# EIS 1NC

### EIS Counterplan 1NC

#### The United States federal government should initiate an environmental impact assessment regarding the consequences of

#### and adopt such a measure if, and only if, it meets compliance requirements under the National Environmental Policy Act.

#### The CP competes – binding EIS includes the option to not do the plan.

**Reddy 2008** (Bina – J.D. from the University Texas School of Law, Student Note Editors for the Texas Environmental Law Journal, associate at Beveridge & Diamond, P.C., The Hard Road: NEPA Review of the Trans-Texas Corridor After Sep-15 and SAFETEA-LU § 6005, p. Lexis-Nexis)

However, along with such lofty ambitions came very little substantive law with which agencies had to comply. NEPA laid out fairly bare-boned "action-forcing" provisions for meeting its goals. n45 For major federal actions significantly affecting the environment, NEPA requires the preparation of an environmental impact statement (EIS). The EIS provides a description of the proposed project, the existing environment, and an analysis of the anticipated beneficial and adverse environmental effects of the proposed project and all reasonable alternatives. One of these alternatives is required to be a "no-build" alternative. Preparation of the EIS is usually done in two stages, resulting in a draft (DEIS) and final EIS (FEIS). n46 The Federal Highway Administration (FHWA) and the Council on Environmental Quality (CEQ) have established through their regulations comprehensive procedures for highway compliance with NEPA. n47 Under these regulations, the traditional review process requires that before proceeding with final design, property acquisition, or construction, the FHWA must show compliance with all applicable state and federal environmental laws, including NEPA. n48 Three basic steps are involved: preparation of the EIS, evaluation and approval of the EIS, and construction. n49 In a typical scenario, a state DOT sponsors a highway project and prepares the DEIS. n50 A notice and comment [\*132] period is held, comments are evaluated, and the FEIS is prepared. n51 The U.S. Secretary of Transportation then independently evaluates and approves the state-prepared FEIS. n52 Once the Transportation Secretary approves the FEIS, the state can go forward with awarding a contract, and a private developer can begin construction. n53

#### EIS review of transportation projects is necessary to prevent severe environmental damage. The CP is modeled internationally and avoids politics.

**Lovaas**, 6/14/**2012** (Deron – Federal Transportation Policy Director for the Natural Resources Defense Council, Earth to Congress: We Need Environmental Stewardship not Streamlining, p. http://switchboard.nrdc.org/blogs/dlovaas/stewardship\_not\_streamlining.html)

I started by pointing out that these provisions being debated by Congress, especially in the House Republican transportation proposal, undermine the National Environmental Policy Act (NEPA), which requires that Federal agencies conduct environmental reviews to consider the potential impacts on the environment by their proposed actions for major projects that they fund, plan or issue permits for. These take time, and they should if they are to be thorough and accomplish their intended goal. One of the originators of the law (and one of my all-time heroes), former Washington Senator Henry "Scoop" Jackson, referred rightly to the statute as requiring a "**look before you leap" approach** when spending taxpayer dollars. Further, if the purpose of the policy is to reduce project delays, it's quite clear that environmental reviews are far from the only factors that may be time-consuming. There is a vast number of issues that can cause hold ups—financing being a major one in this current economic climate, and local controversies and sheer project complexity creating drag. So if reducing project delays is the name of the game, tools other than broad legislative changes that invite unintended consequences such as one-size-fits-all deadlines, imperious default approval of projects or limits on alternatives review should be considered. And, as I've said many times before, states and the federal government need to perform more robust statistical analysis of project delays and not rely wholly on anecdotal evidence. The National Environmental Policy Act (NEPA), which took effect in 1970, requires that federal agencies study and disclose the environmental effects of their actions and include the public in the decision-making process for federally funded projects. In the last 42 years it has made a big difference in reducing the harmful social, economic and environmental effects of federal actions in transportation. NEPA has since been copied – at differing degrees of faithfulness – by most states and 83 nations (\*correct number is actually 160 nations--thanks to a friendly reader who caught this mistake) It is a means, not an end, to better objective management of projects based on their effects. The law also created a Council on Environmental Quality, and required that environmental impact statements be prepared for major federal actions having a significant effect on the environment. Thanks to this important law, countless projects that would have had significant harmful effect on the environment have either been avoided or completed with lower environmental impact. A few examples are: The I-70 in Colorado—initial plans for the Glenwood Canyon section included blasting through mountains, adding artificial supports, and channeling the Colorado River. A citizen’s advisory committee, with better local knowledge than larger government agencies and bureaucracies, recognized the serious impact of the proposed plan. Thanks in large part due to NEPA’s procedural protections, the committee became an active part of the process. The result is a 12.5-mile stretch of highway with lower environmental impacts, the addition of rest stops, bike and jogging paths and rafting support. I have driven this stretch of highway, and hiked up to a beautiful park abutting the highway, fittingly called "Hanging Lake," which would have been destroyed under the first highway design. In the mid-90’s, the Michigan Department of Transportation (MDOT) was pushing for a four-lane freeway parallel to an existing two-lane highway at a cost of $1.5 billion. It would have damaged habitats, forests, wetlands, and rivers. The adjacent community was against the expansion and in favor of upgrading the existing road. After reviewing MDOT’s Environmental Impact Statement (EIS,) the Federal Highway Administration (FHWA) saw that MDOT did not **review alternatives** to the expensive new freeway. Thus, while it did add to the delay, they required MDOT to go back and look at these alternatives. In the end, the upgrade was completed instead of building an entire new freeway, saving a great deal of taxpayer money and reducing environmental damage. The North Carolina Department of Transportation failed to do an adequate EIS for the Monroe Bypass Project in 2006. When challenged in court, the agency and FHWA admitted that the no-build alternative considered as part of the Metropolitan Planning Organization’s modeling actually included a toll road in question. The agency went back to the drawing board to perform a credible alternatives analysis. If the proposed “streamlining” provisions were in place, or if NEPA had been weakened, these examples would have been cautionary tales, instead of proof the process is working. Colorado may have gone with the ugly and destructive through-the-mountain route without having to consider alternatives; Michigan may have moved forward with what Friends of the Earth deemed as **one of the “Fifty Most Wasteful Roads in America**;” and if North Carolina’s DOT was up against streamlining deadlines, they may have gotten away with misleading and faulty modeling scenarios. Scapegoating environmental reviews as the reason projects are delayed is not helpful for getting new transportation investments. The public supports a balanced approach to investments, and environmental advocates support **more infrastructure investment**.

#### Biodiversity loss risks extinction

**Walsh 10** [Bryan, covers environment, energy and — when the need arises — particularly alarming diseases for TIME magazine, Wildlife: A Global Convention on Biodiversity Opens in Japan, But Can It Make a Difference? October 18, 2010 http://ecocentric.blogs.time.com/2010/10/18/wildlife-a-global-convention-on-biodiversity-opens-in-japan-but-can-it-make-a-difference/#ixzz131wU6CSp]

The story of non-human life on the planet Earth over the past few decades is a simple one: **loss**. While there are always a few bright spots—including the recovery of threatened animals like the brown pelican, thanks to the quietly revolutionary Endangered Species Act—on a planetary scale biodiversity is **steadily marching backwards**, with extinctions rising and habitat destroyed. Species as diverse as the tiger—less than 3,500 live in the wild today—to tiny frogs could be gone forever if the trends **keep heading downwards**. In a bitterly ironic twist, back in 2002 the United Nations declared that 2010 would be the international year of biodiversity, and countries agreed to" achieve a significant reduction of the current rate of biodiversity loss at the global, regional and national level," as part of the UN Convention on Biological Diversity (CBD). At this paper in Science shows (download a PDF here), however, the world has utterly failed to reduce the rate of biodiversity loss, and by just about every measurement, **things are getting worse all the time**. (Read the Global Biodiversity Outlook if you really want to be depressed.) With that cheery backdrop, representatives from nearly 200 nations are meeting in the Japanese city of Nagoya—home to Toyota and not a whole lot else—for the 10th summit of the CBD, where they will set new goals for reducing species loss and slowing habitat destruction. At the very least, they should know how critical the biodiversity challenge is—as Japanese Environment Minister Ryo Matsumoto said in an opening speech: **All life on Earth** exists thanks to the benefits from biodiversity in the forms of fertile soil, clear water and clean air. **We are now close to a 'tipping point'** - that is, we are about to reach a threshold beyond which biodiversity loss will become **irreversible**, and may cross that threshold in the **next 10 years** if we do not make proactive efforts for conserving biodiversity. Ahmed Djoghlaf, the executive secretary of the CBD, struck an even darker note, reminding diplomats that they were on a clock—and time was running out: Let's have the courage to look in the eyes of our children and admit that we have failed, individually and collectively, to fulfil the Johannesburg promise made by 110 heads of state to substantially reduce the rate of loss of biodiversity by 2010. Let us look in the eyes of our children and admit that we continue to lose biodiversity at an unprecedented rate, thus mortgaging their future. But what will actually come out of the Nagoya summit, which will continue until Oct. 29? Most likely there will be another agreement—a new protocol—outlining various global strategies on sustaining biodiversity and goals on slowing the rate of species loss. (You can download a PDF of the discussion draft document that will be picked over at Nagoya.) It won't be hard for governments to agree on general ambitions for reducing biodiversity loss—who's against saving pandas?—but the negotiations will be much trickier on the question of who will actually pay for a more biodiverse planet? And much as we've seen in international climate change negotiations, the essential divide is between the developed and developing nations—and neither side seems ready to bend. The reality is that much of the world's biodiversity—the most fantastic species and the most complete forests—is found in the poorer, less developed parts of the world. That's in part because the world's poor have been, well, too poor to develop the land around them in the way rich nations have. (There was once a beautiful, undeveloped island off the East Coast of the U.S., with wetlands and abundant forests. It was called Mannahatta. It's a little different now.) As a result, the rural poor—especially in tropical nations—are directly dependent on healthy wildlife and plants in a way that inhabitants of developed nations aren't. So on one hand that makes the poor directly vulnerable when species are lost and forests are chopped down—which often results in migration to thronging urban areas. But on the other, poverty often drives the rural poor to slash-and-burn forests for agriculture, or hunt endangered species to sell for bush meat. Conservation and development have to go hand in hand. That hasn't always been the mantra of the conservation movement—as Rebecca Tuhus-Dubrow writes in Slate, conservation projects in the past sometimes displaced the human inhabitants over a reserve or park, privileging nature over people. But that's changed in recent decades—environmental groups like Conservation International or the Nature Conservancy now spend as much of their time working on development as they do in protecting nature. "Save the people, save the wildlife"—that's the new mantra. The missing ingredient is money—and that's what will be up for debate at Nagoya. As climate change has risen on the international agenda, funding for biodiversity has lagged—the 33 member nations of the Organization for Economic Co-operation and Development (OECD) donated $8.5 billion for climate change mitigation projects in 2008, but just $3 billion annually for biodiversity. One way to change that could be through "payment for ecosystem services." A biodiverse landscape, intact forests, clean water and air—all of these ebbing qualities of a healthy world are vital for our economies as well. (The Economics of Ecosystems and Biodiversity, a UN-funded study, estimates that nature degradation costs the world $2 trillion to $5 trillion a year, with the poorest nations bearing the brunt of the loss.) Rich countries could pay more biodiverse developing nations to keep nature running—allowing poorer countries to capitalize on their natural resources without slashing and burning. Will that work? I'm skeptical—the experience of climate change negotiations have shown that the nations of the world are great at high ideals and fuzzy goals, but not so hot at actually dividing up the pie in a more sustainable fashion. That doesn't mean there aren't smaller solutions—like Costa Rica's just-announced debt-for-nature deal—but a big bang from Japan this month doesn't seem too likely. The problem is as simple as it is unsolvable, at least so far—there's no clear path to national development so far that doesn't take from the natural world. That worked for rich nations, but we're rapidly running out of planet, as a report last week from the World Wildlife Fund showed. And there's something greater at stake as well, as the naturalist E.O. Wilson once put it: The one process now going on that will take **millions of years to correct** is the loss of genetic and species diversity by the destruction of natural habitats-this is the folly our descendants are least likely to forgive us. **We're losing nature**. And **that loss really is forever.**

## Solvency

### Say Yes – Generic

#### EIS results in the plan --- not affected by delay.

**Reddy 2008** (Bina – J.D. from the University Texas School of Law, Student Note Editors for the Texas Environmental Law Journal, associate at Beveridge & Diamond, P.C., The Hard Road: NEPA Review of the Trans-Texas Corridor After Sep-15 and SAFETEA-LU § 6005, p. Lexis-Nexis)

However, the perception that NEPA is the primary culprit for delay is not a forgone conclusion. In a 2000 FHWA study, 61 percent of participants listed lack of funding, low priority, local controversy (unrelated to environmental issues), or complexity as the primary source of delay. n67 Moreover, judicial review of final agency action is very deferential. Therefore, the risk of a court issued injunction based on final DOT approval is unlikely. n68

### Solvency – AT: Delay

#### Delays inevitable – EIS do not add to the delays inherent in transportation infrastructure

**Plumer**, 2/3/**2012** (Brad – reporter for the Washington Post, Is this duck delaying your highway?, Wonkblog at the Washington Post, p. http://www.washingtonpost.com/blogs/ezra-klein/post/is-this-duck-delaying-your-highway/2012/02/02/gIQAeAf6mQ\_blog.html)

To hear some Republicans tell it, pesky environmental rules are a major reason why it takes so long to build highways and bridges. That’s why the GOP’s transportation bill would speed up reviews for various projects. But is this theory true? The evidence, it turns out, is hard to come by. For starters, according to a Congressional Research Service report from August, only about 4 percent of federal highway projects require an Environmental Impact Statement from federal agencies. (Since these tend to be the largest, costliest projects, they make up about 15 percent of all spending.) And it’s true that many of those projects are often delayed — but from what evidence is available, that’s usually **not because environmental groups are complaining** about wetlands or endangered species or excessive sprawl. In 2000, the Federal Highway Administration conducted a survey of 89 large projects that had suffered long delays, and found that just 19 percent were bogged down due to environmental concerns (resource agency review, endangered species, or wetlands). The vast majority of the projects were delayed because of lack of funding or because they were a low priority for the state (32.5 percent), because of a local controversy (16 percent) or because the project was simply very complex or had shifted in scope (21 percent). Another 2005 study focused on Oregon found that environmental concerns were **not a major source of delay** — and that “efforts to streamline the process may not alter overall timelines.”

#### EIS does not cause delay --- other factors are more important.

**Deacon 2003** (Whitney – member of the Association of Women Lawyers of Greater Kansas City, The Bush Administration’s Attack on the Environment; Target: Nepa’s Environmental Impact Statement, Missouri Environmental Law & Policy Review, p. Lexis)

Are These Criticism's Founded?

NEPA may be getting more blame than it deserves. n86 One study suggests that 92 percent of transportation projects are excluded from conducting environmental assessments or environmental impact statements because they fall within a categorical exclusion. n87 Additionally, a study by the Federal Highway Administration found that out of projects delayed for over five years, sixty-two percent of those projects were delayed due to lack of money, low priority from the agencies themselves, opposition in local communities, the intricacy of the project, n88 or changing or expanding the scope of the project. n89 It is not the environmental laws that are causing the delays. n90 In fact, only two percent of highway construction projects are required to do the full EIS. n91

#### EIS is fast --- multiple measures guarantees quick implementation.

**Lawrence 2003** (David Philip – Governance Director at Diageo Global Procurement, Environmental Impact Assessment; Practical Solutions to Recurrent Problems, p. 251)

EIA Expediting and Focusing Approaches All four jurisdictions have sought to focus on proposals likely to induce significant impacts and on significant impacts resulting from proposed actions. They also have strived to expedite the preparation and review of documents and the implementation of requirements. Screening procedures focus the system on significant proposals. Different types of assessment, class and categorical assessments, and separate requirements for minor projects address variations in degrees of significance among proposed actions. Scoping and significance requirements, procedures, and guidelines enable EIA systems to zero-in on significant impacts. Time limits, suggested timelines, document circulation limits, quick-test EIA triggers, and accelerated project planning reduce the likelihood of delays or extended timelines. Checklists, electronic registries, and clearly defined standards and performance criteria accelerate the review process. Page limits, combined documents, tiering, cross-referencing and document content, style, summary, and appendix requirements reduce unnecessary paperwork. Studies of EIA costs and competitiveness and valuation, pricing, and incentive mechanisms address the overall efficiency of the EIA system.

### Solvency – Airports 2NC

#### EIS will say yes --- avoids delays and solves the environmental harm.

**Berger**, Fall **2003** (Jeffrey – judicial clerk for the Honorable Karen Nelson Moore of the Sixth Circuit, False Promises: NEPA’s Role in Airport Expansions and the Streamlining of the Environmental Review Process, Journal of Environmental Law and Litigation, p. Lexis)

The caselaw demonstrates that the FAA has a phenomenal track record of overcoming judicial review of NEPA compliance because of the four points of analysis highlighted above. According to the outcomes of cases decided under a highly deferential standard of review, the FAA prepares most of its EISs properly, which implies that the FAA has learned how to navigate the NEPA process with some dexterity. It is thus not clear that NEPA suits truly slow down the expansion projects desperately needed for the efficient development of the air transportation system and neither Bush's Order nor Congress's legislation provide any causal proof of such a slowdown. Additionally, a majority of the cases affirm an FAA FONSI and thus preclude the preparation of an EIS altogether, speeding up the process even further. Furthermore, not every EIS for an airport expansion is automatically challenged. Of the twenty-three Records of Decision (EAs and EISs) filed for airport expansion projects by the FAA since 1996, only 10 have been challenged. n178 This may reflect the recognition by expansion opponents that the expenses of a NEPA claim are unlikely to yield substantial gains and may signal their disinterest in NEPA claims relative to other avenues for halting airport growth. The caselaw analysis thus seems to tilt in favor of the benign story: NEPA is doing its job to infuse environmental considerations, albeit incrementally, into the process. The FAA generally complies with NEPA's requirements, with some glaring failures and other subtle shortcuts, because it has learned to play the game and to evaluate environmental factors in a manner that eludes judicial condemnation. This portrait of judicial review, when combined with the lack of evidence that the EA or EIS process drastically extends airport development timelines, undercuts the claim that streamlining will hasten the slow [\*317] pace of development at our nation's airports. Since the courts are reluctant to overturn the FAA's decisions absent a clear arbitrary and capricious act, which is hard to come by, the question remains: Why do we need to streamline a process that already seems to minimize environmental considerations and that does not seem to limit or decelerate airport expansion?

#### An environmental impact statement checks the negative environmental effects of airport expansion. EIS will say yes to the plan.

**Berger**, Fall **2003** (Jeffrey – judicial clerk for the Honorable Karen Nelson Moore of the Sixth Circuit, False Promises: NEPA’s Role in Airport Expansions and the Streamlining of the Environmental Review Process, Journal of Environmental Law and Litigation, p. Lexis)

The preparation of the EA is an intermediate, but crucial step. Judicial laxity in the enforcement of EA regulations could result in airport expansions that have significant environmental ramifications slipping through the NEPA cracks without any EIS analysis. The cases demonstrate that regardless of whether the courts apply a reasonableness or an arbitrary and capricious standard of review, most FONSIs concerning minor airport expansions are deemed adequate so long as the FAA conducts some limited research and assesses the impacts of the actions in some fashion, even though the issuance of multiple FONSIs for one project may conceal a piecemeal attempt to engage in a significant federal action without preparing an EIS. The threshold for what qualifies as an acceptable EA is thus fairly low and the EA aspect of the NEPA process is unlikely to hinder airport expansions in any significant fashion. G. The EIS Process Similar to its successes in litigating EAs, the FAA rarely loses in the EIS process, partially because the deferential standard of review purposefully tilts the balance in the FAA's favor. n121 However, given that an EIS is only prepared when the FAA has determined that an expansion activity will have a significant [\*305] environmental impact, the EIS is expected to discuss the impacts and alternatives in more depth than the EA. In reviewing FAA EISs, courts have resolved issues of: who prepares the EIS; how the FAA generates and evaluates the comparison of alternatives; and the FAA's consideration of both direct and cumulative/secondary impacts.

### Say Yes – Airports – AT: Delay

#### NEPA review will not delay or disrupt airport infrastructure development.

**Berger**, Fall **2003** (Jeffrey – judicial clerk for the Honorable Karen Nelson Moore of the Sixth Circuit, False Promises: NEPA’s Role in Airport Expansions and the Streamlining of the Environmental Review Process, Journal of Environmental Law and Litigation, p. Lexis)

This analysis of the NEPA case law in the realm of airport expansions yields four main points that help frame the ensuing discussion of how "streamlining" NEPA will not speed up the airport expansion process. First, the intersection of NEPA and airport expansion projects demonstrates that little in the case law portrays NEPA as an effective disrupter of airport expansion projects. While every review of a categorical exclusion, a FONSI, or an EIS boils down to an examination of the facts and circumstances surrounding the expansion project, the FAA's success rate in winning NEPA cases, although uncanny, should not be surprising. NEPA serves its barebones role as a procedural constraint because it forces airport proprietors and the FAA to consider environmental consequences by taking a "hard look" at [\*315] the ramifications of an expansion project, but it does little else. Even if a project has dire environmental repercussions, the FAA will not violate NEPA by granting approval if it can demonstrate that the benefits to the national air transportation system outweigh the environmental costs associated with expansion. In sum, NEPA does not provide much of a barrier to FAA approval of airport expansion projects. Approval will be granted so long as the FAA can provide some level of evidence backing its decision even if there is scientific disagreement with its conclusions.

### Solvency – Ports

#### NEPA compliance is key to avoid the environmental impacts as a result of the plan

**IWR 12** (Institute for Water Resources, US Army Corps of Engineers, 6/20/12, "US Port and Inland Waterways Modernization: Preparing for Post-Panamax Vessels," http://www.iwr.usace.army.mil/docs/portswaterways/rpt/June\_20\_REPORT\_SUMMARY\_U.S.\_Port\_and\_Inland\_Waterways\_Modernization.pdf)

Since the 1970s, compliance with the National Environmental Policy Act (NEPA), Clean Water Act, Endangered Species Act (ESA) and other regulatory law has greatly reduced the adverse environmental impacts of many previous practices and positively transformed social attitudes toward the environment. Due to these changes in national commitments, future modernization actions that would have significant adverse impacts will be mitigated, often at great expense, and will play an important role in modernization decisions. In this section, the “environmental footprint” caused by the transportation system is first described to help identify the potential for future environmental impact and mitigation needs. Then indicators of potential impact sources and vulnerabilities are compared to determine which regions may require the most impact mitigation as a consequence of modernization. 3 The national footprint of adverse environmental impacts has accumulated over many decades and is not indicative of the present rate of adverse impact, which is much improved. Measured in geographical terms, the environmental footprint directly impacted by development of transportation system infrastructure is a small fraction of the conterminous United States. But the degree of adverse impact on natural systems and wild species of public interest has been particularly intense and the offsite impacts on air, water and habitat quality from systems operations have been far reaching. The sources of past environmental effects indicate the type of future modernization impacts that are likely to occur from expansion of harbor, port and intermodal infrastructure and from transportation systems operations. Modernization will need to be accompanied by justified mitigation to avoid further 1) degraded air and water quality that threatens human health and safety, especially of low income and minority groups; 2) loss of important natural and cultural heritage found in parks, refuges, wetlands and scarce species; or 3) loss of recreational, commercial and other economically important resources. Potential infrastructural development along coasts and waterways is a concern because coastal ports and inland waterway infrastructure is closely associated with two of the scarcest types of ecosystems—free flowing rivers and estuarine wetlands. Lock and dam impoundments have contributed substantially to the imperilment of numerous freshwater species by reducing free-flowing river habitat. In general, dredging of nontoxic bottoms impacts coastal and riverine benthic organisms temporarily and bottoms typically recolonize quickly following disturbance. In the past, about 10 percent of bottom sediments were contaminated with toxic materials and resistant to colonization by some bottom species. Sediment toxicity directly affects bottom species and indirectly affects the fish and other species that feed on them and humans at the end of the food chain. Contaminated sediments are now disposed of in isolated containment areas. In 1992, USACE was authorized to beneficially use dredge material for environmental improvement. Today about 20 to 30 percent of port and waterway dredged material is used for habitat creation and other beneficial use. But dredging also has had some persistent effects, including some unavoidable take of imperiled species (e.g., sea turtle take is about 35 per year) and damage to shallow-water estuarine ecosystems. Deepening coastal navigation channels can also favor destructive saltwater intrusion into freshwater ecosystems and domestic water supplies. With respect to operations, future emissions of potentially harmful materials into air and water, including green house gasses, also are a significant environmental concern. Because harbors concentrate transportation system operations in densely populated areas, they remain a significant source of air quality degradation and inequitable impact on low income and minority groups (which is inconsistent with Federal policies pertaining to environmental justice). Trucks contribute much more than any other mode to atmospheric emissions. In general, relying more on oceanic shipment by large vessel and inland shipment by train and waterway in place of truck transport is preferred because trucks are so much less fuel and emissions efficient. Ports have made improvements to reduce emissions and are planning more, consistent with social concerns. As freight transport operations increase, accidents may increase. Accidental collision of whales and other marine mammals with vessels approaching and leaving ports has been a significant mortality source, but may moderate with recent speed restrictions. Potential oil and other contaminants spills are associated with all modes.

### Solvency – Railroads

#### Railroad construction causes massive environmental damage --- EIS review is key.

**Eldredge**, Spring **2004** (Maureen – Candidate for Juris Doctor at the University of Colorado, Who’s Driving the Train? Railroad Regulation and Local Control, University of Colorado Law Review, p. Lexis)

2. NEPA Review Under the STB

Construction of new rail lines can have significant environmental impacts from both the construction itself and from disturbance of **ecologically important areas such as wetlands**, that a line may cross. For this reason, the STB's granting of a license for new rail line construction or operation is considered a major "federal action" that triggers review under the National Environmental Policy Act (NEPA). n73 NEPA is a federal [\*561] statute that requires environmental impact statements (EIS) or environmental assessments (EA) whenever there is a major federal action that impacts the environment. n74 Railroad activities outside the STB's licensing jurisdiction are not considered major federal actions, so are not subject to NEPA and do not require an environmental review. This determination is based on the legal classification of the activities, not on the size or environmental impact of such projects, which can be significant. In various opinions the STB has determined that it is able to demand NEPA compliance only for projects and facilities that require a federal license, such as line extensions, new lines, and acquisition of lines by non-rail carriers. n75 Those projects outside STB licensing jurisdiction are considered "ancillary" to railroad operations. They can include transfer facilities, weigh stations, and even line upgrades involving substantial construction. n76 The STB believes that such ancillary facilities, not within its licensing jurisdiction, are nevertheless still exempt from state and local regulatory control.

## Environment Net Benefit

### 2NC Impact Overview

#### Environmental collapse outweighs –

#### Collapse causes irreversible extinction --- that’s Walsh 2010.

#### The aff doesn’t access extinction –

#### Nuclear war won’t escalate – first use will end in conflict resolution

**Quinlan 1997** (Michael – under-secretary of state for defense, Thinking About Nuclear Weapons, p. 31)

There are good reasons for fearing escalation: the confusion of war; its stresses, anger, hatred, and the desire for revenge; reluctance to accept the humiliation of backing down; perhaps the temptation to get further blows in first. Given all this, the risks of escalation—which Western leaders were rightly wont to emphasise in the interests of deterrence—are grave. But this is not to say that they are virtually certain, or even necessarily odds-on; still less that they are so for all the assorted circumstances in which the situation might arise, in a nuclear world to which past experience is only a limited guide. It is entirely possible, for example, that the initial use of nuclear weapons, breaching a barrier that has held since 1945,might so appall both sides in a conflict that they recognised an overwhelming common interest in composing their differences. The human pressures in that direction would be very great. Even if initial nuclear use did not quickly end the fighting, the supposition of inexorable momentum in a developing exchange, with each side rushing to overreaction amid confusion and uncertainty, is implausible; it fails to consider what the decision-makers' situation would really be. Neither side could want escalation; both would be appalled at what was going on; both would be desperately looking for signs that the other was ready to call a halt; both, given the capacity for evasion or concealment which modern delivery systems can possess, could have in reserve ample forces invulnerable enough not to impose `use or lose' pressures. As a result, neither could have any predisposition to suppose, in an ambiguous situation of enormous risk, that the right course when in doubt was to go on copiously launching weapons. And none of this analysis rests on any presumption of highly subtle, pre-concerted or culture-specific rationality; the rationality required is plain and basic.

#### Even if it does, no extinction.

**Nyquist**, 5/20/**1999** (J.R. – contributing editor and author of Origins of the Fourth World War, Is Nuclear War Survivable, p. http://www.antipas.org/news/world/nuclear\_war.html)

The truth is, many prominent physicists have condemned the nuclear winter hypothesis. Nobel laureate Freeman Dyson once said of nuclear winter research, “It’s an absolutely atrocious piece of science, but I quite despair of setting the public record straight.” Professor Michael McElroy, a Harvard physics professor, also criticized the nuclear winter hypothesis. McElroy said that nuclear winter researchers “stacked the deck” in their study, which was titled “Nuclear Winter: Global Consequences of Multiple Nuclear Explosions” (Science, December 1983). Nuclear winter is the theory that the mass use of nuclear weapons would create enough smoke and dust to blot out the sun, causing a catastrophic drop in global temperatures. According to Carl Sagan, in this situation the earth would freeze. No crops could be grown. Humanity would die of cold and starvation. In truth, natural disasters have frequently produced smoke and dust far greater than those expected from a nuclear war. In 1883 Krakatoa exploded with a blast equivalent to 10,000 one-megaton bombs, a detonation greater than the combined nuclear arsenals of planet earth. The Krakatoa explosion had negligible weather effects. Even more disastrous, going back many thousands of years, a meteor struck Quebec with the force of 17.5 million one-megaton bombs, creating a crater 63 kilometers in diameter. But the world did not freeze. Life on earth was not extinguished. Consider the views of Professor George Rathjens of MIT, a known antinuclear activist, who said, “Nuclear winter is the worst example of misrepresentation of science to the public in my memory.” Also consider Professor Russell Seitz, at Harvard University’s Center for International Affairs, who says that the nuclear winter hypothesis has been discredited. Two researchers, Starley Thompson and Stephen Schneider, debunked the nuclear winter hypothesis in the summer 1986 issue of Foreign Affairs. Thompson and Schneider stated: “the global apocalyptic conclusions of the initial nuclear winter hypothesis can now be relegated to a vanishingly low level of probability.” OK, so nuclear winter isn’t going to happen. What about nuclear fallout? Wouldn’t the radiation from a nuclear war contaminate the whole earth, killing everyone? The short answer is: absolutely not. Nuclear fallout is a problem, but we should not exaggerate its effects. As it happens, there are two types of fallout produced by nuclear detonations. These are: 1) delayed fallout; and 2) short-term fallout. According to researcher Peter V. Pry, “Delayed fallout will not, contrary to popular belief, gradually kill billions of people everywhere in the world.” Of course, delayed fallout would increase the number of people dying of lymphatic cancer, leukemia, and cancer of the thyroid. “However,” says Pry, “these deaths would probably be far fewer than deaths now resulting from ... smoking, or from automobile accidents.” The real hazard in a nuclear war is the short-term fallout. This is a type of fallout created when a nuclear weapon is detonated at ground level. This type of fallout could kill millions of people, depending on the targeting strategy of the attacking country. But short-term fallout rapidly subsides to safe levels in 13 to 18 days. It is not permanent. People who live outside of the affected areas will be fine. Those in affected areas can survive if they have access to underground shelters. In some areas, staying indoors may even suffice. Contrary to popular misconception, there were no documented deaths from short-term or delayed fallout at either Hiroshima or Nagasaki. These blasts were low airbursts, which produced minimal fallout effects. Today’s thermonuclear weapons are even “cleaner.” If used in airburst mode, these weapons would produce few (if any) fallout casualties.

### Environment NB – Solvency

#### EIS is deters harmful environmental practices

**Karkkainen**, May **2002** (Bradley – Associate Professor at Columbia Law School, Toward a Smarter: NEPA: Monitoring and Managing Government’s Environmental Performance, Columbia Law Review, p. Lexis-Nexis)

First, of course, the EIS is necessary as a background threat to induce agencies to undertake serious efforts at reducing environmental impacts below the EIS triggering threshold of "significance." Nor is this an empty threat. The enhanced monitoring and reporting requirements recommended by this Article would contribute to greater transparency in the FONSI/mitigated FONSI process, better enabling environmental NGOs and other "watchdog" groups to identify and mount legal challenges to suspect findings of "no significant impact," and thereby to police agency abuses of the statutory standard. The availability of the EIS as a remedy, coupled with citizen suits, makes the proposals offered here enforceable, and potentially largely self-enforcing. Second, some projects and programs truly do have "significant" environmental consequences. Major infrastructure projects like highways, dams, airports, and port improvements, for example, often result in environmental impacts of major scale, scope, and intensity, and may involve irretrievable commitments of resources - along with environmental consequences that may be practically irreversible. In such cases, an EIS should be performed because it is important to know as much as possible about the adverse environmental effects. Indeed, when environmental impacts are of great magnitude and are potentially irreversible, we might want to know more than the standard EIS would tell us. The proposals advanced in this Article address that goal as well, by requiring postproject monitoring of any predicted but uncertain effects. The information generated by this monitoring would support implementation of any adaptive mitigation measures that might be identified or later become available, and contribute to better informed decisionmaking in subsequent rounds involving similar projects. [\*948] Third, at the margins, the cost and administrative burden associated with producing a full scale EIS - **coupled with the political fallout** that might ensue - should serve to deter agencies from moving forward with projects that will unavoidably produce severe environmental impacts. From an environmentalist's perspective, that in itself might be regarded as a desirable outcome.

#### Only the CP solves by altering the implementation of the plan to avoid the environment turns.

**Plumer**, 2/3/**2012** (Brad – reporter for the Washington Post, Is this duck delaying your highway?, Wonkblog at the Washington Post, p. http://www.washingtonpost.com/blogs/ezra-klein/post/is-this-duck-delaying-your-highway/2012/02/02/gIQAeAf6mQ\_blog.html)

Deron Lovaas, transportation policy director for the Natural Resources Defense Council, warns that the bill could lead to projects that move ahead before proper vetting. “You open the door to faster paving,” he told me, “but that could lead to **serious problems** if you then have a neighborhood or community that’s not happy with the project.” What’s more, there’s the risk that states with lax environmental laws could push forward projects that end up being quite damaging to local wildlife or wetlands or water quality or so forth. (The Sierra Club has compiled a dossier of road projects over the years that were successfully altered thanks to environmental review and public input to include wildlife corridors or to limit sprawl or to avoid disrupting scenic areas.)

#### Transportation projects destroy biodiversity.

**Reddy 2008** (Bina – J.D. from the University Texas School of Law, Student Note Editors for the Texas Environmental Law Journal, associate at Beveridge & Diamond, P.C., The Hard Road: NEPA Review of the Trans-Texas Corridor After Sep-15 and SAFETEA-LU § 6005, p. Lexis-Nexis)

A project of the scale of the TIC will naturally have a **substantial environmental impact**. Transportation projects, and highways in particular, bring about their own unique array of environmental hazards. Many of the major environmental problems that the United States faces today, including air pollution, water pollution, excessive energy use, fragmented farmlands and habitat, wildlife and biodiversity losses, and community disruption, result, at least in part, from our massive highway systems. n38 Related concerns are about the ways that road building determines land use and encourages urban sprawl. Roads and parking consume urban space, homes and businesses move outward, more roads are built, and the process repeats itself slowly changing forests, ranches, farms, and recreational areas into development. n39 The actual processes involved in constructing a highway have tremendous environmental ramifications as well. n40 With such far reaching effects, it is not a surprise that over thirty federal environmental laws and regulations are triggered in the construction of a major federally funded highway project. n41

### Environmental Leadership 2NC

#### Environmental leadership is results in global protections --- prevents extinction.

**Harris 2001** (Paul G. – Lecturer at Lignan University, Associate Fellow at Oxford Center for Environment, Ethics, and Society at Mansfield College at Oxford University, The Environment, International Relations, and U.S. Foreign Policy, p. 241-242)

In addition to promoting U.S. global interests, a more robust acceptance by the U.S. government of international equity as an objective of global environmental policy—and indeed of foreign policy generally—has potentially beneficial implications for humankind. Implementation of the equity provisions of international environmental arrangements may reduce human suffering by helping to prevent changes to local, regional, and global environmental commons that would adversely affect people, most notably the many poor people in the economically developing countries who are least able to cope with environmental changes. Insofar as environmental protection policies focus on sustainable economic development, human suffering may be mitigated as developing countries—especially the least-developed countries—are aided in meeting the basic needs of their citizens. Economic disparities within and between countries are growing. At least one-fifth of the world’s population already lives in the squalor of absolute poverty.59 This situation can be expected to worsen in the future. If this process can be mitigated or reversed by international policies focusing on environmentally sustainable economic development, human well-being on a global scale will rise. ‘What is more, international cooperative efforts to protect the environment that are made more likely and more effective by provisions for international equity will help governments protect their own environment and the global environment if they are successful. Insofar as the planet is one biosphere—that it is in the case of ozone depletion and climate change seems indisputable-persons in every local and national community are simultaneously members of an interdependent whole. Most activities, especially widespread activities in the United States and the rest of the industrialized world, including the release of ozone-destroying chemicals and greenhouse gases, are likely to adversely affect many or possibly all persons on the planet. Efforts to prevent such harm or make amends for historical harm (i.e., past pollution, which is especially important in these examples because many pollutants continue doing harm for years and often decades) require that most communities work together. Indeed, affluent lifestyles in the United States, ‘Western Europe, and other developed areas may harm people in poor areas of the world more than they will harm those enjoying such lifestyles because the poor are ill-equipped to deal with the consequences.6° Furthermore, by concerning themselves with the consequences of their actions on the global poor and polluted, Americans and the citizens of other developed countries will be helping their immediate neighbors—and themselves—in the long run. Actualization of international equity in conjunction with sustainable development may help prevent damage to the natural environment worldwide, thereby promoting human prosperity. The upshot is that the United States has not gone far enough in actively accepting equity as an objective of global environmental policy. It ought to go further in doing so for purely self-interested reasons. But there are more than self-interested reasons for the United States to move in this direction. It ought to embrace international equity as an objective of its global environmental policy for ethical reasons as well. We can find substantial ethical justification for the United States, in concert with other developed countries, to support politically and financially the codification and implementation of international equity considerations in international environmental agreements. The United States ought to be a leader in supporting a fair and just distribution among countries of the benefits, burdens, and decision-making authority associated with international environmental relations.61 To invoke themes found in the corpus of ethical philosophy (but without here assuming the burden of philosophical exegesis!), the United States ought to adopt policies that engender international equity in at least the environmental field (1) to protect the health and well-being of the human species; (2) to promote basic human rights universally; (3) to help the poor be their own moral agents (a Kantian rationale); (4) to help right past wrongs and to take responsibility for past injustices (i.e., past and indeed ongoing U.S. pollution of the global environment); (5) to aid the world’s least-advantaged people and countries (a Rawlsian-like conception); (6) and to fhlflll the requirement of impartiality (among other ethical reasons)62—all in addition to the more dearly self-interested justification that doing so will bolster U.S. credibility and influence in international environmental negotiations and contemporary global politics more generally. One might argue, therefore, that the United States ought to be aiding the developing countries to achieve sustainable development because to do so may simultaneously reduce human suffering and reduce or potentially reverse environmental destruction that could otherwise threaten the healthy survival of the human species. Insofar as human-caused pollution and resource exploitation deny individuals and their communities the capacity to survive in a healthy condition, the United States, which consumes vastly more than necessary, has an obligation to stop that unnecessary consumption. From this basic rights perspective,63 the U.S. government should also take steps to reduce substantially the emissions of pollutants from within the United States that harm people in other countries.64 The United States ought to refrain from unsustainable use of natural resources and from pollution of environmental commons shared by people living in other countries—or at least make a good effort toward that end—because the people affected by these activities cannot reasonably be expected to support them (we would not be treating them as independent moral agents, to make a Kantian argument65).

### Environmental Leadership Impact – CCP

#### Environmental leadership is key to change Chinese environmental practices.

**Economy**, 9/7/**2007** (Elizabeth – Senior Fellow and Director for Asian Studies at the Council on Foreign Relations, The Great Leap backward, Foreign Affairs, p. <http://yaleglobal.yale.edu/content/great-leap-backward>)

Given this reality, the United States – and the rest of the world – will have to get much smarter about how to cooperate with China in order to assist its environmental protection efforts. Above all, the United States must devise a limited and coherent set of priorities. China's needs are vast, but its capacity is poor; therefore, launching one or two significant initiatives over the next five to ten years would do more good than a vast array of uncoordinated projects. These endeavors could focus on discrete issues, such as climate change or the illegal timber trade; institutional changes, such as strengthening the legal system in regard to China's environmental protection efforts; or broad reforms, such as promoting energy efficiency throughout the Chinese economy. Another key to an effective U.S.-Chinese partnership is U.S. leadership. Although U.S. NGOs and U.S.-based MNCs are often at the forefront of environmental policy and technological innovation, the U.S. government itself is not a world leader on key environmental concerns. Unless the United States improves its own policies and practices on, for example, climate change, the illegal timber trade, and energy efficiency, it will have little credibility or leverage to push China.

#### Failure to manage the environment collapses the CCP.

**Economy**, 9/7/**2007** (Elizabeth – Senior Fellow and Director for Asian Studies at the Council on Foreign Relations, The Great Leap backward, Foreign Affairs, p. <http://yaleglobal.yale.edu/content/great-leap-backward>)

In the view of China's leaders, however, damage to the environment itself is a secondary problem. Of greater concern to them are its indirect effects: the threat it poses to the continuation of the Chinese economic miracle and to public health, social stability, and the country's international reputation. Taken together, these challenges could undermine the authority of the Communist Party. China's leaders are worried about the environment's impact on the economy. Several studies conducted both inside and outside China estimate that environmental degradation and pollution cost the Chinese economy between 8 percent and 12 percent of GDP annually. The Chinese media frequently publish the results of studies on the impact of pollution on agriculture, industrial output, or public health: water pollution costs of $35.8 billion one year, air pollution costs of $27.5 billion another, and on and on with weather disasters ($26.5 billion), acid rain ($13.3 billion), desertification ($6 billion), or crop damage from soil pollution ($2.5 billion). The city of Chongqing, which sits on the banks of the Yangtze River, estimates that dealing with the effects of water pollution on its agriculture and public health costs as much as 4.3 percent of the city's annual gross product. Shanxi Province has watched its coal resources fuel the rest of the country while it pays the price in withered trees, contaminated air and water, and land subsidence. Local authorities there estimate the costs of environmental degradation and pollution at 10.9 percent of the province's annual gross product and have called on Beijing to compensate the province for its "contribution and sacrifice." China's Ministry of Public Health is also sounding the alarm with increasing urgency. In a survey of 30 cities and 78 counties released in the spring, the ministry blamed worsening air and water pollution for dramatic increases in the incidence of cancer throughout the country: a 19 percent rise in urban areas and a 23 percent rise in rural areas since 2005. One research institute affiliated with SEPA has put the total number of premature deaths in China caused by respiratory diseases related to air pollution at 400,000 a year. But this may be a conservative estimate: according to a joint research project by the World Bank and the Chinese government released this year, the total number of such deaths is 750,000 a year. (Beijing is said not to have wanted to release the latter figure for fear of inciting social unrest.) Less well documented but potentially even more devastating is the health impact of China's polluted water. Today, fully 190 million Chinese are sick from drinking contaminated water. All along China's major rivers, villages report skyrocketing rates of diarrheal diseases, cancer, tumors, leukemia, and stunted growth. Social unrest over these issues is rising. In the spring of 2006, China's top environmental official, Zhou Shengxian, announced that there had been 51,000 pollution-related protests in 2005, which amounts to almost 1,000 protests each week. Citizen complaints about the environment, expressed on official hotlines and in letters to local officials, are increasing at a rate of 30 percent a year; they will likely top 450,000 in 2007. But few of them are resolved satisfactorily, and so people throughout the country are increasingly taking to the streets. For several months in 2006, for example, the residents of six neighboring villages in Gansu Province held repeated protests against zinc and iron smelters that they believed were poisoning them. Fully half of the 4,000-5,000 villagers exhibited lead-related illnesses, ranging from vitamin D deficiency to neurological problems. Many pollution-related marches are relatively small and peaceful. But when such demonstrations fail, the protesters sometimes resort to violence. After trying for two years to get redress by petitioning local, provincial, and even central government officials for spoiled crops and poisoned air, in the spring of 2005, 30,000-40,000 villagers from Zhejiang Province swarmed 13 chemical plants, broke windows and overturned buses, attacked government officials, and torched police cars. The government sent in 10,000 members of the People's Armed Police in response. The plants were ordered to close down, and several environmental activists who attempted to monitor the plants' compliance with these orders were later arrested. China's leaders have generally managed to prevent – if sometimes violently – discontent over environmental issues from spreading across provincial boundaries or morphing into calls for broader political reform.

#### CCP collapse results in lash out --- escalates to WMD use and extinction.

**Renxing**, 8/5/**2005** (San, The CCP's Last-Ditch Gamble, Epoch Times, p. http://en.epochtimes.com/news/5-8-5/30975.html)

“In any event, we, the CCP, will never step down from the stage of history! We’d rather have the whole world, or even the entire globe, share life and death with us than step down from the stage of history!!! Isn’t there a ‘nuclear bondage’ theory? It means that since the nuclear weapons have bound the security of the entire world, all will die together if death is inevitable. In my view, there is another kind of bondage, and that is, the fate our Party is tied up with that of the whole world. If we, the CCP, are finished, China will be finished, and the world will be finished.” 3) “It is indeed brutal to kill one or two hundred million Americans. But that is the only path that will secure a Chinese century, a century in which the CCP leads the world. We, as revolutionary humanitarians, do not want deaths. But if history confronts us with a choice between deaths of Chinese and those of Americans, we’d have to pick the latter, as, for us, it is more important to safeguard the lives of the Chinese people and the life of our Party. That is because, after all, we are Chinese and members of the CCP. Since the day we joined the CCP, the Party’s life has always been above all else!” Since the Party’s life is “above all else,” it would not be surprising if the CCP resorts to the use of biological, chemical, and nuclear weapons in its attempt to extend its life. The CCP, which disregards human life, would not hesitate to kill two hundred million Americans, along with seven or eight hundred million Chinese, to achieve its ends. These speeches let the public see the CCP for what it really is. With evil filling its every cell the CCP intends to wage a war against humankind in its desperate attempt to cling to life. That is the main theme of the speeches.

### Environmental Leadership Impact – Hegemony

#### Environmental leadership is key to overall U.S. hegemony.

**Walter**, 8/28/**2002** (Norbert – Chief Economist at the Deutsche Bank Group, New York Times, p. Lexis-Nexis)

At present there is much talk about the unparalleled strength of the United States on the world stage. Yet at this very moment the most powerful country in the world stands to forfeit much political capital, moral authority and international good will by dragging its feet on the next great global issue: the environment. Before long, the administration's apparent unwillingness to take a leadership role -- or, at the very least, to stop acting as a brake -- in fighting global environmental degradation will threaten the very basis of the American supremacy that many now seem to assume will last forever. American authority is already in some danger as a result of the Bush administration's decision to send a low-level delegation to the World Summit on Sustainable Development in Johannesburg -- low-level, that is, relative to America's share of both the world economy and global pollution. The absence of President Bush from Johannesburg symbolizes this decline in authority. In recent weeks, newspapers around the world have been dominated by environmental headlines: In central Europe, flooding killed dozens, displaced tens of thousands and caused billions of dollars in damages. In South Asia, the United Nations reports a brown cloud of pollution that is responsible for hundreds of thousands of deaths a year from respiratory disease. The pollution (80 percent man-made) also cuts sunlight penetration, thus reducing rainfall, affecting agriculture and otherwise altering the climate. Many other examples of environmental degradation, often related to the warming of the atmosphere, could be cited. What they all have in common is that they severely affect countries around the world and are fast becoming a chief concern for people everywhere. Nobody is suggesting that these disasters are directly linked to anything the United States is doing. But when a country that emits 25 percent of the world's greenhouse gases acts as an uninterested, sometimes hostile bystander in the environmental debate, it looks like unbearable arrogance to many people abroad. The administration seems to believe it is merely an observer -- that environmental issues are not its issues. But not doing anything amounts to ignoring a key source of world tension, and no superpower that wants to preserve its status can go on dismissing such a pivotal dimension of political and economic -- if not existential -- conflict.

### Environment Offense – Highways 2NC

#### Highway construction destroys wetlands.

**Neal 1999** (Jennifer – Executive Editor of the Boston College Environmental Affairs Law Review, Paving the Road to Wetlands Mitigation Banking, Boston College Environmental Affairs Law Review, p. Lexis-Nexis)

In a display of support for wetlands mitigation banking, a brief passage of TEA-21 includes a provision stating that mitigation banking is the preferred method for replacing wetlands lost due to highway [\*183] projects. n201 This is important because the federal and state highway agencies "are among the largest destroyers of wetlands." n202 The Federal Highway Administration (FHWA) has submitted about 100 Environmental Impact Statements each year, more than any other federal agency except the U.S. Forest Service. n203 Highway agencies destroysignificant amounts of wetlands "because their routes run through low, flat areas where natural wetlands once flourished." n204 Congress' explicit preference of mitigation banking for compensatory mitigation projects by this large federal agency will promote mitigation banking.

## AT: Permutations + Theory

### AT: Perm – Do Both

#### 1. Mutually exclusive – transportation investment causes environmental destruction. An EIS includes a no-build option which can ban the plan. That’s Reddy 2008.

#### 2. Intrinsic – it adds a non-binding EIS which is in neither the plan nor CP. That kills neg ground and shifts the goal post.

#### 3. Only prior and binding EIS creates an adaptable plan that avoids environmental destruction.

**Plumer**, 2/3/**2012** (Brad – reporter for the Washington Post, Is this duck delaying your highway?, Wonkblog at the Washington Post, p. http://www.washingtonpost.com/blogs/ezra-klein/post/is-this-duck-delaying-your-highway/2012/02/02/gIQAeAf6mQ\_blog.html)

Deron Lovaas, transportation policy director for the Natural Resources Defense Council, warns that the bill could lead to projects that move ahead before proper vetting. “You open the door to faster paving,” he told me, “but that could lead to **serious problems** if you then have a neighborhood or community that’s not happy with the project.” What’s more, there’s the risk that states with lax environmental laws could push forward projects that end up being quite damaging to local wildlife or wetlands or water quality or so forth. (The Sierra Club has compiled a dossier of road projects over the years that were successfully altered thanks to environmental review and public input to include wildlife corridors or to limit sprawl or to avoid disrupting scenic areas.)

#### 4. Only a strong and binding review sends an international signal --- the perm hampers the EIS effectiveness.

**Caldwell 1998** - Professor of Political Science Emeritis and Professor of Public and Environmental Affairs, Indiana University. Ph.B., University of Chicago, 1934; M.A. Harvard University, 1938; Ph.D. University of Chicago (Lynton, "BEYOND NEPA: FUTURE SIGNIFICANCE OF THE NATIONAL ENVIRONMENTAL POLICY ACT," 22 Harv. Envtl. L. Rev. 203)

[\*205] It is this prospective orientation that extends the relevance of NEPA to a world economy that has been expanding and accelerating beyond any historical precedent. Environmental protection policy has now attained global significance, and NEPA recognizes "the worldwide and long-range character of environmental problems." n7 In some respects, NEPA has already significantly influenced public policy in the United States and abroad. In particular, the procedural reform required by the EIS has improved the quality of public planning and decisionmaking and has been widely adopted in other countries and by international organizations. n8 Despite its influence, however, NEPA has not come near to realizing its full potential either at home or abroad. The international relevance of NEPA has been weakened by ambiguous interpretations in the federal courts and outright denial by some executive agencies. Domestically, NEPA's effectiveness has been hampered by insufficient funding and inconsistent application. The EIS requirement alone is insufficient to achieve the intent declared in NEPA. The research, oversight, and forecasting provisions of NEPA under Title II have yet to be fully implemented. The CEQ has done what it could with unduly limited resources, but has lacked the active presidential and congressional support needed to play its intended role. Where the federal government has acted, its environmental decisions have often been inconsistent with NEPA's declared principles. n9 The goals and principles declared in section 101 n10 have been treated as noble rhetoric having little practical significance. In the absence of forceful White House action, the courts have been the principal interpreters of NEPA, although the [\*206] Supreme Court has limited their adjudication under the Act to purely procedural matters. n11

#### 5. The perm results in public backlash and rollback.

**Musselman 2006** (Jenna – J.D. Candidate at the University at Berkeley, School of Law, SAFETEA-LU’S Environmental Streamlining: Missing Opportunities for Meaningful Reform, Ecology Law Quarterly, p. Lexis-Nexis)

Unlike other environmental statutes, NEPA does not contain a section on judicial review. n165 Instead, before SAFETEA-LU, the Administrative Procedure Act's default six-year statute of limitations applied for NEPA claims. n166 SAFETEA-LU's 180-day deadline cuts that [\*850] timeframe back by more than 80 percent. n167 Under SAFETEA-LU, an agency that has made a final decision regarding a highway or transit project can publish a notice in the Federal Register that claims relating to that decision must be filed within 180 days of the notice. n168 The American Association of State Highway and Transportation Officials (AASHTO) pushed for this change, claiming that eleventh-hour lawsuits delay projects under construction. n169 Yet the availability of the laches defense means that these lawsuits would face dismissal because the project sponsor could show reliance on a final decision and prejudice from the delay, making this argument specious. n170 Given the complexity of many transportation projects and the length and technical nature of an EIS, it is not unreasonable to ensure that the public has adequate time to read and review a final decision, particularly if the project sponsor has not yet awarded contracts or taken other actions in reliance. The new deadline misconstrues the role litigation plays in ensuring that only properly approved projects move forward, and the time limit will stifle public participation, **derailing an important purpose of NEPA**. n171 Most litigation is filed only after consultation attempts urging consideration of environmental impacts have failed. Since projects are often approved before the appropriation of funding, litigation will likely now be filed immediately, eliminating the time formerly available for negotiations during the funding process. n172 Thus, the 180-day time limit may actually spur unnecessary litigation, as those opposed to projects will be encouraged to rush to the courthouse instead of working with DOT and the project sponsor **in a non-adversarial manner**. Interim Guidance from FHWA on implementing this "Limitation on Claims Notices" provision in SAFETEA-LU admits "a notice may prompt some parties to sue merely to preserve their claims until they are more certain whether [\*851] their interests are adversely affected by the Federal action." n173 FHWA thus acknowledges that the 180-day deadline will actually encourage extraneous litigation, as parties will file "placeholder" lawsuits before the expiration of 180 days just in case they discover issues they want to litigate later. n174 It is not even certain that plaintiffs will receive even the full 180 days to review environmental decisions and prepare for litigation. The Interim Guidance indicates that if the NEPA analysis relates to a decision made under a different statute with a shorter deadline on judicial review, the shorter deadline applies. n175 The Interim Guidance goes on to advise project sponsors on the most beneficial ways to use the judicial review deadline to frustrate the efforts of environmental groups with concerns about the project: If there are known interested parties threatening to file a lawsuit, then the notice may serve to ensure that such action occurs quickly... . A notice may be very useful in cases where there are no known potential litigants, but where there are complex or controversial issues or impacts that may generate opposition in the future, as the project moves into an implementation phase. A [judicial review deadline] notice will define the time period during which such osq;newly' interested parties must act on their views. n176 This passage in the Interim Guidance praises the deadline for frustrating the attempts of adversely affected parties when impacts are undiscovered until the time of project implementation. n177 This allows the project sponsor to downplay adverse impacts in the environmental review documentation, knowing that when the potential plaintiff discovers the harm to her property or interests, it will be too late for her to challenge the review process. In addition, given the tendency of actual project implementation to differ from the EIS, this change limits the public's opportunity to review information on environmental impacts, undermining one of the key goals of NEPA. Although thorough public participation and environmental review will almost always slow down the initial stages of a project, even state DOTs have admitted that the NEPA public involvement process can produce higher-quality projects that are **less likely to be contested later in** [\*852] the public forum or **the courtroom**. n178 Yet the Interim Guidance makes clear that the FHWA considers the judicial review deadline to be all about speed, not environmental protection. The document makes numerous references to stopping and avoiding delays, but not once does it mention the supposed other goal of streamlining: maintaining environmental safeguards. n179 Rather than reinforcing the benefits of public participation, FHWA has chosen to interpret SAFETEA-LU to cut off public involvement in favor of forcing litigation.

### AT: Perm – Do Both – Environmental Leadership Deficit

#### Genuine EIS is key to restore environmental leadership.

**Ivanova and Esty**, Summer-Fall **2008** (Daniel C. – Professor of Environmental Law and Policy at Yale University, and Maria – Assistant Professor of Government and Environmental Policy at College of William and Mary, Reclaiming U.S. Leadership in Global Environmental Governance, SAIS Review, p. EBSCO Host)

Third, mere U.S. participation in international environmental efforts will be insufficient. The United States must actively take a leadership role in bringing about a successful response to climate change and other issues. The history of past success in galvanizing the global community into action shows that the United States can and must take the lead. However, any attempt at U.S.-led reform without credible proof of genuine U.S. leadership based on common values and the common good is likely to be met with distrust and opposition.

### AT: Perm – Do CP

#### 1. CP is not normal means – it includes the option to not do the plan. The aff mandates the plan must happen. That’s our 1NC Reddy 2008 evidence.

#### 2. The perm severs –

#### A) The CP changes the process of the plan --- it is substantively different.

**Plumer**, 2/3/**2012** (Brad – reporter for the Washington Post, Is this duck delaying your highway?, Wonkblog at the Washington Post, p. http://www.washingtonpost.com/blogs/ezra-klein/post/is-this-duck-delaying-your-highway/2012/02/02/gIQAeAf6mQ\_blog.html)

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#### B) It severs should --- it means mandatory.

**Foresi 32**

(Remo Foresi v. Hudson Coal Co., Superior Court of Pennsylvania, 106 Pa. Super. 307; 161 A. 910; 1932 Pa. Super. LEXIS 239, 7-14, Lexis)

As regards the mandatory character of the rule, the word 'should' is not only an auxiliary verb, it is also the preterite of the verb, 'shall' and has for one of its meanings as defined in the Century Dictionary: "Obliged or compelled (to); would have (to); must; ought (to); used with an infinitive (without to) to express obligation, necessity or duty in connection with some act yet to be carried out." We think it clear that it is in that sense that the word 'should' is used in this rule, not merely advisory. When the judge in charging the jury tells them that, unless they find from all the evidence, beyond a reasonable doubt, that the defendant is guilty of the offense charged, they should acquit, the word 'should' is not used in an advisory sense but has the force or meaning of 'must', or 'ought to' and carries [\*\*\*8] with it the sense of [\*313] obligation and duty equivalent to compulsion. A natural sense of sympathy for a few unfortunate claimants who have been injured while doing something in direct violation of law must not be so indulged as to fritter away, or nullify, provisions which have been enacted to safeguard and protect the welfare of thousands who are engaged in the hazardous occupation of mining.

#### C) So does increase

**HEFC 2004** (Higher Education Funding Council for England, “Joint Committee on the Draft Charities Bill Written Evidence”, June, http://www.publications.parliament.uk/pa/jt200304/jtselect/jtchar/167/167we98.htm)

9.1 The Draft Bill creates an obligation on the principal regulator to do all that it "reasonably can to meet the compliance objective in relation to the charity".[45] The Draft Bill defines the compliance objective as "to increase compliance by the charity trustees with their legal obligations in exercising control and management of the administration of the charity".[46] 9.2 Although the word "increase" is used in relation to the functions of a number of statutory bodies,[47] such examples demonstrate that "increase" is used in relation to considerations to be taken into account in the exercise of a function, rather than an objective in itself. 9.3 HEFCE is concerned that an obligation on principal regulators to "increase" compliance per se is unworkable, in so far as it does not adequately define the limits or nature of the statutory duty. Indeed, the obligation could be considered to be ever-increasing.

#### 3. Severance is a voting issue – it allows the aff to shift out of all our DA links and makes the aff a moving target.

#### 4. Double-bind – either the aff mandates action or the plan never happens.

**Rayner**, 5/8/**2012** (Martin – independent consultant working in the customs brokerage and international trade logistics field, held executive-level positions in the trade logistic industry, “Buy America” Exceptionalism, International Trade Compliance Strategies, p. <http://tradecompliance.ghy.com/2012/05/buy-america-exceptionalism/>)

With an election looming at the end of the year, it seems highly improbable that any more federal legislation involving significant new government infrastructure spending proposals saddled with contentious “Buy America” provisions will be advanced by the current administration. That said, there are still numerous appropriation bills pending before Congress to fund the U.S. government through 2012 and beyond – any of which could be subject to amendments by lawmakers eager to protect domestic suppliers and/or score political points irrespective of (or oblivious to) government procurement agreements already in place.

#### 5. Fiat should be certain and immediate – its key to neg ground --- every DA relies on implementation and status quo uniqueness to determine risk. Aff delays results in moving targets and avoids our best arguments.

### AT: CP is Normal Means

#### Most transportation infrastructure do not implement EIS.

**Deacon 2003** (Whitney – member of the Association of Women Lawyers of Greater Kansas City, The Bush Administration’s Attack on the Environment; Target: Nepa’s Environmental Impact Statement, Missouri Environmental Law & Policy Review, p. Lexis)

Are These Criticism's Founded?

NEPA may be getting more blame than it deserves. n86 One study suggests that 92 percent of transportation projects are excluded from conducting environmental assessments or environmental impact statements because they fall within a categorical exclusion. n87 Additionally, a study by the Federal Highway Administration found that out of projects delayed for over five years, sixty-two percent of those projects were delayed due to lack of money, low priority from the agencies themselves, opposition in local communities, the intricacy of the project, n88 or changing or expanding the scope of the project. n89 It is not the environmental laws that are causing the delays. n90 In fact, only two percent of highway construction projects are required to do the full EIS. n91

### AT: Plan is a Categorical Exclusion

#### CE only applies to routine and small projects.

**Musselman 2006** (Jenna – J.D. Candidate at the University at Berkeley, School of Law, SAFETEA-LU’S Environmental Streamlining: Missing Opportunities for Meaningful Reform, Ecology Law Quarterly, p. Lexis-Nexis)

For the vast majority of federally funded highway projects, DOT concludes that a categorical exclusion (CE) is appropriate because an examination of the project demonstrates that it will have limited, if any, environmental impacts. n28 Projects receiving CEs typically do not add miles to the road system, and often are routine and involve little construction. n29 In a given year, typically 91 percent of projects receive CEs. n30 It can take as little as a few days to complete the environmental review for a project that will receive a CE, although the average time is six months. n31 Not surprisingly, projects receiving a CE are the least expensive on a per-project basis, accounting for 76 percent of highway project funding in 2001. n32

### EIS CP Good 2NC

#### 1. Tests the resolution – it forces the aff to prove the desirability of definite action which tests “should” and “increase.”

#### 2. Doesn’t do the plan – EIS creates a distinct and altered proposal that is environmentally friendly.

**Plumer**, 2/3/**2012** (Brad – reporter for the Washington Post, Is this duck delaying your highway?, Wonkblog at the Washington Post, p. http://www.washingtonpost.com/blogs/ezra-klein/post/is-this-duck-delaying-your-highway/2012/02/02/gIQAeAf6mQ\_blog.html)

Deron Lovaas, transportation policy director for the Natural Resources Defense Council, warns that the bill could lead to projects that move ahead before proper vetting. “You open the door to faster paving,” he told me, “but that could lead to **serious problems** if you then have a neighborhood or community that’s not happy with the project.” What’s more, there’s the risk that states with lax environmental laws could push forward projects that end up being quite damaging to local wildlife or wetlands or water quality or so forth. (The Sierra Club has compiled a dossier of road projects over the years that were successfully altered thanks to environmental review and public input to include wildlife corridors or to limit sprawl or to avoid disrupting scenic areas.)

#### 3. Conditional fiat increases Aff ground – guarantees delay and non-adoption solvency deficits. The plan is built-in offense against the CP.

#### 4. Neg flex – the CP is key to check an explosion of aff’s that are designed the beat the states CP or politics.

#### 5. There’s plenty of lit.

**Gaines** and Lurie, 5/16/**2007** (Lisa – Interim Director at the Institute for Natural Resources at Oregon State University, and Sue – Faculty Researcher at Institute for Natural Resources at Oregon State University, NEPA for the 21st Century: A Comparative Analysis of Other Organizations’ Environmental Review Structure, p. http://www.fs.fed.us/pnw/about/programs/fsd/NEPA/Final%20Draft%20 Report-160507.pdf)

Since NEPA’s passage more than 35 years ago, a considerable body of literature has developed regarding its controversy, prescriptive recommendations for better implementation, and technical guidance. Less has been written about the perceptions and practical challenges experienced by federal agencies responsible for its implementation. Two studies are particularly instructive.

#### 6. Policy analysis – the CP is key to test the best forms of transportation investments – that’s Lovaas.

#### 7. The aff should be able to defend against CPs in the literature --- that solves their ground claims and proves the burden is on them that the CP is unpredictable.

#### 8. Reject the argument not the team.

### AT: Textual Competition Good

#### Textual competition bad –

#### 1. Kills neg ground – doesn’t allow “ban the plan” and other opportunity cost checks of the aff.

#### 2. Not logical – a CP that excludes “in the United States” would be plan-plus but competes.

#### 3. Doesn’t check – the neg will just use word substitutes to circumvent competition.

#### 4. Reject bad CPs when they happen – our EIS good arg is an impact turn