	96691	Kulning Wind Energy Project	NV	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Renewable Energy Production	Renewable Energy Production	Voluntary	Planned	Not Provided	N/A	N/A	N/A	N/A
8	90401	Battle Born Solar Project	NV	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Renewable Energy Production	Solar	Voluntary	Cancelled	Not Provided	2020-10-13	N/A	N/A	N/A
9	84696	Skipjack Wind Farm	NV	Department of the Interior	Bureau of Ocean Energy Management	FAST-41 Covered Projects	Renewable Energy Production	Wind: Federal Offshore	Voluntary	Planned	Not Provided	N/A	N/A	N/A	N/A
10	96071	Bonanza Solar Project	NV	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Renewable Energy Production	Solar	Voluntary	Planned	Not Provided	2021-08-13	N/A	N/A	N/A
11	95051	Mayflower Wind Energy Project	MA	Department of the Interior	Bureau of Ocean Energy Management	FAST-41 Covered Projects	Renewable Energy Production	Wind: Federal Offshore	Voluntary	In Progress	Not Provided	N/A	11/01/2021	N/A	N/A
12	84911	Empire Wind Energy Project	NY	Department of the Interior	Bureau of Ocean Energy Management	FAST-41 Covered Projects	Renewable Energy Production	Wind: Federal Offshore	Voluntary	In Progress	Not Provided	2020-04-20	06/24/2021	N/A	N/A

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	Project ID	Project	Location	Project Lead Agency	Project Lead Agency Bureau	Project Category	Project Sector	Project Sector Type	Inventory/ Vo	Project Status	Estimated Cost	FIN Date	NOI Date	ROD Date	NOI to ROD (years)
13	73031	Gemini Solar Project	NV	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Renewable Energy Production	Solar	Voluntary	Complete	Not Provided	2018-07-09	07/13/2018	05/08/2020	1.82
14	93191	Atlantic Shores Project 1	NJ	Department of the Interior	Bureau of Ocean Energy Management	FAST-41 Covered Projects	Renewable Energy Production	Wind: Federal Offshore	Voluntary	In Progress	Not Provided	N/A	09/30/2021	N/A	N/A
15	91811	Coastal Virginia Offshore Wind Commercial Project	VA	Department of the Interior	Bureau of Ocean Energy Management	FAST-41 Covered Projects	Renewable Energy Production	Wind: Federal Offshore	Voluntary	In Progress	Not Provided	2021-02-12	07/02/2021	N/A	N/A
16	91751	Kitty Hawk Offshore Wind Project	NC	Department of the Interior	Bureau of Ocean Energy Management	FAST-41 Covered Projects	Renewable Energy Production	Wind: Federal Offshore	Voluntary	In Progress	Not Provided	N/A	07/30/2021	N/A	N/A
17	90021	Sunrise Wind Farm	MA	Department of the Interior	Bureau of Ocean Energy Management	FAST-41 Covered Projects	Renewable Energy Production	Wind: Federal Offshore	Voluntary	In Progress	Not Provided	2020-09-16	08/31/2021	N/A	N/A
18	88446	Lake Elsinore Advanced Pumped Storage Project	CA	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	FAST-41 Covered Projects	Renewable Energy Production	Non-Federal Hydropower -Licenses (including Non-	Voluntary	Paused	Not Provided	2020-07-02	06/18/2020	N/A	N/A

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	Project ID	Project	Location	Project Lead Agency	Project Lead Agency Bureau	Project Category	Project Sector	Project Sector Type	Inventory/ Vo	Project Status	Estimated Cost	FIN Date	NOI Date	ROD Date	NOI to ROD (years)
19	88686	Revolution Wind Farm Project	RI	Department of the Interior	Bureau of Ocean Energy Management	FAST-41 Covered Projects	Renewable Energy Production	Wind: Federal Offshore	Voluntary	In Progress	Not Provided	2020-07-24	04/30/2021	N/A	N/A
20	74166	Ocean Wind Project	N/A	Department of the Interior	Bureau of Ocean Energy Management	FAST-41 Covered Projects	Renewable Energy Production	Wind: Federal Offshore	Voluntary	In Progress	Not Provided	2019-10-30	03/30/2021	N/A	N/A
21	73796	Borderlands Wind Project	N/A	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Renewable Energy Production	Wind: Other than Federal Offshore	Voluntary	Complete	$200,000,000.00	2019-06-28	11/09/2018	08/03/2020	1.73
22	73986	Yellow Pine Solar	N/A	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Renewable Energy Production	Solar	Voluntary	Complete	Not Provided	2019-11-06	06/01/2018	11/06/2020	2.44
23	73126	South Fork Wind Farm and South Fork Export Cable	N/A	Department of the Interior	Bureau of Ocean Energy Management	FAST-41 Covered Projects	Renewable Energy Production	Wind: Federal Offshore	Voluntary	In Progress	Not Provided	2020-02-13	10/19/2018	N/A	N/A
24	73786	Port of Corpus Christi Authority Channel Deepening Project	N/A	Department of the Army	US Army Corps of Engineers - Regulatory	FAST-41 Covered Projects	Ports and Waterways	Port expansion or improvement	Voluntary	In Progress	$400,000,000.00	2019-06-13	04/07/2020	N/A	N/A

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	Project ID	Project	Location	Project Lead Agency	Project Lead Agency Bureau	Project Category	Project Sector	Project Sector Type	Inventory/ Vo	Project Status	Estimated Cost	FIN Date	NOI Date	ROD Date	NOI to ROD (years)
25	72276	Alaska LNG Project	AK	Department of Energy	Department of Energy	FAST-41 Covered Projects	Pipelines	Liquefied Natural Gas Terminal Facilities	Voluntary	In Progress	Not Provided	2017-08-22	05/01/2017	05/21/2020	3.06
26	72516	Jordan Cove LNG Terminal and Pacific Connector Gas Pipeline	OR	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	FAST-41 Covered Projects	Pipelines	Liquefied Natural Gas Terminal Facilities	Voluntary	Paused	Not Provided	2017-10-11	10/05/2017	03/19/2020	2.45
27	73116	Plains Pipeline, L.P. Lines 901 and 903 Replacement Project	CA	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Pipelines	Pipelines	Voluntary	In Progress	$300,000,000.00	2018-08-07	05/03/2019	N/A	N/A
28	95971	SunZia Southwest Transmission Project	AZ	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Electricity Transmission	Electricity Transmission (all)	Voluntary	In Progress	Not Provided	2021-07-29	06/04/2021	N/A	N/A
29	72511	Cardinal-Hickory Creek 345 kV Transmission Line Project	IA	Department of Agriculture	Rural Development	FAST-41 Covered Projects	Electricity Transmission	Rural Transmission	Voluntary	In Progress	$500,000,000.00	2017-10-11	10/18/2016	01/17/2020	3.25

APPENDIX 2: FAST-41 INVENTORY PROJECT DATA

	Project ID	Project	Location	Project Lead Agency	Project Lead Agency Bureau	Project Category	Project Sector	Project Sector Type	Inventory/ Volu	Project Statu	Estimated Cost	FIN Date	NOI Date	ROD Date	NOI to ROD (years)
1	71081	Desert Quartzite Solar	CA	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Renewable Energy Production	Solar	Inventory	Complete	Not Provided	2016-09-22	03/06/2015	01/09/2020	4.85
2	71261	Swan Lake North Pumped Storage	OR	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	FAST-41 Covered Projects	Renewable Energy Production	Non-Federal Hydropower -Licenses (including Non-Federal	Inventory	Complete	Not Provided	2016-09-22	07/08/2016	04/30/2019	2.81
3	71106	Fort Mojave Solar Project (Fort Mojave Tribe)	AZ	Department of the Interior	Bureau of Indian Affairs	FAST-41 Covered Projects	Renewable Energy Production	Solar	Inventory	Cancelled	$380,000,000.00	2016-09-22	N/A	N/A	N/A
4	71256	Red River L&D No. 4	VA	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	FAST-41 Covered Projects	Renewable Energy Production	Non-Federal Hydropower - Licenses (including Non-Federal	Inventory	Complete	Not Provided	2016-09-22	N/A	N/A	N/A
5	71131	Gordon Butte Pumped Storage	WY	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	FAST-41 Covered Projects	Renewable Energy Production	Non-Federal Hydropower - Licenses (including Non-Federal	Inventory	Complete	Not Provided	2016-09-22	N/A	N/A	N/A

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	Project ID	Project	Location	Project Lead Agency	Project Lead Agency Bureau	Project Category	Project Sector	Project Sector Type	Inventory/ Volu	Project Statu	Estimated Cost	FIN Date	NOI Date	ROD Date	NOI to ROD (years)
6	72101	Chokecherry-Sierra Madre Wind Energy (Phase 1)	WY	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Renewable Energy Production	Wind: Other than Federal Offshore	Inventory	Complete	Not Provided	2017-07-05	07/25/2008	10/08/2012	4.21
7	71031	Aiya Solar Project (Moapa)	N/A	Department of the Interior	Bureau of Indian Affairs	FAST-41 Covered Projects	Renewable Energy Production	Solar	Inventory	Cancelled	$170,000,000.00	N/A	N/A	N/A	N/A
8	72996	Chokecherry/Sierra Madre Wind, Phase II	WY	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Renewable Energy Production	Wind: Other than Federal Offshore	Inventory	Complete	$5,000,000,000.00	2018-06-01	N/A	N/A	N/A
9	71251	R.C. Byrd	PA	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	FAST-41 Covered Projects	Renewable Energy Production	Non-Federal Hydropower - Licenses (including Non-Federal	Inventory	Cancelled	Not Provided	2016-09-22	N/A	N/A	N/A
10	71166	Nexus Gas Transmission, TEAL, DTE Lease, and Vector Lease	OH	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	FAST-41 Covered Projects	Pipelines	Interstate Natural Gas Pipelines	Inventory	Complete	Not Provided	2016-09-22	12/07/2016	08/25/2017	0.72
11	71046	Atlantic Sunrise	PA	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	FAST-41 Covered Projects	Pipelines	Interstate Natural Gas Pipelines	Inventory	Complete	Not Provided	2016-09-22	07/18/2014	02/03/2017	2.55

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	Project ID	Project	Location	Project Lead Agency	Project Lead Agency Bureau	Project Category	Project Sector	Project Sector Type	Inventory/ Volu	Project Statu	Estimated Cost	FIN Date	NOI Date	ROD Date	NOI to ROD (years)
12	71036	Atlantic Coast Pipeline, Atlantic Coast Pipeline Amendment, Supply Header, and ACP-	WV	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	FAST-41 Covered Projects	Pipelines	Interstate Natural Gas Pipelines	Inventory	Complete	Not Provided	2016-09-22	10/02/2015	10/13/2017	2.03
13	71276	Venture Global Calcasieu Pass Terminal and TransCameron Pipeline Project	LA	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	FAST-41 Covered Projects	Pipelines	Liquefied Natural Gas Terminal Facilities (Onshore or In State Water) and associated Natural Gas Pipelines	Inventory	Complete	Not Provided	2016-09-22	09/18/2015	02/21/2019	3.43
14	71071	Denbury Riley Ridge to Natrona Project CO2	WY	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Pipelines	Land-based Oil & Gas - Production/Extraction	Inventory	Complete	Not Provided	2016-09-22	06/09/2014	02/28/2019	4.73
15	71161	Mountain Valley and Equitrans Expansion Project	WV	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	FAST-41 Covered Projects	Pipelines	Interstate Natural Gas Pipelines	Inventory	Complete	Not Provided	2016-09-22	11/05/2015	10/13/2017	1.94
16	71266	Tennessee Gas Abandonment and Capacity Restoration	PA	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	FAST-41 Covered Projects	Pipelines	Interstate Natural Gas Pipelines	Inventory	Cancelled	Not Provided	2016-09-22	N/A	N/A	N/A
17	71281	WB Xpress	WY	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	FAST-41 Covered Projects	Pipelines	Interstate Natural Gas Pipelines	Inventory	Complete	Not Provided	2016-09-22	N/A	N/A	N/A

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	Project ID	Project	Location	Project Lead Agency	Project Lead Agency Bureau	Project Category	Project Sector	Project Sector Type	Inventory/ Volu	Project Statu	Estimated Cost	FIN Date	NOI Date	ROD Date	NOI to ROD (years)
18	71141	Gulf LNG Liquefaction Project	MS	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	FAST-41 Covered Projects	Pipelines	Liquefied Natural Gas Terminal Facilities (Onshore or In State Water) and associated Natural Gas Pipelines	Inventory	Complete	Not Provided	2016-09-22	07/01/2015	07/16/2019	4.04
19	71241	PennEast Pipeline	PA	Federal Energy Regulatory Commission	Federal Energy Regulatory Commission	FAST-41 Covered Projects	Pipelines	Interstate Natural Gas Pipelines	Inventory	In Progress	Not Provided	2016-09-22	10/08/2015	01/19/2018	2.28
20	71176	North-South Project	CA	Department of Agriculture	US Forest Service	FAST-41 Covered Projects	Pipelines	Land-based Oil & Gas - Production/Extraction	Inventory	Cancelled	Not Provided	2016-09-22	N/A	N/A	N/A
21	71116	Gateway West Segments 8 & 9	ID	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Electricity Transmission	Electricity Transmission (all)	Inventory	Complete	Not Provided	N/A	09/19/2014	01/19/2017	2.34
22	71101	Energy Gateway South Transmission Project	WY	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Electricity Transmission	Electricity Transmission (all)	Inventory	Complete	Not Provided	2016-09-22	04/01/2011	12/13/2016	5.71

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	Project ID	Project	Location	Project Lead Agency	Project Lead Agency Bureau	Project Category	Project Sector	Project Sector Type	Inventory/ Volu	Project Statu	Estimated Cost	FIN Date	NOI Date	ROD Date	NOI to ROD (years)
23	71246	Plains and Eastern Clean Line	OK	Department of Energy	Office of Electricity Delivery and Energy Reliability	FAST-41 Covered Projects	Electricity Transmission	Electricity Transmission (all)	Inventory	Complete	$2,500,000,000.00	2016-09-22	12/21/2012	03/25/2016	3.26
24	72106	Boardman to Hemingway Transmission Line	OR	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Electricity Transmission	Electricity Transmission (all)	Inventory	In Progress	Not Provided	N/A	07/26/2010	11/17/2017	7.32
25	71156	Kake to Petersburg Transmission Project	AK	Department of Agriculture	US Forest Service	FAST-41 Covered Projects	Electricity Transmission	Electricity Transmission (all)	Inventory	Complete	$200,000,000.00	2016-09-22	05/07/2010	11/30/2016	6.57
26	71296	Ten West Link	AZ	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Electricity Transmission	Electricity Transmission (all)	Inventory	In Progress	Not Provided	2016-09-22	03/23/2016	11/21/2019	3.67
27	72111	Transwest Express	WY	Department of the Interior	Bureau of Land Management	FAST-41 Covered Projects	Electricity Transmission	Electricity Transmission (all)	Inventory	Complete	Not Provided	2017-06-22	01/04/2011	N/A	N/A

CONTINUED

	Project ID	Project	Location	Project Lead Agency	Project Lead Agency Bureau	Project Category	Project Sector	Project Sector Type	Inventory/ Volu	Project Statu	Estimated Cost	FIN Date	NOI Date	ROD Date	NOI to ROD (years)
28	71291	William States Lee III Nuclear Station, Units 1 and 2	SC	Nuclear Regulatory Commission	Office of New Reactors	FAST-41 Covered Projects	Conventional Energy Production	Nuclear Power Plant - Combined (construction and operating) license	Inventory	Complete	Not Provided	2016-09-22	03/20/2008	12/15/2016	8.75
29	71271	Turkey Point, Units 6 and 7	FL	Nuclear Regulatory Commission	Office of New Reactors	FAST-41 Covered Projects	Conventional Energy Production	Nuclear Power Plant - Combined (construction and operating) license	Inventory	Complete	Not Provided	2016-09-22	06/15/2010	04/12/2018	7.83
30	71171	North Anna Power Station, Unit 3	VA	Nuclear Regulatory Commission	Office of New Reactors	FAST-41 Covered Projects	Conventional Energy Production	Nuclear Power Plant - Combined (construction and operating) license	Inventory	Complete	Not Provided	2016-09-22	03/13/2008	06/02/2017	9.23
31	71181	Liberty Development and Production Plan	AK	Department of the Interior	Bureau of Ocean Energy Management	FAST-41 Covered Projects	Conventional Energy Production	Offshore Oil & Gas	Inventory	Paused	$1,500,000,000.00	2016-11-21	09/18/2015	10/17/2018	3.08
32	71701	Levy Nuclear Plant Units 1 and 2	FL	Nuclear Regulatory Commission	Office of New Reactors	FAST-41 Covered Projects	Conventional Energy Production	Nuclear Power Plant - Combined (construction and operating) license	Inventory	Complete	Not Provided	2016-09-22	10/24/2008	10/20/2016	7.99