



FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

Recommended Best Practices

Fiscal Year 2023

Acknowledgements

The Federal Permitting Improvement Steering Council (Permitting Council) issues these recommended Best Practices pursuant to 42 U.S.C. § 4370m-1(c)(2)(B).

The Permitting Council is comprised of 16 members, including the Executive Director (Permitting Council Chair), 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



Background

The Federal Permitting Improvement Steering Council (Permitting Council) is required to issue annual recommendations on best practices for improving the Federal permitting process for “covered projects” under Title 41 of the Fixing America’s Surface Transportation Act (FAST-41).¹ Each lead agency and participating agency for FAST-41 covered projects must submit to Congress and the Director of the Office of Management and Budget (OMB) an annual report assessing agency performance in implementing these best practice recommendations.²

FAST-41 provides that the Permitting Council’s best practice recommendations may include, but are not limited to, the following categories:³

- (i) enhancing early stakeholder engagement, including—
 - (I) engaging with Native American stakeholders to ensure that project sponsors and agencies identify potential natural, archeological, and cultural resources and locations of historic and religious significance in the area of the covered project; and
 - (II) fully considering and, as appropriate, incorporating recommendations provided in public comments on any proposed covered project;
- (ii) ensuring timely decisions regarding environmental reviews and authorizations, including through the development of performance metrics;
- (iii) improving coordination between Federal and non-Federal governmental entities, including through the development of common data standards and terminology across agencies;
- (iv) increasing transparency;
- (v) reducing information collection requirements and other administrative burdens on agencies, project sponsors, and other interested parties;
- (vi) developing and making available to applicants appropriate geographic information systems and other tools;
- (vii) creating and distributing training materials useful to Federal, State, tribal, and local permitting officials;
- (viii) in coordination with the Executive Director, improving preliminary engagement with project sponsors in developing coordinated project plans;
- (ix) using programmatic assessments, templates, and other tools based on the best available science and data; and
- (x) addressing other aspects of infrastructure permitting, as determined by the Council.⁴

¹ 42 U.S.C. § 4370m-1(c)(2)(B).

² 42 U.S.C. § 4370m-7(a)(3).

³ 42 U.S.C. § 4370m-1(c)(2)(B).

⁴ 42 U.S.C. § 4370m-1(c)(2)(B)



Best Practices Prior to FY 2023

The Permitting Council has issued best practices annually since 2017. Prior to the passage of Infrastructure Investment and Jobs Act (IIJA),⁵ FAST-41 required the Executive Director to evaluate each Permitting Council member agency's progress in implementing the best practices. The Executive Director reported on agency progress in its Annual Report to Congress. Annual Reports to Congress for Fiscal Years (FY) 2016-2021 can be found [here](#).

While there have been some substantive changes to the best practices over the years, the majority have remained the same or very similar since 2018, as demonstrated on pages 5-16 of this document.

With the passage of IIJA in November 2021, Congress added three categories to the statutory list of best practice recommendations at 42 U.S.C. § 4370m-1(c)(2)(B):

- (i)(I) engaging with Native American stakeholders to ensure that project sponsors and agencies identify potential natural, archeological, and cultural resources and locations of historic and religious significance in the area of the covered project:
- (viii); in coordination with the Executive Director, improving preliminary engagement with project sponsors in developing coordinated project plans; and
- (ix) using programmatic assessments, templates, and other tools based on the best available science and data.

The Permitting Council issued best practices for FY 2022 solely in the three new categories. This allowed agencies to focus on implementing the new categories highlighted by Congress without precluding agencies from continuing to implement and report on previously issued best practices.

In May 2022, the Permitting Council issued the best practices for category viii (improving engagement with project sponsors in developing coordinated project plans) and category ix (use of programmatic assessments, templates, and other tools). To ensure the best practices under the new category on enhancing early engagement with Native American stakeholders accurately reflected the needs and experiences of Tribes, in April and May 2022, the Executive Director held three Tribal consultation sessions to receive input on the draft best practices. Tribes also provided written comments on the draft best practices in advance of and following the consultation sessions. The Executive Director revised the draft best practices, as appropriate, based on this valuable input. Due to the additional time needed to host the consultations and thoroughly incorporate feedback from Tribes, the Permitting Council issued the best practices on enhancing early engagement with Native American stakeholders in September 2022.

⁵ Pub. L. No. 117-58, 135 Stat. 429 (Nov. 15, 2021).



FY 2023 Approach – Looking Back to Move Forward

Not only did IIJA add best practices categories, as noted above, but it also expanded the Permitting Council’s critical role in coordinating across Federal agencies to improve the environmental review and authorization process. IIJA expanded the Executive Director’s ability to utilize the Environmental Review Improvement Fund to support the role of the Permitting Council as a center for permitting excellence, including supporting interagency detailee and rotation opportunities, advanced training, enhanced support for agency project managers, and for sharing lessons learned.⁶ In May 2022, the Biden-Harris Administration released the Permitting Action Plan, which – among other things – emphasizes the Permitting Council’s critical role in facilitating coordination across Federal agencies to resolve conflicts, share best practices, and accelerate information sharing. The Inflation Reduction Act (IRA),⁷ enacted in August 2022, appropriated \$350 million over nine years to the Environmental Review Improvement Fund, which is administered by the Executive Director, increasing the Permitting Council’s ability to undertake activities to advance the efficiency, clarity, and consistency of the Federal environmental review and authorization process.

Given this expanded funding and authority, the Permitting Council will increase its focus on developing meaningful, transformative, and evidence-based best practices that will drive forward significant permitting process improvements. To that end, for FY 2023, the Permitting Council is reissuing all best practices issued from FY 2018 to FY 2022. This consolidated list of best practices is intended to be used as a resource to inform agencies’ reporting to OMB and Congress. Reissuing the best practices will also allow Permitting Council agencies additional time to implement the FY 2022 best practices, which were issued in May and September 2022.

This approach provides an opportunity for Permitting Council agencies to revisit established best practices, identify redundancies, and reflect on which have been the most successful in improving the Federal permitting process for covered projects. It also allows agencies to evaluate their progress toward implementation and identify their priority areas for future best practice development and implementation. FY 2023 will act as a “look back” to the past five years of best practices and provide a basis on which to move toward more impactful, evidence-based, and actionable best practices that improve the Federal permitting process for covered projects. The FY23 best practices should be considered in agencies’ annual reports to Congress due by April 15, 2024.

Plan for FY 2024 Best Practices

During FY 2023, the Permitting Council will develop new best practices for FY 2024 that will actively contribute to the Permitting Council’s charge to advance permitting excellence. As part of this effort, the Executive Director will gather feedback from Permitting Council agencies to better understand their current and planned approaches to implementing, tracking, and reporting on the

⁶ 42 U.S.C. § 4370m-8(d)(2).

⁷ Pub. L. No. 117-169, 136 Stat. 1818 (Aug. 16, 2022).



best practices. The Executive Director will also gather information to identify examples of high-impact, actionable, and measurable best practices for FY 2024.

The Executive Director may collect feedback from the Permitting Council agencies through a survey, a series of workshops, and/or other collaborative mechanisms. The Executive Director aims to ensure that the new best practices are meaningful, based on qualitative and/or quantitative data; can be easily tracked by agencies at the headquarters and field levels; and that Permitting Council agencies are committed to agency-wide implementation. The Permitting Council anticipates issuing the FY 2024 best practices early in FY 2024 so that agencies have the full year for implementation and data collection.

FY 2018 – FY 2022 Reissued BPs

Not later than April 15, 2024, each participating agency and lead agency must submit to Congress and the Director of OMB a report assessing the performance of the agency in implementing the best practices for FY 2023.⁸ Given the Permitting Council’s proposed approach for FY 2024 to create more evidence-based, action-oriented best practices, the Executive Director recommends that agencies consider including qualitative/quantitative data in its FY 2023 report to Congress and OMB, due by April 15, 2024. Below is a list of consolidated best practices from FY 2018 through FY 2022 that serve as the best practices for FY 2023.

⁸ 42 U.S.C. § 4370m-7(a)(3).



BP Category (as of FY 2022)	2022	2021	2020	2019	2018
<p>i. Enhancing early stakeholder engagement, including - (I) engaging with Native American stakeholders to ensure that project sponsors and agencies identify potential natural, archeological, and cultural resources and locations of historic and religious significance in the area of the covered project; and* (II) fully considering and, as appropriate, incorporating recommendations provided in public comments on any proposed covered project.</p>	<p>1. Identify Tribes that may be impacted by a project or may have knowledge and expertise related to the project by using multiple tools or sources (e.g., the Bureau of Indian Affairs' Tribal Leaders Directory, the Tribal Directory Assistance Tool, the National Park Service's Tribal Historic Preservation Officer Directory, etc.) to verify the accuracy of contact information. Include multiple relevant contacts (e.g., Tribal Government leadership, Tribal administrators, cultural resources staff, natural resources staff, Tribal Historic Preservation Officers, etc.) when conducting outreach to maximize chances that the designated representative(s) of a Tribe are engaged at the appropriate steps in the project's environmental review and authorization process.</p>	<p>1. Proactively engage stakeholders and other agencies early in the project review and permitting process, and identify and document measures taken to increase meaningful stakeholder engagement.</p>			<p>1. Consolidate and organize information on permitting requirements and processes on existing departmental or Agency websites and, where appropriate, use social media platforms and other technologies to share information and to identify and engage interested stakeholders.</p>
	<p>2. Invite identified Tribes, and any other Tribe who so requests, to participate in consultation as early as practicable in the environmental review and authorization process and, to the extent possible, maintain engagement throughout the process. This includes responding to Tribes' questions and concerns; ensuring that complete, accurate, and high-quality data and information is provided to Tribes in a timely manner for Tribes' review and comment; and actively informing Tribes of how the agency incorporated Tribal input into project-related decision making. In addition to consulting with a Tribe's designated representatives, Federal agencies should be prepared to conduct Government-to-Government consultation with a federally recognized Tribe's leadership, where appropriate.</p>	<p>2. Establish and/or utilize pre-review processes to provide project sponsors with an opportunity for early communication on project-specific information with the lead or facilitating agency, other relevant Federal agencies, state agencies, Tribes, and/or local government entities prior to initiation of official review processes (e.g., submission of application or other initiation of the project review and permitting process).</p>			<p>2. Implement the Coordinated Project Plan provisions in the FAST Act (42 U.S.C. § 4370m-2(c)(1)).</p>
	<p>3. Consult with Tribes to develop reasonable permitting timetables that provide sufficient time for meaningful consultation on Federal environmental reviews and authorizations. To the extent possible, coordinate agency requests for Tribal review and input on related, adjoining, or similar projects to avoid overlapping timeframes and simultaneous requests.</p>				



BP Category (as of FY 2022)	2022	2021	2020	2019	2018
<p>i. Enhancing early stakeholder engagement, including -</p> <p>(I) engaging with Native American stakeholders to ensure that project sponsors and agencies identify potential natural, archeological, and cultural resources and locations of historic and religious significance in the area of the covered project; and*</p> <p>(II) fully considering and, as appropriate, incorporating recommendations provided in public comments on any proposed covered project.</p>	<p>4. In consultation with Tribes, identify opportunities to incorporate Indigenous Traditional Ecological Knowledge (ITEK) as best available science in the development of project alternatives and scoping and proactively identify mechanisms to protect sensitive Tribal information. Request and incorporate, as appropriate, input from Tribes on the types of studies that are conducted and the ways in which studies are conducted to assess a project’s potential impacts on Tribal lands and environmental and cultural resources.</p> <p>5. Build trust and mutually defined relationships with Tribes on an ongoing basis and in advance of project-specific information or consultation requests. Examples of relationship building activities include, but are not limited to, hosting biannual meetings with agency and Tribal leadership, visiting Tribal lands and resources that may be impacted by a project, establishing or leveraging an existing agency Tribal liaison position to maintain continuity in relationships throughout potential staff turnover, and hiring Tribal representatives to participate in the environmental review and authorization process.</p> <p>6. In consultation with Tribes, develop and regularly update trainings and other resources on Tribal consultation and engagement. Trainings and resources should include topics such as Tribal sovereignty and treaty rights, Sacred Sites, Government-to-Government consultation requirements, employing respectful protocols, and engagement before and beyond National Historic Preservation Act Section 106 consultation. Strongly encourage Federal staff and third-party contractors to participate in training in advance of Tribal consultation or engagement with Tribal Nations.</p>				



BP Category (as of FY 2022)	2022	2021	2020	2019	2018
<p>i. Enhancing early stakeholder engagement, including - (I) engaging with Native American stakeholders to ensure that project sponsors and agencies identify potential natural, archeological, and cultural resources and locations of historic and religious significance in the area of the covered project; and* (II) fully considering and, as appropriate, incorporating recommendations provided in public comments on any proposed covered project.</p>	<p>7. Where appropriate and to the degree the agency has the authority to do so, identify and pursue opportunities to provide funding or staffing support to Tribes for participating in the environmental review and authorization process for FAST-41 projects to address Tribe’s resource and capacity constraints. For example, work with Tribes to hire consultants or technical review staff to increase Tribes’ capacity to participate in the environmental review and authorization process. Actively inform Tribes of the Office of the Executive Director’s ability to transfer funds from the Environmental Review and Improvement Fund to Tribal governments to facilitate timely and efficient environmental reviews and authorizations for FAST-41 projects. Tribal Nations interested in this funding mechanism can reach out to the Permitting Council Executive Director for further discussion at fast.fortyone@fpisc.gov.</p>				



BP Category (as of FY 2022)	2022	2021	2020	2019	2018
ii. Ensuring timely decisions regarding environmental reviews and authorizations, including through the development of performance metrics.		1. Create or improve agency processes and internal controls to maintain current and accurate timetables and quickly identify, elevate, and resolve issues to continuously improve timeliness of decisions.	1. Develop and/or use ERA process templates, application forms, flow charts, and/or checklists to assist the project sponsor/applicant with providing the required information in a timely manner.		1. Align environmental review and authorization processes across Agencies at the outset of planning for FAST-41 covered projects to allow concurrent reviews where possible and to accurately reflect the sequence of the permitting process based on actual requirements.
			2. Develop and/or utilize intra-agency performance metrics (e.g., durations for applicable authorizations, meeting target completion dates, other measures of timeliness and efficient use of resources) in accordance with the Agency's mission, and share across Agencies when developed.		



BP Category (as of FY 2022)	2022	2021	2020	2019	2018
iii. Improving coordination between Federal and non-Federal entities, including through the development of common data standards and terminology across agencies.		1. Develop, update, enhance, and/or utilize mutually acceptable standards and protocols with Tribal governments for gathering and documenting Tribal input and for the identification and treatment of resources that might be affected by infrastructure projects.			1. Encourage development and/or utilization of joint application processes or programmatic approaches among Federal, State, local, and tribal governments with similar authorities to reduce duplicative actions.
					2. Establish interagency liaison positions (i.e., through Memorandums of Understanding or Memorandums of Agreement) or points of contact to improve communication and coordination with other Federal, State, local, and tribal governments; increase expertise; and facilitate permitting processes.
					3. Use regularly scheduled in-person and/or virtual meetings to ensure coordination among Federal, State, local, and tribal governments to facilitate cooperation and accountability among parties involved in general permitting processes and in environmental reviews and authorizations for covered projects.



BP Category (as of FY 2022)	2022	2021	2020	2019	2018
iv. Increasing transparency.		<p>1. In developing and maintaining the FAST-41 CPP or project plan, as applicable, facilitating, lead, cooperating, and participating agencies should share information about the project review and permitting process, including all information requirements and dependencies, with each other and the project sponsor and, where applicable, on the Permitting Dashboard. With each update to the FAST-41 CPP or project plan, the facilitating or lead agency, in conjunction with the cooperating and participating agencies, should continue to engage with each other and the project sponsor to identify reasonably foreseeable risks to the schedule and potential strategies to address those risks.</p>	<p>1. Provide the project sponsor/applicant and all cooperating and participating agencies of a FAST-41 covered project information about the ERA processes, including all steps, by the time the initial coordinated project plan (CPP) or project management plan is completed. Provide updated schedule to the project sponsor and the other governmental entities with ERA processes when substantive changes occur. Substantive change is when any agency or the project sponsor does not conduct or complete on time a scheduled activity or milestone upon which another entity is dependent.</p>		
			<p>2. Use the Permitting Dashboard to track environmental reviews and authorizations across the Federal Government for projects subject to FAST-41 (42 U.S.C. § 4370m-2(b)), providing dates to the extent allowed by applicable laws, and using dependencies only when determining dates is not feasible.</p>		



BP Category (as of FY 2022)	2022	2021	2020	2019	2018
v. Reducing information collection requirements and other administrative burdens on agencies, project sponsors, and other interested parties.		1. Institute a continuity plan to address staff changes. The continuity plan should include a process for updating the project sponsor and other agencies involved in the project review and permitting process and the FAST-41 CPP or project plan, as applicable, to ensure continued information flow and to minimize delays that may result in substantive schedule changes.		1. Develop and/or use environmental review and authorization process templates, application forms, flow charts, and/or checklists to assist the project sponsor/applicant with providing the required information in a timely manner.	
		2. Develop, enhance, and/or use joint coordination procedures among Federal agencies, and with state, Tribal, and local governments with similar authorities.		2. Institute a process for transitioning FAST-41 covered project information to new environmental review staff, if needed, to ensure continuity of project-specific knowledge.	



BP Category (as of FY 2022)	2022	2021	2020	2019	2018
vi. Developing and making available to applicants appropriate geographic information systems and other tools.		1. Develop and provide resources that explain agencies' project review and permitting processes and associated information needs for reference by project sponsors and agencies involved in the project review and permitting process, and identify appropriate GIS and other tools provided by agencies to support informed project reviews.	1. Make resources available to project sponsors/applicants and stakeholders (e.g., in the form of a resource library) to facilitate knowledge sharing about the agency's ERA processes.	1. Provide stakeholders with a list of GIS information sources that are publicly available and used by Federal agencies to initially assess the potential for environmental resources in a project area.	
				2. Survey government and/or non-government users of current tools to identify potential improvements and, where feasible, improve usability and data availability for existing tools and intra-agency, interagency, and public applications.	
				3. Establish, utilize, and support the maintenance (updating) of one central Federal database of tribal areas of interest with tribal points of contact to facilitate timely government-to-government coordination and consultation.	



BP Category (as of FY 2022)	2022	2021	2020	2019	2018
vii. Creating and distributing training materials useful to Federal, State, tribal, and local permitting officials.		1. Provide training related to the implementation of FAST-41 or to one or more of the BPs, participate in OED-hosted training, or jointly develop and host training with OED. These trainings may be presented to Federal, state, and Tribal governments, and local permitting officials online or in person each year.		1. Make training materials (e.g., print, video, and/or presentation materials) about FAST-41 implementation available online or provided in person each year and available to Federal, State, and tribal governments and local permitting officials. The training materials should be related to implementation of FAST-41 or one or more of the Permitting Council’s BPs (e.g., early stakeholder involvement, maintenance and communication of a project-specific ERA review schedule, establishment of common data sets, pre-application).	
		2. Develop or revise policies, handbooks, programmatic agreements, and other agency resources to address where regulatory and policy changes have occurred, or where there are reoccurring misunderstandings between agencies, to improve the efficiency of the project review and permitting process.		2. Survey Federal, State, and tribal governments and local permitting officials to identify currently available trainings to determine information gaps and potential improvements, and where feasible, create or improve existing resources.	



BP Category (as of FY 2022)	2022	2021	2020	2019	2018
viii. In coordination with the Executive Director, improving preliminary engagement with project sponsors in developing coordinated project plans.	1. Collaborate with Permitting Council agencies to share information with project sponsors to support greater understanding of Federal agency Government-to-Government engagement responsibilities as they relate to environmental review and authorization processes and impacts to CPPs, including the permitting timetable.				
	2. Provide information to project sponsors regarding best practices for identifying, communicating with, and engaging with Tribes as a complement to Federal agency consultation, and identify opportunities to collaborate with Tribes to enhance Tribes' access to infrastructure projects, by leveraging existing resources such as the Advisory Council on Historic Preservation's Early Coordination with Indian Tribes in Pre-Application Processes Handbook.				
	3. Coordinate with the project sponsor as early as practicable to obtain input on project sponsor milestones that will be used to inform the development of the permitting timetable.				
	4. Explain how the project sponsor can provide input to agencies as they develop the permitting timetable and how project sponsors' responsibilities in the permitting process can impact agencies' ability to meet dates in the permitting timetable, such as a project sponsor's timely submission of complete applications.				
	5. Develop, update, and share guidance or practice tips for project sponsors to explain authorization application requirements.				
	6. Circulate the draft permitting timetable with the project sponsor concurrent with review by cooperating and participating agencies.				
	7. Hold regular meetings, to the extent practicable, between the lead, participating, and cooperating agencies and the project sponsor to enhance communication and build trust.				



BP Category (as of FY 2022)	2022	2021	2020	2019	2018
ix. Using programmatic assessments, templates, and other tools based on the best available science and data.	<ol style="list-style-type: none"> 1. Work with cooperating agencies, including State, local, and Tribal governments, and other Federal agencies, as necessary, to gather and implement the best available science to inform decision making in the environmental analysis for a project. 2. Document best available science used in analysis, where appropriate. 3. Utilize existing studies, programmatic assessments, environmental analyses, templates, and/or tools for project-specific analysis to reduce possible duplication of effort and time, consistent with law. 4. Implement a process for regular review and updating of existing resources to avoid the use and dissemination of out-of-date information. 5. Use or establish cross-agency channels to communicate about new and existing permitting resources. 6. Use lesson-learned from completed environmental reviews and authorizations, as applicable, to develop sector-specific regional programmatic approaches where multiple FAST-41 covered projects are anticipated in a region. 				



BP Category (as of FY 2022)	2022	2021	2020	2019	2018
x. Other best practices.		1. Identify and share success stories and/or lessons learned during OED-hosted meetings, including Permitting Council or CERPO meetings, training events, or other OED-hosted meetings.			1. Evaluate policies and procedures related to environmental reviews and authorizations, and identify and share information on past and planned efforts to improve the permitting process, associated assessments, and performance metrics.
		2. Develop and/or use project review and permitting process templates, application forms, flow charts, and/or checklists to assist the project sponsor in providing required information in a timely manner.	2. Identify measures planned or taken by the agency in the outreach section of the CPP to increase the probability of reaching stakeholders (such as, but not limited to: virtual stakeholder meetings, notification tactics, web-based comment submission, and multi-agency utilization of web-based information sources developed for the project).		

