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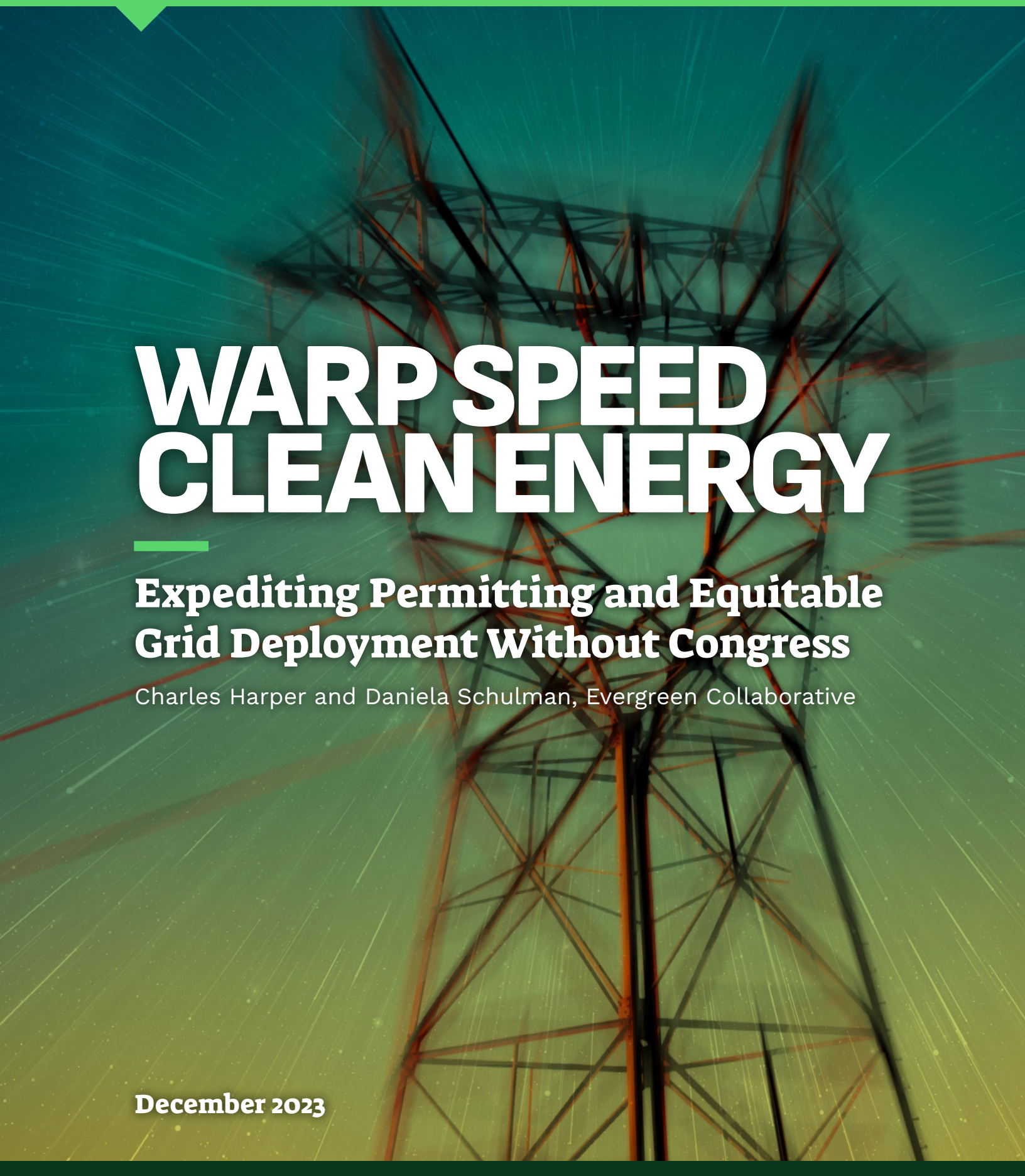

WARP SPEED CLEAN ENERGY

Expediting Permitting and Equitable Grid Deployment Without Congress

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Executive Summary

Rapidly replacing fossil fuels with clean electricity is necessary to avert the worst consequences of the climate crisis, reduce pollution, and create thousands of well-paying jobs. But to achieve these benefits, we need to build new transmission and renewable energy at a scale and speed our country has scarcely seen before.

Most discussion of speeding clean energy deployment has focused on Congressional amendments to bedrock environmental laws like the National Environmental Policy Act (NEPA), which would counterproductively streamline fossil fuel and clean energy projects alike. Rather than waiting on a deal with climate-denying Republicans in Congress that may never come, or does not reduce climate pollution on net, climate advocates and policymakers should refocus on steps that can be taken *today,* without Congress, to equitably accelerate clean energy deployment without helping fossil fuels.

To meet our clean energy goals and avoid the worst climate consequences, federal leaders must take executive action now to address multiple sources of delay in clean energy and transmission buildout. State leaders, too, must pass laws that speed up siting and permitting processes for transmission and clean energy while strengthening community engagement and benefits. At every level, equitable policies that include underserved, overburdened groups in early-stage planning and ensure that clear benefits flow to host communities will ultimately increase support for projects, speed up approval, and deliver better project outcomes. Our country urgently needs more efficient and effective permitting, siting, and planning processes for clean energy and transmission—without waiting on Congress nor paving the way for fossil fuel projects.

To that end, we offer the following recommendations, which the Biden administration, federal agencies, and states could take today:

- **The Federal Energy Regulatory Commission,** in early 2024, must finalize a strong transmission planning rule and backstop siting rule, and initiate rulemakings to expand interregional transmission and transfer capability, pursue deeper interconnection reform, and create an intervenor compensation program.
- **The U.S. Department of Energy,** in President Biden's first term, must swiftly designate National Interest Electric Transmission Corridors (NIETCs); finalize its proposed rule to serve as lead agency for transmission permitting; proactively use its authority to serve as "anchor customer" to help finance major transmission projects; and require developers to sign enforceable community benefits agreements.

- **The White House Council on Environmental Quality** should quickly finalize its Phase II NEPA rulemaking; require federal agencies to identify and solicit early, meaningful input from affected communities; fully consider cumulative impacts; respect Tribal rights and sovereignty; and quickly spend Inflation Reduction Act funds to recruit, train, and retain staff for roles specific to clean energy and transmission siting and permitting.
- **Federal permitting agencies** should increase the use of strong programmatic Environmental Impact Statements (EISs) at the landscape level and for clean energy technology types; increase the use of Mitigated Findings of No Significant Impact (Mitigated FONSIs) for clean energy and transmission projects that will reduce fossil fuel use and related pollution; and adopt justifiable Categorical Exclusions for zero-emissions clean energy and transmission projects.
- **State legislators** should pass laws that unify renewable energy siting and permitting authority at the state level; set reasonable timelines; guard against local obstruction; ensure direct and visible local benefits; and require cumulative impact analysis, upfront and ongoing Tribal consultation, and early and meaningful engagement with affected communities.

Background

The urgency of the climate crisis demands swift, economy-wide decarbonization. Our electricity system is the linchpin of this transformation—widespread electrification combined with clean electricity can cut 70 to 80 percent of United States greenhouse gas pollution. The Biden administration has committed to achieving 100 percent clean power by 2035 and net-zero emissions by 2050. On top of these goals, enormous federal investments from the Infrastructure Investment and Jobs Act (IIJA), the CHIPS and Science Act, and the Inflation Reduction Act (IRA) have made renewable energy by far the cheapest source of electricity and have put the transition away from fossil fuels and toward a just and thriving clean energy economy within reach.

Now the challenge is speed. To fully decarbonize the electric grid by 2035, the United States must start deploying clean energy and transmission faster than ever before. To reach our clean energy goals, the U.S. must double or triple its wind, solar, and storage capacity this decade. By 2035, the annual growth rate for renewables must be at least four times higher than today (according to the National Renewable Energy Laboratory (NREL), NRDC, and Princeton). The good news is that this rapid transformation is also a remarkable opportunity to drive domestic job creation: investing in high-voltage transmission alone would create an estimated 600,000 jobs, and all together the climate and clean energy provisions of the IRA are set to create nine million jobs this decade. If done correctly, these employment benefits could expand to people and communities that have historically been underrepresented in these trades.

Transmission, particularly longer-distance interstate and interregional lines, will also need to grow at a tremendous pace to connect wind and solar facilities to demand. Princeton and NREL researchers estimate that the annual growth rate for high-voltage transmission lines will need to be two times higher than the current rate every single year until 2035 or we will risk losing over 80 percent of the potential carbon pollution reductions of the IRA. We have achieved faster deployment in past decades, but today's planning, siting, and permitting processes are not equipped to efficiently and equitably build clean energy and transmission at the necessary pace and scale.

The grid we know today was largely built in the 1950s and 1960s, without robust oversight or protections for communities and ecosystems, to support an energy system dominated by large, centrally located, utility-owned fossil fuel facilities. The recommendations in this report are intended to help rebalance historic biases away from maintaining a fossil-focused grid and toward clean energy priorities more consistent with public policy.[1] Even though a move toward independent grid operators has somewhat lessened fossil bias, leading scholars

[1] Clearly, new fossil fuel projects directly conflict with U.S. climate targets and the remaining global carbon budget. While this paper focuses on permitting reforms for clean energy and transmission projects, we should state clearly that the Biden Administration's approval of new fossil fuel projects cannot continue in a safer climate future.

continue to call for an end to what they call the "utility transmission syndicate's control." In other words, federal, state, and local governments need tools to remove fossil dependency from the grid and clean developers need to be able to disrupt harmful fossil monopolies.

Our recommendations are meant to recognize and address that realpolitik reality. The public favors a clean energy transition, and the grid needs to respond quickly. Yet, as a result of this historical context, major renewable and transmission projects face a system of federal, state, and local approval processes ill-equipped to equitably and rapidly drive the grid buildout required to maintain reliability during a time of widespread electrification and clean energy deployment. This system contains a host of pinch points that can delay clean energy projects and perversely serves fossil infrastructure like pipelines better than electric infrastructure like power lines.

Slowdowns can arise at the local, state, interstate, and federal levels. Project owners must acquire land, then receive local land-use and construction permits to build on it. Long-distance transmission lines in particular often have to cross private property, which can lead to drawn-out eminent domain battles and challenges obtaining community consent from the many property owners implicated. States have their own permitting and environmental review processes, and have jurisdiction over transmission siting, which can slow down the buildout of interstate lines that require approval from multiple states. While the majority of clean energy projects are sited on private rather than public land, both types of projects can implicate the federal government, including those on federal land or waters and those that rely on federal loans or grants or require other federal approvals. These projects require a range of permits for wildlife protection, air and water protection, and land use, as well as environmental review under NEPA. Budget instability, agency staffing issues, and lack of coordination between permitting bodies often slow down the process at each level.

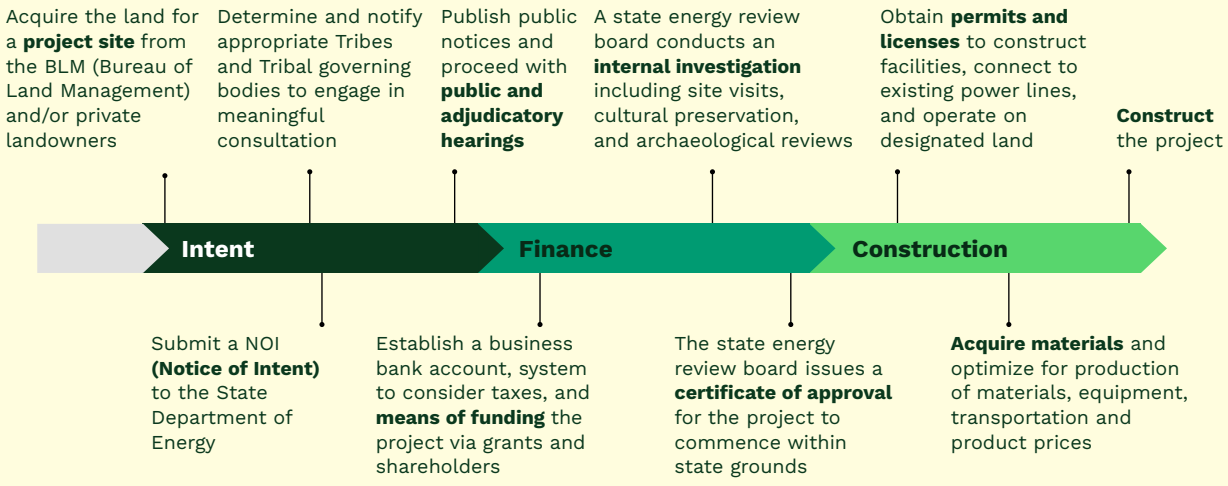

Fig. 1: Renewable energy facility siting and completion process (Adapted from Susskind et al. 2022 and Bozuwa & Mulvaney 2023)

Efforts to streamline clean energy and transmission deployment too often lose sight of this complex, multilayered process and narrowly focus on NEPA reforms. For decades NEPA has been a critical tool for communities and advocates to force reexamination of ill-advised fossil fuel projects, and should not be at the center of permitting debates.

Although not strictly a permitting issue, another major source of delay is connecting renewable energy to the grid, under the purview of Regional Transmission Organizations or Independent System Operators (RTOs/ISOs). Projects that came online in 2022 had waited in the interconnection queue for five years on average, with longer wait times for larger projects and lower completion rates for wind and solar. The Roosevelt Institute released a report in August 2023 breaking down what counts as permitting and what does not, as well as a sharp analysis of project delays and how to address them. All told, it took eight years for the newest high-voltage transmission line in the United States to move from initiation to construction. And this is a success story—many projects face slowdowns or get canceled altogether.

Large renewable energy projects also face a degree of local opposition in nearly every state, sometimes funded by fossil fuel interests, which can lead to years-long project delays or bans. Recent research by Dr. Leah Stokes suggests that one in five wind energy projects faces local opposition, often from small groups of wealthier, white individuals. Meanwhile, fossil fuel projects such as the Willow Project, liquified natural gas (LNG) export terminals, and gas pipelines continue to get the greenlight from the federal government—in violation of ever-diminishing carbon budgets. Both types of projects can face organized opposition, even though renewable projects mitigate climate change while fossil fuel projects worsen it.

It is crucial to distinguish between opposition grounded in misinformation (which may require new approaches to outreach and education) and opposition stemming from rushed or inadequate siting and planning, which can lead to habitat conservation issues, land value impacts, additional burdens on impacted communities, and a lack of local benefits. Affected communities who have been left out of planning conversations and bulldozed by dirty infrastructure are not to blame for the slow pace of the clean energy transition. Our nation's history of fossil fuel racism and discriminatory housing, transportation, and urban planning has consistently overburdened Black, Brown, Indigenous, and poor communities.

Streamlining infrastructure of any kind—including renewable energy and transmission—can risk perpetuating these harms. The task is to design equitable planning, siting, and permitting systems that enable swift deployment of clean energy and transmission, decrease our fossil fuel dependency, and deliver positive outcomes, specifically for affected communities and consistent with the Biden administration's Justice40 Initiative. **Clearly, we need a new planning, siting, and permitting approach that makes it harder, or even impossible, to approve dirty projects and easier to approve clean ones, while offering more inclusive community engagement and visible, meaningful local benefits.**

The Red Herring: A Bipartisan Compromise with Climate-denying Republicans in Congress

Congress made historic progress on clean energy last year in passing the IRA. The law includes over $1 billion in first-of-its-kind funding for more efficient and effective federal environmental

review. However, many transmission investments and positive permitting revisions that would have required minimum transfer capability between grid regions or the consideration of environmental benefits under NEPA were largely left on the cutting room floor. Permitting reform has been a hot topic on Capitol Hill ever since, but now that Republicans control the U.S. House of Representatives, any potential deal that helps on transmission will likely include more unacceptable giveaways to the fossil fuel industry that erode any potential climate benefits.

The fossil fuel industry—and the Republicans and conservative Democrats in Congress that serve their interests—have wanted for years to weaken bedrock laws such as NEPA to make it easier to build energy projects, including dirty power plants and fossil gas pipelines. Many Democratic members of Congress have proposed legislation like the BIG WIRES Act that would require more transmission and transfer capability between grid regions, without helping fossil fuel projects get built. These two efforts came to a head in June 2023 during debt ceiling negotiations. The final deal, the Fiscal Responsibility Act of 2023, left desperately needed transmission reforms out (other than a request for a duplicative study of interregional transfer capability) while limiting the purview of NEPA and fast-tracking the Mountain Valley fossil gas pipeline despite its failure to meet Clean Water Act standards.

Now that many items on the conservative wishlist have been checked off, the opportunity for legislative action on permitting has likely closed for the near term. Though the Administration should absolutely center efforts to advance equitable clean energy and transmission development on its legislative agenda for the second term, it is time to make progress with other tools. Congress failed to deliver meaningful, equitable solutions to speed up clean energy permitting and transmission, and we do not have time to wait around for another bad deal.

Instead, we need policy reforms that can actually shepherd through development of good projects to fight the climate crisis—not indiscriminately weaken review structures in ways that can aid fossil fuel projects and hurt our communities. Recent changes to the permitting system have largely been technology neutral. The IIJA made permanent the Federal Permitting Improvement Steering Council (FPISC), first established in 2015 to improve accountability and transparency in federal permitting for major infrastructure projects. The Fiscal Responsibility Act weakened NEPA, allowing developers to prepare their own environmental reviews and to sue agencies for missing arbitrary timelines and page limits. These changes applying to all types of energy infrastructure—including LNG pipelines and offshore oil rigs—are trying to solve the wrong problem. The heart of the matter is not the length of permitting timelines writ large but the urgency of the climate crisis and the resulting imperative to rapidly and equitably deploy clean energy.

The Opportunity: Executive Actions and State Policy Can Move Without Congress

Without waiting for Congress or compromising with House Republicans, the Biden administration, federal agencies, and state policymakers can still take steps to speed equitable clean energy and transmission projects. Planning, siting, and permitting clean energy infrastructure is a multilayered process, so instead of a single silver bullet solution, we offer a set of recommendations meant to address numerous sources of delay.

This report is laser focused on how to boost planning, siting, and permitting efficiency for clean energy infrastructure now at the local, state, and federal levels across three major categories:

1. **The Federal Energy Regulatory Commission (FERC) and U.S. Department of Energy (DOE) can move swiftly under existing authority** to plan, site, and finance transmission projects—particularly high-voltage regional and interregional lines—as well as pursue deeper interconnection reform, enable federal backstop siting for transmission lines, and offer intervenor compensation to support full community participation. The most important step for FERC is to finalize a strong transmission planning rule in early 2024.
2. NEPA guarantees communities a voice and requires agencies to consider the environmental impact of proposed projects. For decades, NEPA has been a critical tool for calling out the environmental risks, inequities, and climate impacts of ill-advised fossil fuel projects. It can also be a source of analytic support for the right projects: **More can be done in NEPA implementation to enhance transparency, coordination, and efficiency for clean energy project review, uphold Tribal rights to sovereignty and self-determination, and address disproportionate health and environmental impacts on overburdened communities.** Better NEPA reviews can create better projects and outcomes.
3. **State leaders should pass laws that comprehensively revise siting and permitting** to strengthen community engagement, require community benefits, and hasten approvals for renewable energy and transmission projects. Given the unique context of each state, there is no one-size-fits all piece of legislation, but policymakers can look to existing laws in California, Washington, New York, Illinois, and Michigan to draw lessons and examples.[2]

We emphasize these focused energy system reforms both because they are effective, and because they would move the conversation past technology "neutral" efforts by Republicans in Congress to weaken environmental analysis under NEPA. Permitting reform is a double-edged sword that could both help and hurt climate action in equal measure, depending on who holds the reins of power and what future vision they hold for our communities, our energy system, and our planet. We need to articulate an approach rooted in the reality of the climate crisis that speeds up clean energy infrastructure, advances environmental justice, and stops greasing the skids for fossil fuel projects.

[2] California Assembly Bill 205; New York Assembly Bill 9508-B and Senate Bill S8830; Washington House Bill 1812 and House Bill 1216; Illinois House Bill 4412; and Michigan House Bill 5120/5121

FERC, DOE, and Transmission

A primary bottleneck delaying the clean energy transition is not permitting at all, but a lack of investment in new transmission lines and capacity and the planning required to build them. As Evergreen has continued to point out, there is no energy transition without transmission. Transmission is the largest barrier facing the rapid deployment of renewable energy. Lack of adequate transmission lines and grid-enhancing technologies is delaying the interconnection of clean energy projects to the grid, too. FERC and DOE both have crucial roles to play in speeding transmission planning, siting, permitting, and coordination.

Transmission Planning

Before transmission lines can be permitted and sited, they must be planned in the first place. Instead of relying on new acts of Congress to force the planning or construction of new transmission lines, FERC can direct utilities and grid operators to conduct forward-looking planning using its existing authority. This process should include full consideration of all the many benefits new lines would bring, as well as the increases in electrification load and clean energy deployment (which will only accelerate due to IRA tax credits) that will require substantial transmission expansion to maintain a reliable grid. Back in April 2022, FERC issued a proposed rulemaking with some of these planning reforms. **The Commission must work to finalize rapidly a strong regional transmission planning rule in early 2024 that requires grid operators to consider a minimum set of benefits. Finalizing a strong rule would do more than any other action to speed the buildout of much-needed transmission infrastructure.**

To connect more renewables to the grid, FERC should also help put grid-enhancing technologies (GETs) on even footing with new transmission lines. GETs include numerous smart technologies, such as dynamic line ratings and power flow control devices, that get more use out of existing lines. Adding these to existing transmission lines increases their utilization rates, offering a fast, low-cost approach to relieving grid congestion and unlocking capacity for renewables. The problem is, utilities have no incentive to use GETs—the nature of utility cost-of-service regulation perversely makes it more profitable to build costly new transmission than to unlock the capacity of existing wires. At the annual National Association of Regulatory Utility Commissioners meeting, FERC Commissioner Allison Clements called on regulators to require and encourage transmission-owning utilities to add GETs. **In its final transmission planning rule, FERC should establish requirements and incentives for transmission owners to ensure GETs are optimally deployed to facilitate a rapid, equitable clean energy transition.**

In addition to finalizing a strong regional transmission planning rule, FERC should take action to require and expand interregional transmission planning. Congress has considered requiring a minimum transfer capability between grid regions, but FERC could set this requirement on

its own through a rulemaking without waiting for Congress to force its hand. The Commission considered such a rule in a December 2022 workshop. FERC should follow through with a proposed interregional planning rule in early 2024 that sets a substantial minimum requirement, such as the BIG WIRES Act's 30 percent capability. This will enable more low-cost, renewable energy to move to load.

If FERC fails to act, lack of interregional transmission and transfer capability means that preventable grid disasters like 2021's Winter Storm Uri in Texas, which killed 246 people and caused over $100 billion in economic damages, are likely to reoccur. During the storm, unreliable fossil gas plants froze, lost power, or malfunctioned, and the isolated nature of ERCOT's grid caused massive rolling blackouts that left millions of people freezing in the dark to avoid total grid collapse. To prevent another deadly catastrophe, we must lessen our reliance on fossil gas, deploy more renewables and storage, and build interregional transmission.

Interconnection Reform

Another bottleneck to clean energy deployment lies in clogged interconnection queues. As demand for clean energy has risen this past decade, the number of interconnection requests has increased by 300 to 500 percent. Almost 2,000 gigawatts of projects are now waiting in these lines, more than the entire existing capacity of the U.S. grid. On average, projects that came online in 2022 had waited in a queue for five years. Proactively planning more transmission lines would allow more clean energy projects to connect to the grid without requiring costly upgrades. However, the interconnection study process itself is not up to the task of a rapid clean energy transition. In the face of current backlogs, we need bold new approaches to interconnection.

In July 2023, FERC took some action to reform interconnection studies in Order 2023. This order requires grid operators to move to a "first-ready, first-served" process that will group projects seeking permission to connect to the grid into clusters that will be studied simultaneously. The rule will also establish penalties for grid operators that miss study deadlines and for speculative projects that withdraw from the queue. In October 2023, DOE's Interconnection Innovation e-Xchange released a draft roadmap for transforming interconnection that offers an abundance of ideas for transmission providers, regulators, interconnection customers, and other stakeholders. In the near term, the draft report recommends improved data access, automation, queue management, and cost allocation.

While FERC Order 2023 will likely help to unclog the queues, deeper reforms are needed. One such proposal is to adopt elements of the successful interconnection approach of the Electric Reliability Council of Texas (ERCOT). In the last few years, ERCOT has interconnected more clean energy than any other grid region by far, despite its small size (see Fig. 2). Without this queue management approach, an even heavier reliance on fossil gas would have likely made the capacity shortfalls and ensuing loss of life from Winter Storm Uri worse.

ERCOT uses a "connect and manage" approach by which all projects are interconnected without first requiring developers to fund expensive expansions to the entire grid. Other grid regions and developers could similarly adopt and expand this "fast-track" interconnection service, with the understanding that projects using this energy-only interconnection process

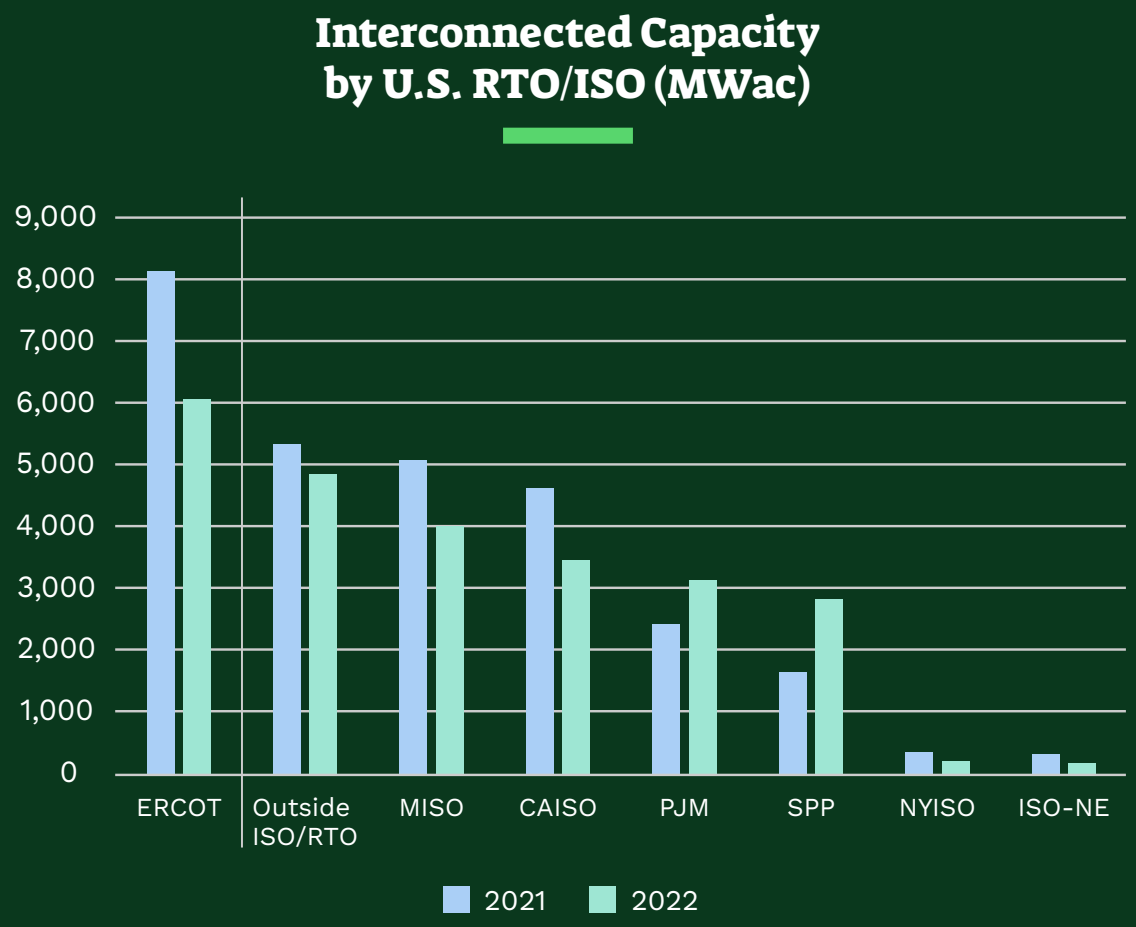

Fig. 2: Recent interconnection data shows that ERCOT's connect and manage process leads to much more interconnected capacity than traditional processes in other regions (Adapted from Norris 2023)

might be curtailed down the road and be ineligible to receive payments in capacity markets (although curtailment risk could be mitigated with co-located energy storage). Currently, 19 percent of projects in interconnection queues nationwide have applied for this energy-only interconnection service or a combination of regular and energy-only service. DOE's draft roadmap for transforming interconnection recommends expanding fast-track options, and suggests more extensive long-term reforms to develop new study standards and explore delinking grid connections from network upgrade requirements. As FERC Commissioner Allison Clements noted in her Order 2023 Concurrence, the Commission can take further action to enable this fast-track interconnection process and tie interconnection studies to the transmission planning process.

Backstop Siting for Transmission Lines

Even once transmission planning and interconnection issues are addressed, there is still the issue of permitting and siting these lines. On this front, Congress and President Biden did deliver a win in 2022: reinforced federal backstop siting authority for transmission lines. Fossil gas pipelines have had the benefit of a single federal siting process for decades. Meanwhile, transmission has been mired in layers of local, state, and federal approval processes that take years. The scales

are tipped in favor of fossil gas and must be reversed—clean electricity is essential to deep decarbonization, while new fossil infrastructure harms communities, worsens the climate crisis, and risks becoming a stranded asset. In the IIJA, Congress reinforced DOE and FERC's authority (dating to the Energy Policy Act of 2005) to site some large transmission lines "in the national interest," but only as a backstop for projects that had seen delays or rejections at the state level. While not quite creating parity between pipelines and transmission lines, these changes will allow FERC to backstop the approval of major lines located in corridors DOE deems to be in the national interest (National Interest Electric Transmission Corridors, or NIETCs).

To facilitate project financing for transmission lines in these corridors, DOE can take advantage of $2.5 billion in IIJA funds and $2 billion in IRA loan authority. The IIJA enables DOE to create public-private partnerships for transmission construction and serve as the "anchor customer" for transmission lines, allowing the agency to purchase up to 50 percent of project capacity for up to 40 years. In October 2023, DOE announced its first round of capacity contracts, committing $1.3 billion in total to three transmission projects. We applaud the agency's proactive use of its anchor customer authority and urge DOE to continue exercising its new authorities in 2024.

DOE should also work quickly to finalize the designation of NIETCs. In May 2023, DOE issued a notice of intent and request for information on the NIETC designation process, which relies on the gaps identified by a National Transmission Needs Study. According to DOE's notice of intent the designation will be largely applicant-driven and route-specific, with input from states and Tribes. DOE's Grid Deployment Office (GDO) issued a proposed Needs Study in spring 2023 and released the final study in October, which found that "there is a pressing need for additional transmission infrastructure." This analysis is an essential first step before GDO can designate the NIETCs eligible for FERC backstop siting. Now that the Needs Study is final, DOE should work to finalize the designation of NIETCs that will fill in the identified gaps transparently and in close coordination with Tribes, environmental justice communities, and other community stakeholders. Only then can FERC begin to assist in siting much-needed transmission lines.

FERC must also implement its new authority rapidly to begin facilitating the deployment of new transmission lines. The Commission issued a notice of proposed rulemaking in December 2022 that would change and clarify several elements of its backstop siting rules. This proposed rule would eliminate the one-year waiting period when applying for FERC backstop siting (allowing the submission of requests to FERC and states concurrently) and clarifies that applicants can ask FERC for help not only if the state delays its permitting decision but also if it issues a denial. FERC, however, has yet to finalize this proposed rule nearly a year later. FERC Chairman Willie Phillips must prioritize the finalization of this rule in early 2024—or risk leaving developers and states in the dark on the all-important ground rules of this revised authority. In 2024, once DOE finalizes proposed revisions to the scope of Categorical Exclusions available to transmission projects (discussed later in this report), the Commission should work closely with DOE to adopt these exclusions as well. FERC has expedited the buildout of gas pipelines for decades. It is about time that transmission was on equal footing.

Federal Coordination for Transmission Under DOE

One additional element of existing law that DOE can use to expedite transmission permitting, while protecting the environment and preserving community input, is Section 216(h) of the Federal Power Act, as amended by the Energy Policy Act of 2005. This section authorizes DOE to serve as the lead agency for coordinating all federal authorizations and related environmental reviews necessary to site a transmission line. In May 2023, DOE and eight other federal agencies signed a memorandum of understanding (MOU) to finally implement this authority. In the MOU, DOE promised to update its regulations concerning this authority and to publish a standardized timeline for the transmission permitting processe. In August 2023, DOE followed through with its proposed rule to Coordinate Interagency Transmission Authorization and Permits, or the CITAP program. The proposed rule and draft standardized schedule establish a two-year timeline for consolidated environmental review and permitting. DOE should work to finalize this rule as soon as possible, set up the Integrated Interagency Pre-application process described in the proposal, and begin expediting transmission permitting for desperately-needed transmission lines. This work should all be completed during President Biden's first term.

Community Participation, Tribal Consultation, and Intervenor Compensation

DOE has significant resources at its disposal to advance procedural justice and community input in transmission siting decisions at the state level. Similarly, FERC can advance equitable participation in federal permitting decisions, including through intervenor compensation funding. Some stakeholders already have a seat at the table: the utility industry, Big Law attorneys, and the wealthy and well-connected. Intervenor compensation, which reimburses costs for organizations or individuals that participate in permitting processes, can shift that balance by fostering and enabling participation by environmental justice communities and other underrepresented and under-resourced voices. Inherent to their design, long transmission lines affect many stakeholders along their routes. Soliciting meaningful and informed input early on, and prioritizing equitable access to the planning and permitting process, can minimize adverse siting impacts and speed the overall transmission deployment timeline.

The IRA provided DOE $760 million for Transmission Siting and Economic Development Grants. This funding, available until September 2029, is open to siting authorities, or other state, local, or Tribal governmental entities in areas considering new transmission lines. With these funds, states can support equitable community participation in transmission siting. Specifically, these grants can support intervenor compensation, which would fund the participation of resource-strapped non-profits, environmental justice advocates, and affected communities in transmission siting processes. **State agencies and siting boards should apply for DOE grants to create or improve intervenor funding programs for participation in the permitting process** (eligible as "other measures and actions that may improve the chances of, and shorten the time required for, approval by the siting authority of the application relating to the siting or permitting of the covered transmission project"). Grantees can also use these DOE funds to ensure community benefits from transmission projects, which can supplement the community benefits agreements offered by project developers, which we detail in the following section. The deadline for initial concept papers from applicants was November 17, 2023 and full applications are due April 5, 2024. Siting authorities receiving these grants must reach final decisions on transmission projects in less than two years.

FERC can similarly create an intervenor compensation program to promote more accessibility and equity in federal siting and permitting processes. **The Commission should issue a notice of proposed rulemaking in 2024 to advance procedural justice, including through the creation of an intervenor compensation program.** FERC has already taken steps to launch an Office of Public Participation (OPP) in 2021, at the direction of Congress, to "help underrepresented individuals and groups that may have limited resources navigate FERC and take part in its proceedings." OPP has a particular focus on "environmental justice communities, landowners affected by FERC decisions, Native American tribes and grassroots advocacy organizations." The office provides some technical assistance to stakeholder groups and individuals but cannot provide intervenor funding without a new rulemaking. FERC Chairman Willie Phillips has rightfully said that environmental justice is one of his top priorities as chairman (along with reliability and transmission). In March 2023, the Commission hosted a roundtable on environmental justice and equity in infrastructure permitting—now we need to see concrete improvements coming out of that conversation. An intervenor compensation rule represents a first step to advance procedural justice within the Commission, which has long been criticized by activists as a rubber stamp for fossil fuel projects in environmental justice communities.

When implementing its new backstop transmission siting authority, FERC should **establish permanent liaison positions in the Office of Public Participation dedicated to environmental justice and Tribal community engagement,** as recommended in the Transmission Principles adopted by several environmental justice and climate organizations.[3] Similarly, joint comments filed with the Commission by climate and environmental justice groups offer detailed recommendations on the establishment of these roles. **The Commission should also increase transparency and offer more opportunities for impacted communities and landowners to participate in the pre-filing process. Specifically, FERC's final backstop siting rule should strengthen its definition of a "stakeholder" to explicitly include environmental justice**

[3] Organizations include: the Center for American Progress, Environmental Defense Fund, Earthjustice, League of Conservation Voters, National Hispanic Medical Association, Natural Resources Defense Council, Sierra Club, Union of Concerned Scientists, and WE ACT for Environmental Justice.

communities and require dedicated, separate public engagement plans for both environmental justice and Tribal communities. This will require applicants to include underserved, overburdened groups in early-stage planning and document those efforts in their Project Participation Plans as required under the Federal Power Act. With these reforms, DOE and FERC, two of the most important agencies for the clean energy transition and grid buildout, can resolve bottlenecks to the transition, speed deployment, and advance equitable processes and community participation.

Community Benefits Agreements

Swift deployment of clean energy and transmission should go hand in hand with direct, visible benefits that flow to community members living in proximity to project sites. Developers rushing to complete projects often come and go fast, neglecting to address community concerns and leaving few localized benefits. Poorly designed projects can even result in adverse outcomes such as reduced access to water resources, loss of agricultural land, environmental harm, and aesthetic impacts. Alternatively, projects that channel economic benefits to under-resourced communities may receive more local support and help advance energy justice.

Federal agencies can require owners of federally funded projects to commit to tangible community benefits on a clear timeframe, with mechanisms to keep them accountable. DOE already requires applicants for all 144 grant and loan opportunities under the IIJA and IRA to submit a "community benefits plan." These plans must be specific, actionable, and measurable—and DOE encourages applicants to proactively engage with labor unions, local governments, Tribal governments, and community-based organizations to design them. **We urge DOE to raise the bar further and require developers to sign enforceable agreements with affected community and labor groups as a condition for receiving federal grants or loans.**

Those contracts—known as community benefits agreements (CBAs)—commit project owners to providing specific local benefits in exchange for community support. CBAs can include local hiring guarantees, prevailing wages, job training programs, discounts on electricity bills, funds for grant-making, investments in local infrastructure like parks, bike paths, and community centers, and more. Developers can also invite host communities to invest in renewable energy projects and receive a share of the profits or enter into joint ventures. Examples of direct ownership at home and abroad include the Morongo Band of Mission Indians' co-ownership of an upgraded transmission line that passes through southern California and Morongo land and Denmark's 2008 Promotion of Renewable Energy Act, which requires new renewable projects to offer at least 20 percent ownership to local residents. These efforts increase local buy-in and energy democracy—and prevent community backlash that can slow down project timelines.

Effective CBAs should be designed and secured early, and uniquely tailored to local needs based on inclusive and meaningful community participation. Agreements should be enforceable, and disputes over execution should be resolved by independent judges. Particularly for CBAs that include direct monetary payments, transparency and local participation are key to avoid approaches that resemble coercion or bribery. The Sabin Center for Climate Change Law recently published a comprehensive guide to best practices for developers and host communities on how best to negotiate CBAs for clean energy projects. In the absence of laws that mandate CBAs, developers should use them proactively—not only to boost project support in host communities, but also to ensure that clean electricity, community benefits, and good-paying jobs go together.

NEPA

To realize the full potential of the IRA and make real progress toward 100 percent clean power by 2035, our permitting system does need an update. This effort must be nuanced and comprehensive, yet the National Environmental Policy Act, or NEPA, has been falsely accused by fossil fuel and renewable energy advocates alike as the sole or primary source of delay for major energy projects. In reality, most projects face multiple sources of delay. Permitting debates that exclusively revolve around NEPA's environmental review overlook causes of delay such as interconnection queues, project financing, and local siting and permitting processes. Some projects on private land also do not require federal NEPA review (while still needing state or local approval). Recent attempts to amend NEPA, including through statutory revisions in Congress, risk limiting community participation and weakening transparency rules for all project types, easing the way for harmful fossil fuel infrastructure.

Decisionmakers should take a multifaceted approach to optimizing clean energy and transmission siting and permitting, addressing the many sources of delay beyond environmental review. That said, more can be done to strengthen community participation, ensure community benefits, and address inefficiencies for clean energy projects undergoing NEPA review. Robust and equitable NEPA review and engagement processes can help build community support for projects upfront and shorten project reviews in the long run. Changes to NEPA permitting processes should occur through executive branch implementation (to avoid the corrupting influence of congressional Republicans), should strengthen environmental justice and climate considerations, and should not fast track any fossil fuel projects. We recommend several changes below that fit within these guardrails.

Strengthen Early, Meaningful Community Engagement

Meaningful community participation is key to successful clean energy and transmission permitting. The fossil fuel industry has a racist legacy of siting coal plants, gas pipelines, and oil refineries near communities of color and low-income communities. In these "sacrifice zones," harmful air and water pollutants cause a range of health impacts, including memory and IQ loss, asthma attacks, worsened heart and lung disease, cancer, and premature death. People living by dirty energy facilities and bearing these health burdens often "lack the social power" to influence siting decisions. Zero-emissions energy sources like solar and wind that displace fossil fuel pollution ultimately benefit human health and the local environment—although this benefit is not always clear to affected communities, and changes to the "sense of place" might be hard to mitigate. By involving relevant community stakeholders early in the planning process, clean energy and transmission developers can site and permit projects that will benefit, rather than burden, the health and environment of local communities. Evidence shows that soliciting

local input at the pre-planning stage can both improve project design and build trust that will speed up project approval and rollout in the long term.

NEPA has been a vital tool for public participation since the 1970s, but participation on its own does not guarantee influence or empower underserved communities, and may occur too late in the process. Engaging with host communities after a plan is nearly final prevents them from shaping project outcomes, limits the ability of agencies and developers to address local concerns, and increases the risk of opposition, which will slow down project timelines. On the other hand, engaging with communities upfront and siting projects well in the first place avoids litigation risk and permitting issues that cause serious delays d2wown the line.

We urge federal agencies to **solicit early, meaningful, and ongoing input, particularly from overburdened and underserved communities, and incorporate those perspectives and comments into final decisions.** Outreach and identification of affected communities should start at the beginning of the project scoping process. To engage meaningfully with communities of color and low-income communities, agencies should pursue "adaptive and innovative approaches," as described in the EPA report "Promising Practices." Among other best practices, agencies should give notice of all changes and actions directly to local organizations and leaders in overburdened communities, and offer language-inclusive materials and public hearings at convenient times and accessible locations. Enough time must exist between advance notice of meetings and the meeting date, and adequate time—no less than 60 days—must be given to allow communities to weigh in at each relevant project phase. Currently, agencies are required to respond to environmental justice concerns by modifying alternatives or analysis; they should be further required to explain *how* these concerns were considered and incorporated into final decisions. WE ACT for Environmental Justice lays out additional community engagement best practices that help ensure that agencies do not seek input from frontline and fenceline communities merely as a box-checking exercise.

To improve public accessibility, **the White House Council on Environmental Quality (CEQ) should prioritize the prompt launch of a public permitting portal that unifies all communications between project applicants and relevant agencies.** The Fiscal Responsibility Act of 2023 gives CEQ one year and $500,000 to study the potential of such a portal. Accessibility should be a top priority in portal design, making project timelines and scientific data easy for the public to find and understand. Lowering barriers to accessing project information will make it easier for affected communities to offer meaningful comment on projects under NEPA review.

Consider Cumulative Impacts

Throughout NEPA review, agencies should prioritize alternatives that benefit overburdened communities and do not cause adverse effects on pollution or public health. For decades, CEQ has required agencies to conduct robust cumulative impact analysis. Cumulative impact analysis considers a proposed project area in the context of its existing infrastructure, pollution, environment, and community composition. Agencies, however, should go beyond this analytical effort. If findings reveal that a proposed project would place a disproportionately high burden on communities of color or low-income or Indigenous groups, the permit request should not be approved, or the project should be modified to alleviate the identified concerns.

Federal agencies and state policymakers are increasingly elevating cumulative impact analysis. In support of President Biden's executive orders to advance racial equity and address the climate crisis, EPA's Office of Research and Development has prioritized strengthening the scientific foundation for assessing cumulative impacts. The proposed A. Donald McEachin Environmental Justice for All Act would amend NEPA to increase consideration of cumulative impacts by permitting agencies and avoid perpetuating harm on "overburdened communities." New Jersey's landmark Environmental Justice Law and New York's S8830, which passed two years later, require permits to be rejected for projects that will cause "disproportionate impacts" or "disproportionate and inequitable pollution burden," respectively. These state laws are model examples of actually taking cumulative impact analysis seriously and issuing permit denials where appropriate.

Cumulative impact analysis should consider all burdens faced by communities, including both clean and dirty energy infrastructure, although polluting fossil fuel infrastructure is likely to be disproportionately implicated. In its final Phase II rules implementing NEPA, CEQ should finalize precise definitions of "environmental justice communities" and "cumulative impacts," as recommended by GreenLatinos and WE ACT. Doing so would provide more clarity and direction to permitting agencies considering the cumulative impacts and environmental justice implications of their NEPA decisions. We urge CEQ to swiftly finalize the strongest possible rule in early 2024 and require agencies to incorporate environmental justice concerns and robust cumulative impact analysis into the heart of their permitting decisions.

Funding to Enhance Clean Energy Infrastructure Siting and Permitting

Infrastructure Investment and Jobs Act

- $2.5 billion for the U.S. Department of Energy (DOE) to administer a Transmission Facilitation Program (Building a Better Grid Initiative) to issue loans, serve as an anchor customer, or partner with shovel-ready projects; $50 million for DOE to carry out the program (Section 40105)
- $1 billion for DOE to provide rural or remote areas financial assistance to improve the resilience, safety, reliability, and availability of energy—including siting or upgrading transmission and distribution lines (Section 40103)
- $500 million for DOE to provide states with technical assistance, including for transmission permits and collaborative siting with local and Tribal governments (Section 40109)
- $500 million for DOE to deploy clean energy on current and former mine lands, including consultation and technical assistance to expedite siting and assess project interconnection, transmission, and permitting needs (Section 40342)
- $160 million for the U.S. Army Corp of Engineers to review and process permit applications and ensure compliance (Division J, Title III)
- $20 million for the National Oceanic and Atmospheric Administration (NOAA) to increase consultation and permitting capacity related to the Endangered Species Act, the Marine Mammal Protection Act, and Essential Fish Habitat (Division J, Title II)
- $3 million for the Federal Permitting Improvement Steering Council's (FPISC's) Environmental Review Improvement Fund; and authorization to establish an applicant fee structure to cover environmental review costs (Division J, Title IV)

Inflation Reduction Act

- Over $1 billion in funding for federal agencies to more effectively and efficiently process environmental permitting applications—including to hire and train personnel:
    - $350 million for (FPISC) (Section 70007)
    - $150 million for the Department of Interior (DOI) (Section 50303)
    - $115 million for (DOE) (Section 50301)
    - $100 million for the Federal Energy Regulatory Commission (FERC) (Section 50302)
    - $100 million for the U.S. Forest Service (Section 23001)
    - $100 million for the Federal Highway Administration (Section 60505)
    - $40 million for the Environmental Protection Agency (EPA) (Section 60115)
    - $30 million for the Council on Environmental Quality (CEQ) (Section 60402)
    - $20 million for (NOAA) (Section 40003)
- $760 million for (DOE's) Grid Deployment Office to administer grants to Tribal, state, and local entities to facilitate transmission siting, permitting, and economic development (Section 50152)
- $100 million to DOE for interregional and offshore transmission analysis and convenings (Section 50153)

Adapted from the White House BIL Guidebook and IRA Guidebook.

Respect Tribal Sovereignty and Self-determination

Existing consultation guarantees are failing to uphold Tribal rights to sovereignty and self-determination. Activists amplified this problem globally during the Dakota Access Pipeline protests, but consultation issues persist in clean energy and critical mineral projects, as well. Federal permitting agencies and developers alike must observe a higher standard that fully analyzes the impact of transmission and clean energy facilities on Tribal lands and waters and invites Tribes to substantively shape decisions. In November 2022, President Biden released a Memorandum on Uniform Standards for Tribal Consultation that includes directives to recognize and respect Tribal self-government and sovereignty, and to elevate Indigenous Knowledge relevant to consultations. Permitting agencies should adhere to this as a baseline.

We urge permitting agencies and developers to seek free, prior, and informed consent and strive for a mutually desired outcome for any projects that may implicate treaties and impact Tribal social, cultural, and spiritual resources. As discussed above, project proposers should offer co-ownership to better assure that Tribes share in the management and profit from infrastructure projects in their traditional lands and waters. Tribal consultation by agencies should start as early as possible and occur often to enable mutual trust and allow for meaningful influence over project design. Agencies should formally consult with all relevant Tribal communities on a nation-to-nation basis, including those without federal recognition, and widely solicit and incorporate input from Tribal members beyond government representatives and technical staff. While robust Tribal consultation might require additional work on the front end, these steps bring Tribes along as partners in clean energy projects that implicate their land and may prevent conflicts that can lead to project delays and cancellations.

Boost Agency Staff Capacity and Interagency Coordination

Rapid decarbonization of the grid will sharply increase the number of large clean energy and transmission projects requiring environmental review. Permitting agencies must be fully staffed and trained to make NEPA determinations in a timely manner. Evidence suggests that lack of agency capacity is already a major source of delay. A review of 41,000 U.S. Forest Service NEPA determinations made between 2004 and 2020 identified inadequate staffing, lack of experience, and high turnover as major barriers to completing timely environmental review. The proposal below should equip agencies to facilitate more effective and efficient environmental review.

To increase the efficiency of environmental review, the Biden administration should direct the U.S. Army Corps of Engineers, Bureau of Land Management, Bureau of Ocean Energy Management, Department of Energy, Environmental Protection Agency, Forest Service, Fish and Wildlife Service, and other federal permitting entities to **identify and report gaps in staff expertise that may be lengthening planning and permitting timelines, and develop workforce plans to fill those vacancies.** These workforce plans should include budget proposals detailing how agencies will take advantage of existing and new IIJA and IRA funding to boost staff capacity. Recruiting and retaining top talent will require offering more competitive salaries. The nature of NEPA review is highly complex, and experienced environmental compliance professionals will get lucrative offers from the private sector that outcompete federal jobs. To address these hiring barriers

in permitting agencies, **the U.S. Office of Personnel Management should issue special rates for occupational groups relevant to NEPA review, including generalists and expert staff.** In lieu of OPM action, agency headquarters should submit their own special rate requests to OPM with a focus on filling vacancies for clean-energy specific functions and interagency coordination. OPM and permitting agencies should also prioritize more effective training for job functions specific to clean energy siting and permitting.

The Federal Permitting Improvement Steering Council (FPISC) plays a key role in strengthening transparency and coordination for clean energy projects under review. FPISC brings 13 agencies together to set timely review schedules and track covered projects on a transparent online dashboard. For covered projects, FPISC develops a Coordinated Project Plan that, if done right, can reduce permit review times by encouraging concurrent analyses, early stakeholder engagement, and shared data management. With permanent and expanded authority under IIJA, **FPISC should continue to expand its permitting dashboard to track more mid-sized renewable energy and transmission projects.** FPISC should also continue taking advantage of $350 million in new IRA funding to enhance Tribal consultation and boost coordination with states.

Plan Smarter and Review Clean Projects Faster Under NEPA

To capture the full potential of the IRA and build a decarbonized economy powered on clean energy, we must unscramble the permitting system for clean energy and transmission *and* prevent new fossil fuel projects that would violate our tightening carbon budget and harm communities. Narrow, strategic changes to NEPA review for clean energy projects can improve coordination, transparency, and efficiency for projects that advance our climate goals without shortening timelines for polluting fossil fuel infrastructure.

NEPA itself is a concise but powerful law that requires federal agencies to engage with the public and consider the environmental impacts of any major federal action. NEPA also established the White House Council on Environmental Quality (CEQ), which issues guidance to federal agencies on how to implement NEPA. The Biden administration is currently finalizing new CEQ rules, expected in early 2024, which will implement changes made by Congress in the Fiscal Responsibility Act of 2023. CEQ's new rule also presents permitting agencies with an opportunity to update their own NEPA implementing regulations. We offer the following recommendations to permitting agencies to streamline environmental review specifically for renewable energy and transmission projects.

Increase the Use of Programmatic Environmental Impact Statements

Under NEPA, federal actions can undergo three possible tiers of analysis. Each tier is designed to addressa different level of environmental impact. First, an agency determines whether the project falls under a Categorical Exclusion, meaning no further analysis is necessary because that type of action does not have significant environmental impacts. About 95 percent of federal actions receive a Categorical Exclusion. If a project does not fall under a Categorical Exclusion, it will receive an Environmental Assessment to determine whether the action has a significant impact on the environment. If the answer is yes, these projects require the lengthiest and most complex level of review, an Environmental Impact Statement (EIS). CEQ estimates that

less than one percent of federal actions undergo a full EIS, and about five percent undergo an Environmental Assessment. Interstate transmission lines and large renewable energy projects like utility-scale solar or offshore wind typically require a full EIS, which takes on average 3.4 years to complete, according to analysis of Forest Service data.

To streamline project-level review for large clean energy projects, **federal agencies (or state or county permitting agencies) should increase the use of programmatic EISs.** Strong programmatic reviews take a comprehensive approach to land-use planning, include robust cumulative impact analysis, and offer mitigation guidelines for an entire landscape or type of technology. After finalizing a strong Phase II rule, we urge CEQ to release accompanying guidance on best practices for conducting and referencing programmatic EISs specifically for clean energy and transmission. We also urge agencies to conduct more, and more thorough, landscape-level programmatic EISs using current best-available scientific information. DOE should also issue a programmatic EIS for transmission technology, which can facilitate faster reviews for much-needed transmission lines.

In the past, some programmatic reviews have left out cumulative impact analysis and thus failed to consider the disproportionate adverse burdens of potential projects on affected communities.[4] These existing programmatic reviews should be updated in accordance with CEQ guidelines, and going forward all reviews should include early and robust stakeholder engagement, cumulative impact analysis, identification of Tribal resources and perspectives, and designation of low-conflict areas to guide renewable energy and transmission development.

Strong programmatic EISs can deliver multiple benefits. Permitting staff can save time and effort when conducting project-level review by "tiering," referencing analysis from the broader reviews and avoiding rework, or allowing project-level analysis to require only an Environmental Assessment instead of a full EIS. Early planning and identification of low impact areas for clean energy development can avoid siting conflicts and expedite review (Gerrard, NRDC, Roosevelt).

Increase the Use of Mitigated Findings of No Significant Impact

Environmental Assessments under NEPA can result in a finding of no significant impact (FONSI), or otherwise kickstart a full EIS. Between those two outcomes is a long-standing but lesser known review outcome: a Mitigated FONSI. By committing to enforceable mitigation actions, agencies ensure that analysis reflects meaningful efforts to avoid, minimize, and mitigate significant effects. If the proposed mitigation actions will render the impacts of a project insignificant, the project will not require a full EIS, potentially saving years of permitting time. Based on 16 years of U.S. Forest Service data, the average time to complete an environmental assessment is half that of a full EIS, and the median time is only 1.2 years. That means Mitigated FONSIs could be an important time-saving tool for the clean energy generation and transmission projects we need to build this decade to keep within reach of national climate targets.[5]

We recommend that permitting agencies amend their NEPA implementing regulations to state that Mitigated FONSIs are the preferred method of review for clean energy and transmission projects if specified mitigation actions are taken. Agencies can do this while reserving the right to determine on an individual basis whether mitigation measures are sufficient to reduce impacts below the level of significance. We also support CEQ's draft regulations that propose to require monitoring and compliance to make mitigation within FONSIs enforceable. A mechanism for accountability is necessary to move mitigation from an empty promise to a guarantee.

Adopt New and Existing Categorical Exclusions

The vast majority of projects subject to NEPA receive a categorical exclusion (CE), the least demanding level of environmental review. To receive a CE, a project must fit into a class of federal actions that a permitting agency has deemed to have no significant impact, individually or cumulatively, on the human environment. To be clear, given these criteria, no fossil fuel projects should qualify. But Congress, in the Energy Policy Act of 2005, made CEs permanent for oil and gas drilling and pipeline placement. This is just one of many exclusions and exemptions that fossil fuel companies have won over decades of lobbying.

[4] Jasmine Jennings, WE ACT for Environmental Justice, personal communication, October 24, 2023
[5] Some state environmental impact laws have similar determinations to Mitigated FONSIs. Under the California Environmental Quality Act (CEQA), for example, one possible result is a "mitigated negative declaration." Many of the recommendations in this section, while focused on federal NEPA review, also apply to state-level "little NEPA" reviews, as well.

Misclassifications that fast-track polluting infrastructure are a step in the wrong direction. At the same time, CEs can and should apply to certain clean energy and transmission projects with positive environmental impacts. Federal agencies frequently use existing CEs for small-scale solar and wind projects, ground-source heat pumps, and the upgrade or replacement of power lines less than 20 miles long. In November 2023, DOE proposed creating new CEs for several categories of projects including: certain energy storage systems, upgrading and rebuilding of existing transmission lines, and solar photovoltaic systems up to 200 acres in area. DOE is accepting comments on this proposed rule until January 2, 2024.

DOE should finalize these new CEs for solar, energy storage, and transmission upgrade projects, while carefully considering the direct, indirect, and cumulative impacts of each proposed category. Furthermore, **DOE should consider other electricity generation projects for CEs if they produce zero emissions of any kind (such as wind or geothermal projects).** Crucially, CEs are not applicable under "extraordinary circumstances," which DOE should clarify includes unique adverse health and environmental impacts on overburdened communities. If a project that would normally fall under a CE might cause disproportionate harm, the agency should proceed with an EA.

New transmission projects are also a prime candidate for inclusion on CE lists, with important caveats. DOE should build on its proposed rule and consider including new transmission construction that takes advantage of existing rights of way, including highways and railways (the proposed rule states that transmission construction within existing pipeline and powerline rights of way will now normally qualify for an EA instead of an EIS). If DOE proceeds with this recommendation, it is crucial that the agency consider cumulative impacts when determining whether the project is not eligible for a CE due to "extraordinary circumstances." While reconductoring or upgrading existing lines can provide some added capacity, upgrades alone will be insufficient in providing the doubling of transmission capacity needed to achieve clean power targets.

Agencies can also adopt clean energy CEs from other agencies under new authority from the Fiscal Responsibility Act of 2023. While this new authority could be used in a future administration to serve fossil fuel interests, the Biden administration should use the authority for good while it has the chance. For example, the U.S. Departments of Transportation and Commerce recently adopted CEs from the DOE for electric vehicle charging and semiconductor manufacturing, respectively. **We urge permitting agencies to adopt CEs approved by other agencies, including wind siting and monitoring, transmission line upgrades, and offshore wind habitat conservation—as well as the new CEs proposed by DOE in its November 2023 proposed rule.** As required under the new interagency adoption process, agencies should closely consult with the agency whose CE is being adopted to ensure appropriate use.

State Siting and Permitting

Beyond the federal permitting system, clean energy and transmission projects also have to navigate a web of local and state approvals. Since some projects on private land do not require federal NEPA review, state and local siting and permitting processes likely pertain to more projects. If poorly coordinated, local siting and permitting process can multiply administrative burden, spur opposition, and increase the likelihood of project delay or cancellation. According to Sabin Center for Climate Change Law research, 228 local governments have passed restrictions on renewable energy across 35 states. To avoid these slowdowns and restrictions, states can pass laws that both streamline clean energy siting and permitting and ensure that clear benefits flow to host communities.

Legislative Opportunities for States

Siting and permitting operate differently across state lines. No single policy solution will work everywhere, and in some states, the existing system may already result in efficient outcomes. The following recommendations serve as a menu of options for adopting model siting and permitting laws in states with systems that currently result in duplicative work, insufficient community participation, or lengthy timelines:

- **Consolidate clean energy siting authority and permitting processes under a single agency or authority.** One state agency would be primarily responsible for preparing permits and coordinating with other state agencies. Project owners seeking approval would apply to this agency alone, rather than a series of local units. Depending on the state, this agency could be a public utility commission, a siting board, a department of environmental protection, or a built-for-purpose renewable siting office. For example, lawmakers in New Mexico and Colorado have established electric transmission authorities to plan and develop projects that increase grid reliability and meet state clean energy goals. Decision-making bodies such as transmission authorities and siting boards should include Tribal representatives and residents of proximate environmental justice communities with experience in community issues around energy siting (as proposed by S.2113 / H.3187 in Massachusetts). Any state agency with siting and permitting authority should be required to offer impacted communities opportunities to participate and influence decisions early on. Reforms should clearly outline steps to ensure the transparency and accessibility of the decision-making body.
- **Grant state agencies authority to prevent overly restrictive local limits and bans on renewable energy and transmission.** If needed, the agency should have authority to override local statutes that ban or overly restrict clean energy infrastructure. The state could shift siting authority from local jurisdictions to the state, or maintain it and exercise backstop authority only if local jurisdictions unjustifiably deny a permit, or fail to approve a permit within a reasonable timeframe. Limits on local jurisdiction must be accompanied by requirements

for developers to meet with local governments and hold community meetings before being eligible to apply for streamlined permitting at the state level. As with state laws in Illinois and Michigan, developers can still be allowed to work with local governments whose standards meet those of the state. State agencies should be required to solicit and incorporate local feedback to ensure that underserved and overburdened localities have real influence over project outcomes. State law can also establish size thresholds or an opt-in program, which stops short of replacing local approval while still offering clean energy projects the option of an expedited review process.

- **Minimize adverse impacts without overly restricting clean energy through upfront environmental assessments and statewide standards.** State legislation should require upfront analysis of clean energy infrastructure potential that maps out zones to favor, like vacant industrial property or brownfields, or zones to consider avoiding. If states choose to remove local zoning and siting oversight or preempt local restrictions, state laws can set baseline project requirements, including reasonable setback rules, noise limits, and height restrictions. The statewide standards should be influenced by input from affected and disadvantaged communities to prevent overburdening nearby residents. Beyond legislation, state leaders can also urge grid operators to undertake more proactive planning.
- **Require early, open, and meaningful planning—prioritizing engagement with overburdened and underserved communities.** From the earliest stages of planning, state agencies should require developers to engage in open and transparent planning with impacted communities, including rural residents, communities of color, lower-income households, and those facing high energy burden or unreliable access to electricity. Developers should be required to regularly update the public on clean energy and transmission plans and solicit input from affected groups on any possible alternatives before selecting a site and going public with a proposal. State entities with decision-making authority should be required to consider environmental justice, climate, and public health impacts. To promote more equitable participation in this early and open planning process, states should make intervenor compensation funds available and accessible. States can either provide public funds, access federal funding (including from DOE, as discussed earlier), or require developers to pay fees that fund local intervenor compensation accounts (as in New York's Accelerated Renewable Energy Growth and Community Benefit Act).
- **Ensure host communities receive direct and visible benefits from nearby projects.** Already the Office of Budget and Management is considering updates that would allow states to be more ambitious and require community benefits plans for federally-funded projects. New state legislation can raise the bar further for state permit applications by requiring community benefits agreements (CBAs), which are overwhelmingly popular across party lines. States should direct clean energy and transmission developers to engage with a representative set of stakeholders—including labor unions, faith groups, local businesses, environmental groups, and community groups—to design effective CBAs that address local needs. CBAs should detail clear timeframes, monitoring and accountability mechanisms, and tangible deliverables. Benefits can include discounts on electricity bills, funds for grant-making, affordable housing, and investments in local infrastructure such as bike paths and community centers. Michigan's newly passed HB 5120 is a strong example of legislation with detailed CBA requirements. At least 40 percent of project benefits should flow to affected communities of color, Indigenous

peoples, and low-income communities. State legislation should also direct developers to support good-paying jobs through prevailing wage requirements, partnerships with unions and local educational institutions for workforce development, and labor agreements. State legislation could also promote partial ownership structures and energy bill discounts that ensure financial benefits for nearby residents.

- **Require upfront consultation with Tribal communities.** Engagement should include Indigenous peoples with and without federal recognition and extend beyond governing bodies to reach all members of the affected Tribal community. All project stakeholders should respect Tribal sovereignty and cultural resources and abide by treaty rights. Agencies should solicit and incorporate Traditional Ecological Knowledge during the planning stage, invite Tribal representatives to observe the proposed site during environmental review, and maintain an open line of communication throughout the permitting process. The state should make intervenor funds available and accessible to promote more equitable consultation.
- **Require state agencies to conduct cumulative impact analysis and incorporate results into project approvals.** Cumulative impact analysis considers a proposed project area in the context of its existing infrastructure, environment, and community composition. If an additional project is found to overburden a community, the permit request should not be approved, or should be modified to alleviate the identified concerns. New Jersey's landmark Environmental Justice Law requires denials if a proposed project is found to cause disproportionate burden, ensuring that cumulative impact analysis is more than a box-checking exercise. Once a law is passed, it is imperative that state regulators precisely define terms like "overburdened community" and "disproportionate impact" in rulemakings and guidance to ensure environmental justice laws have their intended effect. Here, too, states can draw lessons from each other. Following New Jersey, New York passed a similar cumulative impacts law in December 2022. The trend is clearly spreading, and now states have two strong examples for how to say no to polluting energy facilities that pile health and environmental burdens onto communities of color and low-income communities.
- **Set transparent, reasonable timelines and deadlines.** State law should direct siting and permitting agencies to meet reasonable timelines and deadlines. These timeframes should be required in conjunction with improved coordination, increased capacity, and upfront planning and must allow time for meaningful community input and Tribal consultation. These timeframes can apply either to a single state entity or to all county-level permitting units. Key project milestones could include public hearings, determination of application completeness, initial assessment, completion of environmental impact statements, and final decision-making. Permitting agencies could also be required to notify developers if a project will require a full (state or county) EIS and allow them to revisit their application to address impacts. To improve transparency and accountability, the state should track timelines and deadlines and display project status on a public dashboard.

Lessons to Draw from Existing State Law

A few states have already revamped the permitting process for renewables and transmission. Recent legislative success in Michigan to reform siting for wind, solar, storage, and associated transmission projects is one positive example that other states can emulate.

These laws serve as examples to learn from and potential models for other states to follow:

	New York A9508-B, S8830	**California** AB 205	**Washington** HB 1812, HB 1216	**Illinois** HB 4412	**Michigan** HB 5120, 5121
Administering agency	Office of Renewable Energy Siting (ORES) and New York State Energy Research and Development Authority (NYSERDA)	California Energy Commission (CEC)	Department of Ecology (Ecology)	County governments	Michigan Public Service Commission (MPSC)
Eligible project types	Renewable energy (> 25 kW, 20-25 kW may opt-in), co-located storage, associated transmission < 10 miles	Wind, solar, storage (> 50 MW), geothermal, transmission, and clean energy manufacturing facilities	Non-project EISs for large-scale solar, wind, and green hydrogen; streamlined process for renewables, clean energy manufacturing, storage, green hydrogen, and transmission	Commercial wind (> 500 kW) and solar (for whole-sale or retail sale), and supporting facilities	Wind and solar (> 100 MW for wind and storage; > 50 MW for solar) and accompanying storage, substation, transmission, etc. facilities
Unified authority and statewide standards	Established ORES; has 1 year to develop uniform standards, which must achieve net conservation benefit	Established opt-in process that replaces local permitting, except for water quality and coastal permits; Expanded role of CEC to exclusively approve covered projects; CEC must act as lead CEQA agency	Consolidates authority under Department of Ecology, establishes interagency coordinating council. State budget includes ~$30 million for Ecology to boost staff capacity, administer grants to Tribes for consultation	Retains county siting process, sets statewide zoning, siting rules that counties cannot further restrict	Establishes opt-in certificate program run by MPSC. Certificates preempt local policy, if local ordinances are construed to limit or impair construction. Projects must adhere to standard size, setback limits

	New York A9508-B, S8830	**California** AB 205	**Washington** HB 1812, HB 1216	**Illinois** HB 4412	**Michigan** HB 5120, 5121
Avoid, mitigate adverse impacts	Requires analysis of disproportionate environmental impacts on an EJ area and detailed measures to avoid, mitigate or offset them	Determining location must be based on avoiding air pollution, rolling blackouts, impacts on disadvantaged communities	Projects must align with state climate, energy goals; Non-project EISs must identify probable impacts and mitigation measures (HB 1216); Joint Committee directed to review siting inequities; Commerce to draft report on more equitable distribution of clean energy costs, benefits to rural communities (HB 1812)	Requires Agricultural Impact Mitigation Agreement	Requires application to describe mitigation efforts
Proactive planning	Directs NYSERDA to identify "build-ready" sites—e.g., brownfields—for siting renewable energy projects; Developers must obtain numerous environmental approvals at the pre- planning phase before applying	None	Ecology to conduct non-project EISs for large-scale solar, wind, and green hydrogen, publish maps with adverse environmental impacts for each resource	None	None
Community engagement	Requires applicants to notify and consult local agencies, community members; NYSERDA distributes intervenor funds $1,000/MW	Requires public info meeting, workshop, scoping meeting, and meeting on draft environmental impact report	Must identify overburdened communities and verify meaningful, timely engagement	Requires counties to advertise, hold at least one public hearing	Requires public meetings in each affected unit before submitting application; requires developers to provide intervenor funds

	New York A9508-B, S8830	**California** AB 205	**Washington** HB 1812, HB 1216	**Illinois** HB 4412	**Michigan** HB 5120, 5121
Tribal consultation	None	Required, must incorporate Traditional Ecological Knowledge, invite observation, monitoring during environmental review, avoid or minimize impact to cultural resources	Requires early, meaningful, individual consultation with federally recognized Tribes for permits and non-project EISs. Office of Indian Affairs must publish, update list of Tribal contacts, laws, preferences on siting and outreach	None	None
Community benefits	Requires host community benefits (payments or projects) in each affected jurisdiction	Requires CBA, prevailing wage, construction and operation must have net positive economic benefit to local government	To be eligible, developers must describe potential community benefits; Once under review, developers "may" prepare CBAs that "should" include benefits beyond jobs or tax revenues, made by local or Tribal government	None	Requires CBA and PLA, prevailing wage

	New York A9508-B, S8830	**California** AB 205	**Washington** HB 1812, HB 1216	**Illinois** HB 4412	**Michigan** HB 5120, 5121
Cumulative impact analysis	S8830 amends NY State Environmental Quality Review Act (SEQRA) to require cumulative impact analysis in disadvantaged communities before permit is approved or renewed, identifying projected health and pollution effects	None	Non-project EISs must consider cumulative impacts to historic, cultural resources, endangered species, habitat and wildlife, EJ communities, Tribal resources, agricultural land, and military operations	None	None
Siting and permitting timelines	Must grant or deny within 1 year; within 6 months for projects on repurposed sites	Seeks (but does not require) to consolidate permitting process to 1 year	Lead agency must “aspire” to finish EIS within 2 years	Counties must hold a hearing < 45 days after application filing date, must decide on permits < 30 days after hearing	Must grant or deny within 1 year; if county retains control must decide within 4 months

Conclusion

Climate and clean energy advocates have spent months discussing “permitting reform” in Congress with little to show for it. Current transmission and clean energy planning, permitting, and siting processes remain woefully out of step with the urgency of our decarbonization targets—and with the urgent need for equitable and robust permitting processes.

We cannot wait for Congress to come back to the table. The IRA has given us a once-in-a-lifetime opportunity to jolt the clean energy transition, but outdated permitting and planning are holding back the transition. If we want to achieve warp speed clean energy, federal agencies and the states must stepon the accelerator.