## Environmental Impact Statement CP

## Joint Fact Finding CP

### Shell

**Text: The United States Federal Government should submit [plan mandate] for a National Environmental Policy Act Environmental Impact Statement, over which an open forum for project stakeholders should be held. The United States Federal Government should implement the least environmentally-damaging alternative found.**

**Bringing in stakeholders is key to rejoin the political and scientific realm, revitalizing the credibility and legitimacy of science**

**Karl et al 07** [Harman A. Karl, U.S. Geological Survey scientist. Lawrence E. Susskind, Ford Professor of Urban and Environmental Planning at MIT, and Katherine H. Wallace, enrolled in the Master of City Planning program in MIT’s Department of Urban Studies and Planning and is a MUSIC intern. “A Dialogue, not a Diatribe.” Environment, 49:1, pp. 20-34. January/February 2007. <http://web.mit.edu/dusp/epp/music/pdf/ENV_JF07_JFFarticle.pdf>]

For science to be more effectively used in public policymaking, it should—at a minimum—help to scope environmental (including human health) and natural resource management problems effectively, generate useful forecasts of what is likely to happen if nothing is done and how various responses might work, and assist stakeholders in selecting among possible responses even when they have very different levels of scientific and technical capability. To help ensure that good science is considered in decisions that get made, a forum and procedure, in particular at local and community levels, are needed that bring experts, decisionmakers, and the general public together in meaningful deliberations and negotiations that incorporate scientific information, local knowledge, and all the relevant values and interests. What is needed is the development of an interface between the culture of science and that of policymakers and the general public that preserves the impartiality of the scientist and the best practices of scientific inquiry while still honoring the values and preferences of stakeholders. The credibility and legitimacy of science depend upon how and by whom information is gathered and the process by which scientific inquiry is conducted.10 In the last few years scientists have increasingly acknowledged the need to involve “‘users’ and stakeholders more directly in the design and interpretation of”11 scientific studies, recognizing that “in a world put at risk by the unintended consequences of scientific progress, participatory procedures involving scientists, stakeholders, advocates, active citizens, and users of knowledge are critically needed.”12

### Solvency

#### Solvency – Top Level

**In current environmental policy, science is marginalized by competition among policy-makers. The inclusion of stakeholders is a pre-requisite to effective policies.**

**Karl et al 07** [Harman A. Karl, U.S. Geological Survey scientist. Lawrence E. Susskind, Ford Professor of Urban and Environmental Planning at MIT, and Katherine H. Wallace, enrolled in the Master of City Planning program in MIT’s Department of Urban Studies and Planning and is a MUSIC intern. “A Dialogue, not a Diatribe.” Environment, 49:1, pp. 20-34. January/February 2007. <http://web.mit.edu/dusp/epp/music/pdf/ENV_JF07_JFFarticle.pdf>]

While “decisions based on sound science” has been a credo of natural resource management and environmental policy in the United States for more than 100 years, science is still not independent of politics. The concept of “decisions based on sound science” is predicated upon the presumptions that science is a neutral body of knowledge immune from value judgments, science can predict with certainty and clarity what will happen in the physical world, and policymaking is a rational process. None of these is true.5 Policymaking is not an entirely rational process of identifying problems and choosing optimal solutions, especially when scientists must make value-laden assumptions and extrapolations in the face of highly uncertain data to answer questions posed by policymakers.6 What is needed is a way to ensure, politics aside, that our understanding of the workings of complex ecological systems informs public policy choices about where and how development should proceed, how natural resources are managed to ensure sustainable supplies, and whether and how to regulate economic activities that pose a threat to human health and safety as well as environmental protection. In many contentious debates surrounding complicated natural resource management, environmental protection, and human health decisions, science is marginalized. This is due in large measure to the adversarial processes mandated by our legal and administrative systems. They often leave out the human dimensions that ought to be considered in all deliberations leading to natural resources management decisions or environmental policy choices.7 Such decisions are unavoidably based on a range of values along with the interests of a great many stakeholder groups. Science cannot be separated from these values and interests. For many of our very complex environmental problems—so-called “wicked” problems8—decisions based on sound science must integrate social science, natural science, and stakeholder concerns.

Counterplan solves the root cause of the solvency deficit to the plan – building stakeholder consensus

Todorovich and Schned 12 [Petra Todorovich, director of America 2050, and national urban planning initiative, and Daniel Schned, Regional Plan Association and Associate Planner for America 2050. “Getting Infrastructure Going: Expediting the Environmental Review Process.” June 10, 2012. [**http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf**](http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf)]

While the NEPA law is the most common magnet of criticism for the massive delays that routinely plague project delivery in the U.S., the cause of delays is not rooted in the legislation itself. For example, NEPA regulations state that in most cases EISs should be less than 150 pages long and less than 300 pages even for projects of particular complexity.11 Delays are more often caused by a lack of resources, or policies and procedures that have developed over time within the agencies and organizations that implement NEPA.¶ Sometimes delays that occur during the NEPA process are actually caused by external factors, such as shifts in state or local political and funding priorities.12 However, according to experts convened at our roundtable, delays are most commonly indicative of the following four aspects of the process and institutions involved:¶ •¶ Lack of stakeholder consensus over fundamental aspects of a project forged during the planning phase, which are not efficiently resolved during the environmental review process;¶ •¶ Differing and conflicting interpretations of NEPA requirements, and inconsistent implementing policies and procedures among the multitude of government agencies;¶ Administrative bottlenecks and outdated procedures within agencies that have insufficient staff capacity and training to efficiently complete environmental studies or reviews; and¶ •¶ Misdirected response to the threat of environmental litigation, which leads to overly complex and technical environmental analysis and rigorous documentation efforts.¶ Lack of Stakeholder Consensus in Planning Phase¶ The lengthy delays that can arise during the environmental review process under NEPA are often due to the fact that the project was not ready for NEPA, either because of a flaw in its design or because project planners did not address key concerns and were unable to establish consensus among the various stakeholders during the planning phase.¶ As EISs and environmental assessments are drafted, the public and interested agencies are consulted and notified at every step. If local controversies about a project develop and are not addressed in the planning phases, the public participation steps during the NEPA process are often the times when they will surface, delaying a project or forcing it to be redesigned. Thus, the drafting of the EIS tends to be the time when stakeholders come together and realize that they do not agree with some aspect of the project, whether it is the purpose, design, location, environmental impacts, mitigation measures, cost, or some other considerations. In this type of case, the delay is due to a failure to foster agreement during the project planning phases before the NEPA process began.¶ Building consensus during the pre-NEPA planning phase requires greater investments of financial and administrative resources in advance, but tends to save time and money in the long-term by helping avoid unnecessary delays during the EIS or environmental assessment process and achieves greater benefits by delivering the project faster.

#### Solvency - Generic

**Counterplan solves best – public participation solves delays, cost-overruns, and litigations – all of which tank solvency**

**Peyser 05** [Jennifer Peyer, ISU, Master in City Planning, MIT. “How Does Participation in the Framing, Review, and Incorporation of Scientific Information Affect Stakeholder Perspectives on Resource Management Decisions?” June 2005. <http://dspace.mit.edu/bitstream/handle/1721.1/33006/61763813.pdf?sequence=1>]

However, the study further determined that NEPA processes are costly and lengthy; that agencies make decisions before hearing from the public; and that agency officials, particularly senior leadership, lack adequate training in public participation. Furthermore, documents are too long and technical for many people to use; the highly technical nature of NEPA documents and the lack of public resources to "translate" materials into information useful to the interested public have contributed to an "atrocious" level of citizens' understanding of EIS material. 17 According to federal agency NEPA liaisons, the EIS process is still viewed by many as a compliance requirement rather than as a tool to effect better decision making. Because of poor implementation of public involvement processes, agencies have lost public credibility. Agencies have also expressed frustration at the method of public involvement used most often in EIS processes. A NEPA Task Force (2003) received feedback that agencies may also misinterpret or misrepresent environmental effects information and do not conduct qluality analyses. Agencies expressed frustration that other agencies and the public are insensitive to agency goals and responsibilities. Public participation through NEPA often occurs too late in the EIS process and tends to emphasize short-term impacts rather than long-term goals. Both public and agency interviewees noted a need for additional efforts to strengthen trust and credibility. In its review of public involvement in NEPA, The US Institute for Environmental Conflict Resolution (US Institute) identified additional problems including a lack of agency guidance and interagency coordination, inefficient and duplicative processes, confusion about participants' roles, overemphasis on NEPA documentation and litigation protection, and infrequent use of NEPA processes as part of strategic planning and decision making.'8 All of these reflect the lack of meaningful public participation. An additional finding by the US Institute and a growing number of NEPA evaluators is that current practice reflects too little focus on NEPA's Section 101 "productive harmony" clause.' 9 In focusing solely on Section 102, agencies are emphasizing procedure at the expense of NEPA's call for meaningful public involvement. In EIS cases reviewed by Kent and Preister, the social and economic portions of EISs "are a few paragraphs" or rely on Census statistics or other secondary data. They also noted that a lack of citizen participation in social and economic impact analyses. In summary, they explain that "[m]any of the efforts of reform have centered on streamlining the process and decreasing redundancy or irrelevancy rather than increasing citizen ownership and making issue resolution a centerpiece for a 'living process."' Yet another frustration with NEPA is that it often leads to litigation, taking the decisionmaking authority out of the hands of all involved parties. Of the approximately 35 NEPA court decisions issued since October 2001, the federal agencies lost 19, over 54 percent.20 While judicial review provides the public with another avenue to affect an agency's decision, it frames the issue in terms of only the litigating party's interests and can end up trumping an agency's decision.

#### Solvency – Viewpoints

**Status quo politics inculcates competition which produces net worse policies – the counterplan incorporates all viewpoints which allows a true solution to emerge**

**Karl et al 07** [Harman A. Karl, U.S. Geological Survey scientist. Lawrence E. Susskind, Ford Professor of Urban and Environmental Planning at MIT, and Katherine H. Wallace, enrolled in the Master of City Planning program in MIT’s Department of Urban Studies and Planning and is a MUSIC intern. “A Dialogue, not a Diatribe.” Environment, 49:1, pp. 20-34. January/February 2007. <http://web.mit.edu/dusp/epp/music/pdf/ENV_JF07_JFFarticle.pdf>]

Collaborative governance is an essential corollary to an ecosystems approach to natural resources management decisions. “Informing these decisions with science insights and information is important, indeed, critical to our ability to maintain healthy lands and thriving communities,” wrote P. Lynn Scarlett in 2004 when she was Interior’s Assistant Secretary for Policy, Management and Budget.34 Collaborative governance requires joint fact finding because it is the only way to connect scientists, citizens, and policymakers in crafting the decisions that surround contentious natural resources disputes. The power of collaborative governance over regulatory governance is, according to Todd A. Bryan, a resource policy and behavior researcher at the University of Michigan, that of “‘shared ownership’ of our larger and more complex problems and challenges.”35 Although citizens do not have the authority to make final decisions, by empowering them to participate as equal partners in a collaborative problem-solving process, agencies will be more effective in their missions.36 Through collaboration it is expected that more creative and innovative solutions will emerge and that agencies will implement them.37 Compliance-based approaches to environmental policy and natural resource management foster a culture of winners and losers—of a “you against me” dichotomy. If I acknowledge that your viewpoint and my viewpoint are both legitimate, we can reframe the debate by asking how can we work together to shape a solution that satisfies both (all) viewpoints (values and preferences). By proceeding in this way, we can create added value beyond that which any one person (viewpoint) brings to the table. The rapidly increasing number of community-based groups interested in engaging in collaborative problem solving is another indication that the regulatory model of the last 100 years, which has gotten us far, is no longer adequate.38

#### Solvency – Combines Politics w/ Science

**Joint Fact Finding is key to environmental policies – engages scientific inquiry from a balanced political frame**

**Karl et al 07** [Harman A. Karl, U.S. Geological Survey scientist. Lawrence E. Susskind, Ford Professor of Urban and Environmental Planning at MIT, and Katherine H. Wallace, enrolled in the Master of City Planning program in MIT’s Department of Urban Studies and Planning and is a MUSIC intern. “A Dialogue, not a Diatribe.” Environment, 49:1, pp. 20-34. January/February 2007. <http://web.mit.edu/dusp/epp/music/pdf/ENV_JF07_JFFarticle.pdf>]

Joint fact finding (JFF) refers to a procedure or set of best practices that have evolved over the past decade or so for ensuring that science and politics are appropriately balanced in environmental decisionmaking at the federal, state, and local levels. Because JFF promotes shared learning, it helps to create knowledge that is technically credible, publicly legitimate, and especially relevant to policy and management decisions. JFF is a procedure for involving those affected by policy decisions in a continual process of generating and analyzing the information needed to shape scientific inquiry and to make sense of what it produces. It allows for the consideration of local and cultural knowledge as well as expert knowledge. A well-designed and managed JFF process does not result in “science by committee” or allow science to devolve to lowest common denominator thinking. A high-quality JFF process helps ensure that the best-quality science (from the standpoint of those committed to the norms of independent scientific inquiry) is used to inform decisions.13 JFF assumes that an agency of government (or a group of agencies) will act as the convener of whatever decisionmaking process is required. The convener, usually by law, is the final decisionmaking body. Stakeholders are those who believe they will be affected by (or have a right to have a say about) the decision(s) the convener proposes to make. Stakeholders include other governmental actors who are not conveners as well as representatives of a wide range of nongovernmental interests. Conveners often rely on “professional neutrals” (trained facilitators or mediators with experience working to resolve complex public disputes) to assist in the identification of stakeholder representatives and to manage consensus-building dialogue among large numbers of participants.14 While JFF is usually driven by the tight deadlines and serious budget limitations that constrain convening agencies, sufficient time and money must be set aside to ensure reasonable opportunities for stakeholder engagement and group decisionmaking.

#### Solvency - Collaboration

**Collaboration in the form of Joint Fact Finding is necessary to effective policy making – the process of the plan fails and ignores environmental consequences**

**Karl et al 07** [Harman A. Karl, U.S. Geological Survey scientist. Lawrence E. Susskind, Ford Professor of Urban and Environmental Planning at MIT, and Katherine H. Wallace, enrolled in the Master of City Planning program in MIT’s Department of Urban Studies and Planning and is a MUSIC intern. “A Dialogue, not a Diatribe.” Environment, 49:1, pp. 20-34. January/February 2007. <http://web.mit.edu/dusp/epp/music/pdf/ENV_JF07_JFFarticle.pdf>]

Inclusive processes that bring people together to solve problems collaboratively are increasingly being seen as the best way to link the substance of science to decisions that must be made regarding environmental policy. Indeed, process design is now seen as central to the success or failure of any collaborative effort.16 The inherent uncertainty surrounding scientific analysis and forecasting—owing to the complexity of natural systems—is a principal reason that collaborative approaches are best suited to incorporating science into decisionmaking. A participatory, collaborative process channels people holding opposing viewpoints into a civil discourse that can help them discover common ground; from this, mutual understanding may emerge. A conversation, not a diatribe, is needed to cope with the implications of scientific uncertainty. Collaborative approaches to policymaking can generate the civil discourse necessary to produce creative and durable solutions to complex and contentious environmental dilemmas. The principles of consensus building and multiparty, interest-based negotiation provide a framework for decisionmaking in which citizens and government share responsibility for land-use planning, ecosystems and natural resources management, and environmental policymaking. This approach requires meaningful participation of everyone (agencies and citizens) with a stake in an issue to come together to talk about it.17 Collaborative processes should not be confused with traditional public involvement efforts in which there is no or limited discussion and citizens typically have two minutes to present their critique of government policies or decisions that have already been made. Unfortunately, many public agencies still advocate the traditional approach best characterized by the phrase “inform, invite, and ignore.”18 These traditional techniques specifically prohibit meaningful discussion, discourage discourse, and fuel further conflict.

#### Solvency – Local Knowledge

**JFF solves best – local knowledge leads to the best policy option**

**Peyser 05** [Jennifer Peyer, ISU, Master in City Planning, MIT. “How Does Participation in the Framing, Review, and Incorporation of Scientific Information Affect Stakeholder Perspectives on Resource Management Decisions?” June 2005. <http://dspace.mit.edu/bitstream/handle/1721.1/33006/61763813.pdf?sequence=1>]

Many have also recognized that the public can inform the decision-making process by providing an expertise that comes from a close connection to the land or other environmental resource in question. "Local knowledge," as distinct from expert research, relies on a knowledge base built over time through continued close observation of setting or events. Local knowledge also involves an interpretation of these observations that generally emphasizes common sense rather than formal training. In debating fish stocks, a fisherman may argue that a scientific study does not accurately reflect their observations because scientists did not know how to set the nets properly, focused their study in the wrong area, or failed to properly account for seasonal variation in populations. In water quality investigations, citizens may contribute information about a series of unusual odors or local health problems in an area that environmental or public health agencies may have overlooked or failed to connect. As Fischer explains, long-time local residents have the unique ability to ground expert knowledge in the local context and therefore increase its relevance to policy decisions.

#### Solvency - Transparency

**The current EIS process ignores the public – Joint Fact Finding solves transparency and connects the science with better policies**

**Peyser 05** [Jennifer Peyer, ISU, Master in City Planning, MIT. “How Does Participation in the Framing, Review, and Incorporation of Scientific Information Affect Stakeholder Perspectives on Resource Management Decisions?” June 2005. <http://dspace.mit.edu/bitstream/handle/1721.1/33006/61763813.pdf?sequence=1>]

The conventional environmental impact statement (EIS) decision-making process, governed by the National Environmental Policy Act (NEPA), represents the prevailing practice with regard to public involvement in science-intensive policy disputes. The efficacy of the current system, however, has been widely criticized in terms its methods of public involvement. One shortfall is that, although agencies solicit public input at various points, they do not involve stakeholders in a meaningful way in the scientific work associated with environmental decisionmaking. In particular, agencies give the public only a small role in framing scientific studies and no role in research interpretation or incorporation of science into decision-making. Further, agencies' attempts to involve stakeholders in technical questions, while well intentioned, are seldom designed in such a way as to maximize legitimacy of the process or credibility of the science used to craft the plan or policy. Joint fact finding is a process by which stakeholders work with scientists and decisionmakers to frame, review, and incorporate scientific information into policy decisions. Through literature review and case studies of three approaches to public involvement, joint fact finding is explored as a process with the potential to improve the legitimacy and credibility of environmental assessments. While a broad range of stakeholder views were found, joint fact finding was particularly distinguished from conventional processes by its transparency and the explicit connection of science with policy. Resource management decisions involve not only scientific information but nonobjective judgments and values-based interests. Thus, the involvement of stakeholders in a range of scientific processes, and the linking of scientific information to policy-making, is key to public perceptions of credibility and legitimacy. Based on the literature and cases, a number of minimum conditions for successful public involvement in resource management decisions were identified. Convening a stakeholder group of diverse, self-selected representatives must occur early enough for stakeholders to participate in framing the scientific inquiry. Agencies should recognize, manage, and involve stakeholders in nonobjective judgments inherent in scientific inquiry, and help prepare stakeholders for technical discussions through capacity building activities. Finally, it was found that the use a neutral facilitator can benefit the process, and that stakeholders should be involved in selecting and contracting with a facilitator to ease concerns about agency influence.

#### Solvency - Credibility

**Joint Fact Finding solves credibility – prevents scientific and technical issues that are always snuck into the process by policy-makers**

**Peyser 05** [Jennifer Peyer, ISU, Master in City Planning, MIT. “How Does Participation in the Framing, Review, and Incorporation of Scientific Information Affect Stakeholder Perspectives on Resource Management Decisions?” June 2005. <http://dspace.mit.edu/bitstream/handle/1721.1/33006/61763813.pdf?sequence=1>]

Credibility addresses the question of "Is the scientific information used in decisionmaking believable?" Adversary science is a major barrier to credibility in environmental and resource management decision-making. However, it can be managed through joint fact finding. As illustrated by Ozawa and Susskind, joint fact finding reduces parties' abilities to use technical analysis as a "deceptive shield" to serve their interests in a policy-making process. Rather, it makes transparent the scientific and technical issues and requires a joint selection of experts, rather than dueling scientists, to work on these questions. McCreary et al highlight the adaptability of joint fact finding in terms of expert selection and participation, noting that participants may choose to bring together experts that previously worked only with individual interest groups, a new group of non-aligned experts, or some combination of new and familiar experts.3 9 Each of these options allows groups to move beyond the model of adversary science. Joint fact finding also promotes the use of boundary objects, or documents such as tables, maps., or text, that allow experts to work with stakeholders and decision-makers to build a shared understanding, negotiate agreements around scientific issues, and apply technical information to policy questions in a transparent manner. Cash et al discuss the use of boundary objects to bring greater credibility to the acid rain debate, through the Regional Air Pollution Information and Simulation (RAINS) model.40. This type of joint fact finding effort involved research from multiple disciplines and stakeholders representing a number of countries involved in negotiations of emission reduction protocols. The use of boundary objects allowed participants, representing different interests and different technical disciplines, to jointly create a model that all parties found credible and agreed could best inform their choice of an appropriate protocol. Joint fact finding can also lead to increased credibility through an explicit management of the relationship between technical and local knowledge. Adler and Birkhoff outline several basic principles for managing the interplay between expert and local knowledge, or "knowledge from here and knowledge from away". 41 They note a number of principles shared by the best stakeholder processes, each of which can be accomplished through joint fact finding: · no one type of knowledge or "way of knowing" is privileged above others - all modes of inquiry and analysis are welcomed; \* both technical and local information are accessible to everyone involved; \* stakeholders drive the framing of questions, information gathering, analysis, and its application to decision-making; \* all information, regardless of its source, is subjected to respectful questioning about validity, accuracy, authenticity, and reliability; \* capacity building for all participants in learning from different kinds of knowledge. Joint fact finding also helps to mitigate uncertainty and improve credibility through the inclusion of adaptive management as a key component of resource decisions. Adaptive management is the process of making management decisions in light of scientific uncertainty and the dynamic nature of environmental processes.4 2 In dealing with the many unknowns inherent to environmental management in a transparent fashion, stakeholders are able to negotiate how this uncertainty should be dealt with and reflected in the implementation of a resource management plan. Adaptive management involves making decisions with the best available information and creating contingencies to be triggered if certain thresholds or unanticipated consequences occur. While building consensus on the resource plan, stakeholders can also craft monitoring agreements and the criteria for triggering a review of implementation measures. By building such feedback mechanisms into the agreement, joint fact finding and adaptive management allow stakeholders to address unintended consequences and grants flexibility to improve plans based on information collected during implementation.

**Joint Fact Finding solves credibility and legitimacy – adds perspective and interaction**

**Peyser 05** [Jennifer Peyer, ISU, Master in City Planning, MIT. “How Does Participation in the Framing, Review, and Incorporation of Scientific Information Affect Stakeholder Perspectives on Resource Management Decisions?” June 2005. <http://dspace.mit.edu/bitstream/handle/1721.1/33006/61763813.pdf?sequence=1>]

Joint fact finding provides a mechanism to deal with the scientific and technical information and issues that are central to environmental disputes and decision-making. Through greater involvement in stages from framing scientific questions to the review of science and incorporation into policy, joint fact finding gives stakeholders the opportunity to interact with decision-makers and experts to inform and shape the policy-making process. The creation and application of jointly created criteria and boundary objects allows stakeholders from different disciplines and levels of technical expertise are able to discuss and weigh policy options such as project alternatives. Joint fact finding has been used successfully in a suite of decision-making processes, helps address many of the concerns raised in assessments of conventional NEPA public participation, and has the potential to increase the scientific credibility and process legitimacy of resource management decisions.

### NB – Biodiversity

**The counterplan provides a framework for combining politics with sound science – that’s necessary for effective environmental policies**

**Karl et al 07** [Harman A. Karl, U.S. Geological Survey scientist. Lawrence E. Susskind, Ford Professor of Urban and Environmental Planning at MIT, and Katherine H. Wallace, enrolled in the Master of City Planning program in MIT’s Department of Urban Studies and Planning and is a MUSIC intern. “A Dialogue, not a Diatribe.” Environment, 49:1, pp. 20-34. January/February 2007. <http://web.mit.edu/dusp/epp/music/pdf/ENV_JF07_JFFarticle.pdf>]

Because of the ever-increasing stress put on the environment by human activity, it is even more critical now than it was 100 years ago to inform environmental and natural resources decisions with good science. Science will help us to understand the consequences of our activities and inform choices among decision options. In recognition that science is needed now more than ever to inform societal decisions, politicians, government and nongovernmental agencies, and citizens have been asking with a mounting sense of urgency for scientists and science organizations to make their research more relevant to society’s needs and to become involved in policymaking.39 Yet even as scientists heed this call, more often than not, they still find themselves and their work ignored, marginalized, or misrepresented in deeply contentious environmental policy debates. This happens because their science is being used within the context of the traditional adversarial process that minimizes the value of science for informing decisions, and, worse, fosters its misuse. An essential premise advanced here is that when people have a say in the design, analysis, and application of scientific inquiry—a collaborative problem-solving process—they are more likely to value and use it. And, a necessary condition of this premise is that scientists need to engage in that process and not remain aloof from it. Without proper process considerations, the substance of science will not be effectively communicated. By bringing scientists, citizens, and politicians together to talk with each other and share their knowledge as a step in a consensus-seeking effort, joint fact finding is a better way than confrontational, adversarial processes to ensure that good science is used in value-laden decisions and contributes to stable and effective public policy.

**That’s key to resolve and maintain complex ecosystems and the environment**

**Susskind and Karl 08** [Harman A. Karl, U.S. Geological Survey scientist. Lawrence E. Susskind, Ford Professor of Urban and Environmental Planning at MIT. “Balancing Science and Politics in Environmental Decision-Making: A New Role for Science Impact Coordinators.” 8/29/2008 (Last Modified). http://web.mit.edu/dusp/epp/music/pdf/SIC\_Paper\_FINAL.pdf]

It is essential that we find a better way to balance science and politics in environmental decision-making. That is the only way we will be able to manage complex ecosystems effectively, achieve sustainable development, and safeguard public health and safety. A major obstacle to doing this is the chasm that exists between the very different cultures of scientists, public officials, and citizens. One way to bridge these chasms, in our view, is to train a new generation of environmental professionals with the skills needed to manage interactions between scientific experts and those with other kinds of specialized knowledge. Even though this need has been talked about for more than a decade1, few such professionals are being trained who can communicate scientific findings 1 In the 1995 report, Science, Policy, and the Coast—Improving Decisionmaking, the National Research Council stated, “[m]ore effort is needed in the interpretation of fundamental science results for use in policymaking. Perhaps the most effective means of such integration is by …scientists who are engaged in both fundamental research and policy-relevant scientific activities, although such individuals are a rarity. They are able to extend the results of more applied, and often more descriptive, research by bringing in the understanding of processes resulting from fundamental research.” To increase the number of scientists with these capabilities, the NRC has encouraged institutions of higher learning to “improve the cross-disciplinary training of natural and social scientists … and [to create] “programs of to elected officials, citizen activists, and other stakeholders and help all three work together to design, implement and make sense of scientific studies that address their concerns. One of the obstacles, as Jane Lubchenco has noted, is that most university curricula and the reward system for professional scientists within and outside universities do not favor interdisciplinary and action-oriented field-based learning (Lubchenco, 1999). When scientific advice is unheeded —because it is too “hard” for the average person to understand or because the media distorts the issues at stake in science-intensive policy disputes —we are at risk of pursuing public policies that waste natural resources, despoil the environment, destabilize natural systems, and jeopardize human health and safety. The selective use of scientific data to justify one’s own and discredit an adversary’s position regarding environmental management decisions is even more problematic. Such political manipulation generates long-term stalemates when timely action is required.

**Extinction**

**Diner 94** [Judge Advocate’s General’s Corps of US Army, David N., Military Law Review, Winter, 143 Mil. L. Rev. 161]

No species has ever dominated its fellow species as man has. In most cases, people have assumed the God-like power of life and death -- extinction or survival -- over the plants and animals of the world. For most of history, mankind pursued this domination with a single-minded determination to master the world, tame the wilderness, and exploit nature for the maximum benefit of the human race. n67 In past mass extinction episodes, as many as ninety percent of the existing species perished, and yet the world moved forward, and new species replaced the old. So why should the world be concerned now? The prime reason is the world's survival. Like all animal life, humans live off of other species. At some point, the number of species could decline to the point at which the ecosystem fails, and then humans also would become extinct. No one knows how many [\*171] species the world needs to support human life, and to find out -- by allowing certain species to become extinct -- would not be sound policy. In addition to food, species offer many direct and indirect benefits to mankind. n68 2. Ecological Value. -- Ecological value is the value that species have in maintaining the environment. Pest, n69 erosion, and flood control are prime benefits certain species provide to man. Plants and animals also provide additional ecological services -- pollution control, n70 oxygen production, sewage treatment, and biodegradation. n71 3. Scientific and Utilitarian Value. -- Scientific value is the use of species for research into the physical processes of the world. n72 Without plants and animals, a large portion of basic scientific research would be impossible. Utilitarian value is the direct utility humans draw from plants and animals. n73 Only a fraction of the [\*172] earth's species have been examined, and mankind may someday desperately need the species that it is exterminating today. To accept that the snail darter, harelip sucker, or Dismal Swamp southeastern shrew n74 could save mankind may be difficult for some. Many, if not most, species are useless to man in a direct utilitarian sense. Nonetheless, they may be critical in an indirect role, because their extirpations could affect a directly useful species negatively. In a closely interconnected ecosystem, the loss of a species affects other species dependent on it. n75 Moreover, as the number of species decline, the effect of each new extinction on the remaining species increases dramatically. n76 4. Biological Diversity. -- The main premise of species preservation is that diversity is better than simplicity. n77 As the current mass extinction has progressed, the world's biological diversity generally has decreased. This trend occurs within ecosystems by reducing the number of species, and within species by reducing the number of individuals. Both trends carry serious future implications. Biologically diverse ecosystems are characterized by a large number of specialist species, filling narrow ecological niches. These ecosystems inherently are more stable than less diverse systems. "The more complex the ecosystem, the more successfully it can resist a stress. . . . [l]ike a net, in which each knot is connected to others by several strands, such a fabric can resist collapse better than a simple, unbranched circle of threads -- which if cut anywhere breaks down as a whole." n79 By causing widespread extinctions, humans have artificially simplified many ecosystems. As biologic simplicity increases, so does the risk of ecosystem failure. The spreading Sahara Desert in Africa, and the dustbowl conditions of the 1930s in the United States are relatively mild examples of what might be expected if this trend continues. Theoretically, each new animal or plant extinction, with all its dimly perceived and intertwined affects, could cause total ecosystem collapse and human extinction. Each new extinction increases the risk of disaster. Like a mechanic removing, one by one, the rivets from an aircraft's wings, [hu]mankind may be edging closer to the abyss.

### Solvency – Mass Transit/Highways

**Joint Fact Finding empirically key to effective mass transit systems**

**Ehrmann and Stinson** **04**[John R. Ehrmann, founder and Senior Partner of the Meridian Institute, and Barbara L. Stinson, Meridian Institute. “Joint Fact-Finding and the use of Technical Experts.” 10/06/04 (Last Modified). http://web.mit.edu/dusp/epp/music/pdf/JFF-how%20to-CHAPT09.pdf]

One joint fact-finding process, initiated by a regional transporation agency, began as an effort to confirm that a decision made by state and federal agencies to extend an urban mass transit system into a sensitive environmental area in the surrounding suburbs was reasonable. Though a multiyear joint study of impacts and options, a 45-member task force was able to generate an entirely new transit system design and assist the agencies involved in modifying their plans for highway changes and related land uses. By the end of the process, the participants had worked together long enough to be able to transform their concerns into detailed, jointly agreed-upon alternative plans (Forester, 1994).

### Solvency – Army Corps/Water Affs

**Joint Fact Finding solves in the context of Army Corps and Water Projects – The Guadalupe River proves**

**Karl et al 07** [Harman A. Karl, U.S. Geological Survey scientist. Lawrence E. Susskind, Ford Professor of Urban and Environmental Planning at MIT, and Katherine H. Wallace, enrolled in the Master of City Planning program in MIT’s Department of Urban Studies and Planning and is a MUSIC intern. “A Dialogue, not a Diatribe.” Environment, 49:1, pp. 20-34. January/February 2007. <http://web.mit.edu/dusp/epp/music/pdf/ENV_JF07_JFFarticle.pdf>]

The Guadalupe River flows 19 miles from its source in the Santa Clara Mountains through San Jose, California, before reaching the San Francisco Bay in Alviso.20 The 170 square-mile watershed lies completely within Santa Clara County. Over its short course, it transitions from mountainous upper reaches to the highly urbanized Silicon Valley.21 In 1986, Congress approved the Downtown Guadalupe Flood Control Project in which four project sponsors—the U.S. Army Corps of Engineers (the Corps), the City of San Jose, the City of San Jose Redevelopment Agency (SJRA), and the Santa Clara Valley Water District (SCVWD)—developed and implemented flood control measures. Prior to the implementation of any measures, the San Francisco Regional Water Board (SFRWB) issued water quality certification and waste discharge requirements that were developed through negotiations between the four project sponsors, the U.S. Fish and Wildlife Service, the State of California Water Resources Control Board, the National Marine Fisheries Service, the California Department of Fish and Game, and the San Francisco Bay Region Water Quality Control Board. The SFWRB issued the certification to comply with the U.S. Clean Water Act and the California Water Code, and it required the development of a mitigation and monitoring plan, planting of riparian vegetation, maintenance of a low-flow channel for fish passage during the drier months outside the late fall and winter flood season, and improved recreational facilities and access consistent with San Jose’s Guadalupe River Park Master Plan. As is often the case with controversial resource management disputes, the threat of litigation led to the initiation of the JFF process. The Guadalupe-Coyote Resource Conservation District (GCRCD), a public agency under Division 9 of the California Public Resources Code that advises agencies and citizens on land use planning and resource management, issued a Notice of Citizen’s Suit under the Clean Water Act in 1996. GCRD alleged that the mitigation and monitoring plan had not been fully approved by resource agencies and initial mitigation measures did not comply with 1992 certification requirements. Trout Unlimited and the Pacific Coast Federation of Fishermen’s Associations joined the suit. GCRD and these two groups specified that they would be willing to pursue a negotiated resolution instead, however, and they formed the Guadalupe River Flood Control Project Collaborative with the four project sponsors in June 1997. The stakeholders came to the table voluntarily and self-selected their representatives, a primary component of a JFF process. They chose the lawyer from the citizen suit, and the four project sponsors selected representatives from each of their agencies. The process also involved a professional neutral, another element of JFF. The Corps, the City of San Jose, SJRA, and SCVWD jointly funded the neutral facilitation team and, along with the stakeholders from the citizen suit, selected the facilitators. Collaborative members also created a contract specifying that the facilitators were responsive to the entire collaborative despite not being funded by the stakeholder group. This step helped to balance resource and power disparities. Adhering to another JFF component, the collaborative’s participants agreed to the process objectives and criteria—in this case, for flood protection and habitat conservation—at the outset. The objectives included avoidance of project-caused adverse effects; minimization of unavoidable impacts; maximization of on-site mitigation that created shaded, vegetative river cover; consideration of quality as well as the quantity of mitigation; and implementation of an adaptive approach to long-term management, which allowed for continued monitoring, evaluation, and adjustments. The project evaluation criteria included at least as much flood protection as the current strategy, achievement of aforementioned objectives, timely project implementation and completion, cost-effectiveness and affordability, and compliance with relevant laws.

## Environmental Justice CP

### Shell

**Text: The United States Federal Government should amend the National Environmental Policy Act to require that public meetings be held over environmental reviews, all environmental reviews be provided in both plain English and translated forms, and that all environmental reviews conduct an assessment of socioeconomic impacts of all proposed actions. The United States Federal Government should submit the [plan mandate] for an Environmental Impact Statement through the revised process, and implement the results based on its findings.**

**Counterplan is key to environmental justice – status quo processes ignore minority and low-income populations**

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

The public participation provisions of NEPA and the requirement in NEPA that agencies must consider various socioeconomic impacts of proposed actions could be useful tools in the quest for environmental justice. While NEPA has not been used very extensively to advance environmental justice, many communities are turning to strong SEPAs to prevent further inequitable distribution of pollution. CEQ could make several changes to its NEPA regulations based on existing NEPA authority to accomplish the same results as those strong SEPAs.¶ Specifically, NEPA could amend its public participation regulations under existing NEPA authority (1) to require that all NEPA documents be written in plain English; (2) to require agencies to provide translated documents and translators at hearings when a significant percentage of the community that will be impacted by a proposed action does not speak English; (3) to require agencies to use alternative communication strategies, such as notification through community organizations, in addition to the Federal Register, to ensure that the affected community receives notification of, and an opportunity to participate in, the NEPA process; (4) to require agencies to hold public hearings and meetings at times, in places, and in a manner that ensures that all members of the affected community have equal access to the meeting or hearing; and (5) to require more public participation in the EA process.¶ Similarly, CEQ could amend its regulations under existing NEPA authority to require agencies, when conducting an EA or an EIS, (1) to collect data regarding the socioeconomic background of communities that will be affected by proposed actions; (2) to collect available health data regarding those communities; (3) to determine, based on that information and other available information, whether the affected communities suffer a disproportionately high or adverse impact from the proposed action, due to cumulative exposure, unusual susceptibility to pollutants or contaminants, or other reasons; and (4) to consider the fact that a proposed action will have a disproportionately high or adverse impact. on a community as a factor when the agency determines whether alternatives to the proposed action have a less adverse impact on the human environment.¶ CEQ could also amend its regulations under existing NEPA authority to clarify that an agency decision-making process is not the functional equivalent of NEPA unless the agency considers the same factors in that decision-making process as it would under NEPA and the agency provides similar opportunities for public participation in that process as it would under NEPA. Congress could also strengthen NEPA as a tool for environmental justice by explicitly requiring agencies to consider socioeconomic impacts of proposed actions and to minimize the impacts of proposed actions on the human environment. Congress could also provide funding for technical assistance grants to facilitate meaningful community participation in the NEPA decisionmaking process. Regardless of whether Congress takes any action, though, CEQ could strengthen NEPA considerably as a tool to achieve environmental justice by making the administrative changes that are outlined above.¶

### Solvency – General

NEPA can be used to achieve environmental justice

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

¶ 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¶ Finally, in many cases, NEPA requires the federal government to consider certain health and socioeconomic impacts of proposed actions before taking the actions.34 Through this process, the government should be able to identify whether proposed actions will have a disparate impact on minority or low-income communities. The government can then avoid taking those actions. The following sections explore these strengths of NEPA in detail.

NEPA gives a voice to low-income communities and minority communities and improves government decision-making

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

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 secial 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 aplfieves its goal without disparately impacting minority or low income communities. 38

Even if NEPA fails- it still allows communities to fight back

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

In addition to providing citizens with an opportunity to participate in the government's environmental decision-making process, the NEPA review process provides several other benefits to communities that may be disparately impacted by government actions. First, regardless of whether an agency prepares an EIS or an EA, CEQ regulations require that the agency make available to the public the NEPA documents, any public comments that the agency received on the documents, and any comments that the agency received from other agencies on the documents.62 NEPA does not require agencies to implement the least environmentally harmful alternative identified in an EIS or EA.6 However, the EIS or EA may identify mitigation measures or alternatives that are less environmentally harmful than the government's proposed action.64 If the community receives NEPA documents, agency or public comments, or other information before the agency has completed its NEPA review, the community may be alerted that the government has failed to recognize the significance of certain facts in its review. For example, the government may have failed to recognize the cumulative impact of the proposed action and other related actions or the unusual susceptibility of the community to particular health risks. The community can then use the NEPA public participation procedures to provide the government with additional information prior to the government's final decision. On the other hand, if the government decides to take an action that disparately impacts the community, and subsequently the community learns that less harmful alternatives were identified in the EIS or EA or that the EPA or another agency raised concerns about the impacts of the proposed action, the community may be able to use that information in political fora or other fora to prevent the government from going forward with the proposed action.

### **UQ Fails**

The status-quo fails to take socioeconomic impacts or public opinion into the NEPA process

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

Once again, though, the government's approach is misguided. If the substantive law authorizing the agency to develop environmental standards does not require the agency to consider the health or socioeconomic impacts of those standards, or the indirect or cumulative impacts of those standards, the regulatory development process for those standards under the substantive law is not the functional equivalent of the NEPA EIS process. Likewise, to the extent that the regulatory development process under the substantive law deprives the public of the full participation in the decision- making process guaranteed by NEPA, the regulatory process should not be held to be the functional equivalent of the NEPA EIS process. Some states have addressed this drawback in their SEPAs by explicitly providing that state agency regulations must comply with the state's environmental review processes. S

NEPA only requires the government to analyze socioeconomic impacts- it doesn’t impose requirements

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

 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. While comm uities may often be able to use the NEPA environmental review process to force the federal government to consider the disparate impacts of a proposed action,'o many of the federal actions that are most frequently cited as having disparate impacts on minority or low-income communities may be exempt from the NEPA review process.

NEPA Can’t solve- the documents are in English- they exclude non English speakers

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

Even a document written in plain English, though, may be inaccessible to a community impacted by the action addressed in the document if the impacted community does not speak English.'53 Non-English speaking members of the public are denied the opportunity to participate in the environmental review process under NEPA if the environmental review documents are provided only in English. In at least one case, a state court interpreted a SEPA to require that decision-makers translate environmental documents and provide translators at public hearings if a proposed action would impact a community in which a significant percentage of the members do not speak English.'-4 On some occasions, federal agencies have provided non-English translations of environmental documents.1 55 However, NEPA does not require federal agencies to provide translated documents or translators at any time. Similarly, CEQ's draft guidance regarding Executive Order No. 12,298 suggests, but does not require, that agencies provide translated documents in some instances.'

NEPA can’t solve- excludes multiple groups

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

Finally, the traditional manner in which the federal government schedules and conducts public meetings and hearings and disseminates information about the NEPA review process can effectively exclude members of the public from meaningful public participation. Meetings that are held during normal work hours may exclude community members who cannot financially afford to take time off from work to attend the meeting.59 Similarly, meetings that are held at locations that are inaccessible to community members via public transportation may exclude community members who do not have private transportation. 6° Finally, the traditional sign-up procedures for public hearings and rigid time limits on speakers can exclude some community members from the environmental review process.

The EPA has failed to implement Environment Justice Policies effectively because of lack of definition- it stopped emphasizing minority and low-income population in 2001

Weber, associate professor of political science at the University of California, Berkeley & Carroll March 1, 2004 (Steven is affiliated professor of the Energy and Resources Group; and research director of the Berkeley Roundtable on the International Economy. Daniel J. “EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice” <http://www.epa.gov/oig/reports/2004/20040301-2004-P-00007.pdf>)

EPA has not fully implemented Executive Order 12898 nor consistently integrated environmental justice into its day-to-day operations. EPA has not identified minority and low-income, nor identified populations addressed in the Executive Order, and has neither defined nor developed criteria for determining disproportionately impacted1. Moreover, in 2001, the Agency restated its commitment to environmental justice in a manner that does not emphasize minority and low-income populations, the intent of the Executive Order. Although the Agency has been actively involved in implementing Executive Order 12898 for 10 years, it has not developed a clear vision or a comprehensive strategic plan, and has not established values, goals, expectations, and performance measurements. We did note that the Agency made an attempt to issue an environmental justice toolkit; endorsed environmental justice training; and required that all regional and programmatic offices submit “Action Plans” to develop some accountability for environmental justice integration. In the absence of environmental justice definitions, criteria, or standards from the Agency, many regional and program offices have taken steps, individually, to implement environmental justice policies. This has resulted in inconsistent approaches by the regional offices. Thus, the implementation of environmental justice actions is dependent not only on minority and income status but on the EPA region in which the person resides. Our comparison of how environmental justice protocols used by three different regions would apply to the same city showed a wide disparity in protected populations. We believe the Agency is bound by the requirements of Executive Order 12898 and does not have the authority to reinterpret the order. The Acting Deputy Administrator needs to reaffirm that the Executive Order 12898 applies specifically to minority and low-income populations that are disproportionately impacted. After 10 years, there is an urgent need for the Agency to standardize environmental justice definitions, goals, and measurements for the consistent implementation and integration of environmental justice at EPA.

**Status Quo NEPA regulations ignore minority and low-income communities – reform is key to environmental justice**

**Weber,** associate professor of political science at the University of California, Berkeley & **Carroll** March 1, **2004** (Steven is affiliated professor of the Energy and Resources Group; and research director of the Berkeley Roundtable on the International Economy. Daniel J. “EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice” <http://www.epa.gov/oig/reports/2004/20040301-2004-P-00007.pdf>)

This has resulted in a wide array of attributes for identifying minority and lowincome communities, inconsistent application of environmental justice actions across EPA’s regions and programs, and the Agency’s inability to accurately quantify environmental justice integration efforts. Consequently, EPA has not ensured on a consistent basis that minority and low-income populations have been afforded the actions that will benefit and protect them as intended by the Executive Order. Due to regional variations, populations in some States do not receive the same level of environmental justice action as in other States. In 2001, the EPA Administrator stressed that environmental justice is for everyone. While this is consistent with EPA’s overall mission, it does not address the Executive Order’s intent to provide specific actions for minority and low-income populations. EPA has not fully complied with the intent of Executive Order 12898. The Order calls for each Federal agency to make environmental justice part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. However, the Office of Environmental Justice has not provided regions or program offices with: • The definitions or attributes necessary to determine what constitutes minority, low-income, a minority or low-income community, or • A definition of disproportionately. As a result, several regions have developed their own interim guidelines that define and identify potential environmental justice areas based on demographics but most do not address the disproportional issue. This flexibility has impacted limited resources because many regional and program offices’ staffs have prepared interim guidelines and mapping attributes for environmental justice area definition. These disparate definitions have created inconsistencies among the regions as to who should be included in a defined environmental justice area (see Chapter 3). The lack of a generic environmental justice definition for minority and low-income is also impacting the Agency from being able to quantify the program’s accomplishments.

### Solvency - Translations

The CP is key to getting Non English speaking communities into the NEPA process

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

56 In order to ensure that non-English speaking communities are afforded an opportunity to participate in the NEPA decision-making process, CEQ should require, by regulation, that agencies provide translated NEPA documents whenever a proposed action will impact a community that has a significant percentage of members that do not speak English.' 7 The regulation could be modeled on "equitable public participation" language that the EPA included in a proposed regulation that addressed permitting of hazardous waste combustors.

### Solvency – Public Meetings

CEQ should hold public meetings over the plan - that’s key to getting low-income and minority participation

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

CEQ has prepared draft guidance to implement Executive Order No. 12,298, which addresses many of these issues. The guidance recognizes that "[p]articipation of low-income or minority populations may require adaptive or innovative approaches to overcome linguistic, institutional, cultural, economic, historical, or other potential barriers to effective participation in the decisionmaking process of Federal agencies under customary NEPA pro- 161 cedures. To overcome those barriers, the guidance suggests that agencies explore opportunities for.., public participation through means other than written communication, such as personal interviews or use of audio or video recording devices to capture non-written comments; use of periodic newsletters or summaries to provide updates on the NEPA process[;] ... [v]ariations in the size or format of meetings, or the type and number of media used, so that communications are tailored to the particular community or population;... [u]se of locations and facilities that are local, convenient, and accessible to the disabled, low-income and minority communities; [and] [a]ssistance for hearing- or sightimpaired individuals! CEQ should incorporate the language of the draft guidance into regulations. The regulations would not mandate the use of particular innovations on the traditional public meeting or hearing processes but could identify the range of innovations and could require agencies to administer public meetings or hearings "in a manner that ensures that all segments of the affected community have an equal and effective opportunity to participate in public meetings or hearings."16 3 While NEPA's public participation provisions are generally strong, the foregoing administrative and legislative amendments could provide even greater opportunities to include all community members in the NEPA decision-making process in an informed and meaningful manner.

### Solvency – Natives

**The counterplan is key to engage Indian Tribes in the planning process – that’s key to environmental justice**

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

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. CEQ's public involvement regulations under NEPA are an important component of the NEPA public participation process. These regulations include several provisions that can be used to advance environmental justice by requiring federal agencies to take affirmative steps to involve communities in the NEPA decision- making process. Specifically, the regulations require agencies to provide public notice of "NEPA-related hearings, public meetings, and the availability of environmental documents [such as EAs or draft or final EISs] so as to inform those persons and agencies who may be interested or affected."49 When a proposed action will have local impacts, the regulations suggest that an agency could use several types of notice to reach interested parties, including notice through local media, publication in newsletters that may be expected to reach interested persons, notice to community organizations, notice to state or area-wide clearinghouses, direct mailing to owners or occupants of nearby or affected property, or posting of notice on- and off-site in the area where the action is located.0 CEQ has also prepared draft guidance to implement Executive Order No. 12,898 that suggests that agencies should develop a strategy for effective public involvement of minority or low-income populations in the NEPA review of actions impacting those populations.51 The guidance suggests that agencies could establish outreach through religious organizations, minority business associations, environmental justice organizations, legal aid providers, homeowner and neighborhood watch groups, rural cooperatives, business and trade organizations, community and social service organizations, universities and colleges, labor organizations, civil rights organizations, local schools and libraries, senior citizens' groups, American Indian communities, and public health agencies and clinics.52 These notification methods are much more likely to reach potentially impacted communities than traditional Federal Register notice or notice in the legal section of a local newspaper."

**The counterplan to resolve the environmental hazard towards minority populations that result from the plan**

**Weber,** associate professor of political science at the University of California, Berkeley & **Carroll** March 1, **2004** (Steven is affiliated professor of the Energy and Resources Group; and research director of the Berkeley Roundtable on the International Economy. Daniel J. “EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice” <http://www.epa.gov/oig/reports/2004/20040301-2004-P-00007.pdf>)

Disproportionately high and adverse human health effects: When determining whether human health effects are disproportionately high and adverse, agencies are to consider the following three factors to the extent practicable: (a) Whether the health effects, which may be measured in risks and rates, are significant (as employed by NEPA), or above generally accepted norms. Adverse health effects may include bodily impairment, infirmity, illness, or death; and (b) Whether the risk or rate of hazard exposure by a minority population, low-income population, or Indian tribe to an environmental hazard is significant (as employed by NEPA) and appreciably exceeds or is likely to appreciably exceed the risk or rate to the general population or other appropriate comparison group; and (c) Whether health effects occur in a minority population, low-income population, or Indian tribe affected by cumulative or multiple adverse exposures from environmental hazards. Disproportionately high and adverse environmental effects: When determining whether environmental effects are disproportionately high and adverse, agencies are to consider the following three factors to the extent practicable: (a) Whether there is or will be an impact on the natural or physical environment that significantly (as employed by NEPA) and adversely affects a minority population, lowincome population, or Indian tribe. Such effects may include ecological, cultural, human health, economic, or social impacts on minority communities, low-income communities, or Indian tribes when those impacts are interrelated to impacts on the natural or physical environment; and (b) Whether environmental effects are significant (as employed by NEPA) and are or may be having an adverse impact on minority populations, low income populations, or Indian tribes that appreciably exceeds or is likely to appreciably exceed those on the general population or other appropriate comparison group; and (c) Whether the environmental effects occur or would occur in a minority population, lowincome population, or Indian tribe affected by cumulative or multiple adverse exposures from environmental hazards.

### AT Delays

Delaying government action is good- key to buying time for minority communities to fight the injustice

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

NEPA can also advance environmental justice by delaying government actions that may disparately impact minority or lowincome communities. The NEPA environmental review process is time-consuming,69 and citizens can delay it through litigation if the government does not fully comply. For instance, if the government attempts to take an action that disparately impacts a minority or low-income community without preparing an EIS or an EA, and NEPA requires the government to prepare one of those documents, representatives of the community can sue the government to force compliance.0 Similarly, if the government prepares an inadequate EA or EIS, representatives of the community can file suit to challenge the document.71 Since NEPA can delay the federal government from taking actions that may disparately impact communities, the law can provide communities with valuable time to organize and to provide information to the government concerning a proposed action's potentially adverse impacts. The delay may also provide communities additional time to explore alternative ways to prevent the proposed action.

### NB – Environmental Justice

The lack of EIS is the link- The federal government, just like the aff, ignores the impacts of a policy on minorities and low income groups- only strengthening and implementing NEPA solve

Johnson, Professor of Law at Mercer 97 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

Environmental injustice is one of the most pervasive and welldocumented environmental crises facing society today.' The Environmental Protection Agency (EPA) defines "environmental justice" as "[tlhe fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environ- mental [sic] laws, regulations, and policies.",2 However, many minority and low-income communities have historically been denied fair treatment and meaningful involvement in environmental decision-making. As a result, hazardous waste landfills, treatment facilities, and industries that emit the greatest amount of toxic chemicals are located predominantly in minority or lowincome communities. 3 Similarly, air quality in minority and low-income communities is often worse than in other communities.4 The disparate treatment results from the actions of private individuals as well as local, state, and federal government officials. Many environmental injustices occur when the federal government or a state government takes some action, such as issuing a permit for a hazardous waste landfill, and the government fails to consider or ignores the disparate impact that the action will have on minority or low-income communities. In many cases the federal or state government does not consider the disparate impact of its action because the substantive law under which the government is acting does not require it to consider that impact. However, many state environmental policy acts (SEPAs)6 require state governments to consider a wide range of health, economic, social, and cultural impacts before taking actions that affect the environment. Some SEPAs even require state governments to avoid those impacts. SEPAs can be valuable tools to achieve environmental justice. While SEPAs are usually modeled after the National Environmental Policy Act (NEPA),8 many SEPAs require state governments to consider a broader scope of impacts in a broader range of situations than NEPA requires for the federal government.9 Ironically, when Congress enacted NEPA, it envisioned NEPA as a model for state environmental review laws,0 but in the truest sense of cooperative federalism, state laws can now be used as models for changes to NEPA. 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. Both strong SEPAs and a strong NEPA are necessary to effectively address environmental justice concerns on a national scale. Although some states have enacted progressive SEPAs, such as those requiring consideration of environmental justice issues, SEPAs only apply to state or local actions and do not apply to actions that are undertaken by the federal government. However, the federal government takes many actions that can harm human health or the environment and that could have a disparate impact on minority or low-income communities.1 4 The federal government must take advantage of the tools that currently exist under NEPA to require consideration of disparate impacts of its actions on minority and low-income communities. The federal government must also make legislative and administrative changes to strengthen NEPA based on progressive SEPAs.

**Environmental injustice is a form of institutionalized racism-Hurricane Katrina is the ultimate example**

Thomas **Sanchez**, Director and Associate Professor Urban Affairs and Planning Program Virginia Tech & **Brenman**, Executive Director Washington State Human Rights Commission. **2007** (Thomas and Marc “TRANSPORTATION EQUITY AND ENVIRONMENTAL JUSTICE: LESSONS FROM HURRICANE KATRINA. )

 The principle of environmental justice is the product of a much broader movement to address the economic and health impacts of environmental racism. Environmental justice serves as an effective framework for understanding why low-income and minority communities face the 5 brunt of negative impacts from transportation investment. Residents understand that toxic dumps and polluting industries are more likely to find their way into low-income and minority communities. Similarly, residents understand that low-income and minority communities are more likely to face a number of transportation-related burdens. The substantially adverse and disproportionate effects of Hurricane Katrina on African Americans in August 2005 demonstrated to many advocates that what they call “institutional racism” as one such barrier continues to exist in the United States. Institutional racism includes underlying systems and policies that keep people of color and white unequal. There are certain areas of local policy where racism becomes prominent and visible, including policing, zoning, housing, and transportation. Governmental policies and programs can either promote equality, tolerance, and justice or (consciously or not) promote division and inequality and engender the belief that specific racial and ethnic groups are second-class citizens.

**D-rule – we must reject every instance of racism --- impact’s violence and dehumanization**

**Memmi, 97** (Albert, Professor Emeritus of Sociology, University of Paris, “RACISM”, 1997, pg. 163)

The struggle against racism will be long, difficult, without intermission, without remission, probably never achieved. Yet for this very reason, it is a struggle to be undertaken without surcease and **without concessions**. One cannot be indulgent toward racism; one must not even let the monster in the house, especially not in a mask. To give it merely a foothold means to augment the bestial part in us and in other people, which is to diminish what is human. To accept the racist universe to the slightest degree is to endorse fear, injustice and violence. It is to accept the persistence of the dark history in which we still largely live. It is to agree that the outsider will always be a possible victim (and which [person] man is not [themself] himself an outsider relative to someone else?). Racism illustrates in sum, the inevitable negativity of the condition of the dominated; that is, it illuminates in a certain sense the entire human condition. The anti-racist struggle, difficult though it is, and always in question, is nevertheless one of the prologues to the ultimate passage from animality to humanity. In that sense, we cannot fail to rise to the racist challenge.

#### Link – Ignore Local Populations

**The plan’s goals of being politically uncontroversial, quick, and cheap is the same mindset used by policymakers to justify environmental injustice**

**Been** Associate Professor of Law, New York University School of Law **1993** (Vicki, “WHAT'S FAIRNESS GOT TO DO WITH IT?\* ENVIRONMENTAL JUSTICE AND THE SITING OF LOCALLY UNDESIRABLE LAND USES” 1993 Cornell Law Review, http://heinonline.org/HOL/Page?handle=hein.journals/clqv78&div=47&g\_sent=1&collection=journals)

Policy makers and local land use officials have long struggled to cope with the "not in my backyard" (NIMBY) syndrome in attempting to site "locally undesirable land uses" (LULUs), such as home- less shelters, drug or alcohol treatment centers, and waste disposal facilities. In general, LULUs are considered beneficial to society at large,' and many agree that they should be located somewhere.2 Those same citizens protest vigorously, however, when such a use is sited near their homes.3 This protest is quite rational. The benefits that LULUs produce typically are diffused .throughout society, while their costs and risks are concentrated on a relatively small group of neighbors.4 No one wants to be one of the unlucky folks forced to bear those costs.5 Because local protest can be costly, time-consuming, and politically damaging, siting decision makers often take the path of least resistance-choosing sites in neighborhoods that are least likely to protest effectively.6 Not surprisingly, many of the neighborhoods selected are populated disproportionately by the poor and by people of color.7 Indeed, many representatives of low income and predominantly African American, Latino, or other minority neighborhoods charge that industry and governmental siting officials have adopted a PIBBY-"put it in blacks' backyards"-strategy for siting LULUs.8

#### Turns Case

**Institutionalized racism takes out the case- Putting Justice first is the only way to solve for the environment**

**Bullard,** Former Ware Professor of Sociology, **2005** ( Robert D. is Dean of the Barbara Jordan-Mickey Leland School of Public Affairs at Texas Southern University. Previously Director of the Environmental Justice Resource Center at Clark Atlanta University. “The Quest for Environmental Justice Human Rights and the Politics of Pollution” <http://sustainabilitymojo.com/web_documents/environmental_reparations.pdf1>)

Antiurban attitudes, covert and institutionalized or normalized racism, and conscious ignorance can undo efforts to resolve nearly any contemporary environmental problem. Cities are where waste streams meet and accumulate. Cities are also becoming increasingly brown and black in their demographic composition. And cities are where voters necessary for changing governmental policies are located. The profoundly antiurban messages of many U.S. environmentalists and their grounding in racist ideology; parochial land use practices; and the resistance of scientific elites to confronting the phenomenon of multiple, chronic, cumulative and bioaccumalative toxins in the risk decisions they make, all threaten human health and living systems on which we depend. Largely without support from the mainstream environmental groups and scientific elites, environmental justice communities are struggling against these barriers to build the framework for a reparative, restorative environmental policy based on justice first, then sustainability. Antiurban and racist values have left critical gaps in our approached to environmental justice, protection, and sustainability. This antiurban attitude within mainstream environmentalism masks an unconscious racism that threatens to replicate racist outcomes even without conscious intent.

## General

### UQ Fails

#### U – Adversarial Politics

**Environmental politics is dominated by adversarial politics – the results are massive delays and ineffective policies**

**Karl et al 07** [Harman A. Karl, U.S. Geological Survey scientist. Lawrence E. Susskind, Ford Professor of Urban and Environmental Planning at MIT, and Katherine H. Wallace, enrolled in the Master of City Planning program in MIT’s Department of Urban Studies and Planning and is a MUSIC intern. “A Dialogue, not a Diatribe.” Environment, 49:1, pp. 20-34. January/February 2007. <http://web.mit.edu/dusp/epp/music/pdf/ENV_JF07_JFFarticle.pdf>]

Owing to the increasingly contentious nature of the disputes that erupt whenever such decisions must be made, it has become increasingly clear that established mechanisms and institutional frameworks, dominated by adversarial approaches that pit science against politics and interest group against interest group, are inadequate to achieve such an integration of sciences, values, and interests. In an adversarial process, advocates seek to prevail rather than to resolve their differences effectively, and science is not used as a common resource to inform wise decisionmaking. Rather, each side seeks to gain an advantage by exploiting whatever scientific and technical uncertainty exists. In adversarial processes, incomplete understanding (inherent in the complexity of natural systems) is used to delay decisions opposed by one group or individual. Scientists with different interpretations of the same data are pitted against each other, thereby canceling out what they have to say.

**The status quo approach to environmental politics fails – isolates the role of science and guts effective policies**

**Peyser 05** [Jennifer Peyer, ISU, Master in City Planning, MIT. “How Does Participation in the Framing, Review, and Incorporation of Scientific Information Affect Stakeholder Perspectives on Resource Management Decisions?” June 2005. <http://dspace.mit.edu/bitstream/handle/1721.1/33006/61763813.pdf?sequence=1>]

While NEPA has allowed the public to give input on thousands of projects, the conventional public involvement model has been highly criticized by scholars, past participants, and even agency representatives. Although public comment is solicited for the scoping report and on the draft EIS, public involvement is often seen as a procedural requirement rather than a step in crafting better policy that aims to balance environmental, economic, and social goals. Though environmental decisions often hinge on scientific and technical information, the conventional NEPA approach makes a distinct separation between the scientific study and public participation. Further, it fails to recognize value judgments inherent to scientific inquiry and the importance of involving stakeholders in making such judgments. These shortcomings have prevented agencies from realizing the full potential of NEPA as a tool to craft effective and stable environmental policy. 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. There remains a great need to acknowledge and address technical questions in a collaborative manner so that information is gathered, analyzed, and incorporated into decisions such that it is credible and useful to decision makers, stakeholders, and technical experts. Even less explored is the integration of the local (or contextual) knowledge, or observational/anecdotal information, possessed by residents or users of natural resources. The next chapter explores joint fact finding, a consensus-based process focused on the scientific and technical questions of environmental decision-making.

#### U – Update Needed

**NEPA procedures need to be updated.**

**RPA 12**

(Regional Planning Association, “Getting-Infrastructure-Going, Expediting the Environmental Review Process”, June 2012, Regional Planning Association, Date Accessed: 7/24/12, <http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf>)

Update procedures for the 21st century. All efforts should be made to take full advantage of available technologies, such as electronic data-sharing platforms and online public engagement tools, to expedite informed decisionmaking. Prior NEPA work should be made available to environmental practitioners through shared databases. Time can be saved when a project is able to utilize environmental studies and data that were created for previous projects. Excessively lengthy paper documents, aside from being wasteful, are more time-consuming to review. Shorter, clearer documents in electronic format are more accessible to the general public, facilitating more effective outreach. Submitting and sharing all NEPA documentation digitally, and finding ways to limit their length, would save a significant amount of time and lead to a more transparent and accountable process.

#### U - Transportation Bill Kills NEPA

**Recent transportation bill weakens NEPA.**

**Goldfuss 6/29**

(Christy, the Director of the Public Lands Project at the Center for American Progress Action Fund, “[Analysis: Cutting Red Tape In Transportation Bill Means Cutting You Out Of The Environmental Review Process](http://thinkprogress.org/climate/2012/06/29/508689/analysis-cutting-red-tape-in-transportation-bill-means-cutting-you-out-of-the-environmental-review-process/) ”, Think Progress, 6/29/12, Date Accessed 7/24/12, <http://thinkprogress.org/climate/2012/06/29/508689/analysis-cutting-red-tape-in-transportation-bill-means-cutting-you-out-of-the-environmental-review-process/> )

Stories about the recent [House transportation bill](http://thomas.loc.gov/cgi-bin/bdquery/z?d112:hr4348:) will likely focus on what was not in the package: the Keystone XL pipeline and coal ash regulations. However, environmentalists, right-to-know advocates, and community organizers need to take a close look at the section that discusses “Accelerated Decision Making.” For the first time, but likely not the last, conservative politicians in the House won a major victory in this small section of the bill by including their “streamlining” language, which simply means curtailing the public’s ability to comment on the impacts of transportation projects for communities — including on water, air, and public safety. The legislation weakens one of our bedrock environmental laws, the National Environmental Policy Act (NEPA), which guarantees public participation in reviewing government activities that affect the environment. It was signed into law by President Richard Nixon after passing the Senate by unanimous vote and the House by an overwhelming 372-15 vote.

**The transportation bill undermines public involvement in EIS.**

**Goldfuss 6/29**

(Christy, the Director of the Public Lands Project at the Center for American Progress Action Fund, “[Analysis: Cutting Red Tape In Transportation Bill Means Cutting You Out Of The Environmental Review Process](http://thinkprogress.org/climate/2012/06/29/508689/analysis-cutting-red-tape-in-transportation-bill-means-cutting-you-out-of-the-environmental-review-process/) ”, Think Progress, 6/29/12, Date Accessed 7/24/12, <http://thinkprogress.org/climate/2012/06/29/508689/analysis-cutting-red-tape-in-transportation-bill-means-cutting-you-out-of-the-environmental-review-process/> )

First, the “Accelerated Decision Making” section of the transportation bill does what has never been done before — fining agencies up to 7% of their fiscal year budget if they do not meet established deadlines for environmental analyses. On the one hand, that means taking more money away from financially strapped agencies trying to accelerate their decision making process about the impacts of a project. On the other hand, it gives agencies an incentive to deny permits in order to avoid the fine. Neither of these impacts will lead to getting more transportation projects on line faster. Next, this section of the law expands the type of projects that do not have to go through a public comment and environmental review process at all. These projects may get less than $5 million in federal funds, but they could still be large in scope. Regardless of the overall size, the public will not be given an opportunity to comment and the public will not have an opportunity to see how the highway, bridge, or other transportation project will impact their community. Lastly, this is just the beginning of efforts by House Republicans to “streamline” policies that protect the American public’s health and safety. The House Committee on Natural Resources has been an incubator for such policy ideas, mostly around oil and gas development. For example, Rep. Doug Lamborn’s (R-CO), “Streamlining Permitting of American Energy Act” (H.R. 4383) purports to get more oil and gas drilling online by impeding citizens’ ability to exercise their legal right to raise concerns about proposed oil and gas leases by charging $5,000 to do so. The Transportation Surface Transportation Act is just the first time that House Republicans have been successful in getting this language over the finish line.

**Status-quo NEPA implementation results in massive delays, litigation, and piss-poor environmental assessments**

**Luther 08** [Linda Luther, Analyst in Environmental Policy, CRS. “The National Environmental Policy Act: Background and Implementation.” February 29, 2008. <http://www.cnie.org/NLE/CRSreports/08Mar/RL33152.pdf>]

The perception that NEPA results in extensive delays and additional costs to the successful delivery of certain federal projects can be magnified when compliance with multiple environmental laws and regulations is required (see “The Use of NEPA as an ‘Umbrella’ Statute” section, above). The sometimes extensive reviews, documentation, and analysis required by agencies such as the Army Corps of Engineers, the U.S. Fish and Wildlife Service, the Coast Guard, and EPA, as well as various state regulatory and review agencies, add further to the perception that extensive delays are related to the NEPA process. Such “delays” may actually stem from an agency’s need to complete a permit process or analyses required under separate statutory authority (e.g., the Clean Water Act or Endangered Species Act), over which the lead agency has no authority. Litigation is probably the most often cited cause of NEPA-related project delays. Although this may have been the case in the past, the total number of NEPA-related cases in the past 10 years has been small (especially when compared with the total number of federal actions requiring some environmental review under NEPA). For example, in 2005, a total of 118 NEPA-related cases were filed. Of those, 43 resulted in an injunction. The majority of cases were filed against two agencies — the USDA’s Forest Service (with 50 cases files) and the Department of the Interior’s Bureau of Land Management (with 12 cases files).82 The main reason that plaintiffs filed suit was because they believed that the EIS or EA was inadequate (e.g., information was incomplete or the document did not sufficiently analyze the cumulative or indirect effects of an action). NEPA litigation began to decline in the mid 1970s and has remained relatively constant since the late 1980s.83 This trend may be due in part to improved agency compliance with promulgated regulations and improved agency expertise in preparing required documentation. However, another factor may be the decrease in the number of federal actions funded by Congress that would be defined as “major federal actions” under NEPA.84 Although litigation has decreased, agency concern regarding the threat of litigation may still affect the NEPA process, particularly for complex or controversial projects. In addition to CEQ regulations and an agency’s own regulations, a project sponsor may be mindful of previous judicial interpretation when preparing NEPA documentation in an attempt to prepare a “litigation-proof” EIS. CEQ has observed that such an effort may lead to an increase in the cost and time needed to complete NEPA documentation, but not necessarily an improvement in the quality of the documents ultimately produced.85

#### U - Delays

NEPA is time-consuming and delays government action

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

NEPA can also advance environmental justice by delaying government actions that may disparately impact minority or lowincome communities. The NEPA environmental review process is time-consuming,69 and citizens can delay it through litigation if the government does not fully comply. For instance, if the government attempts to take an action that disparately impacts a minority or low-income community without preparing an EIS or an EA, and NEPA requires the government to prepare one of those documents, representatives of the community can sue the government to force compliance.0 Similarly, if the government prepares an inadequate EA or EIS, representatives of the community can file suit to challenge the document.71 Since NEPA can delay the federal government from taking actions that may disparately impact communities, the law can provide communities with valuable time to organize and to provide information to the government concerning a proposed action's potentially adverse impacts. The delay may also provide communities additional time to explore alternative ways to prevent the proposed action.

Multiple barriers tank aff solvency – their process kills investor confidence, public support, and the effectiveness of stimulus

Todorovich and Schned 12 [Petra Todorovich, director of America 2050, and national urban planning initiative, and Daniel Schned, Regional Plan Association and Associate Planner for America 2050. “Getting Infrastructure Going: Expediting the Environmental Review Process.” June 10, 2012. [**http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf**](http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf)]

There are major barriers to the timely completion of the federal environmental review and permitting requirements for important infrastructure projects. It often takes over eight years for the largest, most complex, and controversial projects to complete the environmental review process, compared with just over two years in the 1970s.1 Expediting the environmental review of these big projects is the focus of this report.¶ Long timelines delay important infrastructure improvements and their much needed benefits. They drive up costs by extending the environmental review process and postponing construction. They discourage private investors and erode public confidence in government’s ability to use infrastructure funding wisely. They create uncertainty about when or whether a project will be completed, making it difficult for states and metropolitan regions to conduct long-range infrastructure planning. In the midst of a sustained economic slump, the importance of rethinking the environmental review process is underscored; getting infrastructure going would hasten our economic recovery.

Just the sheer length of the evaluation document nearly takes a decade to get through

Todorovich and Schned 12 [Petra Todorovich, director of America 2050, and national urban planning initiative, and Daniel Schned, Regional Plan Association and Associate Planner for America 2050. “Getting Infrastructure Going: Expediting the Environmental Review Process.” June 10, 2012. [**http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf**](http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf)]

NEPA was originally conceived of as a streamlining tool – organizing the many reviews, regulations, and regulatory agencies and consultants involved in any given project while providing citizens with an opportunity to learn more about projects and their impacts, and the government’s decision-making process. The law and requirements were intended to result in faster, more transparent, informed, and ultimately improved federal decision-making. However, complying with NEPA regulations has become so lengthy that it can postpone the construction of infrastructure projects for many years, particularly for complex projects, even if their environmental impacts are minimal.¶ The length and complexity of NEPA documents have also grown exponentially. In 1973, a final EIS, including public comments and responses, published by the Federal Highway Administration was usually 22 pages long. Now, EISs often reach 1,000 pages or more.5 Similarly, categorical exclusion documents often reach vast page lengths despite a 1983 guidance memorandum by the Council on Environmental Quality that strongly discouraged any “procedures that would require the preparation of additional paperwork to document that an activity has been categorically excluded.”6 Unfortunately, the length of NEPA documents does not assure their adequacy and or expedited review. Longer NEPA documents typically delay the review and approval process.7¶ The Council on Environmental Quality maintains that the NEPA process should take less than 12 months to complete, even for large, complex projects, and no more than three months for less complicated projects. In fact, a survey of projects by the Federal Highway Administration found that the average time it took to complete an EIS in 2011 had grown to 8.1 years, compared with 2.2 years in the 1970s.8 ‘

It nearly takes a decade to complete an EIS normally

Todorovich and Schned 12 [Petra Todorovich, director of America 2050, and national urban planning initiative, and Daniel Schned, Regional Plan Association and Associate Planner for America 2050. “Getting Infrastructure Going: Expediting the Environmental Review Process.” June 10, 2012. [**http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf**](http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf)]

In the 40 years since the passage of the National Environmental Policy Act and the development of the current federal regulatory process, the practice of completing environmental reviews for major infrastructure projects has significantly lengthened average project delivery times. For example, in 2011, the average time it took to complete an environmental impact statement on a highway project was over eight years, compared with two years just after the law was passed. And yet experience has shown that the law itself still provides a strong regulatory framework that ensures adequate protection for the environment, a process for reaching informed investment decisions, and sufficient flexibility to comply with environmental requirements in an expedited manner. It is the misguided implementation of the law that has significantly affected project delivery time.

EIS delays action by 2 Years

Dicus, radiation biologist and former Nuclear Regulatory Commission Commissioner, 3/31/2003 . (Greta Joy. “RADIATION MONITORING & ALARA; REGULATING ENVIRONMENTAL RADIOLOGICAL PROTECTION.” Nuclear Engineering International. Lexisnexis)

These environmental reviews leading to preparation of environmental impact statements typically involve interactions with other federal, state, and local agencies.

Over the years, the process and timetable for developing regulations and supporting guidance has changed. Previously, complex rulemakings took many years to complete. As an example, the radiation protection regulations in 10 CFR Part 20 took over 13 years to complete. Currently, through an open process and public comment period, the time required has been reduced to less than two years. The format of the proposed regulations have changed by prefacing the proposed regulation with a question and answer format which more easily addresses the question that are raised by the proposed actions, potentially negating the need for subsequent additional comments or questions. In addition, guidance documents have been developed and issued at the same time as the revised regulation is issued, if not before, for comment. Finally, the regulatory framework has been changed to be more risk-informed and performance-based, thus allowing the licensees to use detailed knowledge of their facility to determine what level of procedure, surveillance, or licensee intervention is needed to comply with a particular regulation.

NEPA is highly politicized and can delay projects for 7 years

Snow, Washington editor for Oil & Gas Journal and Oil & Gas Financial Journal, 2/13/2012 (Nick “API, WEA officials warn of threats from federal overregulation” Oil and Gas Journal. Lexnisnexis)

"With over 40,000 wells held up in the NEPA analysis with no end in sight and delays in getting permits, we're concerned that the West will be at a competitive disadvantage to areas where public lands aren't predominant," she told reporters.¶ 'A political will'¶ "We know that this administration can do the analysis required under NEPA for wind and solar projects onshore in 9 months. Since this is comparable to what's required for oil and gas projects, it shows there's a political will where the administration thinks it's necessary," Sgamma continued. "Without it, oil and gas project applicants spend up to seven year s getting per mits."

#### U – Litigation

**NEPA failures guts solvency – lengthy litigations prevent projects from ever finishing**

**Josten 09** [Bruce Josten, executive vice president for Government Affairs, second ranking officer at the U.S. Chamber of Commerce. “Letter on Fixing NEPA in the Stimulus Bill.” January 29, 2009. http://www.uschamber.com/issues/letters/2009/letter-fixing-nepa-stimulus-bill]

As currently construed, the National Environmental Policy Act (NEPA) is not conducive to completing infrastructure projects in a timely manner. Environmental activists routinely use NEPA to obtain injunctions against proposed actions until the controlling federal agency has prepared a satisfactory Environmental Impact Statement (EIS). As a result, the lawsuit and subsequent EIS can stop a project dead in its tracks. Moreover, because NEPA lawsuits are so prevalent, the mere threat of a lawsuit (even where one is never filed) makes the EIS preparation process that much more costly and time-consuming for covered projects. In response to the ongoing threat of litigation, EIS documents have become increasingly costly and lengthy, as have the time frames to complete the NEPA process.

### AT Process Not Enough

**The problem is the process, not the law – changes are needed to be more efficient and federal leadership is key**

**RPA 12**

(Regional Planning Association, “Getting-Infrastructure-Going, Expediting the Environmental Review Process”, June 2012, Regional Planning Association, Date Accessed: 7/24/12, <http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf>)

One of the fundamental issues uncovered in our consultations with environmental practitioners is that many of the delays that plague large, complex infrastructure project during the environmental review process are not due to shortcomings in the law, but rather are caused by the administrative policies and procedures for carrying out the environmental review process. Other common problems are a lack of local consensus about the project or insufficient planning and preparation by the sponsor agencies prior to initiating the environmental review process. An important lesson from the expert roundtable in June is that one of the ways to prevent delays is to avoid the need to complete an EIS in the first place. Early on in a project’s conception, attempts should be made to limit the scope and bypass any natural resources or amenities that could trigger an EIS, where appropriate. Of course, expedited time frames should not always dictate project design. Planners should strive to build high-quality projects that meet the needs of current and future generations, and not just replace outdated infrastructure. However, if a project is designed to achieve positive outcomes and benefits, while avoiding triggering an EIS, the lead agencies only have to process either a finding of no significant impact or a categorical exclusion, which might only take up to 18 months or six months, respectively, to complete. When an EIS is required, the three case studies reveal and the expert roundtable confirmed that there are several programs, tools, and techniques for expediting the NEPA process that already exist within the current legislative and regulatory framework. Certain methods are only applicable to projects in unique and specific circumstances, and it is particularly important to determine which methods can be applied to all projects. For example, all three case studies reveal that strong federal leadership led to reduced delays. As a result, this lesson may have broad applicability. On the other hand, methods used in crisis situations, such as reconstruction of the World Trade Center and I-35W Bridge, which involved emergency funds from Congress, might not apply to the more typical variety of infrastructure projects.

### CP Avoids Politics (Agenda)

**Counterplan avoids politics – NEPA is bipartisan**

**Yost 05** [Nicholas C. Yost, who practices law in San Francisco with Sonnenschein Nath & Rosenthal, was General Counsel of the President’s Council on Environmental Quality from 1977- 81, when he drafted the government’s regulations that implement NEPA. Don’t Undermine But Streamline Implementation. 2005. The Environmental Law Institute. http://ceq.hss.doe.gov/ntf/articles/Forum\_NEPA\_Task\_Force\_M-J\_2005.pdf]

NEPA is a bipartisan creation of Congress. Its Senate author, the late Henry Jackson, characterized it as “the most important and far-reaching environmental and conservation measure ever enacted.” NEPA’s House author, John Dingell, stressed that “we must consider the natural environment as a whole and assess its quality continuously if we really wish to make strides in improving it and preserving it.” NEPA says that the federal government must look before it leaps environmentally. Instead of spending time and money trying to clean up the environmental messes left by ill-considered mistakes, the government is required to examine the environmental consequences of its actions — whether directly undertaken or through federal funding or permitting — before it undertakes them. It must devise better, less environmentally intrusive ways of doing things. In the 35-plus years since its enactment NEPA has more than fulfilled the hopes of its creators. Thinking environmentally has become part of the American way.

### **Fed Key**

**Federal leadership is key to NEPA reform**

**RPA 12** (Regional Planning Association, “Getting-Infrastructure-Going, Expediting the Environmental Review Process”, June 2012, Regional Planning Association, Date Accessed: 7/24/12, <http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf>)

Establish stronger federal leadership on major projects. In the case studies above, strong federal leadership helped guide projects through the NEPA process in an expedited fashion. Federal sponsors can speed the process by devoting ample personnel and resources to high-priority, employment-generating projects, instead of multiple, small, lower-priority projects, which often consume their attention. However, adequate funding and staff capacity must be allocated to these agencies to take on this leadership role; they should not be expected to do more with less. A strong federal project sponsor should manage the interfaces between the cooperating federal agencies, resource agencies, local project sponsors, and stakeholders. If federal project sponsors better communicate and delegate the roles of all of the respective agencies involved from the very start of the process, some redundancies and inefficiencies that contribute to delays can be avoided. Establishing more consistent interpretations of NEPA procedures can also save time. Written agreements between agencies can establish common implementing policies and procedures, which would expedite environmental reviews.

### Analysis First – K2 Environment

**We must analyze environmental impacts before building – key to cutting down emissions.**

**Bartholomew 9**

(Keith, Assistant Professor, Department of City & Metropolitan Planning, University of ¶ Utah. Professor Bartholomew is former director of Making the Land Use, Transportation, ¶ Air Quality Connection and is co-author of Growing Cooler: The Evidence ¶ on Urban Development and Climate Change, “CITIES AND ACCESSIBILITY: THE POTENTIAL ¶ FOR CARBON REDUCTIONS AND THE NEED FOR ¶ NATIONAL LEADERSHIP”, FORDHAM URB. L.J. Vol. XXXVI)

U.S. cities are a major contributor to greenhouse gas emissions. Collectively, the commercial and residential buildings that make up our urban areas contribute 38% of the nation’s human-generated carbon dioxide emissions and urban-related car and truck travel another 21%.¶ 1¶ And yet, ¶ American cities are a significant source of hope in the battle to reduce climate change impacts. True, American culture, policy, and affluence have ¶ created some of the most resource consumptive landscapes in the world,¶ 2¶ but the picture is not uniformly dismal. In carbon emissions, as in realestate, not all urban development is equal. ¶ In fact, there is substantial variation in the resource consumption and ¶ carbon emission capacity of differing development patterns. Manhattan, ¶ for example, has been labeled one of the nation’s “greenest” places, in part ¶ because of its record of energy efficiency in transportation,¶ 3¶ while RaleighDurham has been identified as one of the most resource consumptive.¶ 4¶ ¶ While it is tempting to label these variations as just another dimension of ¶ the city-suburb continuum, that would be too simplistic and conclusory. ¶ Moreover, it would not offer much in the way of guidance for future action. ¶ Instead, what is needed is a framework that first provides some understanding of how people interact with their built environments and then offers ¶ constructive direction for policy development. ¶ This Article attempts to construct that framework. Part I begins by outlining the elements that should be included in the framework, using the ¶ concept of accessibility as the primary organizing structure. Part II describes how the framework might be made operational through the use of ¶ an emerging technique called land use–transportation scenario planning, ¶ and offers some indication of what deployment of that technique might ¶ mean for reductions in carbon emission rates. Part III then assesses how ¶ well land use–transportation scenario planning fits within the dictates and ¶ limits of U.S. environmental and transportation law.¶ The analysis reveals that accessibility-based land use–transportation scenario planning holds substantial promise as a decision-making tool that ¶ could lead to meaningful cuts in carbon emissions. While the technique is ¶ accommodated by several important federal environmental and transportation statutes, the fit is awkward. Moreover, the degree to which federal law ¶ mandates use of the technique is limited, indicating that its wide-scale deployment will likely also be limited. Given this outcome, the Article concludes that national leadership is needed for the development of statutory ¶ revisions, principally in the federal transportation planning and funding ¶ law, which is scheduled for renewal by Congress in 2009.¶ 5

**Changes need to be made to make sure that transportation infrastructure does not have a huge negative impact on the environment.**

**Bartholomew 9**

(Keith, Assistant Professor, Department of City & Metropolitan Planning, University of ¶ Utah. Professor Bartholomew is former director of Making the Land Use, Transportation, ¶ Air Quality Connection and is co-author of Growing Cooler: The Evidence ¶ on Urban Development and Climate Change, “CITIES AND ACCESSIBILITY: THE POTENTIAL ¶ FOR CARBON REDUCTIONS AND THE NEED FOR ¶ NATIONAL LEADERSHIP”, FORDHAM URB. L.J. Vol. XXXVI)

Given the environmental and climate impacts associated with increased ¶ levels of mobility,¶ 14¶ it would seem that the focus of land use and transportation planning, policy, and investment should be on accessibility. This, ¶ sadly, is not the case. Instead, for the past half-century, those efforts have ¶ been directed, almost exclusively, at reducing impediments to, and thereby ¶ increasing, mobility.¶ 15¶ The operative principles that lie behind this seeming obsession with mobility can be grouped into four basic policy “levers”: ¶ transportation infrastructure, transportation pricing, transportation education, and land use.¶ 16¶ These policy levers, which individually and synergistically influence individual travel choices and community level transportation patterns, have been pointed, almost uniformly, toward mobility-based ¶ outcomes since the mid-twentieth century. Hence, moving toward an accessibility-focused, and more carbon-efficient, land use and transportation ¶ planning framework will require substantial readjustment to each one of the ¶ levers.

**Increased scenario planning is key to protecting the environment.**

**Bartholomew 9**

(Keith, Assistant Professor, Department of City & Metropolitan Planning, University of ¶ Utah. Professor Bartholomew is former director of Making the Land Use, Transportation, ¶ Air Quality Connection and is co-author of Growing Cooler: The Evidence ¶ on Urban Development and Climate Change, “CITIES AND ACCESSIBILITY: THE POTENTIAL ¶ FOR CARBON REDUCTIONS AND THE NEED FOR ¶ NATIONAL LEADERSHIP”, FORDHAM URB. L.J. Vol. XXXVI)

A 2004 nationwide survey identified eighty land use–transportation scenario planning projects, all of which were completed between 1989 and ¶ 2003.¶ 140¶ These projects are concentrated in large metropolitan areas along ¶ the east and west coasts (Figure 2). They are also concentrated toward the ¶ end of the period studied (Figure 3), suggesting a trend toward greater use ¶ of scenario planning techniques. Most of the studies test three or four scenarios (including a trend scenario) that vary in density, mix, and arrangement of future land uses. Half of the studies also test alternative transportation infrastructure investments. Twelve incorporate a transportation pricing ¶ element. Three quarters of the studies evaluate scenarios for transportation ¶ impacts; over half for impacts on open space and resource lands; thirtythree for impacts on air quality; eighteen for impacts on fuel use; and ten ¶ for greenhouse gas emissions.¶ 141 A study by Bartholomew and Ewing used twenty-three of these projects ¶ to analyze relationships between land use, transportation, and carbon emissions.¶ 142¶ Together, these studies include a total of eighty-five scenarios—¶ one trend scenario per study, plus sixty-two planning scenarios, which are ¶ represented by the bars in Figure 4. For each bar, the value shown is the ¶ percentage difference in VMT between that scenario and the study’s trend ¶ scenario. As indicated, there is a wide variation in values across scenarios, ¶ from +5.2% to -31.7%. The variation in scenario density is similarly ¶ spread across a wide range (from -14.8% to +64.3%) and inverse in direction from VMT (see Figure 5), suggesting a possible inverse correlation between the density of a planning scenario and VMT (see Figure 6). This ¶ suggests that greater scenario density would lead to lower vehicle miles ¶ travelled. One prediction that emerges from an inverse correlation between planning scenario density and VMT is that a reduction in carbon emissions would be associated with increased planning scenario density, given the reduction in VMT. The authors thus sought to determine the possible transportation and carbon emission effects that could accrue if scenarios of the ¶ type and nature assessed in the study were implemented in metropolitan areas nationwide. A multivariate analysis using a heirarchical model revealed three significant influences on VMT: population growth increment, ¶ centralized development, and mixed land use. The analysis also showed ¶ that increasing average density by 50%143¶ and emphasizing infill development, mixed land uses, and coordinated transportation investments would, ¶ by 2050, result in 17% fewer VMT than under projected trend conditions.¶ 144¶ Accounting for “cold start” effects¶ 145¶ and possible engine efficiency reductions,¶ 146¶ this number translates into a CO2 emissions reduction ¶ of 15.3%.¶ 147

**Environmental scenario analysis is key to preserving the environment when building transportation.**

**Bartholomew 9**

(Keith, Assistant Professor, Department of City & Metropolitan Planning, University of ¶ Utah. Professor Bartholomew is former director of Making the Land Use, Transportation, ¶ Air Quality Connection and is co-author of Growing Cooler: The Evidence ¶ on Urban Development and Climate Change, “CITIES AND ACCESSIBILITY: THE POTENTIAL ¶ FOR CARBON REDUCTIONS AND THE NEED FOR ¶ NATIONAL LEADERSHIP”, FORDHAM URB. L.J. Vol. XXXVI)

Though not specifically targeted at the tension between mobility and accessibility, the CAAA conformity provisions and their implementing regulations¶ 180¶ give at least some impetus for engaging those issues.¶ 181¶ The most ¶ direct, and obvious, point for this engagement would be the selection of ¶ transportation projects to be included in long-range system plans. A 1999 ¶ EPA-sponsored study, however, shows that in only a handful of high-growth metropolitan areas has the conformity process led to the scaling ¶ back or elimination of proposed highway projects and the promotion of ¶ transit investments.¶ 182¶ Aside from Atlanta’s high-profile conformity lapse ¶ settlement agreement,¶ 183¶ conformity’s impact on project selection has been ¶ difficult to detect.¶ 184¶ A later study by the Congressional Research Service ¶ shows that while sixty-three nonattainment or maintenance areas experienced conformity lapses between 1997 and 2004, “[m]ost of these areas . . . ¶ returned to conformity quickly without major effects on their transportation ¶ programs: . . . only 5 areas had to change transportation plans in order to ¶ resolve a conformity lapse.”¶ 185¶ As with project selection, conformity’s influence on land use policy, ¶ while notable, has not been widespread. Although the Clean Air Act specifically disavows any “infringement on the existing authority of counties ¶ and cities to plan or control land use,”¶ 186¶ many had hoped that the CAAA’s ¶ restrictive conformity requirements would lead to “tighter coordination of ¶ land use and transportation planning to promote development patterns that ¶ require less travel.”¶ 187¶ The EPA has finessed the tension between statutory ¶ prohibition and popular expectation by sponsoring research and providing ¶ specific guidance on how land use policies might fit into air quality planning and conformity analyses,¶ 188¶ but the agency stresses that its efforts are advisory only.¶ 189¶ Government agencies in several metropolitan areas have, ¶ in fact, used EPA’s research and guidance to take air-quality credit for land ¶ use initiatives; leading examples include the Atlantic Steel redevelopment ¶ project in Atlanta,¶ 190¶ Portland, Oregon’s metropolitan growth management ¶ policies,¶ 191¶ and the Chicago region’s reassessment of infill development ¶ potential.¶ 192¶ Probably the most dramatic change credited to the influence ¶ of the conformity process, at least on land use institutions if not directly on ¶ land use policies, was the creation, in 1999, of the Georgia Regional Transportation Authority (“GRTA”),¶ 193¶ which has substantial veto power over ¶ land use and transportation decisions in the Atlanta region.¶ 194 In addition to these voluntary actions, the conformity-implementing ¶ regulations contain mandatory regional emissions analysis standards that, ¶ indirectly, influence land use policies. In nonattainment and maintenance ¶ areas classified as serious or worse for ozone or carbon monoxide and that ¶ are greater than 200,000 in population, agencies preparing long-range ¶ transportation system plans must ensure that future land use development ¶ assumptions are consistent with the transportation system alternatives under consideration.¶ 195¶ In other words, planners must account for the induced ¶ development effects that might be associated with different investment decisions. This, in essence, requires the consideration of integrated, internally consistent land use–transportation scenarios. Consideration of ¶ changes in land use policies to increase accessibility, however, is not required. Nevertheless, at least some acknowledgement of the potential ¶ sprawl-inducing effects of transportation investments is mandated.¶ 196

### CP Comes First

**And planning should be a condition before building infrastructure.**

**Bartholomew 9**

(Keith, Assistant Professor, Department of City & Metropolitan Planning, University of ¶ Utah. Professor Bartholomew is former director of Making the Land Use, Transportation, ¶ Air Quality Connection and is co-author of Growing Cooler: The Evidence ¶ on Urban Development and Climate Change, “CITIES AND ACCESSIBILITY: THE POTENTIAL ¶ FOR CARBON REDUCTIONS AND THE NEED FOR ¶ NATIONAL LEADERSHIP”, FORDHAM URB. L.J. Vol. XXXVI)

Although planning for metropolitan-wide transportation systems began ¶ in the 1950s, the practice came of age with passage of the Federal Aid ¶ Highway Act of 1962,¶ 150¶ which required metropolitan transportation system planning as a condition for receiving federal transportation funds.¶ 151¶ ¶ To qualify, the planning process needed to be continuing, comprehensive, ¶ and cooperative (the “3Cs”)—meaning that planning had to be ongoing, not ¶ just a single event, to incorporate a broad range of subjects and values, and ¶ to be carried out with the cooperation of state and local government agencies.¶ 152¶ Although the Bureau of Public Roads¶ 153¶ implementing regulations ¶ required consideration of land use and zoning in the 3C planning process,¶ 154¶ they did not require the consideration of alternative development patterns. Moreover, the purpose of the planning process was to achieve increased mobility, not improved accessibility.¶ 155¶ Transportation systems planning has changed markedly since the 1962 ¶ Act, with the most significant changes coming from the Intermodal Surface ¶ Transportation Efficiency Act of 1991 (“ISTEA”).¶ 156¶ ISTEA revolutionized systems planning, principally by allowing for greater flexibility in how ¶ federal transportation funds could be used, and by providing a more expansive list of considerations that had to be incorporated into systems planning, including the possible effects of transportation investments on development patterns and the consistency of transportation plans with land use ¶ and development plans.¶ 157¶ Many of ISTEA’s innovations were carried ¶ forward, first into the Transportation Equity Act for the 21st Century ¶ (“TEA-21”)¶ 158¶ and then into the current transportation statute—the Safe, ¶ Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for ¶ Users (“SAFETEA-LU”).¶ 159¶ Together, the innovations from ISTEA, plus several provisions originating with SAFETEA-LU, could provide a basis for an accessibility based ¶ systems planning process. According to the policy statement that introduces the metropolitan planning requirement section, it is in the national ¶ interest to promote “transportation systems that will serve the mobility ¶ needs of people and freight and foster economic growth and development ¶ within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution.”¶ 160¶ The planning factors ¶ for systems planning processes reflect this purpose statement, requiring ¶ consideration of projects and strategies that will “increase the accessibility ¶ and mobility of people and for freight” and “protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and ¶ local planned growth and economic development patterns.”¶ 161

### NB - Warming

**Effective NEPA is key to check back global warming.**

**Pyke and Batten 8**

(Christopher and Kit, writers for American Progress, “Full Disclosure¶ An Executive Order to Require ¶ Consideration of Global Warming Under ¶ the National Environmental Policy Act”, American Progress, <http://www.americanprogress.org/issues/2008/05/pdf/nepa.pdf>)

The National Environmental Policy Act is the foundation for U.S. environmental policy. NEPA is based on the simple notion that the public has a right to ¶ information about the costs and consequences of federal actions. The law is the ¶ most appropriate mechanism for ensuring consideration of the implications of federal actions for global warming. NEPA provides the framework and authority for such ¶ assessments, yet federal agencies currently lack clear guidance and direction for the consideration of global warming in NEPA assessments.¶ Fortunately, this can be easily remedied. NEPA is the primary vehicle for assessing and ¶ managing environmental risks associated with federal activities through science-based ¶ analysis, deliberation, and public disclosure. NEPA requires federal agencies to analyze ¶ the consequences of their actions and make public disclosures of potential environmental impacts. The purpose of the Act is: ¶ To declare a national policy which will encourage productive and enjoyable harmony between ¶ man and his environment; to promote efforts which will prevent or eliminate damage to ¶ the environment and biosphere and stimulate the health and welfare of man; to enrich the ¶ understanding of the ecological systems and natural resources important to the Nation; and to ¶ establish a Council on Environmental Quality. ¶ In practice, NEPA requires agencies to present information that allows stakeholders to ¶ understand the consequences of proposed actions for the environment.¶ 3¶ NEPA assessments include a comparison of reasonable alternative courses of action, with results ¶ presented in a comprehensive document called an Environmental Impact Statement. ¶ We propose that an analysis of the effects of federal actions on global warming—both ¶ the emissions resulting from actions and implications of changing climatic conditions ¶ for the actions—should be a mandatory part of any NEPA assessment process.¶

Extinction – warming is real and anthropogenic

DEIBEL ‘7 (Terry L. Deibel, professor of IR at National War College, Foreign Affairs Strategy, “Conclusion: American Foreign Affairs Strategy Today Anthropogenic – caused by CO2”)

Finally, there is one major existential threat to American security (as well as prosperity) of a nonviolent nature, which, though far in the future, demands urgent action. It is the threat of global warming to the stability of the climate upon which all earthly life depends. Scientists worldwide have been observing the gathering of this threat for three decades now, **and what was once a mere possibility has passed** through probability **to near certainty.** Indeed **not one of more than 900 articles** **on climate change published in refereed scientific journals** from 1993 to 2003 doubted that anthropogenic warming is occurring. “In legitimate scientific circles,” writes Elizabeth Kolbert, “it is virtually **impossible to find evidence of disagreement** over the fundamentals of global warming.” Evidence from a vast international scientific monitoring effort accumulates almost weekly, as this sample of newspaper reports shows: an international panel predicts “brutal droughts, floods and violent storms across the planet over the next century”; climate change could “literally alter ocean currents, wipe away huge portions of Alpine Snowcaps and aid the spread of cholera and malaria”; “glaciers in the Antarctic and in Greenland are melting much faster than expected, and…worldwide, plants are blooming several days earlier than a decade ago”; “rising sea temperatures have been accompanied by a significant global increase in the most destructive hurricanes”; “NASA scientists have concluded from direct temperature measurements that 2005 was the hottest year on record, with 1998 a close second”; “Earth’s warming climate is estimated to contribute to more than 150,000 deaths and 5 million illnesses each year” as disease spreads; “widespread bleaching from Texas to Trinidad…killed broad swaths of corals” due to a 2-degree rise in sea temperatures. “The world is slowly disintegrating,” concluded Inuit hunter Noah Metuq, who lives 30 miles from the Arctic Circle. “They call it climate change…but we just call it breaking up.” From the founding of the first cities some 6,000 years ago until the beginning of the industrial revolution, carbon dioxide levels in the atmosphere remained relatively constant at about 280 parts per million (ppm). At present they are accelerating toward 400 ppm, and by 2050 they will reach 500 ppm, about double pre-industrial levels. Unfortunately, atmospheric CO2 lasts about a century, so there is no way immediately to reduce levels, only to slow their increase, we are thus in for significant global warming; the only debate is how much and how serous the effects will be. As the newspaper stories quoted above show, we are already experiencing the effects of 1-2 degree warming in more violent storms, spread of disease, mass die offs of plants and animals, species extinction, and threatened inundation of low-lying countries like the Pacific nation of Kiribati and the Netherlands at a warming of 5 degrees or less the Greenland and West Antarctic ice sheets could disintegrate, leading to a sea level of rise of 20 feet that would cover North Carolina’s outer banks, swamp the southern third of Florida, and inundate Manhattan up to the middle of Greenwich Village. Another catastrophic effect would be the collapse of the Atlantic thermohaline circulation that keeps the winter weather in Europe far warmer than its latitude would otherwise allow. Economist William Cline once estimated the damage to the United States alone from moderate levels of warming at 1-6 percent of GDP annually; severe warming could cost 13-26 percent of GDP. But the most frightening scenario is runaway greenhouse warming, based on positive feedback from the buildup of water vapor in the atmosphere that is both caused by and causes hotter surface temperatures. Past ice age transitions, associated with only 5-10 degree changes in average global temperatures, took place in just decades, even though no one was then pouring ever-increasing amounts of carbon into the atmosphere. Faced with this specter, the best one can conclude is that “humankind’s continuing enhancement of the natural greenhouse effect is akin to playing Russian roulette with the earth’s climate and humanity’s life support system. At worst, says physics professor Marty Hoffert of New York University, “we’re just going to burn everything up; we’re going to het the atmosphere to the temperature it was in the Cretaceous when there were crocodiles at the poles, and then everything will collapse.” During the Cold War, astronomer Carl Sagan popularized a theory of nuclear winter to describe how a thermonuclear war between the Untied States and the Soviet Union would not only destroy both countries but possible end life on this planet. **Global warming is the post-Cold War era’s equivalent of nuclear winter at least as serious and considerably better supported scientifically**. Over the long run it puts dangers form terrorism and traditional military challenges to **shame**. It is a threat not only to the security and prosperity to the United States, but potentially to the continued existence of life on this planet.

## Aff

**Only 3 percent of all federal funded transportation requires an EIS.**

**Sierra Club 3**

(Sierra Club, Strategic philanthropy - social and environmental change, Non-profit organization on the environment,  “The Road to Better Transportation Projects:PUBLIC INVO LVEMENT AND THE NEPA PROCESS”, <http://www.sierraclub.org/sprawl/nepa/sprawl_report.pdf>)

In spite of NEPA’s major role in including the public and mitigating environmental impacts of road projects, this indispensable statute is in jeopardy. President Bush signed an executive order in September of 2002 to undermine the environmental review process for transportation projects. This has spurred additional proposals to weaken these protections. Why is NEPA under attack? It is targeted because the highway builders have been aggressively promoting the convenient although false argument that NEPA is to blame for delays in road construction. However, limiting public involvement and weakening environmental review are not the best ways to achieve greater efficiency. Proponents of these measures claim that such reviews cause unnecessary and significant delay. While it is true that the process of producing an environmental impact statement (as opposed to a less intensive “environmental assessment”) requires time — especially when the project is controversial — the fact is that they slow down only a very small percentage of projects every year. There are fewer and fewer such full-blown reviews; the number filed in 2001 — about 500 — was less than a quarter of the approximately 2,000 statements filed in 1973. Today, a mere three percent of federally funded transportation projects require an EIS.

### **AT Delays**

There are no major delays with NEPA environmental assessments.

**Sierra Club 3**

(Sierra Club, Strategic philanthropy - social and environmental change, Non-profit organization on the environment,  “The Road to Better Transportation Projects:PUBLIC INVO LVEMENT AND THE NEPA PROCESS”, <http://www.sierraclub.org/sprawl/nepa/sprawl_report.pdf>)

In most cases, environmental reviews are not a significant time killer. In a 2000 study of 89 projects that had been delayed at least five years, the Federal Highway Administration found that environmental impact statements were not the major cause of delay. According to the study, the most significant factors slowing down these projects were lack of funding, local controversy, low priority, and project complexity, which collectively accounted for 62 percent of the delays. The remaining 38 percent included a range of other factors, including environmental concerns. Endangered species and wetlands accounted for only seven percent and four percent of delays, respectively.

### **EIS Fails**

**An EIS does nothing – it just shows the decision-makers what the effects of the projects are and does nothing to stop bad effects from happening.**

**Cooperative Extension 4**

(University of New Hampshire Cooperative Extension, “Environmental Impact Statements:

An Introduction”, Last Modified 4/14/2004, <http://extension.unh.edu/CommDev/articles/IntrEIS.pdf> )

An Environmental Impact Statement (EIS) is a document that is designed to aid decision-makers in evaluating both the positive and negative effects of potential projects. It is primarily a disclosure document in that it simply conveys information about potential effects of various projects and configurations of projects. It does not contain any recommendations or conclusions as to what decisionmakers should do; nor does it provide guidance as to how a project could be made more efficient, profitable, worthwhile, or less environmentally invasive. It simply offers information in the realm of, “If you did this project, these are the potential impacts which would result

### U – NEPA Solves Now

**Nothing is perfect – NEPA is functional and good enough to get the job done**

**Sierra Club 3**

(Sierra Club, Strategic philanthropy - social and environmental change, Non-profit organization on the environment,  “The Road to Better Transportation Projects:PUBLIC INVO LVEMENT AND THE NEPA PROCESS”, <http://www.sierraclub.org/sprawl/nepa/sprawl_report.pdf>)

While the evidence is clear that public and environmental reviews improve the quality of our roads and have little to do with project delays, the NEPA process is not perfect and there are methods to improve it. Natural resource agencies could do their job more efficiently if they had appropriate budgets for staff and tools for conducting reviews so that better projects can be delivered faster. For instance, federal and state agencies are trapped by outdated technology. A 2000 National Research Council report recommended some specific ways to enhance the review process. The suggestions included: new collaborative planning and design processes, use of (geographic information systems) GIS to determine natural and community constraints on a project (called “gap analysis”), and computer visualization programs that allow users to view a proposed project and its potential impact in three dimensions. Better support for these agencies and updates of their tools and technology would go a long way toward speedier, higher quality project delivery. Possibly the most promising — and commonsense — way to reduce delay is to establish early partnerships and coordination among stakeholders. The earlier that everyone affected is brought together to assist with the design of a project, the less likelihood there is for opposition further down the road. A recent Government Accounting Office study confirmed this: 30 of 33 transportation experts indicated that this approach has great or very great potential for reducing project delivery time. America is known for its open roads. But just as our highway system is integral to our way of life, so are the laws that protect our communities and the natural resources we treasure. Since roads cannot be “unbuilt,” sensible protections such as NEPA — which guarantee project review and public involvement — should be safeguarded and not targeted in the name of expediency.

### Normal Means

**It’s normal means – anything that receives federal money needs to submit an EIS.**

**Cooperative Extension 4**

(University of New Hampshire Cooperative Extension, “Environmental Impact Statements:

An Introduction”, Last Modified 4/14/2004, <http://extension.unh.edu/CommDev/articles/IntrEIS.pdf> )

The National Environmental Policy Act (NEPA) of 1970 attempted to make federal agency land managers take a “hard look” at the potential effects of projects that agencies were funding or implementing. The avenue by which NEPA forced consideration of effects was through the EIS process. Practically speaking, agencies must write an EIS any time a project involves use of public land (such as with lands under jurisdiction of the Forest Service, National Park Service, Bureau of Land Management, etc.), receives federal monies (such as with most highway improvement projects), involves resources under federal jurisdiction (such as wetlands or Threatened or Endangered Species), or involves interstate commerce in the transaction.

### No Data

**Reject their data – there are zero credible studies on the effectiveness of NEPA**

**Luther 08** [Linda Luther, Analyst in Environmental Policy, CRS. “The National Environmental Policy Act: Background and Implementation.” February 29, 2008. <http://www.cnie.org/NLE/CRSreports/08Mar/RL33152.pdf>]

In the past, particularly in the years after NEPA was implemented, the preparation of NEPA documentation played a role in delaying individual federal actions. However, there is little data available to demonstrate that NEPA currently plays a significant role in delaying federal actions. This lack of data is attributable to the fact that other than the Department of Energy and, very recently, DOT, federal agencies do not routinely maintain information on the time it takes to complete the NEPA process. Therefore, gathering accurate data on how long it takes to prepare NEPA documentation, and whether the NEPA process is directly the cause of project delays, is difficult. For example, the preparation of NEPA documentation is generally done concurrently with preliminary project design. If a project undergoes specification changes, those alterations may necessitate modifications to the NEPA documentation. Consequently, the time to complete the NEPA process may be extended.

### Alt Cause – Agencies

**The problem is the agencies, not NEPA itself.**

**Plumer 7/3**

(Brad, reporter at the Washington Post writing about domestic policy, particularly energy and environmental issues, “Do environmental rules make it harder to build infrastructure?

”, The Washington Post, Date Accessed: 7/24/12, <http://www.washingtonpost.com/blogs/ezra-klein/wp/2012/07/03/do-environmental-rules-make-it-harder-to-build-infrastructure/>)

The data comes from [this America 2050 report](http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf) (pdf). Back in the 1970s, finishing up an Environmental Impact Statement took just two years, on average. Today, it takes more than eight. (Keep in mind, however, that this only applies to the largest, costliest transportation projects: Just [15 percent](http://www.washingtonpost.com/blogs/ezra-klein/post/is-this-duck-delaying-your-highway/2012/02/02/gIQAeAf6mQ_blog.html) of federal highway spending even requires an impact statement in the first place.) Now, does this mean Congress should blow up NEPA? No. Or at least that’s not what the Regional Plan Association, which published the report, recommends. The authors note that environmental rules themselves aren’t chiefly responsible for the holdup. Rather, according to a survey of people who actually plan and build these roads and bridges, most of the delays come from agency problems: “administrative process bottlenecks, project management failings, or a lack of capacity among the agencies involved in the process.”

**Agencies under NEPA should be reformed to boost efficiency.**

**Plumer 7/3**

(Brad, reporter at the Washington Post writing about domestic policy, particularly energy and environmental issues, “Do environmental rules make it harder to build infrastructure?

”, The Washington Post, Date Accessed: 7/24/12, <http://www.washingtonpost.com/blogs/ezra-klein/wp/2012/07/03/do-environmental-rules-make-it-harder-to-build-infrastructure/>)

All told, the America 2050 report notes, it would be a mistake for Congress to hack away at existing federal regulations — doing so would “undermine environmental protections and fail to address root causes of delay.” It’s worth remembering, after all, that environmental reviews can be quite valuable: The Sierra Club has compiled a [dossier](http://www.sierraclub.org/sprawl/nepa/sprawl_report.pdf) (pdf) of road projects over the years that were successfully altered thanks to review and public input in order to stem water pollution or to limit sprawl or to avoid disrupting scenic areas. Instead, the report recommends “reforming the internal administrative policies, procedures, and practices currently in place.” That includes humdrum stuff like “integrating environmental reviews with state and metropolitan planning requirements into a more cohesive project development process.” The [report](http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf) offers plenty of detail on what that all means. Sadly, those dry bureaucratic steps don’t make for a sexy campaign slogan. But they might help get all of our bogged-down highways and bridges built more quickly.

### Environmentalists Solvency Takeout

#### NEPA doesn’t actually help- it’s just a political tool used by environmentalists to delay projects

**Oil & Gas Journal** 6/20/**2011** (“Delay, delay, delay” Lexisnexis)

¶ ¶ Administrative profusion makes clear the central aim of the US Environmental Protection Agency's June 6 critique of an environmental report crucial to the Keystone XL pipeline proposal. The aim is to delay.¶ ¶ Because transit of an international boundary is involved, the Department of State must decide whether to allow construction of the US part of the 1,711-mile project connecting Alberta with the US Gulf Coast. If the only interests in play were energy security, jobs, the economy, and--yes--the environment, the decision would be easy. But the pipeline would carry supposedly "dirty oil" from the Canadian oil sands. Environmental groups have made opposition to it a signature cause.¶ ¶ The administration faces a dilemma. It can't say no to energy from a friendly neighbor and jobs for Americans. But it can't say no to its environmentalist supporters, either. It can, however, delay. For that, no more-effective tool exists than the National Environmental Policy Act.¶ ¶ EPA's June 6 judgment was of a supplemental environmental impact statement (EIS) prepared by State in response to a July 2010 finding by EPA that State's initial EIS was inadequate. This is how NEPA regulation works. Projects wait while environmental documents ricochet among agencies and, many times, courts. Often, they wait forever. Environmentalists use NEPA legalities regularly and effectively to mire oil and gas work involving federal agencies, especially drilling on federal land.

### Obama Solves

**Obama is making NEPA more efficient in the squo.**

**RPA 12**

(Regional Planning Association, “Getting-Infrastructure-Going, Expediting the Environmental Review Process”, June 2012, Regional Planning Association, Date Accessed: 7/24/12, <http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf>)

In August 2011, President Obama sent a memo to all of the heads of executive departments and agencies directing them to immediately speed the delivery of major infrastructure projects that are stuck in the NEPA process to more quickly deliver their job benefits, and use information technology to improve the accountability, transparency, and efficiency of the permitting and review processes. 20 In October, 14 infrastructure projects were selected by the Council on Environmental Quality for expedited reviews (see table). The president indicated that additional federal funds and resources would be directed to these five federal agencies and steps would be taken to expedite the environmental reviews of these 14 projects. Depending on the project, those steps will include, “integrating planning and environmental reviews; coordinating multi-agency or multi-governmental reviews and approvals to run concurrently; setting clear schedules for completing steps in the environmental review and permitting process; and utilizing information technologies to inform the public about the progress of environmental reviews as well as the progress of federal permitting and review processes.” 21

### CP Fails – Private Actions

NEPA Fails- doesn’t apply to private actions

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

The fact that NEPA cannot address the disparate siting of heavily polluting industries also highlights a further limitation of NEPA's scope. NEPA does not apply to private actions unless there is a sufficient federal nexus.' zr Several states, through their SEPAs, have extended the reach of the environmental planning requirement beyond state agencies to local governments.IH The European Economic Community's Environmental Impact Directive goes even further and requires planning for all public or private projects likely to have a significant effect on the environment' 29

### AT Environmental Justice

#### NEPA Fails - Enforcement

NEPA can’t protect minority groups from failure of enforcement or from discriminatory enforcement

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

NEPA also fails to provide minority or low-income communities any protection from discriminatory enforcement of environmental laws. While academics and journalists have conducted studies that identify disparate patterns of enforcement of environmental laws, n9 neither the government's failure to bring an enforcement action in a minority or low-income community, nor the government's pattern of discriminatory enforcement of environmental laws, is reviewable under NEPA.'2 0

#### **NEPA Fails – Environmental Assessment O/W**

99% of NEPA is EA, not EIS- communities are foreclosed from participating

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

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 Further-more, 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 EIS5 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 decisionmaking process.**61**

## Other Mechanisms

### Streamlining CP

#### FYI – Streamlining NEPA - Definition

**Definition – Streamlining NEPA**

**Luther 08** [Linda Luther, Analyst in Environmental Policy, CRS. “The National Environmental Policy Act: Background and Implementation.” February 29, 2008. <http://www.cnie.org/NLE/CRSreports/08Mar/RL33152.pdf>]

Some Members of Congress have expressed concerns that project delays are the result of inefficient interagency coordination required for large, complex projects. As a result, a variety of recent bills include provisions intended to streamline the NEPA process. Although not defined in any legislative proposal, the term “streamlining” is broadly used to describe legislative or administrative procedures intended to expedite the NEPA. The term “streamlining” is also used to refer to administrative or legislative actions intended to expedite the process of complying with other environmental requirements, such as permitting. In this report, use of the term refers only to efforts to expedite the NEPA process. It usually refers to a process or procedures to better coordinate federal, state, tribal, or local agency action, when compliance with multiple environmental laws, regulations, or executive orders is required.

#### Solvency

**Streamlining solves NEPA – coordinated process solve time delays and implementation problems**

**Luther 07** [Linda Luther, Analyst in Environmental Policy. “The National Environmental Policy Act: Streamlining NEPA.” January 9, 2007. <http://www.nationalaglawcenter.org/assets/crs/RL33267.pdf>]

Establishing a Coordinated Compliance Process. Most legislative streamlining provisions direct the lead agency to create some form of coordinated environmental review or compliance process. This process often requires the lead agency to establish specific administrative procedures for processing permits, license applications, or environmental reviews under the NEPA process. Often, that coordinated process must be delineated in a Memorandum of Understanding (MOU) between the designated lead agency and participating agencies for certain classes of projects (e.g., projects that require preparation of an EIS or EA). Legislation usually delineates required elements of the coordinated process, the content of the MOU, or both. For example, it may specify certain decision-making authorities of the lead and participating agencies in the selection and analysis of project alternatives, and it may specify methods to conduct the environmental review process under NEPA concurrently with other environmental requirements. Some legislative proposals have allowed the lead agency to establish such a process only if requested by a project sponsor or applicant. Others specify that such a process must be implemented for entire classes of projects undertaken by an agency (e.g., all projects that require an EIS). Proponents of a coordinated compliance process argue that it is crafted to address the charge that the problem of delays with the NEPA process lies in its implementation and that a better coordinated process could lead to better and faster results. Critics are concerned with the details of such processes, such as limits on participating agency input or the imposition of strict deadlines, especially if those deadlines could limit public involvement.

Counterplan avoids politics, addresses the root cause of delays, and solves jobs and competitiveness

Todorovich and Schned 12 [Petra Todorovich, director of America 2050, and national urban planning initiative, and Daniel Schned, Regional Plan Association and Associate Planner for America 2050. “Getting Infrastructure Going: Expediting the Environmental Review Process.” The Regional Planning Association. June 10, 2012. [**http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf**](http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf)]

There are many steps that federal, state, and local agencies can take that do not require amending NEPA, new legislation, or a mandate from the president. Clarifying the scope of projects during concept and preliminary design phases, better integrating planning and environment processes, strengthening the federal role on large, complex projects, better training and process management, and modernizing outdated, inefficient procedures can shave months or even years off of the NEPA process.¶ Making the environmental review process more efficient by reforming the agency procedures that are the root cause of project delivery delays will allow high-priority infrastructure projects to be constructed sooner, creating hundreds of thousands of jobs and fixing many of the deteriorating infrastructure systems that are weakening America’s global economic competitiveness.

NEPA fails – streamlining key

**Berg 7/2** (Nate, staff writer at The Atlantic Cities. “Why Environmental Reviews Are Slowing Down Big Projects”, The Atlantic Cities, Date Accessed: 7/24/12, http://www.theatlanticcities.com/commute/2012/07/why-environmental-reviews-ar)

According to the panel of experts America 2050 convened to discuss the subject, "many of these delays can be attributed to a lack of communication and consensus in the pre-NEPA planning stage, administrative process bottlenecks, project management failings, or a lack of capacity among the agencies involved in the process." So, while discussions about expediting project delivery often begin with changing the NEPA law, in reality, rewriting NEPA would likely undermine environmental protections and fail to address root causes of delay. Instead, reforming the internal administrative policies, procedures, and practices currently in place to follow the NEPA law has the potential to shorten proj­ect delivery timelines while maintaining the strong environmen­tal protections that NEPA established. Even greater efficiency can be achieved by integrating environmental reviews with state and metropolitan planning requirements into a more cohesive project development process. By streamlining the processes within agencies and better integrating planning and environmental reviews, delays on major projects can be largely avoided, according to the report. The most important advice in the report may be the most obvious: get more consensus from stakeholders early on in the planning process and there will be fewer delays caused by people upset with the design and its potential impacts.

### Memos CP

**CP text: The Deputy Administrator of the EPA should issue a memorandum reaffirming that Executive order 12898 is an agency priority.**

Weber, associate professor of political science at the University of California, Berkeley & Carroll March 1, 2004 (Steven is affiliated professor of the Energy and Resources Group; and research director of the Berkeley Roundtable on the International Economy. Daniel J. “EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice” <http://www.epa.gov/oig/reports/2004/20040301-2004-P-00007.pdf>)

 We recommended that the Acting Deputy Administrator issue a memorandum reaffirming that Executive Order 12898 is an Agency priority and that minority and low-income populations disproportionately impacted will be the beneficiaries of this Executive Order. Additionally, EPA should establish specific time frames for the development of definitions, goals, and measurements. Furthermore, we recommended that EPA develop and articulate a clear vision on the Agency’s approach to environmental justice. We also recommended that EPA develop a comprehensive strategic plan, ensure appropriate training is provided, clearly define the mission of the Office of Environmental Justice, determine if adequate resources are being applied to environmental justice, and develop a systematic approach to gathering information related to environmental justice.

### Courts CP

The counterplan solves- it has the Supreme Court interpret the term “environmental impact” to include health and socioeconomic effects- that’s key to environmental justice- the tag needs work

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

The clearest way that NEPA advances environmental justice is by requiring the federal government to consider a variety of health and socioeconomic impacts that may be caused by proposed actions before taking those actions. NEPA clearly requires the government to consider such impacts when it prepares an EIS.72 NEPA may also require the government to consider those impacts when it prepares an EA.73 In a memorandum that accompanied Executive Order No. 12,898, President Clinton reminded federal agencies that NEPA requires them to consider the socioeconomic impacts of proposed actions in many cases. 74 However, neither NEPA nor the Executive Order clarify to what extent agencies must consider those impacts. NEPA, on its face, only requires the government to review environmental impacts of proposed actions and alternatives when preparing an EIS. However, in Metropolitan Edison Co. v. People Against Nuclear Energy,76 the United States Supreme Court interpreted the term "environmental impact" broadly and suggested that the government must consider certain health effects when it prepares an EIS because NEPA's broad goals include protection of health and welfare] 7 The Metropolitan Edison Court stressed, though, that NEPA does not require the government to consider "every impact or effect of its proposed action. 7 1 Instead, the Court suggested that the government must only consider the health effects of a proposed government action in an EIS if the action causes a change in the physical environment and there is a reasonably close causal connection between the change in the physical environment and the health effects. 79 For purposes of this Article, the health effects caused by the change in the physical environment will be referred to as "secondary" health effects. Although Metropolitan Edison only addressed secondary health effects, there are many reasons why NEPA should be interpreted to require the government, when it prepares an EIS, to consider the socioeconomic impacts--"secondary socioeconomic impacts"-that are caused by changes to the physical environment resulting from the government's proposed action. First, it would be consistent with the Court's reasoning in Metropolitan Edison to interpret "environmental impacts" under NEPA to include secondary socioeconomic impacts. The Metropolitan Edison Court interpreted the term "environmental impacts" broadly to include secondary health impacts because that interpretation of the term was consistent with the statute's purpose of protecting human welfare. 8' The Court's decision is a good example of the "legal process" theory of statutory interpretation.82 A court that applies legal process theory identifies the purpose of a statute and then interprets the statute in a manner that is consistent with that purpose. 83 In the same way that the Metropolitan Edison Court adopted a legal process approach to conclude that environmental impacts include secondary health effects, courts should adopt that approach to interpret environmental impacts to include secondary socioeconomic impacts because that interpretation of the term would be consistent with the statute's purpose of protecting economic, social, and cultural values while also protecting the physical environment.' 4 Courts should also interpret NEPA to require the government to consider secondary socioeconomic impacts in an EIS because CEQ has interpreted the statute, by regulation, in that manner.85 CEQ regulations provide that "effects" and "impacts" are synonymous under NEPA and define "effects" to include "ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative."" Courts generally defer to an agency's regulatory interpretation of a statute when the statute is administered by the agency. Finally, courts should interpret NEPA as requiring the government to consider secondary socioeconomic impacts in an EIS because section 102(2)(A) of NEPA requires agencies to use "a systemic, interdisciplinary approach which will insure the integrated use of the natural and social sciences.., in planning and in decisionmaking which may have an impact on man's environment." That provision of NEPA suggests that the government should consider the socioeconomic impacts of proposed actions, regardless of whether the government is preparing an EIS or an EA under NEPA.89 For all of these reasons, NEPA should be interpreted to require the government to consider secondary health and socioeconomic impacts when it prepares an EIS.

### Congress Interpretation CP

Congress can amend NEPA by defining “human environment” broadly- that would cause agencies to consider the socioeconomic impact of a project

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

While CEQ can issue such regulations under its existing authority, it would be much easier to defend the regulations if Congress amended NEPA to clearly describe the extent to which agencies must consider the secondary socioeconomic or health impacts of their actions. Congress could revitalize the law by defining "human environment" broadly, as CEQ has done, and as many states have done in their SEPAs. Congress could also explicitly require agencies to consider the socioeconomic and health impacts caused by changes to the physical environment resulting from federal government actions, regardless of whether the government is preparing an EIS or an EA.

### CEQ Interpretation CP

The CEQ can amend its regulations to make NEPA a tool for environmental justice

Johnson, Professor of Law at Mercer 1997 (Stephen is Associate Dean for Academic Affairs, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2027&context=llr)

Although NEPA can, and should, be interpreted to require agencies to consider secondary socioeconomic and health impacts in EAs and EISs, CEQ's regulations do not provide sufficient guidance to agencies regarding the extent to which those issues must be addressed in EAs or EISs. For several years, CEQ has promised to provide additional guidance regarding environmental justice and NEPA reviews, but the guidance is still forthcoming. 8 In order to promote the use of NEPA as a tool to achieve environmental justice, CEQ should amend its regulations to specifically address this important environmental justice issue.99 Specifically, CEQ's regulations should provide that whenever an agency prepares an EIS or EA, it should (1) identify, to the extent practicable, the communities that will be impacted by the proposed federal action and its alternatives;' (2) collect demographic data regarding the racial and socioeconomic background of the potentially impacted communities;'01 and (3) collect available health data and other information to determine whether the potentially impacted communities are likely to experience particular health effects because of multiple or cumulative exposure to or increased susceptibility to a pollutant released into the communities as a result of the proposed action or its alternatives. 12

### XO EIS CP

**The president of the United States should issue an executive order mandating environmental assessments. – it’s key to check back emissions and global warming.**

**Pyke and Batten 8**

(Christopher and Kit, writers for American Progress, “Full Disclosure¶ An Executive Order to Require ¶ Consideration of Global Warming Under ¶ the National Environmental Policy Act”, American Progress, <http://www.americanprogress.org/issues/2008/05/pdf/nepa.pdf>)

The president has the authority to immediately require that all federal agencies ¶ assess and disclose the greenhouse gas emissions and global warming vulnerabilities associated with federal actions. The president should immediately issue ¶ an Executive Order mandating such assessments for all federal actions. These assessments should include a minimum of three components: ¶ ƒ A quantitative analysis of a federal action’s direct and indirect contributions to ¶ greenhouse gas emissions¶ ƒ An evaluation of the consequences of changing climatic conditions for a federal action¶ ƒ Consideration of alternative actions and mitigation measures that could reduce ¶ greenhouse gas emissions and climatic vulnerability ¶ For each step, the assessment protocols and procedures should be selected and, when ¶ necessary, developed through open, collaborative processes involving key public and ¶ private sector stakeholders. ¶ Quantify and Disclose Greenhouse Gas Emissions¶ Federal agencies should be required to understand how their actions affect greenhouse ¶ gas emissions. Techniques for the assessment of greenhouse gas emissions will vary ¶ between federal actions, and many public and private groups are developing protocols ¶ and procedures for emissions accounting in different circumstances.¶ 9¶ Agencies will require guidance from the CEQ in the selection and, when necessary, ¶ development of protocols and procedures to guide comprehensive, quantitative assessments of greenhouse gas emissions for every action subject to NEPA. The process used ¶ to select protocols and procedures for use with NEPA should be explicitly designed to ¶ inform efforts to reduce emissions directly and indirectly associated with governmental actions—not simply to assign ownership of the emissions. These protocols should ¶ ensure that assessments provide transparent, reproducible, and scientifically-defensible ¶ estimates for direct and indirect emissions.

**The federal government should use NEPA for environmental impact assessments to solve global warming.**

**Pyke and Batten 8**

(Christopher and Kit, writers for American Progress, “Full Disclosure¶ An Executive Order to Require ¶ Consideration of Global Warming Under ¶ the National Environmental Policy Act”, American Progress, <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 greenhouse gas emissions and vulnerability to the effects of global warming. These actions ¶ provide opportunities to reduce emissions and prepare for changing climatic conditions—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 consideration 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.