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U.S. House Committee on Natural Resources

Legislative Hearing on H.R. 573, H.R. 4503, H.R.4776

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Good morning, Chairman Westerman, Ranking Member Huffman and members of the Committee. Thank you for the opportunity to testify and for holding this important hearing.

My name is Jeremy Harrell. I am the Chief Executive Officer of ClearPath Action, a 501(c)(4) organization that advocates for more clean energy innovation, modernized permitting and regulatory reform, America's global competitiveness for manufacturing and unlocking more American resources. To further that mission, we develop cutting-edge policy solutions on clean energy and clean manufacturing innovation. ClearPath Action collaborates with public and private sector stakeholders to enable private-sector deployment of critical technologies needed to meet the globe's energy and environmental needs.

The demand for new sources of reliable and affordable energy is urgent. There are many cutting-edge technologies ready to be deployed, but they currently cannot be developed at the speed the market demands if they cannot secure permits on a predictable, expeditious timeline.

The United States is in competition with China over the future of emerging technologies like Artificial Intelligence (AI), advanced manufacturing and new sources of energy. The reality is that today, the U.S. is losing that competition, in no small part due to the overly complex federal permitting process in place today.

The pace and scale of the energy addition in China is an order of magnitude larger compared to the U.S. In 2024, China added 475 GW of new generation to its grid.[1] By comparison the U.S. added 48.6 GW, barely one-tenth of China.[2] These figures are far from a mere anomaly, the paltry rate of addition in 2024 was the largest buildout of new capacity in the U.S. since 2002. The trend is especially stark with renewable sources of energy. For example, in 2024, China built 421 GW of new renewable generation and 74 GW of new energy storage.[3] By comparison the U.S. built 35 GW of renewables and 10 GW of energy storage respectively in the same year. In addition, China also built 54 GW of new fossil fuel generation, including 48 GW of new coal, whereas the U.S. built just 2.4 GW of new gas and no new coal.

By every metric, China is building more energy than the U.S. each year. In order for the U.S. to win the AI race and prevail against China, the U.S. will need to deploy more energy on a faster timeline to meet rising energy demand. However, building infrastructure projects today requires

[1] In 2024 China added 421 GW of new renewable generation and 54 GW of new fossil generation for a combined total of 475GW; see also https://www.eia.gov/international/analysis/countrv/CHN
[2] https://www.eia.gov/todayinenergy/detail.php?id=64586
[3] https://www.eia.gov/international/analysis/countrv/CHN

compliance with an overly complex and often unpredictable permitting regime. The uncertainty innate to the current system is fundamentally one of the largest barriers to meeting energy security, climate and economic development goals at the federal, state and local levels. These permitting challenges are present in every infrastructure sector of the economy, from energy to housing to transportation projects. No technology source is spared, whether it be solar, wind, geothermal, hydropower, nuclear or natural gas, the process can inhibit the orderly development of new energy resources no matter their source.

Right now, there is a window of opportunity for Congress to deliver effective permitting reform. The combination of Congressional action, recent Supreme Court decisions, administrative executive orders, state policy changes, and a surge in energy demand has created the conditions that necessitate Congressional action to lock in the positive developments, course correct in certain areas, and avoid further uncertainty for project developers. Modernizing permitting is the key to future success and prosperity.

The three bipartisan bills highlighted in this hearing – the Standardizing Permitting and Expediting Economic Development Act (SPEED Act), the ePermit Act and the Studying NEPA's Impact on Projects Act – offer a balanced approach that will help streamline environmental reviews. ClearPath Action has endorsed all three pieces of legislation.

The Committee has already asserted its leadership on permitting through its work on the Fix Our Forests Act, championed by Chairman Westerman (R-AR) and Rep. Scott Peters (D-CA).[4] The strong, bipartisan vote in January 2025 makes clear that there is an appetite to improve permitting in specific sectors. Today's hearing sends a similarly strong signal that broader permitting reform remains a bipartisan priority and it is my hope that this hearing is another step toward passing bipartisan legislation this Congress.

Three key policies to do that are:

- **Modernize NEPA** by clarifying the scope of reviews and eliminating duplication;
- **Reform judicial review and litigation practices** to increase predictability and reduce unnecessary delay tactics; and
- **Increase transparency** to drive oversight action and better leverage technology.

In my testimony, I will talk about the evolution of NEPA, recent court decisions, ClearPath Action's views on the three bills before the committee today and some additional opportunities to consider for meaningful and politically durable reform.

The evolution of NEPA and reform efforts

For half a century, NEPA remained largely untouched by Congress, allowing presidents and the courts to shape the terms of environmental reviews required under the law from the 1970's. During that time, environmental reviews steadily grew in length and scope, with some reviews including several thousand pages of analysis and dragging on for more than a decade. The cost of these delays is significant. Recent analysis by McKinsey estimates projects currently under federal permitting reviews amount to as much as $1.5 trillion of infrastructure capital, costing stakeholders billions of dollars in lost revenue and withholding project benefits and increased

[4] https://www.congress.gov/bill/119th-congress/house-bill/471

GDP.[5] That is $1.5 trillion worth of projects unable to provide grid reliability, reduce emissions or other benefits today.

When Congress passed the Fiscal Responsibility Act (FRA) in 2023, policy reforms long championed by House Republicans were signed into law. These include firm deadlines, page limits and a narrower definition of what constitutes a "major federal action" triggering review.[6] The FRA also created new authorities for federal agencies to borrow existing categorical exclusions from other agencies to further streamline the process. The FRA was a step in the right direction, and there remain immense opportunities for Congress to further improve the permitting system to increase the predictability, transparency and durability of the process.

While opponents of permitting reform will point to statistics that most NEPA reviews are not litigated in absolute terms, the ones most likely to face legal challenges are typically for complex projects that can offer the greatest potential benefits to the American people through reduced energy costs, enhanced energy independence, increased economic opportunity and lower global emissions. A recent analysis by the Breakthrough Institute found that while "full Environmental Impact Statements accounted for just 1% of NEPA reviews, they represented 37% of District Court and 42% of Circuit Court rulings" in the dataset.[7] Furthermore, even though some major infrastructure projects attract years-long litigation, that does not mean that they have more legal deficiencies. The same Breakthrough Institute study found that courts remanded only one-quarter of the projects it studied for legal flaws, indicating that the lengthy, resource-draining litigation is not necessarily producing better environmental results.[8]

If major infrastructure projects are regularly delayed by legal challenges that are ultimately decided in favor of the original project sponsor, it is time to reassess whether the current system is protecting consumers and the environment or project opponents.

In debating ways to streamline the federal permitting process, Congress should focus on these acute risks to large projects that simultaneously offer the greatest potential benefits yet face the greatest likelihood of litigation.

In addition to legal exposure, complex projects are also the most likely to face prolonged NEPA reviews in the first place. In January 2025, the Biden administration's Council on Environmental Quality (CEQ) released data that showed that timelines to complete Environmental Impact Statements (EIS) were improving compared to prior years.[9] The median time to complete an EIS was 2.8 years (34 months) for final EISs issued from January 2019 to December 2024. This figure represented an improvement of roughly 5 months (13%) relative to the period from 2010 to 2018, when the median time from Notice of Intent (NOI) to final EIS was 3.2 years (38

[5] https://www.mckinsey.com/industries/public-sector/our-insights/unlocking-us-federal-permitting-a-sustainable-growth-imperative

[6] https://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=413361

[7] https://thebreakthrough.imgix.net/A-Comprehensive-Analysis-of-NEPA-Litigation_v6.pdf

[8] *ibid.*

[9] Notably, the report excluded the time period from a final EIS to a Record of Decision (ROD) being issued, which is frequently an additional source of delay before a project can begin construction. Past CEQ reports have measured the timeline from NOI to ROD, such as https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/01/20200612CEQ_EIS_Timelines_Report_Update.pdf

months). While the CEQ report focused on median processing times, it is important to acknowledge the long tail of NEPA reviews that plague some projects. The latest CEQ data shows that more than one-third of projects undergoing an EIS took five years or more to reach a final EIS , highlighting the continued unpredictability of this process.[10] This kind of timeline is too long to meet the challenges of today's infrastructure needs in an era of an AI race, manufacturing revival and increased electrification.

Earlier this year, the Trump administration rescinded existing CEQ NEPA rules in response to a circuit court decision and ordered new agency guidance through the Unleashing American Energy executive order issued in January 2025.[11] This change in policy priorities is just the latest iteration of the back and forth from one presidential administration to the next. In response to this executive order, federal agencies released updated NEPA implementation guidance that seeks to streamline environmental reviews. These guidance documents include streamlining actions such as: relying on existing documents to the extent possible, incorporating data by reference, integrating NEPA with other environmental requirements and eliminating duplication of state or local processes.[12]

While administrative actions can streamline environmental reviews to some degree, they lack the long-term durability industry needs. The continued pendulum swings are especially challenging for infrastructure projects that take more than a four-year presidential term to design, finance, permit and build. By codifying changes to the review process, Congress can provide the certainty necessary for project developers to feel confident making billion-dollar investment decisions in new energy infrastructure.

Recent Court Decisions

In the time since Congress enacted the FRA, the Supreme Court has ruled in two major cases that have further clarified the roles and responsibilities of federal agencies to conduct environmental reviews. The combination of legislative action and court decisions has rewritten the rules of the road for federal agencies.

In 2024, the Court's 6-3 decision in *Loper Bright Enterprises v. Raimondo* (*Loper Bright*) overturned the *Chevron* deference doctrine. The Court reaffirmed that judges must independently determine "whether an agency has acted within its statutory authority."[13] The Court held that lower courts should not merely "defer to an agency interpretation of the law simply because a statute is ambiguous."[14]

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[10] https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2025-1-13.pdf

[11] In *Marin Audubon Society v. Federal Aviation Administration* (November 12, 2024), the U.S. Court of Appeals for the D.C. Circuit held that the White House Council on Environmental Quality (CEQ) does not have the statutory authority to issue binding regulations implementing NEPA and that the decades-old CEQ regulations exceed CEQ's authorities. See also https://www.federalregister.gov/documents/2025/01/29/2025-01956/unleashing-american-energy

[12] For example, https://www.energy.gov/sites/default/files/2025-06/2025-06-30-DOE-NEPA-Procedures.pdf

[13] https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

[14] *Loper Bright Enterprises v. Raimondo* ___ slip op. at 1. Available at https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

In May 2025, the Supreme Court issued a unanimous 8-0 decision in *Seven County Infrastructure Coalition v. Eagle County* (*Seven County*), which clarified the scope of NEPA reviews and how *Loper Bright* applied in the NEPA context. *Seven County* held that NEPA does not require an agency to analyze effects beyond those closely connected to the specific federal action under review.[15] The Court explained that upstream and downstream projects that are not under the agency's authority do not need to be considered, nor do projects that are not interrelated and close in time and place (i.e., effectively one single project). The extent of *Loper Bright* is seen in how the Court distinguished an agency's factual determination of what details are relevant in an environmental review and the legal requirement for an EIS to be "detailed."[16] Courts must give the agency judicial deference on the first matter, whereas the second is a matter for courts to interpret.

The majority opinion of the Court in *Seven County* also emphasized that NEPA dictates process alone, not outcomes. NEPA mandates that agencies provide the public with a "detailed statement" outlining the environmental consequences of proposed federal actions, which may include issuing permits, distributing grants, or approving infrastructure projects.[17] It is true that NEPA itself does not grant or deny these permits; it only ensures agencies evaluate and consider environmental impacts associated with any major federal action. NEPA does not specify any particular environmental standards and carries no enforcement penalties. Its role as a purely procedural statute is for the government to "look before you leap."

In practice, these two rulings have meaningfully narrowed the necessary scope for agencies to consider the potential effects of a proposed project and have more appropriately delineated the role of NEPA as a procedural statute. Congress enacted NEPA in 1969 to ensure the federal government analyzed the environmental impacts of its actions. In the following decade, Congress enacted more substantive, specific and environmentally rigorous laws like the Clean Air Act, Clean Water Act and Endangered Species Act. Since the 1970s, Congress has continued to amend these laws and pass new ones with binding standards and rigorous enforcement criteria. Rather than rely on a procedural statute that cannot enforce these criteria, Congress should allow these more specific statutes to bear the burden of fostering the high environmental standards Americans have come to expect. Today, Congress can chart the next course of action for NEPA by codifying the holding and the principles of *Seven County* and streamlining judicial review.

ClearPath Action's View on the Proposed Legislation

H.R.4776, the SPEED Act, seeks to solidify the Court's decisions in *Seven County* by further clarifying the legal standards articulated by each case with respect to NEPA. Despite its purely procedural role, NEPA has been turned into a tool for opponents to block or otherwise delay projects. The current system is overwhelmingly tilted in favor of those seeking to delay projects

[15] The court specifically held that "The D. C. Circuit failed to afford the Board the substantial judicial deference required in NEPA cases and incorrectly interpreted NEPA to require the Board to consider the environmental effects of upstream and downstream projects that are separate in time or place from the Uinta Basin Railway."

[16] *Seven County Infrastructure Infrastructure Coalition v. Eagle County* __ slip op. at 2. Available at https://www.supremecourt.gov/opinions/24pdf/23-975_m648.pdf

[17] 42 U.S.C. § 4332. https://uscode.house.gov/view.xhtml?req=(title:42%20section:4332%20edition:prelim)

through lawsuits designed to obstruct, delay and ultimately force developers to abandon their projects.

Litigants exploit these delays, knowing that time is money. This can result in years of additional analysis that often changes little to nothing about the project. Notably, agencies have won in roughly 80% of appeal cases since 2013, underscoring how excessive litigation disproportionately harms projects more than it changes environmental review outcomes.[18] This uncertainty affects all energy and infrastructure projects from pipelines and transmission lines to manufacturing facilities, where delays drive up development costs and discourage investment.

The SPEED Act seeks to rectify this dynamic by narrowing the scope of legal challenges against approved projects and streamlining judicial review of agency actions. The SPEED Act limits legal challenges to clear and material errors under environmental laws, narrows the scope of review and enforces statutory timelines for resolving disputes. Without these changes, billions in investment and years of progress will suffer avoidable delays that can undermine the infrastructure needed for energy and economic security. The legislation captures a key point of the majority opinion in *Seven County*, clarifying NEPA as a procedural statute and its holding that places clear boundaries on the scope of impacts that must be reviewed.

Additionally, the SPEED Act would direct courts to forgo injunctions or vacatur of permits on purely procedural grounds. The remedy in a legal challenge brought under NEPA should be limited to remand with strict timelines to narrowly address the issue using current studies, data or analysis. This approach is similar to the bipartisan Fix Our Forests Act and offers a strong starting point to balance the needs of communities with a more predictable process. A more predictable process benefits all parties involved, allowing claims to move forward when real harms occur while limiting litigation that merely seeks to delay projects.

Absent serious reforms, judicial unpredictability will remain the biggest wildcard in the permitting system even after the *Loper Bright* and *Seven County* decisions. Congress has the opportunity to clarify and enforce these new legal limitations by enacting legislation to solidify these revised legal standards. In addition, Congress should build upon the bipartisan reforms in the FRA to allow agencies to integrate NEPA analysis with more detailed requirements under substantive environmental laws.

Advocates for permit reform and the courts have similarly supported the functional equivalence doctrine for elements of NEPA reviews that are already addressed by binding requirements under other federal environmental laws. Courts have identified this unnecessary duplication since the 1970s and, as a result, exempted certain permitting decisions under certain law from triggering NEPA.[19] This approach is one reason why a Class VI permit for carbon sequestration issued by the EPA under the Safe Drinking Water Act does not trigger a NEPA review for that action, as the 8th Circuit ruled in a 1981 case, *Western Nebraska Resources Council v. EPA*.[20] In that case, the court found that "EPA need not comply with NEPA prior to its actions under the Safe Drinking Water Act." The EPA's Environmental Appeals Board reiterated the functional

[18] https://thebreakthrough.imgix.net/Understanding-NEPA-Litigation_v4.pdf; https://naep.memberclicks.net/assets/webinars/2024/10.15.24_NAEP_Webinar_NEPA_Caselaw_Update_Slides.pdf

[19] https://ceq.doe.gov/docs/laws-regulations/Major_NEPA_Cases.pdf

[20] https://law.justia.com/cases/federal/appellate-courts/F2/793/194/119134/

equivalence doctrine for Class VI wells and denied review under NEPA in an appeal decided in March 2025, saying "even if Petitioners had properly preserved their NEPA arguments, which they did not, Petitioners would not prevail, as the [Underground Injection Control] permitting program is exempt from NEPA."[21]

In addition, courts have consistently recognized that certain EPA procedures or environmental reviews under enabling legislation are functionally equivalent to the NEPA process and thus should be exempt from the procedural requirements of NEPA. The purpose of the functional equivalence exemption is the avoidance of redundant analysis in a decision-making process that functions in an equivalent way to the NEPA process.[22] [23]

Despite this longstanding case law, Congress has never taken the step to codify or expand this approach to additional areas beyond EPA jurisdiction. In light of the *Seven County* decision, Congress should lean on functional equivalence to reflect NEPA's purely procedural role. If another environmental law addresses a specific area of review, there should be no need to duplicate that same analysis under NEPA. The SPEED Act wisely adopts this approach for environmental reviews required by a state statute or tribal government, removing duplication for actions previously reviewed.

H.R. 4503, the ePermit Act, seeks to codify key elements of the 2025 CEQ Technology Action Plan (Plan). The Plan builds on a congressionally mandated report from the FRA where CEQ illustrated that even the lack of clear data standards and interoperable systems is a necessary first step in better understanding how the federal permitting system works today.[24] CEQ issued the Plan in June to require accountability, provide transparency and encourage the use of modern technology, like AI.[25] These types of technological reforms are perhaps the lowest-hanging fruit for bipartisan action to streamline reviews. Congress should enact the ePermit Act to ensure these transparency and accountability reforms to the permitting process remain from one administration to the next.

Congress should also consider the role of AI, machine learning and other automation technologies that can help reduce the human capital burden of project reviews. The Pacific Northwest National Laboratory is using AI to create a centralized, machine-readable dataset of more than 120,000 past NEPA documents and is developing tools that enable federal reviewers to leverage existing information to accelerate informed decision-making and permit development. As the U.S. seeks to win the AI race with a better permitting system, the federal government should be using those tools to the maximum extent possible.

Additional Opportunities for Congress

[21] https://yosemite.epa.gov/oa/eab_web_docket.nsf/Filings%20By%20Appeal%20Number/E65F020C747473D085258C540050B693/$File/Wabash%20Order%20Remanding%20in%20Part%20and%20Denying%20in%20Part,%20EAD%20FINAL%202025.3.21.pdf

[22] https://ifp.org/wp-content/uploads/How-the-White-House-can-reform-NEPA-1.pdf

[23] https://www.rebuilding.tech/posts/redesigning-nepa-regulation-to-unleash-american-energy

[24] https://bidenwhitehouse.archives.gov/wp-content/uploads/2024/07/CEQ-E-NEPA-Report-to-Congress_Final-508.pdf

[25] https://permitting.innovation.gov/CEQ_Permitting_Technology_Action_Plan.pdf

Pilot Permit-by-Rule: Another approach to increase predictability is for Congress to create a permit-by-rule system for obtaining federal permits. Permit-by-rule is a regulatory mechanism that allows certain activities to proceed without undergoing a full individualized permit review, so long as the activity meets predefined criteria. This approach is currently used in certain instances by the Environmental Protection Agency (EPA) and is worthy of consideration for expanded use cases.[26] Permit-by-rule eliminates case-by-case government reviews and analysis. It also shifts the federal government's role from gatekeeping to compliance and enforcement, upholding the substantive standards to protect public health, safety and the environment. Instead of submitting a detailed application for agency review, the applicant certifies compliance with established standards. The self-certifying applicant remains responsible for complying with the substantive laws that apply to the activity and remains subject to enforcement actions by agencies or citizens if it fails to comply with the relevant laws and regulations.

As the bipartisan testbed of permitting reforms and innovation over the past decade, the Federal Permitting Improvement Steering Council (FPSIC) is a natural place for Congress to authorize a a pilot program for broader federal permit-by-rule implementation for a subset of FAST-41 covered projects. Under its current authorization, FPISC lacks the legal authority to compel timely agency action and resolve interagency disputes. Empowering FPISC to use a permit-by-rule style approach for a set of predetermined projects or sectors would be an effective way to demonstrate the functionality of a broader permit-by-rule review for energy projects.

***Maximize Development of Brownfields through Place-Based Permit Streamlining*:** Similarly, encouraging development in certain prequalified geographic areas could go a long way toward accelerating projects with the lowest impact. Such areas could include previously disturbed lands or well-categorized sites, such as brownfield sites that present opportunities to use existing electrical or mechanical infrastructure. The environmental impacts to these locations related to energy deployment are minimal and in many cases, these locations are in or near communities that need the redevelopment most urgently. Congress could also consider regulatory incentives, including streamlined permitting, to direct investment toward areas where impacts are already well understood.

Beyond updating NEPA, there are many other aspects of the permitting process that need to be fixed. While outside the committee's jurisdiction it is also imperative that Congress also debate and pass legislation that:

- Modernizes the federal siting and permitting regime for transmission to create more streamlined development processes that reflect the urgency of grid expansion while respecting states' roles in the process;
- Improves coordination between transmission planning and interconnection queues to support reliability and provide certainty for all energy resources. Congress should encourage grid planners to adopt flexible processes, allowing them to prioritize commercially-ready projects in the areas with the emergent resource adequacy needs;
- Encourages deployment of innovative grid technologies that can bring new generation resources online quicker and at lower cost;

[26] See, for example, a January 2014 proposal from the Obama administration EPA to leverage "Permits by Rule for the Federal Minor New Source Review Program in Indian Country" as one means of compliance. See also https://www.govinfo.gov/content/pkg/FR-2014-01-14/pdf/2013-30345.pdf

- Clarifies the role of states in Clean Water Act implementation regarding section 401 authorizations for pipelines; and
- Delinates a process for siting and permitting next-generation carbon dioxide and hydrogen pipelines similar to what exists today for natural gas pipelines.

Conclusion

The array of recent permitting changes from current and past presidential administrations and the courts highlighted the importance of Congress' role as the legislative branch. Congress has the opportunity to further clarify the impact of recent Supreme Court decisions, respond to administrative actions and create a predictable permitting system for future infrastructure projects.

The pace and scale necessary to build energy infrastructure projects to reliably meet America's energy demand and reduce emissions is not something the authors of 1970s environmental laws could have imagined. Merely increasing federal funding for projects or to the agencies reviewing them is not going to substantially change that problem. Further, the erosion of regulatory and legal predictability makes attracting project financing more difficult and expensive. At a time when the U.S. economy is poised for significant growth and innovation, I encourage the policymakers on this committee to ensure the federal permitting process can help deliver on these opportunities, not stand in the face of them.

The policies to resolve many of these permitting challenges are well-known and understood. Many of them have earned bipartisan support in the past several years. Now that Congress has passed major energy tax policy changes through reconciliation, permitting reform remains the broadest and most important policy lever to ensure the U.S. can meet rising demand, keep costs low for consumers and prevail against foreign adversaries like China.

It is vital to U.S. energy growth that the Committee continue its work to improve the permitting process, including by swiftly advancing the three bipartisan pieces of legislation before it today. ClearPath Action looks forward to working with this Committee to advance permitting reform legislation and I look forward to today's discussion.