



## FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

### Quarterly Agency Performance Report

Fiscal Q4 2022 (July-September)

December 16, 2022

## Acknowledgements

The Executive Director of the Federal Permitting Improvement Steering Council (Permitting Council) submits this quarterly report to Congress pursuant to 42 U.S.C. § 4370m-7(a)(2).

The Permitting Council is a unique Federal agency charged with improving the transparency and predictability of the Federal environmental review and authorization process for certain critical infrastructure projects. The Permitting Council comprises the Executive Director, who serves as the Permitting Council Chair, and 15 members, including the Deputy Secretary (or equivalent) from 13 Federal agencies, the Chair of the Council on Environmental Quality, and the Director of the Office of Management and Budget.



Department of Agriculture



Department of the Army



Department of Commerce



Department of Energy



Department of Transportation



Department of Defense



Federal Energy Regulatory Commission



Department of Homeland Security



Nuclear Regulatory Commission



Department of Housing and Urban Development



Advisory Council on Historic Preservation



Office of Management and Budget



Council on Environmental Quality



Environmental Protection Agency



Department of the Interior

# Quarterly Agency Performance Report, Fiscal Q4 July-September 2022

## Introduction and Background

Title 41 of the Fixing America's Surface Transportation Act (FAST-41) established the Permitting Council on December 4, 2015.<sup>1</sup> On November 15, 2021, the President signed the Infrastructure Investment and Jobs Act (IIJA), which reauthorized and amended FAST-41.<sup>2</sup> The IIJA amendments to FAST-41 include a requirement for the Permitting Council Executive Director to submit to Congress:

a quarterly report evaluating agency compliance with the provisions of [FAST-41], which shall include a description of the implementation and adherence of each agency to the coordinated project plan and permitting timetable requirements under [42 U.S.C. § 4370m-2(c)].<sup>3</sup>

IIJA also substantively revised the above-referenced coordinated project plan (CPP) and permitting timetable requirements codified at 42 U.S.C. § 4370m-2.<sup>4</sup> A CPP coordinates the public and agency participation in, and completion of, any Federal environmental review and authorization processes for a project that is “covered” by FAST-41.<sup>5</sup> The permitting timetable is a key component of a CPP and includes intermediate and final completion dates for agency actions on environmental reviews or authorizations required for the project.<sup>6</sup> The requirements for CPPs and permitting timetables are discussed in greater detail below.

To assist agencies in the implementation of FAST-41, the Permitting Council created a FAST-41 Data Management Guide (DMG). On March 28, 2022, the Executive Director, in coordination with the Permitting Council members, completed comprehensive revisions of the DMG, which now provides a standard operating procedure for implementing the IIJA-amended FAST-41 requirements related to establishing, maintaining, modifying, and completing permitting timetables and maintaining CPP information on the Permitting Dashboard.<sup>7</sup> The DMG became effective on July 1, 2022. Agency implementation of the DMG is essential to facilitating the Executive Director's new IIJA obligation to evaluate agency compliance with FAST-41, including the revised CPP and permitting timetable requirements. This Quarterly Agency Performance Report, which covers the fourth quarter of Fiscal Year 2022, summarizes agency

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<sup>1</sup> 42 U.S.C. §§ 4370m *et seq.*

<sup>2</sup> Pub. L. No. 117-58, § 70801, 135 Stat. 429, 1287-1294 (Nov. 15, 2021).

<sup>3</sup> *Id.* § 70801(f), 135 Stat. at 1293, codified at 42 U.S.C. § 4370m-7(a)(2).

<sup>4</sup> *Id.* § 70801(c), 135 Stat. at 1289.

<sup>5</sup> 42 U.S.C. § 4370m-2(c)(1).

<sup>6</sup> 42 U.S.C. § 4370m-2(c)(2).

<sup>7</sup> The Permitting Dashboard is administered by the Department of Transportation (DOT) and is used as a transparency and compliance tool for many types of infrastructure projects in which the Federal government is involved. A small percentage of the projects on the Permitting Dashboard are FAST-41 covered projects. The Permitting Dashboard is accessible at <https://www.permits.performance.gov/projects>.

implementation of the DMG and agency compliance with FAST-41 requirements, as amended by IJA.

Specifically, this report provides an overview of:

- The FAST-41 project portfolio;
- Agency compliance with the FAST-41 initiation process, including the requirements for CPPs;
- Agency compliance with the required CPP quarterly updates;
- Agency compliance for permitting timetable modifications; and
- An assessment of how agency compliance will evolve in future Quarterly Agency Performance Reports, including Agency compliance for hyperlinked project information postings.

## Fiscal Q4 2022 FAST-41 Project Portfolio

In the fourth quarter of Fiscal Year 2022, the FAST-41 project portfolio contained twenty-six projects in active review and two paused projects (Liberty Development and Production and Plains Pipeline, L.P. Lines 901 and 903 Replacement Project). The appendix section of this report includes a description of the FAST-41 project portfolio for the fourth quarter of Fiscal Year 2022.

## Agency Compliance with FAST-41 Initiation and CPP Requirements

The FAST-41 process begins when a project sponsor<sup>8</sup> submits a FAST-41 Initiation Notice (FIN) to the Executive Director and the appropriate facilitating agency.<sup>9</sup> The Executive Director must make a project entry on the Permitting Dashboard within 14 days of receiving a FIN unless the facilitating or lead agency, or the Executive Director, determines that the project is not a covered project.<sup>10</sup> In the fourth quarter of Fiscal Year 2022, there were three FINs submitted for covered projects:

- 1) Atlantic Shores North (The U.S. Department of the Interior (DOI) - Bureau of Ocean Energy Management (BOEM) is the lead agency);
- 2) Beacon Wind (BOEM is the lead agency); and
- 3) Mountain Valley Pipeline (the Federal Energy Regulatory Commission (FERC) is the facilitating agency).

Within 21 days after the Executive Director makes a project entry on the Dashboard, the facilitating or lead agency must invite agencies and governmental entities likely to have responsibilities with respect to the proposed project to become a participating or cooperating

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<sup>8</sup> Under FAST-41, a “project sponsor” means an entity, including any private, public, or public-private entity, seeking an authorization for a covered project. 42 U.S.C. § 4370m(18).

<sup>9</sup> 42 U.S.C. § 4370m-2(a)(1)(A). Under FAST-41, a “facilitating agency” is responsible for carrying out most Federal agency responsibilities with respect to prospective and actual covered projects until a “lead agency” is identified pursuant to the National Environmental Policy Act. *See id.* § 4370m-2(a)(5).

<sup>10</sup> 42 U.S.C. § 4370m-2(b)(2)(A)(ii); *see* In re Virgo Solar and Solar 373 Projects, Executive Director Determination of Covered Project Status (July 22, 2022).

agency for purposes of FAST-41.<sup>11</sup> For the three projects submitting FINs in this reporting quarter, the 21-day requirement was met for Beacon Wind and Mountain Valley Pipeline. For Atlantic Shores North, BOEM was unable to meet the 21-day requirement due to on-going discussions about information requested from the project sponsor.

A CPP must be established “not later than 60 days after the date on which the Executive Director must make a specific entry for the project on the Dashboard.”<sup>12</sup> The CPP is central to the management of the environmental review and authorization process for a FAST-41 covered project. The CPP is a living document that includes a list of all entities with an environmental review or authorization responsibility for a project; their respective roles and responsibilities; a discussion of potential avoidance, minimization, and mitigation strategies; plans and a schedule for public and tribal outreach and coordination; and the permitting timetable.<sup>13</sup> The permitting timetable is posted on the Permitting Dashboard and guides the entire Federal review and authorization effort for a covered project. The CPPs for Atlantic Shores North, Beacon Wind and Mountain Valley Pipeline are due in the first quarter of Fiscal Year 2023 and agency compliance will be reported as part of the Fiscal Q1 2023 (October – December) Quarterly Agency Performance Report.

### Agency Compliance with the CPP Quarterly Update Requirements

FAST-41 requires the facilitating or lead agency to update the CPP at least once per quarter.<sup>14</sup> This statutory requirement is currently accomplished via a two-step process that includes agency certification on the Dashboard and, if updates occurred, an upload of the updated CPP document to MAX.gov. Certification of compliance with this FAST-41 requirement is an important metric because it provides the Executive Director with confirmation that agencies are conducting timely reviews and updating project CPPs, as required by FAST-41.

In the fourth quarter of Fiscal Year 2022, there were five instances in which the two-step process to certify CPP review and updates was not completed. The DOI - Bureau of Land Management (BLM) did not properly certify the CPP for the following four projects: Boardman to Hemingway Transmission Line Project; Kulning Wind Energy Project; Plains Pipeline, L.P. Lines 901 and 903 Replacement Project; and SunZia Southwest Transmission Project. Additionally, the Department of the Army - U.S. Army Corps of Engineers (USACE) did not complete the second part of the two-step process (uploading the CPP document to MAX.gov) for certifying its review of the CPP for the Mid-Barataria Sediment Diversion Project.

The Executive Director engaged in follow-up discussions with these two agencies to improve agency implementation of FAST-41 and streamline Permitting Dashboard operation. As a result of these discussions, the Executive Director learned that in some cases, where there has been no activity on a project for reasons beyond an agency’s control, agencies did not fully appreciate the FAST-41 obligation. Therefore, the Executive Director is simplifying the submission process for agencies to certify their CPP review and updates. This new process is expected to be operational on the Dashboard by the end of the first quarter of Fiscal Year 2023.

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<sup>11</sup> 42 U.S.C. § 4370m-2(a)(2)(A).

<sup>12</sup> 42 U.S.C. § 4370m-2(c)(1)(A).

<sup>13</sup> *Id.*

<sup>14</sup> 42 U.S.C. § 4370m-2(c)(1)(B).

The Executive Director continues to advise agencies to ensure that CPP update certifications are submitted timely and will continue to report on this metric in future Quarterly Agency Performance Reports.

## Agency Compliance for Modifying Established Permitting Timetables

A permitting timetable includes intermediate and final completion dates for action by each agency on any Federal environmental review or authorization required for the project.<sup>15</sup> Agencies may modify these timetables, but the extension of a final completion date by more than 30 days requires an Executive Director “determination on the record” authorizing the extension.<sup>16</sup> In the fourth quarter of Fiscal Year 2022, the Executive Director issued three such determinations on the record in response to requests from USACE for the Port of Corpus Christi Authority Channel Deepening Project; from BOEM for the Ocean Wind 1 Project; and from BLM for the SunZia Southwest Transmission Project. These requests to modify the project permitting timetable were approved by the Executive Director in accordance with 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV).

## Agency Implementation of Permitting Timetables Modifications

Each Federal agency is required to meet the intermediate and final completion dates in the currently-posted permitting timetable.<sup>17</sup> If an agency does not meet a completion date, or reasonably believes it will miss a completion date 30 days before the date, it must submit an explanation to the Executive Director for nonconformance with the permitting timetable, establish an alternative completion date in consultation with the facilitating or lead agency, and submit monthly reports to the Executive Director describing any agency activity relating to the project until it has taken final action on the delayed authorization or review.<sup>18</sup>

During the fourth quarter of Fiscal Year 2022, one agency fell into nonconformance due to missing permitting timetable completion dates. For the New England Wind Project, BOEM did not complete timely date changes for either its Endangered Species Act (ESA) consultation or its Essential Fish Habitat (EFH) consultation under the Magnuson-Stevens Fishery Conservation and Management Act. Although date changes were made to the Permitting Dashboard, those changes were not made within 30 days of the completion date in accordance with 42 U.S.C. § 4370m-2(c)(2)(D)(ii). BOEM is currently satisfying its nonconformance monthly missed date reporting requirements for New England Wind’s ESA and EFH pursuant to 42 U.S.C. § 4370m-2(c)(2)(F).

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<sup>15</sup> 42 U.S.C. § 4370m-2(c)(2)(A).

<sup>16</sup> See 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV).

<sup>17</sup> 42 U.S.C. § 4370m-2(c)(2)(F)(i).

<sup>18</sup> 42 U.S.C. § 4370m-2(c)(2)(F)(ii).

## Assessment of Agency Compliance in Future Quarterly Agency Performance Reports

For the first quarter of Fiscal Year 2023, the Quarterly Agency Performance Report will continue to provide a comprehensive assessment of agency compliance with FAST-41 requirements, as amended by IIJA. These requirements include:

- 1) CPP establishment, updates, and content requirements (42 U.S.C. §§ 4370m-2(c)(1)(A) & (B));
- 2) Permitting timetable consultation and content requirements (42 U.S.C. §§ 4370m-2(c)(2)(A) & (B));
- 3) Prerequisites for modifying the permitting timetable after establishment, and the limitation on total length of all modifications (42 U.S.C. § 4370m-2(c)(2)(D)); and
- 4) Conformance with the permitting timetable and, when applicable, fulfillment of nonconformance requirements (42 U.S.C. § 4370m-2(c)(2)(F)).

In addition, the first quarter Fiscal Year 2023 report will provide an assessment of agency compliance with project postings to the Dashboard. For each covered project added to the Permitting Dashboard, FAST-41 requires the facilitating or lead agency, as applicable, and each cooperating and participating agency to post a hyperlink to the Permitting Dashboard that directs the public to a website containing certain project information.<sup>19</sup>

Agencies must make these postings after they receive the required information. Specifically, and where practicable and consistent with applicable law, agencies must post:

- 1) The FIN;
- 2) Either the application and supporting documents that have been submitted by a project sponsor for any required environmental review or authorization, or a notice explaining how the public may obtain access to such documents;
- 3) A description of any Federal agency action taken or decision made that materially affects the status of a covered project, and any significant supporting documentation;
- 4) A description of the status of any litigation to which the agency is a party that is directly related to the project, including, if practicable, any judicial document made available on an electronic docket maintained by a Federal, State, or local court; and
- 5) Any document described above that is not available by hyperlink on another website.<sup>20</sup>

The information described above is required to be posted to the relevant agency's website and made available by hyperlink on the FAST-41 Permitting Dashboard not later than 5 business days after the date on which the Federal agency receives the information.<sup>21</sup>

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<sup>19</sup> 42 U.S.C. § 4370m-2(b)(3)(A)(i)-(ii).

<sup>20</sup> 42 U.S.C. § 4370m-2(b)(3)(A)(i)-(ii).

<sup>21</sup> 42 U.S.C. § 4370m-2(b)(3)(B).

The degree to which agencies comply with the contents of the hyperlink postings that are required by this section of FAST-41 is challenging for the Executive Director to independently verify, as much of the required information is only available to the agencies. However, certain information that is required to be posted, like the FIN, is also required as a part of the FAST-41 process. Therefore, to track agency compliance with this part of FAST-41 in the future, the Executive Director will focus on whether a hyperlink has been posted for FAST-41 covered projects.

In the fourth quarter of Fiscal Year 2022, FAST-41 covered projects on the Permitting Dashboard from seven agencies or bureaus were missing required hyperlinks postings. The Executive Director will continue to offer Dashboard training opportunities and identify Dashboard operation enhancements to support efficient permitting timetable management, increase permitting timetable data quality, and facilitate agency compliance with their FAST-41 requirements.



## APPENDIX

### Description of Project Portfolio

FAST-41 is a voluntary program for qualifying infrastructure projects; project sponsors must apply for and obtain FAST-41 coverage for their projects.<sup>22</sup> The FAST-41 program provides oversight, strengthens cooperation and communication among agencies, enhances transparency, and emphasizes efficient processing of environmental reviews and authorizations. FAST-41 does not modify any underlying Federal statute, regulation, or mandatory environmental reviews.

The FAST-41 project portfolio consists of “covered projects,” as defined at 42 U.S.C. § 4370m(6). This report focuses on a subset of covered projects, those undergoing active Federal review during Q4 2022. Projects undergoing active review are projects that were, at any time in Q4 2022, not canceled, complete, or paused.<sup>23</sup> There were 26 active FAST-41 covered projects in Q4 2022, organized by sector in Figure 1.<sup>24</sup>

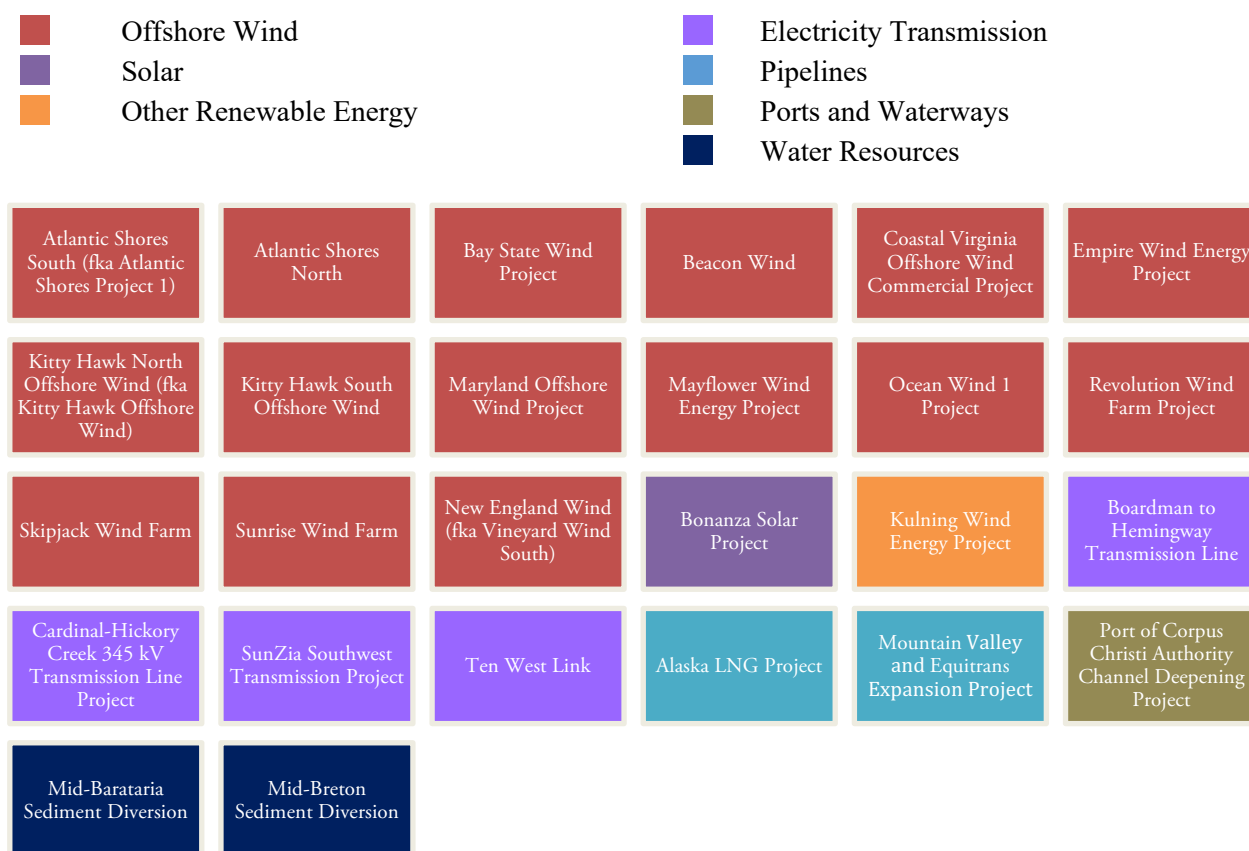


Figure 1: List of covered projects undergoing active Federal review in Q4 2022.

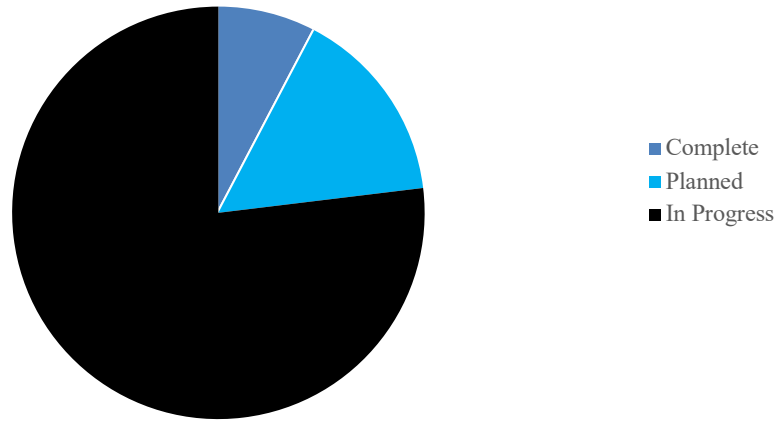
<sup>22</sup> See 42 U.S.C. §§ 4370m-2(a)(1), (b)(2)(A)(ii).

<sup>23</sup> The set of projects undergoing active Federal review was derived from analysis of the Dashboard’s non-public revision history dataset.

<sup>24</sup> The Renewable Energy Production sector is depicted as three sub-sectors: offshore wind, solar, and other renewable energy.

Figure 2 summarizes the status, as of September 30, 2022 (the end of Q4 2022), of FAST-41 covered projects undergoing active Federal review.<sup>25</sup>

Permitting Council Project Portfolio Status  
as of the End of Q4 2022



*Figure 2: Graph showing the status of each project in the Permitting Council portfolio as of the end of Q4 2022.*

During Q4 2022:

- Two projects joined the roster of projects under active review. Both were offshore wind projects: Beacon Wind and Atlantic Shores North.
- The Atlantic Shores project was divided into two projects. The original project is now called Atlantic Shores South, and Atlantic Shores North was added to the Dashboard as a new “Planned” project.
- A few projects transition from “Planned” status to “In Progress.” These include: Bonanza Solar Project, Kitty Hawk South, and Kulning Wind.
- One project, Ten West Link, was newly completed in the quarter.
- No projects were newly paused, or cancelled during the second quarter.

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<sup>25</sup> Project status was derived from analysis of the Dashboard’s non-public revision history dataset.

Figure 3 shows the location of FAST-41 covered projects undergoing active Federal review in Q4 2022.

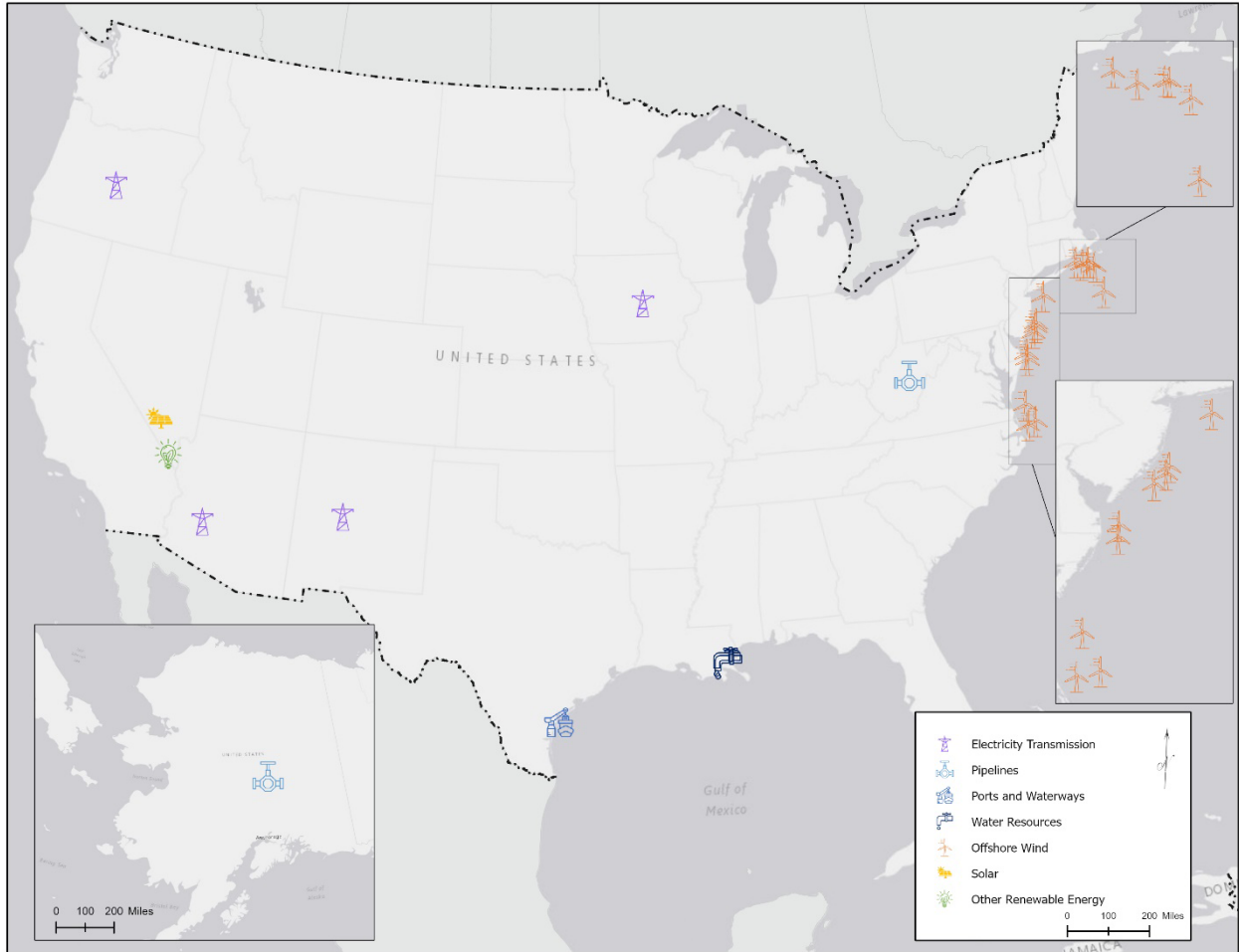


Figure 3: Map of covered projects undergoing active Federal review in Q4 2022