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U.S. House of Representatives Select Committee on The Climate Crisis
Cleaner, Cheaper Energy: Climate Investments to Help Families and Businesses

Thursday, December 9, 2021
1:30 p.m.
210 Cannon House Office Building

Chairman Castor and Ranking Member Graves, my name is Alex Herrgott and I am president of The Permitting Institute ("TPI"). TPI is a Washington D.C.-based non-profit, non-partisan organization, whose purpose is to modernize America's aginginfrastructure while protecting our environmental, cultural, and historic resources.

I appreciate the opportunity to discuss targeted actions Congress can take to increase the efficiency and certainty of the permitting process, while enabling construction of affordable, reliable, and resilient energy infrastructure. Permitting confusion, redundancy, and uncertainty increase the cost of energy and our dependence on foreign nations – including our adversaries – thereby diminishing America's global competitiveness.

The unfortunate reality is that the permitting reforms in the new bipartisan infrastructure law will yield only modest benefits for the transportation, coastal restoration, broadband, energy, and water infrastructure and resources project developers.

Those developers will experience 99% of the same chronic obstacles and process delays. To achieve real progress, Congress must address the bureaucratic gridlock blocking new investment. Permitting uncertainty is diminishing and delaying investment returns across all infrastructure sectors, most notably the expansion of conventional and renewable energy and transmission development.

Volatility in energy markets continues to increase as the country transitions its energy supply. The mismatch between planned electric generation – often delayed by a 7 to10 year development timeline – and electric generation retirement are causing supply and demand issues that are, in part, responsible for rapid increases in domestic and global energy prices.

An equally big deal is the $600-$800 billion in private investment for new wind, solar, transmission, hydrogen, storage, and carbon capture waiting on the sidelines for clarity and certainty. These "big deal" numbers are further informed by an April 2021 report by Grid Strategies LLC, released during a Department of Energy event, that shows 22 "shovel-ready" transmission lines stalled in various phases of the permitting process, with no resolution in sight.

TPI urges this Committee to focus future comprehensive permitting reform efforts broadly and dispassionately on all sources of bureaucratic obstructions blocking accelerated deployment of new clean energy projects. The alternative is a status quo that benefits no one.

Accordingly, project developers and TPI members are hesitant to invest. They know that projects initiated today will not be able to commence operations and realize their investment cost recovery for 7 to10 years at the earliest. As this summary timeline articulates, our nation's permitting system does not solve problems, it creates them.

To illustrate the problem, for major infrastructure projects, it takes:

- **2-to-3 years** of project design, engineering, permitting, planning, and financing
- **2-to-4 years** of formal permitting process submission and review – a timeline that pushes orders for equipment, steel, concrete, and labor contracts years into the future
- **2-to-3 years** of construction – this assumes permitting approvals are granted and supply chain orders are aligned

Despite these challenges, I am here today to highlight significant opportunities for progress and to help remove obstacles impeding infrastructure project timelines. TPI provides guidance early in the process and throughout a project's development – helping our members identify issues years ahead of the current timeline. We minimize risk of delays and avoidable costs by working with all parties to identify a streamlined path to completion while protecting our natural resources.

Still, TPI members, and members of this committee, know all too well that energy projects are routinely stymied at various phases of project development by disconnected and fragmented federal and state review processes. Permitting is often marred by contradictory and redundant rules, timelines, and policies that cause delays, cost overruns, and in some cases, project abandonment.

Chronic permitting problems are exacerbated by the lack of bureaucratic accountability. Our broken system allows agencies to sit on applications for years, even decades in some cases, with no certainty of eventual project approval. TPI does not maintain that federal agencies owe project developers a *yes*, but we believe federal agencies owe project developers an answer—yes or no—in a reasonable timeframe.

While the focus in most permitting timeline discussions often centers on the National Environmental Policy Act ("NEPA"), NEPA is just one process among more than 60 possible federal permits that may be required for a project, spread across 13 federal agencies, not including myriad state and local permitting obligations.

Many otherwise "shovel-ready" infrastructure projects spend years in bureaucratic gridlock. Developers routinely find themselves struggling through the informal pre-permitting, planning, and application process – again, often for years – with extensive ongoing submission and review cycles before NEPA reviews formally commence. Consider these examples:

- Proposed energy projects on federal lands continue to face constantly evolving rules governing species and wetlands protections.

- Some federal agencies have identified new formal or informal policies over the past several years to frontload biological, cultural, and historical survey requirements prior to formally starting the review process—pushing the official starting point even further into the future. In some cases, project pre-planning increases efficiency and substantial discussion early in the process, but in others it can conceal the full duration of the permitting review process and leave developers with no final federal to challenge.

- One egregious example is a $3 billion investment in a clean energy transmission line that began the permitting process more than a decade ago. The project endured seven years of review and was finally deemed "complete" by the federal government four years ago. However, it is now entangled in courtproceedings because one hand did not know what the other was doing – within the same federal agency.

- Multiple offshore wind projects, including Skipjack, Mayflower, and Bay State, even after becoming a clear priority for the Biden Administration, have yet to receive a preliminary permitting timetable from federal agencies, even for those projects statutorily required to have a permitting timetable.

- Over the last few years, several exploration, copper, lithium, molybdenum, nickel, and other mineral projects essential for battery storage and EV deployment have been stalled by internecine squabbling among federal agencies and litigation. This includes a proposed road in Alaska that would have moved critical and "renewable energy" minerals from remote parts of the state to industrial centers.

- Several hydropower permits and operating authorizations have also been challenged in court, citing conflicting statutory and regulatory requirements among as many as 10 federal agencies.

Each of these examples—and there are hundreds more—points to the urgent need to repair the outdated and chaotic permitting system that keeps the country from meeting our growing infrastructure needs.

Most major U.S. infrastructure investments in energy, including wind, solar, hydrogen, carbon capture, hydro, and geothermal, as well as broadband, electricity transmission, oil and gas pipelines, supply chain port expansion, and export development are entirely supported by U.S companies and investors in the private sector. Energy and infrastructure investors require predictability and prompt decision making when putting capital at risk. Unfortunately, investors are too often treated as adversaries pitted against federal regulators rather than as partners in rebuilding our nation.

Despite bipartisan agreement that the country's permitting process is broken, outside stakeholders, each prioritizing their narrow interests, are inhibiting additional reforms. But there is a path forward.

Lawmakers should build on and expand the reforms enacted over the past decade. Perhaps the most notable accomplishment was the creation of the Federal Permitting Improvement Steering Council(FPISC), a voluntary program for project developers charged with identifying best practices andimplementing basic project management practices across 13 federal agencies. The extension of this Council is appreciated by TPI members. However, the FPISC dashboard currently hosts only 20 active multiyear projects of the largest and most complicated efforts in the country – a number that must grow substantially. FPISC's leadership, particularly Executive Director Christine Harada, is preparing the Council to grow. The Council has accepted 8 new projects in 2021, six wind farms, one solar project, one transmission line.

Additionally, thanks for the new bipartisan infrastructure bill, the "One Federal Decision" (OFD) framework enhances coordination among agencies with the goal of completing NEPA review in an average of two years for major surface transportation projects. Unfortunately, if a project doesn't meet the limited and precise FPISC or OFD criteria, coordinating support is limited. This reality leaves hundreds of developers proposing $600-$800 billion in new energy infrastructure suffering through the status quo. Currently, there are no new enacted reforms supporting these important projects.

TPI commends Congress for passing, and President Biden signing, bipartisan infrastructure legislation. However, the Administration is rescinding longstanding permitting efficiencies without proposing new rules help guide efficient permitting. The Administration must reverse course on this flawed approach.

These changes are resulting in extended delays and creating a chilling effect on new infrastructure investment. TPI members appreciate the sector specific and narrowly targeted permitting reforms included in the new infrastructure bill, but they still face growing confusion from the constantly evolving federal rules and reviews.

TPI is concerned that the dividends from 'build back better" are 7 to10 years away, at the earliest. That extended timeline does not account for permits challenged in court and shows the need for Congress to step up to the plate and fix the permitting process.

While we have not yet seen the specifics of the Phase II NEPA rulemaking the Administration plans to unveil later next year after Phase I is finalized early next year, our concern is that it will place renewable and traditional energy infrastructure and generation projects at great risk.

When combined with other new proposed rulemakings and regulatory actions previously listed, it is difficult to find the win for new transmission lines and pipelines, solar installation, wind buildout, broadband deployment, and the expansion of critical minerals production to provide domestic sourcing for the manufacturing supply chain for these projects.

Recent reforms have showed limited results in reducing average permitting timeframes. It is critical to note that those reduced average timeframes are just the tip of a massive permitting iceberg. They do not capture all associated phases of the project development life cycle, the years of early engagement prior to formally commencing review under NEPA, or the years that can follow the Record of Decision. In short, these reforms improved permitting processes but also illuminated how many more opportunities remain to address the root cause of permitting delays and obstruction.

The negative consequences of only addressing parts of the statutory and regulatory process in separate, mutually exclusive, reform exercises are easy to see. On average, project developers report that 20 to 30 percent of total project funding is wasted by delays. The resulting cost overruns create an enormous disconnect between the funding Congress provides and private sector invests, and the ultimate delivery of the infrastructure America needs.

The cost of these pauses and restarts are rarely considered by lawmakers but estimates of the financial impact for major energy infrastructure projects begin at $50 million per month in lost revenue. Add $32 million per month in lost retainers on heavy machinery, architects, engineers, and construction crews who either sit stagnant or are reassigned to active jobs. Finally, tack on another $50 million in annual costs as project sponsors adapt to shifting permitting goal posts

requiring additional studies and mid-project redesigns, broken contract penalties, interest on purchased materials along with financial consequence of delays. That cost is ultimately passed down to citizens, either through taxes, tolls, or increased rates and usage fees.

Greater efficiency DOES NOT mean fewer environmental protections. TPI is building a large coalition of diverse entities committed to a balance that respects the environment while increasing efficiency.

We are working with developers in every affected industry sector, officials at all levels of government, Tribes, non-government organizations, and community leaders to identify permitting "wins".

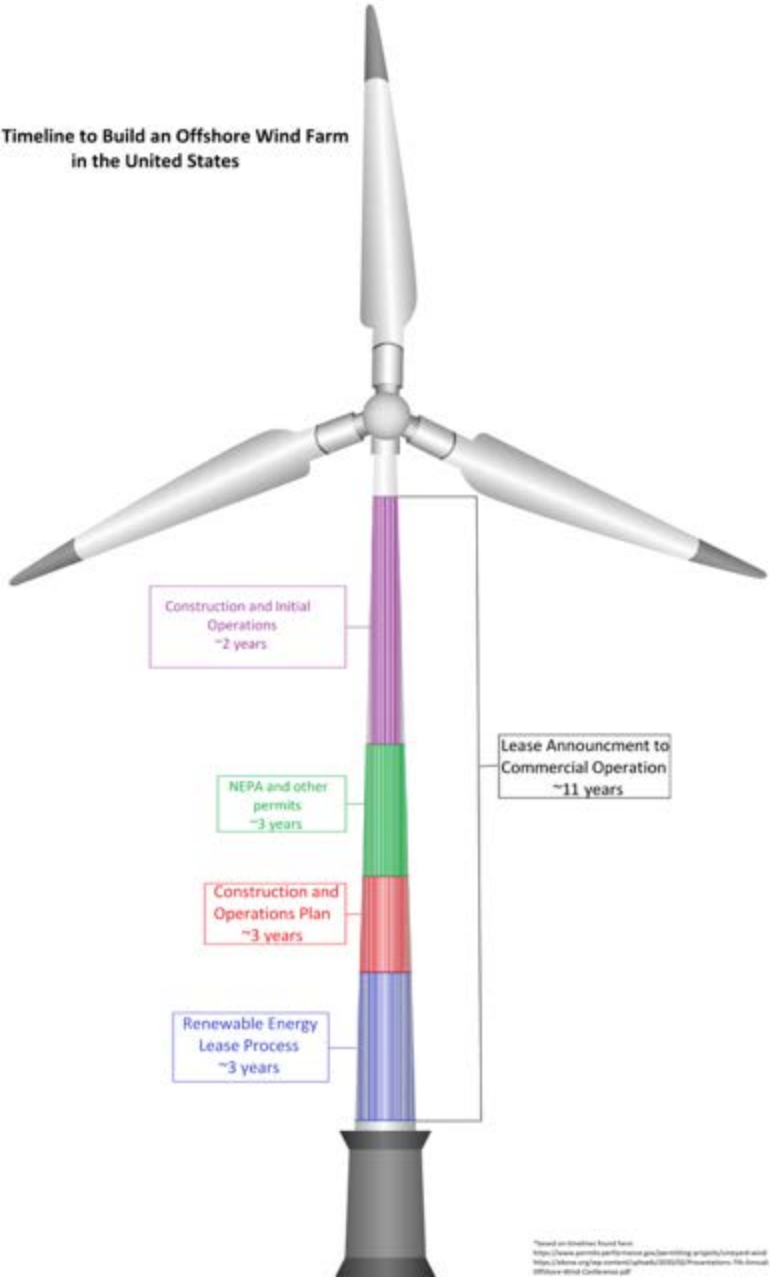
Congress can fix permitting problems by starting small with the creation of temporary initiatives to test new policies in the field under conditions ideal for compromise. One very achievable near-term step is to create a seven-year expedited permitting pilot program for a discrete list of the most critical projects, with focus on coordinating across all regulatory entities. Granting such an essential, yet temporary, new authority will create room to experiment with innovative and expedited permit authorizations. Outcomes can be scrutinized and studied by Congress for feasibility, then converted into more lasting reforms across all sectors.

Congress should also take a hard look at legislative reform initiatives such as the Builder Act, which clarifies the appropriate role for federal reviews at the state and local levels. To that end, TPI is working to expand the permitting-council model to state and tribal governments, emulating the success achieved in Arizona earlier this year. New state coordinating offices bridge the information and communication gap between state and federal regulators. States, local governments, and Tribes often have numerous overlapping permitting responsibilities and they are rarely coordinated efficiently. State, local, and tribal permitting requirements are often best addressed in the field where the project is located, equipped with critical firsthand knowledge andexpertise about local resources. State permitting councils will allow local governments to bring the federal government to the table early in the process.

To be clear, opportunities for progress are directly in front of us. The creation of FPISC and improvements offered in the "One Federal Decision" framework were just the first steps. Meaningful next steps to modernize and expand our energy infrastructure require that Congress enact comprehensive reforms that extend beyond NEPA to eliminate avoidable delays at all phases of a project.

A project development cycle of 7-to-10 years is simply too long. Working together, we can advance permitting reforms to build 21st Century infrastructure that safeguards communities, protects the environment and cultural resources, creates jobs, and brings prosperity to every corner of America.

Timeline to Build an Offshore Wind Farm in the United States



*based on timelines found here:
https://www.permits.performance.gov/permitting-projects/vineyard-wind
https://dlbrnz.org/wp-content/uploads/2020/02/Presentations_7th-Annual-Offshore-Wind-Conference.pdf

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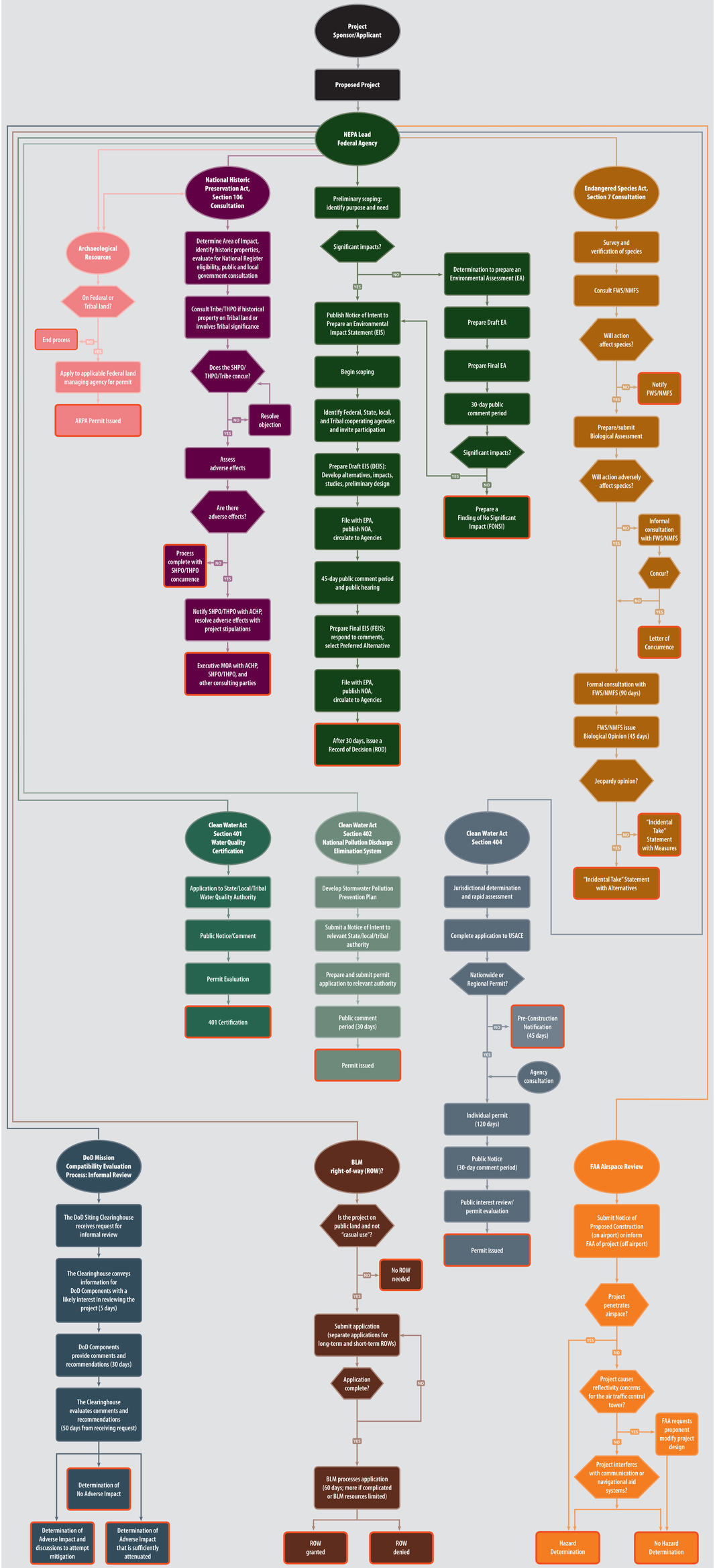
Federal Permitting Process Flowchart for a Solar Project Project



This flowchart shows required Federal permits/approvals that are included on the Permitting Dashboard.
This does not include state and local permits/approvals; however, the administration of some
Federal laws represented in this flowchart is delegated to state and/or local governments.

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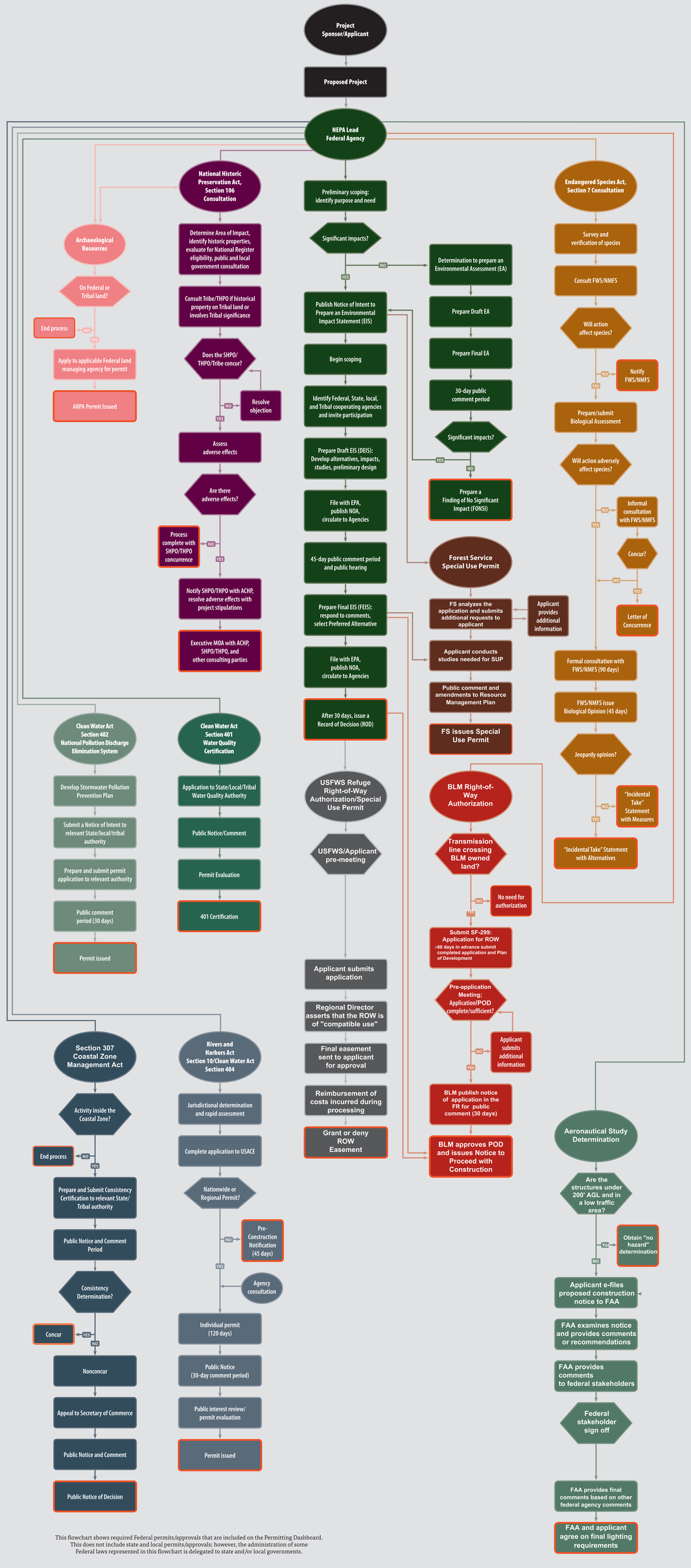
Federal Permitting Process Flowchart for a Transmission Project



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