# Environmental Impact Statement CP

#### The Department of Transportation should submit

#### (insert function of plan)

#### for a National Environmental Policy Act Environmental Impact Statement. The United States federal government should implement the least environmentally damaging alternative identified in the Environmental Impact Statement.

#### The counterplan is not topical and plan-minus

#### It severs should

Summers 94 (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 The legal question to be resolved by the court is whether the word "should"13 in the May 18 order connotes futurity or may be deemed a ruling in praesenti.14 The answer to this query is not to be divined from rules of grammar;15 it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.16

[CONTINUES – TO FOOTNOTE]

13 "Should" not only is used as a "present indicative" synonymous with ought but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation* *and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). 14 In praesenti means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is presently or immediately effective, as opposed to something that will or would become effective in the future *[in futurol*]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

#### It severs substantial

Words and Phrases 1925

Judicial and statutory definitions of words and phrases, Volume 7, p. 6738

The words “outward, open, actual, visible, substantial, and exclusive,” in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain; absolute; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including admitting, or pertaining to any others; undivided; sole; opposed to inclusive. Bass v. Pease, 79 Ill. App. 308, 318.

#### The counterplan solves – the *process* of evaluating environmentally friendly alternatives *prior* to action leads to a compromise that solves the aff and avoids environmental harm

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Robert, “The Political Assault on the National Environmental Policy Act,” http://www.law.georgetown.edu/gelpi/research\_archive/nepa/NEPAUnderSiegeFinal.pdf

Yet another criticism of the NEPA review process is that it impedes the development of consensus support for solutions to environmental problems. In fact, there is no necessary conflict between the decision-making process established by NEPA and the formation of consensus around particular projects or programs. Properly conducted, the NEPA process can be instrumental in achieving lasting solutions with broad public support. Those who insist on seeing conflict between NEPA and consensus building argue, in effect, for rolling back the most valuable aspects of the NEPA process for no good reason. According to some critics, conflict between NEPA and so-called “collaborative” decision-making processes is inevitable. Collaborative decision-making is typically understood as an iterative process of consultation among government officials and stakeholder representatives designed to develop a consensus solution for a particular natural resource problem. Expressing a representative viewpoint, Douglas MacDonald, Secretary of Transportation for the State of Washington, recently opined that the NEPA process “creates a context for discussion and problem-solving that maximizes the polarization of opinion, the staking out of positions, and the exclusion of iteration and compromise in problem solving.” 49 To like effect, the Deputy Chief of the Forest Service has commented: The requirement that alternatives to proposed actions and their effects be documented in an environmental impact statement and environmental assessment prior to a decision does not facilitate a collaborative process between agencies or with other interests. ... Documenting and circulating ... alternatives in a draft and final document for public comment fosters an assumption that the decision maker has a range of options to choose from and various interests can weigh in and comment on the alternatives they support. There is no incentive built into the NEPA process to work toward a single solution that accommodates multiple interests. 50 The Forest Service’s new forest planning regulations reflect this viewpoint, calling the traditional approach of developing and evaluating alternatives in the planning process “divisive.” 51 Under the new regulations, forest plans will be developed through a “collaborative” process that “encourage[s] people to work together to understand each other and find common solutions.” 52 Significantly, environmental analysis will apparently play little if any role in that endeavor; the planning regulations state that Forest Service will not provide “indepth social, economic, or ecological analysis” for options that are discussed in the collaborative process, 53 and the Service separately proposed to exempt forest planning from NEPA analysis altogether. 54 There is unquestionably a serious tension between the NEPA process and the type of “collaborative” approach advanced by the Forest Service. As discussed, NEPA is based on the principles that information on environmental impacts is important in making rational choices among options and that the public should have broad access to the decision-making process. The Forest Service’s approach ignores both principles, threatening to recreate the kind of narrow, environmentally-insensitive decision-making that prevailed prior to NEPA’s enactment. By essentially eliminating environmental analysis, the Forest Service’s approach leaves agency personnel and other participants in the planning process effectively blind to the potential effects of a proposed management approach. The agency’s refusal to identify and evaluate alternatives, in particular, will preclude meaningful evaluation of the potential environmental benefits and tradeoffs offered by different management approaches. Furthermore, the Forest Service’s substitution of a vague “collaborative” process for the clearly-defined rights of public involvement under NEPA threatens to limit, and possibly bias, public engagement in the planning process. The Forest Service will itself choose the participants in its collaborative process; it may either deliberately or instinctively select citizens and groups that it views as likely to agree with its views, and exclude those that it anticipates will make reaching “consensus” difficult. Thus, the representativeness and fairness of the agency’s collaborative process will frequently be open to question. Citizens outside the collaborative process, meanwhile, will be denied all the procedural rights afforded by NEPA, including the opportunity to participate in scoping sessions, to receive information on the environmental impacts of the agency’s proposed action, to propose alternative approaches, and to offer comments on the accuracy of the agency’s environmental analysis. Ultimately, the Forest Service’s approach appears to be based on the notion that by embracing a philosophy of “collaboration,” and controlling the range of viewpoints involved in planning, the agency can magically make disputes over management of forest lands disappear. In reality, management of federal lands, like most government actions affecting the environment, inevitably raises conflicts among different values and interests. NEPA is based on the sound premise that these types of conflicts are best resolved through an inclusive, analytically rigorous process, not an artificially-constrained search for consensus. There are other approaches to “collaborative” decision-making that do allow federal agencies to engage the public broadly in their planning processes without undercutting environmental reviews. There is no necessary conflict between a well-managed NEPA process and an effort to arrive at a conclusion supported by broad public consensus. The scoping process that agencies undertake before beginning preparation of an EIS is explicitly intended to be a collaborative process, albeit an open one, drawing together agency planners, concerned citizens, tribes and other affected governments to define the key environmental issues and alternative approaches that should be studied by the agency. Agencies can continue that cooperative approach throughout the EIS process, consulting with the public and with other affected interests to build consensus on a preferred alternative, on mitigation measures, and on issues arising during scientific studies in the course of preparing the EIS. Concurrent with or subsequent to the NEPA process, agencies can employ alternative dispute resolution, negotiated rule-making, or other techniques in an attempt to arrive at a conclusion with broad public support. 55 Such dispute resolution efforts are actually more likely to succeed once disputed issues have been thoroughly aired and narrowed through the NEPA review process. The recent success in the Gifford Pinchot National Forest in Washington State, described earlier, illustrates the potential for NEPA to help generate solutions with broad public support. In that case, environmentalists, timber companies, local citizens and the Forest Service used the NEPA process as the springboard for negotiating a new management approach for the national forest that reconciled timber harvesting with ecological goals. A local resident involved in the process concluded: “We were able to get timber out in an environmentally responsible way, and we succeeded in avoiding appeals that plague controversial timber sales.” 56

#### Two net-benefits:

#### First – NEPA – the counterplan reverses the trend of categorical exclusions – key to revitalizing NEPA

Green Group 8

Coalition of 30 Environmental groups, Transition to Green: Environmental Trasnition Recommendation for the Obama Administration, Group Includes: American Rivers - Center For International Environmental Law- Clean Water Action- Defenders Of Wildlife - Earthjustice - Environment America - Environmental Defense Fund - Friends Of The Earth- Greenpeace - Izaak Walton League - League Of Conservation Voters -National Audubon Society - National Parks Conservation Association -National Tribal Environmental Council - National Wildlife Federation- Native American Rights Fund - Natural Resources Defense Council - Oceana -Ocean Conservancy - Pew Environment Group -Physicians For Social Responsibility - Population Connection -Population Action International -Rails-To-Trails Conservancy - Sierra Club - The Wilderness Society -The Trust For Public Land - Union Of Concerned Scientists -World Wildlife Fund, http://otrans.3cdn.net/ba9c868ec4fe74f1b8\_2pm62vhlb.pdf

Since 1970, the National Environmental Policy Act (“NEPA”) has required federal agencies to assess the environmental effects of their proposed actions and provide the public a **meaningful opportunity** to participate in agency decision making. The proper application of NEPA ensures that agencies make well-informed decisions that are supported by a robust consideration of the environmental effects of both the proposed action and alternatives to that action, the cumulative effects of the proposed action and its alternatives, and concerns raised by the public. The past eight years have witnessed an assault on NEPA that has eroded the application of the law to the point where major federal actions with significant environmental effects are taken **without any environmental analysis**. First, some agencies have improperly shifted the application of NEPA to later stages of decision making. CEQ regulations state that agencies should integrate the NEPA process at the earliest time possible; the regulations also expressly state that the adoption of “formal plans” is major federal action subject to NEPA. However, agencies have not heeded this mandate, with one agency (the Forest Service) going as far as seeking to exempt planning documents entirely from NEPA analysis. By misconstruing NEPA to mean that an agency does not have to conduct a NEPA analysis until narrow, site-specific actions are taken, agencies have effectively exempted themselves from NEPA’s provisions at the decision stage. Moreover, some agencies fail to apply NEPA until after they have entered binding contracts that create a financial incentive for the agency to go forward with an action regardless of its environmental impacts. Second, agencies have improperly expanded the use of **categorical exclusions** (CEs) to exempt categories of activities that may have significant environmental effects from environmental review. A categorical exclusion is “a category of actions which do not individually or cumulatively have a significant effect on the human environment”, and therefore do not require preparation of environmental impact statement or environmental assessment. CEs are approved through an agency’s NEPA implementing procedures or, in one case, through legislation. If extraordinary circumstances exist that may cause the proposed action to have a significant effect on the environment, that action cannot be categorically excluded from NEPA analysis. When used appropriately, CEs can save agencies time and resources, and avoid duplicative analysis for actions that will not have a significant effect on the environment. However, when there are substantive questions about whether an action’s impacts are significant, the public deserves the opportunity to be part of the process for evaluating potential impacts. Over the past eight years, agencies and Congress have expanded the approval and application of CEs. No longer are CEs applied to only discrete actions that do not have a significant environmental effect; instead, **CEs have been expanded** to include broad categories of actions that should receive a detailed look by the agencies and the public because these actions may have significant direct or cumulative impacts on the environment. Also, some agencies have failed to provide for extraordinary circumstances that would limit the application of CEs to environmentally insignificant actions. Thus, potentially significant actions are approved with minimal to no environmental review or public input. Reinforcing CEQ’s Leadership Role in the CE Process On September 19, 2006, CEQ published draft guidance designed to aid agencies in the establishment, revision, and use of CEs. This guidance has not been finalized. The next Administration should issue final guidance that will reinforce CEQ’s leadership role in the CE process and reflect the changes suggested in comments submitted jointly by over 100 local and national environmental organizations.1 Specifically, the final guidance should, inter alia, (1) require agencies to consult with CEQ early in the drafting of the proposed CE and at minimum before the proposed CE is published in the Federal Register, (2) require agencies to provide CEQ with a comprehensive administrative record supporting the new or revised CE, (3) require that agencies make information supporting CEs available to the public, and (4) instruct agencies to avoid establishing CEs for activities likely to generate public opposition regarding effects on the human environment. Responsible Official: CEQ Chair Review of CEs that raise significant concerns The next Administration should carefully review the CEs that raise significant concerns, and retract those that include actions that may individually or cumulatively have a significant effect on the environment, thus **requiring environmental review**.

#### That solves global ecological sustainability

Caldwell 98 – Professor of Political Science @ IU

Lynton K. Caldwell, Prof. of Political Science/Public and Environmental Affairs @ Indiana Univ., 22 Harv. Envtl. L. Rev. 203, Beyond NEPA: Future Significance of the National Environmental Policy Act, Lexis

A distinguishing feature of any society is its prevailing assumptions about its relationship to the Earth. The history of cultures--especially of religions--reveals a great number of cosmologies, the perceived relationships of people to their planetary environment. Today the survival of living species may depend first, upon the degree to which mankind's concept of its environmental situation corresponds to biophysical realities and second, upon what humans value, and how these values are expressed in relation to these realities. Archeology has recorded the failure of societies that have misconceived the requirements for environmental sustainability. During the earlier centuries of human history the impact of society on its environment was relatively light and local. If an environment, for whatever reason, became unsustainable, people could often move on to new lands, often displacing or destroying the original inhabitants. When degradation of the environment was slow or scarcely perceptible, the consequences of its decline often were not felt until they were irreversible. Where human numbers were small relative to space, migration permitted impaired environments to recover, at least partially. But many areas of the Earth have never recovered from the degradation of centuries-long misuse, and still more are headed toward impoverishment. In a world filled with people and settlements, the option of migration is increasingly unavailable. Recognition of narrowing environmental options has led in recent decades to conservation practices assisted by the growth of science, to the comparative measurement of environmental change, and to forecasts of the probable consequences of present trends. The conservation of natural resources movement has had a paradoxical effect upon human perceptions of environmental realities. While the conservation movement contributed both to the emergence of applied ecology and public environmental concern, many conservationists rejected environmentalism (often called preservationism) as uneconomical, unrealistic and anti-social. Economy and efficiency in the wise use of resources has been the essence of "conservation," which sees the environment as infinitely manageable--capable of sustained productivity under the guidance of experts knowledgeable of science. In this respect, conservationism  [\*236]  is fundamentally consistent with the Western worldview, especially that which prevailed during the era of U.S. Progressivism in the late nineteenth and early twentieth centuries. [n82](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266374593287&returnToKey=20_T8580560845&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.808858.1203594548" \l "n82) Environmentalism emerged in the latter half of the twentieth century from a convergence of changing perceptions of the human condition in fields as diverse as ecology, public health, demography, climatology, cosmology, and ethics. When its true dimensions, assumptions, and expectations are understood, environmentalism is, as Robert Nisbet observed, revolutionary. [n83](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266374593287&returnToKey=20_T8580560845&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.808858.1203594548" \l "n83) Its effect upon human society is comparable to the changed views of reality inherent in the Copernican cosmic revolution in the seventeenth century and the Darwinian evolution revolution in the nineteenth century. To some, this conclusion may seem to be an exaggerated estimate of the influence of environmentalism and its future prospects. Following initial successes of environmental protection efforts, there has been in many countries (including the United States) an anti-government reaction that has sometimes been violent. [n84](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266374593287&returnToKey=20_T8580560845&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.808858.1203594548" \l "n84) It is doubtful that in the long run the "green backlash" will prevail. Its angry proponents are chiefly natural resources industries, land developers and speculators, libertarians, and their allies in public office. Still the counter-intuitive behavior of social systems makes any forecast of the future uncertain. Nevertheless there are ascertainable, measurable trends in today's world that strongly suggest the impending negative impact of powerful coercive environmental events upon human society in the twenty-first century. Adherence to principles like those expressed in NEPA may become more a matter of necessity than of voluntary choice. The way in which people and their governments respond to the prospect of these coercions will shape the future of the world. The timing of effective response is equally important. The longer the delay, the more  [\*237]  difficult the task and the greater the possibility of irremediable damage. Because the future of the world in the twenty-first century cannot be foreseen, we can only conjecture the true location of NEPA on the trajectory of history. I offer the following assessment of the significance of NEPA, fully realizing that, at least in the short run, the world is capable of unpredictable turns. NEPA is most fully understood as a national policy for henceforward into the future. "Environment" may be understood as a surrogate term for a concept more comprehensive than is usually appreciated. Our language tends to lag behind new insights. Among our most persistent and pervasive misconceptions is the artificial dichotomy of economy/ecology. Their true relationship might be suggested by the time-space concept in physics. The concepts of ecology and economy are not the same--they are distinguishable, but, paradoxically, also inseparable.[n85](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266374593287&returnToKey=20_T8580560845&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.808858.1203594548" \l "n85) In mundane reality there are obvious conflicts within and between the "domains" of economy and the environment. Yet both these aspects of our world are in actuality inextricable--separable by cultural convention and for analytic purposes. In reality they should have a common inclusive name. Achievement of a national policy for the environment requires awareness of the ecology/economy interrelationship, of the direction toward which the world appears to be moving, and a growth of consensus on the kind of future that is desirable and sustainable. A national policy for the future of the environment cannot be achieved in isolation from other major societal issues. Issues of population, material growth, property rights and obligations, and basic social equities involve choices which many people would prefer not to make. But the world today is not a "new age of Aquarius," free from ultimate accountability to nature, if not to humanity. Regardless of what we may deny or resist, our society will in one way or another be compelled to accommodate its behaviors  [\*238]  to the inexorable workings of the world. But apocalypse need not be a preordained outcome for a society that marshals and moves its moral, material, intellectual, and organizational capabilities toward attainment of a preferred and sustainable future. IX. AN AGENDA FOR THE FUTURE The National Environmental Policy Act may be seen as a charter and agenda to guide this nation toward rational strategies for coping with the critical environmental problems that are present and growing. The United States has the material and intellectual capabilities for setting a non-hegemonic example for the world. Whether it can generate a collective moral purpose to do so remains uncertain. As individuals, there is little that people can do to reverse destructive socio-ecological trends. Voluntary local initiatives may help where there is a sense of community purpose. But our fundamental environmental problems transcend manmade boundaries and require solutions commensurate with the problems, which are increasingly seen to be transnational, even global. The 1968 Biosphere Conference and the 1972 and 1992 U.N. conferences on the environment testify to an international recognition of mankind's environmental predicament. Yet in a world governed by nations, national action is necessary, not only for each nation, but for international cooperation. Action on any major social issue requires a credible collective purpose, catalytic leadership, and popular receptivity. There is strong evidence that the last of these--public support for environmental action--already exists. A goal-directed agenda is necessary to focus and activate social effort, for without such a codification of purpose, there can be no concerted action. Translation of social purpose into action is a function of leadership. To cope with the environmental predicament of mankind, leadership must be national and participatory, involving all sectors of society, but with an indispensable responsibility in government which is the affirmingand coordinative institution for nationwide and international effort. For the United States, NEPA provides a comprehensive agenda for the environmental future. NEPA creates a foundation for a unifying national effort and legitimizes its goals and principles as  [\*239]  national policy. Beyond NEPA, specific, targeted action programs are needed to achieve its intent. NEPA may be regarded, in effect, as a constitution for the environment--principles to guide the nation toward an enhanced quality of life and an enduring environmental future.

#### Extinction

Jowit 8 – sex edited

Julien, The Guardian, World is facing a natural resources crisis worse than financial crunch, http://www.guardian.co.uk/environment/2008/oct/29/climatechange-endangeredhabitats

The world is heading for an "ecological credit crunch" far worse than the current financial crisis because humans are over-using the natural resources of the planet, an international study warns today. The Living Planet report calculates that humans are using 30% more resources than the Earth can replenish each year, which is leading to deforestation, degraded soils, polluted air and water, and dramatic declines in numbers of fish and other species. As a result, we are running up an ecological debt of $4tr (£2.5tr) to $4.5tr every year - double the estimated losses made by the world's financial institutions as a result of the credit crisis - say the report's authors, led by the conservation group WWF, formerly the World Wildlife Fund. The figure is based on a UN report which calculated the economic value of services provided by ecosystems destroyed annually, such as diminished rainfall for crops or reduced flood protection. The problem is also getting worse as populations and consumption keep growing faster than technology finds new ways of expanding what can be produced from the natural world. This had led the report to predict that by 2030, if nothing changes, [hu]mankind would need two planets to sustain its lifestyle. "The recent downturn in the global economy is a stark reminder of the consequences of living beyond our means," says James Leape, WWF International's director general. "But the possibility of financial recession pales in comparison to the looming ecological credit crunch." The report continues: "We have only one planet. Its capacity to support a thriving diversity of species, humans included, is large but fundamentally limited. When human demand on this capacity exceeds what is available - when we surpass ecological limits - we erode the health of the Earth's living systems. Ultimately this loss threatens human well-being." Speaking yesterday in London, the report's authors also called for politicians to mount a huge international response in line with the multibillion-dollar rescue plan for the economy. "They now need to turn their collective action to a far more pressing concern and that's the survival of all life on planet Earth," said Chief Emeka Anyaoku, the president of WWF International.

#### Second – environmental justice

#### The plan devastates disadvantaged communities, the counterplan avoids harm

Johnson 97 – Professor of Law @ Mercer

Stephen, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, Hein Online

In many cases minority and low-income communities are disparately impacted by government actions because the communities do not have a voice in the decision-making process, and the communities lack the influence or political power of special interest groups that may support the government action. Broad and flexible public participation provisions, like those in NEPA, empower communities and provide them with a voice in the decisionmaking process. Broad and flexible public participation provisions also improve the government's decision-making process by enabling it to solicit information vital to that process. 36 Without such provisions, the federal government may reach decisions that disparately impact minority and low-income communities because the government fails to obtain input from the impacted communities. Arguably, the communities are the most important group of experts. Local individuals, who will be most directly affected by a government action, can provide unique information about the impacts of the proposed action that the government may be unable to obtain elsewhere. 37 This additional information enables the government to identify additional alternatives to the proposed action. As a result, it is more likely that the government can reach a decision that achieves its goal without disparately impacting minority or lowincome communities. 38

#### This impact should be preferred – be skeptical of the affirmative’s advantage because they ignore environmental externalities that devastate minority communities

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Robert and Glenn, Environmental Justice: Grassroots Activism and its Impact on Public Policy Decision Making, Journal of Social Issues, http://www.unc.edu/courses/2005spring/epid/278/001/Bullard2000JSocIssues.pdf

The environmental protection apparatus in the United States does not provide equal protection for all communities. The environmental justice movement emerged in response to environmental inequities, threats to public health, unequal protection, differential enforcement, and disparate treatment received by the poor and people of color. The movement redefined environmental protection as a basic right. It also emphasized pollution prevention, waste minimization, and cleaner production techniques as strategies for achieving environmental justice for all Americans without regard to race, color, national origin, or income. The poisoning of African Americans in Louisiana's "Cancer Alley," Native Americans on reservations, and Mexicans in the border towns all have their roots in the same economic system, a system characterized by economic exploitation, racial oppression, and devaluation of human life and the natural environment. Both race and class factors place low-income and people-of-color communities at spe-cial risk. Although environmental and civil rights laws have been on the books for more than 3 decades, all communities have not received the same benefits from their application, implementation, and enforcement. Unequal political power arrangements also have allowed poisons of the rich to be offered as short-term economic remedies for poverty. There is little or no corre-lation between proximity of industrial plants in communities of color and the employment opportunities of nearby residents. Having industrial facilities in one's community does not automatically translate into jobs for nearby residents. Many industrial plants are located at the fence line with the communities. Some are so close that local residents could walk to work. More often than not, communities of color are stuck with the pollution and poverty, while other people commute in for the industrial jobs. Similarly, tax breaks and corporate welfare programs have produced few new jobs by polluting firms. However, state-sponsored pollution and lax enforcement have allowed many communities of color and poor communities to become the dumping grounds. Louisiana is the poster child for corporate welfare. The state is mired in both poverty and pollution. It is no wonder that Louisiana's petrochemical corridor, the 85-mile stretch along the Mississippi River from Baton Rouge to New Orleans dubbed "Cancer Alley," has become a hotbed for environmental justice activity. The environmental justice movement has set out clear goals of eliminating unequal enforcement of environmental, civil rights, and public health laws; differ-ential exposure of some populations to harmful chemicals, pesticides, and other toxins in the home, school, neighborhood, and workplace; faulty assumptions in calculating, assessing, and managing risks; discriminatory zoning and land use practices; and exclusionary policies and practices that limit some individuals and groups from participation in decision making. Many of these problems could be eliminated if existing environmental, health, housing, and civil rights laws were vigorously enforced in a nondiscriminatory way. The call for environmental and economic justice does not stop at the U.S. borders but extends to communities and nations that are threatened by the export of hazardous wastes, toxic products, and "dirty" industries. Much of the world does not get to share in the benefits of the United States' high standard of living. From energy consumption to the production and export of tobacco, pesticides, and other chemicals, more and more of the world's peoples are sharing the health and envi-ronmental burden of America's wasteful throwaway culture. Hazardous wastes and "dirty" industries have followed the path of least resistance. Poor people and poor nations are given a false choice of "no jobs and no development" versus "risky, low-paying jobs and pollution." Industries and governments (including the military) have often exploited the economic vulnerability of poor communities, poor states, poor nations, and poor regions for their unsound and "risky" operations. Environmental justice leaders are demanding that no community or nation, rich or poor, urban or suburban, Black or White, be allowed to become a "sacrifice zone" or dumping grounds. They are also pressing governments to live up to their mandate of protecting public health and the environment.

### Solvency – Solves Case

#### The counterplan solves – results in *the best compromise* that meets both economic and environmental demands. Only an act of good faith by NEPA that is willing to consider *all* alternatives *before* reaching a policy conclusion leads to stake-holder consensus.

#### This process is unique to the counterplan – stakeholders must be involved *early* and *often* to reach consensus

Peyser 5 – MS in City Planning @ MIT

Jennifer, “How Does Participation in the Framing, Review, and Incorporation of Scientific Information Affect Stakeholder Perspectives on Resource Management Decisions?,” http://web.mit.edu/dusp/epp/music/pdf/jpeyser.thesis.FINAL.pdf

While decision-makers and scientists may be unfamiliar with the joint fact finding approach and may perceive a loss of discretionary power through increased stakeholder involvement, these participants have an opportunity to make improvements suggested by NEPA evaluators. For example, stakeholders’ constant interaction with scientists would offset the perception that agencies misinterpret or misrepresent environmental information or that they do not conduct quality analyses. Due to the heavy involvement of stakeholders early and throughout the process, joint fact finding would change the perception that agencies make decisions before hearing from the public. Finally, at the end of the process, all involved stakeholders will have contributed to the outcome. If conducted appropriately, joint fact finding can make agency and public representatives allies rather than adversaries.

#### Consensus-building efforts solve

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Jennifer, “How Does Participation in the Framing, Review, and Incorporation of Scientific Information Affect Stakeholder Perspectives on Resource Management Decisions?,” http://web.mit.edu/dusp/epp/music/pdf/jpeyser.thesis.FINAL.pdf

In implementing the agreement, the group should also consider how the decision’s efficacy will be monitored. In the event that unanticipated issues arise as a result of the group’s decision, participants should also consider setting up a procedure to reopen the process and revisit the agreement. Finally, stakeholder groups should evaluate their own participation and consider “lessons learned” for their next collaborative effort. Assessments of Consensus-based Approaches – Benefits and Shortcomings The federal government has recognized the benefits of convening a stakeholder group to inform decision-making processes, 27 including • rules that are more sensitive to the needs and limitations of both the parties and the agency; • rules that are more pragmatic and more easily implemented at an earlier date; • a reduction in the number and a more moderate tenor of public comments; • a reduction in the number of substantive changes required before the rule is made final; and • greater creativity in rule making. In addition to improved decision-making outcomes, proponents of consensus-based processes have also asserted a number of positive secondary effects. Birkhoff and Lowry summarized four “levels” of outcomes and benefits that speak to the promise of consensus-based processes: 28 • Individual-level outcomes, such as met interests and needs; satisfaction with process and outcomes; empowerment through increased influence and access to decision makers and information; capacity building in technical information and skills such as negotiation and coalition building; and personal transformation through greater understanding of other parties’ perspectives; • Relationship-level outcomes, such as increased trust and establishment of shared norms between parties that can lead to future cooperation; • Social-level outcomes, such as the formation of new networks; increased social capacity to resolve disputes; and institutionalization of public participation and civic engagement; and • Ecological-level outcomes, including more sustainable, creative, and adaptive solutions through increased participation and inclusion of different perspectives and sources of knowledge.

#### The process of the counterplan avoids delay

Peyser 5 – MS in City Planning @ MIT

Jennifer, “How Does Participation in the Framing, Review, and Incorporation of Scientific Information Affect Stakeholder Perspectives on Resource Management Decisions?,” http://web.mit.edu/dusp/epp/music/pdf/jpeyser.thesis.FINAL.pdf

Consensus-based approaches have been used to address some of the inadequacies of NEPA public involvement. Federal and state statutes have legitimized the use of consensus building, and agencies at all levels of governments have used collaborative processes to facilitate their decision-making. Consensus building processes have the potential to resolve not only the value-based conflicts over natural resources, but also the questions of fact that often delay or even overturn environmental decisions. Still, many of these processes have ignored or taken for granted the questions of scientific and technical information.

#### In particular – 1nc Dreher evidence indicates the counterplan includes negotiated rule-making – that solves

Harter 97 – Professor @ Vermont Law School

Philip J., Visiting Associate Prof and Dir, Program on Consensus, Democracy, and Governance, Vermont Law School, Duke Law Journal, April

The most well developed of these techniques, other than the public hearings and meetings that are adjuncts of the APA itself,  [\*1400]  is negotiated rulemaking (reg neg). [43](http://www.lexis.com/research/retrieve?_m=c2cefcf5146011fa56687a48a7cd33c3&docnum=20&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAl&_md5=444f442e596607894252b8bddb7955af&focBudTerms=The%20most%20well%20developed%20of%20these&focBudSel=all" \l "n43#n43" \t "_self) Fifteen years ago, when the theory of negotiated rulemaking was just emerging, I predicted a number of major benefits from the practice. [44](http://www.lexis.com/research/retrieve?_m=c2cefcf5146011fa56687a48a7cd33c3&docnum=20&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAl&_md5=444f442e596607894252b8bddb7955af&focBudTerms=The%20most%20well%20developed%20of%20these&focBudSel=all" \l "n44#n44" \t "_self) Among them was the fact that the parties would be able to participate directly and immediately in the decision, thereby providing a legitimacy that is missing from hybrid rulemaking. In addition, the costs of developing the rule may be lower since the parties would not have to engage in as much adversarial research and positioning. The parties could focus on the issues that actually separate them and on the issues of importance to them. "Rulemaking by negotiation can reduce the time and cost of developing regulations by emphasizing practical and empirical concerns rather than theoretical predictions." [45](http://www.lexis.com/research/retrieve?_m=c2cefcf5146011fa56687a48a7cd33c3&docnum=20&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAl&_md5=444f442e596607894252b8bddb7955af&focBudTerms=The%20most%20well%20developed%20of%20these&focBudSel=all" \l "n45#n45" \t "_self) The parties have the experience and ability to focus on the details necessary to make a rule work day-to-day in the field. Interestingly, the lack of judicial review was not advocated as a prime benefit. It would be a likely ancillary benefit of the parties' mutual acceptance of the rule and its ensuing legitimacy, but was not an end in itself. Such were the predictions before any reg negs were actually undertaken. Formal evaluations are extraordinarily expensive and face the difficulties inherent in making counter-factual predictions (i.e., what would have happened if some other process were used to develop the rule), or finding a suitably analogous rule with which to compare a given proceeding. [46](http://www.lexis.com/research/retrieve?_m=c2cefcf5146011fa56687a48a7cd33c3&docnum=20&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAl&_md5=444f442e596607894252b8bddb7955af&focBudTerms=The%20most%20well%20developed%20of%20these&focBudSel=all" \l "n46#n46" \t "_self) As a result, few formal evaluations have been conducted, so that it is difficult to deter-  [\*1401]  mine in a rigorous way the extent to which the theory has been borne out. One major evaluation has been undertaken to compare negotiated rules at the EPA with those developed by the traditional notice-and-comment process. The study is currently being conducted for the EPA by Cornelius M. Kerwin, Dean of the School of Public Affairs at American University and Professor Laura I. Langbein. They have released a draft report of their analysis of the reg neg portion of their study. [47](http://www.lexis.com/research/retrieve?_m=c2cefcf5146011fa56687a48a7cd33c3&docnum=20&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAl&_md5=444f442e596607894252b8bddb7955af&focBudTerms=The%20most%20well%20developed%20of%20these&focBudSel=all" \l "n47#n47" \t "_self) Their initial conclusions include: Based on the data presented above, negotiated rulemaking is successful on several critical dimensions. It is widely perceived by participants as an effective means for developing regulations on virtually all important qualitative dimensions. The criteria established in literature and law for the selection of candidates for reg neg appear to be relevant in the selection process used by EPA, although their importance appears to vary from case to case and the discretion exercised by key Agency officials in the use of techniques is obviously considerable. The opportunity to participate in the process appears to be extended broadly, albeit not universally, and EPA or the facilitator it secured were frequently identified as an initiator of participation. The process of negotiation itself emerges as a very powerful vehicle for learning what the participants in the process value highly, and there are many types of information that is exchanged. The interviews suggest further that what is learned has long-term value and is not confined to a particular rulemaking... The negotiation process employs a number of devices to subdivide issues, such as working groups and caucuses, that were viewed as effective by a substantial number of respondents. And the use of non-committee observers serves as a device to expand participation without inflating the negotiating groups past workable limits. Facilitators were generally viewed as competent, unbiased and providing a number of services that promoted consensus. [\*1402] Most participants believe their participation had a substantial effect on the agreement that was produced and report that the opportunity to have an impact on the outcome was one of the aspects of the process they considered most valuable. [48](http://www.lexis.com/research/retrieve?_m=c2cefcf5146011fa56687a48a7cd33c3&docnum=20&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAl&_md5=444f442e596607894252b8bddb7955af&focBudTerms=The%20most%20well%20developed%20of%20these&focBudSel=all" \l "n48#n48" \t "_self)

### Solvency – Agency Will be Supported

#### The process of the counterplan ensures the agency’s recommendations are supported

Lindstrom and Nie 97 – Research Consultants for the Arizona Department of Transportation

Matthew and Martin, “HOW DO YOU COLLECT AND USE PUBLIC INFORMATION IN THE DEVELOPMENT OF TRANSPORTATION PLANS AND PROGRAMS?,” ADOT, REPORT NUMBER: FHWA-AZ97-452, http://www.azdot.gov/TPD/ATRC/publications/project\_reports/PDF/AZ452.pdf

To achieve improved public participation and acceptance of plans and projects an agency must first want to improve public participation. It seems clear -- through the focus groups, telephone interviews, and mail surveys that acceptance of plans and projects is directly related to improved and effective public participation. Citizen support and approval is a common goal sought by agencies, but agencies rarely enjoy these benefits if they continually ignore, silence, or try to placate the public. By building a mutually cooperative relationship with the diverse array of citizens, an agency’s plans and programs will be well known and more likely accepted because citizens and groups will have helped design them from the outset. Through an active and diverse communication process with the public, there will be less community polarization, more information and feedback for both the agency and public, and as a result, more policies that are not just passively accepted, but actively supported by the public.

### Solvency – Each Policy Key / Avoids Politics

#### Binding NEPA review solves better and avoids politics – the counterplan is key because NEPA success relies on public trust

Hutchinson and Bryan 96

Ralph Hutchinson, & Mary Bryan, @ Oak Ridge Environmental Peace Alliance, The Continuing Assault: How the Department of Energy Avoids the National Environmental Policy Act, http://getsustainablenow.org/orepa/nepaorep.html

NEPA seeks to guarantee that environmental impacts are given full consideration in the decision-making processes of the federal government through public participation. NEPA envisions this decision-making process as a **consultative process** with regularly scheduled conversations between government officials and the general public **each time** an activity which might have an environmental impact is being considered by the government. NEPA requires that the public be involved in environmental studies for three reasons:  The public may have more information about the local environmental conditions than federal officials. For instance, the existence of caves, springs, sinkholes, or other unusual natural formations may not be readily apparent to federal officials. Having local residents who have tramped through, hunted over, lived or farmed on land in the past identify geologic peculiarities may save the government time and money. In other instances, the public may have information about past uses of land-for mining, for a waste disposal area, for burial of human remains-which federal officials would not be expected to know. Disclosure in a scoping hearing can **significantly impact** the eventual decisions about the proposed project.  The public may have suggestions and comments which contribute to a better decision. NEPA presumes that federal officials and their contractors do not exhaust the potential for good ideas; NEPA believes that two heads are better than one. By its very nature-requiring officials to thoroughly consider and respond to public comments-NEPA encourages the public to participate in creating the best possible decisions.  Public participation can streamline the decision-making process. The public is engaged early in the decision-making process through scoping hearings in an effort to elicit those issues which are of most concern to the public. NEPA then directs the agency to give primary consideration to these concerns. The law approaches efficiency in a very practical way-don't waste time on things that nobody thinks is a big deal and pay attention to the things people care about. When a federal agency fails to engage the public appropriately in a NEPA process it runs the real risk of making a decision that is **not the best it could make**. It is likely to be less efficient in its decision-making process. What's more, the final decision is less likely to enjoy the support of the public and, in the case of controversial projects, may therefore not receive the funding support necessary from Congress for the project to proceed. Several things are **necessary for meaningful public participation** in the NEPA process; most of them are connected to information. 1. The public should know a decision is being made.  
2. The public should be provided an opportunity to engage decision-makers.  
3. The public should have adequate information about the proposed action to participate in an informed way.  
4. The public should have access to independent technical assistance to evaluate the claims and findings of the agency.  
5. The public and the decision-makers should engage in a consultative process toward a decision supported by all parties. Respect for and trust of the judgement of the public underlies NEPA. In addition, NEPA gives the public a place at the table in recognition of a fundamental fact which has moral imperatives attached to it: Federal agency officials and decision-makers are often transient in the community in which a project is located; they rarely have to live, long-term, with the good or bad impacts of the project they oversee. The public, however, often has roots which run generations deep and will be impacted by the proposed action for the rest of their lives. In other words, local folks have to live with what happens in their community, and bureaucrats and other officials do not. This is not meant to suggest that officials have a cavalier or disrespectful approach to decisions; it is to note, though, that the public has a deeper and more profound incentive in the ultimate decision. Decades later, when the project has run its course, it is the local community which will reclaim responsibility for the environment. NEPA and the Oak Ridge Reservation How all these rules and regulations play out in local communities is the subject of this report-at least how they play out in one local community. Oak Ridge, Tennessee is the home of the Department of Energy's Oak Ridge Reservation, a 35,000 acre site which hosts three large industrial complexes-the K-25 gaseous diffusion facilities now in transition, on their way to becoming a "Technology Park;" national research facilities at the Oak Ridge National Lab; and manufacturing facilities at Y-12. Each of these complexes carries an enormous legacy of hazardous and radioactive contamination from 55 years of nearly unfettered government activity in pursuit of production of nuclear weapons and other endeavors. In December of 1989, the Oak Ridge Reservation was placed on the EPA's National Priority List, signifying the extent of contamination made it a priority for cleanup. Nevertheless, each site has remained "open," continuing current operations and developing new missions in addition to the work of "cleaning up" history's mess. In Oak Ridge, the application of NEPA has been uneven. How zealously DOE seeks to adhere to or avoid the requirements of the law vary from time to time and project to project. Whether such unevenness reflects the personality of DOE management, budget or personnel shortfalls, or a determination not to be slowed down by bothersome regulations, the effect on the public is deleterious. In the past few years, DOE in Oak Ridge has demonstrated repeatedly a failure to embrace the values of NEPA or to comply with the law. What's more, DOE has failed to comply with its own policies regarding NEPA. The results of DOE's NEPA failures always include disappointment on the part of a public which expects government officials to obey the law. But perhaps more seriously, the results of NEPA's failures can be measured in increased risk to workers-in one instance the sheer luck of timing alone prevented loss of life-and to the environment. The results can also be measured in dollars and sense; some decisions currently being made run against the grain of common sense and will ultimately cost DOE more money than would otherwise be the case if NEPA were being followed rigorously. The Oak Ridge Environmental Peace Alliance has been monitoring DOE activities on the Oak Ridge Reservation for ten years-since 1988. We have participated in NEPA activities nearly all that time, and during our tenure as "watchdogs" we have praised and criticized DOE. OREPA is not alone in its concerns about DOE's NEPA compliance in Oak Ridge. Other members of the public who are familiar with DOE activities and who regularly participate in DOE's decision-making processes have been quick to agree when criticisms are voiced. OREPA set out to provide this analysis of the current state of NEPA compliance in Oak Ridge because we have been increasingly dismayed by DOE's behavior and attitude toward NEPA. We place the lion's share of the blame at the doorstep of Oak Ridge Operations management, but we recognize that the responsibility for complying with NEPA and DOE policy falls on the shoulders of every DOE and contractor employee involved in NEPA-covered activities. What's more, holding the government accountable for its actions is, regrettably, increasingly the responsibility of public interest groups. The reader will quickly see that this analysis does not attempt to be comprehensive or exhaustive. We do not analyze all DOE NEPA activities-we could not if we wanted to, since the public is not regularly informed of all NEPA activities. We do not capture all the problems. Instead, we identify some fundamental problems with DOE's NEPA activities in Oak Ridge, and we explore particular Oak Ridge cases which illustrate these problems. It is our belief that fixing some of these fundamental problems could go a long way toward achieving public satisfaction with DOE's NEPA activities and also toward achieving the best possible decisions-the reason NEPA exists. We provide at the end of the analysis some conclusions and recommendations. Many of the concerns captured in this analysis are not new-OREPA's concerns about DOE's in situ vitrification activities, for instance, have been widely publicized. Taken together, however, these examples of DOE's NEPA failure demonstrate that NEPA compliance is not taken seriously by DOE's management in Oak Ridge. The idea of using NEPA to make the best decisions, decisions which place a high priority on environmental protection, appears foreign to most of DOE-Oak Ridge Operations. Even worse, we fear DOE will not take NEPA seriously until it is compelled to in court. Not only is such a course of action expensive and distasteful to the public, it is also unconscionable that DOE should require it. The price of NEPA failure is high. Public trust is eroded each timeDOE fails to do what the public knows it is required to do. But even more importantly, the environment is left inadequately protected when DOE fails to apply NEPA appropriately. Ultimately, we will all pay a high price for failure to protect the environment-if not in this generation, then certainly in generations we hold even more dear. In the following sections, four case studies are analyzed as they pertain to the NEPA process. Four fundamental problems with DOE's NEPA activities are explored: public participation, improper use of segmentation, categorical exclusions, and the use of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to avoid NEPA.

### Link – TI

#### New investment in transportation infrastructure should be subject to NEPA review – avoids environmental harm

Karkkainen 2 – Professor of Law @ Columbia

Bradley C. Karkkainen, Prof. @ Columbia Law School, 102 Colum. L. Rev. 903, Towards a Smarter NEPA, ln

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.

#### New transportation projects should be subject to NEPA review

NASA 7

Overview of the National Environmental Policy Act, http://www.nasa.gov/mission\_pages/constellation/main/peis\_nepa.html

The National Environmental Policy Act (NEPA) of 1969 requires the preparation of an Environmental Impact Statement (EIS) for major Federal actions that may significantly affect the quality of the environment. Under NEPA, the term "environment" encompasses the natural and physical environment (air, water, wildlife, and geology) as well as people's relationship with that environment (health and safety, jobs, housing, schools, transportation, cultural resources, noise, and aesthetics). The goal of Congress in enacting NEPA was to ensure that Federal agencies consider the potential environmental impacts of their proposed actions before deciding on a course of action.

### Link – HSR

#### High speed rail needs a NEPA

FRA 9 – Federal Rail Authority (Compliance With The National Environmental Policy Act In Implementing The High-Speed Intercity Passenger Rail Program, August 13 2009, http://www.fra.dot.gov/downloads/rrdev/hsipr\_nepa\_guidance\_081309Final.pdf)

Service NEPA for Corridor Programs In many, if not most, of the corridors around the country where substantial improvements are needed to implement significantly expanded conventional or high-speed rail services, what FRA has defined in the guidance as “Service NEPA” is an essential first step. Service NEPA (which CEQ refers to as programmatic) typically addresses the broader questions relating to the type of service(s) being proposed, including cities and stations served, route alternatives, service levels, types of operations (speed, electric, or diesel powered, etc.), ridership projections, and major infrastructure components. For a major rail corridor improvement program, this type of environmental review must be completed before any substantial investments in the corridor can be made. Several different approaches are available to accomplish Service NEPA, including Tiered NEPA (Tier 1 environmental impact statement (EIS) or environmental assessment (EA) followed by Tier 2 EISs, EAs or categorical exclusion determinations (CE)) or non-Tiered NEPA (one EIS or EA covering both service issues and individual project components). A large expansive project would typically be addressed in a Tier 1 EIS process involving several rounds of environmental review, such as the EISs that FRA has prepared with the California High Speed Rail Authority for the state’s proposed high-speed rail project. A corridor program of smaller scope with a narrower range of reasonable alternatives could be addressed though a Tier 2 type EIS, or possibly an EA, if appropriate. FRA’s EIS addressing the Desert Express project from Las Vegas, Nevada, to Victorville, California, is an example of this type of review. An EA would be appropriate only for a more limited corridor development program where no significant environmental impacts are anticipated. Regardless of whether a Tier 1 or Tier 2 EIS or an EA is used, to advance a rail corridor development program the document must address the broad service-level issues. The decision on the appropriate level of documentation for a particular proposed action would be made by the FRA in consultation with the applicant. Project NEPA In the Guidance, FRA has drawn a distinction between Service NEPA and Project NEPA. Project NEPA consists of a Tier 2, site-specific environmental review that is appropriate to make a decision on implementing a particular project. FRA’s recent EIS addressing replacement of the Portal Bridge in New Jersey is an example of Project NEPA review. The type of Tier 2 document (EIS, EA, categorical exclusion (CE) documentation) appropriate in a given situation depends on the scope and magnitude of the proposal being considered and the likely environmental impacts. In instances where it is fairly evident that there are likely to be significant environmental impacts, proceeding directly to prepare an EIS would be the appropriate course of action. In situations where an applicant is unsure about whether or not there are likely to be significant environmental impacts, preparing an EA would be the appropriate course of action, which would lead to either a Finding of No Significant Impact or an EIS. In instances where there is likely to be no significant environmental impacts and FRA has an established CE, completion of a FRA CE Worksheet would be the appropriate course of action. See 64 Fed. Reg. 28547. FRA and applicants need to be careful not to segment projects or programs to avoid the scope of environmental review required by NEPA. FRA is responsible for determining the appropriate type and scope of NEPA documentation, and FRA environmental staff is available to advise applicants with respect to individual projects. FRA cannot approve or fund a project that does not have a sufficient NEPA document.

### Link – Title XI

#### EIS’s should be prepared over shipyard expansions

United States Department of Commerce 76 (“FINAL ENVIRONMENTAL IMPACT STATEMENT MARITIME ADMINISTRATION TITLE XI VESSELS ENGAGED IN OFFSHORE OIL AND GAS DRILLING OPERATIONS”, http://ia700805.us.archive.org/12/items/finalenvironm00unit/finalenvironm00unit.pdf)//RK

Only as a last resort would shipyard expansion of any significance be undertaken, and the project would be subject to extensive review by the U. S. Army Corps of Engineers and to hearings which are open to the public. Environmental Impact Statements (except in the case of war) may be prepared for each shipyard expansion and specific attention to the environmental setting of the activity will be required. Expansion of existing shipyards, which are in most cases located in already highly industrialized areas of a waterfront, would generally require certain disruption of the adjacent shoreline. Such disruptions may be caused by filling, dredging, pile driving, excavation, bottom stabilization, and/or other hydraulic works depending upon the nature of the expansion. When suitable land area adjacent to the existing facility is not available due to the configuration of the shoreline, location of other industrial plants, proximity of residential sections, or for other reasons, then such land must be created by filling suitable sections of the waterway on which the expansion is contemplated. Additional dredging of access channels to the construction and repair facilities may be required in certain cases because of the relatively deep draft and excessive width of large semisubmersible rigs. Any such dredging and spoil disposal would have an impact on the environment and would, therefore, fall within the jurisdiction of the Army Corps of Engineers. Creation of new acreage by filling existing waterways, whether for expansion of a shipyard or building a new one, causes a permanent impact on the waterway by diminishing its navigable and recreational area. The filled bottom ceases to provide natural habitat and possible spawning grounds for marine life. However, the new shoreline, which is generally stabilized by steel bulkheads, may provide protection for aquatic organisms, especially in localities with strong current or tidal turbulence. Construction of a new shipyard on Land which requires little or no filling would, of course, have a lesser impact on the ecology, although former wildlife value and biologic productivity will be lost. The disturbance to the environment caused by filling, pile driving, and other hydraulic activities will be of a permanent nature, changing the physical environment, and hence, also the associated biota. Once c onstruction is complete, a new final biological balance will set in. It is self-evident that in areas where profitable harvesting of shell fish has been going on for years, any disturbances to the marine environment, such as filling, will be more objectionable from a c ommercial point of view than filling in areas in which such activities never took place. In constructed areas or in the vicinity of navigable channels, the filling may cause problems to a degree where it may not be permitted at a 11 or diverted to some other location.

### Link – Port Dredging

#### EIS’s should be prepared for ports

Keegan Jr. 11 - Fordham University (J.D., 1998) Williams College (B.A., 1995), (Gerard C., The Dredging Crisis In New York Harbor: Present and Future Problems, Present and Future Solutions, Fordham Environmental Law Review Volume 8, Issue 2 2011 Article 2, http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1444&context=elr)

In National Wildlife Federation v. Benn, plaintiffs sought to ensure the Army Corps' compliance with EPA criteria and to require an Environmental Impact Statement ("EIS") for the effects of ocean dumping of dredged spoils in the New York area. The National Wildlife Federation and the Environmental Defense Fund challenged the Army Corps procedures in dumping dredged spoils in the New York Bight area. "[P]laintiffs claimed that the Army Corps failed to comply with statutory and regulatory requirements in conducting federal programs and licensing private projects involving ocean disposal of dredged spoils.” After the government was granted summary judgement on two claims, the only issue that remained was whether the Army Corps, which is subject to NEPA, was compelled to prepare a comprehensive (programmatic) EIS on dredged spoil dumping in the area. The plaintiffs argued that the Army Corps was acting in violation of NEPA by "treating ocean dumping projects in isolation and not preparing" an EIS for the Mud Dump in the New York Bight. The court held that Army Corps was responsible for, and was required to conduct a programmatic EIS on, the Mud Dump Site. In addition to requiring the Army Corps to adhere more closely to federal guidelines, Benn is important for another reason. The court found the parties had standing to sue even though their claim did not challenge a specific permit or project. The court found it enough that the suit "attacked a clear and consistent pattern of conduct constituting agency action." Plaintiffs, after Benn, will not need to utilize resources by separately litigating individual permit actions project-by-project. As a result, this ruling opened the door to additional suits directly challenging the EPA and the Army Corps' interpretation of their own dredging permit criteria.

#### Must be prior to dreding

Army Corps of Engineers 2002 **(**NATIONAL DREDGING NEEDS STUDY OF U.S.

PORTS AND HARBORS, http://www.graduadosportuaria.com.ar/Vias%20Navegables/Tema%205/National%20dredging%20needs....pdf)

Federal and state agencies interact with Congress by enforcing Federal environmental laws and policies that are a result of increased environmental awareness and concern. The National Environmental Policy Act (NEPA) authorizes Federal and state agencies to implement mitigation and permit-processing policies. Agencies are required to consider environmental consequences of their decisions when implementing NEPA. This is accomplished by considering alternative actions and interacting with other agencies and the public to determine opinions and possible conflicts in the preparation of an environmental impact statement. The Water Pollution Control Act of 1972 assigned the Corps the water quality statutory responsibilities of issuing permits and applying EPA-proposed discharge criteria. The NEPA of 1970 requires the Corps to protect fish and wildlife and consider general environmental factors. Environmental concerns have contributed to the development of Federal regulatory policies that influence the activities of ports. The Corps is responsible for dredging and maintaining navigable waterways. Navigation improvements are performed only when they are justified through benefit-cost analyses. Ports contribute to Corps dredging and filling activities through cost sharing. MARAD issues technical reports that are useful to port officials when making decisions and abiding by Federal guidelines. The U.S. Coast Guard installs navigational aids to provide safety and the capability to navigate waterways. The functions of these Federal agencies directly impact the activities of ports. Difficulties can be encountered in the regulatory process due to the involvement of multiple governmental agencies. Potential obstacles can occur between Federal functions when Federal subsidies conflict with Federal environmental rules. The most significant interaction is between ports and the American people. Economic benefits realized as a result of port improvements can affect the entire Nation. This is achieved by supporting existing businesses, attracting new businesses and generating revenue from fees and port-activity tariffs that are reinvested into port development. As a publicly governed body, a port must be developed in the public’s best interest. The trade stimulated from port development will benefit consumers and citizens. Consumers will have more goods from which to choose from that have lower transportation prices. Ideally, the lower transportation cost will be passed on to the consumer as a lower retail cost. Harbor improvements benefit all Americans indirectly through cheaper consumer goods and facilitate international trade by providing shippers with improved infrastructure. Congress is responsible for maintaining navigation facilities. Projects to improve port facilities must first be assessed in terms of environmental and economic impacts. Once approval for a project is released, then Congress must make appropriations available to construct the improvement. National security is another important aspect of port development. During a time of national crisis the volume of supplies needed for the protection of our national interests must be received and transported in the most timely and efficient manner. This requires landside terminal capabilities and port facilities that are accessible to ships. Adequately dredged harbors are required to meet national security demands. Port development includes deepening channels as well as improving landside services, such as terminal and cargo handling facilities, that can increase the cargo handling capacity of a port. The additional support industries in a port region increase employment opportunities in the area. Lands adjacent to ports must be managed effectively to ensure they are used and preserved properly. Port development requires large financial investments and usually has significant environmental impacts that affect the decision-making process. With port development comes higher land values adjacent to the port and additional revenues generated from property and sales taxes. In answering to the governing bodies and the prominence of environmental awareness, ports are forced to make sound management and development decisions.

### Link – CCS

#### Prior NEPA over CCS solves and is necessary

DoE 10 – Department of Energy (Executive Summary: Report of the Interagency Task Force on Carbon Capture and Storage, August 2010, http://www.fe.doe.gov/programs/sequestration/ccstf/es\_ccstf\_2010.pdf)

Federal agencies must work together to design requirements for CCS using existing authorities in complementary ways. By late 2010, EPA should finalize rulemakings for geologic sequestration wells under the Safe Drinking Water Act (SDWA) and GHG reporting for CO2 storage facilities under the Clean Air Act (CAA), and propose a Resource Conservation and Recovery Act (RCRA) applicability rule for CO2 that is captured from an emission source for purposes of sequestration. EPA guidance to support implementation of these rules should also be provided at the same time. By late 2011, EPA should finalize the RCRA applicability rule. EPA and the Department of the Interior (DOI) should immediately formalize coordination and prepare a strategy to develop regulatory frameworks for CCS for onshore and offshore Federal lands. Ratification of the London Protocol (LP) and associated amendment of the Marine Protection, Research, and Sanctuaries Act (MPRSA) as well as amendment of the Outer Continental Shelf Lands Act (OCSLA) will ensure a comprehensive statutory framework for the storage of CO2 on the outer continental shelf. Federal and State agencies must work together to enhance regulatory and technical capacity for safe and effective CCS deployment. Specifically, EPA, in coordination with DOE, DOI, and State agencies, should develop capacity-building programs for underground injection control regulators. Educating permit writers and other key officials will greatly enhance their capability and efficiency in issuing and enforcing technically sound permits. These programs should leverage existing efforts such as the DOE Regional Carbon Sequestration Partnerships (RCSPs). DOE and EPA should also identify data needs and tools to support regulatory development, permitting, and project development. The Task Force emphasizes that appropriate monitoring, oversight, and accountability for CCS activities will be essential to ensure the integrity of CCS operations, enable a sustainable CCS industry, and provide a strong foundation for public confidence. DOE and EPA, in consultation with other agencies, should track regulatory implementation for early commercial CCS demonstration projects and consider whether additional statutory revisions are needed. This will enable the Administration to more effectively consult with Congress and the States if the existing framework proves ineffective. Federal agencies should begin to develop National Environmental and Policy Act (NEPA) analyses related to CCS as early as possible to help ensure timely completion of robust and comprehensive environmental reviews. Where appropriate to Federal agency decision-making, agencies should consider development of Programmatic Environmental Impact Statements for use in tiered NEPA analysis and initiate this process. CEQ should consider development of CCS-specific NEPA guidance. Efforts to improve long-term liability and stewardship frameworks should continue. By late 2011, EPA, DOE, Department of Justice (DOJ), DOI, and Treasury should further evaluate and provide recommendations to address long-term liability and stewardship in the context of existing and planned regulatory frameworks. Of the seven options identified by the Task Force, the following four approaches, or combinations thereof, should be considered: (1) reliance on the existing framework for long-term liability and stewardship; (2) adoption of substantive or procedural limitations on claims; (3) creation of an industry-financed trust fund to support longterm stewardship activities and compensate parties for various types and forms of losses or damages that occur after site closure; and (4) transfer of liability to the Federal government after site closure (with certain contingencies). Open-ended Federal indemnification should not be used to address long-term liabilities associated with CO2 storage. Public Outreach To enhance and coordinate public outreach for CCS, DOE and EPA should leverage existing efforts to coordinate among Federal agencies, States, industry, and NGOs to gather information and evaluate potential key concerns around CCS in different areas of the United States. Using this information, DOE and EPA should develop a comprehensive outreach strategy among the Report of the Interagency Task Force on Carbon Capture and Storage 8 Federal government, States, industry, and NGOs having two components: a broad strategy for public outreach, targeted at the general public and decision makers, and a more focused engagement with communities that are candidates for CCS projects, to address issues such as environmental justice. A first step should be to immediately establish a clearinghouse for public access to unbiased, high-quality information on CCS. Over time, outreach tools should be developed for project developers and regulators with input from DOE, EPA, Department of Transportation (DOT), and DOI.

### Link – Mass Transit

#### Should EIS over mass transit

FTA No Date – Federal Transit Authority (Environmental Impact Statement, http://www.fta.dot.gov/printer\_friendly/13835\_3009.html)

Applicants intending to apply for federal mass transportation funds should initiate the National Environmental Policy Act (NEPA) process and integrate it with other planning activities at the earliest possible time. The Federal Transit Administration (FTA) should be notified at the time a project concept is identified. Once the applicant has furnished sufficient information and documentation, FTA will advise the applicant of the probable class of action that will be required to meet NEPA requirements. There are three classes of action, which determine the level of documentation required in the NEPA process. Class III actions are defined as any major federal action that may significantly affect the environment. An Environmental Impact Statement (EIS) must be prepared for all Class III actions. The purpose of the EIS is to provide full and open evaluation of environmental issues and alternatives, and to inform decision-makers and the public of reasonable alternatives that could avoid or minimize adverse impacts and enhance the quality of the environment. The FTA's environmental impact regulation (Environmental Impact and Related Procedures (23 C.F.R 771)), issued jointly with FHWA, describes two types of mass transit projects that normally have significant affects on the environment: New construction or extension of fixed rail transit facilities (e.g. rapid rail, light rail, commuter rail and automated guideway transit); and New construction or extension of a separate roadway for buses or high-occupancy vehicles not located within an existing highway. Other types of mass transportation projects may also require an EIS based on FTA's review of an individual project and whether its impacts are judged to be potentially significant. In reaching a determination on the significance of impacts, the definitions of "major federal action" and "significantly" in the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR 1500 et seq.) are used.

### Link – TI – Public Participation Key

#### Transportation investment relies on a flawed system of expertise that excludes disadvantaged populations – the counterplan is key to reverse this trend

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David and Lisa, “Environmental Justice and Transportation Investment Policy,” Scholar

For environmental justice to be an integral element of transportation investment analysis, all affected populations must have accurate, comprehensible information on the nature and level of impacts. While the process through which planners share information with appropriate representatives of low-income populations and minority populations is beyond the scope of this report, establishing the content of what should be shared is the central objective of the chapters to follow. An array of potential impacts can be identified that would be likely if one or several alternative investments were made. It is vital to present these impacts effectively for at least four reasons: Planners generally have the best interests of the community at heart, but they and most public servants are middle-income, non-minority, male-led, white-collar people who do not necessarily have a clear grasp of the needs, concerns, and preferences of populations that are less well represented. Transportation changes impact affected populations in myriad ways. A multidisciplinary approach to examining impacts is highly beneficial in presenting affected populations with full information on diverse impacts ranging from travel time savings to epidemiological issues related to air pollution.2 Even within the same city, different neighborhoods with comparable ethnic and economic circumstances may vary considerably in terms of their priorities and concerns. It is important to provide comprehensive, understandable information on the likely impacts of alternative transportation system changes to enable affected populations to assess what their response should be.

#### Even absent the counterplan, this takes out affirmative solvency

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Richard, Transportation, 28, http://www.uvm.edu/~transctr/pdf/willson\_article.pdf

The theory of knowledge, or epistemology, that is implied by instrumental rationality is scientific objectivism. Drawing from the natural sciences, engineering and certain of the social sciences, this view assumes that objective facts can be known and that the analyst is able to observe a system without participating in it or effecting it. Furthermore, it is assumed that facts can be separated from subjective information and abstracted from complex social settings. Data analysis and modeling results provide the primary information upon which alternatives are evaluated, information such as level of service, air quality conditions or cost effectiveness. Objectivist epistemology and instrumental rationality method go hand-in-hand – if one element cannot be supported it is difficult to justify the other. Some aspects of the practice of transportation planning are well suited to the traditional focus described above. Many transportation conditions are quantifiable and certain aspects of travel behavior are quite predictable (e.g., traveler route selection). Most plans involve complex technical aspects that are suited to a scientific approach. If there is a social consensus about ends and the range of alternatives is within an aspect of travel behavior that is predictable, then the traditional model has much to recommend it. Indeed, the efficiency with which people and goods are moved in developed countries is a testament to the efficiency of these methods. Criticisms of the conventional model It is not new to observe that the practice of transportation planning does not follow the classic instrumental rationality model. It important to review those criticisms, however, because they illustrate the possibilities for communicative rationality. Conventional transportation planning practice reflects a tension between the espoused theory just described and a theory-in-use of strategic rationality. By strategic rationality, I mean a form of rationality that is oriented toward achieving political action. One of the realities of practice is that transportation planners are frequently not able to achieve a consensus concerning the ends of planning. The multiple stakeholders to transportation planning often have different goals and objectives; in recent decades the range of goals for transportation have widened significantly. Instead of acting as advisors to a rational actor decision-maker who is functioning in a closed system, transportation planners find competing interest groups in an organizationally defined and differentially empowered setting. Instead of well-defined problems, they find multiple, perhaps ideologically defined problems. Instead of perfect information and analytic certainty, they find contested, ideological information and models that are stretched to represent complex behavioral realities. The transportation planner’s challenge is to reconcile the espoused theory with these conditions to find practical wisdom and a process that will lead to decision-making and plan adoption. The conventional model is not helpful in this regard. Furthermore, transportation scholarship has abandoned the issue except for offering postmortem on failed processes. The claims for objectivity in data and models that underpin instrumental rationality have been challenged from numerous standpoints. Quantification draws attention to some things and hides other things, such as equity issues or qualitative considerations. For example, studies of travel patterns by gender reveal differences formerly hidden in aggregate data. Wachs (1985) points out that models are also manipulated to produce predetermined outcomes. More broadly, Throgmorton (1993) argues that analytic techniques do not present an objective truth, but instead act as figures of speech and argument. In other words, a survey instrument or model does not exist disconnected from speech in a place and time. Surveys and models have an audience, they respond to what came before, they construct the roles of planners and others and they are built on language concepts. Finally, Harvey (1985) suggests that transportation models must respond to the fact that “values are invoked and mediated through the process, rather than resolved at an early stage” (pp. 458). When models ignore this reality, as they often do, their results become less relevant to decision making. Yet model results and analytic data are often presented as “findings” rather than a form of discourse.3 Many observers of transportation planning recognize that political and institutional aspects in transportation are ignored by the conventional approach (Wachs 1985). Reviewing planning theories that bear on transportation planning, Meyer and Miller (1984) advocate decision-centered transportation planning and identify a broad range of influences on the planning process, including rational comprehensive planning, incrementalist planning, advocacy planning, policy planning, and strategic planning. They argue for an approach that will help decision-makers reach good decisions rather than focus exclusively on the “right” answer. The literature contains many accounts of how little rational planning has to do with actual decision-making (for example, see Altschuler 1979, Wachs 1995, Richmond 1998). Stakeholders, institutions and decision-makers usually know the alternatives they prefer and may seek to structure analysis to rationalize their preferences. Figure 1 shows these groups as direct influences on the evaluation of alternatives even though that is classically the domain of the planner/analyst. In short, political processes rarely “hold still” for the rigid and time-consuming methods of conventional rational planning.

#### Public Consultation is Key to Address Social and Economic Implications of the Plan

Forkenbrock and Schweitzer 97 – David J. Forkenbrock: Bachelor’s degree from the University of Minnesota in 1965, a master’s degree from Wayne State University in 1973, and a doctorate from the University of Michigan in 1977, Nationally recognized transportation researcher, Lisa A. Schweitzer: Ph.D. Urban Planning University of California, Los Angeles (Environmental Justice and Transportation Investment Policy, 1997, pg 52)

It is difficult to make significant improvements to transportation systems without creating adverse economic impacts of one form or another. This being the case, the indicators contained in the foregoing discussion can be used to estimate the nature and extent of such impacts. The two most significant economic impacts related to environmental justice are likely to be changes in relative access to opportunities and changes in the value of real property. This said, it is vital that planners actively consult with low-income populations and minority populations affected by a transportation system change under consideration. Through this direct interaction, planners will gain needed insights both as to the types of impacts that would be likely to materialize and how important they are to the affected populations. Social Impacts Measuring and evaluating the social impacts of a transportation system change is difficult because such impacts are inherently subjective. Each person has opinions as to what aspects of the built environment are important, what constitutes good living space, and what is aesthetically pleasing. Changes in transportation systems and services that are desirable to one person or group may be unacceptable to another. Thus, planners cannot predetermine what social impacts will be important to affected populations.

#### Transportation is a key site for environmental justice

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David and Lisa, “Environmental Justice and Transportation Investment Policy,” Scholar

We developed a series of questions pertaining to the social impacts of a transportation system change. These questions are presented under the general categories of community cohesion and aesthetics. While both categories are highly subjective, the questions will enable planners to help affected populations gain a clear understanding of possible impacts. These impacts could include neighborhood sociability and safety, lighting, landmarks, signage and fencing, changes in urban scale, and landscaping. A unified approach Taken together, discussions of the several types of impacts provide a basis for understanding how a transportation system change would affect people nearby. This report does not evaluate the relative importance of the several impacts, but rather it helps make it possible for those who would experience them to do so. OBTAINING PUBLIC INPUT The objective of this report has been to lay out the types of information nontechnical people should have access to if they would be affected by a transportation system change. Such information is quite extensive, and much of it is the product of rather technical analysis. A need exists to make this information fully comprehensible, so that all affected populations can acquire a sound understanding of the likely impacts, favorable and adverse. Beyond the scope of our study is the important element of devising strategies for involving affected populations, especially those with low incomes and those who are members of racial minorities, in the process of evaluating the sorts of information on impacts discussed in this report. It certainly is the case that for a constructive community participation effort to occur, useful information on environmental, economic, and social impacts must be made available to all participants. On the other hand, technically correct, thorough information is of limited value if it is not available to or well understood by the people who stand to be affected by a transportation system change. A U.S. DOT-sponsored conference on environmental justice and transportation planning produced a series of recommendations regarding involvement by protected populations in the process of determining whether to make particular changes in transportation systems (Federal Transit Administration 1995). Among the general principles mentioned in the conference proceedings are: Strengthen the role of neighborhood and community-based organizations in the planning process (p. 17); hold community leaders accountable for participation [p. 56); Educate planners on ways to actively promote citizen involvement (p. 27); for example, it is important to develop culturally sensitive communications [p. 52) and to conduct sensitivity training to help decision makers and agency staff understand different cultures (p. 19); When appropriate, use intermediary or liaison organizations to make linkages between neighborhoods and area-wide planning (p. 28); Recognize the limitations of traditional public hearings and opportunities to comment on proposed transportation system changes [p. 28); Involve minority populations and low-income populations in the facility planning process at the early stages (p. 52); and Provide information on key issues related to the system changes under consideration at such common locations as grocery stores, churches, and schools (p. 52); also use prime-time advertisements and announcements (p. 58). LOOKING AHEAD A recurring theme in the limited materials available on environmental justice and transportation investment is the need for improved capabilities to assess project impacts. Social and economic considerations have received minimal attention in impact analyses (Federal Transit Administration 1995, p. 18), and methods of analysis need further development. Based on our review of the salient literature and observations while conducting this research, needs for increased knowledge include: • Development of improved baseline assessments that estimate current levels of inaccessibility and adverse impacts. • Improved mobility assessment methods. The current focus on corridor analyses can lead to traditional solutions, such as highway capacity expansion. • Air pollution and noise models that are more capable of micro-scale (neighborhood) analysis, taking into account such factors as building heights and spacing. • More effective methods for reaching affected populations and gauging neighborhood-level priorities regarding elements needing preservation or enhancement. • Better predictive approaches for estimating trip geography and travel desires of low-income populations and minority populations in specific situations. • Location analyses for public and private facilities that take into account protected populations' abilities to conduct their daily activities. • Improved techniques for communicating probable impacts, positive and negative, of contemplated transportation system changes, perhaps including multimedia approaches, taking into account the need to reach low-income populations and minority populations. CONCLUSION A growing awareness of the pivotal role played by the transportation sector in the quality of life for low-income populations and minority populations has led environmental justice advocates to place considerable emphasis on this sector. This report is an attempt to improve the quality of information available to all interested parties, including those who traditionally have had comparatively little knowledge about the consequences of proposed transportation system changes. We stress that more work is needed to further upgrade our ability to generate the salient information. Also needed are improved approaches for including minority populations and low-income populations in the planning process from conceptualization to effectuation. Environmental justice is a public policy objective that has the potential to significantly improve the quality of life for people who often have been left behind as communities grow and change. This report represents a step toward a more equitable sharing of knowledge regarding the benefits and costs brought about by investments in transportation systems.

### Link – New Spending

#### New spending should be subject to NEPA review prior to action

Wayland 9

Karen Wayland et. al, Legislative Director @ Natural Resources Defense Council, 1/13, Congressional Leaders: Reject Request to Waive Environmental Laws in Stimulus Bill Transp. Projects, http://www.edf.org/pressrelease.cfm?contentID=9111

As you prepare to consider economic stimulus legislation, the undersigned organizations want to underscore how past experience has shown that a key to good long-range development decisions is the high quality information provided via the National Environmental Policy Act (NEPA) for projects funded and authorized by the federal government. Securing an effective economic boost, sustainable growth,revitalized infrastructure, and a cleaner, safer planet necessitates a real understanding of the consequences of stimulus investments. Part of the investment our Nation makes in economic recovery must therefore be an investment in smart and open decision-making. NEPA is the federal government’s guarantee that the pros and cons of, and alternative approaches to, its investments and actions will be thoughtfully considered and informed by the best available **scientific and factual information**. It also ensures that your constituents will be able to understand and get orderly input into stimulus decisions. Inevitably, in the course of congressional consideration, special interests will assert that we cannot afford the NEPA process in a time of national urgency. The truth is that we cannot afford that kind of leap-before-you-look rashness. We have neither the time nor the resources to waste on measures that ultimately prove to be unproductive or harmful. Our members, like the American public as a whole, want to be sure that the prudent and knowledgeable approach of NEPA is integrated into all federalstimulusprojects that affect the human environment. To help achieve this outcome, projects eligible for funding under the stimulus should have all necessary state and federal environmental reviews in hand, including NEPA and other environmental and historical resource reviews, before commencing. Among State and local government-provided projects that could be funded under the package are many “shovel ready” proposals that have already completed environmental reviews. For example, Tennessee’s Department of Transportation notes that its entire list of $1.7 billion in stimulus projects includes only projects that have completed all needed environmental studies and obtained necessary permits. Similarly, Georgia submitted a list of $3 billion worth of projects that have passed environmental review and received all necessary permits. Californiahas billions of dollars worth of sustainable projects that have completed environmental review - projects to restore delta levees, invest in a clean energy future, improve stormwater management, expand transit and more.

### Link – NEPA Crossroads

#### The counterplan removes transportation from a growing list of *categorical exclusions* – even if the plan doesn’t have a significant effect on the environment, the counterplan prevents other similar policies from dodging the NEPA process

Karkkainen 4 – Professor of Law @ U Minnesota

Bradley C. Karkkainen, Prof. of Law @ Univ of Minnesota, 12 N.Y.U. Envtl. L.J. 333, Whither NEPA?, Lexis

Yet NEPA's mythic status, like that of the Great Oz, [n6](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n6) rests largely on the power of illusion. Pull back the curtain and NEPA stands revealed as just another statute, subject to repeal or revision at the will of Congress. Like other statutes, NEPA is also vulnerable to administrative reinterpretation - a vulnerability exacerbated in NEPA's case by a statutory text that is far from self-executing. NEPA's central provisions are framed in lofty generalities, [n7](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n7) leaving much discretion to the Council on Environmental Quality (CEQ), [n8](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n8) the federal courts, [n9](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n9) and federal agencies to translate its broad mandates into specific operational requirements. [n10](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n10) Although CEQ's relatively detailed regulations have done [\*335] much to constrain and regularize NEPA practice, [n11](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n11) these regulations, too, hang by an unusually slender legal thread: they are made binding on federal agencies not by congressional delegation of rulemaking authority, but by a presidential executive order instructing federal agencies to follow CEQ's rules. [n12](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n12) Thus, in principle, CEQ regulations could be revoked or revised in whole or in part by a countermanding executive order - an action that can be taken simply by the stroke of the presidential pen, without notice and comment and, in all likelihood, without judicial review. [n13](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n13) As a legal matter, then, NEPA is subject to [\*336] administrative reinterpretation on a potentially far more sweeping scale than more specific statutes that expressly delegate authority to agencies in narrower and more qualified terms. Considering that NEPA rests upon such a shaky legal foundation, it is remarkable how stable the structure has remained over time. Congresses and presidents have come and gone, some of them environmentalists and others more skeptical of environmentalism's aims and methods. Yet NEPA endures - never significantly amended, [n14](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n14) never drastically modified by administrative reinterpretation, a comfortable old shoe of a statute, wearing well the passage of time. Now, for the first time in a generation, NEPA is at a crossroads. [n15](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n15) Long-simmering dissatisfaction among agency officials and resource extraction industries has boiled over. Efforts to revise NEPA practice are proceeding on several fronts. In September, 2003, a CEQ-convened NEPA Task Force issued a detailed report, entitled Modernizing NEPA Implementation, which advocated a series of NEPA "reforms." [n16](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n16) Some of the Task Force recommendations appear uncontroversial. [n17](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n17) Others are too vaguely [\*337] stated at present to evaluate or put into operation.[n18](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n18) Some, however, represent significant and potentially far-reaching departures from established NEPA practice. [n19](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n19) On a separate track, leading administration officials and members of Congress are seeking streamlined NEPA procedures in connection with President Bush's "Healthy Forests Initiative." [n20](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n20) This program is intended to accelerate "forest thinning" and "fuels reduction" - euphemisms for logging - in federally owned forests said to pose a high risk of fire. [n21](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n21) NEPA's analytical requirements are blamed for slowing the pace of these forest management initiatives. [n22](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n22) In addition to these White House initiatives, a number of agencies have undertaken significant revisions of their own agency-specific NEPA compliance procedures. [n23](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n23) While it is too [\*338] early as of this writing to predict what package of NEPA revisions, if any, will emerge from the current ferment, it is timely to examine the general direction of changes now being discussed. This Article concludes that NEPA does need significant restructuring to make it a more effective tool in environmental management. But the general thrust of the proposals now being circulated in Washington is, in the author's judgment, misguided. NEPA has some critical shortcomings, but not because it demands too much information of federal agencies, as the present administration contends. [n24](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n24) Instead, NEPA is falling short because it demands the wrong types of information at the wrong time. The administration's NEPA reform proposals do little to address this problem and would add new problems to the mix.I A View of NEPA's Effectiveness: Four Caricatures Observers hold divergent views on NEPA's effectiveness and its value as an environmental policy tool. As a baseline, we might describe one prevalent view as that of the "NEPA optimist." The optimist argues that NEPA is working reasonably well to achieve the objectives set out by Congress. By forcing agencies to confront information they otherwise might not have considered, the environmental impact assessment process as set out by NEPA [n25](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n25) leads straightforwardly to better informed, more rational, and [\*339] environmentally enlightened decision-making. [n26](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n26)At the same time, the optimist argues, NEPA-mandated procedures have the democracy-enhancing virtue of opening the policy process to greater public scrutiny and public participation, thus enhancing transparency and democratic accountability. [n27](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n27) The twin goals of better-informed decision-making and enhanced public oversight seem to have been the original public policy justifications for NEPA, [n28](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n28) and the Act's most ardent defenders insist it has largely succeeded on both fronts. [n29](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n29) The optimist's rosy assessment can be distinguished from the darker, more cynical view of the "NEPA monkey wrencher." [n30](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n30) The monkey wrencher is often critical of the quality of the information generated by environmental impact assessments and skeptical that agencies compelled to observe the rituals of NEPA procedure are actually influenced by the information thus generated. The monkey wrencher nonetheless places a high value on NEPA because it affords extraordinary opportunities to throw up procedural roadblocks that may delay or kill projects the monkey wrencher opposes. A full-scale environmental impact [\*340] statement (EIS), in particular, is usually costly and time-consuming to produce.[n31](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n31) NEPA litigation - either to decide whether an EIS is required [n32](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n32) or to determine its adequacy once it is produced - adds further costs and delays. Fear of judicial review pushes agencies toward ever-lengthier and more elaborate EISs, responding to all major comments received in the public notice and comment period. [n33](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n33) NEPA thus becomes a highly effective tool that environmental NGOs and others can use to raise the financial and political costs of projects they oppose and stretch out decisions over an extended time frame, giving time to rally political opposition. In some cases these delays and associated financial and political costs may be enough to derail the project entirely. [n34](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n34) In other cases, their ability to erect procedural obstacles may give project opponents leverage in the larger political bargaining that surrounds the decision, which they may use to force desired modifications in project design. When used in this way, NEPA is largely a negative weapon - an obstructionist tool. Its use is predicated upon an understanding [\*341] that the EIS process is by its very nature so inefficient and cumbersome that it may be used to thwart or constrain agency decision-making through selective, tactical application of extreme transaction costs. Environmental NGOs often deploy NEPA in this way, producing environmentally beneficial outcomes in particular cases; some NGOs justify NEPA's continued utility on these grounds. [n35](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n35) In the aggregate, however, a decision-making process that depends upon high transaction costs and tactical obstructionism looks like a sub-optimal way to run a government. As to particular applications, there is no way to sort the good cases from the bad; anyone with an obstructionist agenda, a skilled lawyer, and constitutional standing can wield the procedural monkey wrench to try to block or delay government projects, making NEPA (and state-level "little NEPAs" [n36](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n36)) a favorite tool of NIMBY-ism [n37](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n37) as well as environmentalism. A third position, roughly reflecting the longstanding view of some agency officials and many in the extractive industries operating on federal lands, is that of the "NEPA skeptic." This view is roughly the flip-side of the monkey wrencher's. For all the reasons environmental NGOs love NEPA, agency managers and affected industry parties tend to hate it. They see it as a tool of unprincipled obstructionism, a roadblock to progress, and a pointless and burdensome paperwork exercise that leads to delays and adds to project costs. [n38](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n38) Some NEPA skeptics also see its [\*342] obstructionist potential as a fundamentally undemocratic device that gives "special interest lobbies" (the monkey wrenchers) undue influence over governmental decision-making. [n39](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n39) The skeptics' underlying analysis of NEPA's operative mechanisms is in important respects quite similar to that of the monkey wrenchers, yet, as the parties who bear the costs of delay, they are on the other side of the fence with respect to the desirability of tactical obstructionism. A fourth view, prevalent in the legal academic literature, is that of the "legalist critic." The legalist's view of NEPA is also generally negative, but her complaint here is not that NEPA is too robust, but rather that it is too anemic. Legalists charge that although NEPA was intended to have substantive as well as procedural requirements, the statute has been eviscerated by the courts and especially by the Supreme Court - a forum in which environmental NGOs have never won a NEPA case. The Court held that NEPA's substantive requirements [n40](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n40) were merely precatory and not judicially enforceable; NEPA's requirements, the Court said, are "essentially procedural." [n41](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n41) Mandatory procedure without substantive legal standards is held in low regard [\*343] by the legalist critics. [n42](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n42) In addition, the Court has eliminated even the more detailed procedures that lower courts had begun to require. [n43](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n43) The effect of these decisions, in the view of the legalist critic, is to expand the range of agency discretion and weaken NEPA's influence. This brief inventory does not exhaust the range of views concerning NEPA's effectiveness. Nor are the four positions caricatured here mutually exclusive. Some environmental NGOs, for example, may simultaneously hold optimist and monkey wrencher views, valuing NEPA both because it produces better-informed and more environmentally enlightened agency decisions, and because it allows them to intervene to block especially undesirable projects. Other monkey wrenchers may share the legalist critic's view that judicially enforceable substantive standards would make for a stronger and more effective NEPA, but in the meantime they are willing to use the procedural tools at their disposal. Precisely because they think that procedure without substance is likely to be ineffective, some legalist critics may share the skeptic's view that observance of NEPA's procedural formalities is dilatory, costly, and a waste of scarce agency resources. Nor are these various positions always held in such stark terms as I pose them here; actual views extend across a continuum of intensity. Still, the caricatures depicted here roughly capture the principal poles in the debate. II NEPA's Effectiveness: An Alternative View In a recent article, I came down somewhere between NEPA's [\*344] enthusiasts and its critics, but with a twist. [n44](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n44) I argued that NEPA has accomplished a good deal - certainly more than its most vociferous critics acknowledge. These results have not come about, however, through the mechanisms usually identified by NEPA's supporters. Instead, progress has been achieved mainly through a back-handed and unintentional incentive mechanism, one that is poorly understood and deserves a good deal more scholarly attention than it has received to date. NEPA demands of the reporting agency a great deal of information all at once: a one-time-only, purely ex ante, panoptic assessment of all the environmental consequences of a proposed action; all reasonably foreseeable alternatives to that action; and any reasonably foreseeable mitigation measures necessary to reduce the adverse environmental impacts. [n45](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n45) That's quite a mouthful even to say, but stating it that way suggests the enormous burden that such an open-ended information production requirement places on the agency. Another critical feature of NEPA is that its environmental impact assessment requirements are purely predictive in character. [n46](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n46) Simply put, NEPA asks reporting agencies to tell us everything that's going to happen. It does not ask for subsequent verification that the agency's predictions were accurate. The emphasis is not on actual impacts, but on predicted impacts. This may seem puzzling, but NEPA - written in the latter stages of an era when we had great confidence in "comprehensive bureaucratic rationality" [n47](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n47) - apparently assumes that expert bureaucrats armed with sharp pencils and green eyeshades will have the capacity to predict, accurately and comprehensively, how things will turn out, given a particular course of action and taking all relevant factors into account. We have subsequently learned that the world is more complicated than that. Ecological systems are complex, dynamic, and non-linear, consisting of numerous mutually interdependent [\*345] components and processes, interacting in complex and hard-to-calculate ways, and exhibiting numerous threshold effects and high levels of "inherent stochasticity." [n48](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n48) Our scientific understanding of basic ecosystem components and processes is riddled with gaps and uncertainties, and even the most thoroughly studied and best understood ecosystems tend to produce surprises - sometimes quite large surprises - over time. [n49](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n49) This background of ecological complexity and interconnectedness contributes to the burdensomeness of the EIS requirement. Comprehensive assessments of environmental impacts are costly and time-consuming, as the monkey wrenchers well recognize; it is precisely for this reason that the EIS has become the favorite tool of those seeking to kill or delay projects. [n50](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n50) The background of ecological complexity also creates opportunities for monkey wrenchers to challenge the substantive adequacy of the EISs that are produced, since they can often find some impact, alternative, or mitigation measure that the agency has failed to consider. [n51](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n51) This, predictably, drives agencies to try to [\*346] write even more comprehensive "kitchen sink" EISs so as to preempt the possibility of judicial reversal, further adding to the length of the process, the size of the EIS document, and the costs of EIS production. [n52](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n52) This leads to the further perverse consequence that EISs tend to be quite uninformative. No one can wade through hundreds or thousands of pages of mind-numbing detail. [n53](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n53) Few people inside or outside the agency actually read the EIS, and those who attempt to do so may find it difficult to separate the good information from the junk. Contrary to conventional wisdom, more information is not always better. Over-inclusiveness may dilute the overall quality of information, as good information is swamped by bad. [n54](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n54) The EIS itself, then, turns out not to be a particularly good device for informing anyone - not key agency decision-makers, and certainly not the public. Due to the time it takes to produce, the EIS will also typically arrive too late in the process to inform and influence the agency's decision. [n55](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n55) Typically, agencies will commit resources to producing an EIS only if they have already determined that it is unavoidable; that is, if the project is so environmentally damaging than an EIS will be required, but the agency calculates that project benefits outweigh the costs and delay added by EIS production. [n56](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n56)Consequently, we tend to get EISs only for the most environmentally harmful projects, after the agency has already decided (though not as a formal legal matter) to proceed despite the adverse environmental consequences. As an unintended corollary, agencies have a strong incentive to avoid EIS production in the first instance if at all possible. For the vast majority of projects, avoiding EIS production turns out to [\*347] be reasonably easy. NEPA requires that an agency produce an EIS only if its proposed action "significantly affects the quality of the human environment." [n57](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n57) The term "significantly affects" is not defined in the statute or in the CEQ regulations, [n58](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n58) leaving that judgment to agency discretion - albeit policed by the possibility of NGO lawsuits and judicial intervention. [n59](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n59) Most NEPA compliance effort these days goes not into producing full-scale EISs, but into producing slimmed-down documents called environmental assessments (EAs), designed to produce just enough information to justify a "Finding of No Significant Impact" (FONSI) to get the agency off the hook. [n60](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n60) The numbers tell the story: each year federal agencies produce about 50,000 EAs leading to FONSIs. [n61](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n61) In contrast, across the [\*348] entire federal government only about 500 EISs are produced annually, [n62](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n62) and since every Final EIS must be preceded by a Draft EIS (and may be followed by a Supplemental EIS), this figure really represents approximately 250 federal actions per year that trigger the EIS production process - a vanishingly small number given the scale and scope of federal operations. [n63](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n63) Many of the 50,000 FONSIs are so-called "mitigated FONSIs," in which the proposed project is redefined at an early stage to include some mitigation measures that, if implemented, will bring the expected environmental impacts below the EIS-triggering threshold of "significant." [n64](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n64)To enthusiasts of the EIS process, the mitigated FONSI looks like an unprincipled evasion of NEPA's core requirement. [n65](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n65) If the agency starts out expecting the project to have "significant" impacts, a full-scale EIS is ordinarily required to compel the agency to examine environmental impacts, reasonable alternatives, and the full range of mitigation measures, so that a "fully informed" agency can reassess its alternatives and mitigation options in light of the information thus revealed. With a mitigated FONSI, the agency takes a procedural shortcut, short-circuiting the prescribed decision-making path by choosing mitigation measures before the results of a full EIS analysis are in, and on that basis redefining the project so it is no longer expected to have "significant effects." To the mitigated FONSI's critics, this looks like cheating. [n66](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n66) I say, "Bravo!" to the use of mitigated FONSIs - at least, up to a point. The widespread use of the mitigated FONSI is the best evidence we have that NEPA is actually altering agency decision-making and improving environmental performance. Agencies are redefining projects to include mitigation measures that reduce adverse environmental impacts below the "significant" threshold. [\*349] Moreover, through use of the mitigated FONSI, they are presumably achieving these environmentally beneficial results at a lower cost and in less time than would be required if they went through the full-blown EIS process. [n67](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n67) That is a positive outcome, not a negative one. It is evidence that NEPA works. Of course, it may not be working in quite the way it was intended to work. Rather than serving as the vehicle for fully informed agency decision-making, the EIS operates as a penalty-default rule, creating an incentive for agencies to avoid its onerous requirements by upgrading environmental standards at an earlier stage of project design. III A Smarter NEPA? I said "Bravo!" to the mitigated FONSI, but only up to a point. The missing elements here are verification, transparency, and accountability - shortcomings in the entire NEPA system, but especially in the netherworld of FONSIs and mitigated FONSIs, where most NEPA compliance efforts occur outside the glare of public scrutiny. [n68](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n68) Environmental impact assessment should be reoriented toward monitoring and reporting on actual outcomes, rather than relying exclusively on ex ante predictions. We should begin by recognizing that agency experts do not have perfect information, and consequently we cannot trust that their predictions will turn out to be accurate. If we want to ensure that mitigation measures are achieving environmentally beneficial results, at some point we need to see what has actually happened and to know whether the predictions were correct. Without question, there is value in a pre-project analytical exercise that generates science-based predictions concerning the expected environmental consequences of a proposed action. [\*350] However, because ecological processes are complex and typically less than fully understood, such predictions are often highly uncertain, as are expectations concerning the effectiveness of mitigation measures that might be included in the project. Yet no follow-up monitoring or verification of the accuracy of pre-project predictions is required once the project is in place. [n69](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n69) NEPA thus assumes an unattainable level of clairvoyance at the pre-project stage, and naively relies on the uncertain information thus generated. My first proposal is simply that we require follow-up monitoring to verify the accuracy of any predictions we can identify at the pre-project analytical stage as resting on uncertain foundations. [n70](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n70) Follow-up monitoring would produce multiple benefits. It would provide baseline data that should allow us to improve scientific understanding of ecological processes and human impacts, and thereby improve our predictive capacity over time. [n71](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n71) In addition, it would create the possibility of post-project adjustments in mitigation measures, enhancing their prospects for success. [n72](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n72) Finally, it would give the political branches and the public a better opportunity to hold agencies accountable for actual, as opposed to merely predicted, environmental performance. Second, in recognition of the uncertainty embedded in the NEPA analytical process, I have urged the creation of a new category of NEPA disposition, which I have dubbed the "Contingent FONSI." [n73](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n73) To the extent that an agency's FONSI rests on uncertain predictions about the environmental impacts of the proposed action or the effectiveness of included mitigation measures, we should treat that finding as contingent, pending subsequent verification or reversal on the basis of post-project monitoring. So, for example, if the agency reaches a Finding of No Significant Impact predicated upon the expected (but uncertain) effectiveness of mitigation measures, and follow-up [\*351] monitoring later reveals that the mitigation is less effective than anticipated, the contingent FONSI would be reversed, and the NEPA analytical process would be re-triggered. To avoid a full-scale EIS at that point, the agency would need to devise additional mitigation measures, coupled with further monitoring, to justify a "Round Two" FONSI. Thus, we would build into NEPA an ongoing, dynamic process of learning and adjustment of mitigation plans in light of actual revealed impacts. My third NEPA reform proposal, which I call "Adaptive Mitigation," is closely related to the first two. [n74](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n74) Currently, mitigation plans are typically fixed and inflexible. The agency simply adds a mitigation component to its project proposal, relying on the expected effectiveness of the mitigation measures to justify a FONSI (a so-called "mitigated FONSI"). [n75](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n75) Since this is all that NEPA requires, the agency then proceeds full speed ahead with the project as mitigated, more or less blind to actual environmental outcomes. Under Adaptive Mitigation, agencies would be authorized and encouraged to design more responsive mitigation plans that provide for a range of alternative mitigation measures and subsequent upward or downward adjustments in the scale and intensity of mitigation efforts, to be triggered in response to information produced by follow-up monitoring. This flexible approach to mitigation should have better prospects of success than fixed mitigation measures and, where appropriate, could provide an important part of the justification for a FONSI. IV The CEQ Task Force Report How do the Administration's NEPA Task Force proposals compare with this diagnosis of NEPA's shortcomings? The Task Force report is short on specifics, but it recommends several broad categories of changes. Two of these appear to be relatively [\*352] uncontroversial, at least as presently stated. First, without offering details, the Task Force urges that agencies improve their use of information technologies in the NEPA process. [n76](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n76) Second, in similarly imprecise terms, the Task Force urges enhanced interagency, intergovernmental, and public-private collaboration in the environmental assessment process. [n77](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n77) This Article will not address these recommendations, which at least on a facial level appear reasonable, necessary, and timely - although the goals may be harder to implement than they are to state at this level of generality. Other Task Force recommendations, however, are more controversial. A. Categorical Exclusions Current CEQ regulations permit agencies to define "Categorical Exclusions," entire classes of agency action that are deemed exempt from NEPA's EA and EIS requirements because they "do not individually or cumulatively have a significant effect on the human environment and ... have been found to have no such effect." [n78](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n78) As part of its overall NEPA "streamlining" agenda, the Task Force proposes to "improve and modernize" the use of Categorical Exclusions, [n79](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n79) but there can be little doubt that what the Task Force really has in mind is to expand their use. [n80](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n80) The use of Categorical Exclusions is not problematic when the excluded category is routine and has only a trivial environmental impact. [n81](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n81) That the Task Force should be urging [\*353] expanded use of Categorical Exclusions at this time is more troubling, however. Categorical Exclusions have been authorized for a very long time under CEQ's NEPA regulations. [n82](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n82) Their ready availability, coupled with agencies' understandable desire to avoid costly and potentially lengthy case-by-case environmental reviews, should cause us to expect that agencies would have already placed most categories of genuinely uncontroversial and de minimis actions under Categorical Exclusions. What, then, is to be gained by recommending their expanded use now? A clue may be found in one recent and highly controversial foray into expansion of Categorical Exclusions. In connection with the President's Healthy Forests Initiative, the Departments of Interior and Agriculture have promulgated new Categorical Exclusions for "hazardous fuels reduction activities" and post-fire rehabilitation projects, [n83](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n83) categories that extend to forest "thinning" (ostensibly to reduce fire risk). [n84](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n84) The soundness of these practices as a matter of public policy is hotly debated, with environmental NGOs contending that the Healthy Forests Initiative is motivated less by a genuine concern for fire prevention than by the desire to promote accelerated logging under the rhetorical smokescreen of fire safety. [n85](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n85) In no small measure, these public policy disputes revolve around competing claims about the environmental impacts of thinning and salvage logging. Against that background, creation of the new Categorical Exclusions appears to be a preemptive strike by the Administration, with the dual aim of accelerating the pace of forest thinning and salvage logging by eliminating environmental review and taking the underlying public policy disputes off the table by categorically declaring [\*354] environmental impact analysis off-limits. This arguably constitutes an abuse of the Categorical Exclusion concept, contrary to the spirit, if not the letter, of NEPA. Such moves will inevitably tend toward reducing the number and frequency of environmental reviews, subjecting large classes of governmental action to cursory categorical review framed at a high level of generality. In this way the fine-grained impacts of particular cases can be safely ignored and remaining uncertainties can be interred in a once-off, never-to-be reopened categorical inquiry. The general thrust of the Task Force proposal on Categorical Exclusions is diametrically opposed to my own earlier NEPA reform proposals, which generally aim at expanding and improving the quality of information produced in the environmental review process through expanded monitoring and post-project adjustment of mitigation factors. Additional Categorical Exclusions would also tend to reduce accountability and transparency in a NEPA process that is currently not transparent enough.

### Link – Categorical Exclusion

#### The plan creates a categorical exclusion from NEPA review – this will be *expanded* by future court decisions to undercut NEPA

Outka 6

Uma, Jd & MA in Public Policy @ Maine, NEPA and Environmental Justice: Integration, Implementation and Judicial Review, http://www.abanet.org/irr/committees/environmental/essay/outka.doc

The CEQ regulations authorize each federal agency to define categories of actions within its jurisdiction “which do not individually or cumulatively have a significant effect on the human environment” to be wholly excluded from the requirements of NEPA. The efficiency value of this provision is obvious, and generally, actions taken within a categorical exclusion will not warrant the time and expense of environmental analyses. However, although these technical gaps in NEPA are unlikely to harm the environment or implicate environmental justice, the possibility should not be ruled out. For example, it seems appropriate for the Secretary of the Treasury to create a categorical exclusion for clarifications of tax rules, but expansion of a tax credit for use of gasoline-ethanol blends was challenged under NEPA in Florida Audubon Soceity v. Bentsen. Audubon argued that an EIS should have been prepared because an incentive to increase ethanol production would lead to more forest lands being put to agricultural use. In Friends of Pioneer Street Bridge v. FHWA, residents of Montpelier, Vermont, unsuccessfully challenged the Federal Highway Administration’s NEPA categorical exclusion of a bridge replacement project. The proposed action involved removing an historic bridge from the site, moving it to a new location, and replacing it with a new bridge, which the residents claimed would increase traffic, alter development patterns, and raise environmental justice concerns. Although these cases are rare, if a categorical exclusion applies to a proposed federal action, it may be difficult for environmental advocates to convince a court to require environmental review of potential impacts. Courts afford “substantial deference” to agency decisions to categorically exclude projects from NEPA’s requirements.

### AT: Perms

#### (if applicable) – Ignore perms without thorough and developed explanations and solvency claims in the 2ac – simply the words “permutation do CP” or “perm do both” are complete arguments. Leads to sandbagging, and lets the 1ar re-develop their argument. We made an investment in the 1nc to distinguish the plan from the counterplan.

### AT: Perm Do Both – Transportation Specific

#### Failure to take *fully consider* public views tank the *whole project*

Lindstrom and Nie 97 – Research Consultants for the Arizona Department of Transportation

Matthew and Martin, “HOW DO YOU COLLECT AND USE PUBLIC INFORMATION IN THE DEVELOPMENT OF TRANSPORTATION PLANS AND PROGRAMS?,” ADOT, REPORT NUMBER: FHWA-AZ97-452, http://www.azdot.gov/TPD/ATRC/publications/project\_reports/PDF/AZ452.pdf

Citizen opposition to transportation projects is often explained as being fueled by a fundamental sense that public managers and bureaucrats are untrustful. Several scholars have suggested that political behavior is directly correlated to political trust and confidence. Joel Aberbach and Jack Walker (1970) state that “if distrustful groups are denied access to decisionmaking, or if institutions are too rigid to change, destructive conflict and a breakdown of the social order are possible.” [18] Richard Cole (1974) arrives at similar conclusions in his book Citizen Participation and the Urban Policy Process. [19] One aspect of mistrust includes the belief that the bureaucracy will not deliver the promised goods and services at the specified time and cost--if at all. As John Semmens, an Arizona Department of Transportation Senior Planner, argues, the standard approach to public finance has the taxpayers pay first and trust the bureaucracy to perform. We have seen the inferior results produced by this method. Whatever taxes are paid are never enough. The money is always spent. The benefit for which the tax was assessed typically falls short of what was promised. [20] Consequently, if this is true, any efforts to improve public feedback will involve a significant change in the way public transportation projects get financed. If the public doesn’t trust government agencies to do what they say, any efforts at public participation will need to address this issue first and foremost lest the complete process loses all meaning and dignity.

#### Prior and binding key – otherwise the public won’t participate and links to politics

Lindstrom and Nie 97 – Research Consultants for the Arizona Department of Transportation

Matthew and Martin, “HOW DO YOU COLLECT AND USE PUBLIC INFORMATION IN THE DEVELOPMENT OF TRANSPORTATION PLANS AND PROGRAMS?,” ADOT, REPORT NUMBER: FHWA-AZ97-452, http://www.azdot.gov/TPD/ATRC/publications/project\_reports/PDF/AZ452.pdf

In an ideal world, public participation would run throughout the project or policy in question from the outset. It is an ideal however that has proven difficult to achieve and maintain. The concept of a "cumulative curve of involvement" suggests that initial interest in a project or policy will be low because plans are general and agency credibility lacking. Once plans become more developed and citizens see how they will be affected, public participation will usually increase. [9] Also important in this study is the finding that protest is related to whether the public understands and accepts agency decisions.[10] The implications of this "cumulative curve of involvement" are as follows: 1) It is common for only a few citizens to be present at the beginning or start of a project. 8 2) Active solicitation is therefore required. 3) Citizens will enter the process at staggered times. Thus, introductory orientation materials will be needed throughout the project. 4) Budgets will need to be balanced according to when most citizens enter the process. Although difficult, it is important that citizen participation is elicited at the earliest possible time. The Timing Of Opposition Directly related to this curve of involvement is the stage of planning that public opposition usually takes place. It is common for a project to proceed unabated until the latter stages of the planning process whereby it then meets virulent public opposition and negativity. Recognizing this recurring pattern, the Montana Department of Transportation created a task force to examine this recurring problem. They then made the following recommendations: 1) More Personal Contact - despite the difficulties inherent in early planning, the task force contends that early informal meetings with landowners, interest groups, and citizens can help the agency attain important and early information and feedback. 2) Clear Communication - the task force recommends using informal, clear and concise language, i.e., no abbreviations or acronyms, write for a non-technical and general audience, etcetera. 3) Talk and Act - communication is critical among project team members and the public. When issues or problems are identified, team members are urged to act. The task force also recommends actively seeking out potential project opponents and adversaries. 4) Keeping People Informed - the agency must inform more than just those whom attend formal procedures. This can be done through a variety of mediums, i.e., newspapers, radio, and television. [11] The task force contends that the aforementioned recommendations have resulted in a better use of resources, better projects, and a better ability to meet the public interest. Although public attendance at meetings is still low, the department is trying new ways to seek public awareness. LEVELS OF CITIZEN PARTICIPATION Within the existing literature, there is a general agreement on the importance of citizen participation in the bureaucratic decision-making process. From an academic and theoretical point of view citizen participation is democratically and individually healthy, and from the point of view of the administrator, it is an excellent way to facilitate program-policy success and improve public standing within the community. There also appears to be a consensus regarding the different 9 levels of public participation ranging from complete citizen control to manipulation. These different levels of participation can be seen as a "Ladder of Citizen Participation."[12] Citizen control, delegated power, and partnership are defined as degrees of citizen power. Placation, consultation, and informing are considered degrees of tokenism. And, therapy and manipulation are considered forms of non-participation. This is not to say that forms of one-way communication, i.e., public reports, direct mail, advertising, press conferences, and public hearings, are not important, but that the motives of the agency must be considered and made known to the public. If an agency is seen by the public or relevant stakeholders as making a mere pro-forma attempt at acquiring citizen participation, they will get little and mostly negative feedback. Citizens are equally weary of public meetings and hearings that are held once a project has already begun, when input becomes a case of too little, too late. [13]

#### Focus groups prove

Lindstrom and Nie 97 – Research Consultants for the Arizona Department of Transportation

Matthew and Martin, “HOW DO YOU COLLECT AND USE PUBLIC INFORMATION IN THE DEVELOPMENT OF TRANSPORTATION PLANS AND PROGRAMS?,” ADOT, REPORT NUMBER: FHWA-AZ97-452, http://www.azdot.gov/TPD/ATRC/publications/project\_reports/PDF/AZ452.pdf

FOCUS GROUP 2: ACTIVE OPPONENTS OF THE SCENIC PEAKS PARKWAY, FLAGSTAFF, AZ This focus group was also conducted on September 16, 1996. It consisted of seven persons that were recruited as “active opponents” of the “Scenic Peaks Parkway Initiative” that was presented to Flagstaff voters in the Spring of 1996. Members of the group were chosen because they took a pro-active role in stopping this initiative. Members actively protested, signed petitions, and attended a variety of public meetings, among other activities. Group members opposed the Parkway for varying reasons, but environmental and neighborhood concerns were most common. The session was broken into three parts. The first part was dedicated to the specifics of the Peaks Parkway issue and how it relates to citizen participation in the transportation process, the second part was more generally concerned with ADOT, citizen participation and transportation planning, and the last section of the focus group was a more free-flowing discussion of ADOT, the public, and the communication process. It is important to note that although the focus group centered its attention on ADOT, the conversation often drifted to the city level of government. Some members were unclear what role ADOT even played in the process, thus directed some of their criticism to the city of Flagstaff. Nevertheless, members had much to say about the role of citizen participation in the transportation planning process, whether it be spearheaded by the city or by ADOT. Instead of a discussion of each question posed to the group, a number of themes that ran throughout the session are reviewed. They are the following: The importance of listening, early involvement, increased and better access to decision makers, the need to better explore alternatives, the perceived dominance of special interests, and a mistrust of the agency and the city. The Importance of Listening Members of the group were adamant and in unison in regard to the importance of listening to the public. Participants felt that the staging of multiple public meetings is not the equivalent of listening to the public. Every member agreed that the public’s feelings about the Parkway were known by the city of Flagstaff and ADOT (the same issue has been rejected by voters on numerous previous occasions), but were either ignored or slighted. “Listen to the public before 37 you act” was a common theme that was reiterated throughout the session. One member in particular desired the use of old and new citizen surveys to better gauge public opinion. Some discussants believed that the use of public meetings is actually a deterrent to citizen participation and one called it a mistake to believe that 32 public meetings means public input has been taken. This “dog and pony show” overwhelms the public with the number of meetings it has to attend if its input is to be taken into account. One member felt the process was inherently unfair because whereas the agency has to win only once to build the road, the citizenry has to win every time it is presented to stop it. Early Involvement A common thread throughout the session was the dubious nature of citizen participation “after the fact.” Many members felt as though they were excluded from the decision making process until it was too late to make any serious changes in the plan. Thus, many members felt forced into opposition because they were not involved early enough in the process. The Need for Specifics and an Explanation Members of the focus group were also certain of the need for more detailed specifics of proposed plans and a reasonable explanation of each as well. All believed that the parkway was too conceptual in nature and not detailed enough. One member declared that because ADOT spends taxpayer money, the public has a right to see and understand a comprehensive “blueprint” of proposed plans. This must include the ultimate cost of the project and the reasoning behind it. Members of the group believed that there are much more pressing traffic and transportation issues in the city beside the parkway issue, and are confused why these issues fail to be addressed. More Access to Decision Makers Participants felt that they and especially those stakeholders most affected by a transportation plan should have increased and easier access to relevant decision makers. Members expressed the need to know who is involved in a plan and how they can be reached for question and comment. Moreover, once these decision makers are identified, the group believed they should be held accountable for their decisions. Related to this concern was the group’s confusion with how ADOT was related to this transportation project. Members heard conflicting accounts of ADOT’s position and hoped for a clearer position in the future. The Exploration of Alternatives The focus group repeatedly told of how they wished the city and ADOT would have explored other options and alternatives to the parkway. They believed there are more important transportation issues that need to be addressed in Flagstaff and “Phoenix’s solutions aren’t our solutions.”

#### Overwhelming academic consensus that public participation must occur *prior* to planning

Lindstrom and Nie 97 – Research Consultants for the Arizona Department of Transportation

Matthew and Martin, “HOW DO YOU COLLECT AND USE PUBLIC INFORMATION IN THE DEVELOPMENT OF TRANSPORTATION PLANS AND PROGRAMS?,” ADOT, REPORT NUMBER: FHWA-AZ97-452, http://www.azdot.gov/TPD/ATRC/publications/project\_reports/PDF/AZ452.pdf

The issue to be discussed here is when and how often citizen participation should occur. Because each agency and project is different there is not one universal answer. However, we found an overwhelming consensus in the focus groups, mail surveys, telephone interviews, and participation literature to involve citizens from the very beginning of the decision making process. Depending on the project or decision, the exact format of participation will vary as will the duration of involvement. For example, early citizen involvement entailed community “scoping” meetings for Coconino County’s Kachina Project, but in Maine, citizens sit on regional advisory committees which are charged with broad decision making authority.

### AT: Perm Do Both – Substantive Force Key

#### Lip-service to EIS conclusions devastates NEPA

Lindstrom and Smith 8 - \*Professor of Political Science @ St. John’s, \*\*Professor @ UNA

Matthew, Professor of Political Science @ St. John’s, Professor @ Northern Arizona, The Natural Environmental Policy Act, Google Book

NEPA’s execution has faltered largely because of executive and judicial failure to implement, enforce, and interpret NEPA’s broad policy objectives. Rather than recognizing the comprehensive core and long-term view embedded within NEPA, most US presidents, agencies, and courts have applied a very narrow, crabbed interpretation in implementing NEPA. Most of them have incorporated and recognized only the EIS requirement and not the entire NEPA statement of environmental policy. The partial and incremental use of the law has weakened its effectiveness and nearly obliterated the act’s holistic purpose and vision.

#### The permutation doesn’t solve substantive force – simply compiling information and then *ignoring* the environmental alternative links to the disadvantages

Flournoy 8 – Professor @ UF

Alyson, Harnessing the Power of Information to Protect Our Public Natural Resource Legacy, Texas Law Review, Vol. 86, p. 1575, 2008

Any discussion of NEPA’s potential must begin with the statute’s most frequently identified shortcoming: its lack of substantive force. The Supreme Court’s ruling in the Strycker’s Bay19 case that NEPA imposes no substantive environmental duties on agencies crystallized NEPA’s status as a purely procedural statute.20 Critics have repeatedly pointed to this interpretation as a primary impediment to achieving many of the broad policies and duties articulated in § 101 of the Act.21 Further, commentators disagree on whether the Strycker’s Bay decision is even a proper interpretation of NEPA.22 Regardless, under the Supreme Court’s interpretation, § 102 of NEPA primarily requires federal agencies to: (1) consider environmental impacts of and alternatives to major proposed actions using a systematic, interdis- ciplinary approach,23 and (2) prepare detailed statements on these impacts.24 Even so interpreted, most agree that NEPA has had substantial beneficial effects.25 Thus, some might argue that the preferred route to protecting a natural resource legacy would be to amend NEPA to incorporate a long- needed substantive standard. The lack of a substantive standard has also given rise to the critique that NEPA is flawed because of the inherent tension between the rationalist comprehensive model of decision making on which environmental-impact- assessment practice is premised and the lack of clear goals and priorities in the NEPA process.26 Requiring agencies to compile all the information needed to support a rationalist decision is overkill if agencies need only compile and “consider” this information as they exercise their discretion on which values to prioritize and which to sacrifice. A substantive environ- mental standard could address this critique by focusing NEPA’s open-ended information demands.

### AT: Perm Do Both – Prior Key

#### Must be prior review – after-the-fact attempts to reverse environmental harms inevitably fail

Dreher 5 - Deputy Executive Director of the Georgetown Environmental Law & Policy Institute. He served as Deputy General Counsel of the U.S. Environmental Protection Agency

Robert, “The Political Assault on the National Environmental Policy Act,” http://www.law.georgetown.edu/gelpi/research\_archive/nepa/NEPAUnderSiegeFinal.pdf

The only sense in which NEPA might be said to conflict with the use of EMSs and adaptive management is that all these management approaches require financial investments and, arguably, there are not sufficient resources to pursue all these approaches at optimal levels. But there is no a priori reason to view these approaches as competing with NEPA analysis in a kind of bureaucratic zero-sum game. EMSs and adaptive management might just as well be viewed as competing with all other demands on an agency budget. Moreover, there are significant synergies between these various approaches, as discussed above. To the extent an agency nonetheless sees these different approaches as competing for the same resources, the primary emphasis should remain on ex ante NEPA reviews rather than post hoc analysis using EMSs and adaptive management. Generally speaking, far more can be accomplished for the environment by carefully designing a project or program to avoid adverse effects, rather than by attempting to make corrections after the fact.

#### The affirmative locks-in environmental harm --

Dreher 5 - Deputy Executive Director of the Georgetown Environmental Law & Policy Institute. He served as Deputy General Counsel of the U.S. Environmental Protection Agency

Robert, “The Political Assault on the National Environmental Policy Act,” http://www.law.georgetown.edu/gelpi/research\_archive/nepa/NEPAUnderSiegeFinal.pdf

NEPA gives effect to the common-sense axiom “look before you leap.” The Act does not require fed- eral agencies to choose an environmentally-friendly course over a less environmentally-friendly option. But, as a practical matter, the requirement to prepare an EIS ensures that agency decisions will reflect envi- ronmental values. As the Supreme Court has observed: Simply by focusing the agency’s attention on the environmental consequences of a proposed project, NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast. Moreover, the strong precautiontory language of ... the Act and the requirement that agencies prepare detailed impact statements **inevitably bring pressure** to bear on agencies to respond to the needs of environmental quality.12 Analysis of alternatives is the “heart” of an EIS.13 Comparing the environmental impacts of an agency plan with the impacts of alternative courses of action defines the relevant issues and provides a clear basis for choosing among options. By considering and, where appropriate, adopting reasonable alternatives that meet agency objectives with less environmental impact, federal agencies can achieve NEPA’s environ- mental protection goals while implementing their primary missions.

#### A NEPA review *before* government action is the only way to ensure NEPA leadership - anything less doesn’t solve the net-benefit

Rahall 8

Nick Joe Rahall, D-W.Va. (3rd CD) - Chairman of the House Committee on Natural Resources, US Fed News, Lexis

The National Environmental Policy Act (NEPA) requires the federal government to think **before it acts** with regard to our environment by requiring **solicitation of public comment** and **consideration** of reasonable alternatives. Efforts to undermine or evade these basic tenets of the law are not in the public interest. Enthusiastic and energetic engagement in the NEPA process leads to better decision-making and, thus, should be viewed as an opportunity, not a barrier. By rejecting legislative and regulatory efforts intended to weaken the application of NEPA, the 111th Congress can ensure that the public continues to play a meaningful role in managing our public lands, fresh and marine waters, and fish and wildlife. Recovering Endangered Species The Endangered Species Act (ESA) serves as the cornerstone of biodiversity conservation in the United States. Unfortunately, the Bush Administration has spent the past eight years trying to undermine the fundamental tenets of the ESA and the species protections that it provides. Continuing the Chairman’s commitment to the conservation of endangered species, the Committee will work with the new Administration to explore innovative measures to recover endangered populations of fish, wildlife, and plants in an era of limited budgets. Using the findings of the Government Accountability Office and promoting the use of the best available science, we will seek collaborative solutions to improve the management of the endangered species programs at the Fish and Wildlife Service and National Marine Fisheries Service. By encouraging the issuance of appropriate guidance, regulations, and federal/non-federal partnerships, the Committee will play a **leadership role** in endangered species conservation.

#### Public consultation about *pre-selected* policies doesn’t solve the net-benefit

Jorgensen 2k

Lorna Jorgensen, JD, 20 J. Land Resources & Envtl. L. 311, The Move Toward Participatory Democracy in Public Land Management Under NEPA: Is it Being Thwarted by the ESA?, ln

As early as the 1950s, there was organized opposition to the expanding discretion of administrative agencies, such as the Atomic Energy Commission (AEC) and the United States Forest Service (USFS). [n9](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n9) Groups challenged the AEC's discretion over nuclear fallout and the USFS's discretion over logging practices. [n10](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n10) In the 1960s, political theorists came to a "consensus that the actions of government agencies did not demonstrably represent an overall 'public interest' discovered and implemented by non-political expert administrators . . . but rather merely represented the political results of competing pressures and influences." [n11](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n11) An example of the "experts" making decisions that did not reflect the public interest was the USFS's shift from conservative selection cutting to clear cutting in order to meet the political demands of those who believed the USFS was not producing timber fast enough. [n12](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n12) The Committee of Scientists contends that the words "public involvement or public participation" evolved in the 1960s to correct the process of "government decisions contrary to the will of the people." [n13](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n13) In response to the growing belief that government "experts" were making decisions that did not reflect the desires of the public, citizens demanded an opportunity to be heard and consulted on decisions that affected their lives. [n14](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n14) When Congress passed the environmental laws of the 1960s and 1970s, provisions were made to give citizens access to the decision-making process that had long been dominated by unelected experts in government bureaucracies. [n15](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n15)  [\*313]  In the early stages of implementing these laws, citizen participation was limited to commenting on pre-determined agency action. In 1976, Derrick Sewell and Timothy O'Riordan noted that "there is no evidence that the public is being asked to help identify a range of options from which it may choose, rather than being requested to indicate what it dislikes about a preselected plan or policy." [n16](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n16) Often, public input was limited to public hearings, where the agency could control the agenda and the level of citizen participation. Some analysts argued that the use of public hearings allowed agencies to "contain citizen demands, to formalize participation so that unanticipated actions could be avoided and to channel participation in ways acceptable to agency officials." [n17](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n17) By 1984, Leonard Ortolano found that some progress had been made through the EIS process and that the process had led "to increased public participation in agency planning and . . . that the process sometimes affected decisions." [n18](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n18) However, conflicts over the use of natural resources continued to increase, with "people . . . demanding that resource management ensure ecological sustainability and that the needs and concerns of the citizenry be met by involving them directly in the decision-making process." [n19](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n19)

#### The perm disengages the public – it’s perceived as a charade

Outka 6 – MA in Public Policy @ Maine, JD

Uma Outka , Jd & MA in Public Policy @ Maine, NEPA and Environmental Justice: Integration, Implementation and Judicial Review, http://www.abanet.org/irr/committees/environmental/essay/outka.doc

Determining whether NEPA requires an EIS for a proposed action is perhaps the most crucial step in the NEPA process. Through the EA, an agency decides whether or not the action will significantly affect the environment—it is on that basis that the agency will go forward with an EIS or issue a FONSI. What we know about NEPA implementation underscores the importance of the EA. As Professor Stephen M. Johnson notes, “approximately ninety-nine percent of the actions reviewed by agencies under NEPA each year are reviewed in the context of an EA, rather than an EIS.” Although NEPA regulations call on agencies to “involve environmental agencies, applicants and the public, to the extent practicable” in preparing EAs, public participation is only specifically required at points in the NEPA process after the EA is completed, through the notice and comment provisions discussed below in connection with an EIS. Thus, if an EA reveals a potentially significant impact on the environment and the agency proceeds to scope and draft an EIS, fixed opportunities for public involvement become available. However, the EPA Guidance acknowledges that in practice, “there has been limited public involvement before and during EA preparation by EPA unless there is a question of significance . . . or some particular public interest.” From an environmental justice perspective, this is troubling, because if the agency issues a FONSI and did not involve the public in its EA process, no meaningful opportunity remains. FONSIs are made public once complete, but even if a hearing is held at this stage, there is no further decision-making to which public involvement can contribute. As was clear in Society Hill Towers Owners Association v. Rendell, this fact is not lost on the public. There, residents of a Philadelphia neighborhood, the proposed site of a city-sponsored hotel and parking garage construction project, charged that the “public hearings” in which they were allowed to review the FONSI “were little more than a charade.” It was clear to them that “the project was a ‘done deal’ before public hearing was held.”

#### Prior public involvement and assessment is vital

Jorgensen 2k – JD

Lorna Jorgensen, JD, 20 J. Land Resources & Envtl. L. 311, The Move Toward Participatory Democracy in Public Land Management Under NEPA: Is it Being Thwarted by the ESA?, ln

Since the discussions preceding the passage of NEPA made references to the lack of public input and the need for public scrutiny, it is apparent that  [\*315] Congress envisioned public participation as a part of the NEPA process. In the Senate Interior and Insular Affairs Committee Report, it was noted that "public desires and aspirations are seldom consulted" in environmental decision-making. [n27](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n27) The chairman of the committee stated that exceptions to environmental standards "will have to be justified in light of public scrutiny." [n28](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n28) In addition, Congress included public participation in its statement of NEPA's purpose: It is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations . . . to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations . . . . [n29](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n29) The language of "cooperation" with other entities, as well as the references to the public made during the Congressional debate, indicate that Congress envisioned active public participation to be a part of the NEPA process. The implementing regulations of NEPA also demonstrate an understanding by CEQ that **public input,** beforedecisions were made, wasessential to the process and that "accurate scientific analysis, expert agency comments, and public scrutiny were essential to implementing NEPA." [n30](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n30) More recently, a member of Congress who advocated application of NEPA to extraterritorial actions and domestic actions having an extraterritorial impact, stated that "NEPA's strength lies in its democratization of Federal administrative law. NEPA mandates public and interagency involvement. It thereby empowers citizens with the information they need to meaningfully contribute to the environmental decision making process." [n31](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n31)

#### Involvement of constituencies *early* in the process is vital to avoid political backlash

Jorgensen 2k – JD

Lorna Jorgensen, JD, 20 J. Land Resources & Envtl. L. 311, The Move Toward Participatory Democracy in Public Land Management Under NEPA: Is it Being Thwarted by the ESA?, ln

It is clear that public input is an essential part of NEPA, but courts have also made clear that NEPA is a process and does not mandate a particular decision. [n35](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n35)Thus, it could be argued that public participation has not had an impact on agency decisions. Holly Kaufman asserts, however, that "public disclosure and the opportunity for public involvement and influence on projects are among NEPA's greatest achievements." [n36](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n36) In addition, "more and more agency decision makers are embracing NEPA as a front-end component for making good, reasoned decisions," [n37](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n37) and the threat of litigation gives "each agency a far stronger incentive to involve all potential constituencies early in the processand to take their concerns into account in developing decision proposals." [n38](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266788662570&returnToKey=20_T8617025623&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.982782.271665971#n38) It is apparent that public participation in the NEPA process has made a difference in environmental decisionmaking. The trend toward more public participation may actually **build support for contentious** land management **decisions** and result in better decisions regarding management of the public lands.

#### Must be early in the process

IAIA 99 - the leading global network on best practice in the use of impact assessment for informed decision making regarding policies, programs, plans and projects (International Association for Impact Assessment, “Principles of Environmental Impact Assessment Best Practice”, http://www.iaia.org/publicdocuments/special-publications/Principles%20of%20IA\_web.pdf)//RK

The EIA process should be applied: • As early as possible in decision making and throughout the life cycle of the proposed activity; • To all development proposals that may cause potentially significant effects; • To biophysical impacts and relevant socio-economic factors, including health, culture, gender, lifestyle, age, and cumulative effects consistent with the concept and principles of sustainable development; • To provide for the involvement and input of communities and industries affected by a proposal, as well as the interested public; • In accordance with internationally agreed measures and activities. Specifically the EIA process should provide for: Screening - to determine whether or not a proposal should be subject to EIA and, if so, at what level of detail. Scoping - to identify the issues and impacts that are likely to be important and to establish terms of reference for EIA. Examination of Alternatives - to establish the preferred or most environmentally sound and benign option for achieving proposal objectives. Impact Analysis - to identify and predict the likely environmental, social and other related effects of the proposal. Mitigation and impact management - to establish the measures that are necessary to avoid, minimize or offset predicted adverse impacts and, where appropriate, to incorporate these into an environmental management plan or system. Evaluation of significance - to determine the relative importance and acceptability of residual impacts (i.e., impacts that cannot be mitigated). Preparation of environmental impact statement (EIS) or report - to document clearly and impartially impacts of the proposal, the proposed measures for mitigation, the significance of effects, and the concerns of the interested public and the communities affected by the proposal. Review of EIS - to determine whether the report meets its terms of reference, provides a satisfactory assessment of the proposal(s) and contains the information required for decision making. Decision making - to approve or reject the proposal and to establish the terms and conditions for its implementation. Follow up - to ensure that the terms and condition of approval are met; to monitor the impacts of development and the effectiveness of mitigation measures; to strengthen future EIA applications and mitigation measures; and, where required, to undertake environmental audit and process evaluation to optimize environmental management.

### AT: Perm Do Both – Binding Key

#### The counterplan re-invigorates NEPA, the perm and the plan collapse it

Dreher 5 - Deputy Executive Director of the Georgetown Environmental Law & Policy Institute. He served as Deputy General Counsel of the U.S. Environmental Protection Agency

Robert, “The Political Assault on the National Environmental Policy Act,” http://www.law.georgetown.edu/gelpi/research\_archive/nepa/NEPAUnderSiegeFinal.pdf

First, agency promises during the course of the NEPA review process to “mitigate” the adverse effects of federal actions should be made binding commitments. Too frequently, federal agencies advance mitigation measures to help justify publicly a decision to proceed with a particular action, but then fail to carry through on the mitigation. A mechanism is needed to ensure that promises to engage in mitigation are actually kept. Successful implementation of mitigation measures goes to the heart of NEPA’s basic goal of protecting the environment. Although NEPA does not itself require federal agencies to provide mitigation, 62 virtually every federal agency decision made under NEPA includes some mitigation designed to avoid, reduce, or compensate for environmental damage that would otherwise occur. Mitigation measures may include, for example, installing fish passage at a new hydropower dam, restoring degraded wetlands to compensate for wetlands destroyed by a new roadway, or adopting traffic-reduction measures to reduce air pollution from a new development. Failure to carry through on such mitigation seriously undermines NEPA’s goal of protecting the environment. Failure to implement mitigation commitments also undermines the integrity of the NEPA review process. NEPA requires that agencies discuss any potential mitigation measures so that the likely environmental consequences of a proposed project can be fairly evaluated. 63 Agencies routinely point to proposed mitigation measures in NEPA documents to explain how the adverse effects of a federal agency action have been reduced to an acceptable level. Agencies also rely on mitigation to justify the conclusion that their actions will not have sufficiently significant adverse effects to require an EIS, allowing them to issue a “mitigated FONSI” on the basis of a relatively superficial EA instead. If the proposed mitigation measures invoked in the NEPA process are not in fact implemented, the integrity of the NEPA review process is subverted and the accuracy of the conclusions reached in the NEPA process are thrown into doubt.

#### The public must be *genuinely* involved to sustain NEPA credibility and avoid backlash

McGinty 97

Kathleen A. McGinty, Chair - Council on Environmental Quality (Executive Office of the President), ’97 [The National Environmental Policy Act, http://ceq.hss.doe.gov/nepa/nepa25fn.pdf]

Overall, what we found is that NEPA is a success — it has made agencies take a hard look at the potential environmental consequences of their actions, and it has brought the public into the agency decision-making process like no other statute. In a piece of legislation barely three pages long, NEPA gave both a voice to the new national consensus to protect and improve the environment, and substance to the determination articulated by many to work together to achieve that goal. To that end, NEPA charges CEQ and all federal agencies with achieving "productive harmony" among our environmental, economic, and social objectives. NEPA directs federal agencies to open their doors, bring the public in, and offer **genuine opportunities for participation** and **collaboration** in decision-making. Despite these successes, however, NEPA's implementation at times has fallen short of its goals. For example, this NEPA Effectiveness Study finds that agencies may sometimes confuse the purpose of NEPA. Some act as if the detailed statement called for in the statute is an end in itself, rather than a tool to enhance and improve decision-making. As a consequence, the exercise can be one of producing a document to no specific end. But NEPA is supposed to be about good decision-making — not endless documentation. The Study finds that agencies sometimes engage in consultation only after a decision has — for all practical purposes — been made. In such instances, other agencies and the public at large believe that their concerns have not been heard. As a result, they may find themselves opposing even worthy proposed actions. This may in turn lead to agencies seeking “litigation-proof” documents, **increasing costs** and time **but not** necessarily **quality**. In such cases, potential cost savings are also lost because a full range of alternatives has not adequately been examined. Other matters of concern to participants in the Study were the length of NEPA processes, the extensive detail of NEPA analyses, and the sometimes confusing overlay of other laws and regulations.

### AT: Perm do CP

#### The perm severs the plan:

#### 1 – process vs. product – although federal projects require a NEPA review, only the counterplan *ensures* that environmental costs are reflected in the final decision

Johnson 97 – Professor of Law @ Mercer

Stephen, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, Hein Online

NEPA would also be a more effective tool to achieve environmental justice if it imposed some substantive requirements on the federal government in addition to the procedural requirements. NEPA only requires the federal government to consider the effects of its actions; it does not prohibit the government from taking actions that will have adverse health, socioeconomic, or environmental impacts."' NEPA requires the government to consider alternatives to proposed actions and to consider measures that will mitigate the impacts of the action, but it does not require the government to implement those alternatives or mitigation measures.1 Communities can use the procedural requirements of NEPA as a tool to achieve environmental justice, as previously discussed.' However, as Professor William Rodgers has noted, "Process, without more, is fundamentally a toothless exercise, committed only to the perfection of forms.""4

#### Requiring the most “environmentally friendly option” is distinct from the plan

Tedder 11 – JD Candidate @ U of A

Brian, “NEPA EXPRESS: A NEED FOR SUSTAINABLE STREAMLINING FOR TRANSPORTATION PROJECTS WITHOUT UNDERMINING ENVIRONMENTAL REVIEW,” http://www.ajelp.com/Vol2Comments/NEPA\_Transportation.pdf

The streamlining of environmental review in Representative John Mica’s original bill, as reported on the House floor, refers to the National Environmental Policy Act of 1969 (NEPA). This Act establishes a national framework for environmental protection by requiring the federal government to “encourage productive and enjoyable harmony between man and his environment.”4 It applies to “major federal actions significantly affecting the environment.”5 While NEPA does not require the federal government to select the most environmentally friendly option, it entails procedural processes (“the NEPA Process”) that consider environmental impacts and alternatives.6 These procedures include: categorical exclusion for when detailed analysis is not required; an environmental assessment (EA) from which a finding of no significant impact (FONSI) indicates no significant environmental damage; and an environmental impact statement if the project would have significant environmental consequences.7

#### More evidence

Johnson 97 – Professor of Law @ Mercer

Stephen, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, Hein Online

While NEPA includes many provisions that can be used to achieve environmental justice, there are also some important limits to its effectiveness. First, many of the federal government's actions that disparately impact minority and low-income communities are not subject to NEPA's review procedures.' °4 Second, NEPA merely requires the federal government to analyze the impacts of its proposed actions and alternatives. It does not impose any substantive requirement on the federal government to avoid actions that have adverse environmental impacts.' °5 Finally, in some cases, NEPA's public participation procedures do not ensure that all members of the public will have an opportunity to participate in the environmental review process in an informed and meaningful manner.' ° Many of those limitations could be removed by making administrative changes or legislative changes to NEPA based on successful SEPAs.

#### 2 – EIS vs. EA – 99 percent of NEPA reviews don’t require an EIS – prevents public participation

Johnson 97 – Professor of Law @ Mercer

Stephen, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, Hein Online

Although NEPA provides for broad and flexible public participation when an EIS is required, it provides few opportunities for public participation when an EIS is not required. 5 This is an important distinction because approximately ninety-nine percent of the actions reviewed by agencies under NEPA each year are reviewed in the context of an EA, rather than an EIS. 56 Furthermore, agencies are increasingly attempting to mitigate the impacts of their actions in the planning stages so that they will not have to prepare an EIS. 7 CEQ's regulations generally do not require agencies to (1) notify the public that the agency is preparing an EA, (2) prepare a draft EA for public comment, or (3) solicit public comment on an EA. 8 In fact, under CEQ's regulations, agencies must only notify the public when the agency has completed the EA and has decided to prepare an EIS 5 or when the agency has found that the proposed action will not have a significant impact on the human environment and that it is not necessary to prepare an EIS.' When the agency determines, based upon an EA, that it is not necessary to prepare an EIS, citizens and communities are effectively foreclosed from participating in the decision 61 making process.

#### \*EA = Environmental assessment, distinct from Environmental Impact Statement

#### 3 – this distinction is legally codified – the counterplan preserves the status quo as an option, and is choosing between a *wide range* of alternatives – the fiatted action is distinct from the plan

Federal Register 81

Council on Environmental Quality, published in the Federal Register and appears at 46 Fed. Reg. 18026 (1981), http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm

1a. Range of Alternatives. What is meant by "range of alternatives" as referred to in Sec. 1505.1(e)? A. The phrase "range of alternatives" refers to the alternatives discussed in environmental documents. It includes all reasonable alternatives, which must be rigorously explored and objectively evaluated, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them. Section 1502.14. A decisionmaker must not consider alternatives beyond the range of alternatives discussed in the relevant environmental documents. Moreover, a decisionmaker must, in fact, consider all the alternatives discussed in an EIS. Section 1505.1(e). 1b. How many alternatives have to be discussed when there is an infinite number of possible alternatives? A. For some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. For example, a proposal to designate wilderness areas within a National Forest could be said to involve an infinite number of alternatives from 0 to 100 percent of the forest. When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. An appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the Forest to wilderness. What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case. 2a. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency. If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant? A. Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant. 2b. Must the EIS analyze alternatives outside the jurisdiction or capability of the agency or beyond what Congress has authorized? A. An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Section 1506.2(d). Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies. Section 1500.1(a). 3. No-Action Alternative. What does the "no action" alternative include? If an agency is under a court order or legislative command to act, must the EIS address the "no action" alternative? A. Section 1502.14(d) requires the alternatives analysis in the EIS to "include the alternative of no action." There are two distinct interpretations of "no action" that must be considered, depending on the nature of the proposal being evaluated. The first situation might involve an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases "no action" is "no change" from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the "no action" alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, projected impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development. The second interpretation of "no action" is illustrated in instances involving federal decisions on proposals for projects. "No action" in such cases would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward.

### AT: Delay

#### No delays

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Robert, “The Political Assault on the National Environmental Policy Act,” http://www.law.georgetown.edu/gelpi/research\_archive/nepa/NEPAUnderSiegeFinal.pdf

Finally, the evidence does not support the argument that the NEPA review process causes inordinate delays in decision-making. For example, studies by the Federal Highway Administration (“FHWA”) show that environmental reviews take up only a quarter of the total time devoted to planning and constructing a major highway project, hardly a disproportionate commitment for projects that will make permanent changes to the landscape. 43 The significant delays that sometimes occur in highway projects are generally due to other causes, such as lack of funding, the low priority assigned to a project by the sponsoring state transportation agency, or significant local disagreements over the merits of the project. 44 A comprehensive survey conducted by the Natural Resources Council of America of agency NEPA implementation confirmed that NEPA is not a major cause of project delays: In none of the twelve agencies reviewed during this study did NEPA emerge as the principal cause of excessive delays or costs. Instead, the NEPA process was often viewed as the means by which a wide range of planning and review requirements were integrated. Other administrative and Congressional requirements were sometimes cited as resulting in lengthy delays in decision making, which persons outside the agencies attributed to NEPA. 45

#### Less than a year

EIA 9

Environmental Impact Assessments, http://ec.europa.eu/environment/eia/eia-studies-and-reports/eia-costs-benefit-en.htm

Preparation of the EIS typically takes 2-3 months. The subsequent stages of consultation, review and decision-making may take 3-6 months, depending upon the complexity of the issues raised.

#### Turn – assessing environmental harms *before* starting the project avoids future delays

Amekudzi 5 – Professor of Civil and Environmental Engineering @ Ga Tech

Adjo, Consideration of Environmental Factors in Transportation Systems Planning, Scholar

Understanding the environmental consequences of transportation investment decisions has been a concern of trans-portation decision-makers for many decades. Although before 1970 many transportation plans performed a cursory examination of the likely community and environmental impacts of proposed system investment, it was not until the 1969 National Environmental Policy Act (NEPA) and its application to all types of federally funded projects that envi-ronmental analysis and assessment became an important component of transportation planning and project development. Initially, the major effect of NEPA occurred in project development where environmental assessments or environ-mental impact statements were conducted to determine the significance of potential environmental impacts and to identify strategies to mitigate these effects. In response to a growing societal awareness of environmental quality and numerous federal and state laws concerning the consideration of various environmental impacts, state and metropolitan transportation plans began to include "environmental impact" as an important part of evaluation. Other studies, such as alternatives analysis, major investment studies, and corridor studies, also examined the probable environmental impacts of proposed transportation alternatives. However, identifying project-specific environmental problems or so-called "fatal flaws" usually did not occur until a project had entered project development, usually many years after the project had first been considered. National experience has shown that waiting until the project development stage of transportation decision-making to deal with environmental issues that might have been resolved earlier (for example, during systems planning) can result in significant delays in project completion. In addition, identifying, defining, and prioritizing projects that occur in transportation planning and programming might have had different (and better) results if more information on likely effects had been available earlier. An important question thus becomes, is there some way of considering environmental issues earlier in sys-tems planning that will help to reduce project development time later on and lead to better projects?

#### Delay begs the question of the link – there would *only* be a delay if the aff negatively influences disenfranchised populations

Johnson 97 – Professor of Law @ Mercer

Stephen, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, Hein Online

In its existing form, NEPA can be used to achieve environmental justice in several ways. NEPA's public participation provisions empower communities by enabling them to provide input into the federal government's decision-making process and to educate the government about the disparate impacts proposed actions may have on the communities." While NEPA's public participation provisions give communities a voice in government decisionmaking, they also give the communities valuable information about public health and safety and the government's decisionmaking process. If the government decides to take an action that disparately impacts a minority or low-income community, community leaders can use the information they receive through the NEPA review process to organize the community against the government action. The NEPA review process can also advance environmental justice by delaying the federal government in taking actions that could disparately impact communities. The delay provides communities more time to organize their opposition to the government actions. 32 The cost of the environmental review process might also derail government projects, including those which could have a disparate impact on communities. 33

#### Mistakes correlation with causality – all infrastructure projects are time-consuming – there is little evidence that NEPA substantially increases delay

Transportation for Tomorrow 7

“Evaluation of Time Currently Required to Implement Rail, Highway, Transit, and Port Projects from “First Thought” to Operation,” http://transportationfortomorrow.com/final\_report/pdf/volume\_3/technical\_issue\_papers/paper4k\_01.pdf

Since a project’s compliance with the requirements of NEPA is a subset of one or more of the four major elements of the project development process, the time that it takes to fulfill all of the requirements of NEPA naturally could have a direct impact on the timing of the overall process. Any delays in receipt of a Record of Decision (ROD), which is the final official step of the NEPA EIS process, extend the time required for determining exactly what will be designed and built. The requirements of both NEPA and other laws for the protection of resources tend to magnify the perception that the NEPA process is at the root in complicating a project’s approval and delivery. During the 30+ years since NEPA was signed into law, stakeholders in the transportation project delivery process have questioned the effect that it has had on the timely delivery and overall cost of transportation projects. Although it is a commonly accepted fact that the NEPA process, especially the preparation and approval of EISs, can often take several years to complete, the time required and the relative costs incurred to complete the entire highway project delivery process has not been well documented or understood. At best, studies of the environmental process have looked at that process directly, but generally not relative to the construction or other phases of the project. Most of the information available concerning the time required to complete a project has come from anecdotal sources, generally focused on single projects. In this regard, it is not evident what portion of the schedule and cost of the entire project delivery process is attributed to NEPA compliance requirements, in comparison to other potential sources of process delay such as funding shortages, compliance with environmental permitting requirements, changes in design, contractor delays, lawsuits and injunctions, etc.

#### Here’s quantitative evidence that other delays are much larger than the counterplan

Transportation for Tomorrow 7

“Evaluation of Time Currently Required to Implement Rail, Highway, Transit, and Port Projects from “First Thought” to Operation,” http://transportationfortomorrow.com/final\_report/pdf/volume\_3/technical\_issue\_papers/paper4k\_01.pdf

In brief: the study focused only on highway projects for which EISs had been prepared. The sample consisted of 100 Federal-aid highway and bridge projects, all of which were open to the public by the time the study began. (A sample size of 100 projects had been predetermined to be used for this study since such a sample was considered to be sufficiently large to avoid sampling error.) Projects were drawn from those completed during the 1970’s, 1980’s, and 1990’s. The descriptive statistics on the length of the NEPA process formed the core of the study's findings. The results of the study indicated that, for the projects in the sample and over the course of approximately 30 years, the average time to complete an EIS for a transportation project was approximately 3.6 years. By comparison, the mean length of time for the completion of the project was approximately 13.1 years. Put another way, for the sample's projects, completion of the NEPA process accounted for approximately 28% of the overall time for project development. (See Figure 3)

#### Streamlined review solves

Tedder 11 – JD Candidate @ U of A

Brian, “NEPA EXPRESS: A NEED FOR SUSTAINABLE STREAMLINING FOR TRANSPORTATION PROJECTS WITHOUT UNDERMINING ENVIRONMENTAL REVIEW,” http://www.ajelp.com/Vol2Comments/NEPA\_Transportation.pdf

NEPA streamlining does not have to undermine the environmental protections afforded to citizens and other concerned stakeholders. In a recovering economy, it is understandable that the federal government would want to accelerate transportation agency output to create infrastructure jobs. But the House must consider the effects of environmental streamlining. Efficient environmental review can exist without default rules that would automatically approve federal action regardless of environmental impact. These are the very projects that could, and likely would, have significant environmental impacts, and therefore should receive thorough review.

### AT: Plan Solves Environment

#### The plan doesn’t solve the environment, and the counterplan does

Dreher 5 - Deputy Executive Director of the Georgetown Environmental Law & Policy Institute. He served as Deputy General Counsel of the U.S. Environmental Protection Agency

Robert, “The Political Assault on the National Environmental Policy Act,” http://www.law.georgetown.edu/gelpi/research\_archive/nepa/NEPAUnderSiegeFinal.pdf

The complaint that NEPA analysis is technically or scientifically deficient is more difficult to assess. The breathtaking variety of federal agency actions subject to NEPA — from building or authorizing construction of highways, dams, pipelines and transmission lines to managing the conflicting demands of recreational users, miners, grazers and timber companies on the public lands — means that very different types of environmental analysis must be brought to bear on different types of federal actions. The challenge in evaluating the effectiveness of NEPA is compounded by the lack of meaningful agency-specific, much less government-wide, programs to track the reliability of NEPA reviews. In addition, there are remarkably few independent studies of whether the NEPA process succeeds in predicting environmental outcomes. 38 In debating whether NEPA reviews produce reliable environmental predictions, the reality is that we are woefully under-informed. Despite this uncertainty, it is clear that the analysis in NEPA documents assists agencies in making better, and more environmentally-sensitive, decisions. As one academic study concluded, EISs may not consistently produce precisely accurate environmental predictions, but they at least provide “sensible assessments” of likely environmental consequences to guide decision makers. 39 The numerous NEPA success stories cited above demonstrate that federal agencies are better informed about the environmental consequences of their proposed actions than they would be in the absence of a forward-looking environmental analysis. NEPA has transformed agency cultures, broadening agencies’ narrow mission-orientation to include sensitivity to environmental values. Moreover, as discussed above, the NEPA review process is not simply a technical analysis of environmental impacts; it is also a political process for engaging the public in federal decisionmaking. NEPA has succeeded in creating a structured framework for making public choices, based on the best available information, about what courses to pursue in an inherently uncertain world. As the Department of Energy’s highest environmental official recently affirmed, “NEPA is an essential platform for providing useful information to decisionmakers and the public, supporting good decisionmaking, and thus advancing DOE’s mission.” 40

### AT: EIS Fails at Predicting

#### Science is improving EIS predictions

Dreher 5 - Deputy Executive Director of the Georgetown Environmental Law & Policy Institute. He served as Deputy General Counsel of the U.S. Environmental Protection Agency

Robert, “The Political Assault on the National Environmental Policy Act,” http://www.law.georgetown.edu/gelpi/research\_archive/nepa/NEPAUnderSiegeFinal.pdf

At the same time, advances in the science of environmental impact analysis already appear to be significantly improving the environmental analysis in NEPA documents. Scientists are making steady progress in improving mapping using geographic information systems (“GIS”) techniques, in expanding computer modeling capabilities, and in developing our understanding of ecological systems and biological functions. These new advances are being integrated into environmental analysis under NEPA on a continuous basis. Additional post-decision monitoring is needed to verify the benefits of these new techniques and to help refine them over time.

### NEPA Good – Spillover

#### The counterplan spills over – reinvigorating NEPA *deters* future environmental abuses

Dreher 5 - Deputy Executive Director of the Georgetown Environmental Law & Policy Institute. He served as Deputy General Counsel of the U.S. Environmental Protection Agency

Robert, “The Political Assault on the National Environmental Policy Act,” http://www.law.georgetown.edu/gelpi/research\_archive/nepa/NEPAUnderSiegeFinal.pdf

First, NEPA has unquestionably improved the quality of federal agency decision-making in terms of its sensitivity to environmental concerns. Examples are legion in which proposed federal actions that would have had serious environmental consequences were dramatically improved, or even in some instances abandoned, as a result of the NEPA process. To cite just a few instances: In the early 1990s, mounting problems with obsolete nuclear reactors at its Savannah River site put the Department of Energy under pressure to build enormously expensive new reactors to produce tritium, a key constituent of nuclear warheads. A programmatic EIS allowed DOE to evaluate alternative technologies, including using a particle accelerator or existing commercial reactors, leading ultimately to cancellation of the tritium production reactors. Admiral James Watkins, then Secretary of Energy, testified before the House Armed Services Committee: “Looking back on it, thank God for NEPA because there were so many pressures to make a selection for a technology that it might have been forced upon us and that would have been wrong for the country.” 16 The NEPA process led to improvements in a land management plan for the Los Alamos National Laboratory that averted a potentially serious release of radiation when the sensitive nuclear laboratory was swept by wildfire in May 2000. The laboratory’s initial management plan did not address the risk of wildfire, but other federal agencies alerted the Los Alamos staff to that risk in comments on the draft EIS accompanying the plan. The laboratory prepared a fire contingency plan, cut back trees and underbrush around its buildings, and replaced wooden pallets holding drums of radioactive waste with aluminum. Those preparations turned out to be invaluable when a major wildfire swept Los Alamos the following year, damaging many buildings but not triggering a significant release of radiation. 17 In 1997, the Federal Energy Regulatory Commission was considering issuance of a license for construction of a major new hydropower dam on the Penobscot River in Maine. The EIS disclosed that the proposed Basin Mills Dam would undermine long-standing federal, state and tribal efforts to restore wild Atlantic salmon populations to the Penobscot River. FERC received strong comments in opposition to the project from federal and state fishery managers and the Penobscot Indian Nation, among others, and concluded that the public interest was best served by denial of the license. The Ivory-billed woodpecker, recently rediscovered, to great public celebration, in the swamplands of Arkansas, owes its survival in large part to NEPA. In 1971, shortly after NEPA’s enactment, the Army Corps of Engineers advanced a proposal to dredge and channelize the Cache River for flood control, threatening the vast tracts of bottomland hardwood wetlands in the river basin on which the woodpecker and many other species of wildlife depended. Environmentalists challenged the adequacy of the Corps’ NEPA analysis in court, pointing out that the Corps had failed to evaluate alternatives to its massive dredging program that would cause less damage to wetland habitat. The court enjoined the Corps from proceeding until it fully considered alternatives, 18 and public outcry subsequently led to the abandonment of the dredging project and the creation of the national wildlife refuge where the Ivory-billed woodpecker was recently sighted. A massive timber sale proposed for the Gifford Pinchot National Forest in Oregon, stalled by controversy over impacts on sensitive forest habitat, was entirely rethought as a result of the NEPA process. A coalition of environmentalists, the timber industry, labor representatives and local citizens worked together to develop a plan to use timber harvesting to restore the forest’s natural ecosystem. Instead of clearcuts, the new proposal focuses on thinning dense stands of Douglas fir (the result of previous clearcutting) to recreate a more natural, diverse forest structure, while still yielding 5.2 million board feet of commercial timber. The citizen alternative was adopted by the Forest Service and implemented without appeals or litigation. A local resident involved in the process says: “It’s a win, win, win.” 19 In Michigan, communities concerned about the impacts of a proposed new four-lane freeway successfully used the NEPA process to force the state highway agency to consider alternatives for expand ing and improving an existing highway, avoiding the largest wetland loss in Michigan’s history and saving taxpayers $1.5 billion. Similarly, a proposed freeway in Kentucky’s scenic bluegrass region was redesigned to protect historic, aesthetic and natural values thanks to public input and legal action during the NEPA planning process. The National Trust for Historic Preservation acclaimed the Paris Pike as a project that “celebrates the spirit of place instead of obliterating it.” 20 These and other similar examples only begin to tell the story of NEPA’s success, however. NEPA’s most significant effect has been to deter federal agencies from bringing forward proposed projects that could not withstand public examination and debate. Prior to NEPA, federal agencies could embark on massive dam- or road-building projects, for example, without public consultation and with virtually no advance notice. As a result, family farms, valuable habitat, and sometimes whole communities were destroyed without the opportunity for full and fair debate. Today, many similar projects that could not survive such a debate simply never get off the drawing boards. More broadly, NEPA has had pervasive effects on the conduct and thinking of federal administrative agencies. Congress’s directive that federal agencies use an “interdisciplinary approach” in decision-making affecting the environment, 21 together with the Act’s requirement that agencies conduct detailed environmental analyses of major actions, has required federal agencies to add biologists, geologists, landscape architects, archeologists, and environmental planners to their staffs. These new employees brought new perspectives and sensitivities to agencies that formerly had relatively narrow, mission-oriented cultures. NEPA’s requirement that agencies consult with federal and state agencies with special environmental expertise also has helped broaden agency awareness of environmental values.

### NEPA Good – Generic

#### The counterplan solves the case better – prior NEPA review improves decision-making and is key to citizen influence

Dreher 5 - Deputy Executive Director of the Georgetown Environmental Law & Policy Institute. He served as Deputy General Counsel of the U.S. Environmental Protection Agency

Robert, “The Political Assault on the National Environmental Policy Act,” http://www.law.georgetown.edu/gelpi/research\_archive/nepa/NEPAUnderSiegeFinal.pdf

Enacted in 1970, at the beginning of our recognition of the dangers of environmental degradation, NEPA establishes a national policy calling for “productive harmony” between man and nature. The Act also directs federal agencies to take into account, and publicly disclose, the environmental consequences of their proposed actions before taking steps that may significantly affect the quality of the human environment. Apart from improving the substance of agency decisions, NEPA reinforces the democratic system by providing an avenue for citizens to comment upon and influence government decisions that affect their lives and communities. Today, NEPA’s critics are mounting an unprecedented attack on this bedrock legislation. The most significant proposals would (1) exempt large categories of government activity from the NEPA environmental review process, (2) restrict the substance of environmental analysis under NEPA, in particular by allowing federal agencies to ignore environmentally superior alternatives to a proposed action, and (3) limit opportunities for the public to comment on and challenge agency decisions. Cumulatively, these and other proposals threaten to kill the NEPA process with a thousand cuts. The attacks on NEPA are supported by businesses and resource users who see NEPA as an impediment, by their political supporters, and by certain agency officials who object that the Act constrains their discretion. Self-interest aside, the challenges to NEPA are supported by arguments questioning the wisdom and utility of the NEPA environmental review process. NEPA’s implementation can certainly stand improvement, as others have observed before, but the NEPA process is fundamentally sound. NEPA should be improved and strengthened, not destroyed.

### NEPA Good – Modeled Globally

#### Support for NEPA will be modeled globally

Caldwell 98

Lynton K. Caldwell, Prof. of Politiical Science/Public and Environmental Affairs @ Indiana Univ, Harvard International Law Review, 22 Harv. Envtl. L. Rev. 203, Beyond NEPA: Future Significance of the Naitonal Environmental Policy Act, Lexis

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](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266378363060&returnToKey=20_T8580844276&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.481113.9541615761#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](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266378363060&returnToKey=20_T8580844276&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.481113.9541615761#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](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266378363060&returnToKey=20_T8580844276&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.481113.9541615761#n9) The goals and principles declared in section 101 [n10](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266378363060&returnToKey=20_T8580844276&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.481113.9541615761#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](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266378363060&returnToKey=20_T8580844276&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.481113.9541615761#n11) The failure of NEPA to fulfill its potential is of particular concern today, as the policy issues addressed in NEPA seem almost certain to reach a point of urgency early in the twenty-first century. Growing economic and social demands indicate environmental troubles ahead too clearly to be dismissed as "alarmist." In America's future, the quality of life will depend upon the extent to which the government and people of the United States make the principles declared in NEPA a practiced reality. Its principles must be applied in actual public administration. In order to revitalize NEPA as a true expression of national intent, it is first necessary to understand why it has not become a highly visible centerpiece of American environmental policy. Why has this statute, which has had worldwide influence and has been described as America's environmental Magna Carta, not achieved greater recognition in the United States? NEPA is perhaps no less understood than is any other federal statute--many of which are lengthy, complex, and subject to periodic reinterpretation by the judiciary. In fact, NEPA has the potential to be more easily grasped and readily applied because it is relatively short, straightforward and, as a policy act, neither vague nor ambiguous.

#### Strong adherence to impact statements will influence international law

Christopher 8 – sex edited

Caleb W., JD - Advisor to the UN Mission of the Republic of the Marshall Islands, 9 Vt. J. Envtl. L. 549, ln

The United States enacted the National Environmental Policy Act of 1970 (NEPA) in an effort to "encourage productive and enjoyable harmony between [hu]man and his environment," in response to environmental degradation brought about by a largely unbridled postwar economic expansion.[n7](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266378773180&returnToKey=20_T8580872591&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.496077.68492978066#n7) The law was introduced by President Nixon as a tool to  [\*553]  encourage federal agencies to bridge complex conflicts between the competing tangle of economic, social, and ecological concerns often surrounding a proposed infrastructure project. [n8](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266378773180&returnToKey=20_T8580872591&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.496077.68492978066#n8) When agencies chose to utilize the process as a means to engage and negotiate different interests, NEPA worked effectively in diffusing mutual animosity and in allowing balanced projects to progress. The potential success of NEPA did not go unnoticed. The decade following its inception saw many states create their own versions of NEPA. These "mini-NEPAs," eventually adopted by at least twenty states, applied to the actions of state agencies and their applicants for permits or discretionary approval. [n9](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266378773180&returnToKey=20_T8580872591&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.496077.68492978066#n9) At least six "mini-NEPAs," including New York's State Environmental Quality Review Act (SEQRA), extended environmental review to state authority delegated to the local or municipal level for a variety of land use planning actions.[n10](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266378773180&returnToKey=20_T8580872591&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.496077.68492978066#n10) The American experience with EIA was also noticed by the international community. The NEPA model was adopted in varying forms by over 100 nations within their domestic law. [n11](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266378773180&returnToKey=20_T8580872591&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.496077.68492978066#n11) This international phenomenon of EIA is unique, given that its rapid international codification took place unilaterally without the mandate of an explicit multilateral environmental agreement or treaty. The prevalence of EIA was noted  [\*554]  during the Rio Declaration on Environmental and Development. [n12](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266378773180&returnToKey=20_T8580872591&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.496077.68492978066#n12) The Declaration specifically discusses the universal importance of EIA as an environmental decision-making tool, remarking that EIA, "as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority." [n13](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266378773180&returnToKey=20_T8580872591&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.496077.68492978066#n13) EIA is emerging as customary international law. [n14](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266378773180&returnToKey=20_T8580872591&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.496077.68492978066#n14)

### NEPA Good – Warming

#### Strong NEPA solves warming

Pykek and Batten 8 – \*PhD, Director of Climate Change Services for CTG Energetics - Former environmental scientist with the US EPA’s Global Change Research Program, \*\* Managing Director for Energy and Environmental Policy at the Center for American Progress

Dr. Christopher R. Pykek, Director of Climate Change Services for CTG Energetics - Former environmental scientist with the US EPA’s Global Change Research Program, Dr. Kit Batten, Managing Director for Energy and Environmental Policy at the Center for American Progress, May, Full Disclosure, http://www.americanprogress.org/issues/2008/05/pdf/nepa.pdf

Global warming presents a real and present danger to the responsibilities of the government of the United States. One of the first practical steps toward addressing this issue is to recognize that many federal actions influence green- house gas emissions and vulnerability to the effects of global warming. These actions provide opportunities to reduce emissions and prepare for changing climatic condi- tions—provided that decision makers and stakeholders understand the implications of federal actions and are presented with appropriate alternatives and mitigation options. Acting on these opportunities requires a systematic process for assessing climate change risks, disclosing the impact of federal actions, and evaluating alternative actions and potential mitigation measures. The most practical vehicle for such assessments is the National Environmental Policy Act. NEPA provides the authority and processes needed to immediately include consider- ation of the effects of global warming along with other important environmental issues already considered in environmental impact assessments. Consideration of global warming under NEPA will promote fiscal and environmental responsibility, reduce risks to taxpayer investments, avoid costly litigation, and provide the foundation for informed decision making and public dialog about the implications of federal actions.

### EIS Good – Public Participation

#### The counterplan integrates citizen decision-making

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Robert, “The Political Assault on the National Environmental Policy Act,” http://www.law.georgetown.edu/gelpi/research\_archive/nepa/NEPAUnderSiegeFinal.pdf

The third visionary element of NEPA is its creation of broad opportunities for members of the public to participate in government decisions that affect their environment. The public can help define the environmental issues that an agency will study in “scoping meetings” at the start of an EIS process, can propose an alternative approach for the agency to evaluate, and can comment on gaps and misunderstandings in the agency’s analysis at the draft stage of the EIS. In this context, “the public” includes not only individual citizens, but businesses, charitable organizations, towns and other local governments, tribes, state agencies, and even other federal agencies affected by a proposed action. Public participation in the NEPA process serves two functions. First, individual citizens and communities affected by a proposed federal agency action can be a valuable source of information and ideas, improving the quality of environmental analysis in NEPA documents as well as the quality of agency decisions. Second, allowing citizens to communicate and engage with federal decision-makers serves fundamental principles of democratic governance. NEPA reflects the belief that citizens have a right to know, and to be heard, when their government proposes actions that may affect them. For many individuals and communities who understandably perceive federal agencies as remote and insensitive, public participation in the NEPA process creates a valuable crack in the bureaucratic wall. 14

#### The counterplan is key to public participation

Johnson 97 – Professor of Law @ Mercer

Stephen, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, Hein Online

When an agency prepares an EIS, NEPA provides opportunities for broad and flexible public participation. Before the agency begins to prepare an EIS, it must provide notice to the public that it plans to prepare an EIS, 9 and it must solicit input from the public regarding the scope of issues and alternatives to be considered in the EIS. 4 At a minimum, the agency must invite "affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds)" to participate in the scoping process.1 An agency may, but is generally not required to, hold public hearings to determine the scope of issues and alternatives to be considered in the EIS. 42 After the scoping process is completed, the agency prepares a draft EIS and makes it available for public comment. 43 The agency may, but is generally not required to, hold public hearings on the draft EIS. 44 The agency then prepares and circulates a final EIS. 45 The agency must respond to all of the comments that it receives on the draft EIS when it prepares the final EIS.4" In addition, when the agency makes a decision regarding an action requiring an EIS, the agency must prepare a "concise" record of decision (ROD). 47 Among other things, the ROD details "whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not., 48 The EIS process enables citizens to get involved in the decisionmaking process at an early stage and provides citizens with several opportunities to provide input prior to the ultimate decision. To the extent that communities are aware that an agency is conducting an EIS, the process provides communities with broad opportunities for public participation.

#### The counterplan integrates a bottom-up model that provides the public a voice in transportation infrastructure development

CEE 12

Center for Environmental Excellence by AASHTO (the American Association of State Highway and Transportation Officials), http://environment.transportation.org/environmental\_issues/nepa\_process/

Public Involvement Handled correctly, scoping and public participation in the NEPA process will improve acceptance of the decision and, at minimum, provide the decisionmaker with the best information possible for making a decision. The amount and type of public involvement will vary depending on the complexity and degree of controversy involved in a project. It is very helpful to obtain public input on a range of issues, including scoping; purpose and need; alternative development; effects analysis; making the decision; and implementation. SAFETEA-LU requires that the lead agencies establish a plan for coordinating public and agency participation and comment during the environmental review process. Coordination plans are discussed further in the subsection titled SAFETEA-LU Environmental Review Provisions. AASHTO Practitioner’s Handbook 05—Utilizing Community Advisory Committees for NEPA Studies (December 2006) suggests a Citizen Advisory Committee as a public participation technique that can be employed to gain stakeholder feedback, identify and resolve local concerns, and build community support during the pre-NEPA and NEPA decision-making processes. Additional information is available on FHWA’s Environmental Review Toolkit under NEPA and Transportation Decisionmaking, Public Involvement. [back to top] Comments The draft EIS must summarize the scoping process, the results of any meetings that have been held, and any comments received during preliminary coordination. Between the draft EIS and the final EIS, the state DOT and FHWA must consider and respond to all substantive comments received on the draft EIS, including those from public hearings.

#### The plan is an exercise in restrictive and exclusionary government rule-making -- the hierarchical nature of administrative power precludes effective public involvement in democracy

Freeman 2k – Professor of Law @ UCA

Jody, Acting Professor of Law, University of California Los Angeles, New York University Law Review, June

Most administrative law theory now adheres to a hierarchical, agency-centered conception of administrative power in which the  [\*548]  most pressing theoretical goal is to constrain agency discretion. [10](https://www.lexis.com/research/retrieve?_m=6bef1440df3d2292bc4d66503776ab4e&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtb-zSkAl&_md5=06fe4613a3e6aa57152cdc4d83cd2028" \l "n10#n10" \t "_self) Given the reality of public/private interdependence, I propose an alternative conception of administration as a set of negotiated relationships. Specifically, public and private actors negotiate over policy making, implementation, and enforcement. This evokes a decentralized image of decision making, one that depends on combinations of public and private actors linked by implicit or explicit agreements. One might describe this conception by using the term "shared governance," but "governance" implies a hierarchy of control in which there is one thing - or a set of things - to be governed, and a center of control that does the governing. In my conception, however, there are only problems to confront and decisions to make. There is nothing to govern. This alternative conception challenges the fundamental public/private distinction in administrative law. It invites a reconsideration of the agency as the primary unit of analysis in the field. There is no center of decision making, as we tend to think in administrative law. [11](https://www.lexis.com/research/retrieve?_m=6bef1440df3d2292bc4d66503776ab4e&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtb-zSkAl&_md5=06fe4613a3e6aa57152cdc4d83cd2028" \l "n11#n11" \t "_self) Viewing governance in this light allows us to recognize that both critical legal studies and public choice theory are correct: There is no purely private realm and no purely public one. If both are true at the same time - as I think they are - the entity on which we ought to focus administrative law's scholarly attention is neither public nor private but something else: the set of negotiated relationships between the public and the private. This approach also casts private parties in a more realistic and balanced light. The view that private actors exacerbate the traditional legitimacy crisis in administrative law - that they are menacing outsiders whose influence threatens to derail legitimate "public" pursuits -  [\*549]  features prominently in the dominant models of the field. And yet, private actors are also regulatory resources capable of contributing to the efficacy and legitimacy of administration. This realization suggests the possibility of harnessing private capacity to serve public goals. A focus on interdependence reorients administrative law toward facilitating the effectiveness of public/private regulatory regimes and away from the traditional project of constraining agency discretion. [12](https://www.lexis.com/research/retrieve?_m=6bef1440df3d2292bc4d66503776ab4e&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtb-zSkAl&_md5=06fe4613a3e6aa57152cdc4d83cd2028" \l "n12#n12" \t "_self)

#### The impact is equality – provides a necessary check on government exploitation

Wainwright 5

Hillary, Why Participatory Democracy Matters - And Movements Matter to Participatory Democracy, http://www.tni.org/detail\_page.phtml?page=archives\_wainwright\_matter

Popular participation lets people, as well as officials, decide detail on how broad policy commitments are carried out. How public policy is administered is not value neutral: process matters. Take waste. An environmentally sustainable approach which sees waste as a resource - an embodiment of accumulated energy and materials - is different from an approach which regards waste as something to be got rid of. The former, guided by reuse and recycling, requires widespread popular participation to make it work. This participation isn't an extra, and it's not about going to meetings and attending committees. This approach is about a publicly accountable and therefore improvable system that supports the household making the voluntary act of separation of their waste. The same principles of daily and ongoing democratic processes could be applied to education, transport, social services - indeed every public service. An open, rule-governed process of popular participation appropriate to the task at hand - proposing the detailed priorities of the budget for example, or managing a local public facility - has a stronger democratic legitimacy than officials working behind closed doors, often doing their own deals with certain social groups and economic interests. Formally, representative democracy does have the final say. But since representatives must each seek re-election in a multi-party system, they have to be responsive and sensitive to the proposals drawn up by their constituents. Participatory democracy, in a complementary relationship to electoral power, thus has the potential to move societies further towards the democratic ideals of popular control and political equality. Liberal democracy has always conceded that civil society organisations play an important role. It is conventionally accepted that a strong civil society keeps elected representatives on their toes, and does so through organised interest groups all of whom press their causes on government, sometimes through political parties, sometimes through independent lobbies. Sometimes, certain special interest groups - most notably unions and business, but locally also residents or voluntary sector organisations - have been drawn into corporatist arrangements with government, gaining a special political status so that the government negotiates with them over decisions affecting their interests. This sort of deal, however, has often undermined the credibility of both groups: the non-governmental organisations seen as both too close to government and as pursuing their own special interests; the government seen as favouring one group or two groups against others, or organised interests against 'the people'. One of the frustrations and flaws of representative democracy is that while civil society has grown in size and developed in terms of structures and internally democratic forms, it has remained marginalised in its impact on the formal political system - perhaps invited in and then ignored, or used to give the formal system unwarranted legitimacy. Participatory democracy provides a real alternative, or complement, to elected power: a distinct and organised public sphere in which the demands of the people can be articulated, developed and negotiated between each other, and finally negotiated with the local or other relevant state institutions.

### EIS Good – Public Participation – AT: Not Accessible

#### Empirically, NEPA review has successfully integrated citizen decision-making – it is accessible

Dreher 5 - Deputy Executive Director of the Georgetown Environmental Law & Policy Institute. He served as Deputy General Counsel of the U.S. Environmental Protection Agency

Robert, “The Political Assault on the National Environmental Policy Act,” http://www.law.georgetown.edu/gelpi/research\_archive/nepa/NEPAUnderSiegeFinal.pdf

Equally important, NEPA has succeeded in expanding public engagement in government decision-making, improving the quality of agency decisions and fulfilling principles of democratic governance that are central to our society. Today, citizens take it as a given that major governmental actions that could affect their lives and their communities will be subject to searching public examination and discussion. As CEQ concluded in a report commemorating NEPA’s 25th anniversary, “NEPA’s most enduring legacy is as a framework for collaboration between federal agencies and those who will bear the environmental, social, and economic impacts of their decisions.” 22 CEQ noted that “agencies today are more likely to consider the views of those who live and work in the surrounding community and others during the decision-making process.” As a result, “Federal agencies today are better informed about and more responsible for the consequences of their actions than they were before NEPA was passed.” 23 The extent and diversity of public participation in government decision-making as a result of NEPA is astonishing. To cite a few typical examples: The National Park Service proposed a lake management plan in 2002 for Lake Mead National Recreation Area in Nevada that raised significant issues regarding future recreational use of the lake, including what kinds of motorized boats should be allowed and whether the lake should be managed more like an urban park or more for primitive recreation. The Park Service received more than 10,000 comment letters on the draft EIS accompanying the plan. Commenters included 30 businesses, such as local marinas and jet ski manufacturers; 813 organizations, including national environmental groups, local community and boat-owning groups, the local chamber of commerce, the personal watercraft industry association, and many fishing groups; 17 public agencies, including neighboring national parks, state fish and game departments, nearby counties and towns, the Environmental Protection Agency, and the Nevada Department of Cultural Affairs; and 9,153 individual citizens. In response, the Park Service adopted a final plan committing to manage the lake for a range of recreational settings, from primitive to urban, and expanding protections for water quality and the natural environment. 24 A draft EIS issued in 2001 for a contemplated highspeed rail line between Charlotte, N.C. and Washington, D.C. drew between 500 and 600 written comments, raising concerns related to safety, noise, vibration, impact on property values, congestion, historic districts, tourism and access to the rail service. Fourteen government agencies commented, and 18 public meetings were held, drawing at least 650 people. 25 Based on the EIS and the comments received, the Federal Railroad Administration and the Federal Highway Administration approved the route for the proposed rail line, with more detailed planning to follow. In sum, NEPA functions as a critical tool for democratic government decision-making, establishing an orderly, clear framework for involving the public in major decisions affecting their lives and communities.

#### Discursive Political engagement is good – educated population that affects the government

**Jacobs et Al 9 (**Jacobs, Lawrence R.; Cook, Fay Lomax; Delli Carpini, Michael X.. Talking Together : Public Deliberation and Political Participation in America. Chicago, IL, USA: University of Chicago Press, 2009. pg. 9 http://site.ebrary.com/lib/umich/Doc?id=10326359&ppg=14 Copyright © 2009. University of Chicago Press. All rights reserved.

Citizen deliberation was expected to improve the legitimacy and accountability of the American political system. In place of consent derived from elections and interest-group bargaining, deliberationists promised “accountability” or “reciprocity”—a public process of “reason-giving” that would elevate public understanding and encourage government officials to explain their actions in ways that citizens would be more likely to accept as legitimate (Gutmann and Thompson 2004). Public discussion, explanation, and, especially, justification of government policy would expand the information available to citizens and incorporate them in the making of policy (Fishkin 1995). The emergence of a more reasoning citizenry was expected to coincide with a new hunger and realism among policymakers for “shared governance” that would mollify constituents who distrusted government and were informed and enraged about complex and enduring challenges that resisted traditional approaches to governance (Bryan 2004; Leighninger 2006; Sirianni and Friedland 2001; Fung 2004). The **payoffs were extensive— from better-informed and wiser citizens to greater government responsiveness to citizens and better policy decisions.** The proponents of deliberation, then, frontally challenged the persistent doubters of citizens as informed and active participants in civic and political life by proposing a process that would transform individuals into enlightened citizens and restore democratic policymaking. Public deliberation, its advocates promised, would establish a process to anchor the views of citizens in informed and rational persuasion— it would create “debate and discussion aimed at producing reasonable, well-informed opinion in which participants are willing to revise preferences” (Chambers 2003, 310) and “democratic control [that] is substantive rather than symbolic, and engaged by competent citizens” (Dryzek 2000, 1). The “authenticity” of democracy would be restored by facilitating the development of citizens and opening up government to broader participation and influence, giving citizens a say in and an understanding of policy (Chambers 1996; Gutmann and Thompson 1996).

#### Discursive political is important – Key to better governmental form.

**Jacobs et Al 9 (**Jacobs, Lawrence R.; Cook, Fay Lomax; Delli Carpini, Michael X.. Talking Together : Public Deliberation and Political Participation in America. Chicago, IL, USA: University of Chicago Press, 2009. pg. 13-14 http://site.ebrary.com/lib/umich/Doc?id=10326359&ppg=14 Copyright © 2009. University of Chicago Press. All rights reserved.

POLITICAL EFFICACY. The fifth condition is that democratic deliberation ought to have significant effects on politics and government policy that are manifested in related and interactive ways. Democratic deliberation improves the confidence of citizens in their own efficacy by helping them see the relevance of government and politics to their private lives and by increasing their political knowledge, leading them to participate in voting, volunteer for elections, attend rallies, write letters to officials, and engage in other forms of political participation (Gastil and Dillard 1999a; Kim, Wyatt, and Katz 1999; Knoke 1990; McLeod, Scheufele, and Moy 1999; Walsh 2004). This represents a feedback effect of a particular form of politics (democratic deliberation) and government policy (responsive and legitimate) on the capacity of citizens to identify their interests and appreciate their political influence (Mettler and Soss 2004; Pierson 1993; Campbell 2003). The political significance of deliberation, its promoters contend, supplements electoral politics. “Talk-centric democratic theory,” Simone Chambers explains, “focuses on the communicative processes of opinion and will-formation that precede voting” (2003, 310). Deliberationists suggest that an authentic process of public talk invigorates and educates citizens and promotes a healthy evolution in what they demand and expect of their elected representatives. By stimulating citizen participation in more informed and substantive public debate, democratic deliberation is expected to improve the quality and responsiveness of government (Gutmann and Thompson 1996; Chambers 1996). Politics, democratic deliberationists insist, involves not only battles between opposition candidates for office and for government policy but also the “contestation of discourses in civil society” (Dryzek 2000, 5). Indeed, some deliberationists place more faith in fostering discourse in civil society than in enlivening representative democracy, which they criticize as myopic in its preoccupation with direct political or legislative results and as narrowly instrumental in treating the preferences of voters as fixed. Democratic deliberation, they suggest, sets the boundaries of policy discussion by shaping the “shared means of making sense of the world embedded in language . . . [as well as] assumptions, judgments, contentions, dispositions, and capabilities” (18). “Discourse,” with its “shared terms of reference” is fundamental to forming coherent narratives or accounts that set the expectations to which political representatives must respond. Martin Luther King’s protests and speeches in the 1950s and 1960s contributed to the formation of a discourse about race relations that prefigured a shift in policy. This emphasis on the political significance of discourse in civil society redefines politics as a process of collective and public communication for expressing and reconciling deep moral differences and reconnecting individuals to what they share rather than an instrumental means for achieving the fixed goals of isolated and anonymous individuals (Habermas 1989; Gutmann and Thompson 1996). Although some deliberationists locate the primary value of public talk in its targeted impact on citizens and warn against too much emphasis on policy impact as merely “instrumental” (Ryfe 2002; Button and Ryfe 2005), others stress the significance of affecting government policy for shaping the direction of authoritative power and encouraging future citizen engagement (Levine, Fung, and Gastil 2005; Fung 2004; Gastil 2000; Young 2000). Frank Bryan concludes from New England town meetings that “real democracy . . . occurs only when all eligible citizens . . . are legislators . . . [who] make the laws that govern the action of everyone within in their geographic boundaries” (2004, 3– 4). The results are engaged voters and wise and effective policies. In short, public talking— according to the broad community of deliberation theorists— exerts significant political influence by empowering citizens, invigorating and educating voters, and shaping the terms of debate and discourse in civil society about what is considered viable government policy. “Deliberating is not just another activity on the list,” Gutmann and Thompson argue, because it “provides the means by which the justifiability of the other activities can be determined” (Gutmann and Thompson 2004, 56).

### EIS Good – Public Participation – AT: Public Doesn’t Care

#### Public doesn’t care

Jacobs et al 9 **(**Jacobs, Lawrence R.; Cook, Fay Lomax; Delli Carpini, Michael X.. Talking Together : Public Deliberation and Political Participation in America. Chicago, IL, USA: University of Chicago Press, 2009. pg. 4 http://site.ebrary.com/lib/umich/Doc?id=10326359&ppg=14 Copyright © 2009. University of Chicago Press. All rights reserved.

This book’s first conclusion, then, is that citizens engage in more extensive and meaningful public talking than previously suspected. Our findings challenge the enduring tendency to attribute the ills of democracy to a lazy and withdrawn citizenry, breaking from a long tradition that has belittled and dismissed the competence of citizens and from more recent critiques of public deliberation as elitist, exclusionary, and politically insignificant.

### EIS Good – Public Participation – Key to Democracy

#### Public participation in transportation planning is key to democracy

Lindstrom and Nie 97 – Research Consultants for the Arizona Department of Transportation

Matthew and Martin, “HOW DO YOU COLLECT AND USE PUBLIC INFORMATION IN THE DEVELOPMENT OF TRANSPORTATION PLANS AND PROGRAMS?,” ADOT, REPORT NUMBER: FHWA-AZ97-452, http://www.azdot.gov/TPD/ATRC/publications/project\_reports/PDF/AZ452.pdf

Collecting and effectively using public information in the development of transportation plans and programs is an important goal. Unfortunately, many agencies have been unsuccessful in achieving it. This research is dedicated to helping the Arizona Department of Transportation, and other interested agencies, to better their citizen participation efforts. This report begins with an extensive literature review that examines the various themes, definitions, concepts, and controversies that are often discussed. Next, it outlines the objectives, conditions, and essentials of any citizen participation program. These recommendations have been culled from literature that examines transportation planning as well as other planning areas. The myths and realities of public participation are then discussed. Before citizen input can be successfully gathered, those persons responsible need to be aware of several obstacles and pitfalls that lay ahead of them. After this discussion, the study makes a very concrete turn by providing the results of a telephone and mail survey. It is within these two chapters that the specifics of citizen participation can be best understood. Following this, an analysis of two focus groups that were conducted is provided. And finally, the attached appendices provide the reader with additional and helpful information with regard to acquiring more effective citizen participation. Taken together, the literature review, surveys, and focus groups provide a very in-depth understanding of public participation in the transportation planning process. More important are the similarities that run throughout each section. There are parallel themes, problems, and recommendations that are found in each section that should reassure the reader that the findings are not spurious nor anomalies. THE IMPORTANCE OF PUBLIC PARTICIPATION Before the question of how to increase and effectively use public participation in the development of transportation plans and programs can be answered, it is necessary to understand the overall importance of this participation. Citizen involvement in the political process is an oftstudied and rich field of inquiry. Voting studies, political alienation, citizen efficacy, and political behavior are all staples of the social sciences. The question of bureaucratic participation-- that which will be examined here, is less well-known but does have an adequate literature base. Participation in the political and decision-making processes is crucial for a healthy and stable democratic system. Although a representative democracy, the United States requires an active and caring citizenry if it is to remain a legitimate democracy. A participatory democracy has three important redemptive qualities. First, it strengthens the democratic spirit through its educative function. Second, it helps build and strengthen communities. And third, participation helps turn institutions into more effective instruments of society. [1] Participation is often erroneously thought of as the simple act of voting. Yet, it is and must be much more than this one single and solitary act. [2] Public participation in the bureaucratic process has important democratic implications. It is within this type of decision-making process that communities can regain control while issues can be honestly and earnestly discussed. It is a chance to move away from the adversarial politics that currently dominates toward a more open, discursive and congenial process. [3] Moreover, it appears to be what Americans want. [4] The political right, left, and center have consistently put forth the merits of increased individual and community political participation. Despite being politically efficacious, it is realized that successful governing requires some type of popular consent and without some degree of approval, governing and the most basic of decision-making becomes impossible.

### EIS Good – Public Participation – Terminal

#### Revitalizing citizen-led democracy solves extinction

Gare 3 – PhD, Professor of Social Science @ Swinburne

Arran, "Beyond Social Democracy? Beyond Social Democracy?" Democracy and Nature, 9(3), Nov 2003, via EBSCO

In the new order, the state’s role, along with a range of new institutional structures ranging from the local to the international level, is exclusively to create the stable framework for the efficient functioning of the market. Although this phase extends the market into the Third World, power is concentrated as never before with the elites of the core zones. Civil society has dissolved almost completely, people have been brutalized, and politics and democracy rendered superfluous. Only a small minority of the world population, mostly in a few affluent regions in North America, Western Europe and East Asia are benefiting from these developments. And the consequence of the internationalization of the market economy and the concentration of economic power it engenders, is ‘an ecological crisis that threatens to develop into an eco-catastrophe, the destruction of the countryside, the creation of monstrous mega-cities and the uprooting of local communities and cultures’ (p. 116). Fotopoulos argues that with liberalized commodity and capital markets, the internationalization of the market economy with an over-riding commitment to economic growth, it is impossible to regulate the market to control its destructive imperatives. Any country that attempts to do so (for instance Sweden), will lose its international competitiveness (p. 86ff). Market efficiency in an internationalized economy and social control of the market are irreconcilable. This argument provides the background for the defence of inclusive democracy. Going beyond efforts to democratize industrial production and focusing on the community rather than merely the economy, the project of inclusive democracy encompasses the political, economic, social and ecological realms; that is, any area of human activity where decisions can be taken collectively and democratically. Democracy is defined as the ‘institutional framework that aims at the equal distribution of political, economic and social power. . . in other words, as the system which aims at the effective elimination of the domination of human beings over human being’ (p. 206f). Ecological democracy is defined as the institutional framework that aims to reintegrate humans and nature. The original example of genuine democracy (although it was confined to a small proportion of the total population) is taken to be ancient Athens of Pericles. The liberal ‘democracies’ of the modern world, social democratic models and Marxist socialism that reduce politics to the scientific management of production, are dismissed as various forms of oligarchy. Fotopoulos traces the history of these social forms, claiming them to be perversions of the democratic ideal. Fotopoulos offers an historical, social and economic analysis of ancient Greek democracy to show what true democracy is and the conditions for its success. The basis of democracy must be the choice of people for individual and collective autonomy. Political decisions should be made by citizens collectively in community assemblies, not through representatives. Positions to which authority is delegated should be filled by lot on a rotation basis. All residents in a particular geographical area should be directly involved in decision-taking processes and should be educated to enable them to do so. Political rights should be accompanied by social and economic rights and, to ensure this, productive resources should be owned by the demos (the people). In one of the most important sections of the book, Fotopoulos provides a detailed model of a production and distribution system simulating and gaining the benefits of a market economy while avoiding the destructive effects of real markets. This involves a combination of democratic planning and a voucher system, securing the satisfaction of basic needs for everyone while enabling individuals to maintain their sovereignty as consumers. Satisfaction of basic needs involving more than one community should be coordinated through a confederal plan formulated in regional and confederal assemblies made up of delegates. Fotopoulos shows how such a system could be made workable economically and politically. The point of offering such a model is not to prescribe how people should organize themselves but to demonstrate that direct democracy is feasible. Fotopoulos argues we do not have to wait for the conditions for inclusive democracies to evolve. They can be created at almost any time, although it is easier at some times rather than others. Fotopoulos argues that to escape the destructive imperatives and brutalizing effects of the present order, ‘The immediate objective should. . . be the creation, frombelow, of “popular bases of political and economic power”, that is, the establishment of local and public realms of direct and economic democracy which, at some stage, will confederate in order to create the conditions for the establishment of a new society’ (p. 284). This struggle must be undertaken simultaneously at the political, economic, social and cultural levels. The final part of the book is devoted to the philosophical justification of inclusive democracy. Essentially, Fotopoulos develops Castoriadis’ arguments that the core of democracy is autonomy—the freedom of people to be self-instituting, that is, to be able to put into question and transform their existing institutions and their dominant social paradigm (beliefs, ideas and values).1 Any philosophy that denies the possibility of such autonomy is criticised. In particular, Fotopoulos attacks those who see democracy as the outcome of something other than the free choice of people, whether this be the truths of religion, the laws of nature, the cunning of reason or the evolution of society. The question then is whether people are prepared to struggle for democracy now, given that their failure to do so not only means accepting their subjugation and brutalization, but also the destruction of the ecological conditions of their existence.

### EIS – Public Participation – VTL

#### Public participation is key to value to life

Forkenbrock and Schweitzer 97 – David J. Forkenbrock: Bachelor’s degree from the University of Minnesota in 1965, a master’s degree from Wayne State University in 1973, and a doctorate from the University of Michigan in 1977, Nationally recognized transportation researcher, Lisa A. Schweitzer: Ph.D. Urban Planning University of California, Los Angeles (*Environmental Justice and Transportation Investment Policy*, 1997, pg 67-69)

The objective of this report has been to lay out the types of information nontechnical people should have access to if they would be affected by a transportation system change. Such information is quite extensive, and much of it is the product of rather technical analysis. A need exists to make this information fully comprehensible, so that all affected populations can acquire a sound understanding of the likely impacts, favorable and adverse. Beyond the scope of our study is the important element of devising strategies for involving affected populations, especially those with low incomes and those who are members of racial minorities, in the process of evaluating the sorts of information on impacts discussed in this report. It is certainly is the case that for a constructive community participation effort to occur, useful information on environmental, economic, and social impacts must be made available to all participants. On the other hand, technically correct, thorough information is of limited value if it is not available to or well understood by the people who stand to be affected by a transportation system change. A U.S. DOT-sponsored conference on environmental justice and transportation produce a series of recommendations regarding involvement by protected populations in the process of determining whether to make particular changes in transportation systems (Federal Transit Authority 1995). Among the general principles mentioned in the conference proceedings are: • Strengthen the role of neighborhood and community-based organizations in the planning process (p. 17); hold community leaders accountable for participation (p. 56); • Educate planners on ways to actively promote citizen involvement (p.27); for example, it is important to develop culturally sensitive communications (p. 52) and to conduct sensitivity training to help decision makers and agency staff understand different cultures (p. 19); • When appropriate, use intermediary or liaison organizations to make linkages between neighborhoods and area-wide planning (p. 28); • Recognize the limitations of traditional public hearings and opportunities to comment on proposed transportation system changes (p. 28); • Involve minority populations and low-income populations in the facility planning process at the early stages (p. 52); and • Provide information on key issues related to the system changes under consideration at such common locations as grocery stores, churches, and schools (p. 52); also use prime-time advertisements and announcements (p. 58). Looking Ahead A recurring theme in the limited materials available on environmental justice and transportation investment is the need for improved capabilities to asses project impacts. Social and economic considerations have received minimal attention in impact analyses (Federal Transit Administration 1995, p. 18), and methods of analysis need further development. Based on our review of the salient literature and observations while conducting this research, needs for increased knowledge include: • Development of improved baselines assessments that estimate current levels of inaccessibility and adverse impacts. • Improved mobility assessment methods. The current focus on corridor analyses can lead to traditional solutions, such as highway capacity expansion. • Air pollution and noise models that are more capable of micro-scale (neighborhood) analysis, taking into account such factors as building heights and spacing. • More effective methods for reaching affected populations and gauging neighborhood-level priorities regarding elements needing preservation or enhancement. • Better predictive approaches for estimating trip geography and travel desires of low-income populations and minority populations in specific situations. • Locations analyses for public and private facilities that take into account protected populations’ abilities to conduct their daily activities. • Improved techniques for communicating probable impacts, positive and negative, of contemplated transportation system changes, perhaps including multimedia approaches, taking into account the need to reach low-income populations and minority populations. Conclusion A growing awareness of the pivotal role played by the transportation sector in the quality of life for low-income populations and minority populations has led environmental justice advocates to place considerable emphasis on this sector. This report is an attempt to improve the quality of information available to all interested parties, including those who traditionally have had comparatively little knowledge about the consequences of proposed transportation system changes. We stress that more work is needed to further upgrade our ability to generate the salient information. Also needed are improved approaches for including minority populations and low-income populations in the planning process from conceptualization to effectuation. Environmental justice is a public policy objective that has the potential to significantly improve the quality of life for people who often have been left behind as communities grow and change. This report represents a step toward a more equitable sharing of knowledge regarding the benefits and costs brought about by investments in transportation systems.

### EIS – Public Participation – Racism

#### Public participation solves racism

Bullard 2 - PhD in Environmental Sociology, Professor of Public Affairs (Robert D., “POVERTY, POLLUTION AND ENVIRONMENTAL RACISM: STRATEGIES FOR BUILDING HEALTHY AND SUSTAINABLE COMMUNITIES”, A Discussion Paper prepared for the National Black Environmental Justice Network (NBEJN) Environmental Racism Forum World Summit on Sustainable Development (WSSD) Global Forum Johannesburg, South Africa July 2, 2002, <http://www.ejrc.cau.edu/PovpolEj.html)//RK>

The United States is the dominant economic and military force in the world today. The American economic engine has generated massive wealth, high standard of living, and consumerism. This growth machine has also generated waste, pollution, and ecological destruction. The U.S. has some of the best environmental laws in the world. However, in the real world, all communities are not created equal. Environmental regulations have not achieved uniform benefits across all segments of society. [2] Some communities are routinely poisoned while the government looks the other way. People of color around the world must contend with dirty air and drinking water, and the location of noxious facilities such as municipal landfills, incinerators, hazardous waste treatment, storage, and disposal facilities owned by private industry, government, and even the military.[3] These environmental problems are exacerbated by racism. Environmental racism refers to environmental policy, practice, or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups, or communities based on race or color. Environmental racism is reinforced by government, legal, economic, political, and military institutions. Environmental racism combines with public policies and industry practices to provide benefits for the countries in the North while shifting costs to countries in the South. [4] Environmental racism is a form of institutionalized discrimination. Institutional discrimination is defined as "actions or practices carried out by members of dominant (racial or ethnic) groups that have differential and negative impact on members of subordinate (racial and ethnic) groups." [5] The United States is grounded in white racism. The nation was founded on the principles of "free land" (stolen from Native Americans and Mexicans), "free labor" (African slaves brought to this land in chains), and "free men" (only white men with property had the right to vote). From the outset, racism shaped the economic, political and ecological landscape of this new nation. Environmental racism buttressed the exploitation of land, people, and the natural environment. It operates as an intra-nation power arrangement--especially where ethnic or racial groups form a political and or numerical minority. For example, blacks in the U.S. form both a political and numerical racial minority. On the other hand, blacks in South Africa, under apartheid, constituted a political minority and numerical majority. American and South African apartheid had devastating environmental impacts on blacks. [6] Environmental racism also operates in the international arena between nations and between transnational corporations. Increased globalization of the world's economy has placed special strains on the eco-systems in many poor communities and poor nations inhabited largely by people of color and indigenous peoples. This is especially true for the global resource extraction industry such as oil, timber, and minerals. [7] Globalization makes it easier for transnational corporations and capital to flee to areas with the least environmental regulations, best tax incentives, cheapest labor, and highest profit. The struggle of African Americans in Norco, Louisiana and the Africans in the Niger Delta are similar in that both groups are negatively impacted by Shell Oil refineries and unresponsive governments. This scenario is repeated for Latinos in Wilmington (California) and indigenous people in Ecuador who must contend with pollution from Texaco oil refineries. The companies may be different, but the community complaints and concerns are very similar. Local residents have seen their air, water, and land contaminated. Many nearby residents are "trapped" in their community because of inadequate roads, poorly planned emergency escape routes, and faulty warning systems. They live in constant fear of plant explosions and accidents. The Bhopal tragedy is fresh in the minds of millions of people who live next to chemical plants. The 1984 poison-gas leak at the Bhopal, India Union Carbide plant killed thousands of people--making it the world's deadliest industrial accident. It is not a coincidence that the only place in the U.S. where methyl isocyanate (MIC) was manufactured was at a Union Carbide plant in in predominately African American Institute, West Virginia. [8] In 1985, a gas leak from the Institute Union Carbide plant sent 135 residents to the hospital. Institutional racism has allowed people of color communities to exist as colonies, areas that form dependent (and unequal) relationships to the dominant white society or "Mother Country" with regard to their social, economic, legal, and environmental administration. Writing more than three decades ago, Carmichael and Hamilton, in their work Black Power, offered the "internal" colonial model to explain racial inequality, political exploitation, and social isolation of African Americans. Carmichael and Hamilton write: The economic relationship of America's black communities . . . reflects their colonial status. The political power exercised over those communities go hand in glove with the economic deprivation experienced by the black citizens. Historically, colonies have existed for the sole purpose of enriching, in one form or another, the "colonizer"; the consequence is to maintain the economic dependency of the "colonized." [9] Institutional racism reinforces internal colonialism. Government institutions buttress this system of domination. Institutional racism defends, protects, and enhances the social advantages and privileges of rich nations. Whether by design or benign neglect, communities of color (ranging from the urban ghettos and barrios to rural "poverty pockets" to economically impoverished Native American reservations and developing nations) face some of the worst environmental problems. The most polluted communities are also the communities with crumbling infrastructure, economic disinvestment, deteriorating housing, inadequate schools, chronic unemployment, high poverty, and overloaded health care systems.

### EIS Good – Environmental Justice

#### Solves environmental justice

Johnson 97 – Professor of Law @ Mercer

Stephen, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, Hein Online

NEPA also includes provisions that implicitly require that the government consider the disparate impacts that a proposed action may have on minority or low-income communities. ' However, the federal government has been exploring the expanded use of NEPA to require consideration of environmental justice issues since President Clinton issued Executive Order No. 12,898 on environmental justice in 1994.12 With bold leadership from the Council on Environmental Quality (CEQ)," 3 NEPA could be strengthened dramatically through administrative changes. In addition, legislative changes to NEPA based on effective SEPAs could make NEPA a more effective tool to achieve environmental justice.

#### Prioritize this impact

Nieutvenhuis 10 – Professor of Education Management

Jan, Acta Academica 2011: 43(1) – available at: http://up-za.academia.edu/JanNieuwenhuis/Papers/882363/Social\_justice\_in\_education\_today

Accept the geo-historical context of the struggle as something that must be reconciled with attempts to create social justice. This implies that the state must work with communities to repair damaged solidarities by reconciling autonomy and interdependence (Giddens 1991)- This also implies the abolishment of structural forms of oppression that restrict peoples' access to resources and opportunities for developing and exercising their capacities or capabilities for living a decent human life (Young 2002). In doing so care must be taken not to create new forms of exclusion that will, in turn, create new forms of social injustice. Similarly, it must ensure fairness in terms of rewards. One cannot reward state officials with considerable bonuses when they are failing to deliver the social services intended to create a just society. Justice is done when each member of an organisation receives a reward equivalent to the contribution s/he makes (Rawls 1971, Miller 1999). This also applies to education. One cannot reward a child if no contribution was forthcoming. For example, One cannot promote a child to the next grade automatically if s/he did not participate in the educational process on an equal basis with others. A theory of social justice in education is essential. Brighouse (2002: 181) states that until recently there was no theory of justice in education and that one cannot simply read a theory off from Rawls, Young, Giddens, or any other author. This article critically reviewed a number of theories that could inform such a theory of social justice in education. It argued that social justice is an ideal — a vision that must become a way of life that permeates all aspects of being human. For this reason it cannot be legislated or achieved by means of international conventions or declarations — albeit important instruments to promote social justice; social justice must be lived. It requires that every citizen must take the responsibility to protect, advance and promote the values, principles and ideals of social justice. The road to achieving this is, however, obstructed by geo-historical and scarcity challenges confronting developing countries. These challenges and their negative impact on achieving social justice in education must be addressed in an ordered and well-structured manner without creating new forms of social injustice. As long as poverty, unemployment and high levels of violence exist, there cannot be social justice. This is the real challenge and it is a journey on which all developing countries and their people must embark. In Long walk to freedom Nelson Mandela (1994a: 751) asserts: Some say that (the liberation of the oppressed and the oppressor) has now been achieved. But I know that that is not the case. The truth is that we are not yet free: we have merely achieved the freedom to be free, the right not to be oppressed. We have not taken the final step of our journey, but the first step on a longer and even more difficult road. For to be free is not merely to cast off one's chains, but to live in a way that respects and enhances the freedom of others.

#### Specifically true for transportation

Kumar 9 – PhD, Professor and Head of Physical Planning @ New Delhi

Ashkok, Institute of Town Planners, India Journal 6 - 4, 68 - 72, http://itpi.org.in/pdfs/oct6\_09.pdf

In this paper, the author argues that transport planning has become highly sciencitized discipline. Sciencitization of transport planning practice, among others, have led to two main consequences for society and economy. One, sciencitization of transport planning has led it to achieving the ends of technical rationality that is transport planning practitioners firmly believe that technical robustness of their proposals and projects remain their primary task, and moral goals such as transport equity are mere social irritants. Second, excessive emphasis on technical rationality has created a condition whereby problem formulation and reformulation has become detached from societal needs, particularly those of the majority urban poor. The paper ends by suggesting that moral principles such as equity and by implication social justice must remain at the heart of transport planning practice and education, if this important specialization has to make any significant contribution to the most important exercise of nation building. Transport planning is an integral part of town and country planning. It is the only land use, which has the capacity to provide links between other land uses physically. Whatever may be the level of technological advances aimed at reducing the need to travel (globalization of work and work processes, working from home within a city, studying in a virtual university, internet based entertainment), place remains important. As long as locale remains vital for human civilization to function and flourish, transport planning will continue to occupy high place on the table of town and country planning. In this specific sense, transport planning is the only land use which could thus afford meaning to other land uses because without physical links through road networks, it is not possible to reasonably enjoy activity systems located in the form of other land uses. Whether we meet people for specific purpose or get together on a social occasion, the significance of transport planning could not be overlooked because in order to make every trip affordable, comfortable, enjoyable and sustainable (less time and energy consuming), someone must do a good job at transport planning. Most of the efforts in transport planning are made to achieve efficiency by use of scientific or instrumental rationality. Instrumental reasoning implies complete reliance on scientific methods of analysis and examination and proposed action premised on such reasoning. Thinking, conceiving, planning and implementing planning projects through instrumental reason is acceptable provided it does not become an end in itself. Transport planners are known for their technical prowess as most of the practitioners of transport planning generally have engineering background. In this paper, I make the argument that transport planning is highly sciencitized discipline. Sciencitization of transport planning practice, among others, have led to two main consequences for society and economy. One, sciencitization of transport planning has led it to achieving the ends of technical rationality that is transport planning practitioners firmly believe that technical robustness of their proposals and projects remain their primary task, and moral goals such as transport equity are mere social irritants. As I will try to demonstrate below in briefly, engineering content dominates the essence of both transport planning practice as well as education. Second, excessive emphasis on technical rationality has created a condition whereby problem formulation and reformulation has become detached from societal needs, particularly those of the majority urban poor. I intend to close my discussion in this paper by suggesting that moral principles such as equity and by implication social justice must become the nerve center of transport planning practice and education, if this important specialization has to make any significant contribution to the most important exercise of nation building. Improving one or two intersections or roundabouts could never achieve these moral ends.

### Avoids Politics

#### The perm and the plan link to politics

Spain 96

David, Queensland University of Technology Law School, Environmental Legal Systems, November, http://www.earthsharing.org.au/spaine.html

Legislation cohering consensus policies stipulate a process by which measures are regularly & ethically negotiated (between bureaucrats & industry, perhaps with public input) on a case-by-case basis. In this vein may be mentioned a variety of co-operative measures such as state intervention (eg liming of acidified lakes) and demand management (eg peak rate hikes). Co-operative mutual restraint (which tends to become enshrined in custom) may be the only efficient method of environmental safeguard where the users are impoverished nomads (eg grazing vulnerable rangelands) or where thinly-spread resources are exploited (eg extraction of timber), with complicated impacts (eg canopy & habitat damage involved in cutting & snigging). The comparative abundance of well-informed & active citizenry in a modern democracy makes it dangerous for a government to impose any policy or strategic plan without exposing the draft for public comment: failure to take this course and sincerely listen can be perceived as arrogant and excite voter backlash. Even so, it is the developers & industrialists (unlike the unpaid, volunteer public) who have the most time & money to devote to such "negotiation", and it is they who tend to have the ear of bureaucrats & politicians. Thus, indigenous governmental intervention is quite likely not only to fail to address pollution but indeed to engender it: expensive high-stack smoke dispersal may achieved glorious blue sky over urban areas, such that a myriad local voters happily return the incumbent politician, but in reality the problem is merely displaced and engenders acid rainfall elsewhere…

#### Consensus building of the counterplan avoids political backlash

Percival 97 – Professor of Law @ Maryland

Robert V., Professor of Law, Robert Stanton Scholar & Director, Environmental Law Program, University of Maryland School of Law, University of Chicago Legal Forum

Those who make a serious effort to "rethink regulation" ultimately will recognize that far more fundamental environmental progress could be accomplished by changing the nation's energy, agricultural, and transportation policies to make them more responsive to environmental concerns. The nation's tax system levies the vast majority of taxes on labor and capital rather than on waste and pollution. [215](http://www.lexis.com/research/retrieve?_m=c737c7bcb804efbc832f6f604952812d&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtb-zSkAl&_md5=6f476aea722b3c7258f7eb8214a9fa0b" \l "n215#n215" \t "_self) However, fundamental reforms in tax  [\*197]  or energy policy are quickly dismissed as politically unrealistic. Much more effort should be devoted to considering why such policies are so unattractive politically and what, if anything, can be done to change the political dynamics. The enactment of consensus food safety and safe drinking water legislation in 1996 demonstrates continuing bipartisan support for environmental protection. It also demonstrates that legislative gridlock can be overcome when measures are perceived to provide some benefits to both industry and environmental interests that traditionally have been antagonistic. The enactment of further environmental legislation may require the use of consensus-building processes that foster compromises necessary to overcome legislative gridlock.