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OVERSIGHT OF THE COUNCIL ON ENVIRONMENTAL QUALITY: A YEAR IN REVIEW

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

MAY 11, 2022

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ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

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OVERSIGHT OF THE COUNCIL ON ENVIRONMENTAL QUALITY: A YEAR IN REVIEW

WEDNESDAY, MAY 11, 2022

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The Committee, met, pursuant to notice, at 10 a.m. in room 406, Dirksen Senate Office Building, Hon. Thomas R. Carper (Chairman of the Committee) presiding.

Present: Senators Carper, Capito, Cardin, Whitehouse, Markey, Kelly, Padilla, Inhofe, Cramer, Lummis, Wicker, Sullivan, and Ernst.

OPENING STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. Good morning, everyone. I am pleased to call this hearing to order.

I want to begin by welcoming our witness, Brenda Mallory, Chair of the Council on Environmental Quality, back before our Committee today. We appreciate your being here to discuss the CEQ's work since your confirmation last year.

Some of you have heard me, and she has heard me say this before, but I know one Delawarean who has been the Chair of the Council on Environmental Quality. He is a former Governor, a Republican, and he had been a leader at the DuPont Company and became Governor of Delaware. When Richard Nixon was President, and later, Gerald Ford, they nominated Russ Peterson, who served under two Presidents as Chairman of CEQ.

I used to ask, when I was in the State Treasury, I used to ask, Governor Peterson, just what did you do when you were chair of CEQ? He used a music analogy. He said, it is like, when you are CEQ chairman, you are the orchestra leader, and you have an orchestra with many people playing instruments. They make different sounds. But the idea of the chair of CEQ is to make sure that the different pieces that have, and the government have, just like musical instruments, to make sure that they play in harmony. That is the way he described it to me. I think it is a pretty apt description, so the orchestra leader here today is Brenda Mallory.

We welcome you.

We also thank you for celebrating Earth Day with us in Delaware last month. Your visits to Delaware State University and Delaware Technical Community College made a real impact on everybody we met, especially the kids, large and small. They ran the gamut, everything from kindergarten to doctoral programs at Dela-

ware State University. And you are welcome to visit us in Delaware at any time. Thanks for coming.

Since the moment that he took office, President Biden has made leading our country out of the greatest economic downturn since the Great Depression, as well as addressing climate change and advancing environmental justice, top priorities of his Administration. The role that CEQ plays in achieving these goals cannot be overstated, but it is not well understood by a whole lot of people.

CEQ ensures, and I mentioned earlier, that Federal agencies work in harmony to protect our environment and to improve public health, which is critical to creating a nurturing environment for job creation and job preservation. We are always interested in how to create, we don't create jobs in what we do, but we help create that nurturing environment, and CEQ plays a vital role.

With more than 8 million Americans back to work since President Biden took office, that is a lot of people working who weren't working a year ago, it is clear that CEQ's urgent work is not stymying economic growth.

Earlier this year, the Fourth National Climate Assessment made clear that nations throughout the world must dramatically and urgently reduce emissions if we are to avoid the most devastating impacts of climate change. Driving to the train station this morning, I was hearing the kinds of problems that they are having in New Mexico with fires, wildfires. Really devastating stuff. That is just another example of what we face.

These impacts are already being felt in communities in the United States and across our planet, showing us just how vulnerable we are to climate change and extreme weather. Just last week, I don't know about where you all live, but on the East Coast, we had 4 days of rain. We saw some of that in Washington, and it produced flooding in places where, frankly, it doesn't flood a whole lot, including Delaware.

Prior to that, in the last year alone, we witnessed record heat waves in Oregon, where only a third of households have air conditioning. Think about that. Wildfires burned millions of acres in California, Montana, Arizona, and other western States.

The same hurricane that knocked out access to power and water for a million people in Louisiana and Mississippi then went on up the East Coast to produce flash floods in New Jersey and New York. People there actually drowned in those places, especially in New York, actually drowned in their basements, unable to escape the torrent of floodwater.

According to the National Oceanic and Atmospheric Administration, damages from last year's disasters totaled roughly \$145 billion, \$145 billion. That is just in 1 year. So it is becoming increasingly clear that the Administration's focus on climate change is both timely, and I believe, critical.

Addressing the longstanding environmental inequities in our Nation is equally important and also linked to climate change. We know that while climate change threatens to disrupt all communities and affects all aspects of our economy, it poses unique threats to communities that are already vulnerable.

In other words, Americans living in lower income and marginalized communities have less ability to prepare for and re-

cover from extreme weather. The least among us have the most to lose from inaction on climate.

That is why our Federal agencies need to address these twin goals of climate action and environmental justice together. Fortunately, we have an important tool to improve Federal analysis and decisionmaking, and that is the National Environmental Policy Act, known as NEPA.

NEPA established the Council on Environmental Quality in 1969. This was done in part to provide agencies with high quality information on the environmental effects of their proposed actions. Over the years, we have made a number of adjustments to NEPA. It is not exactly the same as it was in 1969. We have made some tweaks, I hope improvements, ensuring that the law functions as intended while also not being overly burdensome to industry.

Earlier this year, CEQ finalized revisions to the rule that implements NEPA. This restored critical protection under NEPA and also provided agencies and other stakeholders with greater certainty as they begin to implement the programs created under the Bipartisan Infrastructure Law, which has its roots, its origins, literally in this room, in this Committee. These revisions will ensure that agencies consider the cumulative impacts of a project, such as the implications for climate change and the question of whether the impact is on a community that is already vulnerable.

CEQ also has been coordinating efforts across the Federal Government to improve the Federal permitting process for clean energy technologies, such as carbon capture and sequestration, something that several of us are very much interested in. Today, we look forward to hearing more about those efforts from our witness.

I would also be remiss if I didn't set the record straight with respect to the Biden administration's policy actions and gas prices in our country, something about which there is a fair amount of controversy, as we know. The last time I checked, the United States is still the top oil and gas producer in the world, producing more than we consume. With more than 9,000 unused, approved permits to drill offshore, the oil and gas industry, not the Federal permitting process, bears more than a little responsibility for the current level of domestic production. But we can get into more of that later.

In addition to its permitting efforts, CEQ has also been hard at work delivering on the Administration's promise to prioritize environmental justice and equitably distribute the benefits of climate actions. As part of that effort, CEQ has released a draft version of its Climate and Environmental Justice Screening Tool, helping agencies to better identify underserved or overburdened communities. And they have also recently hired, I believe, a new Director of Environmental Justice to oversee this important work.

CEQ has also established sustainability goals for Federal buildings and other Federal procurements and launched a \$1 billion effort, known as the America the Beautiful Challenge, the America the Beautiful Challenge, to support conservation and restoration projects on Federal lands. All of this demonstrates, I believe, the Administration's commitment to leading by example when it comes to doing what is good and what is right for our planet.

So, we are looking forward to hearing from you, Madam. Do people call you Chair Mallory? What is your official title?

Ms. MALLORY. Yes, they do say Chair, if I am not able to stop them.

[Laughter.]

Senator CARPER. All right, Ms. Mallory, we are delighted at the critical efforts that you are leading and whether CEQ has the resources it needs to effectively carry out your work.

Before we do that, I turn it over to our Ranking Member for opening remarks and get us started.

We have a Delawarean, Greg Williams, who has been nominated to serve on a Federal District Court in Delaware. I am introducing him in about 5 minutes on the Judiciary Committee, so I will rejoin you shortly. In the meantime, I leave you in good hands. Thanks so much.

**OPENING STATEMENT OF HON. SHELLEY MOORE CAPITO,
U.S. SENATOR FROM THE STATE OF WEST VIRGINIA**

Senator CAPITO [presiding]. Thank you, Mr. Chairman. Thank you for leaving me in charge, and thank you for holding today's hearing to conduct oversight on the Council on Environmental Quality, CEQ, and thank you for coming to be with us today, Chair.

I know that both you and I are very proud of this Committee's monumental achievement of developing and reporting surface transportation and drinking and wastewater legislation unanimously last year. And we are also very proud that when those bills became law at the end of the last year as part of the Infrastructure Investment and Jobs Act, IIJA, and soon, hopefully, our WRDA legislation, which we passed last week out of Committee unanimously, will also join that IIJA into law.

A top priority for all of us in the Committee is to make sure the programs and authorizations we carefully negotiated move from being words on a page to projects on the ground. If IIJA is implemented as Congress intended, we will develop modern roads and bridges to connect rural communities, critical water infrastructure projects to create access to clean water, improvements to our transmission system to ensure access to reliable and affordable power, and the development of natural gas pipelines and other energy projects to ensure fuel for both here and exports abroad, a need that has been made all the more real by the Russia war in Ukraine.

The funding and authorizations provided by IIJA will propel development. But those projects must also complete environmental reviews and secure Federal permits before shovels can actually go in the ground.

In that legislation, we also recognized that the status quo for NEPA reviews and permitting has been unacceptable, so a 2020 CEQ report found that the average environmental impact statement took 4 and half years to be completed. We know that some projects can take up to 10 years to get through the NEPA permitting process.

Congress explicitly directed streamlining of environmental reviews for transportation projects, particularly by codifying the One Federal Decision policy for certain transportation projects. That

policy recognizes that delays caused by a never ending environmental review process can kill or stifle projects and investment.

IIJA puts in place a common sense guidepost that NEPA reviews for major transportation projects will take no longer than 2 years, and all environmental permits and other project authorizations should follow within 90 days after that. A clear project timeline will help to plan, finance, and construct transportation projects within the 5 year authorization window for the Federal Highway programs.

Congress's clear intent, both in the highway bill and in other portions of the IIJA, such as the permanent reauthorization of the Federal Permitting Improvement Steering Council, was to ensure projects are completed faster so that the American people can benefit from the investments.

As the agency charged with overseeing implementation of the NEPA Act, as well as the agency that serves as an environmental coordinating hub Administration-wide, CEQ can play a unique and instrumental role in implementing Congress's goals.

CEQ could institute environmental review and permitting efficiencies that can make the IIJA implementation a success. I will say that nothing that I have seen coming out of CEQ assures me that this is what is going to happen. Certainly, improving NEPA efficiency does not appear to be a priority.

Instead, CEQ seems very busy implementing executive orders that direct CEQ to manage and develop countless new Administration led policies not authorized in statute, from coming up with an environmental justice screening tool to be employed Administration-wide to managing new Federal efforts to transition all Government cars to electric vehicles in an unrealistic timeframe.

CEQ is bogged down with activities imposed by the President unilaterally, and even then, CEQ can't even keep up with the President's own timelines. For example, the draft environmental justice tool was not released until this February, which is actually 5 months after the President's self-imposed deadline. In the meantime, CEQ has not provided, I don't think, adequate attention to actually implementing NEPA.

The one major action related to NEPA CEQ has taken I do not believe will speed up projects. Last month, the CEQ rolled back three key reforms made to NEPA under the Trump administration. CEQ proposes to put the Federal Government in charge of deciding a project's purpose and need. CEQ would encourage individual Federal agencies to layer on additional review requirements, and CEQ is directing agencies to bring in cumulative and indirect impacts that will have the effect of putting the thumb on the scale against certain projects. In doing so, CEQ has only amplified ambiguity and uncertainty that we are trying to get around within the NEPA review process, which will slow down our project delivery.

The opposition from project developers across industries, from roadbuilders to energy producers, has been swift and emphatic. Their message is clear: Why is CEQ making the NEPA process more difficult, not faster and clearer? CEQ has shown no willingness to expedite the review and permitting review process for CCUS, as directed by Congress in the USE IT Act. CEQ has provided guidance that largely serves to present alleged pros and cons

of CCUS and fails to provide concrete direction to Federal agencies to actually expedite CCUS projects. That is disappointing to me, as somebody who is a big supporter of that, and telling, that even with respect to projects that are clearly necessary to the Administration's well publicized climate goals, CEQ is apparently unwilling to propose reforms that could cut that red tape.

Chair Mallory, thank you for coming today to discuss some of the issues that I have brought up. I am sure you will. This could not be a more important time for this discussion. Just this morning, the Administration has released an action plan for expediting permitting decisions, and I look forward to learning more about that plan, as well as how the Administration will implement the project delivery improvements enacted by Congress.

The actions the Administration takes now concerning environmental review and permitting will determine the implementation of the IIJA, the USE IT Act, and other recent legislation, how it delivers to the American people the infrastructure improvements that Congress intended and that they deserve.

I look forward to today's hearing, and I will turn it over to you, Chair, for your opening statement.

**STATEMENT OF HON. BRENDA MALLORY,
CHAIR, COUNCIL ON ENVIRONMENTAL QUALITY**

Ms. MALLORY. Thank you, Senator Capito, and also thank you to Chairman Carper. It is a pleasure to be here.

Chairman Carper, Ranking Member Capito, and members of the Committee, I appreciate the opportunity to appear before you today. Last month marked 1 year since I was confirmed by this body. Since then, my staff and I have been working on behalf of President Biden and the American people to find common sense solutions to the environmental challenges that families face in their daily lives.

I have been fortunate to meet with a number of you to understand your priorities so that we can work together to deliver cleaner air, water, and lands to the American people. Serving in this role is an honor, and I am grateful to the President and to you for placing your faith in me.

In my travels over the past year, I heard from residents of one of Michigan's most polluted areas, from communities in Delaware, to families in New Orleans, and neighbors in Tampa, all of whom live in the shadow of polluting industries. These communities have been coping for decades with toxic pollution in the air they breathe and water they drink.

President Nixon once said, clean air, clean water, open spaces: These should once again be the birthright of every American. Indeed, the mission of safeguarding clean air and clean water has long been a shared American value. This value grounds our work at CEQ.

Every person in this country should be able to expect clean water from their tap or well. That is not the reality for far too many communities. Every person in this country should be able to expect that air they breathe won't make them sick. That is also not the reality for far too many communities.

For too long, we have failed to deliver on these basic protections. That is why our environmental justice work in the Biden-Harris administration is so important. While our work is far from over, I am proud of the work we have done so far to set the foundation to tackle a legacy of injustice. Together with Congress, we have begun the hard work of alleviating the environmental burdens that so many communities experience through unprecedented investments in the Bipartisan Infrastructure Law, many of which were unanimously supported by this Committee.

We are replacing lead pipes, accelerating Superfund cleanups, cleaning up abandoned mines and oil wells, and protecting the most vulnerable communities from fires, floods, and storms. The impacts of these investments are not abstract. They are helping Americans right now.

The Bipartisan Infrastructure Law is also helping us to plan for the future. Thanks to this historic funding, we are going to be doing a lot more building in the next few years, from electric vehicle charging infrastructure to wind turbines and solar farms, to the transmission that will move this new, clean power.

The question we are grappling with is, how will we build faster and better? How will we build so that we protecting communities while growing our clean energy economy at the pace required by the climate crisis?

This morning, we released a permitting action plan that tackles this challenge in four ways. First, we will set clear timelines for the projects to get reviewed and permitted. Second, we will use public dashboards so that everyone can track where projects stand in the process, including nearby communities. Third, we will hire more staff in the offices that are doing the hard work of permitting and reviews. And fourth, we will use the old saying, measure twice, cut once. Smart and early design, analysis, and public input save time by avoiding conflict, litigation, and waste.

I want to close by saying that the investments that President Biden and Congress made will deliver a cleaner environment for generations to come, but we also need Congress's continued help to transition to clean energy at the pace and scale required to meet the challenge of climate change.

The Bipartisan Infrastructure Law puts us on the right path, but there is still more work to be done. The clean energy provisions the Senate is considering would help cleanup and reduce carbon emissions in the power and transportation sectors while cutting energy costs for American families.

Thank you for the opportunity to testify today, and I look forward to answering your questions.

[The prepared statement of Ms. Mallory follows:]

TESTIMONY OF
BRENDA MALLORY
CHAIR
COUNCIL ON ENVIRONMENTAL QUALITY

BEFORE THE
U.S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

May 11, 2022

Chairman Carper, Ranking Member Capito, and members of the Committee, I appreciate the opportunity to appear before you today to discuss the work we are doing at the Council on Environmental Quality (CEQ), and across the Biden-Harris Administration, to improve the health of the environment in which Americans live, learn, work, pray, and play.

Last month marked one year since I was confirmed by this body, and since then my staff and I have been working, on behalf of the President, to find common sense solutions to the environmental challenges that families are facing in their daily lives—from toxic chemicals that are seeping into their drinking water to the dangers of worsening fires, floods, and storms.

In my travels over the past year, I heard from residents of Detroit's 48217 zip code—one of Michigan's most polluted areas—who live in the shadow of multiple industrial plants and are coping with pollution upon more pollution being loaded into the air they breathe.

I spent time in Louisiana where I saw the extraordinary impact of coastal restoration projects that are helping rebuild the health and productivity of the Mississippi River delta, restoring livelihoods to fishing communities that depend on these wetlands, and protecting homes and communities from increasingly more intense storms and flooding.

And I saw the remarkable work that the Yurok Tribe is doing to conserve and restore California's redwood forests, to better protect these old forests and nearby communities from catastrophic fires, and create more habitat to rebuild salmon and steelhead stocks.

I have also been fortunate to meet with many of you to understand your priorities as I work side-by-side with our agencies to help deliver cleaner air, water, and lands to the American people. The work we have begun to do over the past year has been an honor, and I thank the President and you for placing your faith in me.

While our work at CEQ is expansive, my testimony will focus primarily on: the bipartisan work and accomplishments of this Committee and Congress, in partnership with the Biden Administration; the steps CEQ is taking to advance efficient and effective permitting of transformational clean energy and infrastructure investments; and the critically important work that lies ahead.

Bipartisan accomplishments and partnership

President Nixon once said, “Clean air, clean water, open spaces—these should once again be the birthright of every American.” He later went on to sign into law the Clean Air Act and the National Environmental Policy Act, which created the organization I am honored to chair today. Indeed, the mission of safeguarding clean air and clean water has long been a shared American value.

While our work is far from done, I applaud this Committee’s leadership in tackling these important issues. In a short time, this Committee led the development of historic bipartisan legislation that will phasedown hydrofluorocarbons (HFCs), a greenhouse gas hundred to thousands of times more potent than carbon dioxide. In addition, the Bipartisan Infrastructure Law, which makes transformative investments in our clean energy future, includes major policies that were unanimously supported in this Committee. Those policies include major investments to get lead out of America’s drinking water, clean up the nation’s most contaminated lands, and deploy the electric charging infrastructure, electric buses, and other clean and affordable transportation options that consumers want and need.

The impacts of these investments are not abstract; they are helping Americans here and now.

For example, thanks to Congress and the President teaming up to pass the Bipartisan Infrastructure Law, every Superfund site that has been part of the backlog will now be cleaned up using that funding. Some of these sites have been waiting for years, and all too often they are located in low-income communities and communities of color. These sites include a neighborhood in Florida with soil contaminated from treating wooden telephone poles, a former copper mine in Maine laced with leftover metals, and an old steel manufacturer in southern New Jersey where parts of the Golden Gate Bridge were fabricated. The cleanup of these sites is now possible because of you.

In Greensboro, North Carolina, investments are being made today to help secure electric buses and replace older buses that have exceeded their useful life. This is part of a broader effort supported by the Bipartisan Infrastructure Law to fund 70 projects in nearly 39 states. Together, we are securing cleaner air for children and thousands of bus drivers who breathe polluted air on their rides to and from school. We will create good jobs along the way in advanced manufacturing and in clean energy.

Advancing efficient and effective permitting

There is a long history of taxpayer dollars being wasted on poorly designed projects: of buildings built in flood plains, and then washed away; of Black and brown neighborhoods being bulldozed to make way for a new highway, without their voices and perspectives being heard.

There is also a history of delays that can slow and discourage projects and investments: of agencies using complicated processes; of documents that get backed up in understaffed offices.

These are some of the reasons why CEQ was proud to recently finalize a narrow rulemaking that will restore clarity to the environmental review process by affirming that agencies need to assess direct, indirect, and cumulative impacts of decisions and projects. In addition to bringing the rule

back to long-standing practice and procedures, our changes ensure the investments in the Bipartisan Infrastructure Law can be made more efficiently and with the appropriate public engagement.

Our expectation is that the rule will not cause delays to projects. In fact, by reducing conflict and litigation, it will likely result in projects getting completed faster, not slower. And the rule we implemented keeps in place recently established timelines for completing environmental reviews.

We are also working to ensure that key offices responsible for these reviews are appropriately staffed so that there aren't pinch-points in the process. The President's budget request for Fiscal Year 2023, for example, requests additional resources for Section 7 consultations at the U.S. Fish and Wildlife Service and NOAA, so that projects requiring Endangered Species Act consultations receive timely attention.

Areas of focus for continued partnership

In addition to the progress that the Administration and Congress are making to modernize America's infrastructure and build a clean energy future, I want to highlight two areas that deserve additional attention and focus.

First, we must stay laser-focused on ensuring that every single person in America has clean water to drink, clean air to breathe, and a healthy environment in which to live, learn, work, play, and pray. Yet—still—these essentials are out of reach for too many people. Communities of color, economically disadvantaged communities, Tribal Nations and indigenous peoples, and rural communities are shouldering a disproportionate share of the nation's pollution burden and climate change risks.

That is why the President has made the pursuit of environmental justice central to his environmental and climate agenda.

Through the Justice40 Initiative, we are working to ensure that the benefits of Federal climate and clean energy programs reach communities that have been left out for far too long. At CEQ, we are developing a Climate and Economic Justice Screening Tool that, based on pollution data and climate risks, helps identify which communities are disadvantaged and should be prioritized under the Justice 40 program.

I am also proud of the work that the Administration is doing to ensure that the voices of communities with environmental justice concerns are heard at all levels of government. We have created the White House Environmental Justice Advisory Committee, composed of community leaders and environmental justice experts, to help provide input on the Administration's whole-of-government approach to environmental justice.

At CEQ, we have created our own first-ever environmental justice program, and several other agencies are expanding and strengthening their own environmental justice programs.

We need Congress's continued help as well. The provisions in the proposed Build Back Better legislation, for example, would help clean up and reduce carbon emissions in the power and

transportation sectors. The bill would also invest \$3 billion into Environmental Justice and Climate Justice Block Grants. These grants will support community-led projects that address environmental and public health harms related to pollution and climate change. The legislation would also expand low-income housing, strengthen public transit, and cut the pollution that threatens our water and air.

In addition to confronting environmental justice, we must do more to confront the decline of biodiversity. For our country to be healthy and prosper, we need nature. It supplies the clean air we breathe, the water we drink, and the food we eat.

For that reason, I am grateful for the progress this Committee and Congress are making in conserving and restoring America's lands, waters, and wildlife. I applaud the Committee for your focus on developing legislation that will help recover America's imperiled wildlife and to build on America's proud, bipartisan stewardship traditions.

Through the President's America the Beautiful Initiative, the Administration is also committed to doing everything we can to support locally led conservation efforts across the country—from helping make Federal conservation grants and programs more accessible to states, Tribes, private landowners, and local communities to partnering with western governors to conserve major wildlife migration corridors.

Conclusion

CEQ is hard at work delivering on the President's commitment to protect our health, our environment, and our communities. The investments that you—Congress—have made are helping us ensure the benefits of a cleaner environment for all Americans for generations to come.

Thank you for the opportunity to testify today. I look forward to our continued partnership and welcome any questions you may have.

Chairman Carper:

1. One of the best ways the federal government can address climate change and bring down energy costs for all Americans is by using the federal government purchasing power. When the federal government invests in cleaner and more efficient technologies, it saves taxpayers dollars in energy costs and sends the right market signals to help lower energy costs for all. How is CEQ helping to ensure the federal government is buying clean and efficient across all our agencies? What more could be done and how can Congress help?

During his first week in office, President Biden issued Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad,” in which he called on the Federal Government to use its purchasing power to lead the Nation’s effort to combat the climate crisis head-on by transitioning to zero-emission vehicles, carbon pollution-free energy, and sustainable infrastructure in federal agencies, public lands, and offshore waterways. 86 Fed. Reg. 7,619 (Feb. 1, 2021). In December of last year, President Biden signed Executive Order 14057, “Catalyzing Clean Industries and Jobs through Federal Sustainability,” which, along with our Federal Sustainability Plan, outlined how the Federal government will leverage its scale and procurement power to lead by example in tackling the climate crisis, reducing emissions across federal operations, investing in American clean energy industries and manufacturing, and creating clean, healthy, and resilient communities. 86 Fed. Reg. 70,935 (Dec. 13, 2021). The President’s executive order directs the Federal government to use its scale and procurement power to achieve five ambitious goals:

- i. “100 percent carbon pollution-free electricity [CFE] on a net annual basis by 2030,” at least half of which will be locally supplied clean energy to meet 24/7 demand;
- ii. “100 percent zero-emission vehicle [ZEV] acquisitions by 2035, including 100 percent zero-emission light-duty vehicle acquisitions by 2027;
- iii. [A] net-zero emissions building portfolio by 2045, including a 50 percent emissions reduction by 2032;
- iv. Net-zero emissions from overall federal operations by 2050, including “a 65 percent reduction in scope 1 and 2 greenhouse gas emissions...by 2030 from 2008 levels;”
- v. [N]et-zero emissions from Federal procurement,” no later than 2050, “including a Buy Clean policy to promote use of construction materials with lower embodied emissions;” § 102.

The Office of the Federal Chief Sustainability Officer within CEQ is (1) leading interagency implementation to achieve these goals¹ and (2) coordinating with the Office of Management and Budget and other key agencies on a whole of government approach to ensure how we build, buy, and manage our assets, accelerates the transition to clean, efficient, and low carbon products and technologies. The Administration welcomes engagement with Congress on legislation that facilitates

¹ Per the directive from section 501 of Exec. Order 14057.

and supports agency action to achieve these goals, and ensures they have the necessary authorities and funding for implementation.

2. I have expressed significant concerns about the U.S. Postal Service's new purchase of internal combustion engine vehicles that are barely more efficient than the 25-year-old vehicles they have today, and the comparatively small number of electric vehicles they have committed to purchasing. You recently sent the Postal Service a letter voicing your concerns about this decision and the environmental analysis that informed that decision. Could you please elaborate on the issues you've identified with how the environmental review was conducted and any concerns you may have with the data underlying their analysis?

CEQ believes that the Next Generation Delivery Vehicles (NGDV) present a critical opportunity to harness modern clean technology, reduce pollution, improve health, and sustain American competitiveness in the coming decades. NGDV would allow USPS to achieve up to 70% electrification of its fleet, which would have widespread benefits to public health, in tackling the climate crisis, and in strengthening American competitiveness.

In February, I sent a letter to Postmaster DeJoy expressing concerns with the USPS's environmental review process for the NGDV. I joined the EPA in urging the USPS to complete a supplemental environmental impact statement (SEIS) to remedy the deficiencies in the agency's previous environmental review and to make a decision that is grounded on sound legal footing. Early this month, the USPS announced its intention to complete an SEIS.

In addition, the recently passed Inflation Reduction Act included \$3 billion in funds for the Postal Service to purchase zero-emission delivery vehicles and to purchase, design, and install the infrastructure necessary to support those vehicles. This will have a transformative effect on the Postal Service fleet.

3. As you know, PFAS is a forever chemical that is found in drinking water across the country. PFAS is an issue that is of top concern for many of my colleagues, including myself and the Ranking Member. That's why I was so pleased President Biden directed all federal agencies through Executive Order to purchase substitutes for PFAS-containing products. It is my understanding that CEQ instructions to agencies to help implement this Executive Order were due mid-April, but were delayed. When do you think this guidance will be available?

CEQ issued implementing guidance as required by Executive Order 14057 to agencies on August 31, 2022.

4. If we are going to meet our climate goals, we must develop and deploy innovative technologies aimed at cleaning up industrial practices, which includes investments in direct air capture and other carbon capture, utilization, and storage (CCUS) technologies that remove and store carbon pollution already released into the atmosphere. As CEQ works to implement the Utilizing Significant Emissions with Innovative Technologies (USE IT) Act and develop the framework to help guide CCUS deployment in a manner that is environmentally sound and cuts cumulative pollution in nearby communities, how is CEQ working to ensure that the communities most burdened with the impacts of carbon pollution have a voice in the deployment of this technology?

CEQ recognizes the importance of Carbon Capture, Utilization, and Sequestration (CCUS) technology in reducing pollution and achieving a net-zero future. Further, CEQ recognizes the vital role of the Federal government in ensuring CCUS projects are done properly and in a manner that reflects the input and needs of local communities.

To help achieve these goals, CEQ issued guidance earlier this year that will help inform Federal agencies approaches to reviewing and permitting CCUS projects. In particular, the guidance we issued emphasizes the need for consultation with Tribal Nations, engagement and transparency with stakeholders and local communities, and the incorporation of environmental justice and equity considerations early into the review and design of CCUS projects.

5. Would you elaborate on how CEQ is working with local communities to implement the America the Beautiful initiative? Would you also share with the Committee how this initiative is supporting voluntary conservation efforts?

To meet the moment, the Biden-Harris administration has launched America the Beautiful, a decade-long challenge to pursue a locally led and voluntary, nationwide effort to conserve, connect, and restore the lands, waters, and wildlife upon which we all depend. The initial report released in May 2021 outlines the key principles that will guide our conservation efforts, including:

- **Pursuing a collaborative and inclusive approach to conservation;**
- **Conserving America's lands and waters for the benefit of all people;**
- **Supporting locally led and locally designed conservation efforts;**
- **Honoring Tribal sovereignty and supporting the priorities of Tribal Nations;**
- **Pursuing conservation and restoration approaches that create jobs and support healthy communities;**
- **Honoring private property rights and supporting the voluntary stewardship efforts of private landowners;**
- **Using science as a guide; and**
- **Building on existing tools and strategies with an emphasis on flexibility and adaptive approaches.**

To deliver on these priorities, CEQ started its work by listening to communities. First, CEQ, in coordination with the Departments of the Interior and Commerce, held two virtual Tribal consultation sessions on October 26 and 28, 2021, and received written comments from September 27, 2021, to November 23, 2021. These opportunities were provided with the intent of engaging with Tribes and Tribal leaders to better understand their needs, interests, and best ways to work together on the America the Beautiful initiative. A document that summarizes the thoughtful individual written and verbal responses CEQ received from these consultations can be read [here](#)²: [CEQ Summary of Tribal Consultations on America the Beautiful | The White House](#).³

Second, CEQ participated in and supported three public listening sessions in winter of 2022 with DOI, NOAA and USDA, which heard from 200 unique speakers and received 34,500 comments through the Federal Register notice Request for Information. This information, garnered from communities, land owners, Tribes, states and NGOs, has all helped to develop projects and investments aligned with the key principles of the America the Beautiful Initiative.

To that end and delivering on the principles and the input received, in April of this year, the Biden-Harris Administration launched the America the Beautiful Challenge which aims to dedicate \$1 billion to support and accelerate locally led, voluntary conservation and restoration projects led by local communities across the country. *See [Biden-Harris Administration Launches \\$1 Billion America the Beautiful Challenge](#)*, THE WHITE HOUSE (Apr. 11, 2022). The America the Beautiful challenge works to streamline the grant application and facilitation process as it creates a one-stop-shop for States, Tribes, territories, local groups, and non-governmental organizations to apply for multiple grant programs through a single application managed by the National Fish and Wildlife Foundation (NFWF). *See [America the Beautiful Challenge](#)*, NAT'L FISH & WILDLIFE FOUND. This streamlined process responded to the request of communities reduce application burdens on states, Tribes, communities and other interested parties.

All funds awarded through this Challenge will support locally led, voluntary conservation efforts identified as priorities by communities. Applications were received from all 50 states as well as Puerto Rico and a suite of territories. In addition, over 130 Tribes applied, nearly a quarter of all applicants.

6. As you know, early identification of any impacts that can be avoided or need to be mitigated is one of the best ways to ensure projects can proceed efficiently, while still protecting critical environmental resources. Are there any actions the Biden administration is taking today to help the federal government identify impacts earlier in the permitting process? If CEQ were provided with additional resources, what tools, shared data and maps, project management systems, or other activities could CEQ

² CEQ, *Executive Summary: Tribal Comments* (2021), <https://www.whitehouse.gov/wp-content/uploads/2022/03/Atb-Tribal-Consultation-Summary.pdf>.

³ See also, *CEQ Summary of Tribal Consultations on America the Beautiful*, THE WHITE HOUSE (March 21, 2022), <https://www.whitehouse.gov/ceq/news-updates/2022/03/21/ceq-summary-of-tribal-consultations-on-america-the-beautiful/>.

support that would help to facilitate early detection and avoidance of protected resources, and help to improve interagency coordination?

The National Environmental Policy Act (NEPA), enacted in 1969, is a cornerstone of our Nation's efforts to protect the environment and engage the public in governmental decision-making as it requires that proposed major Federal actions consider environmental impacts and reasonable alternatives. CEQ is responsible for providing policy direction and guidance to federal agencies for the efficient, transparent, and science-based implementation of NEPA.

Further, the Biden-Harris Administration is committed to deepening these commitments. On May 10, 2022, the White House announced the Permitting Action Plan. *[Biden-Harris Permitting Action Plan to Rebuild America's Infrastructure, Accelerate the Clean Energy Transition, Revitalize Communities, and Create Jobs](#)* THE WHITE HOUSE (May 10, 2022). The Action Plan works to (1) strengthen and accelerate the Federal permitting and environmental review process, (2) encourage agencies to engage in greater public input and consultation, and (3) establish clear timeline goals and a system of accountability and transparency. *Id.* at 1. This plan further works to create greater coordination across federal agencies to best complete this review and permitting goals. *Id.*

If CEQ were provided with additional resources, those resources would be focused on initiatives to further enhance the effectiveness, efficiency, and transparency of NEPA reviews, consistency of NEPA implementation across the agencies, and collaboration among agencies in the environmental review and permitting process so that Federal projects can be permitted soundly and efficiently. Resources could go to support additional expert staff at CEQ, technology, training, and more.

Senator Padilla:

1. How is CEQ is engaging – in a meaningful way – with Tribal Nations and other communities as part of the America the Beautiful effort? And more specifically, what is CEQ doing to get funding to communities so that they have the resources they need to actually develop conservation and restoration projects in partnership with the federal government?

The America the Beautiful initiative has put Tribal consultation and building Tribal capacity at the center of our efforts. There are three specific ways in which we have worked to support Tribal efforts through consultation. First, in order to better formulate our conservation actions as part of the [Conserving and Restoring America the Beautiful Report](#),⁴ CEQ, in coordination with the Departments of the Interior and Commerce, held two virtual Tribal consultation sessions on October 26 and 28, 2021, and received written comments from September 27, 2021, to November 23, 2021. These opportunities were provided with the intent of engaging

⁴ DOI ET AL., CONSERVING AND RESTORING AMERICA THE BEAUTIFUL (2021), <https://www.doi.gov/sites/doi.gov/files/report-conserving-and-restoring-america-the-beautiful-2021.pdf>.

with Tribes and Tribal leaders to better understand their needs, interests, and best ways to work together on the America the Beautiful initiative. A document that summarizes the thoughtful individual written and verbal responses CEQ received from these consultations can be read [here](#)⁵: [CEQ Summary of Tribal Consultations on America the Beautiful | The White House](#).⁶

Second, as part of the America the Beautiful Challenge, Tribal Nations that apply for and receive funding through that program will have no match requirement due to the support of both public and private partners. Due to this and the technical assistance from the National Fish and Wildlife Foundation and other partners during the application process, over 20 percent of applications received as part of the Challenge were from Tribal entities.

Finally, the Administration works closely with Tribal governments and advocates to understand what conservation actions and outcomes are important to them and supports Tribal conservation efforts, where and whenever possible. This has included, (1) the restoration of Bears Ears National Monument and the development of a co-management plan for the area, (2) the protection of Chaco Canyon from oil and gas extraction, (3) the protection of the Tongass National Forest, and (4) actions to protect the salmon that depend on the fresh waters of Bristol Bay.

2. What progress has the Buy Clean Task Force made and what is CEQ's role in ensuring the procurement of cleaner materials in projects funded by the Bipartisan Infrastructure Law?

CEQ and the White House Office of Domestic Climate Policy co-chair the first-ever interagency Buy Clean Task Force. This task force works to harness the Federal government's purchasing power to promote the use of construction materials with lower embodied emissions and pollutants in Federally funded projects, including those funded by the Bipartisan Infrastructure Law. The Task Force convenes regularly and is currently working on developing the recommendations directed under Executive Order 14057, which CEQ will consider in developing Buy Clean policy and guidance for agencies. *See* § 303, 86 Fed. Reg. 70,935 (Dec. 13, 2021). The Task force is tasked with developing recommendations regarding the following:

- Identifying priority pollutants and materials to be covered under a Buy Clean policy and mechanisms for collecting the necessary data for implementation;
- Financial and technical assistance to enhance manufacturer capabilities to report and reduce embodied emissions in priority materials they produce and to increase transparency of embodied emissions; and
- Pilot programs to incentivize Federal procurement of construction materials with lower embodied-emission materials.

⁵ CEQ, *Executive Summary: Tribal Comments* (2021), <https://www.whitehouse.gov/wp-content/uploads/2022/03/Atb-Tribal-Consultation-Summary.pdf>.

⁶ *See also*, *CEQ Summary of Tribal Consultations on America the Beautiful*, THE WHITE HOUSE (March 21, 2022), <https://www.whitehouse.gov/ceq/news-updates/2022/03/21/ceq-summary-of-tribal-consultations-on-america-the-beautiful/>.

As the Task Force continues its work, pilot efforts are already underway. On March 30, 2021, the General Services Administration (GSA) issued agency “Buy Clean” standards for the concrete and asphalt used in GSA construction, modernization, and paving projects. See [GSA, P100: Facilities Standards for the Public Buildings Service \(2021\)](#). These GSA Buy Clean standards are the first in the United States to apply beyond a local jurisdiction.

3. Do the Administration’s PFAS commitments have the funding needed to stay on track?

Consistent with the Biden-Harris Administration’s commitment to following the science in addressing the risk of PFAS and other contaminants of emerging concern, and to ensure clean air, clean water, and safe food, the Administration was proud to work with Congress to pass the Bipartisan Infrastructure Law, which includes \$10 billion in funding to address emerging contaminants, including PFAS, through EPA’s State Revolving Funds and through drinking water grants to small or disadvantaged communities. Further, President Biden’s fiscal year (FY) 2023 budget includes approximately \$126 million to the EPA to research, restrict, and remediate PFAS. The Biden-Harris Administration will continue to work with Congress to secure critical funding for agencies across the federal government to prevent PFAS from entering the nation’s water, air, land, and food; clean up PFAS pollution and hold polluters accountable; and accelerate research and development on PFAS science and solutions.

4. How is the Administration prioritizing PFAS clean-up for environmental justice communities?

We recognize that low-income, disadvantaged, and communities of color may be disproportionately impacted by pollution and environmental hazards. To address this historic and present injustice, the Biden-Harris Administration is implementing the Justice40 Initiative, which aims to ensure that 40 percent of the overall benefits of certain Federal investments reach disadvantaged communities. Federal agencies are working to gather data to better determine if and where PFAS contamination is disproportionately impacting environmental justice communities. For example, EPA’s fifth Unregulated Contaminant Monitoring Rule will require monitoring for 29 PFAS in thousands of drinking water systems nationwide beginning in 2023..

Also, as noted above, the Bipartisan Infrastructure Law includes \$10 billion in funding to address emerging contaminants, including PFAS, through EPA’s State Revolving Funds and through drinking water grants to small or disadvantaged communities. These programs will facilitate investments in monitoring and treatment in communities and water systems, and more than half of these funds will be targeted to small or disadvantaged communities.

Ranking Member Capito:

1. Executive Order 14057, entitled “Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability,” instructs CEQ to create a working group on “zero-emission vehicle fleets” and oversee the federal government’s goal to acquire 100 percent zero-emissions light-duty vehicles by 2027, as well as reach 100 percent zero-emissions vehicle acquisitions by 2035. Does CEQ or the “Zero-Emissions Vehicle Fleets” working group plan to study and quantify the volume of critical minerals that would be required to meet this goal?

Executive Order 14057 and the Federal Sustainability Plan aim to establish the Federal government as a leader in clean transportation and accelerate a transition to a 100% zero-emission vehicle fleet. The Executive Order, along with OMB Memorandum M-22-06 directing agencies on implementation, establish targets for Federal agency acquisition of zero-emission vehicles, and requirements for installation of charging infrastructure. § 508, 86 Fed. Reg. 70,935 (Dec. 13, 2021); OMB, [Memorandum M-22-06: Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability](#) (Dec. 8, 2021) [hereinafter OMB M-22-06]. The mandate of the Zero-Emission Vehicle Fleets Federal Leaders Working Group is to “provide recommendations on implementation of these zero-emission vehicle goals and report semiannually to the Federal Chief Sustainability Officer and the [National Climate Task Force] on its actions and progress.” OMB M-22-06, at I.C.4.

Successful implementation of the Federal Sustainability Plan will require the Federal government to work with American vehicle, battery, and charging equipment manufacturers and installers in order to become the largest zero-emission vehicle fleet in the Nation. CEQ continues to coordinate with agencies and components in the Executive Office of the President to monitor supply chain issues that might impact our ability to meet our zero-emission vehicle goals.

2. The International Energy Agency (IEA) estimates global demand for individual key minerals could increase between 700 percent and 4,200 percent by 2040.⁷ What is CEQ currently doing to address the shortage of domestic critical minerals?

CEQ and the Biden-Harris Administration are committed to both (1) developing a strong supply chain of domestically sourced critical minerals and (2) meeting strong environmental, sustainability, safety, Tribal consultation, and community engagement standards. Balancing these goals will help foster confidence within the American public that (1) the minerals and materials used in our electric vehicles, smartphones, solar panels and other technology are sourced under responsible

⁷ <https://iea.blob.core.windows.net/assets/ffd2a83b-8c30-4e9d-980a-52b6d9a86fdc/TheRoleofCriticalMineralsinCleanEnergyTransitions.pdf>

social, environmental and labor standards and (2) our shared natural resources for Americans will continue to be robustly available for future generations.⁸

To meet the demands of a clean energy economy and to reduce reliance on foreign adversaries, President Biden invoked the Defense Production Act which grants the Federal government greater funding and authority to secure the supply of critical materials necessary to produce key products like batteries, semiconductors, and permanent magnets. See [Fact Sheet: President Biden Takes Bold Executive Action to Spur Domestic Clean Energy Manufacturing](#), THE WHITE HOUSE (June 6, 2022). This action provides support for the production and processing of critical minerals, such as lithium, nickel, cobalt, graphite and manganese and rebuilds and maintains American expertise in these critical sectors. *Id.*

3. According to a 2015 National Mining Association study, the permitting timeline for mining operations is seven to ten years.⁹ This timeline is significantly longer than the permitting process in allied countries such as Canada and Australia. Do you believe seven to ten years is an acceptable average time to permit a critical mineral mine?

CEQ fully supports efforts to improve the efficiency and effectiveness of permitting, and is proud to be working with other agencies to advance the President's Permitting Action Plan [*Biden-Harris Permitting Action Plan to Rebuild America's Infrastructure, Accelerate the Clean Energy Transition, Revitalize Communities, and Create Jobs*, THE WHITE HOUSE (May 10, 2022).] As part of this Permitting Action Plan, CEQ is working, in particular, to help agencies set and meet clear timelines for completing environmental reviews, engage communities early in the design and review of projects, and reduce the likelihood of conflict and litigation, which can result in project delays. For these reasons, CEQ recently updated its NEPA regulations by making three targeted amendments that improve their clarity and efficiency. We look forward to continuing to work with other Federal agencies and stakeholders to improve the predictability, efficiency, and effectiveness of environmental review and permitting processes across the board, including for mining projects.

4. What actions is CEQ taking to expedite environmental review and permitting processes for US mines that produce critical minerals?

CEQ is proud to be helping support and advance the President's Permitting Action Plan, which aims to help improve the efficiency and effectiveness of environmental

⁸ *Biden-Harris Administration Fundamental Principles for Domestic Mining Reform* (Feb. 22, 2022), <https://www.doi.gov/sites/doi.gov/files/biden-harris-administration-fundamental-principles-for-domestic-mining-reform.pdf>.

⁹ <https://thehill.com/blogs/pundits-blog/energy-environment/247646-new-study-quantifies-how-much-mine-permit-delays-can/>

review and permitting processes, including for projects that aim to produce critical minerals.

It is also worth noting that President Biden recently invoked the Defense Production Act (DPA) with respect to strategic and critical materials. *See [Fact Sheet: President Biden Takes Bold Executive Action to Spur Domestic Clean Energy Manufacturing](#)*, THE WHITE HOUSE (June 6, 2022). The President's action gives Federal agencies more authority and resources to encourage the production of strategic and critical materials. The President's directive focuses, in particular, on providing support for the production and processing of minerals, such as lithium, nickel, cobalt, graphite and manganese necessary to produce key products like batteries, semiconductors, and permanent magnets. *Id.* CEQ and the Biden-Harris Administration are committed to addressing critical material shortages and doing so in a way that is environmentally sustainable, reflects Tribal consultation, and incorporates the perspectives and needs of affected communities

5. What role does the Buy Clean Task Force, created by Executive Order 14057, play in federal procurement decisions?

CEQ and the White House Office of Domestic Climate Policy co-chair the first-ever interagency Buy Clean Task Force, which works to harness the Federal government's purchasing power to promote the use of construction materials with lower embodied emissions and pollutants in Federally funded projects, including those funded by the Bipartisan Infrastructure Law. § 303, 86 Fed. Reg. 70,935 (Dec. 13, 2021).

The mandate of the Task Force is to provide recommendations to the Administration on (1) identifying priority pollutants and materials to be covered under a Buy Clean policy, (2) financial and technical assistance to enhance manufacturer capabilities to report and reduce embodied emissions in priority materials they produce and to increase transparency of embodied emissions; and (3) pilot programs to incentivize Federal procurement of construction materials with lower-embodied-emission materials. *Id.* These recommendations will inform development of additional policy, guidance, tools, and resources to assist agencies in procuring low carbon construction materials. Decisions regarding individual procurements are made at the agency level.

6. How is CEQ ensuring that task forces and working groups created by Executive Order 14057 will engage with all relevant stakeholders?

Stakeholder engagement is central to the mission of CEQ. In Executive Order 14057, the President emphasized the need for strong partnerships with the public,

private, and non-profit sectors and labor unions and worker organizations. § 403, 86 Fed. Reg. 70,935 (Dec. 13, 2021).

7. According to Executive Order 14057, CEQ will be exploring methods for the federal government to cut emissions across its building portfolio, from materials procurement to energy efficiency. When determining strategies for the federal government to cut emissions, will CEQ consider reducing the federal government's overall building or vehicle portfolio?

Increasing efficiency and reducing the overall footprint of Federal assets that generate greenhouse gas emissions are both critical strategies to cutting emissions and achieving the Executive Order's goal of net zero emissions from Federal operations by 2050. Executive Order 14057 includes direction to agencies to (1) develop and annually update a zero-emission fleet strategy that addresses not only the type of vehicles in the fleet, but also fleet size and (2) pursue space reduction and consolidation as part of a strategy to reduce building emissions. §§ 204, 205(c)(i), 86 Fed. Reg. 70,935 (Dec. 13, 2021). CEQ, in consultation with OMB, will provide further guidance to agencies on using these approaches, along with others, and engage with agencies on their plans to achieve net-zero buildings and zero-emission vehicle goals and targets.

8. If the answer to the preceding question is yes, will CEQ also quantify the cost savings from a portfolio reduction?

There are various legislative requirements and Federal real property management policies that influence agency decisions around portfolio reduction. Within the Executive Office of the President, OMB leads coordination on the budget and cost aspects of Federal real property management.

9. The final NEPA phase I rulemaking issued by CEQ last month rolled back three major reforms put in place by the Trump Administration. In your view, will – and if so, how – each of the changes improve the timeliness of NEPA reviews?

In 2020, CEQ made the first substantive changes to NEPA's implementing regulations since CEQ substantively amended the "worst case" analysis requirement in 1985. The 2020 changes caused implementation challenges for agencies, increased litigation risk for projects, and created confusion among stakeholders and the general public by modifying well-settled concepts in the implementation of NEPA. For example, in the 2020 regulations CEQ struck the longstanding terms "indirect effects" and "cumulative effects" from the regulations, which led to confusion as to whether such analysis is still required. Decades of legal precedent under the statute confirm that this analysis is required.

The Biden-Harris Administration finalized phase one of a two-phase process to revise the CEQ regulations earlier this year. Phase 1 restored three provisions to the NEPA regulations to ensure that (1) Federal agencies evaluate all reasonably foreseeable environmental effects of the decisions they are making; (2) that agencies develop and analyze reasonable alternatives to the proposed agency action; and (3) that CEQ's NEPA regulations serve as a floor, rather than a ceiling, for the environmental review standards that Federal agencies should be meeting, thereby giving agencies flexibility to harmonize NEPA's requirements with other statutory requirements. By restoring clarity to this process, CEQ believes environmental reviews will be conducted more soundly and efficiently.

10. How is CEQ working to maximize the use of categorical exclusions to expedite project delivery? Please explain.

CEQ recognizes that the environmental review process must be done in a time-sensitive matter, though not at the expense of safety and certainty in the environmental review process. Agency development of and reliance upon categorical exclusions (CEs) is one effective and efficient way to achieve this goal. CEQ continues to work expeditiously with Federal agencies to facilitate the establishment of CEs that are appropriate, benefit from public input, and, once established, are applied in a responsible manner.

11. Do you think categorical exclusion sharing among agencies is an efficient way to improve project delivery times?

The environmental review process must prioritize science, accuracy, and impact, in addition to speed. While efficiency is important in this process, it cannot be made at the expense of accurate environmental review. Categorical exclusions have historically been created with specific agency missions and types of actions in mind. Allowing categorical exclusions (CEs) to be shared across agencies and across disparate projects – without appropriate sideboards - has the potential to allow possibly harmful projects to evade adequate environmental review. CEQ is evaluating the provisions for sharing CEs, including evaluating whether adding appropriate safeguards can prevent harmful unintended consequences.

12. How is CEQ engaging with stakeholders on CEQ's announced NEPA phase II rulemaking?

CEQ has sought input from stakeholders on the NEPA process, in general, as well as input on the current regulations. CEQ has met with stakeholders and representatives from academia, business and trade associations, developers, environmental justice organizations, environmental organizations, labor unions, and more. CEQ staff have attended and presented at conferences and events on NEPA and listened to ideas for improvement. CEQ also receives and welcomes

information from stakeholders on NEPA implementation challenges and opportunities for regulatory improvement.

13. What will the scope of the phase II rulemaking be?

Phase One was the first step in a two-phase approach that CEQ is taking to reform and modernize the regulations that guide the implementation of the National Environmental Policy Act (NEPA). While Phase One proposed a narrow set of changes to the 2020 NEPA regulations, the next phase of rulemaking will take a more comprehensive look at the NEPA regulations, and may propose additional changes to the regulations. In particular, CEQ is developing these additional changes with an eye toward (1) promoting sound decision-making consistent with NEPA's statutory requirements; (2) meeting climate and environmental justice objectives; (3) providing for an efficient process and regulatory certainty; and (4) providing for meaningful public engagement in the NEPA process.

14. Will CEQ amend any of elements of the One Federal Decision (OFD) policy put into the regulations through the 2020 NEPA modernization rule?

Phase One was the first step in a two-phase approach that CEQ is taking to reform and modernize the regulations that guide the implementation of the National Environmental Policy Act (NEPA). While Phase One proposed a narrow set of changes to the 2020 NEPA regulations, the next phase of rulemaking will take a more comprehensive look at the NEPA regulations, and may propose additional changes to the regulations. In particular, CEQ is developing these additional changes with an eye toward (1) promoting sound decision-making consistent with NEPA's statutory requirements; (2) meeting climate and environmental justice objectives; (3) providing for an efficient process and regulatory certainty; and (4) providing for meaningful public engagement in the NEPA process.

15. How is CEQ working to implement OFD requirements in the current NEPA regulations?

CEQ is committed to implementing the law. The Biden-Harris Administration has put forth a Permitting Action Plan to help ensure we conduct efficient and effective environmental reviews. [*Biden-Harris Permitting Action Plan to Rebuild America's Infrastructure, Accelerate the Clean Energy Transition, Revitalize Communities, and Create Jobs*](#), THE WHITE HOUSE (May 10, 2022). The Action Plan works to (1) strengthen and accelerate the Federal permitting and environmental review process, (2) provide for clear schedules and system of accountability and transparency, (3) provide for meaningful public input and consultation, and (4) deliver improved environmental and community outcomes on the ground. *Id.* This plan also emphasizes the importance of greater coordination across Federal agencies to best complete NEPA environmental review and permitting goals in a timely fashion.

16. Specifically, how will CEQ ensure agencies complete environmental impact statements (EIS) for OFD eligible projects within two years?

CEQ is working to further the goals of the Biden-Harris Administration's Permitting Action Plan to (1) strengthen and accelerate the Federal permitting and environmental review process, (2) provide for clear schedules and system of accountability and transparency, (3) provide for meaningful public input and consultation, and (4) deliver improved environmental and community outcomes on the ground. [Biden-Harris Permitting Action Plan to Rebuild America's Infrastructure, Accelerate the Clean Energy Transition, Revitalize Communities, and Create Jobs](#) THE WHITE HOUSE (May 10, 2022). This plan works to create greater coordination across Federal agencies to best complete NEPA environmental review and permitting goals in a timely fashion. *Id.*

17. Section 11301 of the Investment in Infrastructure and Jobs Act, H.R. 3684, entitled "Codification of One Federal Decision," imposes a two-year goal for completing EISs pursuant to NEPA for certain Department of Transportation (DOT) projects. In March, Secretary Buttigieg informed the Committee that DOT is "working hard to implement" that policy and they would follow up with more details on the progress. What role has CEQ played in implementation of this provision to date?

CEQ is committed to assisting DOT in sound and effective implementation of laws passed by Congress regarding NEPA reviews for transportation projects, including the Investment in Infrastructure and Jobs Act. For example, CEQ co-chairs with DOT an interagency coordination group that identifies opportunities for collaboration and for the elimination of conflicts in the environmental review and permitting process for transportation projects. The Biden-Harris Administration also put forth a Permitting Action Plan to help ensure we conduct efficient and effective environmental reviews. [Biden-Harris Permitting Action Plan to Rebuild America's Infrastructure, Accelerate the Clean Energy Transition, Revitalize Communities, and Create Jobs](#) (May 10, 2022). The Action Plan works to (1) strengthen and accelerate the Federal permitting and environmental review process, (2) provide for clear schedules and system of accountability and transparency, (3) provide for meaningful public input and consultation, and (4) deliver improved environmental and community outcomes on the ground. This plan works to create greater coordination across Federal agencies to best complete NEPA environmental review and permitting goals in a timely fashion. *Id.*

18. Are specific processes in place at CEQ to ensure participating agencies do not implement conflicting procedures when conducting the environmental review process and permitting a transportation project?

CEQ works to prioritize agency collaboration and conflict resolution to ensure improved relationships, cost reduction, and better outcomes in the environmental review and permitting process. CEQ co-chairs with DOT an interagency coordination group that identifies opportunities for collaboration and for the

elimination of conflicts in the environmental review and permitting process for transportation projects. CEQ also supports the work of the Interagency Infrastructure Permitting Improvement Center within DOT, whose mission includes the identification of potential interagency conflicts in the environmental review and permitting of transportation projects and proactively seeking solutions for these potential conflicts.

19. Despite strong, bipartisan support for carbon capture utilization and sequestration (CCUS) in Congress, some outside groups have called CCUS efforts “greenwashing.”¹⁰ Do you agree with that characterization?

Responsible CCUS is one of the necessary tools to reduce greenhouse gas emissions. The Biden-Harris Administration is committed to making CCUS a widely available, cost-effective, and rapidly scalable solution to help tackle climate change. The Biden-Harris Administration also firmly believes that responsible CCUS projects should engage communities and Tribes in co-development of projects and approaches; protect communities from pollution; and incorporate environmental justice and equity considerations, especially in communities that are already exposed to multiple pollution sources.

CCUS technologies already exist, with an estimated 45 facilities in operation or in development in the United States today. CCUS is likely to be especially important for decarbonizing the industrial sector, where high-temperature heat can be difficult and expensive to electrify, and where there are significant process emissions (for example, roughly 60% of the greenhouse gas emissions from cement production come from a chemical process and not from the burning of fossil fuels). Although CCUS is often associated with fossil energy use, it is also a solution for lowering emissions from cement and concrete, steel, ethanol, and pulp and paper.

20. In response, to CEQ’s recently released Climate and Economic Justice Screening Tool (CEJST), several WHEJAC members, including Dr. Robert Bullard, have launched an initiative funded by the Jeff Bezos Earth Fund to create an alternative “screening tool.”¹¹ How is the creation of an alternative tool by members of the Administration’s own advisory council impacting the ongoing establishment of environmental justice methodologies and procedures, as overseen by CEQ?

The Climate and Economic Justice Screening Tool (CEJST) is a critical component of the Biden-Harris Administration’s commitment to addressing inequity and injustice. The CEJST will help Federal agencies to identify disadvantaged communities that are marginalized, underserved, and overburdened by pollution. The tool will provide important information for the President’s historic Justice40 Initiative, which aims to ensure that 40 percent of the overall benefits of certain

¹⁰ <https://www.eenews.net/articles/ccs-in-the-gulf-climate-solution-or-green-washing/>

¹¹ <https://insideepa.com/daily-feed/white-house-ej-advisors-develop-alternative-screening-tool>

Federal investments reach disadvantaged communities. The CEJST’s methodology was developed with these Federal resource allocation purposes in mind.

CEQ welcomes other efforts to develop environmental justice screening tools. In fact, to encourage such innovation, CEJST was developed using open-source technology, which enables members of the public to build and adapt the tool.

The development of the CEJST has underscored the critical need for high-quality, nationally-consistent data to capture the distribution of environmental, climate, and health burdens. CEQ hopes that the development of screening tools will lead to the creation of more robust datasets that enable us to better understand and address environmental injustices across our nation.

21. Have you participated in a meeting of the Interagency Working Group on the Social Cost of Greenhouse Gases, which was created by Executive Order 13990, entitled “Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis”?

I have not personally participated in this working group.

22. If the answer to the preceding question is yes, please provide a list of Working Group meetings that you and your staff attended, including the date, time, and participants.

I have not personally participated in this working group.

23. Do you support the Working Group holding public meetings and increasing the group’s transparency and accountability?

Federal agency working groups are designed to provide a forum for subject matter experts to discuss issues and engage with one another in a collaborative manner.

24. If the answer to the preceding question is yes, will you advocate for the Working Group to do so?

Federal agency working groups are designed to provide a forum for subject matter experts to discuss issues and engage with one another in a collaborative manner.

25. Executive Order 13990 directed the Working Group to provide the President recommendations in “areas of decision-making, budgeting, and procurement” by the federal government. Please provide any recommendations CEQ has made to the President pursuant to the Executive Order.

I have not personally participated in this working group.

26. In the Climate 21 Project’s transition memo for the Environmental Protection Agency (EPA), of which you were a lead author, you recommended EPA “[w]ork with DOE and DOI on speeding siting for renewable energy on public lands and on

accelerating/coordinating the NEPA process to be less cumbersome and more effective.” Does this recommendation also apply to the domestic mining of critical minerals, which are crucial for renewable energy and electric vehicle manufacturing?

The Climate 21 Project Transition Memo was something I co-authored before my tenure as Chair of CEQ. This memo was coordinated by a group of climate experts and delivered actionable advice for a whole-of-government climate response as coordinated by the White House.

On the issue of mining critical minerals, President Biden, just over a year ago, signed Executive Order 14017 which ordered a review of vulnerabilities in our critical mineral and material supply chains. § 3, 86 Fed. Reg. 11,849 (Mar. 1, 2021). The released supply chain assessment that came out of this review found that the United States has an over-reliance on foreign resources and adversarial nations for critical minerals. [THE WHITE HOUSE, BUILDING RESILIENT SUPPLY CHAINS, REVITALIZING AMERICAN MANUFACTURING, AND FOSTERING BROAD-BASED GROWTH](#), THE WHITE HOUSE (June 2021). Further, this report recommended that America “must secure reliable and sustainable supplies of critical minerals and metals to ensure resilience across U.S. manufacturing and defense needs,” all with a laser focus on boosting strong labor, environmental and environmental justice, community engagement, and Tribal consultation standards. *Id.* President Biden has since met with community leaders and expanded critical resource programs.

With these considerations in mind and in the face of recent supply chain shortages, President Biden invoked the Defense Production Act (DPA), which grants the government greater funding and authority in producing critical resources. *See* 50 U.S.C. § 14511. This invocation focuses on providing support for the mining, processing, and recycling of critical minerals, such as lithium, nickel, cobalt, graphite and manganese. In addition, the Administration has convened a Federal interagency working group focused on the responsible production of critical minerals and identifying opportunities for regulatory reform and process improvements.

27. If the answer to the preceding question is no, how do you plan to address the growing shortage in critical minerals and the energy security issues that come with relying on China and Russia for these materials?

On the issue of mining critical minerals, President Biden, just over a year ago, signed Executive Order 14017 which ordered a review of vulnerabilities in our critical mineral and material supply chains. The released supply chain assessment that came out of this review found that the United States has an over-reliance on foreign resources and adversarial nations for critical minerals. Further, this report recommended expanding domestic mining, production, processing, and recycling of critical minerals and materials—all with a laser focus on boosting strong labor, environmental and environmental justice, community engagement, and Tribal consultation standards. President Biden has since met with community leaders and expanded critical resource programs.

With these considerations in mind and in the face of recent supply chain shortages, President Biden invoked the Defense Production Act (DPA), which grants the government greater funding and authority in producing critical resources. This invocation focuses on providing support for the mining, processing, and recycling of critical minerals, such as lithium, nickel, cobalt, graphite and manganese.

28. Do you believe the NEPA process is too slow and cumbersome to permit energy projects in a timely manner?

CEQ is fully committed to ensuring that environmental reviews are conducted effectively and efficiently, and in a manner that is grounded in science and the law. CEQ is proud to be helping to advance and implement the Biden-Harris Administration's Permitting Action Plan, which is focused on strengthening and accelerating the Federal permitting and environmental review process, providing for clear schedules and systems of accountability and transparency, providing for meaningful public input and consultation, and delivering improved environmental and community outcomes on the ground. This plan works to create greater coordination across Federal agencies to best complete our environmental review and permitting goals in a timely fashion.

29. The Climate 21 Project, for which you were a member of the steering committee, said in its transition memo for the Executive Office of the President that “merely restoring NEPA to its traditional form will not enable the federal government to effectively permit the clean energy infrastructure—including generation, transmission, and sequestration infrastructure—needed to meet an ambitious goal like achieving 100 percent clean electricity by 2035.” Do you agree with the Climate 21 Project’s assertion that taking NEPA back “to its traditional form” would run counter to achieving the Administration’s energy goals?

CEQ is currently working toward modernizing the regulations that guide the implementation of the National Environmental Policy Act in order to best meet climate and environmental justice objectives, including facilitating vital infrastructure upgrades and transitioning to clean energy. Our first step in these reforms was a targeted rulemaking that restored three longstanding NEPA provisions to ensure that the regulations were consistent with the statute and science. We are now working to develop additional ideas for improving the soundness and efficiency of the Federal environmental review process so that we can meet our infrastructure and clean energy goals in a manner that protects public health and the environment.

30. According to the Department of Energy’s 2016 “NEPA Lessons Learned” quarterly report, the average cost of preparing EISs in 2015 was \$4.19 million.¹² Is CEQ taking or considering any actions to reduce the costs associated with completing NEPA reviews for infrastructure projects?

¹² <https://www.energy.gov/sites/prod/files/2016/03/f30/LLQR-March-2016.pdf>

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31. Has CEQ recorded and assessed costs to project sponsors who are undergoing the EIS process?
- If yes, how did CEQ develop the methodology to assess a comprehensive cost associated with the process?
 - If not, why not?

No, CEQ has not recorded and assessed costs for the development of EISs. CEQ is aware of challenges in obtaining this information because of various approaches agencies take for the development of NEPA reviews, as well as the administrative burden it would place on agencies to gather this information.

32. Russia's unprecedented invasion of Ukraine has exposed Europe's dangerous reliance on Russian oil and natural gas. Nations across the world are seeking to import American oil and gas to affirm their energy security. Do you believe that the United States should expand its domestic oil and gas infrastructure?

President Biden is laser focused on lowering energy costs for working families while creating good-paying jobs and tackling the climate crisis. In the face of Putin's war in Ukraine, Americans are experiencing higher prices at the gas pump. In response to this crisis, President Biden banned the import of Russian oil and worked to immediately increase domestic supply by encouraging production, expanding permitting, and processing a historic release of 50 million barrels of crude oil from the Strategic Petroleum Reserve to increase global oil supplies. The US is currently undertaking record levels of oil and natural gas production with increases of up to 1 million barrels per day.

33. Which specific actions is CEQ taking to expand US oil and gas infrastructure?

President Biden is laser focused on lowering energy costs for working families while creating good-paying jobs and tackling the climate crisis. In the face of Putin's war in Ukraine, Americans are experiencing higher prices at the gas pump. In response to this crisis, President Biden banned the import of Russian oil and worked to immediately increase domestic supply by encouraging production, expanding permitting, and processing a historic release of 50 million barrels of crude oil from the Strategic Petroleum Reserve to increase global oil supplies. The US is currently undertaking record levels of oil and natural gas production with increases of up to 1 million barrels per day.

34. Shortly after your hearing before EPW, a member of the White House Environmental Justice Advisory Council, Professor Robert Bullard, stated that the "only thing that has slowed [liquefied natural gas (LNG) export projects] is to have stringent environmental regulations and enforcement and to challenge permits whenever you can using the National Environmental Policy Act." ¹³ Do you agree with Professor Bullard that delays and challenges from the NEPA process are slowing down the construction of LNG export terminals?

CEQ is fully committed to ensuring that environmental reviews are conducted effectively and efficiently, and in a manner that is grounded in science and the law. CEQ is proud to be helping to advance and implement the Biden-Harris Administration's Permitting Action Plan, which is focused strengthening and accelerating the Federal permitting and environmental review process, providing for clear schedules and system of accountability and transparency, providing for meaningful public input and consultation, and delivering improved environmental and community outcomes on the ground. This plan works to create greater coordination across Federal agencies to best complete our environmental review and permitting goals in a timely fashion across all sectors.

35. Do you support expediting the permitting and development of LNG projects to supply our allies with American-produced LNG?

CEQ is fully committed to ensuring that environmental reviews are conducted effectively and efficiently, and in a manner that is grounded in science and the law. CEQ is proud to be helping to advance and implement the Biden-Harris Administration's Permitting Action Plan, which is focused strengthening and accelerating the Federal permitting and environmental review process, providing for clear schedules and system of accountability and transparency, providing for meaningful public input and consultation, and delivering improved environmental and community outcomes on the ground. This plan works to create greater coordination across Federal agencies to best complete our environmental review and permitting goals in a timely fashion across all sectors.

¹³ <https://www.facingsouth.org/2022/05/nepa-restoration-buoys-gulf-coast-enviros-fight-big-gas>

36. On May 10, 2022, CEQ and the Administration released the “Permitting Action Plan” to utilize the Federal Permitting Improvement Steering Council (FPISC) throughout the implementation of the Infrastructure Investment and Jobs Act (IIJA). In particular, the plan’s Fact Sheet references “interagency coordination on siting, permitting, supply chain, and related issues for: Climate-smart infrastructure.” What types of projects are included under the term “climate-smart”?

The Biden-Harris Administration put forth a Permitting Action Plan to help ensure agencies conduct efficient and effective environmental reviews. [Biden-Harris Permitting Action Plan to Rebuild America's Infrastructure, Accelerate the Clean Energy Transition, Revitalize Communities, and Create Jobs](#). THE WHITE HOUSE (May 10, 2022). The Action Plan works to (1) strengthen and accelerate the Federal permitting and environmental review process, (2) provide for clear schedules and system of accountability and transparency, (3) provide for meaningful public input and consultation, and (4) deliver improved environmental and community outcomes on the ground. This plan works to create greater coordination across Federal agencies to best complete our environmental review and permitting goals in a timely fashion. *Id.* This plan also encourages agencies to create greater interagency coordination to best complete environmental review and permitting in a timely fashion. This effort also works to add efficiency and clarity to the Biden-Harris Administration’s commitments to Federal sustainability. With these goals in mind, current and future Federal projects will work to better support climate-smart infrastructure and systems; this means creating and transitioning infrastructure to be resilient, adaptive, sustainable, and climate-friendly.

37. What actions is CEQ taking to mitigate rapidly increasing inflation?

The President has made fighting inflation his top domestic priority and, through a wide range of executive and legislative actions – including the Inflation Reduction Act – is taking major steps toward reducing costs for American families. CEQ is proud to support the Administration’s efforts to combat inflation, including by helping accelerate the deployment of affordable, clean energy and supporting the build-out of American infrastructure – such as broadband – that reduces costs for families now and in the future.

38. The last time CEQ released a report on federal agency permitting timelines and page counts was 2020.¹⁴ Does CEQ plan to update these reports?
- If not, why not?

¹⁴ https://www.permits.performance.gov/sites/permits.dot.gov/files/2020-04/FPISCRcommendedPerformanceSchedules2020_04062020.pdf

CEQ is committed to engaging in research that can facilitate more efficiencies in the environmental review process, including research on timelines. The scope and frequency of such research are dependent on the resources available to the agency.

39. Does CEQ maintain data regarding the total number of proposed actions issued, number of proposed actions pending during the drafting of an EIS, or length of time each federal agency has taken to complete an EIS and environmental assessment?

CEQ does not maintain such data.

40. How does CEQ define the term “conservation” as the term is used in President Biden’s “America the Beautiful” or “30x30” initiative?

President Biden laid out an inspiring and inclusive vision for how the United States can come together to conserve, protect, connect, and restore our lands and waters across the country. His call to action, the America the Beautiful initiative, will help strengthen the economy, address the interconnected climate and biodiversity crises, and advance environmental justice. See [DOI ET AL., CONSERVING AND RESTORING AMERICA THE BEAUTIFUL](#) (2021). This initiative describes conservation as protecting and restoring the health and abundance of America’s natural resources, including clean air, clean water, and wildlife. *Id.* at 10. It is important to note that the Biden-Harris Administration’s initiative “specifically emphasizes the notion of ‘conservation’ of the nation’s natural resources (rather than the related but different concept of ‘protection’ or ‘preservation’) recognizing that many uses of our lands and waters, including of working lands, can be consistent with the long-term health and sustainability of natural systems.” *Id.* Similarly, the “30 percent goal also reflects the need to support conservation and restoration efforts across all lands and waters, not solely on public lands, including by incentivizing voluntary stewardship efforts on private lands and by supporting the efforts and visions of States and Tribal Nations.” *Id.* This full suite of actions – and many more locally-led, voluntary practices which adhere to the eight principles outlined in the initial report – are considered conservation for the purposes of the America the Beautiful Initiative.

41. During the hiring process, to what extent does CEQ consider an applicant’s technical expertise in infrastructure construction or project development as relevant experience?

CEQ seeks individuals with a diverse range of educational backgrounds, expertise, technical training, and life experiences. We seek to hire the best fit for each job so that our team, overall, is best able to advance and implement President Biden’s climate, environmental, and jobs agenda.

42. On April 29, 2022 I signed a letter to CEQ pertaining to final guidance on CCUS required by the USE IT Act. When can we expect a response from CEQ?

My team and I appreciated your feedback and CEQ responded on July 6, 2022.

43. On May 11, 2022 I signed a letter to CEQ pertaining to the Administration’s “30x30” Initiative. When can we expect a response from CEQ?

My team and I appreciated your feedback and CEQ responded on July 14, 2022.

44. On May 13, 2022 I signed a letter to CEQ pertaining to the Social Cost of Greenhouse Gases (SC-GHG). When can we expect a response from CEQ?

My team and I appreciated your feedback. CEQ, however, was copied on this letter and not the main recipient.

Senator Inhofe:

1. As a lead author in the Climate 21 Project’s transition memo, you recommended that the Environmental Protection Agency (EPA) “*work with Department of Energy (DOE) and Department of Interior (DOI) on speeding siting for renewable energy on public lands and on accelerating/coordinating the NEPA process to be less cumbersome and more effective*”. Does this recommendation also apply to the domestic mining of critical minerals?
 - a. If not, how do you plan to address the lack of domestically-sourced critical minerals as well as the national security issues that come from relying on China and Russia for critical minerals?

The Climate 21 Project Transition Memo was developed by a group of climate experts and delivered actionable advice for a whole-of-government climate response coordinated by the White House. I contributed to the memo before my tenure as Chair of the CEQ.

Executive Order 14017 orders a review of vulnerabilities in our critical mineral and material supply chains. § 3, 86 Fed. Reg. 11,849 (Mar. 1, 2021). The released supply chain assessment that came out of this review found that the United States has an over-reliance on foreign resources and adversarial nations for critical minerals. [THE WHITE HOUSE, BUILDING RESILIENT SUPPLY CHAINS, REVITALIZING AMERICAN MANUFACTURING, AND FOSTERING BROAD-BASED GROWTH](#) (June 2021). Further, this report recommended that America “must secure reliable and sustainable supplies of critical minerals and metals to ensure resilience across U.S. manufacturing and defense needs,” all with a laser focus on boosting strong labor, environmental and environmental justice, community engagement, and Tribal consultation standards. *Id.* President Biden has since (1) met with community leaders, (2) expanded critical resource programs, (3) issued fundamental principles for mining reform for the administration’s actions, and (4) launched a public process to solicit comments on how to improving mining permitting, extraction, development and closure on federal lands, specifically soliciting input from states, tribes, industry and academia.

With these considerations in mind and in the face of recent supply chain shortages, President Biden invoked the Defense Production Act (DPA), which grants the Federal government greater funding and authority in producing strategic and critical materials. See [Fact Sheet: President Biden Takes Bold Executive Action to Spur Domestic Clean Energy Manufacturing](#), THE WHITE HOUSE (June 6, 2022). This invocation focuses on providing support for the production and processing of minerals, such as lithium, nickel, cobalt, graphite and manganese necessary to produce key products like batteries, semiconductors, and permanent magnets. *Id.* CEQ and the Biden-Harris Administration are committed to addressing critical material shortages and doing so in a way that is environmentally sustainable and consistent with Tribal consultation and impacted community engagement standards.

2. Considering the expansive climate priorities of this Administration and given your recent final phase 1 rule for revisions to the NEPA regulations which included the redefining of the word “effects” particularly impacting federal agency projects in the energy space, is CEQ working to maximize the use of categorical exclusions to expedite energy project delivery?

The targeted revisions CEQ finalized to NEPA’s implementing regulations restore three long-standing practices for conducting environmental reviews. These changes will ensure that NEPA is administered effectively and with greater consistency and clarity among Federal agencies.

CEQ will continue to work with Federal agencies to evaluate their proposals for existing and new categorical exclusions expeditiously, including those for energy project delivery. CEQ will assist these agencies to make sure these proposals are appropriate, benefit from the public input, and, once established, are applied in a responsible manner.

3. Considering the Infrastructure Investment and Jobs Act (P.L. 117-58) codified the One Federal Decision policy requiring certain Department of Transportation (DOT) projects to complete environmental impact statements pursuant to NEPA in no longer than two years, what role has CEQ played in regards to the NEPA implementation aspects of this One Federal Decision policy for DOT projects?

CEQ is committed to assisting DOT, as needed, in the implementation of laws passed by Congress regarding the One Federal Decision policy and NEPA reviews for certain transportation projects. For example, CEQ co-chairs with DOT an interagency coordination group that identifies opportunities for collaboration and for the elimination of conflicts in the environmental review and permitting process for transportation projects. In addition, the Biden-Harris Administration put forth a Permitting Action Plan to help ensure we conduct efficient and effective environmental reviews. [Biden-Harris Permitting Action Plan to Rebuild America’s Infrastructure, Accelerate the Clean Energy Transition, Revitalize Communities, and](#)

Create Jobs (May 10, 2022). The Action Plan works to (1) strengthen and accelerate the Federal permitting and environmental review process, (2) provide for clear schedules and system of accountability and transparency, (3) provide for meaningful public input and consultation, and (4) deliver improved environmental and community outcomes on the ground. This plan works to create greater coordination across Federal agencies to best complete our environmental review and permitting goals in a timely fashion. *Id.*

Senator Cramer:

1. Chair Mallory, on May 11, 2022, twenty Republican senators and I sent you a letter regarding the Biden administration's 30x30 initiative, otherwise known as "America the Beautiful." As you know, 30x30's origin stems from Executive Order 14008. Since the EO there has been no opportunity for input on the initiative from the public at large. This is despite the fact the administration recently announced their \$1 billion America the Beautiful Challenge, included numerous funding requests to help advance 30x30 in the President's FY23 Budget Request, and applicable agencies have already highlighted actions they've taken as contributing to 30x30's conservation goals.
 - a. In light of the administration's increased NEPA scrutiny and 30x30 actions, will you commit to responding to my letter requesting the legal authorization you are using to carry out 30x30 and your determination on if a Programmatic Environmental Impact Statement is necessary for 30x30?

My team and I appreciated your feedback and CEQ responded on [July 14, 2022](#).

2. In March, several of my colleagues sent a [letter](#) to the President and other federal agencies relating to CEQ's actions regarding the Federal Columbia River System, specifically regarding a need for transparency within the process CEQ is undergoing. They requested a response by May 1st.
 - a. Can you provide a response to this letter?

My team and I appreciated your feedback and CEQ responded on [June 9, 2022](#).

Senator Boozman:

1. Do you agree with the Council on Environmental Quality's (CEQ) December 2012 "Final Guidance on Improving the Process for Preparing Efficient and Timely Environmental Reviews Under the National Environmental Policy Act" (40 CFR Parts 1500 – 1508) that states the text of a final Environmental Impact Statements (EIS) "should normally be less than 150 pages" and "10-15 pages is generally appropriate for EAs"?

CEQ is fully committed to ensuring that environmental reviews are conducted effectively and efficiently, and in a manner that is grounded in science and the law. CEQ is proud to be helping to advance and implement the Biden-Harris

Administration's Permitting Action Plan, which is focused strengthening and accelerating the Federal permitting and environmental review process, providing for clear schedules and system of accountability and transparency, providing for meaningful public input and consultation, and delivering improved environmental and community outcomes on the ground. This plan works to create greater coordination across Federal agencies to best complete our environmental review and permitting goals in a timely fashion. CEQ is also working to develop additional ideas for improving the soundness and efficiency of the Federal environmental review process so that we can meet our infrastructure and clean energy goals in a manner that protects public health and the environment.

2. Congress has enacted a number of Categorical Exclusions (CE) to assist the Forest Service in expediting critical hazardous fuels reduction projects to protect watersheds and communities from catastrophic fire, but CEQ's interpretation of the guidelines on "extraordinary circumstances" often precludes the Forest Service from utilizing these CEs. Will you commit to working with my office and the Forest Service to address these impediments and assist the Forest Service in operationalizing these authorities on non-reserved acres?

My team would be happy to work with yours on this important issue. CEQ recognizes that the environmental review process must be done in a time-sensitive matter, though not at the expense of safety and certainty in the environmental review process.

3. I am aware of at least nine forest management projects the Forest Service is proposing to thin trees on an average of 8,000 acres that have taken between 3 to 11 years and NEPA files totaling over 2,800 pages to try to move forward with these projects. Will you commit to working with my office to determine how to reduce NEPA burdens on the Forest Service?

CEQ commits to working with your office and continuing our work toward an efficient environmental review process across all Federal agencies and departments.

Senator Wicker:

1. The Council on Environmental Quality has convened an interagency working group to examine recurring flooding in the Yazoo Backwater Area. During a recent meeting in my office, you mentioned that the working group has outlined the relevant issues associated with identifying a flood control solution for the South Delta. As the working group moves forward with a proposal, it is imperative that my constituents and their representatives in Washington, D.C. understand any agency concerns and priorities. Will you provide me with a copy of this two-pager developed by the Council on Environmental Quality in a timely manner?

CEQ will continue the interagency process we have convened to develop options to address flood risk in the Yazoo Backwater Area. We have appreciated the

partnership with the Mississippi Congressional delegation and look forward to developing solutions that can help provide meaningful and lasting solutions within the basin.

Senator CAPITO. Thank you very much.

I will start the questions.

I want to ask you just a quick question on one of your four points of the release of the information this morning. You mentioned, hire more staff. Is that at Fish and Wildlife, hire more staff?

Ms. MALLORY. I think, basically, what the plan calls for is agencies doing the assessment that is necessary to determine where they need resources, and then acting on that.

Senator CAPITO. I would recommend Fish and Wildlife has been, is holding up a lot of the permitting, and it is very frustrating to a lot of people who are trying to move, whatever the project, clean energy, whatever the project. On that one, I think we both agree there are more resources needed.

Let me ask you about the international situation, since I mentioned that in my opening statement. We see that the unprovoked invasion of Ukraine has really, I think, put a light, and the President has talked about this, on the need for energy security both here and abroad. And the President has mentioned the ability of the United States to help with liquefied natural gas and things of that nature to help Europe become less dependent on Putin.

Would you agree that we must immediately act to replace Russian imports into Europe with American made energy? Do you agree with that?

Ms. MALLORY. Senator, what I would say is that the President has been clear that the Ukraine situation and Russia's unprovoked action causes us to look at the current crises that we are already dealing with, the climate crisis being critical to that to assess how we take action that helps the Ukraine situation but doesn't undermine our overall goals for climate action.

Senator CAPITO. I was going to ask next, have you taken any specific actions to strengthen our energy security, increase our domestic energy production to meet this, and export more? I think that answer to that is no.

Ms. MALLORY. Senator Capito, the answer is that what we are trying to do, as I said, is find that balance so that the President can continue to provide the support that Ukraine needs, but that we don't lose track of our overall goals to address the climate crisis.

Senator CAPITO. I guess I am talking less about Ukraine at this point, although they are certainly in our hearts and minds, and we are probably going to be passing a very large package to help them. I am talking about the rest of Europe, which is now held hostage to Putin and his natural gas supplies.

Let me ask you this question. On the permitting issue that I talked about with the IIJA, does this run into conflict with some of the goals that you have set forward in terms of a 2 year timeline and a 90 day repeat, shortening the time of the projects? How do you see those working in conjunction with one another? Because we feel, I feel, as though you could create a conflict there.

Ms. MALLORY. First of all, thank you, Senator, I appreciate that question. One of the things that I have been trying to do, consistent with the President's goals from the beginning of my time at CEQ, is find a way to meet the multiple goals that the President has set before us. He has been very clear that he wants us to ensure that we get the projects done that are necessary in order to

meet the investments that we have identified as being important through the Bipartisan Infrastructure Law and other laws, but to do it in the right way, so that we are making smart decisions that allow us to meet our multiple goals.

I would say that the whole effort that is reflected in the permitting action plan this morning is us trying to bring together the best tools that are available, to take advantage of what we know has worked in the Federal Government to get decisions done in a way that is both appropriate but also recognizes what our ultimate values are. And that is what we believe we can achieve through the permitting action plan, so that you get the projects, but you also get them done well.

Senator CAPITO. I was interested in one of the quotes from your statement is, more building in the next few years, and it appears sort of laced through the action plans that you took on the NEPA regulatory changes, where you have taken down three of the major provisions that the Trump administration put forward, I mentioned it in my opening statement, only sets up more regulations from different Federal regulators. Again, it looks like a burdensome, how do I want to say this, a burdensome package, again, to slow any kind of new construction, or even a CCUS project.

Ms. MALLORY. Senator, thank you for that question. One of the things that the work that we did in the NEPA provisions was focused on is making sure that we are able to do the analysis that effectively determines what are the impacts that a project is going to cause. If you narrow your focus to such an extent that you are not actually considering the real impacts of a project, that is just setting us up for failure. So our focus has been on making sure that the agencies have the tools to do the necessary analysis, but then to support them in ways that they can do it in a time efficient manner.

Senator CAPITO. Thank you.

I am going to go to Senator Cardin. Is he on Webex?

Senator CARDIN. I am with you, thank you, Madam Chair. Let me thank our witness for your work.

The Infrastructure Bill is a once in a lifetime opportunity for this country, so your role is critically important to make sure we do it right. You were very clear that environmental justice is one of our goals in regard to how we rebuild our infrastructure in America. I was proud that included in this bill was the removal of lead from our water pipe systems that we have, reconnecting communities that have been divided by highways that were destructive to the residential communities, and the list goes on and on. We have resiliency in this, et cetera.

My home State of Maryland has the Maryland Environmental Justice Screening Tool. You have the White House Climate and Environmental Screening Tool that is available. Let me ask you how you intend to implement the use of these tools with the opportunities that we have with the infrastructure bill to make sure that we are sensitive to the communities' needs, that we recognize that the communities that have been hit the hardest as a result of climate change have been low income communities, communities that have been hit the hardest in regards to our efforts to build interstate roads have been our low income communities.

How do you intend to use this opportunity to make sure that, in fact, we carry out our commitment for environmental justice?

Ms. MALLORY. Thank you, Senator, I appreciate that question, because the work that CEQ is doing has environmental justice squarely at the center of our priorities.

What the President has directed in the early Executive Orders, including the specific direction that we do a screening tool, is that we use the tool to help decide how we prioritize the allocation of resources and benefits to communities to make sure that the folks who have been underserved in the past, whose communities have been under-invested in, are among those that receive the benefits of the Federal investment.

That is the goal of the tool. The tool is a mapping tool. It allows us to prioritize areas where the programs that show that communities have high air pollution, that show that the communities have high impacts to climate impacts, that show that there is a high health burden, these are the things that are built into deciding how we focus on the communities who need the most help. So our idea is that once the tool is finalized, that this will be a resource that the agencies look to as they are trying to make decisions that relate to their funding.

Senator CARDIN. I am very supportive of that. I just hope you will keep us engaged at every stage. This is a relatively new opportunity that we have, and we want to make sure that we actually take advantage of it. So I would appreciate your keeping our Committee informed as to how this tool is in fact working in practice in dealing with these issues.

I want to ask you one additional question on the American the Beautiful Initiative by the Administration and what role you will play in regard to working with the private sector to expand the lands that are protected through conservation under the American the Beautiful Initiative. Will your office play a role in this?

Ms. MALLORY. Absolutely. This is one of our central activities. I in fact chair a committee working with Secretary Haaland, Secretary Vilsack, and Secretary Raimondo on managing the America the Beautiful Initiative across the Government.

The key about the America the Beautiful Initiative is that it is the first time a President has set a conservation goal, our goal here being to conserve 30 percent of the lands and waters by 2030. And our focus is on making sure that we elevate and lift up the great work that is going on across the country, where people in each community have identified what are the important measures of conservation in their communities, and create programs that really help to provide support for those efforts.

Last week, in fact, I was in Florida and had the opportunity to see how activities are going on the ground where the public and private sector are working together on some conservation efforts that really reflected exactly what we want America the Beautiful to look like when it is put in place.

So the grant program that I announced last week, which is \$82 million that is going to be run through a request for proposal that brings together funding from several different agencies is an available resource that communities in the public and private sector could use.

Senator CARDIN. Thank you very much. I look forward to the results of your work.

Thank you, Mr. Chair.

Senator CARPER [presiding]. Senator Cardin, thanks very much for those questions.

Senator Inhofe is next. I think he will be followed by me, and then we will move along. I think after that, Senator Cramer, Senator Whitehouse, Senator Padilla.

Thanks, everyone.

Senator INHOFE. Thank you, Mr. Chairman. It is good to see you again, as I have already mentioned to you.

Chair Mallory, I have two requests, and they are not related to each other. They are separate. Let me start with the first one. Just so there is not any misunderstanding in what I am asking for, I am actually going to read it, so I have a record of what I am saying. All right?

DOD is legally responsible for the cleanup of PFAS contamination that they cause. In order to clean up the contamination, they need to dispose of it. The best way to do so is incineration. DOD is ready to incinerate PFAS waste, but has been told by someone in the Administration not to do it.

The two questions I would have is, first of all, who is telling them that they can't release their incineration guidance? The second thing is, if they can't incinerate, how do you propose they dispose of PFAS contaminated materials? You are from the right area to respond to those questions, I believe. What would be your response?

Ms. MALLORY. Thank you Senator for that question. PFAS is obviously a really important issue that the Administration is spending a fair amount of time on. Specifically, in my office, I am chairing an interagency policy council that is focused on trying to coordinate the PFAS activities that are occurring all across the government. From the campaign until right when the President issued early Executive Orders, PFAS and the need to address it has been a high priority for them.

One of the things that I am trying to do within the interagency policy forum is to make sure that the agencies are working together as they are identifying what are the actions and tools that are necessary in order to make sure that we are meeting the challenge of PFAS. We are in a place with PFAS where the science is still evolving, the standards still need to be put in place. There are a variety of technical things that need to happen.

Meanwhile, there are families and people who are being harmed every day. So trying to make sure that we are able to move in a way that allows for the agencies to address the issues and address them in a way that is responsive to the health concerns of the community, I think, is important.

Incineration is an issue. I know EPA, in guidance that they issued, I believe it was last year, talked about incineration being kind of—it is among the things where it is an approach, but it is one that we have to be very careful about because of the air quality impacts that are associated with that. We are talking to DOD about the studies that they have underway and getting additional

information about the work in incineration and PFAS. And that is part of an ongoing discussion.

Senator INHOFE. It is my understanding that New York has already crossed that bridge. They have made a statement as to any dangers having to do with this. So that study has been going on, I assume, for quite some time.

So I just want to find out when this is going to be resolved. Right now, if you leave it the way that you are stating it there, that it is something you don't like in the first place, and therefore it is going to take you a while, how long is this going to take so that you will be able to clean this up?

Ms. MALLORY. First of all, Senator, I think we are spending real effort in trying to get the agencies to work together around this issue.

Senator INHOFE. But your agency is an agency that has the responsibility to resolve this problem.

Ms. MALLORY. What I am saying is that we are gathering the information that will make that possible. The New York study that you made reference to, I think that there are other studies that we are not able to make available at this point, the DOD has done, and we want to see what those studies look like, which I think will be this summer.

Senator INHOFE. If this is the only study that has been, is this the only study, then, that has been publicized?

Ms. MALLORY. I don't know the answer to that question, but I am happy to get back to you on it.

Senator INHOFE. Well, there is not a lot of time to get back, because we have to do something with this right now. Nothing is being done. I came to this meeting because it is apparently the White House that is stopping this or delaying this. Is it being stopped or delayed? Can you inform me as to the status of this?

Ms. MALLORY. What I can say about it, Senator, is that we are having conversations with DOD about this guidance. I did not perceive us as stopping or even delaying it. But we are having conversations with them about what is their plan and what is necessary to address this issue.

Senator INHOFE. But aren't you precluding them from doing cleanup?

Ms. MALLORY. What I asked DOD to do was to pull together the information so that we can have a briefing for everyone about what their plan is. I did not preclude them from doing anything.

Senator INHOFE. All right, then give me a timeframe of this. This is an inconvenience issue, I understand, for DOD. DOD would have things that they need to be doing, and we need to be using this technology that has been accepted, and we just want to get to the bottom of where we are today, how much time it is going to take to accomplish the different things you are trying to determine, and where we are going to be with this.

Ms. MALLORY. Again, thank you, Senator, for the question. I will definitely get back to you with what the status is. I will say that DOD actually was arranging for, and I think we were assisting and arranging for a meeting. I am not sure if it is scheduled yet.

Senator INHOFE. All right. I know my time is—I have one other issue I want to talk about, so let me just wind up this one really

quickly, here. You have nothing today that you are going to be able to share with me in terms of when we will be able to clean up this mess?

Ms. MALLORY. Not unknown, no, Senator, I will definitely get back to you on that. It might be today, but it won't be while I am sitting here.

Senator INHOFE. Well, all right. You have made that clear. How long do you think it would be? Give me a timeframe.

Ms. MALLORY. Yes, I mean, I commit to you that, today is Wednesday, I commit to you that we will get back to you, certainly by the end of the week, on where we are on the issue.

Senator INHOFE. OK, that is good. The other issue I will bring up on the second round.

Senator CARPER. That is great. I would just ask you keep both majority and minority staffs in the loop on your responses to Senator Inhofe and his staff on this issue, OK? Thank you very much.

I think I am next.

Let me just say, I applaud the President's commitment, and your commitment as well, to address decades of under-investment in environmental justice communities. President Biden's Justice40 Initiative sets a lofty goal of delivering 40 percent of the Federal benefits from a variety of programs to low income, disadvantaged, and minority communities. At the same time, the Biden administration, under your leadership, has proposed a climate and economic justice screening tool to help agencies identify disadvantaged communities and address historic injustices. With that said, meaningful historic changes are hard to make overnight, as you know.

Here is my question. Briefly, please share with us some of the achievements that CEQ has made in advancing environmental justice under your leadership and expand on the challenges you are facing to ensure the goals of Justice40 are met across the Federal Government. And if you would like to suggest a couple of ways we could be of help, please let us know that. Go right ahead.

Ms. MALLORY. Thank you, Senator, for that question. As I said earlier, the environmental justice part of the President's agenda is central to the work that we are doing at CEQ. It is personally a very high priority for me in terms of meeting this long challenge.

Under the President's direction, there are a number of things that we were directed to do in order to really put in place the infrastructure that would allow us on a regular basis to think about, to make sure that we are considering what the impacts of Federal actions are on all communities. Ultimately, what we want to achieve in our environmental justice work is an assurance that every American, no matter where they live, can count on having clean air, clean water, and healthy communities, and that we are doing our part as Federal servants to try to deliver on that.

So, the President instructed us to create a White House Advisory Council in which we have a regular interaction with 25 experts and academics in the field who have been working in environmental justice for many years, to get their input, their reaction about things that need to be addressed as part of our policymaking. We created a White House Environmental Interagency Council so that the senior leadership all across the agencies comes together and has an opportunity to discuss, what is each agency doing to try to

meet the President's goals, and how we collectively can work together to make sure that we are accomplishing the mission.

Then the creation of the Climate and Economic Justice Screening Tool was obviously one of the central pieces to help us deliver on the President's commitment to do a Justice40 Initiative, which is the 40 percent commitment. And the way that we are carrying that out is to finalize the tool, but then working with all of the agencies as part of Justice40 to make sure that they have the approaches for identifying how within specific programs they would need to make adjustments in order to carry that out, what the methodologies are, what the best benefits are. So all of that work has been going on since July 2021. And Justice40 is up and running in the way that we are approaching our implementation of programs, even as we are trying to finalize the tool.

More importantly, and I think what is going to be more impactful, is that within each of the agencies, the leadership and the rank and file career folks who are working there are now getting into the habit of thinking about more directly, how will this affect all communities? How will this affect the specific communities that are often not on people's minds in terms of what impacts are? I think that is actually one of the successes of the work so far.

Senator CARPER. All right. Sometimes, folks ask me, what do you mean by environmental justice? Why are they making such a big deal about it? Senator Inhofe and I have been, for years, on Thursdays around noon, participating in the same Bible study. Our chaplain is Barry Black, as our colleagues know, who is a retired Navy Admiral, former Chief Chaplain of the Navy and Marine Corps.

He is always reminding us of the importance of the Golden Rule, treating other people the way we want to be treated. I think he once said it is the only rule that is in every major religion in the world. Everyone ought to treat other people the way we want to be treated. I think that certainly applies with respect to clean air, clean water, and protection from this all this climate crisis that we are witnessing.

Thank you. With that, my time has expired. I am going to yield, happily, to Senator Cramer for his questions.

Thank you.

Senator CRAMER. Thank you, Mr. Chairman.

Thank you, Chair Mallory, for being here.

Again, thank you for the hearing, Mr. Chairman, and thanks for teeing up that question, because I want to elaborate on it a little bit and ask you to, as well. I am looking at the White House Environmental Justice Advisory Council's Justice40, some of the conclusions that they drew, and this is going to get me to my first question.

Some of the conclusions, for example, examples of types of projects that will not benefit a community, here is a list from your—fossil fuel procurement, development, infrastructure repair that would in any way extend lifespan or production capacity; transmission system investments to facilitate fossil fire generation or any related subsidy; highway expansion, that certainly wouldn't help any community; road improvements or automobile infrastructure other than electric vehicle charging stations—really?—indus-

trial scale bioenergy, God forbid that that would happen in a community. That certainly wouldn't be good.

Critical to me in these discussions, around social justice and what is not good for a community, I have been participating, a number of us have, in a bipartisan discussion right now, as we speak, in these weeks, on trying to find a bipartisan energy and environment climate plan that we could agree on that would forward reliable power, whether it is for vehicles or for electricity, while at the same time, meeting certain goals.

I think you have been talking in circles, frankly, but I think I understand you are just trying to find the balance. You are talking about balance, right? We have demands. We have an economic demand, we have national security demands, we have Europe pleading with us for our natural resources because they voluntarily cut themselves off of Russia's natural resources.

But critical to all of this, in my mind, is prioritization of commercialization of emerging technologies. Emerging technologies, particularly in the power sector, that would also reduce emissions, technologies like carbon capture utilization and storage, listed as one of the things that don't help communities, for example. Direct air capture is also listed in the White House document as something that doesn't help communities. Emission free nuclear power generation, I don't know how you could want to advance cleaner energy and not be for nuclear. I want to remind you that President Biden's emission goals say that carbon capture utilization and storage and nuclear are critical components to reaching the targets.

Then you have this Environmental Justice Advisory report stating they believe CCUS will not benefit communities. CEQ says environmental justice considerations must be incorporated into all permitting decisions.

Some who see these, really, are left with some pretty obvious questions. Does the Administration actually support CCUS and nuclear? Do they actually support all communities, or only certain communities? If so, why are they simultaneously making it harder for these types of projects to get permitted? Help me find the balance here.

Ms. MALLORY. Yes, first of all, thank you for the question, Senator. I appreciate what you are struggling with. One of the things that the President is trying to do through the environmental justice work and I think was critical in his interaction with the communities during the campaign, and that was reflected in early Executive Orders is, he wants the authentic voices of communities to be heard, to be elevated, to be part of the conversation. What you read, the recommendations that we heard from the Environmental Justice Advisory Council, that is their reflection of their authentic voices.

That doesn't mean that every single item there the President shares exactly that view with. He has also been very clear, I think, through the campaign, throughout early activities, that we think that technology is an important part of the solution for decarbonizing the environment, that we have to not only work hard to reduce the emissions of carbon, but we also are probably not going to be able to do it sufficiently without removing, having some technology that can help remove environment.

I think the President has been clear about what his views are on that.

Senator CRAMER. I don't think it is clear at all. I think it is very confusing, quite honestly. I don't think there is anything clear about it.

What I would like, I wonder, if anybody, when they do these surveys or they are talking to these communities, if they ever ask the question, how would it be if your natural gas gets turned off in the middle of winter? How about the air conditioning gets turned off because there is no electricity because God forbid, we have nuclear power or carbon capture utilization on a coal fired power plant, and we are only going to rely on the wind on the days that it blows?

What is the process for coming up with crazy, frankly, this is cartoonish, this Justice40 document. I don't think the President is clear at all. I think the President sends confusing messages. I think investors see them as confusing, if not hostile, quite honestly. I prefer him to remain committed to carbon capture utilization storage and nuclear, frankly, as parts of the solution.

I will get to some more questions in another round. Thank you.

Senator CARPER. Before I turn to Senator Whitehouse, since Senator Whitehouse has not returned yet, I think maybe we are going to go to Senator Padilla next. Is that correct?

Before I do that, let me just say that as my colleague knows, let me say to Senator Cramer, I think you know how strongly I feel about nuclear. Old Navy guy, 70 years we have been doing nuclear in the Navy, and I think you have an idea, as a native of West Virginia, what I think about CCUS. I think we are poised to do good things there.

Senator CRAMER. I don't worry about you.

Senator CARPER. Thank you. I wish more people felt that way. [Laughter.]

Senator CRAMER. I don't even worry about Senator Whitehouse. I rather like him.

Senator CARPER. Senator Whitehouse has rejoined us. After him, I think, maybe Senator Lummis after Sheldon.

Senator Whitehouse, welcome.

Senator WHITEHOUSE. Thank you, Chairman.

First, responding to some of the comments we have heard here, yes, to helping Europe disconnect from Russian fossil fuels. The Ukraine War is a fossil fuel powered war that sends important messages about the danger of this international industry. And for national security reasons, totally yes to helping Europe get off fossil fuels.

Let's do remember that there is no American energy security in oil and gas. It can't happen. It can't happen for the very simple reason that the price of oil and gas is not set here in America. It is set by an international cartel of Iran and Venezuela and Russia and Saudi Arabia and others, and a horde of speculators who surround them.

Every day, the American oil and gas industry has the choice whether to set their prices based on their cost of production here in America or whether to ride the cartel prices way up into the stratosphere and pocket billions and billions and billions of dollars in excess profits. And every day they choose that.

We could knock a dollar off the price of gasoline tomorrow, if President Biden had the authority to, and they would still make money. That is how grotesque the excess profits are. And it is a choice that the oil and gas industry makes, not to follow market price based on cost of production, but to follow international cartel price. I hope we take a good hard look at that in the future.

With respect to carbon capture, a place where we have done a lot of good work in this Committee; first of all, thank you for your interim guidance. I think that is a very good start. We need carbon capture for the very simple reason that we are going to miss the 1.5 degree safety threshold. We are going to overshoot, and going to zero carbon doesn't get you back once you have overshoot.

We need these technologies; we need to develop them, and we also need to make sure that communities that have been burdened by pollution understand that this is not another end run around their concerns.

So, thank you for you focus on environmental justice. Thank you for the screening tool, which I have used for Rhode Island. It is very accessible and easy to use. I am grateful to you for it. Thank you for the focus that we have to engage communities in order to succeed, and in particular, with carbon capture, we have to engage communities.

I think the question of NEPA reform and moving forward efficiently is a very important one. To me, the lesson is the sooner you can engage the conflicting uses, the better. We did this with offshore wind in Rhode Island, as you may know. We had a very good process that got all the users together with really good data from the University of Rhode Island. And because our process was good, we got the first steel in the water, the first electrons on the grid.

We showed that you could site offshore wind in America, and now there is this explosion that President Biden is counting on for 30 gigawatts of clean and renewable energy. But it is going to happen a lot quicker if you get the lesson right, which is that all the conflicting users have to be brought together as soon as possible.

I don't know if you have been following what BOEM did, but they got off to a terrible start with Vineyard Wind. It stubbed the toe of the whole offshore wind movement because they had not done that. They had not gotten everybody in the room who was a conflicting user. They had instead tried to roll communities.

Now, with the progress going forward, BOEM has been better. They have moved the conflict identification forward. The New York Bay process has been much, much, much improved, so we are really, I think, gaining ground. To me, the lesson is that the process can't be one that is designed to steamroll communities and people who will be victims of pollution, but one that hears them early so that their concerns can be taken into consideration as quickly as possible. I hope that is the theory that will guide you.

We are trying to improve carbon capture and carbon removal by creating a market for it. As you know, it is free to pollute. The fossil fuel industry fights incredibly hard every day to make sure that it is free for them to pollute and dump carbon dioxide into the atmosphere, and tons and tons and tons and tons and tons, so let everybody else pick up the tab for those bad effects.

We will be launching very soon a bill to give the Department of Energy a role buying carbon removal to jumpstart the market and move these technologies forward, in addition to the 45Q support that we have given. And I hope you will take a look at that bill. I hope you can round up Administration support for it. It is called the Federal Carbon Dioxide Removal Leadership Act.

With that, congratulations to you on the CCUS work. Congratulations on the environmental justice work. Congratulations on the screening tool, and good luck making sure that our regulatory siting issues are dealt with in a way that does not steamroll local communities, but rather efficiently resolves the conflicts that they inevitably produce. Thank you.

Ms. MALLORY. Thank you so much, Senator. I would just like to emphasize that the permitting action plan that we issued this morning is designed to do exactly what you are saying, to take the best lessons that we have learned, to use the senior leadership across the government to work together to make sure that we are organizing our work on individual actions to bring people together and resolve issues. I think that is hugely important.

On the CCUS front, I think we absolutely are, as an Administration, supporting CCUS as a technology. The President has been clear on that. I think that we have to work harder to make sure that CCUS does not end up harming communities. That is what they care about. That is what they are worried about. They are worried because they are often the afterthought, and as a result, they have concerns that that is what people are thinking about now. We are trying really hard to avoid that.

Senator WHITEHOUSE. That is the right thing to do. Thank you.

Senator CARPER. Let me say, as we used to say in the House of Representatives, colleagues, I want to associate myself with the words of the Senator from Rhode Island.

Senators, I want to submit for the record a unanimous consent request. I ask unanimous consent to submit for the record materials describing the cause of the volatility in global energy markets, including a memorandum from MIT Economist discussing three conclusions, which I will not elaborate on right here.

[The referenced information follows:]

The Natural of Oil and Gasoline Markets
 Christopher R. Knittel
 George P. Shultz Professor of Energy Economics
 Director, Center for Energy and Environmental Policy Research
 Deputy Director for Policy, MIT Energy Initiative
 Massachusetts Institute of Technology
 April 1, 2022

The tragic events in Ukraine have created renewed interest in oil and gasoline prices. The oil and gasoline markets function very differently from each other and, in the case of oil, do not behave in a way that gives the US much leverage. In this memo, I discuss how oil and gasoline markets function, focusing on the behavior of oil and gasoline prices. I also discuss what it means for the United States to be “energy independent” and how the US has never achieved such a distinction.

US oil production has limited impact on the price of oil

Oil markets are global. That is, there is effectively one price of oil across the globe. This, in turn, implies that every barrel of oil competes with every other barrel of oil worldwide. What drives this feature of oil markets is the fact that oil, in contrast to natural gas, is extremely inexpensive to move. For example, historically, it costs roughly \$2 to move a barrel of oil from the Gulf Coast to Europe, or vice versa. Therefore, an owner of a barrel of oil in the Gulf Coast would not be willing to sell their barrel in the US if the price in Europe was more than \$2 more than the US price. This means that the two prices can differ by at most \$2.

This makes it more difficult for US policy to lower the oil price in the US because that would require reducing the global price of oil. For example, suppose the Biden Administration could immediately increase US production by 2 million barrels a day, an increase of roughly 20% and approximately equal to the rise in US production from February 2021 to December 2021. This 20% increase in US production will be spread over the entire **world** production. While it is a 20% increase in US production, it is only a 2% increase in world supply. While this will certainly put downward pressure on world oil prices, the impact would not be as large as the original 20% number may suggest. While there is good reason to believe that the US should look to increase production, we must be realistic about what that increase will do to oil prices. The same can be said of using releases from the Strategic Petroleum Reserve to lower prices. While such releases will put downward pressure on prices, they are not likely to provide sustained relief.

The US is not, and could not easily be, energy independent, in terms of price

The fact that the oil market is a world market also affects the concept of “energy independence.” Many appear to believe that energy independence exists if we produce the same amount of oil as we consume. This is not energy independence. At least it is not if you believe, as I do, that independence implies that oil prices in the US are independent of what is happening elsewhere. Even if we produce the same amount of oil as we are consuming, anything that raises oil prices in Europe will also raise US prices. Again, this is because there is one world price. To see this empirically, the graph below plots weekly net imports of crude and petroleum products and

prices in Cushing, OK the US benchmark price (known as Western Texas Intermediate, WTI).¹ We see that WTI prices were increasing beginning in April of 2020, even though net imports bounced above and below zero.

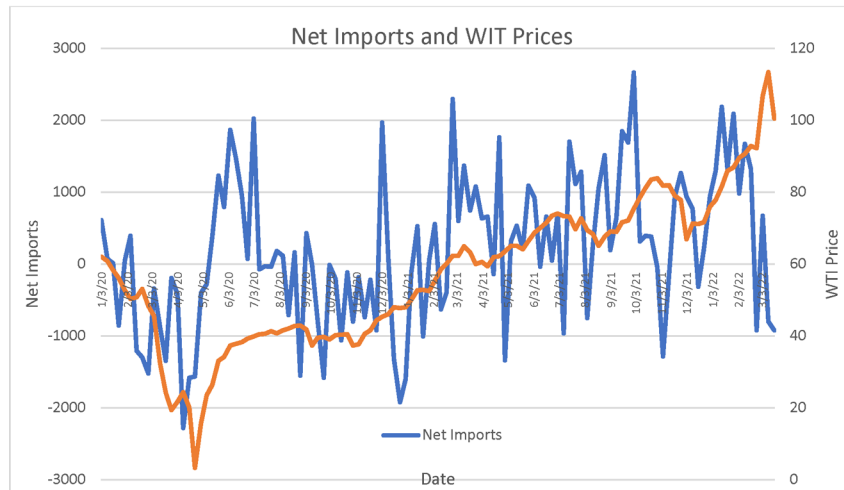


Figure 1: US Net Imports of Petroleum Products and WTI Oil Prices

True independence would require not only producing at least as much as we consume but also banning the sale of US oil *and petroleum products* outside of the US. Doing this, however, would reduce the incentive to produce oil which would in turn push against the ability of the US ever to be oil independent. A ban on crude export, in fact, existed up to 2015. The ban was originally passed during the oil shocks of the 1970s in combination of national price controls.² Note also that the goal of autarky is to lower prices in the US compared to the rest of the world. This will necessarily reduce how much drilling takes place in the US relative to the case where US oil and petroleum products have access world markets. The supply response will push against energy independence. The US could also, in principle, nationalize the oil industry, but I would fear that this, too, would reduce how much oil is produced given the likely inefficiencies associated with a nationalized oil industry.

Evidence indicates that gasoline prices are high because of retail gas stations, not refiners

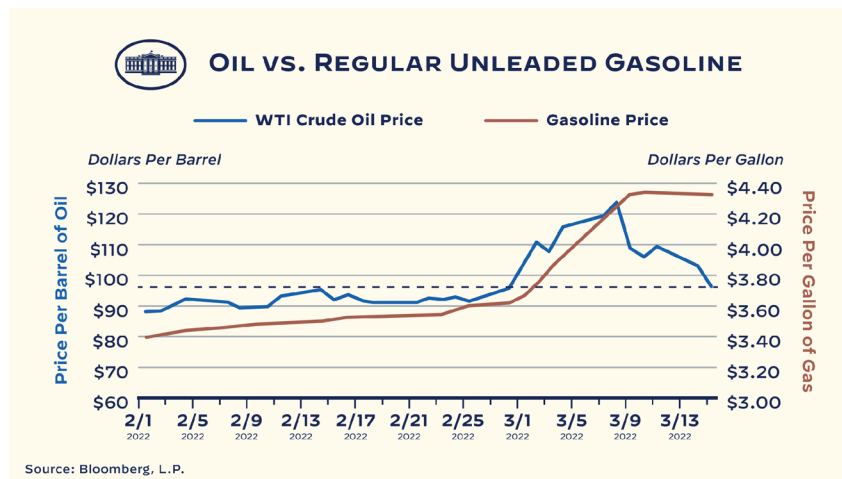
Retail gasoline prices, however, are more local markets. This is true because states vary in how much they tax gasoline, and some states have their own “blends” of gasoline – requirements on what is blended into a gallon of gasoline or how it is refined typically for environmental reasons. This allows retail gasoline prices to vary across states and countries. For example, the average

¹ https://www.eia.gov/dnav/pet/pet_move_wkly_dc_NUS-Z00_mbbldpd_w.htm.

² For a discussion, see <https://cepr.mit.edu/workingpaper/the-origin-of-us-transportation-policy-was-there-ever-support-for-gasoline-taxes/>.

price of gasoline in the US this past week was \$4.53 per gallon for all grades and formulations but was \$5.71 in California and \$3.889 in Texas.³ In the UK, the average price is \$8.305.⁴

Recently, the Biden Administration released a graph comparing WTI oil prices with average retail gasoline prices that exhibited what economists refer to as the “Rockets and Feather” phenomenon.⁵ Specifically, this refers to the situation where many retail prices closely track wholesale costs as they increase (the rocket) but slowly track wholesale costs when they fall (the feather).



One open question is whether this results from pricing behavior of refineries or retail gas stations. I investigate this here. Unfortunately, the Energy Information Administration (EIA) only collects daily prices for refinery (wholesale) prices charged by refineries and not gas stations (retail prices). Therefore, I only analyze wholesale prices, but this is sufficient to draw meaningful conclusions. While the EIA collect weekly retail prices, these are less helpful for analyzing the rockets and feathers phenomenon.

Graphing wholesale prices against oil prices strongly suggests that the feather portion in the Administration’s graph is due to **retail gasoline station pricing** and not refinery pricing, at least in most parts of the US. For example, below is a similar graph to the Biden Administration’s but for wholesale prices in the Gulf Coast. Gulf Coast wholesale prices track oil prices similarly when oil prices increase or decrease. Wholesale gasoline prices in New York exhibit similar behavior, as do New York heating oil, Los Angeles (LA) diesel, New York diesel, and Gulf

³ <https://www.eia.gov/petroleum/gasdiesel/>.

⁴ https://www.globalpetrolprices.com/United-Kingdom/gasoline_prices/.

⁵ See, for example, <https://academic.oup.com/qje/article-abstract/112/1/305/1870906?redirectedFrom=fulltext&login=false>.

Coast diesel prices. Among the prices collected by the EIA, the one exception is LA wholesale gasoline prices (reformulated blendstock for oxygenate blending, or RBOB). LA RBOB prices did not fall as much as oil prices during the recent drop in oil prices and increased when oil prices increased. The net effect of this is that LA RBOB prices are higher today than they were when oil prices were at their recent peak.

This analysis suggests that, outside of the California, the rockets and feather phenomenon exists because of pricing behavior downstream of the refineries. There are two downstream prices. The “rack” price is the price paid by gas stations that buy directly from the rack and “jobbers” that sell to gas stations. The second downstream price is the retail price charged at gas stations. The predominant explanation for the rockets and feather phenomenon in the economics literature is that is caused by the existence of non-informed consumers that face search costs.⁶ One might believe retail consumers are less informed and face higher search costs which may suggest the feathers portion is driven at the retail level. However, this requires further study.

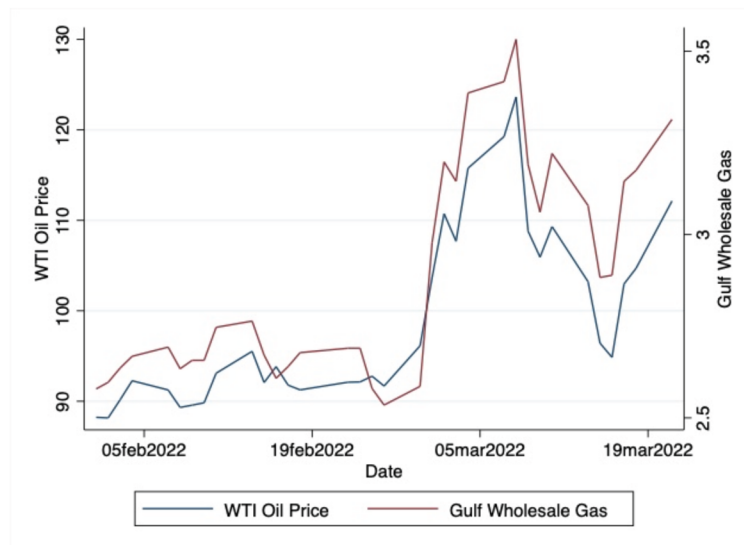


Figure 2: WTI Oil Prices and Gulf Coast Wholesale Gasoline Prices

⁶ See, for example, <https://www.jstor.org/stable/25593733?seq=1>.

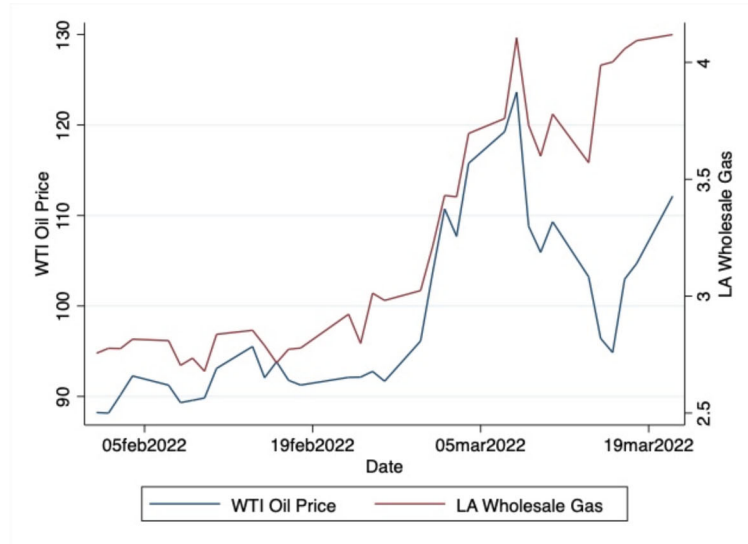


Figure 3: WTI Oil Prices and Los Angeles Wholesale Gasoline Prices

What drives crude oil prices?

*An analysis of 7 factors that influence oil markets,
with chart data updated monthly and quarterly*



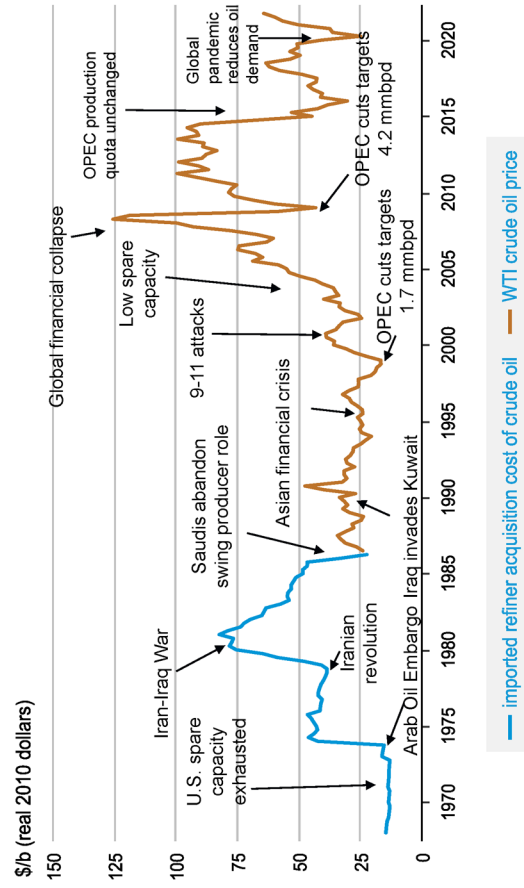
March 8, 2022 | Washington, DC



U.S. Energy Information Administration

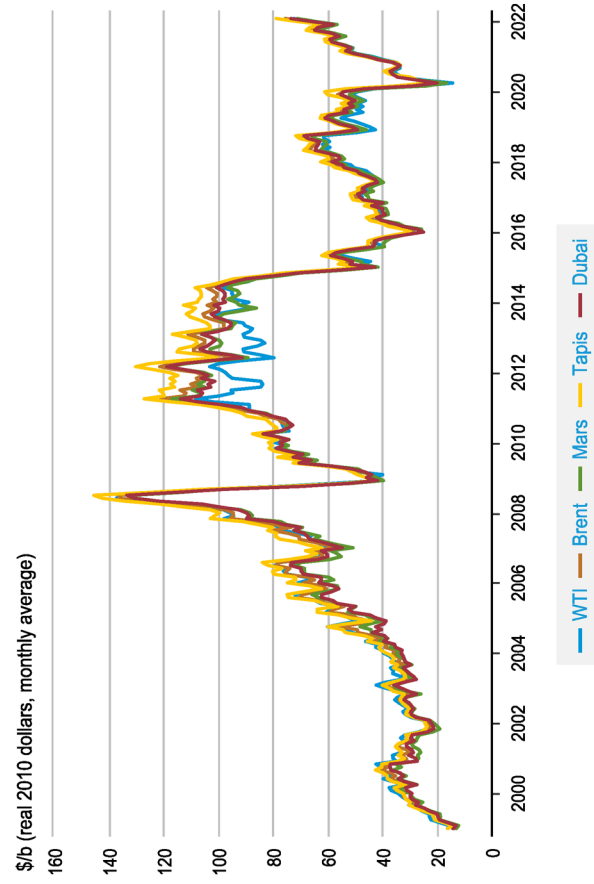
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Crude oil prices react to a variety of geopolitical and economic events



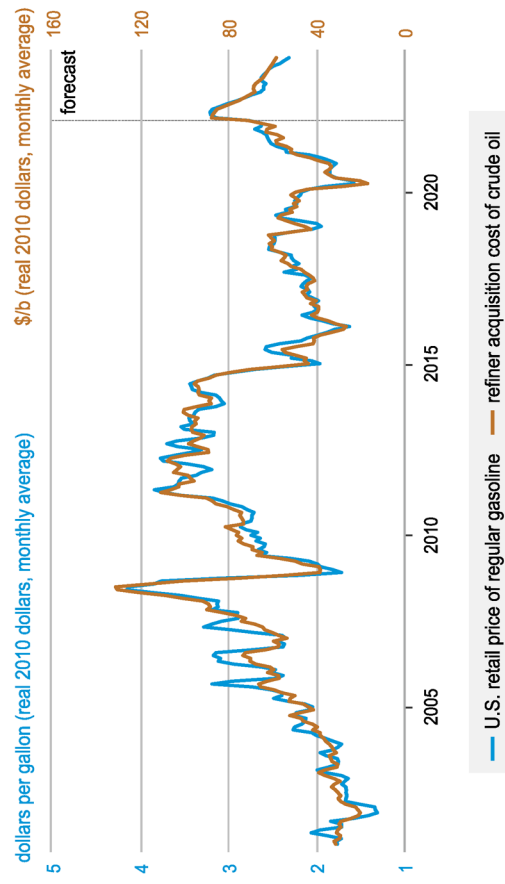
Sources: U.S. Energy Information Administration, Refinitiv An LSEG Business

World oil prices move together due to arbitrage



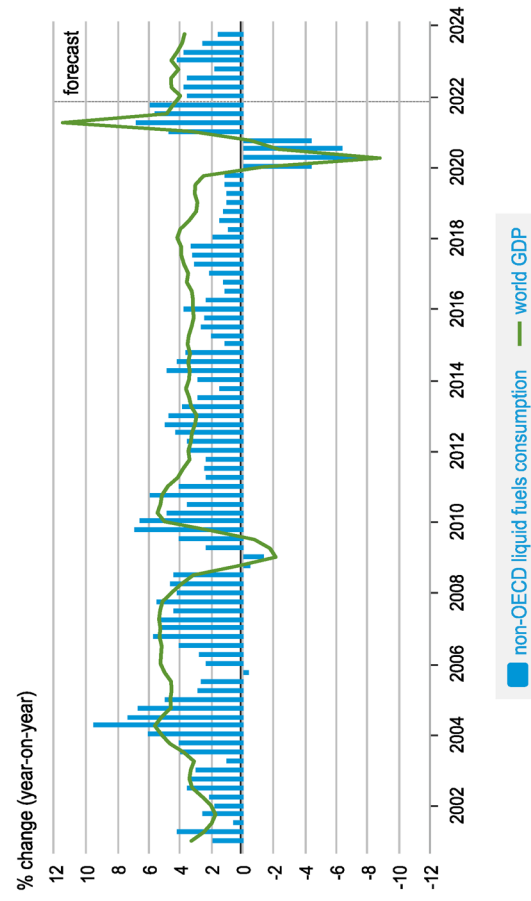
Sources: Bloomberg, Refinitiv An LSEG Business

Crude oil prices are the primary driver of petroleum product prices



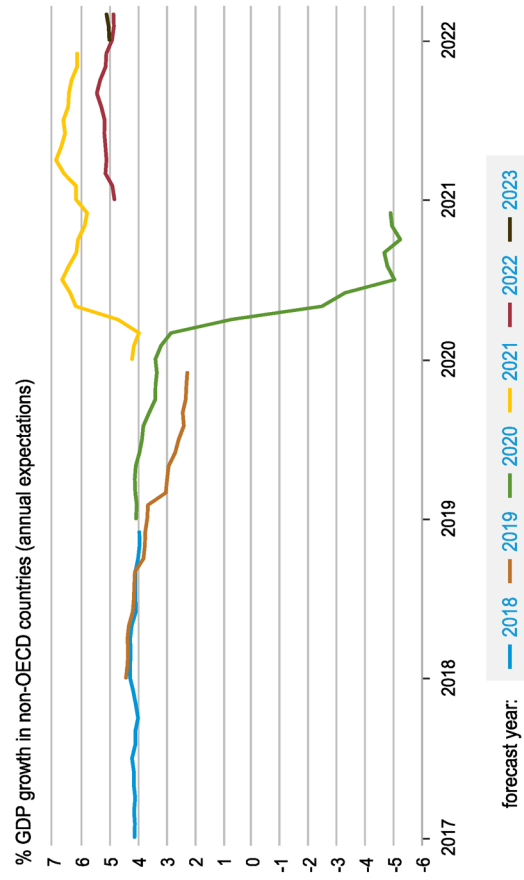
Source: Short-Term Energy Outlook

Economic growth has a strong impact on oil consumption



Sources: U.S. Energy Information Administration, Oxford Economics

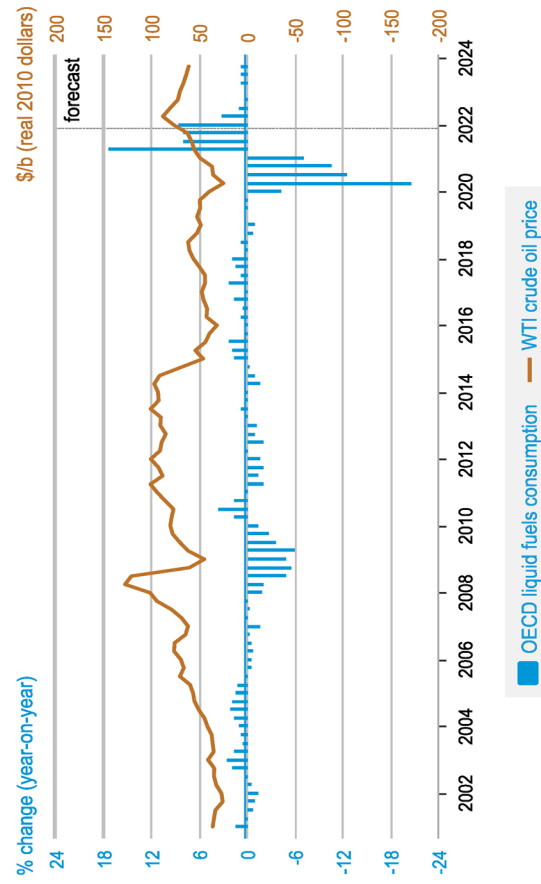
Changes in expectations of economic growth can affect oil prices



Note: Starting in January of each year, each line shows the expected forecast of GDP growth for the specified calendar year, which tends to move toward the actual realized growth outcome as the year progresses. Expectations continue to evolve into the next calendar year as revised GDP data become available (e.g., 2008 GDP expectations are revised even during 2009).

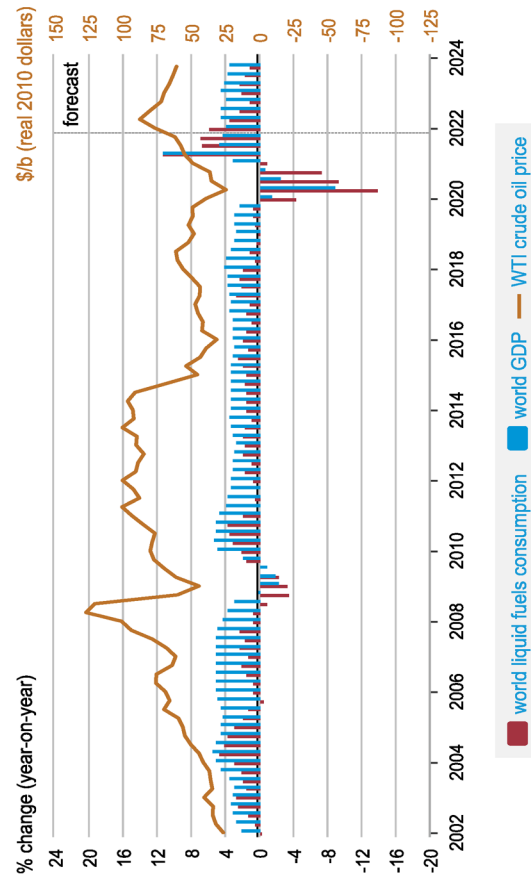
Source: Oxford Economics

In OECD countries, price increases have coincided with lower consumption



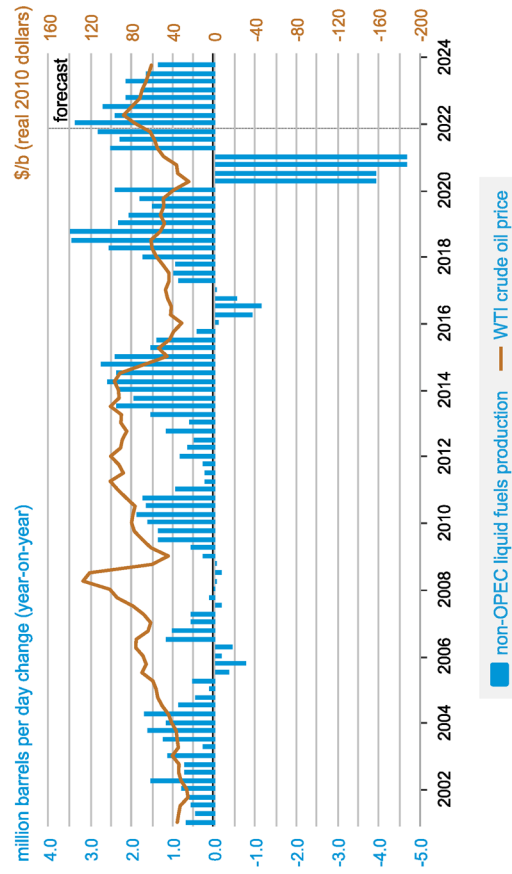
Source: Short-Term Energy Outlook

Rising oil prices held down global oil consumption growth from 2005-2008, despite high economic growth



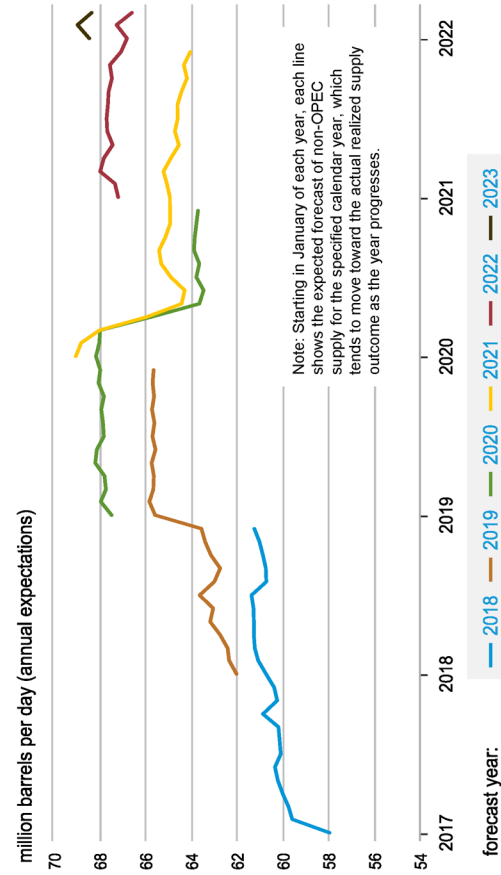
Source: Short-Term Energy Outlook

Changes in non-OPEC production can affect oil prices



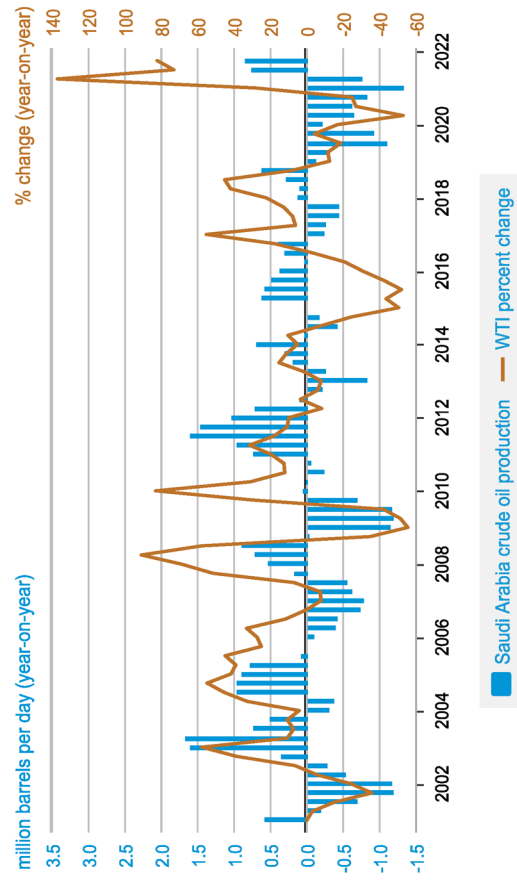
Source: Short-Term Energy Outlook

Non-OPEC supply expectations indicate changes in market sentiment concerning oil supply



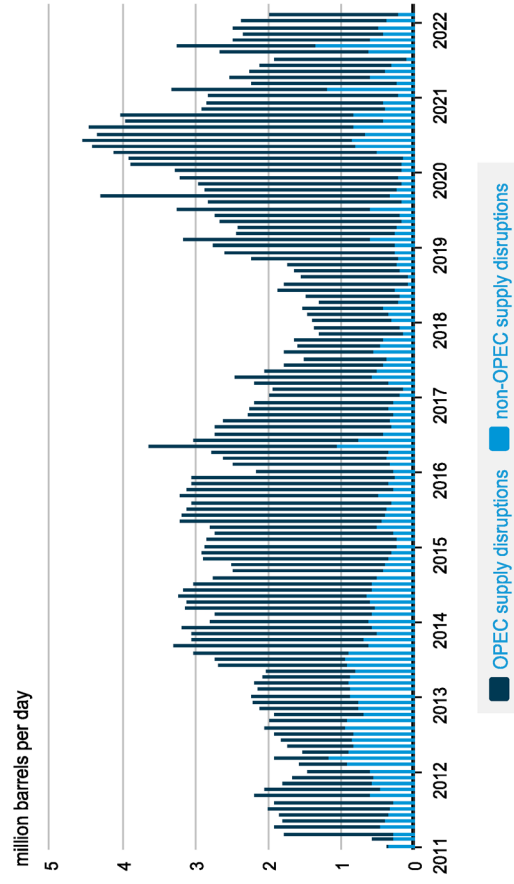
Source: Short-Term Energy Outlook

Changes in Saudi Arabia crude oil production can affect oil prices



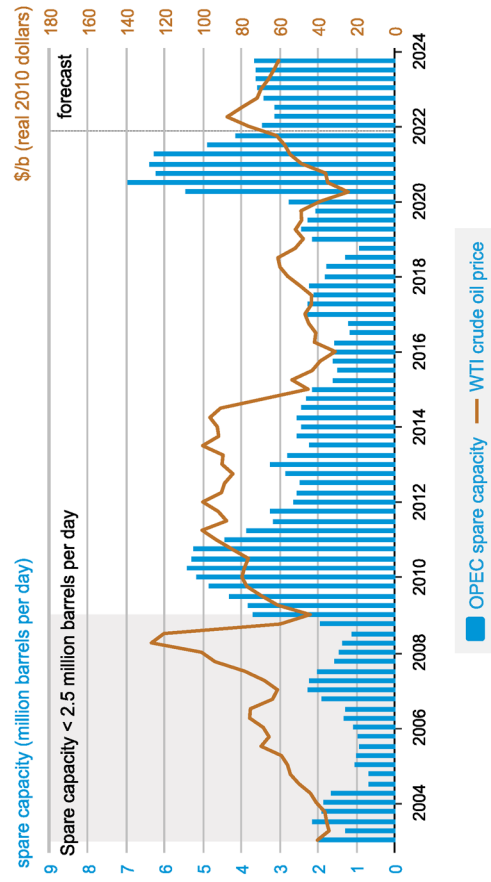
Sources: U.S. Energy Information Administration, Refinitiv An LSEG Business

Unplanned supply disruptions tighten world oil markets and push prices higher



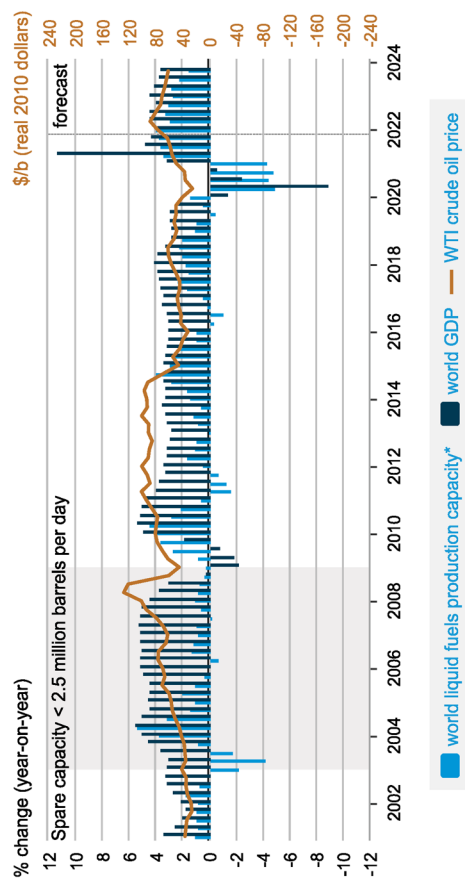
Sources: U.S. Energy Information Administration

During 2003-2008, OPEC's spare production levels were low, limiting its ability to respond to demand and price increases



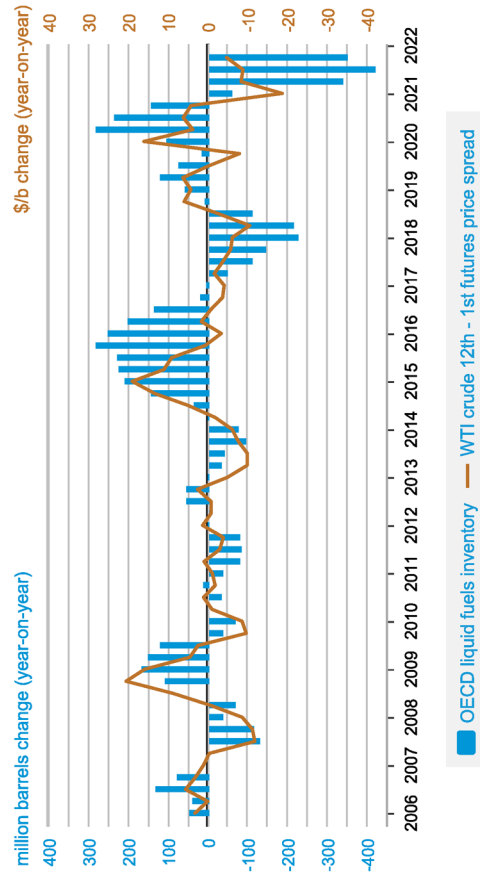
Source: Short-Term Energy Outlook

The years 2003-2008 experienced periods of very strong economic and oil demand growth, slow supply growth and tight spare capacity



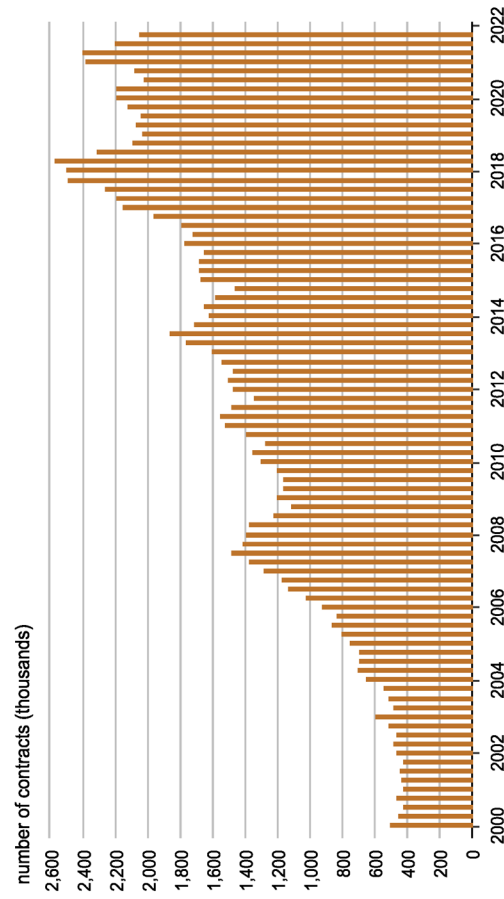
Source: Short-Term Energy Outlook

Inventory builds go hand-in-hand with increases in future oil prices *relative to* current prices (and vice versa)



Source: Short-Term Energy Outlook

Open interest in crude oil futures grew over the last decade as more participants entered the market

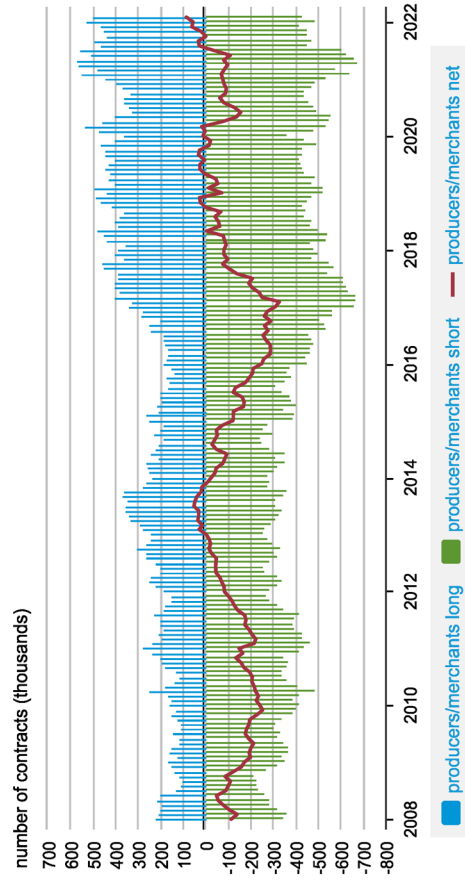


Source: Bloomberg



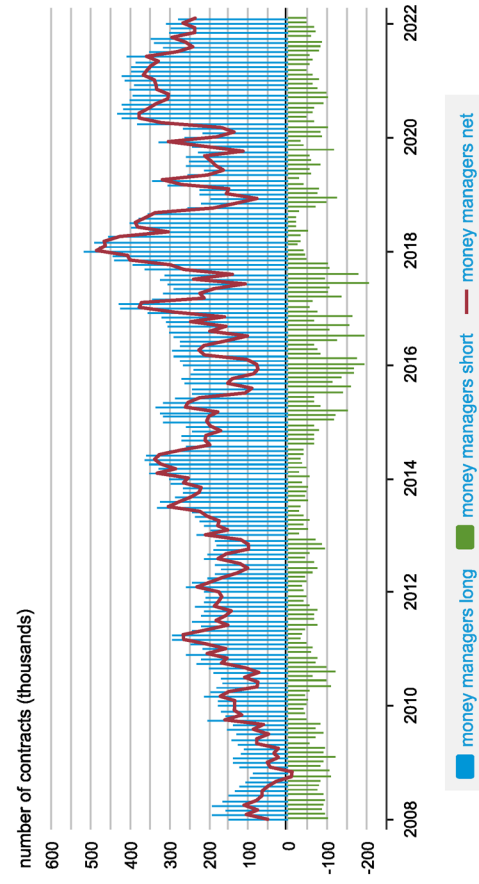
March 8, 2022

Physical participants' (producers, merchants, processors, and end users) U.S. futures market contract positions



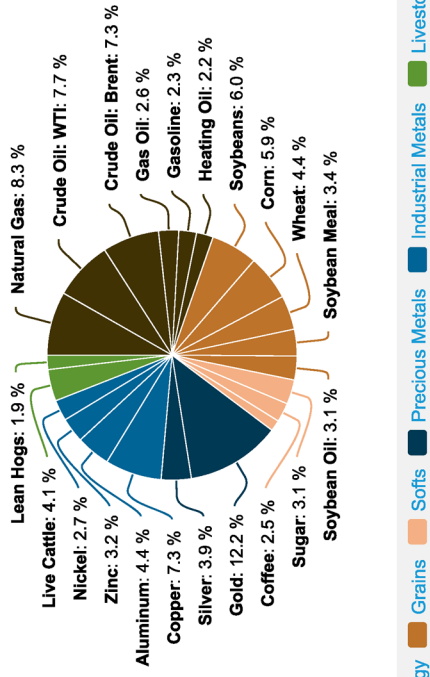
Source: Commodity Futures Trading Commission, Commitments of Traders

Money managers tend to be net long in the U.S. oil futures market



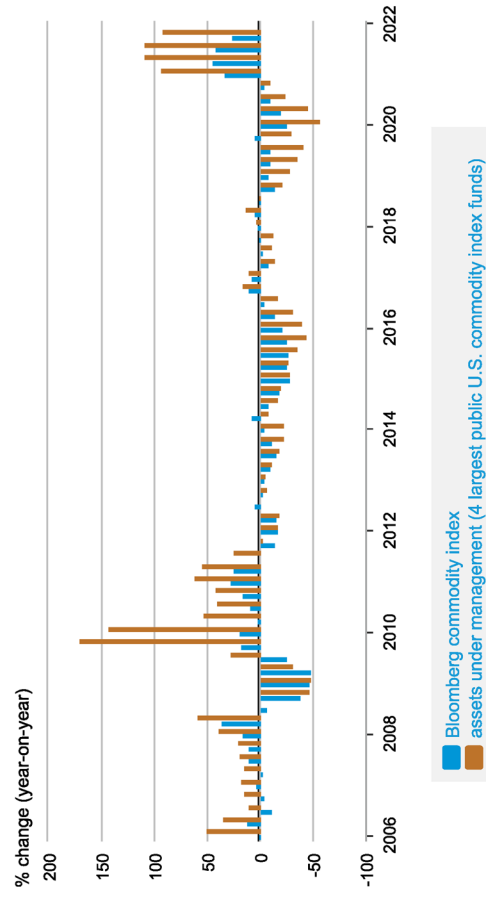
Source: Commodity Futures Trading Commission, Commitments of Traders

Crude oil plays a major role in commodity investment



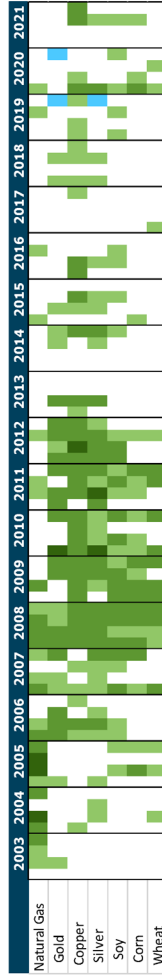
Source: Bloomberg

Commodity index investment flows have tended to move together with commodity prices



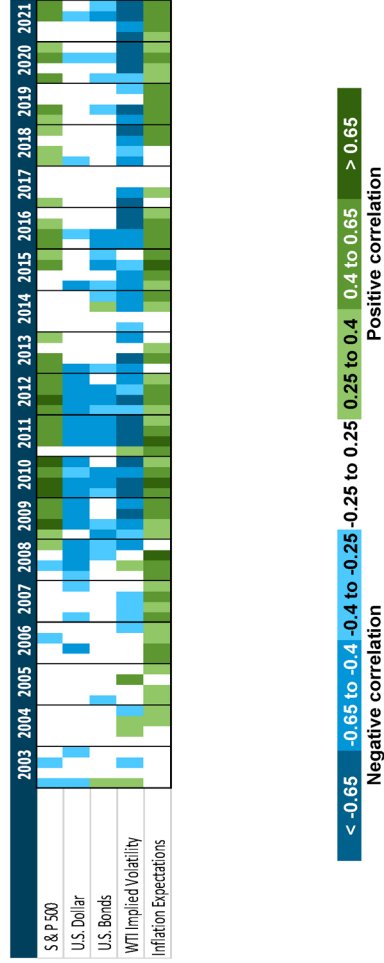
Source: Bloomberg

Correlations (+ or -) between daily price changes of crude oil futures and other commodities generally rose in recent years



Note: Correlations computed quarterly

Correlations (+ or -) between daily returns on crude oil futures and financial investments have also strengthened



Note: Correlations computed quarterly

For more information

U.S. Energy Information Administration home page | www.eia.gov

Short-Term Energy Outlook | www.eia.gov/steo

Annual Energy Outlook | www.eia.gov/aeo

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March 8, 2022

Why gasoline prices remain high even as crude oil prices fall

Crude oil prices are down more than 20 percent from their March high, but many Americans are still seeing gas at more than \$4 per gallon

Analysis by [Andrew Van Dam](#)

Staff writer

April 11, 2022 | Updated April 11, 2022 at 10:44 a.m. EDT

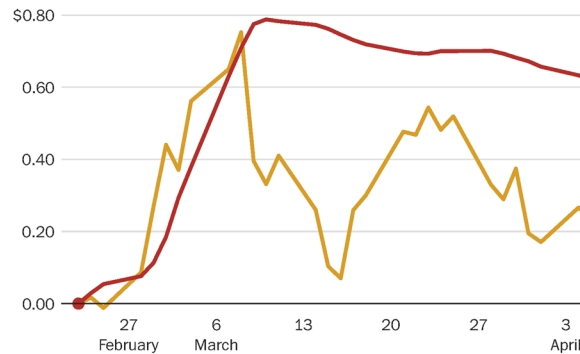
When the cost of crude oil soared to new highs in early March with the Russian invasion of Ukraine, prices at the gasoline pump followed. They climbed 17 percent in a little over a week.

But when crude prices eased — they're now down more than 20 percent from their March high — pump prices eased somewhat but have remained elevated.

This pattern is so common, especially with gas prices, that economists have a pet name for it: rockets and feathers. When crude prices jump, pump prices tend to rise like a rocket. But when crude prices fall, pump prices tend to descend gently, like a feather.

Pump prices remain high even as crude falls

Change in the price of a gallon of each commodity since Russia invaded Ukraine



Note: Crude price assumes there are 42 gallons in a barrel of West Texas Intermediate; gasoline price is based on the U.S. average for a gallon of unleaded. Most recent crude price is as of Monday morning, most recent gasoline price is as of Monday morning.

This widely documented phenomenon helps explain why gasoline has remained stubbornly expensive even as crude gets cheaper, and why gas stations tend to pocket fatter profits when prices are falling than when they're rising.

Economists and policymakers offer myriad reasons for what fuels the rockets and lightens the feathers, from corporate greed to collusion, but the strongest force may simply be consumer interest.

Drivers shop more carefully — and force stations to compete — when prices are rising, said Clemson economist and gas price expert Matthew Lewis.

When drivers pull up to a gas station and see a higher price than they expect, they think they can get a better price somewhere else, Lewis said. They don't realize West Texas Intermediate spot prices are driving up gasoline costs everywhere, so they'll check a couple more stations' prices before pumping.

But if that same person pulls up and sees a lower price than expected, they're likely to assume they're getting a good deal — they have no idea that crude prices are falling even more than the price they're paying. They pump gas immediately, no search needed.

This pattern is borne out in Lewis's analysis of Internet traffic to the price-comparison platform GasBuddy, published in the *Journal of Industrial Economics*. People flock to the site when prices are rising but virtually ignore it as they fall.

With pump prices now at \$4.11, nearly double their 2020 average of around \$2.18 a gallon, and at all-time highs (before accounting for inflation), Americans are unusually sensitive to price changes. When gas prices are this much higher than what drivers have been paying recently, drivers are more likely to cut back on driving and hunt for better prices, according to additional research by Lewis and his collaborators.

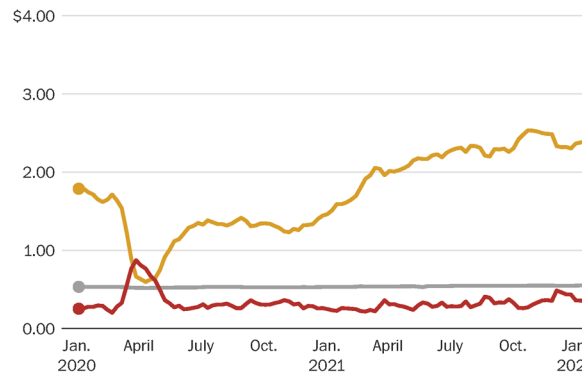
On the other side of the transaction, stations tend to make most of their profit when prices are falling like a feather. When prices are skyrocketing, station owners earn less and may lose money in the hypercompetitive environment spawned by expensive gasoline.

On average, stations enjoyed far higher profit margins in 2020 when prices were lower than they did in 2022 as prices hit record highs. At the height of pandemic closures in 2020, customers weren't buying much gasoline, but stations were pocketing 87 cents for every \$2.07 gallon of unleaded gasoline sold, according to data provided to The Washington Post by the Oil Price Information Service (OPIS), a Dow Jones company.

When prices soared in early March, stations made just 35 cents on each gallon. In the most recent week, as crude prices continued to fall, stations were pocketing 55 cents a gallon before labor and other expenses, according to OPIS. It was easily their best profit since the pandemic began.

Gas stations make the biggest margins when prices fall

Breaking down the price of one gallon of unleaded gasoline in the U.S.



Note: freight prices, not shown, average around 2 cents a gallon; profit margin

Many neighborhood stations buy wholesale gas once every three to five days, said Patrick De Haan, GasBuddy's head of petroleum analysis. When prices rise quickly, the stations that refill their tanks first are hit with the high prices, but they can't pass that on to customers since an across-the-street competitor may have a few days of supplies at the older price.

As a result, many stations lose money on gasoline sales as prices rise. If they raised prices before their competitors did, they would lose legions of newly price-conscious customers — customers who also walk into the convenience store and buy some high-margin Slim Jims and energy drinks. It takes a few days for stations to pass on their higher costs, De Haan said.

“After about Day Three or Day Four, stations are starting to push the big increases along,” De Haan said. “Meanwhile, that means they’ve been underwater now for 72 to 96 hours. So stations are behind. They’re losing their shirt.”

Stations can make up for those losses by being slow to lower pump prices as crude prices fall. And if prices fall low enough, stations can make a killing.

“The biggest myth is that retailers love it when the price goes up, because they make so much money,” said Tom Kloza, global head of energy analysis at OPIS. “The reality is they love it when the price collapses.”

When crude prices fall, pump prices can be propped up by “tacit collusion,” said Lewis, of Clemson. That sounds shady, but it’s a completely legal process in which station owners — without communicating with each other through any means other than the price signs towering over their pumps — independently realize they will all benefit if prices remain high, so nobody wants to be the first to lower them.

“Let’s be honest,” De Haan said, “gas stations are a for-profit business. They’re not looking to put themselves out of business by losing money on the way up and then shooting themselves in the foot by lowering their price too fast on the way down.”

But if retailers don’t make money when prices are rising, who does? Economists say that while refiners may see some temporary benefits, they’re squeezed by the same forces that crush retail profit margins. So, in the end, everything comes back to the companies and countries that actually extract the oil.

“Anybody who’s producing oil is making boatloads of money right now,” said University of California at Berkeley economist Severin Borenstein, a godfather of rockets-and-feathers research. “That doesn’t mean oil producers are doing anything anticompetitive,” he clarified later, “just that they are the lucky beneficiaries of a disrupted market that is driving the market price way above their production costs.”

When the oil industry gets lucky and prices rise, executives reap the benefits, according to an Energy Journal analysis of pay at 78 U.S. energy companies by University of Michigan economist Catherine Hausman and UC Berkeley economist Lucas Davis.

Executives tend to get substantial raises when oil prices climb, even though prices are generally driven by geopolitical forces and other factors outside their control, Hausman said. And when prices fall, executive pay doesn’t budge.

Other than oil producers and executives, credit card companies may be the biggest beneficiaries of high oil prices, Kloza said. They take a percentage of whatever the customer pays at the pump, so their cut soars alongside gas prices, yet they don’t have to invest any additional time or resources in the transaction.

Within a few weeks or months, gasoline prices will catch up with pump prices as gas stations push each other’s prices down in a slow, steady battle for customers. But even as crude prices fall, they remain relatively high in historical terms, making it unlikely that pump prices will fall to pre-pandemic levels in the near future, experts say.

Senator CARPER. I think Senator Inhofe has a unanimous consent request as well.

Senator INHOFE. One request, and that would be that I can submit for the record my second question.

Senator CARPER. Without objection, so ordered. Thank you.

[Senator Inhofe's question is included in the questions for the record printed earlier in this hearing document.]

Senator CARPER. With that, we are ready to here from Senator Lummis.

Take it away.

Senator LUMMIS. Thank you, Mr. Chairman, and thank you, Chair Mallory, for being here.

I am hearing a total disconnect between what the Senator from Rhode Island just said and what the Administration is doing. So I am going to ask you the question now, but then I want a few minutes to vent before you answer it.

So here is the question. In May of last year, the White House Environmental Justice Advisory Council released a report that said carbon capture is among the types of projects that will not benefit a community, not benefit a community. And yet the Senator from Rhode Island, a member of your own party and a tremendous advocate for environmental justice, believes just the opposite. There is a disconnect in your own party among people who are real advocates for environmental justice. So, here is what I am going to say in the way of venting, but that is my question.

You know, everything that you do at CEQ relates to the West, everything you do. It makes a difference for us on whether we have enough electricity in our homes via transmission lines. It impacts our abilities to fight wildfires, to commute to work on roads and bridges in massively large States. So it is a huge consequence.

It is because of NEPA that I wanted to serve on this Committee. It is that important to our State. It affects us that much, so I am really disheartened by this Administration's actions in rolling back what were common sense reforms made by the last Administration.

Let me paint a picture as I see it. Americans are facing the highest inflation in 40 years. The cost to the average household of this inflation is \$5,200 annually. There is this sense of frustration and doom, and some say magical thinking, about inflation as it relates to the way this Administration looks at it. That was reported in Bloomberg yesterday.

Gas prices hit a brand new record high. The average American is paying \$2,000 more per year just for gasoline, and it is higher in my big State of Wyoming. Americans are looking at the stock market and their 401(k)s with horror. On top of that, our Nation is facing a supply chain crisis. There is a nationwide shortage of baby formula; brownouts are being discussed as possibilities in our energy sector.

And CEQ, through its permitting regulations, are a key player in addressing these challenges. And CEQ's answer has been more government, more red tape, more bureaucracy. So that is the kind of magical thinking in response to all of these problems our Nation is having right now that I just think has got to stop.

Now, listen to this: Terry O'Sullivan, the President of the Laborers International Union of North America, said it best, concerning

CEQ's latest actions. This is a huge labor union talking about CEQ's latest actions. The rollback of updates to the National Environmental Policy Act reinstates burdensome requirements that will cause excessive permit delays and allow project adversaries to use frivolous lawsuits to disrupt or upend long overdue construction.

Once again, communities in need of vital infrastructure and the hardworking men and women who build America will be waiting as project details are subjected to onerous reviews. Americans will continue to bear the expense of NEPA related delays, which costs taxpayers billions of dollars annually. Lengthy review processes and unpredictable legal challenges are also having a chilling impact on private investment in infrastructure.

So, this Congress puts out a big infrastructure bill. People on this Committee worked hard on it, including the Chair and the Ranking Member, to get infrastructure moving in this country.

And what does CEQ do? It slows it down. It throws up roadblocks. It puts up delays. It makes this country move slower and more expensively. It takes projects longer. They are more expensive. And our ability to respond to the demand for infrastructure is being roadblocked by CEQ, by the White House. This is, you give with one hand, and you take away with the other. And the American people know it.

So, the frustration level is high with me. It is high with the labor unions. And I want to tell you, then when you move to this report on carbon capture, again, this report says carbon capture is among the types of projects that will not benefit a community.

So, what I am just saying is the frustration is, what we are trying to do as a Congress is just being thwarted at every turn by what you all are doing in the White House. This is the expression of frustration that you are hearing at this table today.

I haven't given you enough time, because I needed to unload on you. While I turn over the questioning to the next member of the Committee, I may submit some questions for the record, because I am 100 percent confused about what this Administration's goals are.

Thanks, Mr. Chairman. I yield back.

Ms. MALLORY. Mr. Chairman, may I respond?

Senator CARPER. Yes, go ahead.

Ms. MALLORY. Yes. I am sorry; I will be very quick because I know the time is over.

I did want to say a couple of really quick things. First of all, on the idea about what NEPA is, what we are doing for the NEPA program, those changes that we made are fundamental to ensuring that, in fact, we actually assess the impacts. If we are not able to look at the impacts, then we are moving forward on very expensive projects, spending a lot of money, as you all authorized, and we are doing it without the right information. So that is No. 1. That is critical to what we are doing. Those were not common sense changes that occurred.

Second, I think it is important to separate out the White House Environmental Justice Advisory Council recommendations from the President. The President is setting forth what he believes to be important, key elements for our strategy, which includes the invest-

ments in technology, on carbon capture, which includes thinking about removal as a technique.

The communities don't like it because they have decades of experience, even some would say centuries of experience, of people not doing projects in a way that is beneficial to them or that even takes into consideration their potential harms. I think that is the thing that we have to address.

Senator CARPER. All right.

Senator Markey, I believe you are next. Thank you.

Senator MARKEY. Thank you, Mr. Chairman, very much.

First, I would like to associate my remarks with those of Senator Whitehouse of Rhode Island.

Chair Mallory, I want to applaud the work that you have done so far in releasing an initial version of the Climate and Economic Justice Screening Tool. As the Senate author of the Environmental Justice Mapping and Collection Act, along with Congresswoman Cori Bush in the House, this has been a longstanding priority of mine. Low income and disadvantaged communities, especially those overburdened by pollution, deserve justice and targeted relief from polluted air and water.

Some stakeholders in the movement for environmental justice have expressed concern that the tool does not explicitly screen for race, and could overlook thousands of disadvantaged census tracts as a result. Others have asked for a system that looks at how burdens interact in order to paint a picture of the cumulative impacts on a community.

Chair Mallory, how is the Council on Environmental Quality continuing to work to take these and other stakeholder concerns into account as it continues the development of the screening tool?

Ms. MALLORY. Thank you, Senator, for that question. I appreciate it. As I have said already, the work that we are doing on environmental justice is really central to the work that CEQ is doing, and that the screening tool is a very important factor in that.

The way that we have structured the screening tool is directly related to the types of programs that are going to be affected by the distribution of resources. The Justice40 initiative is about looking at clean energy projects, about climate change related projects, about some affordable housing issues. So what we did is to establish criteria that really focus on those issues within the community. We are identifying communities that have high health burdens; we are identifying communities where the climate change impacts seem to be high; we are identifying communities with low education. All of these factors will actually allow us to focus on the disinvestment that we think is critical for making sure that the underserved communities are addressed.

Senator MARKEY. So, the initial version of the Climate and Economic Justice Screening Tool has many regions for which there is little or no data, including in tribal communities and U.S. territories. We can't help protect all communities if we don't understand all communities. Are you now going to be filling in the gaps to make sure all that information is in fact gathered so that those communities can be served?

Ms. MALLORY. One of the things that we did when we announced that we were doing the screening tool or putting out the beta

version of it is that we are going to have an NAS study that is helping us with data sets. We know that there are data gaps. We used the data that was available at a national level to really set up the beginning of the tool. But we know that we need more data. That is part of the effort that will go on even after we release what will be the final, or at least the operating tool.

Senator MARKEY. So after the information is developed, the communities are going to need more than just money or proclamations. They need a seat at the table in order to make sure the government gets this right.

How will CEQ support ongoing community interaction with this tool?

Ms. MALLORY. I think we have been actually making ourselves available with a number of members of the community, and also creating folks who can serve as ambassadors for helping to work with the community on how to use the tool, on what is necessary in order to operate it. We know that technical assistance is very important as it relates to communities. That is something that we are working with our agency partners on to make sure occurs.

Senator MARKEY. So you are saying that there will be a way for community members themselves to report their needs for investments in certain areas and comment on the current status of Justice40 related programs in their area?

Ms. MALLORY. Yes, absolutely. Even the tool created, actually the tool itself allows for people to be able to submit information if they think we have missed something.

Senator MARKEY. That is great. Thank you. It is just so important, thank you for your great work on this issue.

Chair Mallory, I applaud the CEQ's new final phase one rule to restore the potential of the NEPA process to protect human health and the environment. The National Environment Policy Act is our bedrock statute for bringing the public good into the Federal decisionmaking process. The public good is not slowing down good decisionmaking; it enables it. For example, delays in permits for mines are more likely due to plan changes from the applicant than from the NEPA process itself.

For example, on LNG exports, FERC has already permitted facilities that could move 28 billion cubic feet per day of liquid natural gas, facilities that so far have not yet been built. But that is not a NEPA problem getting them constructed. The work has already been done to get them permitted.

Sometimes I hear concerns, but LNG is a big issue. It is already permitted. And for the small subset of Federal projects that require full environmental impact statements, those projects are longer lasting and better for the fact that the public can weigh in and understand what is happening in their community. Just like on a grade school test, NEPA means big corporations have to show their work in order to get an A. That is all NEPA really requires, that the work be produced, that it can be examined, and it can be done in a timely fashion.

I want to say, I think you are doing a great job on this. Without a working NEPA process, small business owners, local community leaders, concerned parents or other stakeholders would not be able

to weigh in on these massive Federal projects. Do you agree with that?

Ms. MALLORY. Absolutely. I think that is what we are trying to focus on, particularly with the release of the affirming action plan today, is to highlight how we can make the process work with the values of ensuring that we are doing impact analyses.

Senator MARKEY. And you are making disadvantaged communities can have their voices heard?

Ms. MALLORY. Absolutely.

Senator MARKEY. Beautiful. Thank you so much.

Senator CARPER. The Senator's time has expired.

Senator Sullivan is next. He is en route to join us; when he arrives we will be sure to work him into the lineup.

I think Senator Padilla may be with us by Webex.

Alex, are you out there?

Senator PADILLA. Yes, Mr. Chairman, thank you.

Senator CARPER. We recognize Senator Padilla.

Senator PADILLA. I will jump right in. Five minutes goes by fast.

Last week, the Department of Justice made several important announcements in support of the Administration's new Environmental Justice Enforcement Strategy. And it certainly was welcome news. Part of that effort is one that I have been pushing for the Department to do, which is to create a dedicated environmental justice office within the Department of Justice to better hold polluters accountable and to support historically marginalized communities, as Senator Markey has just been discussing.

I was also pleased to see that the Department of Justice finally issued an interim final rule to restore the use of supplemental environmental projects, also known as SEPs, in certain settlements. This is an important tool, because SEPs serve as an essential environmental justice function. They provide tangible, real world projects in below income communities, communities of color in many cases, who would otherwise be forced to deal with the pollution that is left behind by bad actors on their own.

The restoration of SEPs is just one tool that we have in the toolbox. It is great to have it back. We need more to correct the injustices in overburdened communities.

With that being said, my question, Chair Mallory, is can you talk about other tools in the toolbox to invest in historically marginalized communities, and what the Council is doing to help right these historical wrongs?

Ms. MALLORY. Yes, Senator; thank you for that question. Yes, environmental justice is obviously central to the work that we are doing. I can talk about several of the steps that we have already taken.

The underlying message as to all the work we are doing is just trying to make sure that all communities get the benefit of the environmental protection network ecosystem that exists in this country, that everybody has the benefit of clean air, clean water, and a livable community. So the President's direction to us has been focused on getting the voices in the White House so that we know what people are thinking, and we are doing that through the White House Environmental Justice Advisory Council.

We are also doing that in, every time that I go out and visit a community, I make a point to ensure that I am meeting local representatives from different environmental justice organizations who can talk to me specifically about what they are experiencing and how they see the work that CEQ and the White House is doing and can be more helpful. So that is a very important tool.

I think other agencies are doing similar things. If you are tracking any of the work that the Department of Energy or EPA or the Department of Transportation are doing, they are regularly interacting with the communities who are affected by their programs to find out how those communities are both feeling what the Administration is doing and planning, but also how we as an Administration can be helpful in ensuring that the work that we are doing actually has a positive benefit for everyone. That is a very important mechanism that we are using.

Then within the Federal Government itself, the Environmental Justice, the White House Interagency Council is a really important mechanism for making sure that we all know what agencies are doing and can both use the good examples of individual agencies to encourage and inspire work around the Federal family, but also to make sure that everybody is aware of how we are taking advantage of the opportunities that are presented by the Bipartisan Infrastructure Law, as an example, how we are taking advantage of that opportunity to make sure that good benefits reach all American people.

Those are the mechanisms that we are using.

Senator PADILLA. Thank you.

Mr. Chairman, in the minute I have left, I do have a follow up question on this topic, but I will submit in writing questions as it pertains to the American the Beautiful framework. I have questions about inclusiveness, what we are doing to ensure input from a variety of stakeholders. The question is if it pertains to PFAS cleanup, that has been brought up earlier at the hearing, and Federal procurement opportunities to advance an environmental justice agenda as well.

But the one specific one, in my time remaining, talking about additional tools in the toolbox. If somebody is lost or going somewhere they have never been before, they need one of two things, good directions or a map. I put it simply there, because in the State of California, the State has led, when it comes to mapping tools for environmental justice, with its tool known as CalEnviroScreen. It is identifying how California communities, by census tract, are disproportionately burdened by and vulnerable to multiple sources of pollution. So I think it is a great model for something that we can understand and develop as a Federal tool at the national level.

Chair Mallory, can you just briefly describe how the Council can help implement a climate and economic justice screening tool?

Ms. MALLORY. Thank you for the question. What I would say to that quickly is just that when we were developing our own tool, we very much recognized that California and New York and several other States had their own tools that are in use. We collaborated with folks who were involved in those processes to both learn what the positive benefits we could take and sort of scale to a national

level, but also some of the challenges that they faced and how that might affect Federal programs.

So that is, the work that has been done in California and other States is very much front of mind on folks as they were developing the tool.

Senator PADILLA. Thank you very much.

Thank you, Mr. Chair.

Senator CARPER. Senator Kelly, I am going to ask you to wait for Senator Sullivan. It is his turn.

Welcome, Senator Sullivan. You are recognized.

Then I believe next is Senator Kelly.

I am going to run and vote and leave the Committee in good hands to the gentlewoman to my right.

Senator SULLIVAN. Thank you, Mr. Chairman and Madam Chair, thank you for being here.

I am going to follow up on the questioning that a lot of us have that Senator Lummis started, and that is on this new NEPA reg. I think A, there is very much disappointment in CEQ, what they are doing with this; B, if you talk to the average Governor or mayor in America, it doesn't matter if they are Democrat, Republican, I guarantee you they are against this.

Mr. Chairman, I would like to submit this Wall Street Journal editorial, if it hasn't already been submitted, How to Kill American Infrastructure on the Sly, the White House Revises NEPA Rules that Will Scuttle New Roads, Bridges, and Oil and Gas Pipelines.

Senator CARPER. Without objection.

[The referenced information follows:]

How to Kill American Infrastructure on the Sly

The White House revises NEPA rules that will scuttle new roads, bridges and oil and gas pipelines.

By The Wall Street Journal Editorial Board—April 20, 2022

Americans are going to need a split-screen for the Biden Administration's policy contradictions. Even as the President on Tuesday promoted the bipartisan infrastructure bill he signed last November, the White House moved to make it harder to build roads, bridges and, of course, oil and natural-gas pipelines.

The White House Council on Environmental Quality is revising rules under the National Environmental Policy Act for permitting major construction projects. CEQ Chair Brenda Mallory says the changes will "provide regulatory certainty" and "reduce conflict." Instead, they will cause more litigation and delays that raise construction costs, if they don't kill projects outright.

NEPA requires federal agencies to review the environmental impact of major projects that are funded by the feds or require a federal permit. Reviews can take years and run thousands of pages, covering the smallest potential impact on species, air or water quality. Project developers can be forced to mitigate these effects by, say, relocating species.

While the 1970 law was intended to prevent environmental disasters, it has become a weapon to block development. The Trump Administration sought to fast-track projects by limiting NEPA reviews to environmental effects that are directly foreseeable—e.g., how a pipeline's construction would affect a stream it crosses.

Some liberal judges, however, have interpreted NEPA broadly to require the study of effects that indirectly result from a project such as CO2 emissions. Now the Biden Administration is mandating this. CEQ's new rule will require agencies to calculate the "indirect" and "cumulative impacts" that "can result from individually minor but collectively significant actions taking place over a period of time." This means death by a thousand regulatory cuts for many projects.

The Transportation Department will likely have to examine how a highway expansion could increase greenhouse-gas emissions in concert with new warehouses. The Federal Energy Regulatory Commission might have to calculate how a new pipeline would affect emissions from upstream production and downstream consumption.

Wait—didn't FERC recently walk back its policy to do exactly this? The White House is thumbing its nose at West Virginia Sen. Joe Manchin, who blasted FERC's now-suspended policy for shutting "down the infrastructure we desperately need as a country."

The rule's obvious intent is to make it harder to build pipelines, roads and other infrastructure that would enable more U.S. oil and gas production, even as the Administration makes phony gestures to reduce energy prices. Last Friday the Administration announced it would comply with a court order to hold oil and gas lease sales on public land. Those leases won't matter if energy companies can't get federal permits for rights-of-way.

While fossil fuels may be the rule's political target, don't be surprised if green energy is snagged in this trip-wire. Environmental groups have used NEPA to block new mineral mines and transmission lines that connect distant renewable energy sources to population centers. In this Administration, the left hand doesn't seem to know what the far left hand is doing.

Senator SULLIVAN. So here is the issue. And it is a broader issue, and it is way before you came. But I am firmly of the view when the national Democrats get in power and they have a choice between the working men and women who build things in America, like the Laborers, I am going to quote from them like Senator Lumis did, and the radical elite environmental groups, coastal elites, they always side with the radical far left environmental groups. And the working men and women always get the shaft.

The Democratic Party used to say they are the party of the working men and women. They are definitely not anymore. The head of the Laborers said, they opposed this, "Rollback of the updates to NEPA reinstate burdensome requirements that will cause excessive permit delays and allow project adversaries to use frivolous lawsuits to disrupt and upend long overdue construction. Once again," I am still quoting from him, "communities in need of vital infrastructure and the hard working men and women who build America will be waiting as project details are subjected to onerous reviews." He goes on to oppose this.

Why did you not listen to the Laborers on this? Because you clearly didn't.

Ms. MALLORY. Thank you, Senator, for that question. As I have been saying today, our focus and the President's focus as we are moving forward in the work that we are doing on the National Environmental Policy Act is to make sure that we are taking advantage of good science—

Senator SULLIVAN. No, no, no. Let me interrupt. I am sorry. But you guys always fall back on science, and it drives me nuts.

Let me give you another example. The National Petroleum Reserve of Alaska set aside by Congress for oil and gas development, 2 weeks ago through an Executive Order you took half of that off the table. Almost 8 million acres of some of the most prospective oil and gas land in the country. It is not even controversial. You guys took it off the table. You cited science. It is ridiculous, OK?

So don't fall back on science, with all due respect. Why did you not listen to the Laborers who clearly oppose this? What about the statement from the Laborers did you disagree with?

Ms. MALLORY. Senator Sullivan, what I would say is I will fall back on science, because it is about science. I will fall back on good government, because it is about good government. I will fall back on making sure you look before you leap because—

Senator SULLIVAN. Delaying infrastructure is not good government. I voted for the Infrastructure Bill; Senator Capito voted for the Infrastructure Bill. This completely undermines the ability build infrastructure. The people who build it, like the Laborers, agree with my position.

Let me ask another thing. When you talk about good governance, your rule says agencies have to analyze, compile reports on indirect and cumulative effects, "aesthetic, historical, cultural, economic, social, and health impacts for every Federal, every single major Federal action." Where is the limiting principle where you have to focus on "aesthetic, historical, cultural, economic, social, and health impacts?"

Could any EIS survive a challenge when you are literally saying you have to focus on everything? What is the limiting principle

here? This is an invitation for radical, far left environmental groups to sue. And that is exactly what this is. Help me in good governance with “aesthetic, historical, cultural, economic, social, and health impacts.” Who the heck can do that for every project in America? That is your language.

Ms. MALLORY. Yes, and it sounds like it is coming directly out of the statute itself. But the limiting principle is reasonably foreseeable impacts. That is what are focusing on.

Senator SULLIVAN. How can you reasonably foresee aesthetic, historical, cultural, economic, social, and health impacts for every project?

Ms. MALLORY. It is not as hard as it may sound if you look at it in the abstract.

Senator SULLIVAN. Really?

Ms. MALLORY. No, it is not.

Senator SULLIVAN. How can you do an EIS that fits that principle?

Ms. MALLORY. It is done every day, Senator. There are professionals who know the environmental area and how you do an analysis, and it is—

Senator SULLIVAN. Let me just ask one—I am sorry, I am out of time. Just, I would like to go back to the question, is, why did you ignore the Laborers’ very significant, substantial comments, these are the men and women who are going to build American infrastructure, they know what they are talking about, why did you ignore their concerns?

Ms. MALLORY. We did not ignore them.

Senator SULLIVAN. You did. You did.

Ms. MALLORY. The reason that we issued a permitting action plan today is because we are trying to balance those two things: How do we get projects done expeditiously but also done in a way that we are actually doing the analysis necessary? We are not ignoring them. We are trying to do it in a way that makes sense.

Senator SULLIVAN. You have ignored it, right? They were against your rule.

Ms. MALLORY. That may be, but it was not because they were ignored. We definitely heard their comments. We talked to them; we have talked to them in different ways to try to make sure that the projects go forward in an expeditious way.

Senator CAPITO [presiding]. Senator Kelly.

Senator KELLY. Ms. Mallory, thank you for being here today. I want to discuss, as I have a number of times before this Committee, the effect of a 20 year long drought in the western United States. While a drought of this magnitude is unprecedented, I know that if we act quickly enough we can advance some solutions which can guarantee water security in Arizona and the rest of the West.

That is why I worked really hard to ensure that the Bipartisan Infrastructure Law included \$8 billion for western water infrastructure. I am glad to see that the Bureau of Reclamation is already disbursing some of this funding with projects in the Yuma area receiving funding just this week to upgrade canals and some pipelines.

We are also seeing innovative solutions throughout the West like water re-use and plans for some desalinization facilities which can help boost our scarce water supplies. But time is critical here. And a years long NEPA approval process for a pipeline carrying desalinated water or delayed updates to a dam's flood control manual can have some real consequences to our water security.

Ms. Mallory, can you share how the regulatory actions undertaken by the Council on Environmental Quality in recent months will help ensure that projects which conserve or bolster scarce water reserves in the western United States are able to move through the environmental review and permitting process quickly and efficiently?

Ms. MALLORY. Yes, Senator, thank you very much for that question.

As I have been saying, with NEPA, the goal of the very targeted changes that we made to NEPA last month is to make sure that we are looking at the important suite of impacts that really are going to affect a project. For example, on any project that has to do with water in an area where drought is so profound, we are going to want to make sure that that analysis is actually fully considering not only the direct impacts of what is being built, but also what are going to be the repercussions of that. So what we are doing in the rule itself was to just make sure that we get that on the table.

The work that we have done in the permitting action plan and other mechanisms that the government has used are designed to help move things in the expeditious way that you are talking about, that are designed to bring the senior leadership to the table to help resolve some of the sticking points that may come up on your projects. I don't know your specific projects that you were referencing.

But the idea is, we know there are times at which we have to have everybody engaged and involved in coming to the solutions that are necessary to resolve those projects. Those are the things that we think will help resolve your concerns.

Senator KELLY. So a hypothetical desal plant somewhere in the western United States requires a hypothetical pipeline to ship the water some distance. Could you give me an estimate for how long that NEPA process, that you would hope that would take?

Ms. MALLORY. I can't give you a specific estimate on that. I think the goal is that we are striving to make the projects go as quickly as possible, given those circumstances. Your project is obviously going to be very different than a narrower project that doesn't transgress over large areas of land and that have impacts on the numbers of species along the way. Those are going to be slightly different projects than a more narrow one.

But I think the goal is to, at the beginning of the project, identify what we think is necessary in order to complete the project, to give an estimate on what we think the timeline is going to be. That is what we are committing to in the permitting action plan, then we would lay out a schedule, and then to work with the parties who are involved in it to try and make sure we can meet that expeditiously. That is our plan.

Senator KELLY. The One Federal Decision rule, I believe it targets less than 2 years to get something through permitting. Would you expect this process to take less than 2 years on new infrastructure in Arizona that would help solve our water issues?

Ms. MALLORY. Yes, what I would say is, it depends. It really depends on the circumstances, whether there is other information that is available that doesn't require you to re-do analyses, like existing analyses that can be used. The circumstances will really affect it.

Our goal is to try to identify a schedule that will allow you to move as quickly as possible. That might be 2 years; that might be under 2 years. That is the goal. Then to try to use the accountability and oversight mechanisms to keep people on track.

Senator KELLY. Thank you.

Senator CAPITO. Well, I think that concludes our first round. In waiting for the Chairman to come back, I will go ahead and take his spot and start the second round.

In a filing to the Federal Energy Regulatory Commission last year, the EPA "recommended that attention should be paid to the costly irreversibility of constructing natural gas pipelines." EPA stated, "An important question to consider is whether pipeline construction will lock in natural gas production and use at the expense of substitute energy sources with lower social costs." And I would remind you that according to the WHEJAC, some of those projects that would be eliminated would be the CCUS projects, the Direct Air Carbon Capture Projects, nuclear projects.

I am very concerned to see a similar line of thinking incorporated into the NEPA regulatory changes that you signed last month. Under those regulations, the government defines the purpose or need of a project under NEPA and can override a project developer's purpose.

As I understand it, under the new regulations an energy company could request permits for a natural gas plant and the Federal Government could instead say, through the NEPA review, that solar generation should be developed instead, regardless of what the business case is. Would you say that is a fair characterization?

Ms. MALLORY. Again, thank you, Senator. I think obviously you know how important this issue is for CEQ and for the President. So I appreciate the attention that we are getting.

What I would say about that particular provision, what we were trying to address is the reality that various factors go into identifying what is the reasonable alternative or range of alternatives that should be considered. And what the previous Administration did is they made a change that made that scope very dependent on what the applicant said it was. All we are saying is that this is a public statement, this is what the agency sees as the available, reasonable options that should be analyzed, even if it would mean that this particular applicant isn't the applicant who would do the permit.

The answer to your question is, the circumstances really would depend, but that sounds to me like something like that would be different than what I would expect the agency to ask.

Senator CAPITO. It is funny, from what your explanation was, it sounded to me like the answer to that was yes, that the determina-

tion could be made that the applicants or the applicants' idea or purpose could be to provide more power to a certain area and that the method by which that is delivered through that developer's and private entity could shift.

But I will shift to another question here. One of the key project delivery provisions of IIJA, I talked about this, was the codification of One Federal Decision for major transportation projects. In today's fact sheet on permitting action plan, you state that the IIJA's provisions "enhance efficiency, accountability, predictability, and will provide the tools needed to ensure timely and sound delivery of these historic investments." You seem to recognize the critical role One Federal Decision plays in the environmental rule review and permitting process.

So as you move forward to phase two of your update for NEPA, do you commit to keeping the elements of One Federal Decision as part of these regulations?

Ms. MALLORY. Thank you for that question. What I can commit to you on a rulemaking process, Senator, is that we will certainly have discussions about what is included in that rule and reflect the fact that you have made this request.

Senator CAPITO. I think you really have to follow the law here.

Ms. MALLORY. Absolutely.

Senator CAPITO. It is in the law.

Ms. MALLORY. It is in the law, and we are following it. What I am saying is, whether it is part of the broader rule that will go beyond what the Bipartisan Infrastructure Law covered is the issue.

Senator CAPITO. Yes, you stated we are going to be building a lot. We are not going to be building a lot if we don't stick with these, a lot, efficiency, and as we see, with inflation and everything else, this is a real issue. Time is money here. And I think it is very concerning.

I would like to go to—I come from a State that has economic challenges, as you know. We talked about this. We have communities of real downturn and hopelessness. The statistics that just came out on drug deaths today, I read 108,000, I think it was, Americans lost their lives. Unfortunately, our State is subject to some of that.

I think that a broader view of what is going to bring people out of poverty needs to be taken here by the Administration. I understand the clean air and the clean water, and that is what we all want. But at the same time, to exclude a highway expansion, a community might not have a way out. I know certainly in Senator Sullivan's case, in many of the communities in Alaska, they have no infrastructure to move, to progress, in some cases, both on the water and on the transportation.

So I think a broader view of how this can open up communities and pull people out of poverty which is ill health and drug addiction and everything else that goes along with that sometimes, is what I think a lot of us are trying to make the point that you can't exclude communities who have been treated poorly, and that we want to have them treated like the Golden Rule. You have to have all the options on the table here.

And I know you said we have got to listen to these communities, and I know you are listening to the communities. But there are

conversations that go on with the communities who want to have cheaper energy, who want to have the availability of power costs that are going to be reliable and that are going to be there for them and for their children when they grow up in and around.

You know, I am from a small area. A lot of our folks don't want to move from where they are. So the solutions I think, I think that is the frustration that I feel listening to the testimony, is the narrowing of the view of, it almost gives us, me, an impression of, I know better what is good for you than what you know is good for yourself.

So I would just ask you to take that thought with you as part of my impressions today. Thank you.

Ms. MALLORY. Thank you, Senator. I appreciate your making those comments. First of all, I just want to be clear. Again, I feel like people are equating all of our views with the views that were expressed to us by the environmental justice advocates. We believe that those are views that we have to consider along with other views as well. We are not just limiting what we think and how we behave simply to recommendations. We are trying to make sure that those recommendations are part of the process of thinking how we move forward.

I am making an effort, and I think other members of the Administration as well, to get out and reach out and talk to all communities. It is not that we are simply limited to our experts that are interacting with us through the Advisory Council. In our interactions with other people, we are listening to other people, and we are hearing different views. This is a big country, and in different regions people have different ideas about what is the best approach. We are trying to take all of that into account.

Senator CARPER [presiding]. Thank you for presiding over this hearing while I had to run and vote. I think we have some more votes coming up.

This is my second round. I would like to lead it off by giving you the opportunity, if you want to, to respond to some of the questions that Senator Sullivan raised that you may not have had a chance to respond to earlier. If you want to take that opportunity, it is yours.

Ms. MALLORY. I am not sure that there is not much new to add. As I was trying to say to the Senator, I think basically on the issues of carbon capture and sequestration, which is obviously something that we talked a little bit about, and how that is an important part of the President's agenda, and how we are approaching that issue, I don't know that there are new things to say on that.

What we are trying to do is to make sure that we invest in the technology and conduct it in a way that we are not harming people who are living near or close to related facilities, and that that is as important a consideration as everything else in the planning. So that is really the main point that I was trying to reflect.

Senator CARPER. All right. I am not going to dwell on carbon capture sequestration, which is something that I am strongly interested in, as are other Democrats and Republicans.

I would note that the issue of regenerative agriculture, in my State, we raise a lot of chickens, a lot of soybeans, a lot of corn,

a lot of lima beans. We are always concerned about overdevelopment in our State. We have these beautiful beaches in southern Delaware, and there is a lot of interest from people to live in southern Delaware, and developers want to over-develop southern Delaware.

So we are always looking ways to keep farmers on the land. One of the ways to do that is make sure they have greater income, have more fertile soil, and regenerative agriculture is something we are hugely interested in, as are the farmers. So I would just share that with you. We will come back later and talk about it.

My next question would be, last month the Columbia Journal of Environmental Law published a study on NEPA's implementation at the U.S. Forest Service. The study reviewed over 40,000 NEPA decisions completed by the U.S. Forest Service between 2004 and 2020, over 40,000 decisions by the U.S. Forest Service between those years. It uncovered that one of the biggest hurdles to quick or timely environmental reviews is lack of agency resources, lack of agency resources. And contrary to popular belief, less rigorous analysis does not actually lead to faster decision times.

However, not having the right staff or sufficient resources to conduct NEPA reviews leads to slower decision times. This means that the past Administration's efforts to starve Federal agencies of staff and resources did not make the reviews move faster. It actually made the delays worse, not better.

My question: Do these findings surprise you? And what are you and others in the Administration doing to ensure that the Federal Government has the resources and staff to conduct environmental reviews in a timely manner?

Ms. MALLORY. Thank you, Senator, for that question.

It doesn't surprise me, having been a career staff person in the Federal Government for 14 years before I took on my first political position. What we know is that agencies are going to work to whatever you establish for them as the goal. And what gets cut is the quality of what gets done. That is why I think we are trying, in the action plan, one of the key pillars of that is to try to make sure that the agencies are assessing what their needs are and deploying the staff in places that are necessary, or at least working as a Federal team to try to help each other do well, to work in a way that we help each other, so that the resources that are necessary in order to conduct the whatever is necessary for the permitting is available. That is part of having the leadership in regular interaction around our permitting progress.

Senator CARPER. Second question. Given that, this involves State and local governments given that State and local agencies implement so many Federal programs, what guidance, technical assistance, and support do you anticipate providing to our partners at the State or local level with permitting action plans?

In your answers, if you could clarify something for me, I would be grateful. In the action plan and recent rulemaking, did CEQ roll back any of the timelines for decisionmaking? Did you roll back any of the timelines for decisionmaking? And also, are the changes intended to delay the investments we are making in the Bipartisan Infrastructure Law? I don't think that is the case, but I would like to hear it from you directly on this issue, please.

Ms. MALLORY. First of all, on the action that we just took recently, it was three very targeted actions that did not affect the timelines or the One Federal Decision process, or any of the efforts that were specifically efficiency focused. That was not covered in our most recent rule.

On the question about the resources and what we need to do there, the action plan itself is designed to help us or make the connections with the State and local entities who are very active in actually implementing the rules. It does not say specifically what we are going to do, but we identify that as an area in which we have to get together with preferably like national level bodies that are coming from cities like the League of City Voters, that is not the right name, that work at a level that is representative of both States, ECOS is an example of a body that we would envision kind of creating a relationship to help figure out how we can best work together with States.

We can improve our part, but our part is only one part. We can get the funding necessary to do our part. But ultimately, for a lot of the projects, it is really important that State and local entities be able to also do their part.

Senator CARPER. All right.

We have just been joined by Senator Wicker. I am prepared to yield to him if he and Senator Sullivan are OK with that.

But let me ask another unanimous consent request of my colleagues. I ask unanimous consent to submit for the record a Congressional Research Report entitled The Role of the Environmental Review Process in Federally Funded Highway Projects, Background and Issues for Congress, which concludes the environmental reviews mandated by NEPA do not result in infrastructure project delays when early stakeholder engagement is part of the project planning process.

[The referenced information follows:]



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The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress

April 11, 2012

Congressional Research Service

<https://crsreports.congress.gov>

R42479

Summary

Under programs administered by the Department of Transportation's (DOT's) Federal Highway Administration (FHWA), certain highway and bridge projects may be eligible for federal funding. Project approval and the receipt of federal funds are conditioned on the project sponsor (e.g., a local public works or state transportation agency) meeting certain standards and complying with federal law. Activities necessary to demonstrate compliance with those requirements may be completed at various stages of project development. Although the names of each stage may vary from state to state, project development generally includes the following: planning, preliminary design and environmental review, final design and rights-of-way acquisition, construction, and facility operation and maintenance.

When there is debate over the time it takes to complete federal highway projects, the environmental review stage has been a primary focus of congressional attention concerning legislative options to speed project delivery. The current process includes activities necessary to demonstrate that all potential project-related impacts to the human, natural, and cultural environment are identified; effects of those impacts are taken into consideration (among other factors such as economic or community benefits) before a final decision is made; the public is included in that decision-making process; and all state, tribal, or federal compliance requirements applicable as a result of the project's environmental impacts are, or will be, met.

Compliance requirements depend on site-specific factors, including the size and scope of the project, and whether and to what degree it may affect resources such as parks, historic sites, water resources, wetlands, or urban communities. For all proposed federal-aid highway projects, however, some level of review will be required under the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. §4321 et seq.). Broadly, NEPA requires federal agencies to consider the environmental effects of an action before proceeding with it and to involve the public in the decision-making process.

The time it takes to complete the NEPA process is often the focus of debate over project delays attributable to the overall environmental review stage. However, the majority of FHWA-approved projects require limited documentation or analyses under NEPA. Further, when environmental requirements have caused project delays, requirements established under laws other than NEPA have generally been the source. This calls into question the degree to which the NEPA compliance process is a significant source of delay in completing either the environmental review process or overall project delivery. Causes of delay that have been identified are more often tied to local/state and project-specific factors, primarily local/state agency priorities, project funding levels, local opposition to a project, project complexity, or late changes in project scope. Further, approaches that have been found to expedite environmental reviews involve procedures that local and state transportation agencies may implement currently, such as efficient coordination of interagency involvement; early and continued involvement with stakeholders interested in the project; and identifying environmental issues and requirements early in project development.

Bills in the House and Senate (the American Energy and Infrastructure Jobs Act of 2012 (H.R. 7) and Moving Ahead for Progress in the 21st Century (MAP-21; S. 1813)) would reauthorize DOT programs. Both include provisions intended to expedite project delivery by changing elements of the environmental review process, particularly NEPA requirements. This report provides information on existing NEPA and environmental review requirements, particularly requirements that may be subject to change under the House and Senate proposals.

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Introduction

Under programs administered by the Department of Transportation's (DOT's) Federal Highway Administration (FHWA), certain highway and bridge projects may be eligible to receive federal-aid funding.¹ As a condition of receiving those funds, a project sponsor (e.g., a local or state transportation agency) must meet certain standards and requirements applicable to activities completed at every stage of project development. Although the names of those stages may vary somewhat from state to state, those stages generally include initial project planning, preliminary design/engineering and environmental review, final design and rights-of-way acquisition, construction, and facility operation and maintenance.

Each stage of project development is initiated and completed largely at the state or local level, with FHWA having ultimate responsibility for ensuring that individual projects comply with requirements applicable to federal-aid highways.² Also, each development stage involves a range of activities that will affect the time it takes to deliver the project. Required elements of the preliminary design and environmental review stage will vary by project, but generally include processes necessary to identify and demonstrate compliance with environmental requirements applicable to that project.

When there is debate over the time it takes to complete federally funded highway projects,³ particularly debate over activities that may expedite or delay project delivery, various elements of the environmental review stage of project development have been the focus of attention. However, whether or the degree to which elements of that process may delay projects is unclear.⁴

The two most recent laws authorizing DOT programs included requirements intended to expedite the environmental review process that focused primarily on procedures necessary to demonstrate compliance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. §4321 et seq.).⁵ Current legislation to authorize DOT programs in the House and the Senate (the American Energy and Infrastructure Jobs Act of 2012 (H.R. 7) and Moving Ahead for Progress in the 21st Century (MAP-21; S. 1813)) also include provisions intended to expedite project delivery that focus primarily on the NEPA process.⁶

Despite the focus on the NEPA process, it is unclear whether or how changes to that process would result in faster highway project delivery. Available evidence regarding potential causes of project delays associated with environmental compliance is largely anecdotal and specific to

¹ This report focuses on projects approved under programs administered by FHWA. Although they involve similar regulatory requirements, issues unique to transit projects approved under programs administered by the Federal Transit Administration (FTA) are not addressed in this report.

² Those requirements are largely established under Chapter 1, "Federal-aid Highways," of Title 23, "Highways" of the *U.S. Code*.

³ In this report, reference to "federal-aid highways," "federal highways," or "federal highway projects" means projects that may receive federal funding pursuant to the Federal-aid Highways provisions of Title 23. Those projects include, but are not limited to, the initial construction, reconstruction, replacement, rehabilitation, restoration, or other improvements of a highway, road, street, parkway, right-of-way, bridge, or tunnel.

⁴ See CRS Report R41947, *Accelerating Highway and Transit Project Delivery: Issues and Options for Congress*, by William J. Mallett and Linda Luther.

⁵ The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU or SAFETEA; P.L. 109-59, for FY2005-FY2009) and the Transportation Equity Act for the 21st Century (TEA-21; P.L. 105-178, for FY1998-FY2003).

⁶ H.R. 7 was reported favorably by the House Transportation and Infrastructure Committee on February 13, 2012. MAP-21 passed the Senate on March 14, 2012.

unique, individual projects. Still, that evidence, while limited, points to issues or requirements apart from NEPA as more common causes of project delays.

This report identifies issues relevant to the debate over the role of the environmental review process in transportation project delivery. It identifies social and environmental issues that led Congress to enact the range of requirements that now make up the environmental review process, as well as selected requirements applicable to its implementation (particularly NEPA requirements). The report also identifies complexities in tying the environmental review process to federal-aid highway project delivery time. In particular, it identifies issues that make it difficult to determine the time it takes to complete the project development process, in general, or individual stages of development (e.g., activities related explicitly to environmental reviews); or to identify root causes of project delays tied to specific elements of the environmental review process. This report also discusses various approaches identified by transportation stakeholders as those that have expedited the environmental review process and overall project delivery.

Information and issues in this report were selected to help Members of Congress and their staff understand the NEPA compliance process as well as additional environmental compliance requirements that may be affected by H.R. 7 and MAP-21. Discussion of specific legislation is provided separately in CRS Report R42445, *Surface Transportation Reauthorization Legislation in the 112th Congress: MAP-21 and H.R. 7, Major Provisions*, coordinated by Robert S. Kirk.

Background and Overview of Issues

Activities that may take place during the environmental review process and how that process is implemented will vary from project to project, from state to state. The environmental review process does not involve compliance with a single federal compliance requirement. It involves processes necessary to demonstrate compliance with a potentially wide array of requirements applicable to projects approved under the Federal-aid Highways program. Broadly, for federally funded highway projects, it involves two separate, but related processes—preparing appropriate documentation required under NEPA; and identifying and demonstrating compliance with any additional state, tribal, or federal environmental requirements applicable to that project.

For a given project, how NEPA and other environmental compliance requirements must be demonstrated will largely depend on the degree to which the proposed project would have adverse effects on communities, natural or cultural resources (e.g., wetlands, endangered species habitat, historic sites, parks, or recreation areas), or special status land (e.g., farmland, floodplains, or coastal zones). Compliance with those requirements may include obtaining a permit, approval, study, or some level of analysis or consultation from an agency outside DOT.

NEPA was intended, in part, to ensure that federal agencies would consider the environmental impacts of an action among other factors (e.g., economic or community benefits) in the federal decision-making process. NEPA has two primary aims—to assure that federal agencies consider the environmental effects of their actions *before* proceeding with them and to involve the public in the decision-making process.

NEPA does not require an agency to elevate environmental concerns above other factors in the overall federal decision-making process. If the adverse environmental effects of a proposed action are adequately identified and evaluated, an agency is not constrained by NEPA from deciding that other project benefits outweigh the environmental costs and moving forward with the action. In contrast, other requirements applicable to federal-aid highways *may* dictate or somehow affect the outcome of a project decision. For example, other federal laws may require the selected project alternative to be the one with the least impact to a particular resource, prohibit FHWA approval of

a project alternative that uses certain resources, require certain mitigation measures to limit a project's impacts, or require that certain activities take place in accordance with certain criteria (e.g., as specified in a permit or approval).

Environmental Reviews and Project Delays

Required elements of the environmental review process, particularly compliance with NEPA, will have an effect on project development. For example, before DOT can approve a project and allow final project design, property acquisition, or project construction to proceed, the project sponsor must appropriately document compliance with NEPA and complete any investigation, review, or consultation necessary to demonstrate compliance with other applicable environmental requirements. Further, it is DOT policy to use the NEPA compliance process as a mechanism to balance transportation decision making by taking into account the potential impacts on the human and natural environment and the public's need for safe and efficient transportation.⁷

State and local transportation agency officials and other stakeholders with an interest in transportation improvement generally acknowledge that elements of the environmental review process provide important protections to the human, cultural, and natural environment. However, those officials also sometimes argue that completing the process can be difficult and time-consuming. Some have argued, for example, that the time it takes to complete required NEPA documentation and supporting analysis or to obtain required input or approval from outside agencies can delay completion of federally funded transportation projects.

It is generally not disputed that the time it takes to complete the environmental review process for federally funded highway projects can take months or even years. What is unclear is the degree to which elements of the environmental review process directly or routinely *delay* project delivery. Determining the time it takes to complete activities associated with the environmental review process, or delays directly attributable to those activities, is difficult for several reasons including, but not limited to:

- **Limits to available data.** There is no centralized source of data regarding highway project delivery. States generally do not track project development time from planning to construction. States generally do not attempt to isolate elements of the environmental review process, which may overlap with preliminary project planning, design, or engineering activities. Further, there is no standard measure for determining when a project or the environmental review process, in particular, is completed "quickly" or would be considered "delayed."
- **The influence of local factors on project delivery.** The environmental review process may start, stop, and restart for reasons unrelated to environmental issues. Local and state issues have been shown to have the most significant influence on whether a project moves forward relatively quickly or takes longer than anticipated. Those issues include the project's level of priority among others proposed in the state; changes in funding availability; and local controversy or opposition to the project (which may or may not be connected to environmental issues).
- **The variation in project type and complexity.** The wide range of projects approved under programs administered by FHWA (e.g., bridge repair versus major new highway construction) do not easily allow an "apples to apples"

⁷ See *NEPA and Project Development: Program Overview* on FHWA's "Environmental Review Toolkit" webpage at <http://environment.fhwa.dot.gov/projdev/index.asp>.

comparison of the time it takes to complete the environmental review process or factors that may delay it. Anecdotal evidence regarding projects identified as “delayed” have involved multiple, complex causes of delay (including local issues) unique to *that* project, not a single cause that may be commonly applicable to other projects.

- **Variation among state requirements and implementation processes.** The effect of requirements under federal law may be difficult to isolate since local, state, or tribal requirements and procedures will also affect how environmental compliance requirements are implemented. State DOTs implement their project delivery process differently, depending on factors specific to their state and its needs. For example, some states may implement unique design and contracting processes that expedite project delivery that other states do not.
- **Time “saved” cannot be gauged.** Depending on the scope and complexity of the project, more time spent addressing environmental issues in the project planning and preliminary design stage may result in faster completion of final design and project construction (when delays may require actions that take more time and money to address). Time may also be saved when adverse project impacts that could lead to local opposition to the project are identified and addressed during the early stages of project development.

Challenges to Tying Project Delays to NEPA Compliance

Transportation agency officials and project sponsors have broadly identified environmental compliance requirements as a common source of frustration in completing the project development process. However, limits to and contradiction in available data make it difficult to clearly identify specific causes of delay that are directly and routinely attributable to specific elements of environmental compliance. Identifying a distinct root cause of a delay will arguably be necessary before effective “solutions” (procedures that would result in faster project delivery) can be identified. That is, knowing *that* a delay occurred may be irrelevant if it is not determined *why* the delay occurred. An understanding of *why* is useful in identifying a solution that directly addresses a problem’s underlying cause.

Determining why a project was delayed may be difficult or may be attributable to multiple, interrelated factors. Generally, the more complex the project, the more complex the potential cause(s) of delay. For example, compared to a maintenance or repair project, a major new construction project will require more extensive review, documentation, or analysis to demonstrate compliance with NEPA and other applicable environmental requirements. However, the following factors call into question the degree to which NEPA alone is a significant source of project delay in overall project development:

- **The majority of projects require limited review under NEPA.** The majority of FHWA-approved projects (approximately 96%) involve no significant environmental impacts and, hence, require limited documentation, analysis, or review under NEPA.
- **Compliance with DOT’s “NEPA regulations” extends beyond what is required under NEPA.** DOT’s “Environmental Impact and Related Procedures”⁸ prescribe the policies and procedures to ensure that FHWA-approved projects will comply with NEPA as well as requirements established

⁸ 23 C.F.R. Part 771.

under Title 23 applicable to Federal-aid Highways (e.g., provisions applicable to the consideration of adverse economic, social, and environmental effects (under §109(h)), public hearings (§128), and preservation of parklands (§138)).

- **The NEPA compliance process is used to demonstrate compliance with all applicable environmental review requirements.** It is DOT policy that any investigation, review, or consultation necessary to demonstrate compliance with applicable environmental requirements be completed within the context of the NEPA process. This use of NEPA as an “umbrella” compliance process can blur the distinction between what is required under NEPA and what is required under separate authority.

Transportation agency officials asked to identify sources of frustration or delay in completing the environmental review process most commonly cite compliance requirements applicable to the protection of parklands, historic sites, wetlands, or threatened or endangered species. The potential root cause of delay in complying with those requirements could be attributable to a wide range of project-specific factors (e.g., incomplete permit applications, challenges in obtaining multiple approvals or permits for a complex project, or disagreement with a resource agency over appropriate methods to mitigate project impacts).

Both existing law and regulations implementing NEPA include explicit directives and requirements intended to streamline the NEPA process. Included among those requirements are procedures intended to coordinate efficient agency interaction and cooperation, reduce NEPA-related paperwork and duplication of effort (e.g., documentation and analysis that may be required by similar state, tribal, or federal requirements or from one stage of project development to the next), and integrate the consideration of environmental compliance issues in a project’s planning stage. Barriers to efficiently implementing existing requirements may be project-specific or involve issues that may be difficult to address by simply amending or eliminating existing federal requirements.

This is not to suggest that there are not instances where preparation of documentation and analysis required under NEPA is not time-consuming or may contribute to delays in project delivery. However, it is unclear whether or what additional federal requirements may be implemented to expedite the NEPA process. Conversely, it is not clear whether the elimination of certain NEPA-specific requirements may expedite project delivery or would alter the framework for coordinating an already complex compliance process, resulting in additional project delay. For a given project, whether changes to the NEPA process might result in faster project delivery will likely depend on the project’s scope and complexity; the degree to which it is affected by “local” factors (e.g., state funding or project priorities); and compliance requirements applicable to the project, in addition to those under NEPA.

Highway Construction Impacts That Led to the Current Process

To understand why a complex array of requirements may apply to highway projects, it is useful to understand the social and environmental concerns that led Congress to enact the various laws that now form the framework of the environmental review process. Each requirement included within that process represents past efforts by Congress to minimize adverse impacts from federally funded highway projects or to minimize adverse impacts to certain communities or resources that Congress identified as needing some level of protection.

The current debate over the environmental review process frequently centers around the effect that completion of that process has on project delivery. The debate rarely recognizes the issues that led Congress to enact the requirements that now make up that process. Requirements included within the environmental review process, and procedures to demonstrate compliance with them, have evolved over the past 50 years. However, many of the requirements that are subject to particular scrutiny today were enacted between 1966 and 1972.

During the 1950s and 1960s, the public was becoming increasingly aware of and concerned about the impacts that human activity were having on the environment. Increasing attention turned to the effect that federally funded programs and projects were having on the human, cultural, and natural environment. One federal program that generated particular concern was the development and construction of the Interstate Highway System.

The Federal-Aid Highway Act of 1956 (P.L. 84-627) authorized and provided revenue sources for the construction of the National System of Interstate and Defense Highways (commonly known as the Interstate Highway System, Interstate System, or the Interstate). The Interstate System is a network of limited-access roads including freeways, highways, and expressways forming part of the National Highway System of the United States.⁹ Construction of the Interstate System took approximately 35 years and resulted in a network of roads and bridges that currently includes over 45,000 miles of rural highways, suburban and urban freeways, and bridges.¹⁰

Although the connection of rural, urban, and suburban communities resulted in a host of economic and cultural benefits, construction of the Interstate System also brought certain adverse impacts to both the human and natural environment. Those impacts were seen particularly in the construction of the urban freeways. Planning for such projects often involved locating freeways within available open space or where land acquisition costs were relatively low. “Available open space” often meant historic sites, parks, or recreation areas. Adverse impacts to those resources from highway projects drew increased attention from newly formed stakeholder groups with an interest in environmental protection and historic preservation.

Project planning that involved lower land acquisition costs often meant property acquisitions in densely populated, working-class or high-poverty neighborhoods. Resulting urban freeway projects had a disproportionate impact on the urban poor. One such example involved a segment of I-95 north of Miami. The route selected by local transportation officials cut through the inner-city community of Overtown, a once-thriving African-American community known as the “Harlem of the South.” A 2009 FHWA report discussing lessons learned in complying with environmental requirements describes the project as follows:

In 1957, the Overtown community was almost decimated by the development of the I-95 and I-395 freeways. The constructed roadway had a disastrous impact on the economic and social structure of the community. The community continues to shoulder the lingering effects of those negative impacts, and as a result there is also persistent anger towards and distrust of [the Florida Department of Transportation].¹¹

⁹ The National Highway System is approximately 160,000 miles of roadway important to the nation’s economy, defense, and mobility.

¹⁰ For more information about the Interstate Highway System, see the U.S. Department of Transportation’s Federal Highway Administration website, “Celebrating the Eisenhower Interstate Highway System,” <http://www.fhwa.dot.gov/interstate/homepage.cfm>.

¹¹ Report prepared by the John A. Volpe National Transportation Systems Center Research and Innovative Technology Administration, U.S. Department of Transportation for the Office of Project Development and Environmental Review, Federal Highway Administration, “Strategies and Approaches for Effectively Moving Complex Environmental Documents Through the EIS Process: A Peer Exchange Report,” January 2009, available on the Federal Highway

Opposition to other urban freeway projects led to “freeway revolts” spearheaded by newly established environmental and social justice groups.¹² Freeway revolts took place in cities like Baltimore, Boston, Los Angeles, New Orleans, New York, Reno, and San Francisco. As a result, a significant number of projects were abandoned or significantly scaled back due to widespread public opposition, especially by those whose neighborhoods would be disrupted or who would be displaced by the proposed freeways.

Elements of the Environmental Review Process

By the mid to late 1960s, Congress began to enact legislation intended to address the growing public concern over projects implemented under the Federal-aid Highways program. During that period, Congress also enacted legislation in response to increasing awareness and concern over the impacts of all federal actions—not just federal highway projects. Also during the 1960s and into the 1970s Congress began to enact a wide range of laws intended to identify, prohibit, control, or mitigate adverse impacts of human activities to specific community, natural, or cultural resources that Congress identified as in need of certain protection. This report identifies and summarizes requirements that have been identified as those most commonly applicable to federally funded highway projects.

Requirements Applicable to Federal-aid Highways

FHWA is prohibited from approving a project for funding under the Federal-aid Highway program until the project sponsor demonstrates that the proposed project will comply with all applicable federal, tribal, and state requirements. To the extent possible, compliance with any requirements that apply to a project, as a result of that project’s effect on the human and natural environment, must be appropriately documented and demonstrated during the environmental review stage of project development.

Requirements specific to Federal-aid Highways include a host of standards, procedures, and conditions applicable to the various stages of project development. Several requirements (applicable primarily to activities that take place during the project planning, preliminary design, and environmental review phases of development) reflect concern over the effects of urban freeway construction (discussed above), including the following:

- **Directive to establish guidelines to assure consideration of adverse project impacts (23 U.S.C. §109(h)).** Directed DOT to establish guidelines to assure that possible adverse, economic, social, and environmental effects of proposed highway projects and project locations were fully considered during project development, and that final project decisions be made in the best overall public interest, taking into consideration the costs of eliminating or minimizing adverse effects to air, noise, and water pollution; destruction or disruption of man-made and natural resources; aesthetic values, community cohesion, and the availability of public facilities and services; adverse employment effects, and tax and property value losses; and injurious displacement of people, businesses, and farms.

Administration’s “Streamlining/Stewardship” website at <http://environment.fhwa.dot.gov/strmlng/eisdocs.asp>.

¹² For a discussion of issues related to freeway revolts and general issues with urban freeway construction, see “Paved with Good Intentions: Fiscal Politics, Freeways and the 20th Century American City,” by Jeffrey A. Brown, Eric A. Morris, and Brian D. Taylor, in the University of California Transportation Center’s *Access* magazine, Fall 2009, available at http://www.uctc.net/access/35/access35_Paved_with_Good_Intentions_Fiscal_Politics_.shtml.

- **Directive to establish noise standards (23 U.S.C. §109(i)).** Directed DOT to establish standards for highway noise levels compatible with different land uses. DOT cannot approve plans and specifications for any proposed federal-aid project unless it includes adequate measures to implement those noise standards. As implemented under DOT regulations, a project may be required to demonstrate compliance with applicable standards through an analysis of traffic noise impacts and, when necessary, to implement noise abatement measures.
- **Public hearings requirements (23 U.S.C. §128).** For a proposed project bypassing or going through any city, town, or village, a state transportation department is required to certify that it held or afforded the opportunity for public hearings; considered the economic and social effects of the project location, and its impact on the environment; and considered the consistency of the project with local planning goals and objectives.
- **Preservation of parklands requirements (23 U.S.C. §138).** More commonly referred to as “Section 4(f)”¹³ requirements, DOT is prohibited from approving a project that uses publicly owned (local, state, or federal) parks and recreation areas, wildlife and waterfowl refuges, and publicly or privately owned historic sites of national, state, or local significance. DOT may approve a project that uses a 4(f) resource only if there is no prudent and feasible alternative to do otherwise, and that use includes all possible planning to minimize harm to the resource.

Of the requirements specifically applicable to Federal-aid Highways, the preservation of parklands requirements may have the greatest effect on highway project development and delivery. Projects that would use a 4(f) resource require an evaluation analyzing project alternatives (including location and design shifts) that avoid the resource.¹⁴ To be approved by FHWA, the evaluation must show that alternatives that would *not* use the resource would result in “truly unique problems,” resulting in costs or community disruption of extraordinary magnitude. This test is often referred to as the “Overton Park Criteria,” after a court case in the 1970s in Memphis, TN.¹⁵ In approving the use of a 4(f) resource, FHWA must also consider the significance and importance of the resource itself.

SAFETEA amended Section 138 to allow for the use of a 4(f) resource if that use can be proven to have *de minimis* impacts to the resource.¹⁶ Generally, *de minimis* impacts would result from the use of minor amounts of a particular resource. Such a determination requires concurrence from an official with jurisdiction over the resource. For example, for a transportation project adjacent to a publicly owned park, recreation area, or wildlife and waterfowl refuge, FHWA would be required to consult with, as appropriate, agencies within the Department of the Interior (e.g., the U.S. Fish and Wildlife Service, National Park Service, or the Bureau of Indian Affairs) or state or local park

¹³ The term “Section 4(f)” refers to the section of the Department of Transportation Act of 1966 (P.L. 89-670) under which the requirement was originally set forth. It was initially codified at 49 U.S.C. §1653(f) and only applied to DOT agencies. Later that year, 23 U.S.C. §138 was added with somewhat different language, which applied only to the highway program. In 1983, as part of a general recodification of the DOT Act, §1653(f) was formally repealed and codified in 49 U.S.C. §303 with slightly different language. This provision no longer falls under a “Section 4(f),” but DOT has continued this reference, given that over the years, the whole body of provisions, policies, and case law has been collectively referenced as Section 4(f).

¹⁴ Depending on project alternatives under consideration for a given project, compliance with Section 4(f) requirements can be complex. This report does not discuss those requirements in detail. For more information, see the “Section 4(f)” website included in FHWA’s “Environmental Review Toolkit,” at <http://www.environment.fhwa.dot.gov/4f/index.asp>.

¹⁵ *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971).

¹⁶ See Department of Transportation, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” final rule, 73 *Federal Register* 13367-13401, March 12, 2008.

authorities. For historic sites, a *de minimis* impacts determination must be based on criteria established under the National Historic Preservation Act applicable to uses that will have no “adverse effect” on the site (16 U.S.C. §470f). The determination must receive concurrence from the State Historic Preservation Officer (SHPO) and, if appropriate, the Advisory Council on Historic Preservation (ACHP).

Compared to other environmental requirements likely applicable to federal-aid highway projects, Section 4(f) is unique in its limits on the use of a protected resource. Most requirements intended to protect communities or specific natural or cultural resources allow for adverse project impacts if those impacts are sufficiently identified and considered in the decision-making process. Some requirements may specify that a project implement certain mitigation measures or be implemented in accordance with an approval or permit from an agency responsible for protecting that resource. An outright prohibition on the use of a particular resource, except for *de minimis* impacts or under extraordinary conditions, is not common to other environmental requirements.

Requirements Applicable to “Federal Actions”

In the 1960s Congress debated legislative options to address potential adverse impacts associated with federal actions. An action may be deemed “federal” based on the role that a federal agency plays in a project’s approval or funding. A project funded under the Federal-aid Highways program would generally be considered a federal action. Two laws applicable specifically to federal actions that significantly affect the environmental review process for highway project development are NEPA and the National Historic Preservation Act (16 U.S.C. §470, et seq.).

As discussed previously, NEPA has two primary aims—to require federal agencies to consider the environmental impacts of a project and to give the public a meaningful opportunity to learn about and comment on the proposed project *before* a final decision is made. It is a procedural statute. That is, NEPA requires federal agencies to implement procedures to ensure that environmental impacts of a project are included among, but not elevated above, other factors considered during the federal decision-making process. If the adverse environmental impacts of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other benefits (e.g., community and economic benefits) outweigh the environmental costs and moving forward with the action. (The NEPA compliance process is discussed under “Demonstrating Compliance with NEPA.”)

The National Historic Preservation Act (NHPA) declared a national policy of historic preservation to protect districts, sites, buildings, structures, and objects significant to American architecture, history, archaeology, and culture. NHPA did not mandate preservation of historic resources or prohibit adverse impacts to them, but Section 106 requires all federal agencies to *consider* the impacts of a proposal prior to taking any action that may affect a site included in, or eligible for inclusion on, the National Register of Historic Places.

NHPA also requires federal agencies to afford the Advisory Council on Historic Preservation (an independent federal agency created by the law) a reasonable opportunity to comment on federal actions that would affect properties on or eligible for inclusion on the National Register of Historic Places. For federally funded highway projects, FHWA must consult with the Advisory Council or the designated SHPO to determine project impacts to historic sites and potential ways to mitigate those impacts.

There are similarities between requirements established under Section 4(f) and Section 106, but also important differences between the statutes. Like NEPA, Section 106 establishes a procedural requirement that directs all federal agencies only to consider project impacts on certain resources.

Section 4(f) applies only to DOT projects and prohibits the use of certain resources for those projects, except under certain conditions.

Additional federal laws and executive orders apply explicitly to federal actions that affect certain resources or communities. For example, a federally funded highway project may require compliance with additional requirements applicable to federal actions if that project may:

- involve the acquisition, rehabilitation, or demolition of real property that will displace persons from their homes, businesses, or farms as protected under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. §4601, et seq., more commonly referred to as the Uniform Act);
- affect wetlands or floodplains pursuant to Executive Order 11990 or Executive Order 11988, respectively;
- convert farmland to nonagricultural uses pursuant to the Farmland Protection Policy Act of 1981 (7 U.S.C. §4201 et seq.);
- cause disproportionately high and adverse impacts on minority and low-income populations with respect to human health and the environment pursuant to Executive Order 12898; or
- affect human remains and cultural material of Native American and Hawaiian groups pursuant to the Native American Grave Protection and Repatriation Act (25 U.S.C. §3001 et seq.).

Requirements Applicable to Certain Resources

In addition to requirements applicable to federal-aid highways, specifically, and federal actions, in general, Congress has enacted a host of individual statutes intended to protect certain natural, environmental, and cultural resources from human-induced activities. A potentially long list of federal compliance requirements *could* apply to a given highway or bridge project, but requirements that will *actually* apply to a project will be limited by site-specific conditions and the degree to which the proposed project may affect protected resources. Broadly, highway projects may be subject to requirements intended to identify, minimize, or control adverse impacts to:

- **Land**—including land use that may affect the habitat of threatened or endangered plant and animal species, migratory birds, archaeological sites, and land designated as a national trail or national wilderness; and
- **Water resources or water quality**—including projects that may affect wetlands, aquatic ecosystems, navigable waters (e.g., rivers, streams, harbors), floodplains, coastal zones, or designated “wild and scenic” rivers, or projects that may affect water quality (e.g., discharge pollutants into U.S. waters).¹⁷

For a given federally funded highway project, compliance with a number of federal, state, or tribal regulations intended to identify, control, mitigate, or minimize project impacts to land and water resources may be required. Specific compliance requirements will depend on standards or regulatory requirements of that law and the degree to which the proposed project may adversely affect that resource. Depending on those factors, project development and implementation may

¹⁷ Air quality issues are also relevant to federal-aid highway project development. Under the Clean Air Act, FHWA must insure that transportation plans, programs, and projects conform to the state’s air quality implementation plans. Conformance with a state implementation plan is largely determined during project planning. Issues associated with meeting federal air quality requirements are not discussed in this report.

require some level of consultation, analysis, or approval from an agency with jurisdiction over the resource. For example, a highway or bridge project that results in pollutants being discharged into wetlands, rivers, or streams or that may affect navigable waterways or harbors likely will require project development be completed in accordance with provisions established under the Clean Water Act or the Rivers and Harbors Act. Pursuant to those laws, the selection of a particular project alternative may require a permit or certification from the Army Corps of Engineers (the Corps), the Environmental Protection Agency (EPA), the United States Coast Guard, or a state or tribal water quality control agency.

Implementing the Environmental Review Process

The individual requirements discussed above were enacted by Congress after a particular concern arose or need was identified. For an individual project, several requirements involving similar compliance directives could apply. For example, depending on its impacts, a project may be subject to different public hearing or notification requirements under separate federal regulatory or statutory requirements.

The environmental review process is intended to function as the mechanism under which potentially duplicative requirements are identified and coordinated (including duplicative state or tribal requirements). Specifically, it is DOT policy that, to the fullest extent possible, any investigation, review, and consultation necessary to demonstrate environmental compliance be coordinated as a single process. The environmental review process *is* that single process. It forms the framework under which *all* applicable compliance requirements intended to protect the human, natural, or cultural environment are identified and demonstrated. Further, the NEPA compliance process forms the framework for completing the environmental review process.

In the past, suggestions made by transportation stakeholders to expedite project delivery, as well as legislative options proposed by some Members of Congress, have focused on requirements established specifically under NEPA. However, examples of individual projects delayed by environmental requirements more often involve issues associated with environmental compliance obligations established under separate state or federal requirements. In identifying and determining the potential effectiveness of nationally applicable approaches to expedite the environmental review process, it is necessary to distinguish between what is required explicitly under NEPA versus other federal environmental requirements.

Demonstrating Compliance with NEPA

The Council on Environmental Quality (CEQ) promulgated regulations implementing NEPA that were broadly applicable to all federal agencies.¹⁸ CEQ required each federal agency to develop its own NEPA procedures specific to typical classes of actions undertaken by that agency.¹⁹ In 1987, DOT promulgated “Environmental Impact and Related Procedures.”²⁰ Those regulations prescribe the policies and procedures for FHWA to implement NEPA as it may apply to federally funded highway projects. They also include procedures necessary to ensure compliance with environmental requirements established under Title 23 applicable to Federal-aid Highways (e.g., procedures necessary to demonstrate compliance with requirements applicable to economic, social, and environmental effects, public hearings, and preservation of parklands (Section 4(f))). DOT’s regulations have been revised periodically in accordance with legislative directives from

¹⁸ 40 C.F.R. §§1500-1508.

¹⁹ 40 C.F.R. §1507.3.

²⁰ 23 C.F.R. Part 771.

Congress and to reflect court decisions applicable to DOT's implementation of both the NEPA process and its other environmental compliance obligations. Most recently, the regulations were modified to reflect the new environmental review process established under SAFETEA.

Identifying the Appropriate NEPA Document

For a given highway project that receives funding or approval under Federal-aid Highways programs, compliance with NEPA is demonstrated in the "NEPA document." Requirements that define the various categories of NEPA document and required elements of each are found in the NEPA regulations promulgated by both CEQ and DOT.

Transportation projects vary in type, size, complexity, and potential to affect the environment. To account for the variability of potential project impacts, NEPA regulations establish three basic "classes of action" that dictate how NEPA compliance will be documented and implemented. Determining the appropriate NEPA document and level of environmental review and analysis necessary for that document is dependent upon the answer to the following question: "Will the proposed action have any significant environmental impact?" Answers to that question, and the corresponding NEPA documents, are as follows:

- **Yes.** Those projects require an Environmental Impact Statement (EIS) followed by a final Record of Decision (ROD).
- **Maybe.** When the significance of a project's impacts is not clear, an Environmental Assessment (EA) must be prepared to determine whether an EIS is necessary or a Finding of No Significant Impact (FONSI) is appropriate.
- **No.** Those projects are categorically excluded from the requirement to prepare an EIS or EA; as such, those projects are generally referred to as Categorical Exclusions (CEs or CATEX).

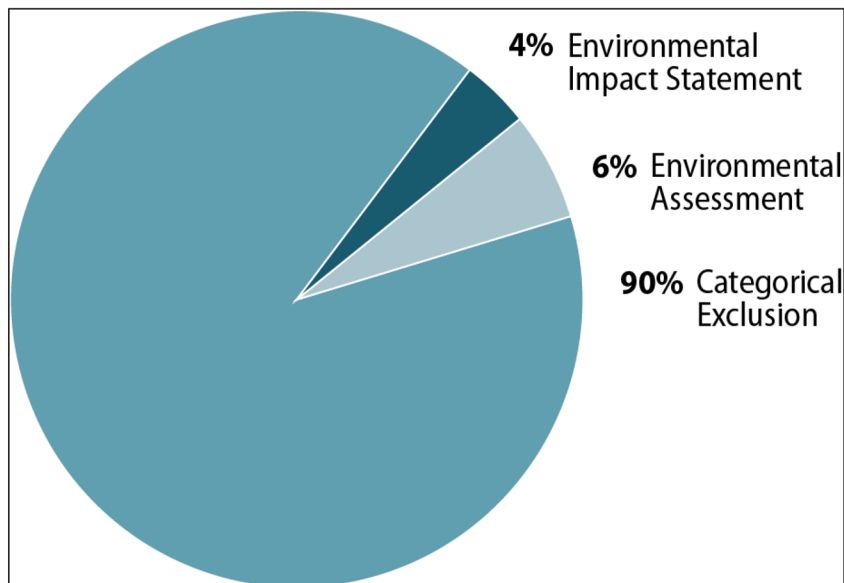
Pursuant to NEPA's aims, an evaluation of environmental impacts is required prior to commitment of federal resources. To meet that requirement, preparation of the NEPA document may begin in the project planning stage, but must be completed within the preliminary design and environmental review stage of project development. Generally, subsequent stages of project development (final design activities, property acquisition, or project construction) cannot proceed until the necessary NEPA document is complete and approved by FHWA.

FHWA-Approved Projects By NEPA Class of Action

Major highway projects that require an EIS are the most studied and discussed when there is debate over the time it takes to complete the NEPA process. Further, past legislative efforts to expedite the NEPA process have focused primarily on the NEPA process as it applies to EIS preparation. However, FHWA data from 1998 to 2007 show that approximately 4% of federal-aid highway projects approved under programs administered by FHWA required an EIS. Projects processed as a CE or with an EA/FONSI accounted for approximately 96% (see **Figure 1**).

Figure 1. FHWA-Approved Projects—By NEPA Class of Action

Average from 1998 to 2007

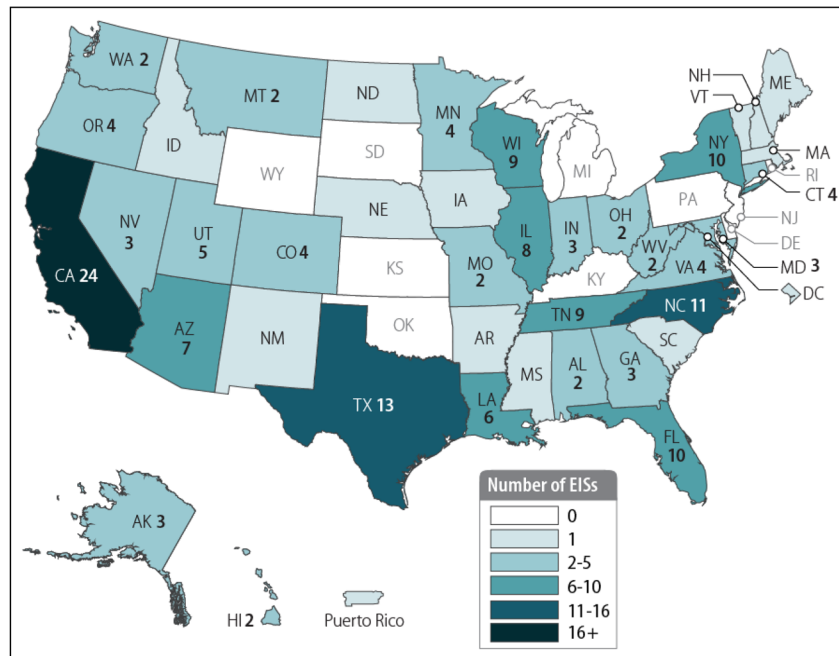


Source: Congressional Research Service, based on data available from FHWA's "Streamlining/Stewardship: Performance Reporting" website at <http://environment.fhwa.dot.gov/strmlng/projectgraphs.asp>.

More recent FHWA data illustrate a similar proportion of major new projects and smaller maintenance/rehabilitation projects. In FY2009, of the approximately 55,043 miles of roadway projects receiving federal-aid highway funds, approximately 50,166 miles (91%) involved reconstruction projects with no added roadway capacity, restoration and rehabilitation activities, or road resurfacing (i.e., projects likely to be processed as CEs). Approximately 4,877 miles of road construction projects involved new construction, relocation, or reconstruction with added capacity (i.e., projects likely to require preparation of an EA or EIS).²¹

In addition to representing a small number of overall projects, few projects currently being developed require an EIS. As of November 18, 2011, 10 states had no active projects that involved EIS preparation, 12 states and the District of Columbia and Puerto Rico were preparing 1, and 18 states were preparing between 2 and 5 (illustrated in **Figure 2**). Further, a significant number of active EISs (68 of 175 or 39%) were being prepared in just five states—California, Texas, North Carolina, Florida, and New York.

²¹ These statistics apply to projects funded under the Federal-aid Highway program. For more detail, see the Federal Highway Administration's "Highway Statistics for 2009: Obligation of Federal-Aid Highway Funds For Highway Improvements Fiscal Year 2009 (Intended to Show Only Projects Authorized in FY 2009)," Table FA-10, October 2010, available at <http://www.fhwa.dot.gov/policyinformation/statistics/2009/fa10.cfm>.

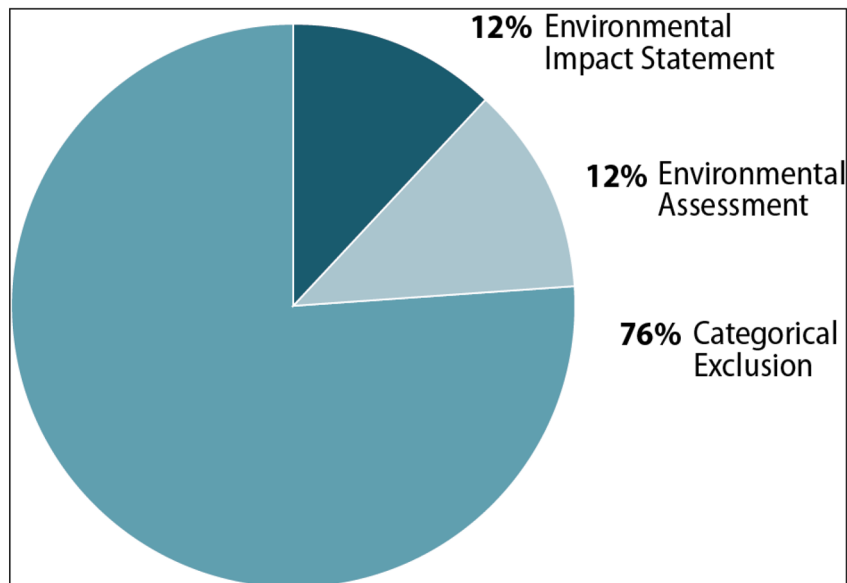
Figure 2. Active FHWA Projects Requiring an EIS in Each State

Source: Congressional Research Service, based on FHWA's list of Active and Inactive Environmental Impact Statements (EISs) as of November 18, 2011, available on the agency's "NEPA and Project Development" website at http://www.environment.fhwa.dot.gov/projdev/active_eis.asp.

While projects requiring an EIS represent a small proportion of total projects and a small number of active projects being developed in each state, they are more likely to be high-profile, complex projects that affect sizeable populations and take years, even decades, from planning to construction. They may cost millions, or even hundreds of millions, of dollars. For example, data from 1998 to 2007 regarding FHWA funding allocation show that while projects processed as CEs generally represent 90% of projects approved, those projects accounted for approximately 76% of FHWA program funds. Over that period, projects requiring an EIS accounted for approximately 4% of the total projects approved, but 12% of allocated program funds (see **Figure 3**).

Figure 3. Percentage of FHWA Program Funding Allocation by NEPA Class of Action

Average from 1998 to 2007



Source: Congressional Research Service, based on data available on FHWA's "Streamlining/Stewardship: Performance Reporting" website, <http://www.environment.fhwa.dot.gov/streaming/projectgraphs.asp/>.

While a project requiring an EIS will likely cost more than a project processed as a CE, there is not necessarily a direct relationship between a project's cost and its level of environmental impacts. For example, it cannot be stated that projects that cost over \$1 million, or even \$10 million, will require an EIS. This point is illustrated by reviewing FHWA's list of "Major Projects," defined to include those expected to receive over \$500 million in federal assistance.²² Included on FHWA's list of currently active major projects are several that are being processed as CEs or with an approved FONSI.²³ For example, the "Loop 12/State Highway 35E Corridor" project in the Dallas-Fort Worth, TX, area is described as a reconstruction and widening project estimated to cost \$1.6 billion. Project letting for that project began after approval of an EA/FONSI. Also included on the list is the "I-595 Corridor Improvements Project." That project, determined to be a CE, will add reversible lanes and involve major interchange improvements along 10.5 miles of the I-595 corridor in Florida. It is estimated to cost \$1.8 billion.

²² That definition of "Major Projects" was included among provisions in Section 1904 of SAFETEA that amended the "Project approval and oversight" requirements under 23 U.S.C. §106. The identification of a project as "major," in this context, is unrelated to its potential distinction as a "major federal action significantly affecting the quality of the human environment" pursuant to NEPA under 42 U.S.C. §4332(c).

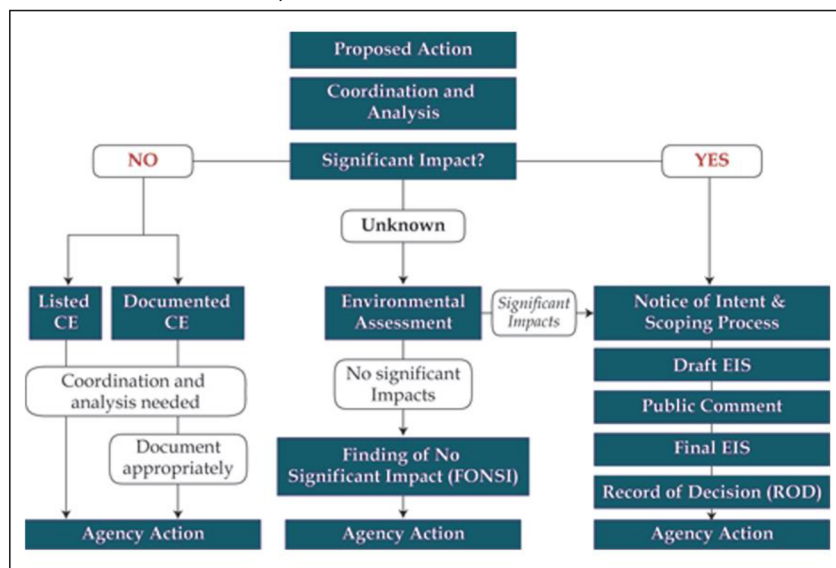
²³ See the *FHWA Active Project Status Report*, available on FHWA's "Project Delivery" website, <https://fhwaapps.fhwa.dot.gov/foisp/publicActive.do>.

Selected Requirements for Each Category of NEPA Document

Each NEPA document (EIS, EA, and CE) must include certain required elements (see **Figure 4**). That is, the NEPA document must show that environmental impacts were considered as part of the federal decision-making process, not a paperwork exercise to document impacts from a project after a decision was made.

Figure 4. NEPA Decision-Making Process

Required Elements of NEPA Documentation



Source: FHWA guidance document, *Integrating Road Safety into NEPA Analysis: A Primer for Safety and Environmental Professionals*, in the “FHWA Environmental Toolkit,” available at http://www.environment.fhwa.dot.gov/projdev/pd6rs_primer_sec2.asp.

Requirements applicable to each element of each NEPA document, and how DOT requires an applicant for federal funds to demonstrate compliance with each element, largely evolved in the 20 years after NEPA was enacted. Those requirements are reflected in both CEQ and DOT regulations implementing NEPA. The evolution of the NEPA compliance process was also influenced by the courts. For example, the courts played a prominent role in determining issues such as what constitutes “significant” impacts, who must prepare an EIS, at what point an EIS must be prepared, and how adverse comments from agencies should be handled. Changes to required elements of the NEPA process, applicable to projects funded under DOT programs, are also made by Congress.

Selected requirements applicable to each category of NEPA document, including requirements established under SAFETEA, are discussed below.

Categorical Exclusion (CE) Determinations

As discussed above, projects processed as CEs represent the greatest proportion of projects approved for federal-aid highway funds. DOT defines CEs as actions that, based on past experience with similar actions, do not individually or collectively have a significant impact on any natural, cultural, recreational, historic, or other resource, or involve significant air, noise, or water quality impacts; and that will *not*

- induce significant impacts to planned growth or land use for the area;
- require the relocation of significant numbers of people;
- have significant impacts on travel patterns; or
- otherwise, either individually or cumulatively, have any significant environmental impacts.²⁴

A project may meet these criteria, but still involve “unusual circumstances” that would require FHWA to ensure that a CE designation is appropriate. Unusual circumstances applicable to federally funded highway projects include substantial project controversy on environmental grounds; a significant impact on properties protected under Section 4(f) or Section 106 of the National Historic Preservation Act (NHPA); or inconsistencies with any federal, state, or local requirements relating to the environmental aspects of the action.²⁵

DOT identifies two groups of surface transportation projects that would likely meet the CE criteria (absent any unusual circumstances applicable to the project). The first group includes specific actions that meet criteria applicable to CEs.²⁶ DOT has determined that these projects (presented in **Table 1**) will likely result in insignificant environmental impacts because they either do not involve or directly lead to construction or involve minor construction.

Table 1. Federally Funded Highway Projects Specifically Listed as CEs

Non-construction activities (e.g., planning, technical studies, or research activities).	Emergency repairs after a natural disaster or catastrophic failure.
Installing fencing, signs, pavement markings, small passenger shelters, and traffic signals that involve no substantial land acquisition or traffic disruption.	Deploying electronic, photonic, communication, or information processing systems to improve system efficiency or safety.
Altering a facility to make it accessible to elderly and handicapped persons.	Landscaping activities.
Implementing ridesharing programs.	Improving existing rest areas or truck weigh stations.
Scenic easement acquisition.	Installing noise barriers.
Activities in a state highway safety plan.	Constructing bicycle or pedestrian lanes or facilities.

Source: Congressional Research Service, taken from actions listed at 23 C.F.R. §771.117(c).

A proposed action included in this list may or may not require an applicant for federal funds to submit supporting documentation to FHWA. Necessary paperwork could range from a simple checklist to substantial documentation. The extent of paperwork or supporting documentation is directly related to the extent of the impacts and necessary analysis of those impacts. For example,

²⁴ 23 C.F.R. §771.117(a); further DOT criteria used to determine whether a project would meet necessary CE criteria extend from CEQ regulations defining CEs at 40 C.F.R. §1508.4.

²⁵ 23 C.F.R. §771.117(b).

²⁶ Listed at 23 C.F.R. §771.117(c).

construction of a bicycle path or installation of traffic signals in a historic district may require some level of compliance with Section 106 of the NHPA or Section 4(f).

The second group of CEs includes actions that past DOT experience has shown to have substantial, but generally not “significant,” effects.²⁷ For this group, DOT regulations include “examples” of actions commonly approved by FHWA that may meet the regulatory definition of a CE (presented in **Table 2**). Such projects require the project sponsor to provide FHWA with documentation to confirm that the project does not involve “unusual circumstances” resulting in significant environmental impacts. Unlike specifically “listed CEs” (**Table 1**), the potential universe of “documented CEs” is not limited to projects identified by DOT. Instead, FHWA may approve a CE designation for any action as long as documentation is provided that demonstrates the project meets the regulatory definition of a CE.

Table 2. Examples of FHWA-Approved Projects That May Be Classified as a CE
Actions That May Be Designated a CE with Appropriate Documentation and FHWA Approval

Highway modernization through resurfacing, restoration, rehabilitation, or reconstruction.	Bridge rehabilitation, reconstruction, or replacement.
Highway safety or traffic operations improvement projects.	New truck weigh station or rest area construction.
Approval for changes in access control.	Approval for disposal of excess right-of-way or for joint or limited use of right-of-way.
Acquisition of certain preexisting railroad right-of-way.	Land acquisition for hardship or protective purposes.
Construction of transportation corridor fringe parking facilities.	

Source: Congressional Research Service, taken from examples of actions listed at 23 C.F.R. §771.117(d).

Although they are excluded from the requirement to prepare an EIS or EA, CEs are sometimes incorrectly identified as being exempt from NEPA or having *no* environmental impacts. No *significant* environmental impact *under NEPA* does not mean the project has *no other* regulated environmental impacts. For example, to demonstrate that a project meets both the CE criteria and will comply with other environmental requirements, state DOTs routinely gather information regarding a CE’s potential to

- involve work that requires highway traffic or construction noise abatement;
- be located within certain limits of a sole source aquifer or alter stream flow;
- involve the acquisition of more than minor amounts of temporary or permanent right-of-way;
- require a Section 4(f) evaluation or “an opinion of adverse effect” under Section 106 of NHPA;
- involve commercial or residential displacement;
- involve work in wetlands that would require a permit from the Corps; or
- be constructed in a county that lists federal threatened and endangered species.

A project may involve any one or more of these (or other) activities that will have some effect on the human or natural environment, yet have environmental impacts that do not rise to the level of “significant” under NEPA. However, the threshold of significant impacts is primarily relevant to

²⁷ Listed at 23 C.F.R. §771.117(d).

NEPA compliance. Other laws intended to protect or mitigate impacts to natural or cultural resources will have their own compliance thresholds applicable to *that* law. FHWA approval of a project processed as a CE may be delayed if the project sponsor does not realize that its proposed project may be subject to compliance requirements in addition to NEPA.

Within its responsibilities to oversee the Federal-aid Highway program, FHWA typically establishes procedures with each state DOT regarding CE review and approval. In a given state, “listed CEs” generally require minimal documentation before FHWA approval. NEPA review for those projects would be included as part of FHWA’s project oversight and approval obligations established under Title 23. For “documented CEs,” FHWA either reviews the NEPA documentation as part of the project development process and any agreed-upon procedures as part of the project review and approval, or the state DOT does this review in accordance with a formal programmatic CE agreement established between FHWA and the state DOT.

A programmatic CE agreement sets forth specific project circumstances for which a CE could be processed, and maintains FHWA oversight and responsibility for the NEPA determination. A programmatic approach involves establishing a streamlined process for handling routine environmental requirements, commonly applicable to specific types of project (e.g., bridge maintenance or road resurfacing activities). It allows for repetitive actions to be considered on a programmatic basis rather than project by project. Established on a local, regional, or statewide basis, a programmatic CE may establish procedures for consultation, review, and compliance with one or more federal laws. FHWA suggests that, to the extent possible, state DOTs take a programmatic approach to CE determinations.

Apart from its potential to enter into programmatic CE agreements with FHWA, state DOTs may assume FHWA responsibility for CE determinations. Pursuant to provisions in Section 6004 of SAFETEA,²⁸ FHWA may assign and a state DOT may assume responsibility for determining whether certain highway projects meet the CE criteria. Under that authority, a participating state would be authorized to determine all CE applicability, including determining whether proposed projects that are not specifically listed under DOT’s NEPA regulations may meet the CE criteria.

States that choose to assume FHWA responsibility would be required to do so in accordance with terms and conditions established in a memorandum of understanding (MOU) between the state and FHWA.²⁹ States assuming federal authority are legally liable for the NEPA determination. That is, FHWA would not be liable for the NEPA determinations for CEs in states participating in the program. FHWA would be required to conduct an annual review of a participating state’s process for making CE determinations. To date, three states (Alaska, California, and Utah) have requested and been assigned responsibilities under the Section 6004 program.

Environmental Impact Statements (EIS)

Projects requiring an EIS make up the smallest percentage of projects approved by FHWA, but have generated the most attention when debating NEPA’s potential role in delaying highway projects. FHWA does not specifically identify actions that require an EIS. That determination must be made on a case-by-case basis. However, DOT identifies the following as examples of highway projects that normally require an EIS: a new controlled access freeway; a highway

²⁸ 23 U.S.C. §326.

²⁹ For more information, see memorandum from the U.S. Department of Transportation, Federal Highway Administration, to Directors of Field Services and Division Administrators, regarding “Guidance on the State Assumption of Responsibility for Categorical Exclusions (CE),” April 6, 2006, available at <http://www.fhwa.dot.gov/hep/6004memo.htm>.

project of four or more lanes on a new location; and new construction or extension of a separate roadway for buses or high-occupancy vehicles not located within an existing highway facility.³⁰

Both the steps to complete an EIS and the EIS itself include certain required elements. Each required element represents the evolution of NEPA compliance requirements—as established by CEQ and, in part, as a result of judicial interpretation of NEPA’s mandate and how its procedural requirements must be implemented. Required components in EIS preparation are

- file a Notice of Intent (NOI)
- scope the environmental issues
- prepare a draft EIS
- circulate the draft EIS for comment
- prepare the final EIS
- issue a final record of decision (ROD)

The NOI serves as the formal announcement of the project to the public and to interested federal, state, tribal, and local agencies.³¹ As soon as possible after, or in conjunction with, the determination that an EIS is needed, the agency is required to determine the scope of the project. During that process, the project sponsor/applicant for federal funds should determine which environmental laws, regulations, or other requirements may apply to the project. During the scoping process, routes that may pose certain challenges and could be avoided may be identified (e.g., the presence of terrain or resources that may involve potential engineering or technical problems, regulatory restrictions, or public opposition). For example, during the scoping process, a potential route or alignment may be identified that would avoid property of historical significance, endangered species habitat, or wetlands—each of which may require compliance with the NHPA, the Endangered Species Act, or the Clean Water Act, respectively.

Once the scope of the action and its environmental issues have been determined, EIS preparation can begin. Required elements of an EIS, including selected elements in DOT’s NEPA regulations or FHWA policy, are summarized in **Table 3**.

³⁰ 23 C.F.R. §771.115(a).

³¹ 40 C.F.R. §1508.22.

Table 3. Required Elements of an EIS as Implemented by FHWA

Elements of an EIS	Definition/Description
Purpose and need statement (§1502.13)	A brief statement, developed by the lead agency, specifying the underlying purpose of a project and the need to which the agency is responding. According to FHWA, this section may be the most important, as it establishes why the agency is proposing to spend large amounts of taxpayers' money while at the same time causing significant environmental impacts. A clear, well-justified statement explains to the public and decision makers that the use of funds is necessary and worthwhile, particularly as compared to other needed highway projects. The statement forms the basis on which potential alternatives to meet that need are identified and a final alternative is ultimately selected. It cannot be so narrow that it effectively defines competing "reasonable alternatives" out of consideration. The "purpose" may be a discussion of the goals and objective. The "need" may be a discussion of existing conditions that call for some improvement, including those applicable to transportation demand, safety, legislative direction, urban transportation plan consistency, modal interrelationships, system linkage, and the condition of an existing facility.
Alternatives (§1502.14)	Defined as the "heart" of the EIS, this section includes the identification and evaluation of all reasonable alternatives that may meet a project's purpose and need. FHWA requires the range of alternatives to include a discussion of how and why all reasonable alternatives were selected for consideration, and to explain why other alternatives were eliminated from detailed study. Each alternative, and its associated impacts, must be evaluated in sufficient detail to allow decision makers and the public an opportunity to compare the merits of each option.
Affected environment (§1502.15)	A succinct description of the environment of the area(s) to be affected or created by the alternatives under consideration. DOT requires this section to include a description of the existing social, economic, and environmental setting of the area potentially affected by all alternatives presented in the EIS. Data may include demographics of the general population served by the proposed project, as well as an identification of socially, economically, and environmentally sensitive locations or features in the proposed project area. For example, the EIS should identify the presence of affected minority or ethnic groups, parks, hazardous material sites, historic sites, or wetlands, among other factors.
Environmental Consequences (§1502.16)	Analysis of impacts of each project alternative on the affected environment, including a discussion of the probable beneficial and adverse social, economic, and environmental effects of each alternative. Where applicable, this section must include a description of the measures proposed to mitigate adverse impacts and methods of compliance with applicable legal requirements. FHWA recommends this section be devoted largely to a scientific analysis of the direct and indirect environmental effects of the proposed action relative to each alternative. Potential environmental consequences identified by FHWA include land use, farmland, social, economic, air quality, noise, water quality, wetland, wildlife, floodplain, or construction impacts; the requirement to obtain any permits; impacts to wild and scenic rivers, coastal barriers, threatened or endangered species, historic and archeological preservation, or hazardous waste sites; and any irreversible and irretrievable commitment of resources. This section would likely require input from other federal, state, tribal, or local agencies with expertise on the environmental consequences under review.
List of preparers (§1502.17)	List of names and qualifications of individuals responsible for preparing the EIS. FHWA requires this section to include lists of state and local agency personnel, including consultants, who were primarily responsible for preparing the EIS/performing environmental studies and FHWA personnel responsible for EIS preparation/review.
Appendix (§1502.18)	Prepared if necessary. An appendix normally consists of material that substantiates analysis fundamental to the impact statement.

Source: Congressional Research Service, taken from CEQ regulatory definitions under 40 C.F.R. §1502 and requirements and definitions applicable to highway projects included in FHWA guidance "NEPA and Transportation Decisionmaking: The Importance of Purpose and Need in Environmental Documents," and "Guidance for Preparing and Processing Environmental and Section 4(f) Documents."

The EIS is prepared in two stages, resulting in a draft and a final EIS.³² Supplemental documents may be required in some instances. Among other requirements, the final EIS must identify the preferred project alternative; reflect an evaluation of all reasonable alternatives considered; identify and respond to public and agency comments on the draft EIS; and summarize public involvement. The final EIS should document compliance with requirements of all applicable environmental laws, executive orders, and other related requirements. If full compliance is not possible by the time the final EIS is prepared, it should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. FHWA approval of the environmental document constitutes adoption of any findings and determinations in the EIS. The ROD presents the basis for the agency's final decision and summarizes any mitigation measures that will be incorporated in the project.

Each required element of the EIS involves compliance requirements established under both NEPA and other environmental requirements. For example, a clear delineation of project purpose and need is also necessary to meet the requirements under Section 4(f), executive orders on wetlands and floodplains, and permitting requirements established under Section 404 of the Clean Water Act. Identifying the potentially affected environment and analysis of environmental consequences also demonstrate that environmental impacts are considered during, not after, the decision-making process (as required under NEPA), but also include consultation, analysis, or input from resource agencies that may be necessary to ensure compliance with other applicable environmental law.

SAFETEA included several provisions that applied to projects that require an EIS. Section 6002 amended Title 23 by adding "Efficient Environmental Reviews for Project Decision-making" (§138). It established a new environmental review process applicable to all highways, transit, and multi-modal projects requiring an EIS. Among other requirements, the new process

- requires the project sponsor to notify DOT of the type of work, termini, length, general location of the proposed project, and a statement of any anticipated federal approvals;
- establishes a new entity required to participate in the NEPA process, referred to as a "participating agency," which includes any federal, state, tribal, regional, and local government agencies that *may have an interest in* the project;³³
- requires the lead agency to establish a plan for coordinating public and agency participation in and comment on the environmental review process for a project or category of projects;
- requires the lead agency to establish a 60-day deadline on agency and public comments on a draft EIS and a 30-day deadline on all other comment periods in the environmental review process, except under certain circumstances (e.g., the deadline is extended by the lead agency for "good cause"); and
- prohibits claims seeking judicial review of a permit, license, or approval issued by a federal agency for highway or transit projects unless they are filed within 180 days after publication of a notice in the *Federal Register* announcing the final agency action, unless a shorter time is specified in the federal law under

³² 40 C.F.R. §1502.9.

³³ This category of agency participant in the NEPA process differs from a "cooperating agency," discussed below, that is defined as an agency having jurisdiction by law or special expertise with respect to any environmental impact of a proposed project or project alternative.

which the judicial review is allowed (previously, the six-year limit under the Administrative Procedure Act applied to NEPA-related claims).

DOT has produced guidance to help state DOTs implement SAFETEA's revised environmental review process and modified regulations implementing NEPA to reflect SAFETEA's amendments to Title 23.³⁴

The National Cooperative Highway Research Program conducted a survey of state DOTs to determine their impressions of the new environmental review process established by SAFETEA. The DOTs responding to the survey were generally favorable regarding the act's requirements.³⁵ In particular, there was wide approval of the 180-day statute of limitations.³⁶ However, survey respondents expressed concerns about some provisions, including their impressions that it represented no major change from what state DOTs were doing previously; it duplicated existing coordination procedures; and DOT already involved outside agencies prior to implementing the new procedures. Further, many survey respondents expressed concern that some requirements of the new environmental review process seemed to run counter to streamlining initiatives by creating additional requirements that could have a negative impact on schedules and budgets.³⁷

Under Section 6005, SAFETEA amended Title 23 to establish a "Surface Transportation Project Delivery Pilot Program" (§327). The pilot program allowed Oklahoma, California, Texas, Ohio, and Alaska to assume certain federal environmental review responsibilities (in addition to the assumption of CE determinations established under Section 6004, discussed above). Responsibility could be assumed for environmental reviews required under NEPA, or any federal law, for one or more highway projects within the state. As a condition of assuming federal authority, Congress required the state to waive its right to sovereign immunity against actions brought by citizens in federal court and consent to the jurisdiction of federal courts. That is, the state would become solely liable for complying with and carrying out the federal authority that it consents to assume.

To date, only California has agreed to and developed a program to participate in the pilot program. Other states declined, primarily due to state legislature concerns regarding the potential liability associated with assuming federal responsibility for NEPA.

Additionally, some state transportation agency officials and stakeholders with an interest in transportation project development have expressed concern over DOT requirements implementing the pilot program (as required pursuant to the directive in Section 6005). Those objections have centered largely around DOT's requirement applicable to rights-of-way (ROW) acquisitions in states that choose to assume federal authority under NEPA. As discussed earlier, one of NEPA's primary aims is to ensure that federal agencies consider the impacts of their actions before proceeding with them. The NEPA process cannot simply document a decision that has already been made. This requirement means that federal funds cannot be used for ROW acquisitions (an action that could indicate that a final project decision has been made) before the

³⁴ See "SAFETEA-LU Environmental Review Process, Final Guidance," November 15, 2006, available at <http://www.fhwa.dot.gov/hep/section6002/index.htm> and the Department of Transportation's "Environmental Impact and Related Procedures; Final Rule," 74 *Federal Register* 12517, March 24, 2009.

³⁵ See the National Cooperative Highway Research Program's "Legal Research Digest 54: Practice Under the Environmental Provisions of SAFETEA-LU," December 2010, available at http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_lrd_54.pdf.

³⁶ There was also wide approval of changes made to Section 4(f) under SAFETEA Section 6002, applicable to *de minimis* project impacts (see "Requirements Applicable to Federal-aid Highways") regarding the "preservation of parklands" requirements.

³⁷ See the summary of survey respondent impressions of SAFETEA provisions at pp. 16-21.

NEPA process is complete. Currently, states may make ROW acquisitions using state funds on an at-risk basis. That is, they may purchase land using state funds, but risk losing future federal funding for that purchase if the project ultimately involves an alternative that does not use that property. By assuming DOT's authority, a state would assume federal agency-level responsibility to comply with NEPA. DOT has found that would mean, in its capacity as a federal agency, the state would be precluded from making such advanced ROW acquisitions.

Some have argued that the loss of a state's ability to make at-risk ROW acquisitions has been a disincentive to states that may otherwise want to assume federal authority under NEPA. However, when the fear of taking on federal liability and subjecting the state to the jurisdiction of federal court were primary reasons that states did not want to assume NEPA authority, it is unclear how states could be protected from potential judicial review if they are allowed to complete a transaction that *could appear* to violate one of NEPA's primary goals. Although state DOTs may be willing to accept that risk, a state legislature may not, particularly when an incentive for a state to assume the federal role under NEPA is to eliminate FHWA's oversight of the NEPA process (e.g., FHWA's legal sufficiency review of an EIS).

Environmental Assessments (EAs)

The third category of NEPA document is an EA. It is required for an action that is not a CE and does not clearly require an EIS, or where FHWA believes an EA would assist in determining the need for an EIS. An EA is intended to be a concise public document that serves to provide sufficient evidence and analysis for determining whether to prepare an EIS or a Finding of No Significant Impact (FONSI).³⁸

In preparing an EA, the applicant, in consultation with FHWA, is required to consult with interested agencies at the earliest appropriate time to determine the project scope; determine which aspects of the proposed action have potential for social, economic, or environmental impact; identify alternatives and measures which might mitigate adverse environmental impacts; and identify other environmental review and consultation requirements which should be performed concurrently with the EA.³⁹

The EA is subject to FHWA approval before it is made available to the public. The document itself need not be circulated, but must be made available for public inspection and comment (typically for at least 30 days). A notice of availability must be sent to state- and area-wide clearinghouses and should be published locally. Depending on FHWA-approved state procedures, a public hearing may or may not be required.

FHWA requires the basis of a request for a FONSI be clearly and adequately documented. Like an EIS, the EA or FONSI is required to clearly document compliance with NEPA and all other applicable environmental laws, executive orders, and related requirements. An approved FONSI functions as the final agency decision on a project.

Like projects processed as CEs, determining the time it takes to complete an EA is difficult. Local and state transportation officials do not routinely, nor could they easily, track the time it takes to complete an EA. A distinct end point could be identified (issuance of a FONSI), but a starting point may be hard to identify. Further, since EAs likely require limited environmental review or analysis under NEPA, any analysis or review that is prepared to support a FONSI would likely be required under separate state or federal law. However, transportation agency officials have complained that EAs sometimes approach the length of an EIS. If that is the case, factors

³⁸ 40 C.F.R. §1508.9.

³⁹ 23 C.F.R. §771.119(b).

indirectly related to the NEPA compliance likely apply to the project. For example, a project that may involve local controversy or opposition, but still have no significant impacts, may require more analysis or documentation than anticipated. Also, a project with substantial environmental impacts to certain resources may require time-consuming consultation, analysis, or approvals from agencies outside DOT to confirm that no significant impacts will occur, or it could be an indication that an EIS should have been prepared initially.

Agency Roles and Responsibilities in the NEPA Process

The NEPA document is prepared by a “lead agency,” and may require input and analysis from “cooperating” or “participating” agencies. Depending on the environmental impacts of a given project, both the lead and cooperating agencies are obligated to meet certain federal requirements. The time it takes to meet those obligations has been identified by transportation agencies as a potential source of frustration or project delay.

Lead Agencies

The “lead agency” is the federal agency responsible for preparing the NEPA document.⁴⁰ DOT must serve as the lead federal agency for a federally funded transportation project (FHWA generally serves as the lead for highway projects). The direct recipient of federal funds for the project must serve as a joint lead agency (a requirement explicitly established under SAFETEA). For a federal-aid highway project, that is typically the state DOT, but may include a local agency project sponsor or a federally recognized Indian tribal governmental unit. At the discretion of the required lead agencies, other federal, state, or local governmental entities may act as joint lead agencies. These include, but are not limited to toll, port, and turnpike authorities and metropolitan planning organizations (MPOs). For example, the U.S. Department of Homeland Security may serve as a joint lead agency with DOT and the project sponsor on a transportation improvement at a national border crossing.

In practice, the entity seeking federal funds will prepare the NEPA document, and other supporting environmental review documents, with guidance from FHWA (as necessary or as requested). FHWA, however, has ultimate responsibility to ensure that a project seeking federal funds will comply with the various laws, regulations, and executive orders applicable to the project. In that capacity, before final approval and project funding, FHWA is required to independently evaluate the necessary environmental documents and review the legal sufficiency of a final EIS⁴¹ or Section 4(f) evaluation.⁴² This review is intended to ensure that the Section 4(f) evaluation or NEPA document is consistent with legal requirements. It includes a review of the documentation and associated compliance efforts to determine if those efforts are sufficient to assure compliance with applicable law. A separate technical review of the final NEPA/Section 4(f) document is also conducted by FHWA, prior to document approval.

Cooperating and, after SAFETEA, Participating Agencies

The lead agency must consult with and obtain the comments of any federal agency that has “jurisdiction by law or special expertise with respect to any environmental impact involved” in an

⁴⁰ See 40 C.F.R. §1508.16.

⁴¹ 23 C.F.R. §771.125(b). A legal sufficiency review of an EA may be required if FHWA determines that details of the individual project warrant such a review.

⁴² 23 C.F.R. §774.7(d).

action that requires an EIS.⁴³ In CEQ's NEPA regulations, those agencies are identified as "cooperating" agencies.⁴⁴ Pursuant to directive from Congress in SAFETEA, DOT's NEPA regulations were supplemented to also identify "participating" agencies, which may include any federal and non-federal agencies that may have an interest in the project.⁴⁵

At the request of the lead agency, the cooperating agency is required to assume responsibility for developing information and preparing environmental analyses, including portions of the EIS related to its special expertise. Cooperating agencies are also obligated to provide comments on the NEPA document on areas within their jurisdiction, expertise, or authority. For projects requiring an EIS, that role may be set out in a memorandum of understanding or agreement between the agencies. The lead agency is also required to request comments from appropriate state, local, or tribal agencies; any agency that has requested to receive EISs on similar actions; and the project applicant.⁴⁶

CEQ regulations specify requirements for inviting and responding to comments on the draft EIS (including requirements that specify a cooperating agency's duty to comment on the draft).⁴⁷ The lead agency is required to consider those comments and respond in one of the following ways:

- modify proposed alternatives, including the proposed action;
- develop and evaluate alternatives not previously considered;
- supplement, improve, or modify its analyses;
- make factual corrections in the EIS; or
- explain why the comments do not warrant further response from the lead agency, citing the sources, authorities, or reasons that support its position.⁴⁸

As illustrated in the choices listed above, the lead agency is not precluded from moving forward with a project if it explains why a cooperating agency's comments do not warrant further response. However, FHWA suggests that every reasonable effort be made to resolve interagency disagreements on actions before processing the final EIS. If significant issues remain unresolved, the final EIS shall identify those issues and any consultation or other effort made to resolve them.

Some highway projects have involved disagreements regarding the appropriate authority and extent of involvement of coordinating agencies in the NEPA process. For example, in 2003, Transportation Secretary Norman Mineta requested CEQ Chairman James Connaughton to clarify the role of lead and cooperating agencies in developing EIS statements of project purpose and need statements.⁴⁹ Secretary Mineta cited the sometimes lengthy interagency debates over those statements as a cause of delay in highway project development. In his response, Chairman Connaughton referred to CEQ regulations specifying that the lead agency has the authority and responsibility to define a project's purpose and need. Further, Chairman Connaughton referenced

⁴³ 42 U.S.C. §4332(2)(C).

⁴⁴ 40 C.F.R. §1508.5.

⁴⁵ Specific only to DOT's NEPA requirements, "participating" agencies for federal highway projects are defined at 23 C.F.R. §771.107(h) as a state, local, tribal, or federal agency that may have an interest in the proposed project and have accepted an invitation to participate in the environmental review process.

⁴⁶ 40 C.F.R. §1503.1.

⁴⁷ 40 C.F.R. §1503.

⁴⁸ 40 C.F.R. §1503.4.

⁴⁹ Text of Secretary Mineta's May 6, 2003, letter, and Chairman Connaughton's May 12, 2003, response, are available at <http://www.environment.fhwa.dot.gov/guidebook/Ginterim.asp>.

previous federal court decisions giving deference to the lead agency in determining a project's purpose and need. Chairman Connaughton's letter also quotes CEQ's regulations, citing the lead agency's "responsibilities throughout the NEPA process for the 'scope, objectivity, and content of the entire statement or of any other responsibility' under NEPA."

Public Involvement

To meet NEPA's goal applicable to public participation in federal decision making, CEQ's regulations require agencies to provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform public stakeholders.⁵⁰ DOT procedures extend beyond those established under CEQ regulations to reflect requirements applicable to "public hearings" established under Title 23.⁵¹ For example, EAs do not need to be circulated, but must be made available to the public through notices of availability in local, state, or regional clearinghouses, newspapers, and other means. Depending on a state's public involvement procedures (approved by FHWA), a public hearing may or may not be required for projects that proceed with an EA. Pursuant to DOT regulations implementing NEPA, documentation necessary to demonstrate compliance with Title 23's public hearing requirements (e.g., public comments or hearing transcripts) must be included in the final EIS or FONSI, as applicable.

Stakeholders that comment on surface transportation projects may be expected to vary depending on a project's impacts. They may include individuals or groups who may benefit from or be adversely impacted by the project, or special interest groups with concerns about the project's impacts on certain affected environments. For example, a highway project that involves upgrading existing roadways may involve construction activities that would affect adjacent homes or businesses. The project may elicit comments from the local business community (e.g., individual businesses, the Chamber of Commerce, or local development organizations) or area homeowners. A project that may affect sensitive environmental resources, such as wetlands or endangered species, may generate comments from local or national environmental organizations.

If a member of the public has concerns about a project's impacts, comments may be directed at virtually any element of the NEPA process or related documentation. Someone may disagree with the definition of project's purpose and need discussion, the range of "reasonable" alternatives selected for consideration and analysis, or the identified level of significance of the project's impacts (e.g., a FONSI was issued when the individual felt an EIS should have been required). Issues that arise during the public comment period may also be the subject of legal action. Critics of NEPA charge that those who disapprove of a federal project will use NEPA as the basis for litigation to delay or halt that project. Others argue that litigation results only when agencies do not comply with NEPA.⁵²

Actual litigation played a prominent role in NEPA's early implementation. However, it may be the *threat* of litigation that affects its current implementation. The number of NEPA-related

⁵⁰ 40 C.F.R. §§1500.2(d), 1506.6.

⁵¹ 23 U.S.C. §128.

⁵² Plaintiffs have generally cited some inadequacy in the NEPA documentation as the basis for filing NEPA-related lawsuits (see CEQ's *Litigation Surveys* for each year from 2001 to 2009 on its "NEPA Litigation" web page at http://ceq.hss.doe.gov/legal_corner/litigation.html). They may charge, among other things, that an EIS or EA did not include sufficient analysis of all project alternatives, did not consider all "reasonable" project alternatives, did not adequately analyze the effects of project alternatives, or that an EA was prepared when an EIS should have been (i.e., a FONSI was issued when impacts were in fact significant).

lawsuits filed annually against FHWA is low.⁵³ Still, the potential threat of litigation may result in an effort to prepare a “litigation-proof” NEPA document. This may be the case particularly for projects that are costly, technically complex (potentially requiring compliance with multiple environmental laws), or controversial (e.g., opposed by or individuals affected by the project or groups that anticipate adverse impacts to resources of concern to them). Some look at this positively, asserting that the fear of a lawsuit makes agencies more likely to adhere to NEPA’s requirements. Others counter that the threat of litigation may lead to the generation of wasteful documentation and analyses that do not add value to, and slow, decision making.

Demonstrating Compliance with Additional Requirements

Unlike NEPA, which will apply in some way to all federally funded highway projects, additional environmental requirements applicable to a project will depend on site-specific conditions and potential impacts to resources at the site. For example, what and how requirements may apply to a project will depend on its effect on water quality, water resources, and land use as well as community, visual, noise, or social impacts, to name a few. While a wide array of requirements may apply to federally funded highway projects, certain federal requirements apply more commonly than other requirements. Also, certain compliance requirements have been identified by transportation stakeholders as those more likely to delay the environmental review process (see surveys and studies listed in **Appendix**). The most commonly applicable laws, and selected compliance requirements, are listed in **Table 4**.

Table 4. Federal Law Commonly Applicable to FHWA-Approved Projects

Federal Law	Selected Compliance Requirements
Section 4(f)	For projects that would use a 4(f) resource, an evaluation or a determination of <i>de minimis</i> impacts must be prepared (see the discussion regarding “Preservation of parklands” in the “Requirements Applicable to Federal-aid Highways” section). The evaluation or <i>de minimis</i> impacts determination requires some level of consultation with or concurrence from the official with jurisdiction over the resource (e.g., the Department of the Interior’s U.S. Fish and Wildlife Service (FWS); federal, state or local park authorities; or the designated SHPO).
Section 106 of the National Historic Preservation Act	For projects that may affect a site included, or eligible for inclusion, in the National Register of Historic Places, FHWA must consult with the Advisory Council on Historic Preservation (ACHP) or the designated SHPO to determine impacts to the site and seek ways to avoid, minimize, or mitigate adverse impacts. Affected parties must be involved in mitigation plans.
Endangered Species Act (Section 7)	FHWA must prepare a biological assessment when the presence of threatened or endangered animals or plants is suspected to occur in the vicinity of a project. FHWA must consult with the federal agency of jurisdiction (FWS or the Department of Commerce’s National Marine Fisheries Service (NMFS)) that will issue a biological opinion on whether the proposed action would jeopardize the continued existence of listed species, or destroy or adversely modify their designated critical habitats.
The Clean Water Act (Section 404)	Requires that the discharge of dredge and fill materials into navigable waters of the United States be done in accordance with review and permitting procedures administered by the Corps, under guidelines developed by EPA. Other federal agencies potentially involved in permit evaluation process include FWS or NMFS.

Source: Congressional Research Service, taken from requirements listed in FHWA’s “Summary of Environmental Legislation Affecting Transportation,” at http://www.fhwa.dot.gov/environment/env_sum.htm.

⁵³ From 2001 to 2009, NEPA-related lawsuits filed annually against FHWA ranged from a low of three to a high of 12; see CEQ’s *Litigation Surveys* cited in footnote 52.

Note: This is not intended to be an exhaustive list of federal requirements potentially applicable to federally funded highway projects or a complete description of potentially applicable compliance requirements established pursuant to each law. However, the selected requirements illustrate the potential need to obtain permits or consult with agencies outside DOT. Further, federal laws selected for listing in this table represent those identified by transportation agency officials as a common source of delay in completing the environmental review process.

As illustrated by the requirements listed in **Table 4**, when a federal highway project involves regulated impacts to certain resources, an agency with jurisdiction over that resource may be required to provide some level of analysis, consultation, or approval before a project can proceed. Resulting consultation or approval may include directive(s) to the project sponsor regarding how or whether the proposed project may use the resource. These requirements can lengthen the time it takes to complete the overall environmental review process, if outside agency opinions, input, and/or evaluations are required before the NEPA review can be completed. Whether such requirements will lead to project delays could depend on a host of factors such as whether the project sponsor anticipated the need for outside agency approval or the workload of the agency processing the approval.

To integrate the NEPA compliance process and avoid duplication of effort associated with a project's overall environmental compliance obligations, CEQ's NEPA regulations specify that, to the fullest extent possible, agencies must prepare the NEPA documentation concurrently with any other environmental requirements. The appropriate NEPA documentation should demonstrate compliance with all applicable environmental requirements. It must indicate any federal permits, licenses, and other approvals required to implement the proposed project. This means that compliance requirements of any additional environmental laws, regulations, or executive orders must be identified (but not necessarily completed) during the NEPA process. If full compliance is not possible by the time the final NEPA document is prepared, the document should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met.

Environmental Reviews and Project Development

To understand how the environmental review process may affect project delivery, it is useful to understand how the process fits into overall project development, as well as the challenges associated with measuring each stage of that development. It is also useful to recognize root causes of delay in completing the environmental review process, as well as how the process can lead to more efficient project development.

Stages of Project Development

Federal-aid highway funds are generally apportioned to each state by FHWA for the construction, reconstruction, and improvement of highways and bridges on eligible highway routes, and for other special-purpose programs. Individual state DOTs are responsible for determining how and on which projects those funds will be spent. In making that determination, multiple activities and decisions occur from the time a tribal or state DOT, metropolitan planning organization, or local program agency (such as a municipal public works agency) identifies a transportation-related need and a project addressing that need is constructed.

Each stage of project development is initiated and completed largely at the local, tribal, or state level, with ultimate project approval at the federal level—from FHWA for federally funded highway projects. Although the names and details of each step may vary from state to state, they generally include project planning, preliminary design and environmental review, final design and

right-of-way acquisition, and project construction. Activities common to each phase of the project development process, including maintenance activities that may take place after project construction, are described in **Table 5**. The table also identifies potential environmental compliance obligations that may occur in each stage of project development.

Table 5. Stages of Federal-Aid Highway Project Development

Common Project Activities and Environmental Compliance Obligations in Each Phase of Development

Project Phase	Description/Common Activities	Common Environmental Compliance Obligations
Planning	Transportation program or project planning involves a cooperative process designed to foster involvement by all users of the planned system—such as the business community, community groups, environmental organizations, the traveling public, freight operators, and the general public. During this stage, a proactive public participation process is conducted by the metropolitan planning organization (MPO), state DOT, and transit operators. Among other activities, MPOs and state DOTs identify current and projected future transportation problems and needs, and analyze, through detailed planning studies, various transportation improvement strategies to address those needs. They also develop long-range plans and short-range programs for alternative capital improvement and operational strategies for moving people and goods.	Efforts have been made, in both FHWA guidance and statutory directive from Congress, to link statewide and metropolitan planning to the environmental review process. For example, Section 6001 of SAFETEA requires the development of long-range transportation plans to include consultations with resource agencies responsible for land-use management, natural resources, environmental protection, conservation, and historic preservation, which may involve comparisons of resource maps and inventories; discussion of potential mitigation activities; and participation plans that identify a process for stakeholder involvement.
Preliminary design and environmental review	A project applicant identifies the preliminary engineering issues, such as proposed alignment of roadways, costs, and project details. This stage includes preliminary engineering and other activities and analyses, such as topographic or metes and bounds surveys, geotechnical investigations, hydrologic or hydraulic analysis, utility engineering, traffic studies, financial plans, revenue estimates, hazardous materials assessments, and general estimates of the types and quantities of materials and other work needed to establish parameters for the final design.	An applicant for federal-aid funds must determine the appropriate NEPA document to be prepared and identify various resources potentially affected by a proposed project and its alternatives. The final NEPA document must identify and demonstrate compliance with any other applicable environmental requirement, to the maximum extent possible, including completing necessary environmental or engineering studies, outside agency coordination or approvals, and public involvement.
Final design and right-of-way acquisition	Final construction plans and detailed construction specifications for the selected project alternative are prepared. If necessary, property appraisals and the acquisition of rights-of-way (ROW) or property to mitigate environmental impacts are made. Property acquisition that may involve the relocation of residents and businesses must be done in accordance with the Uniform Act of 1970. Also, if necessary, utilities are relocated. Project costs are finalized.	Property or material purchases cannot proceed until the NEPA document is approved by FHWA. Property acquisitions must be completed in compliance with requirements identified in the document. If late changes to the project are required, the environmental review process may have to be revisited if design changes result in unanticipated or previously unidentified environmental impacts.

Project Phase	Description/Common Activities	Common Environmental Compliance Obligations
Construction	The state DOT, or other project sponsor, requests and evaluates bids, and awards contracts. Project construction must reflect decisions made during the planning, environmental review, and design stages of project development.	Necessary permits or other compliance requirements identified during environmental review must be in place. Mitigation measures must be complete (e.g., installation of noise barriers or implementation of wetland mitigation). If elements of the project change, the environmental review process may have to be revisited if changes result in unanticipated environmental impacts.
Maintenance	Although not considered part of project development, the majority of projects funded under FHWA-approved programs involve activities that may be broadly described as “maintenance.” Highway maintenance may include modernization through roadway resurfacing, restoration, rehabilitation, reconstruction, or adding shoulders or auxiliary lanes. Bridge maintenance may include rehabilitation, reconstruction, or replacement.	Identifying, planning, and implementing necessary maintenance activities are likely initiated and carried out at the local level, with state DOT approval. Maintenance activities would commonly involve a CE determination as well as an assessment of impacts that may require compliance with additional environmental requirements (e.g., impacts to historic sites or structures or endangered species habitat).

Source: Congressional Research Service, based on a review of state DOT practices.

Frequently, “environmental review” is considered synonymous with “NEPA compliance.” That is not the case. However, completion of the NEPA compliance process and the overall environmental review process are linked by DOT’s requirement that a project cannot be approved and subsequent stages of project development cannot proceed until the project sponsor appropriately documents compliance with NEPA and other applicable environmental requirements.

Challenges in Measuring Stages of Project Development

There are distinct activities associated with each stage of project development. However, the following factors make it difficult to estimate the time it takes to complete each stage:

- Most state and local transportation agencies do not maintain a centralized source of data tracking the time it takes to complete transportation projects. Further, there is no acceptable measure of when a project is delivered in a timely manner versus delayed. A project or a stage of its development may be considered “delayed” if it took the project sponsor longer than anticipated.
- Most state and local transportation agencies do not attempt to extract and measure the time it takes to complete individual activities attributable to a single stage of development (e.g., activities categorized distinctly as applicable to “environmental review”). Further, tracking that data may be difficult since elements of one phase may overlap with another (e.g., project planning activities may include elements of environmental review) and a distinct start and end point of individual activities may be difficult to identify.
- Project development may start, stop, and restart for reasons unrelated to environmental compliance. For example, EIS preparation may begin with publication of a NOI, but preparation may stop and restart due to changes in state

priorities, funding availability, or a host of other issues unrelated to NEPA. In such cases, the time between issuing a NOI and ROD are an inaccurate measure of the NEPA process.

- Differences between state DOT project development processes make it difficult to establish a nationally applicable measure of project development stages. Also, the influence of tribal- or state-specific environmental compliance requirements makes it difficult to isolate the time it takes to comply with federal requirements.

Considering these points, it is difficult to determine either the time it takes to meet specific elements of the environmental review process (e.g., NEPA compliance or agency consultations under the Endangered Species Act) or the degree to which completing the process delays project delivery. Further, it is not possible to assert, with any degree of accuracy, broad, nationally applicable values to the time it takes to complete the environmental review process. For example, there are no data available to substantiate a statement such as “environmental compliance accounts for X% to Y% of surface transportation project development time,” or “compliance with NEPA or Clean Water Act permitting requirements delays X% to Y% of projects for X to Y months/years.” Instead, it may be possible to determine “bridge reconstruction or rehabilitation in state A takes from X to Y months/years” if state A is one that tracks such information.

Also, it may be generally stated that the time it takes to deliver larger, more complex or controversial projects takes longer to complete than is typical for the majority of FHWA-approved highway projects (e.g., maintenance and rehabilitation projects). In addition to taking longer to complete due to their potential cost, size, and complexity, they will likely require compliance with more state, tribal, and federal requirements and may generate more public interest or opposition.

In 2002, the General Accounting Office (GAO) released a report that attempted to determine the typical amount of time it takes to complete overall project delivery as well as individual phases of project development for certain federally funded highway projects.⁵⁴ Data for this report were compiled based on the professional judgment of FHWA staff, staff of state departments of transportation, and transportation associations. According to FHWA, planning, gaining approval for, and constructing federally funded major highway projects that involved new construction typically took from nine to 19 years from planning to construction. FHWA estimated that the preliminary design and environmental review phase for those projects typically took from one to five years, depending on the complexity of the design and possible environmental impacts that must be considered.⁵⁵ It was noted that projects studied in the GAO report included those that would typically require an EIS and represent a small percentage of federally funded projects. It was also noted that, while there are many reasons new highway construction projects may take a long time to complete, most studies on project delivery focused only on the timely resolution of environmental issues to improve project completion times, rather than examining all aspects of project development.⁵⁶

⁵⁴ U.S. General Accounting Office (now the Government Accountability Office), *Highway Infrastructure: Preliminary Information on the Timely Completion of Highway Construction Projects*, September 19, 2002.

⁵⁵ In addition to information from FHWA and state DOT staff, this report also looked at the time it took and the steps necessary to complete six new highway construction projects in California, Florida, and Texas (the largest in the state, in terms of federal funds received, and a randomly selected “medium-sized” project).

⁵⁶ Consistent with the factors that make it difficult to measure individual phases of project development, discussed above, GAO noted that federal and state governments do not maintain information centrally (or, in some cases, at all) on the time it takes to complete highway projects. GAO also noted that there was no accepted measuring stick with which to gauge whether project performance is “timely.” To make its determination on project timing, GAO relied on a

Causes of Delay in Completing Environmental Reviews

Although the extent to which the environmental review process may delay project delivery is unclear, it is generally not disputed that the time it takes to demonstrate compliance with environmental requirements can be time-consuming, particularly in cases where EIS preparation is required. Also, while transportation agency officials may cite elements of the environmental review process as a source of frustration or delay, it is not clear what specific environmental compliance requirements currently and routinely lead to project delays or the root cause of those delays.⁵⁷ For example, a common complaint among transportation agency officials is that outside agencies (including FHWA review and approval of the final NEPA documents) do not provide necessary input or approval in a timely way. However, there is little information available that clearly indicates *why* that may be the case on anything other than a project-specific level.

Few studies have looked at the root causes of project delay directly attributable to the environmental review process. Available studies have looked at a limited number of major new construction projects that required an EIS. By their nature, those projects involve unique project-specific issues and are likely to involve complex design, engineering, and compliance issues. Causes of delay for those projects more likely represent the exception and not the rule.

A 2003 FHWA study that attempted to identify causes of delay in completing EISs was unable to identify common factors or conditions that directly or indirectly affected the time it took to complete the NEPA process.⁵⁸ Although timing varied by broad geographic region, it did not seem to vary in relation to the majority of other variables considered (e.g., the presence of certain “controversial issues” or the required participation of agencies outside DOT). Instead, it was observed that the time it took to complete the NEPA process may have been more affected by external social and economic factors associated with broad geographic regions of the country.⁵⁹

Subsequent, albeit limited, study data and anecdotal evidence regarding individual projects also point to factors external to environmental reviews as those most likely to delay the process. In particular, causes of delay in completing environmental reviews arise primarily from potentially overlapping local and project-specific issues including, but not limited to, the following:

- **Local issues**—the project’s level of priority among others proposed in the state; changes in funding availability; concerns of local property owners; or opposition to the project (which may or may not be connected to environmental issues).
- **Project-specific issues**—the project’s technical complexity; changes in project scope or design; lawsuits or the threat of litigation (which may or may not be connected to environmental issues); poor consultant work; issues with city

best estimate prepared by FHWA. According to FHWA, the estimate it provided to GAO was based on the professional judgment of its staff and several state DOTs.

⁵⁷ The identification of factors that currently affect project delivery is particularly relevant when considering legislative options to address potential causes of delay in the environmental review process. State DOTs have improved their environmental review procedures in the past 10 years. Also, FHWA has expanded its efforts to provide information and guidance on the process, including increased efforts to encourage states to implement programmatic agreements applicable to NEPA compliance and other environmental laws.

⁵⁸ Federal Highway Administration and the Louis Berger Group, *Evaluating the Performance of Environmental Streamlining: Phase II*, 2003, available on FHWA’s “Streamlining/Stewardship” website, <http://www.environment.fhwa.dot.gov/stmlng/baseline/phase2rpt.asp>.

⁵⁹ Ibid., under “Conclusions 4.2.”

documentation; issues with new alignment or coordination with other transportation projects; or land use planning issues.⁶⁰

As discussed previously, environmental requirements identified as a source of delay have been associated with selected requirements established under Section 4(f); the Endangered Species Act; the National Historic Preservation Act; and the Clean Water Act. If a project is delayed by requirements under those laws, that delay may be attributable to project-specific issues.

Efforts to identify specific problems or causes of delay in meeting requirements other than NEPA have found differing perceptions among resource agency and transportation agency officials. For example, in completing its obligations as part of the environmental review process, resource agencies have identified poor communication, problems with the project's alternative analysis, being given incorrect or incomplete information, disagreements or differences of opinion among agencies, or environmental or biological issues associated with the project. Transportation agency officials also cited disagreements or differences of opinion and environmental or biological issues associated with the project, but identified a lack of timely response from resource agencies as the primary problem.⁶¹

Benefits to the Environmental Review Process

When there is debate over potential options to expedite the environmental review process, that process may be viewed as simply an obstacle to overcome before a highway or bridge project can be built. Benefits to the process may be overlooked or hard to quantify. Potential benefits may generally be thought of as those associated with balancing transportation and infrastructure needs with environmental protection and community concerns. However, one benefit that is not often considered is the degree to which the environmental review process may ultimately save time and reduce overall project costs by identifying and avoiding problems in later stages of project development. A study prepared for the Transportation Research Board made this point when evaluating causes of delay in the construction phases of development.⁶²

Among other findings, the study found that certain recognized management principles, identified as relevant to timely completion of highway construction projects, should be applied by state highway administrators and contractors. It found that adherence to these principles was often inconsistent and lacking, usually resulting in construction delays. Among the principles identified was the "Cost-Time Relationship," under which, the study found,

More time spent in design identifying problems will reduce construction time and result in a shorter overall project time. A widely recognized principle is that spending more monies during planning and design will reduce the time and cost required for construction by avoiding unforeseen conditions, reducing to a minimum design errors and omissions, and developing schemes that will support the most efficient approach to construction. In the design phase, the opportunity to make decisions to influence the final project cost is

⁶⁰ Factors listed here are those that have been most commonly identified in surveys or studies conducted by FHWA and GAO, as well as selected university and transportation organizations. For a list of the surveys and studies used to prepare this report, see **Appendix**. Those surveys and studies have looked primarily at causes of delay applicable to projects that require an EIS.

⁶¹ See "FHWA/Gallup Study on Implementing Performance Measurement in Environmental Streamlining," available at http://environment.fhwa.dot.gov/stmlng/gallup_05-07.asp.

⁶² Thomas, H.R. and Ellis, R.D., *Avoiding Delays During the Construction Phase of Highway Projects*, Transportation Research Board, National Research Council, October 2001, NCHRP 20-24(12). Also see "The Root Causes of Delays in Highway Construction," a summary of the study's findings submitted for presentation by the authors at the TRB annual meeting in 2003, available at http://www.ltrc.lsu.edu/TRB_82/TRB2003-000646.pdf.

greatest. Yet, the expenditure of project funds is comparatively minimal, typically about 10% of the capital budget.⁶³

These study findings illustrate the potential problem with considering time spent in the planning or preliminary design stage as a delay. It is impossible to determine whether or how much time may be *saved*, and project delivery ultimately accelerated, by avoiding conditions identified early in the process.

Expediting Environmental Reviews

Lessons Learned

The potential for the environmental review process to expedite project delivery is illustrated in findings of a 2009 peer exchange between representatives from state DOTs and FHWA Division Offices. The exchange was intended to identify strategies to more effectively move complex environmental documents through the EIS process.⁶⁴ Participants presented information on projects in their states that had moved through the environmental review process quickly. They highlighted the challenges encountered, methods used to successfully and efficiently navigate the EIS process, and lessons learned from their experience. It was observed that the practices described by state DOTs represented a fundamental shift in the way agencies have conducted environmental reviews over the last 10 to 15 years. Those state DOTs were found to have

embraced innovative and creative solutions to balance transportation and infrastructure needs with environmental protection and community concerns. The environmental review processes for the successful projects ... were conducted in a collaborative and transparent manner, whereby [state DOTs] sought to include stakeholders early and often throughout development of the EIS. Such methods not only lead to a faster completion of the environmental review process, but perhaps more importantly, they result in the delivery of better quality projects, ones that fulfill the transportation needs of communities while maintaining protection of environmental resources at the same time.⁶⁵

One recent event serves as a good example of how environmental compliance requirements can be coordinated efficiently. That event was the reconstruction of the I-35 bridge in Minneapolis after its August 1, 2007, collapse. A new bridge opened just over a year later on September 18, 2008. The timing of that bridge reconstruction led to the question “Why can’t all projects be completed that quickly?”

The answer to this question can be found, in part, in an FHWA study that examined how the key elements of the environmental review process were completed after a bridge collapse.⁶⁶ A primary

⁶³ “The Root Causes of Delays in Highway Construction,” p. 3.

⁶⁴ *Strategies and Approaches for Effectively Moving Complex Environmental Documents Through the EIS Process: A Peer Exchange Report*, prepared by the John A. Volpe National Transportation Systems Center Research and Innovative Technology Administration, U.S. Department of Transportation for the Office of Project Development and Environmental Review, Federal Highway Administration, January 2009, available on FHWA’s

“Streamlining/Stewardship” website at <http://environment.fhwa.dot.gov/stmlng/eisdocs.asp>.

⁶⁵ *Ibid.*, under “Recommendations for Successful Tools & Techniques.”

⁶⁶ See “Meeting Environmental Requirements After a Bridge Collapse,” prepared for the Office of Project Development and Environmental Review, Federal Highway Administration, U.S. Department of Transportation, and prepared by the John A. Volpe National Transportation Systems Center Research and Innovative Technology Administration, U.S. Department of Transportation, August 2008, available at http://www.environment.fhwa.dot.gov/projdev/bridge_casestudy.asp.

factor cited in the study was that, in the wake of an emergency, the major causes of surface transportation project delay are absent. The “major causes of delay” identified were a lack of funding or priority in the state for the project; local controversy; interested stakeholder or local opposition; or insufficient political support.⁶⁷ Other potential causes of delay could still apply to emergency projects, including issues with the projects’ complexity, poor consultant work, or the environmental review process.

The FHWA study looked at the Minnesota bridge collapse as well as other projects that involved bridge reconstruction after a collapse. Projects in the study illustrated how efficiently the environmental review process *could be* implemented if the more common sources of delay are absent and environmental review involves efficient interagency cooperation.

Bridge reconstruction for the I-35 project required the same environmental permits that would apply to any bridge reconstruction project of similar scope and scale. Despite the urgency of the project, there was no waiver or exemption from the environmental review or permit requirements. The replacement bridge was widened to accommodate future transit options, but did not increase capacity. The project fit the criteria necessary to be processed as a CE, but still required

- a permit issued by the Corps under Section 404 of the Clean Water Act;
- a bridge construction permit issued by the U.S. Coast Guard;
- an assessment of potential impacts to threatened and endangered species by a consultation team formed by FHWA, Minnesota DOT (MnDOT), and the Department of the Interior’s U.S. Fish and Wildlife Service (FWS);
- a Minnesota Pollution Control Agency permit certifying compliance with the Clean Water Act’s National Pollutant Discharge Elimination System and other requirements; and
- an assessment of potential cultural and historic issues through MnDOT’s Cultural Resources Unit (CRU), in part, in accordance with a programmatic agreement with the Minnesota SHPO and tribes interested in reviewing state projects.

Efficient interagency coordination on the project was a factor identified as one associated with expedited reconstruction of the bridge. However, the efficiency of that agency interaction did not begin with this project. FHWA observed that staff from state and federal agencies involved in the environmental review process had worked collaboratively on past projects. The agencies established lines of communication and understood the tasks and concerns of each other’s agencies. Those existing relationships led to a quick response among those agencies after the bridge collapse. Further, FHWA and MnDOT recognized that by limiting the scope of the project, the environmental review process was expedited because no expanded environmental review was needed (e.g., it met the criteria applicable to a CE). Further, federal and state resources were focused on this project—its completion was a priority to the state.

Apart from issues cited in the FHWA bridge study, MnDOT cited its use of a design-build procurement process as an important factor in the expediting project completion. A “design-build” process brings designers and contractors together early in the project development process and allows for a shortened process completion time by overlapping design and construction.⁶⁸

⁶⁷ Major sources of project delay cited in the bridge study are those identified in FHWA survey results included in **Appendix**.

⁶⁸ For more information about the bridge reconstruction project, see the Minnesota DOT “I-35W St. Anthony Falls Bridge” website at <http://projects.dot.state.mn.us/35wbridge/index.html>.

Lessons learned from projects completed relatively quickly as well as suggested solutions from transportation agency officials⁶⁹ involve certain common approaches or procedures that have or could streamline the environmental review process. Those approaches include the following:

- efficient interagency communication and project coordination;
- early and continued communication with stakeholders affected by a project;
- improvements in internal processes and procedures;
- demonstrated agency commitment to priority projects and project schedules; and/or
- programmatic approaches to meeting compliance obligations.

Each of these approaches can be implemented under existing standards and requirements applicable to federally funded highway projects. For example, CEQ and DOT regulations implementing NEPA include explicit requirements intended to identify potential environmental issues early in the project development process and coordinate efficient interagency cooperation. CEQ also provides federal agencies with guidance on improving the efficiency and timeliness of their environmental reviews under NEPA.⁷⁰ DOT provides guidance and information intended to assist state and local agencies in implementing the environmental review process more efficiently.⁷¹

Administrative Efforts

In 2009, DOT initiated its “Every Day Counts” program to identify and implement approaches to shortening project delivery (among other goals). The program includes an evaluation of potential changes in DOT’s role in implementing the environmental review process, including the following efforts:

- **Improve the link between project planning and environmental review**—sets up a framework for incorporating planning documents and decisions from the earliest stages of project planning into the environmental review process.
- **Enhance legal sufficiency reviews**—uses the process to identify the most common problems in NEPA and Section 4(f) document development, their root causes, and the measures local and state transportation agencies can take to avoid the problems; and encourages reviews when documents are in their draft stage, reducing the potential need for multiple legal reviews of a “final” document and helping to resolve conflict and potential controversy earlier in the process, when project schedules can better accommodate the change.

⁶⁹ See findings in the 2007 FHWA/Gallup study (cited in footnote 61).

⁷⁰ CEQ guidance “Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act,” released on March 6, 2012, available at <http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/efficiencies-guidance>. CEQ stated that the guidance is part of its broader effort to “modernize and reinvigorate” federal agency implementation of NEPA and to support goals established in President Obama’s August 31, 2011, memorandum, “Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review.” For information about CEQ pilot programs established to support those goals, see <http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/nepa-pilot-project>.

⁷¹ See FHWA’s online “Environmental Review Toolkit,” available at <http://environment.fhwa.dot.gov/index.asp>. It includes, for example, guidance and information regarding linking project planning and environmental requirements; NEPA requirements applicable to project development; a database of “lessons learned” related to streamlining and environmental stewardship; and guidance on compliance requirements such as those applicable to wetlands, Section 4(f), and historic preservation.

- **Expand the use of programmatic agreements**—identify new and existing programmatic agreements that may be expanded to a regional or national level.
- **Encourage the use of existing regulatory flexibility**—clarify existing requirements applicable to activities that may be allowed during the preliminary design phase of development and to ROW acquisition and utility relocation.

These issues identified by both DOT and state transportation agencies illustrate the need to more efficiently implement existing requirements or to identify barriers to implementing them.

Conclusions

There is little debate that delays in transportation project delivery can result in higher project costs, as well as delay potential positive economic advantages such as bringing project-related jobs to the community. Also, it is known that completing the environmental review process takes time, sometimes years for complex, major projects. Meeting environmental compliance requirements may result in project delays or, at least, a project taking longer than anticipated by its sponsor. However, what is unclear is whether or what specific elements of the environmental review process routinely delay project delivery.

The time it takes to complete the NEPA process is often the focus of debate over project delays attributable to the environmental review process. However, the influence of environmental requirements established under Title 23 and other federal law call into question the degree to which changes in the NEPA process will expedite the environmental reviews and accelerate project delivery. Further, although there are no comprehensive data and available information tends to be anecdotal, when delays in the environmental review process have been identified, they primarily stemmed from local or project-specific issues (e.g., project complexity, changes in state priorities, or late changes in project scope).

Regardless of potential changes to the NEPA process or the overall environmental review process, local factors will strongly influence project delivery time. State or local decision makers will continue to have the most significant influence on project delivery in their capacity to establish (and change) project priorities, allocate available funds, and be influenced by local controversy or project opposition. A project's environmental review process may be efficiently executed and involve no delays in the process itself, but still take decades or never be completed if local and state issues are acting against the project.

The potential success of efforts intended to expedite the environmental review process would involve evidence that transportation projects were delivered more quickly. However, considering the limits to measuring the time it takes to complete the environmental review process, the relative success of a particular approach may be gauged in terms of the degree to which state or local transportation agencies find it useful in meeting their environmental compliance obligations.

Compared to transportation planning and project development during construction of the Interstate Highway System, state and local transportation agencies are more inclined to consider a project's effects on communities and resources. Apart from any potential changes to federal environmental review requirements, local and state agency decisions regarding transportation project planning, funding, and development will continue to be strongly influenced by a project's benefits and adverse effects to the environment and the community it serves.

Appendix. Surveys and Studies Applicable to the Environmental Review Process

In this report, summary information and conclusions regarding factors applicable to measuring the stages of project development, the time it takes to complete the environmental review process, and primary sources of delay or perceptions among transportation agency officials regarding causes of delay in completing the environmental review process were drawn from data included in the following surveys and studies conducted by FHWA, GAO, universities, or transportation organizations:

Federal Highway Administration (available on FHWA's "Environmental Toolkit: Streamlining/Stewardship—Performance Reporting" website, <http://environment.fhwa.dot.gov/streamlng/esl0measures.asp>).

- *Evaluating the Performance of Environmental Streamlining: Phase II*, an FHWA-commission study conducted by the Louis Berger Group, 2003.
- FHWA surveys, *Reasons for EIS Project Delays and Information on Timeliness on Completing the NEPA Process*.
- *Strategies and Approaches for Effectively Moving Complex Environmental Documents Through the EIS Process: A Peer Exchange Report*, prepared for FHWA by DOT's John A. Volpe National Transportation Systems Center Research and Innovative Technology Administration, January 2009.
- *FHWA/Gallup Study on Implementing Performance Measurement in Environmental Streamlining*, "Implementing Performance Measurement in Environmental Streamlining," May 2007.

Government Accountability Office.

- *Highway Infrastructure: Stakeholders' Views on Time to Conduct Environmental Reviews of Highway Projects*, GAO-03-534, May 23, 2003.
- *Highway Infrastructure: Preliminary Information on the Timely Completion of Highway Construction Projects*, GAO-02-1067T, September 19, 2002.

University and Transportation Organization Studies.

- *What Influences the Length of Time to Complete NEPA Reviews? An Examination of Highway Projects in Oregon and the Potential for Streamlining*, by Jennifer Dill, Center for Urban Studies, Nohad A. Toulon School of Urban Studies & Planning, Portland State University, submitted for presentation at the 85th Annual Meeting of the Transportation Research Board, November 15, 2005 (revised).
- *Causes and Extent of Environmental Delays in Transportation Projects*, prepared by TransTech Management, Inc., for the American Association of State Highway and Transportation Officials (AASHTO), December 2003.

Environmental Streamlining: A Report on Delays Associated with the Categorical Exclusion and Environmental Assessment Processes, prepared by TransTech Management, Inc., for AASHTO, October 2000.

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Senator CARPER. I should yield to Senator Wicker.

Senator WICKER. Mr. Chairman, I would defer to Senator Sullivan. He has not yet voted, and I have.

Senator CARPER. OK.

Senator SULLIVAN. Yes, I am getting screamed at. This is too important for me.

Senator CARPER. Second bite out of the apple. Go ahead.

Senator SULLIVAN. Hopefully they will keep the vote open for me.

Madam Chair, I am obviously, I am expressing frustration, it is no—I am not trying to be rude to you. But this Administration, the Biden administration has issued 22 Executive Orders or Executive Actions solely targeting Alaska, 22. I guarantee you they are not doing it to Delaware. And my constituents are up in arms, because it is targeting their livelihood, it is targeting their access to Federal lands.

Deb Haaland, Secretary Haaland was in Alaska 3 weeks ago. She meets with the Inupiat People of the North Slope, who every single one of them said no more regulations to lock up our lands. She smiled, nodded, she got back, and 72 hours after her return, she issued a giant Executive Order taking, as I mentioned, half of the National Petroleum Reserve of Alaska off of the table and had the audacity to put in their rule that they were doing it because the Inupiat People wanted their subsistence right protected. She had just met with them. And that is not at all what they said. It was an insult.

So I am very frustrated. And I am frustrated on behalf of my constituents.

Senator Kelly's question, I am sure you know, the average EIS takes almost 4 years. That is average. One-quarter of all EISes take 6 and a half years. Do you think those timelines are good for our country?

Ms. MALLORY. Senator, as I was saying, one of the reasons that we have released the permitting action plan is that we are trying to get the processing efficiencies in place in a way that will allow us to—

Senator SULLIVAN. There is a lot of smart people who think your NEPA rule will do the exact opposite and will give radical environmental groups the opportunity to sue away and delay more. I had a gold mine in my State. It is called the Kensington Gold Mine. Took 20 years to permit, 20 years. Do you think that is good for the country?

Ms. MALLORY. I know that there are extreme examples out there that we are trying to make sure that we address.

Senator SULLIVAN. Let me ask, just with regard to the rule, as you know, under Federal law, you do not only have to publish that in the Federal Register, the rule must then be submitted to the House and Senate before taking action. When does CEQ intend to do that? That is a Federal law requirement.

Ms. MALLORY. I will have to get back to you on that.

Senator SULLIVAN. OK. That is important.

Let me ask just one final question. The President made this big deal about the lack of critical minerals, which really hurts our defense industrial base, our renewable sector, renewable technology,

and that the Administration is going to do all this great stuff to make sure critical minerals are from America, not China.

I had a recent amendment in terms of instructions for our conferees on the USECA conference that passed unanimously. Every U.S. Senator said, hey, we should get our critical minerals and technology from America, our allies, and not China and not Russia. So, pretty broad bipartisan support for that.

And yet, and yet, this Administration reversed the Ambler Mining District road decision in Alaska. Huge stock of critical minerals for our country in the Ambler Mining District. You guys reversed it about 8 months ago.

And then the big nickel, I believe it is nickel, prospect in Minnesota was also recently reversed. These again were super big goals of the radical left environmental groups. And the President is saying, we are going to do this, and yet the actions you take, the clear actions are harming America's ability to actually mine and process critical minerals. That is two examples, Minnesota and Alaska.

So what is CEQ's role to oversee the Administration's implementation of addressing the shortage of critical minerals that we need desperately in our country across the board, including for EV technology and batteries and military issues as well?

Ms. MALLORY. Thank you, Senator, for the question. Again, this is an area where the President has put some attention on the importance of our putting ourselves as a country in a better position on critical minerals. And he has also recommended that we pursue mining reform based on principles that will essentially bring our modern ethos around environmental protection into the way that we proceed on mining.

So CEQ is actively engaged with other members of the White House on those efforts and initiatives.

Senator SULLIVAN. Thank you.

Thank you, Mr. Chairman.

Senator CARPER. You bet.

Senator Wicker, thanks for joining us today. Before you go forward with your questions, let me just make another unanimous consent request.

I ask unanimous consent to submit for the record materials that show that U.S. oil production continues to recover despite claims that the Biden administration's actions have slowed drilling.

Without objection, that is so ordered.

[The referenced information follows:]

Oil & Gas industry

Oilfield services bounce back as US drilling boom gathers pace

Long-suffering sector reaps rewards of scramble to open up new shale patch production

Justin Jacobs in Houston and Myles McCormick in New York MAY 3 2022

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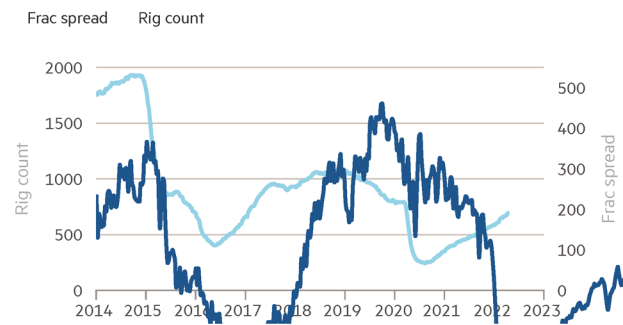
A drilling boom in America's oil heartlands has triggered a sharp reversal of fortunes for the country's long-suffering oilfield services groups as they reap the rewards of the scramble to pump more crude.

Many producers have rushed to open the taps to capitalise on soaring oil prices since Russia's invasion of Ukraine, ratcheting up demand for the companies that drill and frack new wells.

"At \$100 oil, everything is busy," said Jeff Miller, chief executive of Halliburton, one of the world's biggest oilfield services companies, whose profits jumped more than 50 per cent in the first quarter.

The sector, responsible for the grunt work across the US oil patch, has been slow to recover since the pandemic-induced price crash of 2020 sent scores of companies into [bankruptcy](#).

Drilling has bounced back in America's oil heartlands



FINANCIAL TIMES

Source: Baker Hughes and Primary Vision

But high prices have spurred renewed activity in US oilfields, largely driven by private operators. The rig count is up 20 per cent since the start of the year and nearly 60 per cent over the past 12 months, according to data from Baker Hughes, one of the oilfield services companies.

The frac spread, which measures the quantity of fracking equipment in the field, has jumped 15 per cent this year according to data provider Primary Vision. In the

5/9/22, 11:44 AM

Oilfield services bounce back as US drilling boom gathers pace | Financial Times

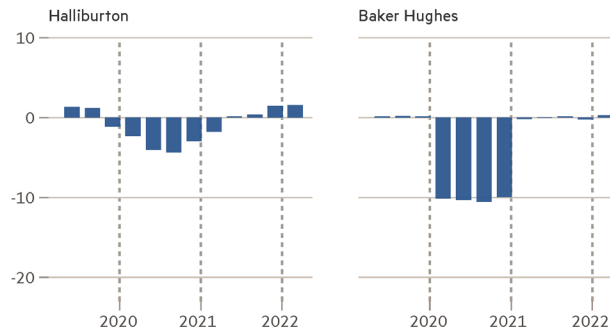
Permian, by far the largest US oilfield, approvals for new well permits hit a [record](#) in March.

“The level of demand for the services has finally gotten to a point where the service companies can turn around and start charging more,” said Rob Mathey, senior analyst at consultancy Rystad Energy. While last year any increase in prices was just passing on mounting costs, he added, the sector had been able to start increasing margins in the first quarter of this year.

The competition for service companies’ business marks a welcome change after recent years of suppressed pricing and profitability because of a glut of rigs and other fracking equipment built as the shale boom gathered pace a decade ago. Rystad estimates that the industry will be able to increase margins by 10-20 per cent in 2022 compared with late 2021.

The big oilfield services companies are turning a profit again

Net income, rolling 4-quarters (\$bn)



Olivier Le Peuch, chief executive of Schlumberger, the world’s biggest oilfield services group, said last week the uptick was contributing to “one of the strongest outlooks for

5/9/22, 11:44 AM

Oilfield services bounce back as US drilling boom gathers pace | Financial Times

the energy services industry in recent times”, adding that conditions were “extremely favourable for pricing power”.

Crude prices have surged past \$100 a barrel in the wake of Moscow’s invasion of Ukraine, fuelling inflation around the world and setting off a frantic search for more supplies to help bring prices down.

President Joe Biden’s administration has lobbied Saudi Arabia and other countries in the Opec-plus alliance of producers to accelerate new production, and pursued new diplomatic deals with Iran and Venezuela that could unlock supply currently under US sanctions.

With little to show for those efforts, the administration has increasingly [leaned on the domestic oil and gas industry](#) to ramp up output.

The uptick in drilling has not been universal. While privately held operators have switched to growth mode, big publicly listed producers have been restrained by pressure from Wall Street investors to limit spending and funnel the windfall from high prices back to shareholders through dividends and share buybacks.

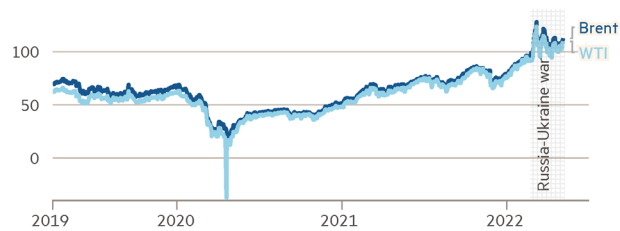
Still, the market for new equipment and skilled workers to man rigs and truck equipment across the oilfields has quickly tightened after years of limited investment.

“There is starting to be a little bit of a competition for [fracking] fleet,” said Chris Wright, chief executive of Liberty Oilfield Services, which operates fracking equipment across the US. “Not everyone that wants a fleet or wants an extra fleet today, frankly, is going to get one.”

“Halliburton’s hydraulic fracturing fleet remains sold out and the overall market appears all but sold out for the second half of the year,” said Miller. “[Tightness] exists across the whole oil and gas value chain, in spare parts, engines, electronics and many other inputs that cost more and are sometimes not immediately available.”

Oil prices have surged past \$100 a barrel since Russia's invasion of Ukraine

\$ per barrel



FINANCIAL TIMES

Source: Refinitiv

Raoul LeBlanc, vice-president at S&P Global Commodities Insights, said inflation for US oil producers was running at about 15 per cent this year and could rise to 25-30 per cent next year if companies try to further increase drilling activity. That could sharply push up the oil prices American producers need to justify new drilling.

But services providers are hesitant to ramp up investment in crews and equipment too quickly for fear of being left exposed if the market turns sour again.

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Oilfield services bounce back as US drilling boom gathers pace | Financial Times

“I’m not going to go wild with capex, bringing a whole bunch of stuff off the fence, unless I’m confident I get paid for it,” said Stuart Bodden, chief executive of Ranger Energy Services, which operates the country’s largest active fleet of workover rigs, used to maintain and extend the lives of wells.

“We’ve all learned in the past where we see demand coming in, people come in and say, ‘oh, I want it’,” he added. “We spend money, and then six months later, they go, ‘oh, you know what, we decided we don’t want that after all’. I think we all know that if we go and build a bunch of equipment all we’re doing is shooting ourselves in the foot.”

However, there is growing confidence in some corners that with global oil supply expected to be tight for several years, the drilling boom will last.

Halliburton’s Miller said he expected “very busy years ahead” for his company in an “accelerating multiyear upcycle”.

Investors are starting to pile back into oilfield services shares on signs of rising profitability after years of weak returns. The S&P Oil and Gas Equipment and Services index is up about 35 per cent since the start of the year, a period when the S&P 500 has declined by 10 per cent.

Oilfield services share prices are climbing



FINANCIAL TIMES

Source: Refinitiv

Moody's, the credit rating agency, said in a recent report that earnings at the big global oilfield services firms could rise by more than 10 per cent this year, with an even bigger jump for smaller US drillers.

Industry executives say the biggest challenge faced by services groups seeking to ramp up drilling was finding workers in a tight US labour market.

Wright said he used to be able to attract blue-collar workers from around the country

<https://www.ft.com/content/8ef3bde4-2ebb-4eb8-bf8e-bb8f43f9a2fc>

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to the oilfield's harsh working conditions with higher pay, perks and a schedule that put them in the field for two weeks and then at home for two weeks.

However, he said that model was no longer working as well, given strong demand for the same pool of workers from the booming construction and trucking industries.

"Labour could be the big winner out of this," said LeBlanc. "They're going to have to bribe people to go back and live in these places."

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Rotary Rig Count 5/6/2022					
Baker Hughes 					
Location	Week	+/-	Week Ago	+/-	Year Ago
Land	688	4	684	254	434
Inland Waters	0	0	0	-1	1
Offshore	17	3	14	4	13
United States Total	705	7	698	257	448
Gulf Of Mexico	16	3	13	3	13
Canada	91	-4	95	36	55
North America	796	3	793	293	503
U.S. Breakout Information	This Week	+/-	Last Week	+/-	Year Ago
Oil	557	5	552	213	344
Gas	146	2	144	43	103
Miscellaneous	2	0	2	1	1
Directional	34	4	30	11	23
Horizontal	646	3	643	238	408
Vertical	25	0	25	8	17
Canada Breakout Information	This Week	+/-	Last Week	+/-	Year Ago
Oil	42	-3	45	20	22
Gas	49	-1	50	16	33
Major State Variances	This Week	+/-	Last Week	+/-	Year Ago
Alaska	8	-1	9	5	3
California	7	0	7	1	6
Colorado	15	0	15	5	10
Kansas	1	0	1	1	0
Louisiana	62	4	58	10	52
New Mexico	98	1	97	28	70
North Dakota	35	0	35	20	15
Ohio	12	0	12	2	10
Oklahoma	53	2	51	32	21
Pennsylvania	25	2	23	6	19
Texas	344	-1	345	127	217
Utah	12	0	12	3	9
West Virginia	14	0	14	3	11
Wyoming	15	0	15	11	4
Major Basin Variances	This Week	+/-	Last Week	+/-	Year Ago
Ardmore Woodford	2	0	2	2	0
Arkoma Woodford	2	0	2	2	0
Barnett	4	0	4	3	1
Cana Woodford	25	-1	26	13	12
DJ-Niobrara	15	0	15	8	7
Eagle Ford	61	0	61	28	33
Granite Wash	5	1	4	2	3
Haynesville	68	1	67	19	49
Marcellus	39	2	37	9	30
Mississippian	2	1	1	2	0
Permian	335	0	335	106	229
Utica	12	0	12	2	10
Williston	37	0	37	22	15

Application for Permit to Drill Status Report: 3/1/2022 to 3/31/2022					
State Office	Received	Approved	Processed	APDs Approved and Available to Drill (AAPD)*	Pending
Alaska	2	0	0	6	2
California	9	4	4	233	44
Colorado	13	4	4	501	64
Eastern States	6	0	0	22	19
Montana	13	6	13	691	108
Nevada	0	0	0	4	11
New Mexico	194	419	423	4647	3701
Utah	21	18	18	488	129
Wyoming	48	22	30	2408	501
March Total	306	473	492	9000	4579
Federal	293	446	465	8546	4430
Indian	13	27	27	454	149
Fiscal Year Totals**	1632	1470	1535	9000	4579
Individual State Office data includes APD activity for both Federal and Tribal lands					
*APDs Approved and Available to Drill and Pending APDs are reported in Fiscal Year Totals					
** Fiscal Year Totals Cover 10/1/2021 to 3/31/2022					
Fiscal Year Totals may change slightly in monthly reports due to ongoing data migration between the Automated Fluid Minerals Support System (AFMSS) 1 and AFMSS 2 databases.					

Application for Permit to Drill Status Report: 10/1/2021 to 3/31/2022*					
State Office	Received	Approved	Processed	APDs Approved and Available to Drill (AAPD)	Pending
Alaska	3	1	1	6	2
California	63	161	161	233	44
Colorado	55	23	27	501	64
Eastern States	6	2	2	22	19
Montana	101	87	98	691	108
Nevada	3	0	0	4	11
New Mexico	1044	970	992	4647	3701
Utah	86	52	59	488	129
Wyoming	271	174	195	2408	501
Total	1632	1470	1535	9000	4579
Federal Total	1536	1392	1450	8546	4430
Indian Total	96	78	85	454	149
Includes APD activity for both Federal and Tribal lands					
* Fiscal Year Totals may change slightly in monthly reports due to ongoing data migration between the Automated Fluid Minerals Support System (AFMSS) 1 and AFMSS 2 databases.					

Senator CARPER. With that, Senator Wicker, you are good to join us; the stage and the floor are yours.

Senator WICKER. Thank you, Mr. Chairman. I look forward to seeing that document that you just entered by unanimous consent.

Madam Chair, thank you so much for visiting our State of Mississippi, and thank you for meeting with me earlier today about a grave problem, manmade flooding problem that we have in the south Delta concerning the Yazoo Pump Project. I very much appreciate that.

You visited our State in February. In a nutshell, can you share with the Committee what you learned?

Ms. MALLORY. Yes. It was a several day trip in Mississippi with Secretary Haaland, who basically was looking at some historic sites in the area as part of a direction from Congress. So it was my opportunity to visit the Medgar Evers site, to visit the area that was involved in the killing of Emmett Till, and then we saw another site that was related to those two projects. Then I left her, and I joined the Corps of Engineers, and we went and we visited the Yazoo Pump area.

Senator WICKER. Let me just interject. All of those sites are very important to me also, so I am glad you did. But specifically, you were about to get to Yazoo.

Ms. MALLORY. Yes, to Yazoo. The purpose of that meeting was because, obviously, there is action that was taken by the Environmental Protection Agency that reinstated basically the 404(c) veto that had been used over that area. So we are at a place where the question is, now what? What do we do about what has to happen in this area in order to address the regular flooding that is occurring for communities, and to make sure that we are doing it in a way that balances with the eco-concerns that have been raised previously?

So that was the point of my seeing the area and having a chance to hear from the Corps' experts on what they thought that the issues and opportunities were.

Senator WICKER. I realize I asked you a very general question. But you saw the area where the recurrent flooding takes place, is that correct?

Ms. MALLORY. Correct.

Senator WICKER. It is indeed a manmade problem, caused by a project built by the Federal Government, is that not correct?

Ms. MALLORY. That is correct.

Senator WICKER. Thank you so much about that, and also thank you for meeting with me earlier, as I already said. I think we agreed that a schedule has been pretty much finalized concerning getting all of the relevant agencies together and moving by the middle of July. I do appreciate that, and I appreciate your assurance that you will get a copy of that schedule to me. You are planning to do that, are you not?

Ms. MALLORY. That is correct.

Senator WICKER. Yes, ma'am. Then I think there is a two pager where you and other agencies that are involved in this have sort of boiled down the relevant issues with regard to this proposal, and you are going to get that to me also?

Ms. MALLORY. I am going to talk to the agencies about that. We are going to have some discussion about that.

Senator WICKER. OK. Well, I hope you will do that. So I might ask you also to get back to us on the record about that. But I hope you will.

The six counties most affected by the flooding near the proposed Yazoo pumps are Sharkey County, where 30.3 percent of the residents are in poverty; Issaquena County, 43.3 percent of the residents there are in poverty; Humphreys County, 33.3 percent of the residents in that county are in poverty; Yazoo County, 31 percent of the residents are in poverty; Warren County, 19.2 percent of the residents are in poverty, the best one of the group but still way, way too much. And Washington County, 27.7 percent of the residents are in poverty.

The President has made environmental justice central to his environmental and climate agenda. And I understand you have been asked about that earlier. But would you agree that the statistics that I have read to you argue strongly for looking at this proposed projects in terms of environmental justice?

Ms. MALLORY. I will say, Senator, that is actually one of the things that is high on my list of follow up on this project. Because I have not yet had a chance to talk to the communities or even community leaders about either the project or just their own situation. So that is something that is definitely on my list of things to do on this project.

Senator WICKER. OK. I think we agreed in our meeting earlier, which again I appreciate so much, that maybe some weekend soon, a long weekend, a break, or during the August break, at least by then, you might facilitate a team coming down and looking, talking to stakeholders, the low income populations are very much in support of this project, the minority populations who are in support of this project.

So I appreciate your working with us. I think we are on the road to a schedule that gets us to a point in mid-July of actually decisionmaking. And I certainly look forward to learning as much as I can about the list of the issues that they boil down to.

So thank you very much for working with us on behalf of the residents of the south Delta.

And thank you, Mr. Chairman.

Senator CARPER. Thanks so much for joining us, and for your persistent focus on this issue.

As our colleague knows, one of the things that we talked about is the level of poverty in some of those counties, which is almost unbelievable. One of the things I have found in my own work as Governor and as chairman of the National Governors Association, a huge focus, I have always hugely focused on job creation and job preservation. If you want to help somebody, best way you can help is make sure they have a job and that they can lift themselves out of poverty.

The 8 years I was Governor in Delaware, more jobs were created in those 8 years in Delaware than any 8 years in the history of the State. I didn't create one of them. We helped create a nurturing environment for job creation and job preservation, and one of those factors, work force is important, tax is important, reasonable regu-

lation is important. Also important is the quality of the environment, is the water drinkable, is the air something you can breathe. How about landfills and pollution and that sort of thing? All that is important as well. It all works together. I don't know of any business that wants to live or operate in a place where the water is undrinkable and the air is something you cannot breathe. That is not a good thing.

Having said that, I am going to give you a couple minutes, if you wish. I am going to ask one unanimous consent request, and then I am going to give you a minute or 2 or 3 to come back and wrap up anything you feel like you would like re-emphasize, maybe something you didn't have a chance to respond to.

While you think about that for a moment, I am going to ask unanimous consent to submit for the record a report from the Federal Highway Administration which found that between 90 to 99 percent of all road and bridge projects are completed as categorical exclusions, and therefore are not subject to lengthy review under NEPA.

That is worth repeating. I ask unanimous consent to submit for the record a report from the Federal Highway Administration that found that between 90 to 99 percent of all road and bridge projects are completed as categorical exclusions, and therefore are not subject to lengthy review under NEPA. That surprises me, and probably surprises you and others on this Committee.

[The referenced information was not received at time of print.]

Senator CARPER. All right. That being said, I have something I am going to say, I call it boilerplate, right at the end. But I want to give you the opportunity to say something you didn't have a chance to say, question that wasn't asked that you wish had been. The time is yours.

Ms. MALLORY. First of all, thank you, Senator Carper. I really appreciate it. And I really appreciated the opportunity to be here today to share some of the work that CEQ is doing. I hope that my pride in the work that we are doing and of my staff and all that we are doing for the American people has come through in the discussion. I think we have accomplished a lot in this first year. We have much more to do, obviously, because the President has a very ambitious agenda. And we are working hard to achieve that sort of balance that really comes through in every single issue.

I have probably used the word balance many times today, but what is important is trying to meet the multiple goals that the President has set out. We want to have well thought out, analyzed decisions that will endure, that will not be problems that are affected by flood plains that we fail to analyze. We want to make sure that the choices that we make reflect the public's expectation and investment in the Federal Government that we are using our funds in an effective and a thoughtful way.

So I think NEPA continues to be, it is a hard issue for people, because people want their projects fast. But they also want them to last. So what we are trying to achieve through the NEPA rules is that.

The focus on environmental justice could not be more important. It is central that we reset the way in which we look at our approach to communities, our willingness to bring them into the proc-

ess early, our willingness to make sure that they are part of our decisionmaking. That doesn't mean we are going to agree on everything. But I think we ought to be working in a way that we are trying to minimize the impacts that people are feeling, even if we don't agree on an actual technology or approach. But we should be trying to set things up so that people are not suffering because of choices that we are making. So I think that continues to be really important in the work that we are doing.

We didn't get into a number of areas that CEQ is working on, we didn't talk much about sustainability today or a lot of the work that is going on in the conservation area. But I can just assure you that we are pursuing all of our issues with that same focus: What is going to benefit the American people under the agenda that this President has set? How do we do it so that all Americans get the benefit of it? And how do we do it so that we are being good servants and ensuring that the work is done in an effective way?

I will end there. Thank you so much for the time.

Senator CARPER. You bet. Thank you for those comments. Those were worth waiting for.

This is a wonderful Committee, and I feel privileged to help lead it with the great leadership of Senator Shelley Capito. Members of this Committee don't agree on everything, but we work hard to try to find consensus and principal compromises where possible.

It is important, I use the phrase often, we can walk and chew gum at the same time. That thought comes to mind as we discuss some of these difficult issues.

Thank you for coming today and joining us and sharing an update of what you all are up to at CEQ and the important work that you and your team are doing, not without its challenges. But I think that you demonstrated today, and in the last months, that you are up to the challenge.

Thank you again for joining us on Earth Day in Delaware, for your attention to the concerns raised by Senator Wicker. I think I heard in his comments an invitation to head down to Mississippi sometime later this year. If you can do that, I know he would appreciate that. I would, too.

Before we adjourn, a little bit of housekeeping. Senators will be allowed to submit written questions for the record through the close of business on Wednesday, May 25th. We will compile those questions, and we will send them to you and your staff. We ask that you reply to us by June 8th of this year.

Unless there is something else that I am missing, with that, I take this gavel and declare this hearing is adjourned.

Thank you so much.

[Whereupon, at 12:10 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows:]

5/10/22; 5:05 PM

DEC's Comprehensive Study of PFAS and Metals Finds No Clear Link to Norlite's Operations, No Indication of Human Health Ris...



**Department of
Environmental
Conservation**

For Release: Tuesday, March 9, 2021

**DEC's Comprehensive Study of PFAS and Metals
Finds No Clear Link to Norlite's Operations, No
Indication of Human Health Risk
Low Levels of PFAS in All Upwind, Downwind, and
Background Samples Consistent with Emerging Research
on Prevalence of this Contaminant in the Environment
Study in Response to Community Concerns about Potential
Impact of Norlite's Past Combustion of Fire-Fighting Foam**

New York State Department of Environmental Conservation (DEC) Commissioner Basil Seggos today announced the findings of the agency's comprehensive soil and water sampling initiative of communities surrounding the Norlite facility in the city of Cohoes. DEC conducted the science-driven sampling initiative to help determine if contaminants are present in communities surrounding the Norlite facility as a result of its past combustion of aqueous film-forming foam (AFFF) that contains Per- and Polyfluoroalkyl Substances (PFAS) and 23 metals, including mercury. The study found no clearly discernible pattern of aerial deposition that could be traced to Norlite's operations. Sampling identified low-level detections of PFAS compounds in all soil samples collected, upwind, downwind, and at background locations, consistent with emerging research on the prevalence of these contaminants in urban, suburban, and rural environments. In addition, concentrations of PFAS found in soils were below guidance values developed by DEC and the Department of Health (DOH) and do not indicate a human health risk. Today's announcement builds on DEC's ongoing response to community concerns to ensure the environment and community are protected since AFFF containing PFAS was disposed at Norlite. The full DEC study and corresponding data are available at DEC's website.

"In response to concerns from the community, I applaud our team of experts for designing and implementing this comprehensive sampling effort driven by science and data to ensure Cohoes and other nearby communities are not at risk," **Commissioner Seggos said.** "The results of our sampling should give local residents peace of mind about the impacts from AFFF containing PFAS combusted at Norlite. I encourage everyone in the community to review our report and all the data and join our upcoming community information session to further discuss the findings. Make no mistake, our job is not done and DEC will continue to hold this facility accountable for the impact of its operations on the surrounding area while we engage local residents in our decision-making every step of the way."

Based on the comprehensive review of the data undertaken by DEC experts, in consultation with the New York State Department of Health (DOH), the report found:

- Analysis of soil concentrations does not show clear evidence of an increase in downwind PFAS concentrations;
- Analysis of soil concentrations does not show evidence of a significant increase in downwind metals concentrations. DEC found elevated concentrations of metals in one sample, which may be associated with the operations of an adjacent facility;

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- Concentrations of PFOA and PFOS in soils do not indicate a human health risk. These concentrations are below guidance values applicable to the current land use and potential for human exposure;
- Analysis of stream water concentrations at high flow and low flow indicates possible influence from soils and precipitation in areas of low surface water PFAS concentrations, but not in locations with higher surface water concentrations, such as those found in the Patroon Creek and in the Salt Kill downstream from Norlite; and
- Analysis of surface water samples in areas of ponded water on or near Norlite property indicates that there are likely sources of PFAS compounds not associated with Norlite kiln emissions. DEC will assess the source of this potential contamination.

Notably, the soil sample results for Saratoga Sites were all below residential use guidance values for soil, and ranged from 0.29 parts per billion (ppb or µg/kg) to 0.63 ppb for PFOA, and from 1.1 ppb to 4.5 ppb for PFOS. The soil guidance values developed by DEC and DOH are more protective than residential soil targets in other states that have developed such criteria.

DEC and DOH will continue to evaluate health-based values for all PFAS compounds and work to establish guidance values for additional PFAS compounds. DEC will also monitor groundwater and surface water on the Norlite property to better assess the existence of PFAS compounds over time, and require emissions testing to include analysis of organic and inorganic fluorine compounds from the kilns at Norlite.

To advance the state's ongoing response efforts and scientific understanding of air emissions associated with PFAS compounds, in coordination with DOH, DEC collected soil and water samples from upwind, downwind, downstream, upstream, and background locations in order to determine if aerial deposition of potential metal and PFAS contaminants exists. In total, 22 soil samples were collected from 18 locations, and surface water samples were collected from 14 locations. Four of the water sample locations were from the Salt Kill, which runs through the Norlite property, two from an on-site quarry pond, and two from an un-named pond immediately south of the Norlite facility. In addition, DEC collected water samples from the Patroon Creek in Albany County and Schuylar Creek in Saratoga County to assess background concentrations from other surface water sources. The samples from the stream locations were taken at both low and high flow conditions. The sampling effort was announced in July 2020.

In addition to the sampling initiative, in February DEC commenced enforcement against Norlite based upon two recently issued Notices of Violation, which placed the facility on formal notice of six violations arising from its improper management of dust from air pollution control equipment and its repeated failure to control offsite fugitive dust resulting from operations. DEC is also closely scrutinizing all potential sources of fugitive dust, immediately responding to community complaints of dust and other impacts from the facility, and continuing to compile new information in order to hold the facility accountable and to ensure that DEC's decision-making is accurately informed by the latest facts and data.

DEC directed Norlite to cease combustion of AFFF containing PFAS compounds after the facility temporarily suspended operations at the end of 2019. Since that time, DEC has worked with local and state elected officials to assess the potential impacts of Norlite's past combustion of firefighting foam. In addition, Governor Andrew M. Cuomo signed a new law last year that prohibits the combustion of AFFF that contains PFAS in certain communities, including Cohoes. Prior to that, DEC secured a commitment from Norlite to suspend all processing of AFFF materials until additional testing is conducted that establishes that high temperature combustion destroys these compounds. In addition, DEC informed Norlite that the future combustion of any substances not previously addressed in its permits will trigger a requirement to seek a permit modification prior to processing in the facility.

The past combustion of PFAS led to concerns from local residents and public officials that emissions from the facility could have caused a release of PFAS contaminants in the surrounding community. Because drinking water is a primary pathway for exposure to PFAS contamination, out of an abundance of caution, DEC and DOH conducted sampling of the Cohoes and Green Island municipal water supplies last year to determine if PFAS

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concentrations in water have changed over time. This sampling confirmed that there have been no impacts to area drinking water since Norlite began receiving AFFF.

DEC will soon hold a public information session to discuss the study and provide other updates about DEC's oversight and response to community concerns at Norlite. Additional details will be provided when available. Residents are encouraged to immediately report suspected violations to DEC at 1-800-457-7362 and to Norlite at 518-235-0401. For more information, go to DEC's website.

**U.S. Department of Transportation
National Environmental Policy Act
Categorical Exclusion
Survey Review**

November 27, 2012

FHWA Publication No: FHWA-HEP-13-003

This report was prepared pursuant to section 1318(a)(2) of the Moving Ahead for Progress in the 21st Century Act of 2012 (MAP-21), Pub. L. 112-141, 126 Stat. 405 (2012).

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Background

Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4347, requires Federal agencies to prepare for every major Federal action significantly affecting the quality of the environment a detailed statement of the environmental impacts of the proposal. The Council on Environmental Quality (CEQ) NEPA implementing regulations require each Federal agency to identify in their NEPA procedures a list of actions that do not individually or cumulatively have significant environmental effects, and to provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect (40 CFR 1507.3(b)(2)(ii), 40 CFR 1508.4).

The Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) have issued a joint NEPA implementing procedures at 23 CFR Part 771 that includes a list of categorical exclusions (CEs) at 23 CFR 771.117. The FHWA and FTA regulations designate two general types of CEs – (1) those actions that only need a record in the project file that confirms the action fits the CE description and normally do not require additional approval by the FHWA or FTA (designated in 23 CFR 771.117(c) and referred to as “c-list” or “listed CEs”), and (2) those additional actions that require the FHWA or FTA approval, as applicable, after consideration of documentation demonstrating that CE criteria are satisfied and significant environmental effects will not result from the action (designated in 23 CFR 771.117(d) and referred to as “d-list” or “documented CEs”).

Under the provisions of 23 CFR 771.117(d), the FHWA and FTA may determine whether actions not specifically described in either the c-list or in the d-list examples meet CE criteria. The items listed in the d-list are examples of actions that could be processed as CEs if the actions are shown to meet the CE criteria in project documentation, which is reviewed and approved by the FHWA or FTA. The list of examples are the types of actions that do not result in significant effects and typically can be categorically excluded through documentation showing that there is no potential for significant environmental impacts to result from the action.

Regarding project documentation for CEs, the expectation is for c-list actions to be documented with a description of the project or activity sufficient to show that the action fits within the listed CE action in regulation and that no unusual circumstances (how FHWA/FTA address extraordinary circumstances) exist that would make the application of the CE improper. For projects processed as documented CEs, the expectation is for documentation to demonstrate that the project meets all criteria for a CE, and any conditions specified in regulation for the CE being applied.

In processing both types of CEs, reviewers must consider whether unusual circumstances exist that require appropriate environmental studies to determine if the CE classification is proper, or whether the preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is appropriate instead of the CE determination. Examples of unusual circumstances include significant environmental impacts, substantial controversy on environmental grounds, significant impact on properties protected by section 4(f) of the Department of Transportation Act or Section 106 of the National Historic Preservation Act, and inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to environmental aspects of the action (23 CFR 771.117(b)).

The majority of the projects undertaken by State departments of transportation (SDOTs) and transit authorities are processed as CEs. The role of CEs for highway projects continues to expand given funding constraints that are shifting the focus of transportation programs from major new construction to maintaining and improving the functionality of the existing infrastructure. Many of the current and programmed transportation projects are facility reconstruction, bridge replacement, and facility operational improvements, such as adding turning lanes or reconfiguring interchanges/intersections. For transit projects, CEs continue to be the most common form of NEPA approval. Most of FTA's program is funded through formula funds, which are generally for system enhancements (e.g., vehicle and equipment purchases and rehabilitation, maintenance, and facility construction and rehabilitation, including stations). Generally, these projects have minimal environmental impacts and are likely to be categorically excluded from preparation of an EA or EIS.

Use of CEs in Transportation Projects Since 2005

This survey review of CE usage and CE requests by grantees and other stakeholders is required by MAP-21. Section 1318(a) of MAP-21 directs the Secretary to (1) survey the use by the Department of CEs in transportation projects since 2005, (2) publish a review of the survey that includes a description of the types of actions categorically excluded and any requests previously received by the Secretary for new CEs, and (3) solicit requests for new CEs from SDOTs, transit authorities, metropolitan planning organizations (MPOs), or other government agencies.

To comply with this requirement, the FHWA and FTA reviewed the administrative records of rulemakings for new FHWA and/or FTA CEs proposed since 2005 and in the Department's review of regulations in 2011. The administrative records for the rulemakings proposing CE actions included the NPRMs, public comments on these rulemakings, and final rules associated with these NPRMs, as applicable (72 Fed. Reg. 44038, Aug. 7, 2007, Docket No. FTA-2006-26604 and 77 Fed. Reg. 15310, Mar. 15, 2012, Docket No. FTA-2011-0056). In addition, FHWA and FTA reviewed requests for new CEs received as a part of the assessment of Federal regulations in response to the President's Executive Order (EO) 13563 (Improving Regulation and Regulatory Review, January 18, 2011). The requests for new CEs was documented in the *Retrospective Review and Analysis of Existing Rules* (Department of the Transportation, August 2011). Also, in September 2012, the Secretary sent a questionnaire to SDOTs, transit authorities, MPOs, local public agencies, and federally-recognized Tribes asking for actions they request for consideration as new CEs through rulemaking.¹ This survey review captures the results of these activities.

The questionnaire asked SDOTs, transit authorities, MPOs, and federally-recognized Tribes to provide information on:

- CEs processed as a part of the NEPA for transportation projects since 2005;
- Types of actions categorically excluded;

¹ On August 28, 2012, the Office of Management and Budget assigned OMB Control Number 2125-0632 to this information request.

- Requests previously received by the Secretary of Transportation for new CEs that are not currently in regulation; and
- Requests for new CEs.

The Secretary of Transportation sent the questionnaire electronically to 1,511 individuals from SDOTs, transit authorities, MPOs, and federally-recognized Tribes. The questionnaire period ran from September 5, 2012, through October 9, 2012. Responses were collected online and through email. Respondents were encouraged to provide electronic documents and other materials to supplement their answers.

Five hundred twenty-two (522) individuals responded to the questionnaire. Local public agencies represented the largest group of respondents, with transit authorities, MPOs, and SDOTs comprising the next three largest groups (Table 1). The “other” agency category includes responses from the American Association of State Highway and Transportation Officials (AASHTO) and a railroad. The SDOT respondents represented 40 States, the District of Columbia, and Puerto Rico.

Table 1: Survey responses, by organization type

Agency	Count	Percentage of Total
Local Public Agency (LPA)	268	51.3%
Transit Authority	77	14.8%
MPO/Council of Government (COG)	60	11.5%
SDOT	53*	10.2%
Consulting Firm	27	5.2%
Tribe	21	4.0%
Federal Agency	12	2.3%
Other	3	0.6%
Railroad	1	0.2%
Total	522	

*There were multiple respondents to the survey from some SDOTs for a total of 53 SDOT responses from 40 states, the District of Columbia and Puerto Rico.

Number and Proportion of CEs Used

SDOTs reported that most of their transportation projects were processed as CEs. The results indicate that SDOTs process considerably more CEs annually than the other agency types surveyed. Transit authorities, MPOs, and federally-recognized Tribes reported, on average, fewer than 10 actions processed as CEs annually while SDOTs reported processing an average of 343 actions as CEs. The survey results indicate that CEs constitute 90 to 99 percent of the NEPA decisions in the transportation programs for a majority of SDOTs and transit authorities.

Types of CE actions

Tables 2 and 3 provide an overview of questionnaire responses by category of CE action and denote the frequency of use by identifying actions that are among the 10 most frequent actions for SDOTs and

transit authorities. The questionnaire asked respondents to identify their top 10 documented CEs from the list of examples and provided a blank box to enable respondents to enter a documented CE that was not on the list. Most responses from individual respondents were from the list of examples, however some respondents provided examples of documented CEs within their top 10 that were not on the list. The frequency of any documented CE example provided by respondents in the blank box was insufficient to make the overall top 10 list for SDOTs and transit authorities. There were 15 examples provided in individual responses in the blank box that are not included below because they were similar to existing CEs or are rare actions.

Table 2. Highway/Transit Transportation Actions Processed as Listed (c-list) Categorical Exclusions

23 CFR Regulatory Reference	Category of Actions	Frequency of Use*
771.117(c)(1)	Activities which do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.	Top 10 for SDOTs and transit authorities
771.117(c)(2)	Approval of utility installations along or across a transportation facility.	Top 10 for SDOTs
771.117(c)(3)	Construction of bicycle and pedestrian lanes, paths, and facilities.	Top 10 for SDOTs
771.117(c)(4)	Activities included in the State's <i>highway safety plan</i> under 23 U.S.C. 402.	Top 10 for SDOTs
771.117(c)(5)	Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.	
771.117(c)(6)	The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.	
771.117(c)(7)	Landscaping.	Top 10 for SDOTs
771.117(c)(8)	Installation of fencing, signs, pavement markings, small	Top 10 for SDOTs and transit authorities

	passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.	
771.117(c)(9)	Emergency repairs under 23 U.S.C. 125.	Top 10 for SDOTs
771.117(c)(10)	Acquisition of scenic easements.	
771.117(c)(11)	Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal-aid participation.	
771.117(c)(12)	Improvements to existing rest areas and truck weigh stations.	
771.117(c)(13)	Ridesharing activities.	
771.117(c)(14)	Bus and rail car rehabilitation.	Top 10 for transit authorities
771.117(c)(15)	Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.	
771.117(c)(16)	Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.	Top 10 for transit authorities
771.117(c)(17)	The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.	Top 10 for transit authorities
771.117(c)(18)	Track and railbed maintenance and improvements when carried out within the existing right-of-way.	
771.117(c)(19)	Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.	Top 10 for transit authorities
771.117(c)(20)	Promulgation of rules, regulations, and directives.	
771.117(c)(21)	Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as	Top 10 for SDOTs and transit authorities

	components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.	
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*Based on results from the survey questionnaire to identify top 10 CE actions.

Table 3. Highway/Transit Transportation Actions Processed as Documented (d-list) Categorical Exclusions

23 CFR Regulatory Reference	Category of Actions	Frequency of Use*
771.117(d)(1)	Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).	Top 10 for SDOTs
771.117(d)(2)	Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.	Top 10 for SDOTs
771.117(d)(3)	Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.	Top 10 for SDOTs
771.117(d)(4)	Transportation corridor fringe parking facilities.	
771.117(d)(5)	Construction of new truck weigh stations or rest areas.	
771.117(d)(6)	Approvals for disposal of excess right-of-way or for joint or	Top 10 for SDOTs

	limited use of right-of-way, where the proposed use does not have significant adverse impacts.	
771.117(d)(7)	Approvals for changes in access control.	
771.117(d)(8)	Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.	
771.117(d)(9)	Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.	Top 10 for transit authorities
771.117(d)(10)	Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.	Top 10 for transit authorities
771.117(d)(11)	Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.	
771.117(d)(12)	Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land	

	acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.	
771.117(d)(13)	Acquisition of pre-existing railroad right-of-way pursuant to 49 U.S.C. 5324(c). No project development on the acquired railroad right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, has been completed.	

*Based on results from the survey questionnaire to identify top 10 CE actions.

Requests Previously Received by the Secretary for New CEs

The Secretary received requests for new CEs as a result of various Federal Register notice actions. In August 2007, the FHWA and FTA published an NPRM (72 Fed. Reg. 44038, Aug. 7, 2007) to propose new CE actions as directed in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59, 119 Stat. 1248, 2005). On February 16, 2011, (76 Fed. Reg. 8940) the Secretary published a notice requesting comments on an implementation plan in response to EO 13563 (Improving Regulation and Regulatory Review) on regulations, including DOT environmental regulations. FTA published an NPRM in March 2012, (77 Fed. Reg. 15310, Mar. 15, 2012), proposing to define CE actions that only pertain to FTA actions. Commenters on these notices made suggestions for new CEs. Requests for CEs that came from these solicitations are listed below in Table 4, along with the source of the suggestion and its date.

Table 4. Actions Suggested as New Categorical Exclusions Since 2005

<u>Proposed CE Action</u>	<u>Source</u>	<u>Date</u>
Generally small, low-impact Safe Routes to Schools (SRTS) projects.	DOT EO Implementation Plan 2011	March 24, 2011
Safe Routes To School projects are generally small, low-cost, and within an existing built environment and therefore should not require documentation to qualify for the categorical exclusion unless special circumstances exist.	DOT EO Implementation Plan 2011	March 24, 2011

Routine state of good repair projects within existing ROW/transit property that are routinely granted CE status after submitting documentation for approval should be moved to the list of projects in subsection (c).	DOT EO Implementation Plan 2011	April 1, 2011
The rehabilitation, construction and improvements to ferry terminal passenger overhead loading structures.	FTA NPRM 2012	April 30, 2012
The replacement of in-water creosote-treated timber piles, berthing and other structures such as wingwalls, dolphins, pilings underneath the trestle and docks for ferry terminals.	FTA NPRM 2012	April 30, 2012
Geotechnical investigations necessary to define the elements of a proposed action or alternative so that structural, seismic conditions, and environmental effects can be assessed.	FTA NPRM 2012	April 30, 2012
Ferry terminal passenger overhead loading or transfer spans to make them accessible to the disabled and elderly per 23CFR 771.117(c)(15).	FTA NPRM 2012	April 30, 2012
Ferry terminal maintenance and repair projects that occupy substantially the same environmental footprint and do not result in a change of functional use.	FTA NPRM 2012	April 30, 2012
Maintenance and rehabilitation and reconstruction of facilities that occupy substantially the same physical footprint, such as improvements to bridges, tunnels, storage yards, buildings, and terminals, including platform extensions.	FTA NPRM 2012	May 10, 2012
Maintenance and improvement to rail-bed and track when carried out within the existing right-of-way.	FTA NPRM 2012	May 10, 2012
Geotechnical borings, monitoring wells, utility potholing, archaeological survey, and similar subsurface exploration and due diligence activities prior to completion of an EIS or EA.	FTA NPRM 2012	May 14, 2012
Broadening the types of acquisitions that could occur as CEs and the addition of transferring interest in real property as activities eligible as CEs.	FTA NPRM 2012	May 14, 2012
Modernization or minor expansions of transit structures and facilities such as bridges, stations or rail yards.	FTA NPRM 2012	May 14, 2012

Transit technology based initiatives such as: electronic fare collection, automatic vehicle locator systems, traffic signal priority for transit, devices to facilitate transfers.	FHWA/FTA NPRM 2007	October 16, 2007
Technology based security projects (e.g. cameras, communications systems).	FHWA/FTA NPRM 2007	October 16, 2007
Radio communication systems as long as they do not require land acquisition for communication towers or new radio towers.	FHWA/FTA NPRM 2007	October 22, 2007
Conversion of an existing general use lane to an HOV/HOT or other toll lane and/or other value pricing concepts along with supporting improvements which require no or minimal right-of-way (less than 1 acre) and result in less than 1 acre of impact to aquatic resources.	FHWA/FTA NPRM 2007	September 26, 2007 and October 9, 2007
Transit projects that alleviate urban congestion such as new bus routes that have minimal impact.	FHWA/FTA NPRM 2007	October 16, 2007
Transit station rehabilitations.	FHWA/FTA NPRM 2007	October 16, 2007
Any acquisition of property in advance of a transportation project, including acquisition specifically to control right-of-way costs should be categorically excluded when: use of the property does not change prior to NEPA analysis of alternatives for a future transportation project, the acquisition does not prejudice subsequent NEPA analysis of alternatives for a future transportation project, and Federal regulations and procedures for property acquisition are followed.	FHWA/FTA NPRM 2007	October 18, 2007
Transit preventative maintenance.	FHWA/FTA NPRM 2007	October 22, 2007
Americans with Disabilities Act service.	FHWA/FTA NPRM 2007	October 22, 2007
Park and ride lots.	FHWA/FTA NPRM 2007	October 22, 2007
Rehabilitation of existing park and ride lots and transit centers which do not involve acquisition of additional land and when existing streets provide adequate capacity.	FHWA/FTA NPRM 2007	October 22, 2007
Construction and expansion of buildings within an existing maintenance facility as long as the existing street network has adequate capacity.	FHWA/FTA NPRM 2007	October 22, 2007

Further examination of congestion management activities that would meet the criteria for CEs.	FHWA/FTA NPRM 2007	October 9, 2007
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Requests for New CEs from Secretary's October 2012 Survey Responses

As a result of the Secretary's questionnaire, included in Appendix A, 117 survey respondents suggested a total of 266 different actions for new CEs (Table 5). SDOTs provided the largest number of requested new CEs. Many actions suggested for new CEs were similar both within and among organization types.

Table 5: Number of requested CEs, by organization type

	Respondents	CEs Proposed
Local Public Agencies	48	67
SDOTs	23	162
Transit Authorities	24	43
Consulting Firms	9	9
Tribes	5	5
MPO/COGs	6	6
Railroad	1	1
Other	1	50
<i>Total</i>	<i>117</i>	<i>343*</i>

**The total number of requested CEs (343) is greater than the total number of requested new CEs (266) due to the fact that some respondents across organization types suggested the same actions for consideration as CEs in the future.*

The requested actions covered a wide range of activities, including those related to the following (in order of frequency):

- Safety and operations (39 proposed actions)
- Maintenance and preservation actions (23)
- Bridges (18)
- Activities within existing right-of-way or urban areas (17)
- Railroads (16)
- Transit (15)
- Rehabilitation and reconstruction (12)
- Environmental mitigation (12)
- Bicycle and pedestrian facilities (10)
- Utilities, lighting, and signage (10)
- Actions consistent with existing plans or land use and those approved by other agencies (10)
- Culverts and waterways (6)
- Acquisitions (6)
- Excess right-of-way (6)
- Activities with limited Federal involvement/funding (5)
- Activities under a certain size/cost threshold (4)
- Alternative energy (3)
- Parking (3)
- Geotechnical work (3)
- Aesthetic treatments (3)
- Ferries (2)
- Other (46)

The complete list of requested CEs is included in Appendix B. Except in a few instances, responses did not indicate whether the requested actions were for listed or documented CEs.

Next Steps Regarding Designating New CEs through Rulemaking

Section 1318(b) of MAP-21 requires the Secretary to issue an NPRM to propose as new CEs those CEs identified through the survey review, or received in the questionnaire request, to the extent that they meet the CE criteria in 23 CFR 771.117(a) and 40 CFR 1508.4. To meet this requirement, the FHWA and FTA, on the Secretary's behalf, will evaluate and determine which of these requested CEs are not otherwise duplicative, meet regulatory requirements, and can be substantiated as recommended by the CEQ *Final Guidance for Federal Agencies and Departments on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act* (75 Fed. Reg. 75628, Dec. 6, 2010).

If potential new CEs are identified in this evaluation, then the FHWA and FTA will develop a draft NPRM to propose new CEs through rulemaking. After appropriate coordination within the Federal Government an NPRM would be published in the *Federal Register*. The notice would contain a description of each action proposed as a new CE, whether the action would be a listed or documented CE, information on where the administrative record supporting the proposed CE designation can be viewed, and a request for comments on the proposal. A comment period would be identified in the notice and an electronic docket established for the submittal of comments through the Internet. After the close of the comment period, all comments submitted would be reviewed and considered in the process of drafting a final rule, if establishing the new CEs is determined appropriate at that time.

Appendix A: MAP-21 Section 1318 Categorical Exclusion Survey**INSTRUCTIONS**

Thank you for agreeing to complete the following survey based on your agency's experience.

INSTRUCTIONS: Section 1318 of MAP 21 provides, in part, that the Secretary (DOT) shall

- (1) survey the use by the Department of categorical exclusions in transportation projects since 2005;
- (2) publish the review of the survey that includes a description of
 - a. the types of actions categorically excluded, and
 - b. any requests previously received by the Secretary for new categorical exclusions.
- (3) solicit requests from State departments of transportation, transit authorities, metropolitan planning organizations, and other government agencies for new categorical exclusions.

The survey should take no more than approximately 120 minutes to complete, and should take less time depending on whether you are willing to provide supplementary information. Responses regarding past categorical exclusions (CEs) should be limited to the period since 2005.

[Please email categorical.exclusion@dot.gov if you have questions or comments.](mailto:categorical.exclusion@dot.gov)

OMB CONTROL NUMBER: 2125-0632. This agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

General Information**1. Please identify the name of your organization and the State in which you work.**

Name (first, last): _____

Organization: _____

Position: _____

State: _____

Point of Contact Work Email Address: _____

Point of Contact Phone Number: _____

2. How many actions does your agency conduct that are processed annually as CEs?

Exact Number (if known): _____

Approximate Number: _____

3. And what proportion of your agency's program is processed as CEs? An estimate is acceptable.

Proportion (%) _____

Survey Questions

4. Does your agency have forms, checklists, or standardized templates for documenting actions processed as CEs?

Yes ___

No ___

5. Please send any forms or templates you might have to categorical.exclusion@dot.gov.

Check this button if you intend to email forms or templates to categorical.exclusion@dot.gov, otherwise click "Next."

6. How does your agency assess that the CE class of action is appropriate (if your agency routinely makes this type of assessment)? Check all that apply.

___ The action appears on a list of CEs in regulation

___ The action appears in a prior agreement with a State or Federal agency

___ A project description is necessary to evaluate a proposed action

___ My agency consults with State and/or Federal environmental professionals to assess whether the CE class of action is appropriate

___ My agency does not routinely make this type of assessment

___ Other (please specify): _____

7. Please select up to 10 types of categorical exclusions most frequently processed by your agency.

- ☐ Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR part 630; approval of project concepts under 23 CFR part 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal aid system revisions which establish classes of highways on the Federal aid highway system.
- ☐ Approval of utility installations along or across a transportation facility.
- ☐ Construction of bicycle and pedestrian lanes, paths, and facilities.
- ☐ Activities included in the State's highway safety plan under 23 U.S.C. 402.
- ☐ Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.
- ☐ The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
- ☐ Landscaping.
- ☐ Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
- ☐ Emergency repairs under 23 U.S.C. 125.
- ☐ Acquisition of scenic easements.
- ☐ Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal aid participation.
- ☐ Improvements to existing rest areas and truck weigh stations.

- ___ Ridesharing activities.
- ___ Bus and rail car rehabilitation.
- ___ Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
- ___ Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.
- ___ The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.
- ___ Track and rail bed maintenance and improvements when carried out within the existing right of way.
- ___ Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.
- ___ Promulgation of rules, regulations, and directives.
- ___ Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.
- ___ Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).
- ___ Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.
- ___ Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

- ☐ Transportation corridor fringe parking facilities.
- ☐ Construction of new truck weigh stations or rest areas.
- ☐ Approvals for disposal of excess right of way or for joint or limited use of right of way, where the proposed use does not have significant adverse impacts.
- ☐ Approvals for changes in access control.
- ☐ Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.
- ☐ Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
- ☐ Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
- ☐ Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.
- ☐ Acquisition of land for hardship or protective purposes.
- ☐ Other (please specify) _____

8. Would you like to propose any actions as new CEs, especially for new c-list CEs (actions that normally do not require any further NEPA approvals) including any that currently require documentation (d-list)?

- ☐ Yes
- ☐ No

Please identify the additional actions that you would like to propose as CE actions.

9. Substantiation of newly proposed CE actions require a description to ensure that the category is limited to actions that have been shown not to have individual or cumulatively significant impacts. Please identify criteria that characterize the types of action that, based on experience, do not cause significant environmental impacts.

Please provide representative examples of the types of activities the proposed CE action(s) would cover. Finally, please provide examples of CE documentation on previously implemented actions, statements from professional staff, or expert opinion regarding the significance of the impacts of the CE. Also, please inform us if your proposed CE(s) has been recognized by other Federal agencies.

[Click here](#) for example information on materials that could be used to substantiate new CE action(s) and [here](#) for the Council on Environmental Quality's guidance on what constitutes substantiation information.

___ Please check this button if you intend to email information (to categorical.exclusion@dot.gov) that will substantiate your proposed CE action(s).

10. Has your agency proposed any new CEs to USDOT since 2005?

___ Yes

___ No

If yes, please identify the new CE(s) your agency has proposed to USDOT since 2005, and indicate whether your agency still believes the CE(s) is needed.

11. Does your agency track the number of CEs and amount of time required to complete the documentation for each action processed as a categorical exclusion?

___ Yes

___ No

If yes, please describe the mechanism(s) used to track each action. If not, who in your organization would be available to provide input on whether and how such a tracking system would be helpful and what it should include?

12. Does your agency require or offer training related to NEPA reviews?

☐ Yes

☐ No

13. What type of training related to NEPA reviews does your agency require or offer?
Please select all that apply.

- ☐ General NEPA and Project Development Training
- ☐ Advanced NEPA and Project Development Training
- ☐ Section 4(f)
- ☐ Impacts to wetlands
- ☐ Impacts to historic and archaeological resources
- ☐ Impacts to threatened and endangered species
- ☐ Brownfields and other hazardous waste sites
- ☐ Public involvement
- ☐ Stormwater
- ☐ Environmental justice
- ☐ Social impacts
- ☐ Water quality
- ☐ Coastal zones or barriers
- ☐ Visual impacts
- ☐ Other (please specify) _____

Appendix B: Actions Requested As New CEs in Survey Questionnaire

Utilities, Lighting, Signs	
Replacement of existing utility powerline poles for overhead utilities and for new poles that are part of an overall pole replacement project where new poles do not exceed 25% of the totals for the project.	LPA
Traffic signal and highway lighting installations for safety.	Consulting, SDOT
All signs and traffic signals	LPA
Mechanical, electrical, lighting or traffic signal work.	SDOT
Tower lighting and street lighting projects.	SDOT
Traffic signal installation including signal pole foundations requiring no new right-of-way	MPO, SDOT
Regulatory sign installation and replacement requiring no new right-of-way	MPO
Acquisition, installation, rehabilitation, operation, evaluation, and improvement of discrete utilities and similar appurtenances (existing and new) within or adjacent to existing transportation right-of-way, such as: utility poles; underground wiring, cables, and information systems; power substations and transfer stations; and catenary and signal work.	Transit
Purchase of temporary construction easements and/or utility easements	Transit
Installation, restoration or rehabilitation of communication lines or other quasi-utilities structures along or across a transportation facility.	AASHTO
Safety and Operations	
Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting (e.g., slope and bank stabilization).	SDOT
Approvals for changes in access control (Move to c-list)	SDOT
The addition of a turn lane or passing lanes, for safety, within the existing right-of-way.	SDOT
Any bridge or road maintenance or improvement project that is safety funded (i.e. HSIP, HRRR, etc.), including those requiring minimal additional rights of way necessary for safety improvements.	LPA, Transit
Traffic control improvements	COG, SDOT (2)
Closure of at-grade railroad cross for safety purposes where ADT is 200 or less and the added travel is 10 minutes or less.	SDOT
Move to C list: Approvals for changes in access control.	SDOT
Safety and operational improvements with no additional rights-of-way, or with minor rights-of-way acquisition where there are no previously identified environmentally sensitive issues. (e.g. retrofit of existing intersection with a modern roundabout).	LPA
Discrete activities, including repairs, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: the deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation measures; and retrofitting existing transportation vehicles, facilities or structures.	Transit
Highway safety and truck escape ramps	SDOT
The installation of raised pavement markers	SDOT
Anti-skid treatments.	SDOT
Installation of turn lanes at roadway intersections	SDOT
Change of driveway/access configuration.	SDOT
Upgrading safety feature	SDOT
Highway safety or traffic operations improvement projects including the installation of ramp metering control devices	SDOT
Traffic operational improvement projects, see 23cfr771.117(d)(2). Proposing to move this under (c).	SDOT
Upgrade, removal, or addition of guardrail	SDOT
upgrade median barrier	SDOT
Install or replace impact attenuators.	SDOT
Upgrade bridge end approaches/guardrail transition.	SDOT, AASHTO
Roadway skid hazard treatment.	SDOT
Repair and installation of roadway skid hazard treatments.	AASHTO
Clear zone safety improvements, such as fixed object removal or relocation	SDOT, AASHTO
Highway information systems.	SDOT
Computerized traffic signalization systems.	SDOT
Freeway traffic surveillance and control systems.	SDOT
Motorist aid systems	SDOT
Guardrail replacement where no new bank stabilization is required	SDOT
Safety projects within existing ROW.	SDOT
Installation of roundabouts.	SDOT

Impact attenuator and glare screen installation.	SDOT
New grade-separation along an existing controlled-access facility	COG
Installation of wind/sand fencing either within public ROW or easements and where a MSHCP is in place.	LPA
Repair or construction of sidewalks, ramps, or handrails as required by the Americans with Disabilities Act.	SDOT
Traffic detours.	SDOT
Installation of ITS, ramp metering control devices, freeway traffic surveillance and control systems, motorist aid systems, highway information systems, computerized traffic signalization systems or roadway lighting. Includes purchase and installation of equipment for Traffic Operations Centers	AASHTO
Upgrading, removal or addition of guardrail, median barrier or impact attenuators.	AASHTO
Routine seismic retrofit of facilities to meet current seismic standards and public health and safety standards without expansion of capacity.	AASHTO
Bridges	
Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.	SDOT
Making bridge repairs for work such as painting bridge, removal of hazardous paint on bridge, replacing or rehabilitating bridge deck, retrofitting bridge railing or curb, sealing/repairing existing bridge joints, overlaying bridge deck; and upgrading bridge end approaches/guardrail transitions. Criteria to meet: no new bank stabilization is required and bridge is not on or eligible for the National Register of Historic Places.	Tribe, SDOT
Bridge replacements in kind no major roadway realignments or grade changes	LPA (2)
Bridge/interchange replacement	LPA, SDOT
Bridge Repairs: Repairs to the existing bridge components of every kind, including cleaning, painting, and asphalt overlays and replacement of deteriorated individual components such as bearing, railings, structural members, joints, lights	LPA
Bridge component upgrades: improvements of individual components such as coatings, bearing, railings, structural members, joints, corrosion protection to increase safety including load capacity, or increase the structure longevity or to decrease future maintenance costs.	LPA
Installation of stone, scour protection: around bridge foundations and on bridge approach embankments provided the stone is not placed higher than the 100 year flood elevation and not more distant from the end of the bridge than twice the embankment height.	LPA
Bridge rehabilitation and replacement without additional lanes and without significant changes in alignment, including complete superstructure replacement with necessary substructure modifications and rehabilitation.	LPA
Restoring and rehabilitating existing bridge (including painting, crack sealing, joint repair, scour repair, scour counter measures, fender repair, bridge rail or bearing pad replacement, seismic retrofit, etc.).	SDOT
Replacement of existing bridge (in same location) by present criteria. Discussion with FHWA is recommended to ensure proper level of documentation.	SDOT
Widening of standard bridge to provide safety shoulders without adding through lanes.	SDOT
Bridge removal.	SDOT
Changes in access controls.	SDOT
Intelligent Transportation Systems.	SDOT
Highway safety and truck escape ramps	SDOT
Median Guardrail/Cable Barrier within existing ROW	SDOT
Culvert and bridge replacement/reconstruction that involve no more than minimal right-of-way necessary to grade around the new bridge/culvert plus any necessary channel work	SDOT
Existing Right-of-Way and Urban Areas	
Bridge replacement and roadway rehabilitation projects that are constructed entirely within existing right-of-way	Consulting, LPA (3), SDOT (3)
Addition of Through Lanes within existing right-of-way.	SDOT
All activities within an existing right-of-way that are approved by the agency who has maintenance and ownership responsibility for the right-of-way	LPA
CE for sidewalks constructed on existing right of way	LPA
Installation of Cable Median Barrier in existing ROW	SDOT
Installation of new guardrail in existing ROW	SDOT (2)
Safety Improvements all within existing ROW and previously disturbed ROW. - propose moving these to the C list.	SDOT
Any bridge or road maintenance or improvement project located within the existing right of way (i.e. no new right of way required).	LPA
Transportation improvements along existing urban roadways that do not expand out of the existing right-of-way	LPA
Projects which are done entirely within existing right-of-way.	LPA (3), Tribe
Projects in urbanized areas since most of the areas are already disturbed.	LPA

All actions within existing transit authority-owned property, as long as any action will comply with state and local statutes.	Tribe
All roadway projects associated with urban infill/redevelopment projects.	LPA
Redevelopment/modernization projects that are in a fully developed urban area.	LPA
Full replacement/component replacement of substation facilities (CEc)	Rail
The installation of raised pavement markers	SDOT
The replacement of traffic signals within existing ROW	SDOT
Maintenance and Preservation	
Maintenance of existing facilities that does not lead to construction, such as cleaning storm drains and pipes, sweeping streets, clearing ditches.	SDOT (2)
Storm debris cleanup for on system roads.	LPA
Surface Preservation or maintenance type work on roadways such as chip sealing, crack sealing, surface rejuvenation, milling/pulverizing existing pavement, pavement overlays, pavement patching, or other work to maintain, improve, or preserve the surface treatment and provide an adequately drivable and safe surface. Criteria that characterize action as not causing significant environmental impacts: work does not extend beyond the existing surfaced area or where work extends slightly beyond existing surface and/or removal of some vegetation is necessary- if flattening of slopes is not required.	Tribe, SDOT
Pure maintenance activities for roads and bridges	LPA
Highway resurfacing without pavement widening including a single pass of milling, crack and seat and multiple overlays	LPA
Repairing erosion on streams where road fill is being eroded by stream.	LPA
Clearing of debris from Bridge abutments.	LPA
All necessary maintenance and construction of existing roads including new construction approved by local municipalities	LPA
All necessary maintenance and repairs of existing bridges, culverts and other drainage structures	LPA
All pavement preservation activity within the existing pavement edge.	MPO
Bank stabilization	SDOT
Herbicidal spraying within existing ROW	SDOT
Mowing or brush removal/trimming projects within existing ROW	SDOT
Beautification or facility improvement projects (landscaping, curb and gutter installation and replacement, ADA ramps/curb ramps, installation of park benches, decorative lighting, etc.).	SDOT (2), AASHTO
Retaining wall restoration, fencing, guardrail installation or replacement, intermittent resurfacing, restoration or replacement of drainage structures.	SDOT
Preventive maintenance activities such as joint repair, pavement patching, shoulder repair and the removal and replacement of old pavement structure.	SDOT
General highway maintenance, including filling potholes, crack sealing, mill and resurfacing, joint grinding milling, etc	SDOT
General highway maintenance, including joint repair, pavement patching, crack sealing, skid hazard treatments, striping, shoulder repair, mill and resurfacing, joint grinding, milling, and the removal and replacement of old pavement structure	AASHTO
Paving Shoulders.	SDOT
Mowing or brush removal/trimming projects within existing ROW	SDOT, AASHTO
Herbicidal spraying within existing ROW	SDOT, AASHTO
Construction, modification, or repair of storm water treatment devices, protection measures such as slope stabilization, and other erosion control measures.	AASHTO
Routine repair of facilities due to storm damage, or other natural disasters, including permanent repair to return the facility to operational condition that meets current standards of design and public health and safety without expanding capacity	AASHTO
Limited Federal Funding/Involvement	
Utilization of federal grant funds less than one million dollars should not trigger the NEPA process.	LPA
Projects that have limited federal participation (noted in Map-21).	LPA
Projects that has less than 50% federal funding or less than \$10,000,000 in federal funding	LPA
Small local government projects with less than \$5,000,000 federal funds on a corridor established by a Thoroughfare Plan with minimal relocations.	LPA
Projects in which no findings are required from FHWA (No tribal involvement, no involvement with 106 resources, no Section 4(f) involvement, and no formal ESA consultation; Impacts can be mitigated through coordination/consultation with appropriate agencies) (C-list)	SDOT

Rehabilitation and Reconstruction	
Highway and Bridge Rehabilitations and Reconstructions - moved from the d-list to the c-list.	Consulting (7), LPA (5), Transit (2), SDOT
Rehabilitation of existing highways with no significant change in alignment, traffic volume or drainage patterns.	LPA
Highway reconstruction without additional lanes and without significant changes in alignment, but including utility and storm water replacement or relocation, addition or widening of shoulders, addition of curbs, gutters, or slope stabilization, provided not more than 10' of permanent R.O.W. is required to be acquired when measured perpendicular to the existing highway boundary.	LPA
Resurfacing, restoration and rehabilitation	SDOT (7)
Maintenance and rehabilitation and reconstruction of facilities that occupy substantially the same environmental footprint and do not result in a change in functional use, such as: improvements to bridges, tunnels, storage yards, buildings, and terminals; construction of platform extensions and passing track; street track; and at grade railroad crossings.	Transit
Station / facility repair, even with structural / architectural improvements within ROW, but not expanding envelop.	Transit
Restore, rehabilitate, and/or resurface existing pavement.	SDOT
Modernization of a highway by resurfacing, restoration, rehabilitation and reconstruction	SDOT
Resurfacing/rehabilitation/reconstruction projects that are within existing ROW	SDOT
Historic preservation, rehabilitation and operation of historic transportation buildings, structures, or facilities, including railroad facilities and canals.	SDOT, AASHTO
Reconstruction and/or widening of roadway on existing alignment with no additional through lanes, continuous turn lanes, or auxiliary lanes	SDOT
Curb/gutter repairs or construction	SDOT
Culverts and Channels	
Culvert maintenance and replacement	LPA
Adding additional culverts to prevent roadway and adjoining property damage. Criteria to meet: if work will not be within a water of the U.S. or a defined channel that could convey water to a jurisdiction water of the U.S.; if work is within the existing right-of-way; and if any vegetated areas disturbed are reestablished.	Tribe
Channel modifications in ephemeral streams (while stream bed is dry) in an effort to increase capacity of the stream channel within 1000' of a bridge crossing (lessen the impacts of backwater rise and flooding of properties).	LPA
Improvements of drainage facilities	SDOT
Crossing or modifying regularly maintained irrigation canals which are over 50 years old.	LPA
Restore, replace, and rehabilitate culverts, inlets, drainage pipes, and systems including safety treatment	SDOT, AASHTO
Bike/Pedestrian	
Bike, Ped, to improve connectivity in non-existing corridors	LPA
Non-motorized trails	LPA
Leasing of ROW for pedestrian improvements	Transit
ROW acquisition for bikeway/pedestrian facilities	SDOT
Projects which are bike and/or ped and do not impact wetlands	LPA
Installation of Bicycle/pedestrian facilities with minor or no additional rights-of-way, or with minor rights-of-way acquisition where there are no previously identified environmentally sensitive issues	LPA, SDOT
Transit/roadway corridors where a transportation comp plan can show a documented need (and require they include bike and ped facilities)	LPA
Acquisition, construction, rehabilitation, and improvement or limited expansion of stand-alone pedestrian, or transportation bicycle facilities, such as: a pathway, lane, or pedestrian bridge; and transit plaza amenities.	Transit
Construction of bicycle lanes and pedestrian walkways, sidewalks, shared-use paths, or facilities and trailhead parking.	SDOT, AASHTO
ROW acquisition for bikeway/pedestrian facilities	SDOT, AASHTO
Rail	
Modernization of rail transit systems (dCE)	
Minor Rail extensions on Public Right of Way	LPA
Small scale projects such as expansion of rail platforms and adding canopies to rail stations	Transit
Component replacement at rail stations (CEc) Replacing components of a station such as staircases, escalators, elevators, platform structure, lighting, etc.	Transit
Activities that take place in the railroad right of way, such as improving/rehabbing tracks, signals, switches, etc.	Transit

Minor roadway realignment or traffic signals for rail safety reasons	Transit
Construction/extension of storage/pocket tracks within existing railroad ROW	Transit
Relocation of TPSS within or adjacent to existing railroad ROW (with minor property acquisition)	Transit
Track and rail-bed improvements or acquisition, including improving vertical and horizontal alignment of railroad crossings and improving sight distance at railroad crossings.	SDOT (2), AASHTO
Railroad crossing work outside of existing right of way.	SDOT
Improve railroad crossing surface.	SDOT
Improve vertical and horizontal alignment of railroad crossing.	SDOT
Improve sight distance at railroad crossing.	SDOT
Railroad crossing elimination by closure, and railroad overpass removal within right of way.	SDOT, AASHTO
Preservation of abandoned railway corridors, including the conversion and use for pedestrian, equestrian, or bicycle trails.	SDOT, AASHTO
Upgrade railroad track circuitry.	SDOT, AASHTO
Transit	
Bus rapid transit and streetcars	LPA
Development activities for transit located on, above, or adjacent to existing transit facilities, that are not part of a larger transportation project and do not substantially enlarge such facilities, such as: police facilities, public service facilities, and amenities.	Transit
Acquisition, rehabilitation and maintenance of vehicles or equipment, within or accommodated by existing facilities, that does not result in a change in functional use of the facilities, such as: equipment to be located within existing facilities and with no substantial off-site impacts; and vehicles, including buses, rail cars, and trolley cars that can be accommodated by existing facilities or by new facilities that qualify for categorical exclusion.	Transit
Bus Stops. Transit Stations. Transit Centers. New Streetcar and extensions of existing streetcar lines in existing ROW.	Transit
Acquisition or transfer of an interest in real property that is not within or adjacent to recognized environmentally sensitive areas (e.g., wetlands, non-urban parks, wildlife management areas) and does not result in a substantial change in the functional use of the property or in substantial displacements, such as: scenic easements and historic sites for the purpose of preserving the site. This CE extends only to acquisitions that will not limit the evaluation of alternatives.	Transit
Simple BRT lines on shared lanes which will only have shelters and nominal impact on streetscape.	Transit
Bus projects that do (not) involve provision of exclusive lanes or exclusive guideways.	Transit
Minor track and/or platform shifts within an existing railroad right-of-way	Transit
Addition of transit infrastructure that can be constructed within rights-of-way already within transportation uses.	Transit
Modernization or minor expansions of transit structures and facilities such as bridges, stations or rail yards;	Transit
Rehabilitation or improvement of transit or commuter rail passenger stations where the work will not require the permanent acquisition of real estate to be a categorical finding. This may include projects with an increase in the number of users, such as might be associated with a CMAQ project	Transit
Rehabilitation or improvement of transit or commuter rail bridges where the work will not require the permanent acquisition of real estate.	Transit
FTA should consider findings similar to the FRA's, as published in the Federal Register on May 26, 1999.	Transit
Rehabilitation or reconstruction of existing rail and bus transit buildings and ancillary buildings where only minor amounts of additional land are required, and there is not a substantial increase in the number of users (Move to C-List)	SDOT, AASHTO
Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks, and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic. (Move to C-List)	SDOT, AASHTO
Alternative Energy	
Installation of Electrical Vehicle Charging Stations	SDOT
Small scale renewable energy projects	Transit, SDOT
Construction of alternative energy facilities (CNG, electrification, solar, fuel tanks, farms, wind turbines, etc.).	SDOT, AASHTO
Ferries	

Ferry system activities that do not include work under the mean high tide line, including work on ferry terminals, ferry vessels, dock facilities, navigation systems, and security systems.	SDOT
Maintenance and repair of Ferries and facilities	SDOT
Parking	
Park and Ride facilities with or without bus transfer areas - move from d-list to c-list	Transit
Transportation corridor fringe parking facilities, park-and-ride lots and ridesharing activities	SDOT (2)
Installing, upgrading or repairing transportation corridor fringe parking facilities, park-and-ride lots and ridesharing facilities.	AASHTO
Environmental Mitigation	
Erosion and water pollution control work.	SDOT
In-situ and offsite, wetland mitigation projects	SDOT
Habitat enhancement for endangered species, both in-situ and offsite.	SDOT, Transit (2)
Removal of fish barriers and removal of channel constrictions.	LPA
Activities designed to mitigate environmental harm that cause no harm themselves, or to maintain and enhance environmental quality and site aesthetics, and employ construction best management practices, including but not limited to: noise mitigation activities; stormwater management; roof replacement; rehabilitation of public transportation buildings, structures, or facilities, including those that are listed or eligible for listing on the National Register of Historic Places when there are no adverse effects under the National Historic Preservation Act; retrofitting for energy conservation; and, landscaping or re-vegetation.	Transit
Installation of new noise walls and other new noise mitigation projects.	SDOT
Mitigation of water pollution due to highway runoff.	SDOT
Mitigation projects.	SDOT
Animal crossings.	SDOT
Environmental mitigation activities (wetland, stream, upland, etc.).	SDOT, AASHTO
Installation of new noise walls and other new noise mitigation projects	sdot
Projects undertaken to assure the creation, maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife	AASHTO
Limited Size or Cost	
Projects requiring the acquisition of less than one acre should not trigger the NEPA process.	LPA
Projects under a certain dollar threshold.	LPA
Projects that impact a specified, minor length of road (e.g. 200 feet)	LPA
Modification, changing, or new construction on existing property involving less than one acre.	Transit
Acquisitions	
Acquisitions of land for protective purposes; advance land acquisition loans under section 3(b) of the UMT Act.	SDOT (2), AASHTO
Acquisition and/or preservation of minor amounts of abandoned railroad right of way	SDOT
Projects with minimal right of way acquisition, such as corner clips, utility easements or temporary construction easements.	LPA
Acquisition of land for hardship or protective purposes for a particular parcel or a limited number of parcels; advance land acquisition loans under Section 3(b) of the Urban Mass Transportation Act.	SDOT
Acquisition of scenic or historic sites	AASHTO
Acquisition of land for hardship or protective purposes. (Move to C-List)	AASHTO
Excess ROW	
Move to C list: Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposal use does not have significant adverse impacts	SDOT (2)
ROW disposal	SDOT
Disposal of excess right of way.	SDOT
Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts (Move to C-List)	SDOT, AASHTO
Land donations to the DOT associated with ROW permits (non-NHS-limited access ROW).	SDOT
Disposal of excess ROW parcels wholly contained in Major Project Acquisitions	SDOT
Geotechnical Work	

Geotechnical borings, archaeological and wetland surveys	Transit (2), SDOT
Geotechnical activities (grouting, rock fall barrier installations, rock fall netting installations, and drilled shafts and walls for stabilization, etc.)	SDOT, AASHTO
Geotechnical and other subsurface investigation, including drilling of test bores/soil sampling to provide information for preliminary design and for environmental analyses and permitting purposes.	AASHTO
Consistent with existing plans/land use and/or previously approved by other agencies	
When approved pre-existing plans (e.g. City General Plans, Master Plans, etc.) already dictate project specifications, the level of NEPA review should reflect the lack of alternatives analysis that can be entertained	LPA
CEQA approved CE projects	LPA
Any project previously reviewed, approved, and cleared by any other Federal Agencies NEPA process.	Transit
Assembly or construction of facilities that is consistent with existing land use and zoning requirements (including floodplain regulations), is minimally intrusive, and requires no special permits, permissions, and uses a minimal amount of undisturbed land, such as: buildings and associated structures; bus transfers, busways and streetcar lines within existing transportation right-of-way; and parking facilities.	Transit (2)
Amend wording of existing CE to be: "Assembly or construction of facilities that is consistent with existing land use and zoning requirements (including floodplain regulations), is minimally intrusive, and requires no special permits or permissions beyond those required by local zoning officials, and uses a minimal amount of undisturbed land."	Transit
Projects that are required to satisfy a permit from a regulatory or resource agency that has already undergone the NEPA process for that category of action.	SDOT
Projects in which coordination/consultation results in the determination that further findings from FHWA are not required; Involvement with one or more of the above, requiring no further action after coordination/consultation is completed with the appropriate agency (Section 4(f) does not apply, no adverse effect under 106, and no jeopardy under ESA); Tribal coordination would still require government to government consultation through FHWA Impacts can be mitigated through coordination/consultation with appropriate agencies (C-list)	SDOT
Projects that have all necessary ESA consultations are completed through programmatic or individual consultations	SDOT
Add a CE that would cover grants, loans, and refinancing for a project already approved and funded by another federal agency if that project has been subject to an environmental review pursuant to the National Environmental Policy Act (NEPA) and (1) there have been no changes to the project that would result in significant environmental impacts not already evaluated and (2) there is no new information or circumstances that would result in significant environmental impacts not already evaluated in the prior environmental review.	Transit
Road widening in compliance with local General Plans which have already undergone the public approval process	LPA
Aesthetic Treatments	
Improvements to existing waysides and scenic overlooks.	SDOT
Aesthetic treatments and other scenic beautification.	AASHTO
Screening unsightly areas.	SDOT
Other	
Control and removal of outdoor advertising	AASHTO
Improvements to existing maintenance facilities.	AASHTO
Installation, restoration, rehabilitation or replacement of rock fall mitigation measures.	AASHTO
Air space leases that are subject to Subpart D, Part 710, Title 23, Code of Federal Regulations	AASHTO
Shoulder widening for both traffic and air quality purposes.	LPA
Widening, adding roadway width or shoulders without adding through traffic lanes.	AASHTO
Lane Reduction Changes - provided traffic analysis is completed	SDOT, AASHTO
Land donations to the DOT associated with ROW permits (non-NHS-limited access ROW).	SDOT, AASHTO
Stimulus or fast track projects	COG
Conversion of existing grade level intersections to interchanges, are implicitly allowed under 23 CFR, section 771.117 (d) (1). Recommend that this type of action be included with explicit language.	SDOT
Applying pavement to dirt roads, to include the excavation of the existing dirt road to accommodate the base course needed for the new pavement.	LPA
Utilization of existing government property for alternate purposes	LPA
Impact to a minor amount of isolated, poor quality wetland was allowed under one of the older CEs.	LPA
Projects that do not impact wetlands and do not contain addition impervious surfaces used by motor vehicles.	LPA
Changing transportation modes in an existing location, such as from a ferry to a bridge.	LPA
Add to D List: Interchange modifications with minimal impacts.	SDOT
Add to D List: Widening of existing facilities, including general purpose lanes.	SDOT

TODs/joint development	Transit
Emergency repairs necessary to restore vital travel, typically within 180 days of the event. Includes emergency projects like mine collapse, flooding damage, etc.	SDOT (2)
Joint or limited use of ROW where the proposed use would have minimal or no adverse social (including highway safety), economic or environmental impacts	SDOT
Major re-construction improvements to existing rest areas and truck weigh stations	SDOT (2)
Reconstruction of existing rest areas and truck weigh stations.	AASHTO
Architectural planning, research, and site investigations	SDOT
Surfacing existing unpaved roadway or shared use paths.	SDOT
Perfection of title for right of way when the subsequent action is in support of an action that is not otherwise subject to FHWA review under NEPA	AASHTO
Material source pits	SDOT
Investigative activities for future projects.	SDOT
Project staging and storage areas	SDOT
Third-Party Contracts for Goods & Services Education & Training Security	Transit
Removal Fill actions permitted and consulted when these are the major impacts associated with the project.	SDOT
Widening and improving existing transportation facilities through the addition of lanes that will add capacity when the following conditions are met: a. Lane additions are limited to two (2) new lanes in each direction; b. The project does not exceed five (5) miles in length; c. Widening is consistent with regional and local plans; d. The proposed action is on the state or federal highway system; and e. The project does not involve unusual circumstances that would result in a significant impact on the environment.	SDOT
Addition of a new roadway on new alignment to connect existing facilities when the following conditions are met: a. The new roadway is limited to a five lane cross section; b. The project does not exceed five (5) miles in length; c. New road construction is consistent with regional and local plans; d. The proposed action is on the state or federal highway system; and e. The project does not involve unusual circumstances that would result in a significant impact on the environment.	SDOT
Closure of roads at railroad crossings where there is minimal ADT and safer options for accessing the other side of the railway are within 2 mile	SDOT, AAHSTO
Adding or lengthening turning lanes (including continuous turn lanes), intersection improvements, channelization of traffic, dualizing lanes at intersection and interchanges, auxiliary lanes, and reversible lanes. For auxiliary lanes and reversible lanes, discussion with FHWA is recommended to ensure the appropriate level of documentation before advancing the project.	SDOT
Flattening slopes; improving vertical and horizontal alignments	SDOT, AAHSTO
Restoration, rehabilitation or replacement of retaining walls or slope protection	AASHTO
Widening, adding roadway width and shoulders without adding through travel lanes.	SDOT
Transportation enhancement projects involving acquisition of historical sites and easements, or historical preservation.	SDOT, AAHSTO
Improvements to existing maintenance facilities	SDOT, AAHSTO
Joint or limited use of ROW where the proposed use would have minimal or no adverse social (including highway safety), economic or environmental impacts.	SDOT
Lane reduction changes- provided traffic analysis is completed.	SDOT
Modernization of a highway by the addition of turn lanes and/or the addition of shoulders	SDOT (2)
Approvals for changes in access control that involve the National Highway System and limited access ROW (i.e. work necessary within state controlled ROW for the realignment of an intersecting local road; breaks in the limited access ROW for new roads or drives	SDOT
Approvals for changes in access control (Move to C-List)	AASHTO
USDOT should consider moving all d-list activities to the c-list and define the criteria, common between all states, when signature delegation to a state or other jurisdiction is not authorized. USDOT would develop criteria derived from the agencies' programmatic CE agreements	SDOT
We would recommend that all of the items listed under 771.117 (d) 1 be moved to the c-list when they do not increase roadway capacity.	SDOT