

**Bringing National Environmental Policy Act Practice
into the 21st Century:
Restoring the Role of the Council on Environmental Quality**

An ETCI White Paper

by

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Bringing National Environmental Policy Act Practice into the 21st Century:

Restoring the Role of the Council on Environmental Quality

The Problem

The Council on Environmental Quality (CEQ) has lost its way, turned its back on its duties, forsworn its mission.

Created by our National Environmental Policy Act of 1969 (NEPA) *to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation*, in recent times CEQ has

- convened “streamlining” task forces comprised of agency (but not industry or environmental group) representatives;
- published (but not distributed) “citizen’s guides” to the Act;
- stood by idly while Congress put language in the Patriot Act and the Energy Policy Act (among others) that guts the very basis of American environmental impact assessment practice;
- prepared “memos” that attempt to overturn decisions of duly appointed Federal courts; and
- let its principal and one of its most useful duties, that of preparing an annual report on the state of the environment as a basis for furthering policy development and legislation, be sunsetted.

Our National Environmental Policy Act is not just – or even mainly – about parts per million of toxins or acres of compensation for wetlands. It focuses on the *human* environment, and mandates broad – and public – discussion of national environmental goals; it frames government actions and decisions in the context of *trusteeship* for future generations. It is the only Federal environmental law that does so, and it has served as an international model for nearly 40 years.

The Council and its Chair have a tremendous potential workload, which should be touching all of the major environmental topics from boom and bust economies in the west to alternative energy to global warming to preservation of cultural heritage to identifying non-quantifiable quality-of-life factors such as visual and recreational resources. Yet because of the persistent failure by current and previous administrations to appoint a complete three-member Council, and because the current and previous chairmen have had no personal knowledge of the US Federal environmental impact assessment process (coming from the private sector and state government, respectively), and because the Council’s staff comprises fewer than two dozen people (mostly attorneys) the Council has been hamstrung for decades.

For example:

- In the Bush II administration, the Council has produced numerous documents purporting to “streamline” or “improve” NEPA practice, but perversely has failed to distribute them widely, provide briefings on their contents to their intended audiences, or develop training on how to meet the recommendations.

- The Council has failed for three decades to successfully seek authority to put any of this “guidance” into regulatory form, so that agencies could be required to comply with the best practices some of it contains.
- The staff apparently do not get away from their desks to see what real projects look like in the real world. For example, several “revised” Environmental Assessments they produced as “examples” under the Healthy Forest Initiative failed to comply with the individual agency requirements or in some cases even with the CEQ’s own regulations. From reading the documents, it was abundantly clear that the “revisers” of these documents knew nothing about forests, fire, Bureau of Land Management or USDA Forest Service policies and procedures, or the western US terrain and wildland-urban interface, all of which are directly related to the tasks required under the Healthy Forest Act.
- In recent years the Council has allowed legislation to be passed that guts the very principles underlying effective environmental impact assessment; it has invoked new interpretations of its own regulations to provide authority for actions to be taken in express defiance of court-ordered constraints; and it has developed guidance documents that follow no known official procedure for issuing formal instructions:
 - For example, the Patriot Act allows the Secretary of DHS to waive all environmental laws *and* the Administrative Procedure Act, so he cannot be sued for arbitrary and capricious decisions arising from failure to comply with environmental requirements. Everyone understands the need for speed and sometimes secrecy associated with actual security projects. But the Secretary has used this authority numerous times to enable the anti-immigration fence along the US-Mexico border to be constructed through wetlands, endangered species critical habitat, and other identified areas of critical environmental concern with no apparent security justification and in defiance of explicit Federal court orders. Where was CEQ when this legislation was being proposed and debated?
 - For example, Section 390 of the Energy Policy Act of 2005 created 5 new “Categorical Exclusions” that apply only to oil and gas development projects. These legislative creatures bear no relation to those developed through normal Federal agency processes, or in fact to the process for developing such categories outlined the following year by CEQ itself in the Federal Register (71 FR 181:54816-54820, September 19, 2006). Where was CEQ in this legislative process?
 - For example, the CEQ allowed the US Navy to continue a multi-year sonar-testing program that has been shown to be deadly to marine mammals, again in defiance of a specific court order, by invoking the “emergency” clause of its own regulations, intended for responses to wildfires, earthquakes, hurricanes, and other natural disasters. A decade-long ongoing research program can in no way be appropriately characterized as an “emergency,” as Justice Ruth Bader Ginsberg correctly noted in her November 12, 2008 dissent to the recent Supreme Court ruling that upheld the Navy action (on other grounds). The CEQ’s startling interpretation was contained in a “letter” based on no independent investigation and written over a single weekend.
 - For example, the CEQ Chairman signed a memo on June 24, 2005 describing the plain requirement in their own regulations to examine “past, present, and reasonably foreseeable future actions” during cumulative effects analysis as requiring only an “aggregation” of past actions, an interpretation that has been loudly dismissed as both wrong (not in accordance with either their own 1997 “handbook” or current best practice) and outside of their authority to do in a simple “memo” (see “Questionable Authority,” *Environmental Law*, Summer, 2007).

The list could go on, but the pattern is clear. The CEQ is neither providing the leadership it should nor the guidance it could, to assist those charged with upholding our “national charter for protection of the environment.”

Background

The National Environmental Policy Act

On January 1, 1970, President Richard M. Nixon signed the National Environmental Policy Act (NEPA) into law. The Council itself calls NEPA our “basic national charter for protection of the environment,” in the first paragraph of its implementing regulations (40 CFR 1500.1(a)).

NEPA was the first legislation of its kind in the world; it passed unanimously both houses of Congress, and continues to serve as a consensus model for similar laws in scores of countries nearly 40 years later. Concepts first articulated by NEPA are today enshrined in formal policies of the World Bank, the European Union, the United Nations, and many other international organizations.

Its Purpose section reads as follows:

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

All of what follows is based on the simple idea that these purposes are worth pursuing, and that the Council has a vital role to play in attaining them.

Section 102 of the NEPA is the “action forcing” section. It requires Federal agencies to prepare a “detailed statement” prior to making a decision concerning a “major Federal action significantly affecting the quality of the human environment” – including actions involving the Federal lands, funding, permits or licenses, and proposed legislation – in order to analyze and disclose to the public:

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

This “detailed statement” was labeled an Environmental Impact Statement in the CEQ’s NEPA implementing regulations in 1978. Two other types of documents also were created by those regulations:

1. A threshold analysis used for determining whether the expected environmental impacts from a Federal decision are expected to be significant or not, called an Environmental Assessment, and
2. A smaller-scale analysis for actions of a sort determined through previous analysis to normally not have significant impacts, called a Categorical Exclusion.

The regulations contain detailed instructions for preparing Environmental Impact Statements, and less detailed guidance for Environmental Assessments and Categorical Exclusions.

The Council on Environmental Quality

The Council on Environmental Quality has had a long and occasionally illustrious history since its creation nearly 40 years ago. The eight original tasks of the Council on Environmental Quality (CEQ) are found in Section 204 of the Act:

It shall be the duty and function of the Council –

- 1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;*
- 2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;*
- 3. to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;*
- 4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;*
- 5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;*
- 6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;*
- 7. to report at least once each year to the President on the state and condition of the environment; and*
- 8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.*

Subsequent amendments designated the Chairman of the CEQ also as Director Office of Environmental Quality in the Executive Office of the President, for which the duties are listed in 42 USC §4372:

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by –

1. *providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;*
2. *assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;*
3. *reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;*
4. *promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;*
5. *assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;*
6. *assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;*
7. *collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.*

The requirement to prepare an annual report to the President and Congress was sunsetted in 1995 by PL. 104-66. The last CEQ Annual Report was published in 1997.

Because no agency was given explicit oversight responsibilities in the language of NEPA itself, the CEQ took on the task of preparing “guidelines” for compliance with the Act, first published in 1973. In 1977 President Jimmy Carter amended Executive Order 11514, authorizing the CEQ to promulgate regulations that would be binding on all Federal agencies. After formal notice and public comment under the Administrative Procedure Act, the final regulations were published on November 28, 1978. They have been amended only once, in 1986, to remove the requirement for a “worst case scenario” analysis during environmental analysis.

In 1997 the CEQ published the results of an assessment of the first 25 years of NEPA, called *National Environmental Policy Act: A Study of its Effectiveness*. In it they highlighted what they called the “Five Mandates” of the Act:

Supplemental Mandate – to add to the existing authority of every Federal agency the responsibility and power to protect the environment and integrate environmental, social, and economic objectives when carrying out agency functions.

Affirmative Mandate – not only to preserve existing environmental quality, but to make decisions that restore and enhance the environment.

Procedural Mandate – to use a planning and decision-making process for developing or considering the approval of plans, policies, programs or projects that gives “appropriate consideration to environmental values and amenities,” which occurs mainly through the analysis of environmental impacts and alternatives, including mitigation measures.

Substantive Mandate – to recognize that each person should have a healthful environment and has a responsibility to contribute to environmental quality, and to require all Federal agencies

“to the fullest extent possible” to interpret and administer all laws in ways that implement the policy of serving as trustee of the environment for present and future generations and the other policies set forth in NEPA; in other words, the responsibility to “act” to protect the environment.

Integration Mandate – to implement the substantive national environmental policy “to the fullest extent practicable” in a manner that is “consistent with other essential policy considerations;” in other words, to take the environmentally preferred course of action unless it poses a conflict with other essential policies, in which case the decision-maker looks to the substantive policies of NEPA as guidance for integrating varied considerations and making decisions directed toward achieving a *productive harmony between people and nature* [sic].

Restoring the Council on Environmental Quality

The Council has a major role to play in restoring confidence and capacity in American environmental impact assessment under the National Environmental Policy Act. Before it can fulfill that role, the Council itself must be restored to full functioning. Then, those functions must be in service to the purposes of the Act, not for the benefit of a particular agency or industry. Third, the Council must take the lead in solving real environmental problems here at home, not just producing whimsical “guidance” that is never implemented. And finally the Chairman, in the role of Environmental Advisor to the President, must take the lead in restoring America to its leadership role in world environmental protection and management efforts.

1. Restore the Council to Full Functioning

Section 202 of NEPA sets out the nature of the Council:

The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Throughout its history, the Council itself, not just its staff, has been heavy on lawyers and light on scientists and practitioners. Furthermore, since at least 1992 the “Council” has consisted merely of its Chairman, who in recent years has been assigned double duty with the Council and as Environmental Advisor to the President, as noted above. This situation should be remedied.

Because NEPA is about the *human* environment, the Council should have at least one member representing the social sciences, whether anthropology, geography, sociology, economics, public health or industrial psychology. Another member should represent the natural sciences – biology, botany, wildlife management, soils or geomorphology, geology, hydrology – to which so much effort is devoted during environmental impact assessment. And the third should represent the physical sciences – particularly chemistry or toxicology, which are so crucial to understanding air and

water quality issues and coping with the vast needs to restore ecosystem health (including humans).

The Chairman, especially, should have broad and deep understanding of NEPA, with practical experience dealing with the environmental and policy consequences of Federal actions both within and outside of Federal agencies. The Chairman should have international environmental experience as well, to better support America's efforts to participate in the world environmental community.

Staff also should be drawn from a wider pool, representing the social, natural and physical sciences; environmental policy development; and public health, and should consist of professionals with actual implementation experience as well as planners and analysts. Everyone should get out of the office to visit the many types of development projects on the ground and see the results of various policy scenarios, in the rural west as well as the urban east.

Section 201 of the Act defines the Council's role in preparing the President's annual Environmental Quality Report, and describes the contents of that report as follows:

Environmental Quality Report (hereinafter referred to as the "report") ... shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

The annual Environmental Quality Report should be restored. The CEQ's "2008 Report" on their web site is in fact a list of Freedom of Information Act Requests (they processed 40 in 2008), with no environmental content whatever. How embarrassing that our government doesn't even produce one public report on the state of our nation's *total* environment, but must depend on private sector initiative (and funds).

For example, the excellent report by The Heinz Center, *The State of the Nation's Ecosystems 2008* (Island Press) is the sort of thing that CEQ was created to do, required to do, and did quite well until PL 104-66 took this duty away. And currently no other agency has the role to recommend programs for remedying deficiencies of existing environmental programs, or recommend needed environmental legislation. Rather, these tasks are fragmented among various Departments and agencies (including the National Academy of Sciences), each of which is so busy trying to carry out more duties with fewer resources that they have no time for nationwide efforts to shore up what intended to be national priorities.

2. The Council Should Function in Service to NEPA

Since promulgating final regulations for implementing NEPA in 1978 (40 CFR 1500-1508), the Council has written a series of "memos," "handbooks," "reports," "guides," "studies," and

“compendiums,” most of which are never distributed beyond the “Department Heads” to whom the original copies are addressed. They now are available for download from the “nepanet” portion of the Council’s web site (which makes Craig’s List look sexy), but are organized by type of document and year rather than by topic.

For example, when my company, Environmental Training & Consulting International, Inc., was chosen to conduct the first nationwide training workshop on the then-newly-published “handbook” for *Considering Cumulative Effects under the NEPA* in 1997, our Federal government client had to pay the Council to publish enough hard copies for participants to use during the workshop. And even today one cannot acquire a hard copy, acquire a copy on CD, or even download a complete copy from the Council’s web site, but must download it chapter-by-chapter and assemble the complete document oneself.

For example, the 2008 *Citizen’s Guide to the NEPA* is available on the Council’s web site, but essentially no place else. This document should be widely distributed. At least a brochure outlining the main points should be on display in every Federal agency office foyer, and available for download from every agency’s web site. (And it should be revised by an actual citizen to eliminate the legal-speak and acronym soup.)

For example, the Council provides a “compendium” of some available live training courses on its web site, but neither makes any effort to keep it up to date (providers must take this on themselves) nor has ever developed any materials, “talking points,” or training itself. Many of the training courses listed in the “compendium” are taught by lawyers, English teachers, political scientists, or academics. Very few are taught by people with actual experience doing actual environmental impact assessments inside agencies or for actual projects as consultants. The Council should be designing, developing, and delivering its own training courses either on-line or live, and using experienced scientists, analysts and implementers to do so.

For example, many other nations have created “sector-based” requirements or standards, which define the nature of expected environmental impacts from certain well-known types of development projects, and define the types of actions that would mitigate the environmental consequences of such projects. Pipelines, dams, roads, electric transmission lines, airports, recreation developments, and other frequently-conducted activities have known (or knowable) consequences on soils, water quality and quantity, wildlife, air quality, local communities, cultural heritage sites, endangered species, greenhouse gases, visual resources, Wilderness, public health, and the like. The Council should take the lead in developing similar sets of standards for Federal activities in the US, in cooperation with US EPA (whose Office of Federal Activities a decade ago published an entire book of “pollution prevention checklists” covering similar topics, which has long since vanished from public view).

For example, many other nations conduct environmental impact assessment guided by an explicit adoption of the “precautionary principle,” which states that in situations of uncertainty (which environmental decision making always exhibits) one should err on the side of precaution. That is, if one can’t demonstrate that an action is safe, beneficial or at least neutral in its consequences, one should assume it is not, and act accordingly. In the US we turn this on its head, assuming that a practice or activity is benign until proven otherwise, no doubt because of the strong tradition of “innocent until proven guilty” in our criminal law system. But as the National Academy of Sciences points out in their new report *Science and Decisions: Advancing Risk Assessment* (released December 3,

2008), we need to take another tack to avoid prolonging fragmented practices that endanger our air, water, soils, wildlife, heritage resources, social structure – in short, our “human environment.” Interactions of multiple projects on multiple resources and receptors, and the cumulative and long-term effects of these interactions, must be addressed explicitly in both regulatory decision making by US EPA under its media-specific authorities *and* in environmental impact assessments under NEPA. The Council should take the lead in developing methods to incorporate the precautionary principle in US environmental impact assessment practice.

For example, the threshold determination documented in an Environmental Assessment under NEPA has been notoriously ignored for decades. Federal agencies prepare thousands of EAs for every Environmental Impact Statement they prepare; yet most agency staff are baffled by the task of determining whether the consequences of their actions meet some threshold of “significance” or not, and by how to document their determination in the face of scientific uncertainty or lack of appropriate data. The CEQ’s own “incomplete information” procedure, contained in 40 CFR 1502.22, while useful from a legal standpoint, is not helpful to a biologist in the field trying to determine a threshold for a species that has not been adequately studied but *may* be of crucial importance to a fragile ecosystem. Recent “streamlining” direction from the Council has focused on making the EA document shorter, not on methods of making the crucial threshold determination. Saying the same thing louder and louder from 1983 until today – “the EA should be about 10 to 15 pages long” – is not equivalent to providing adequate guidance.

3. The Council Should Lead in Solving US Environmental Problems

A principal task of the Council is to

... develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation....

This means the Council should be at the table during discussions of forest and rangeland policy, energy policy, wildlife policy, endangered species policy, heritage resources policy, water policy, farm and food policy, environmental justice policy, economic policy, public health policy, transportation policy, and all the other arenas covered by the Act. Indeed, the Council is the *only* entity in the Federal government that has jurisdiction over the whole of the “human environment,” which is defined under the Act as “the natural and physical environment and man’s relationship with that environment” (40 CFR 1508.14).

While the Council by itself cannot single-handedly take on developing coherent and coordinated policies in all these arenas at once, it should certainly take the lead in setting up open, collaborative and constructive forums that consider options for fulfilling the purposes of NEPA. The US is blessed with environmental experts inside Federal, state and local government agencies, research institutions, academic institutions, industries, NGOs, and citizen groups. Even with a small staff, the Council should contribute mightily to the effort to make sure the right hand knows what the left is doing with respect to the human environment:

For example, the Council should convene an annual conference on the state of the environment, the proceedings of which should become its restored annual “report.”

For example, the Council should ensure that proposed national legislation supports or enhances efforts to protect the environment, rather than removing more and more Federal actions from NEPA review.

For example, the Council should take steps to ensure that the Purpose and Policy sections of the National Environmental Policy Act, not just the procedural requirements of Section 102, are explicitly considered in every Environmental Impact Statement prepared by a Federal agency for a proposed project. With US EPA, the Council should turn the required review of draft EISs required by Section 309 of the Clean Air Act into a real process for inculcating an environmental ethic into Federal decision making, not just a nit-picking exercise arguing about parts per million of some pollutant.

For example, the Council should develop a competitive internship/fellowship program, enticing the best and the brightest – both students and faculty – from environmental science, social science, and public policy departments as well as law, medical and business schools all over the country to come to Washington and help determine what needs fixing and how to fix it. And through vehicles such as the Intergovernmental Personnel Act, the Council should create fellowships for mid-career professionals from the Forest Service, Bureau of Land Management, US Fish and Wildlife Service, US Environmental Protection Agency, Department of Homeland Security, Federal Highway Administration, US Army Corps of Engineers, and other agencies to come and help make policies that work, for their agencies, for the environment and for our human society, in furtherance of the goals of the Act.

For example, the US currently has no explicit mechanism for what elsewhere is called “strategic environmental assessment,” or looking at the sustainability of strategic government decisions such that planners, decisions makers and the affected public are informed and the “best” alternative can be developed and carried out. Federal land managing agencies, such as the US Forest Service, the Bureau of Land Management, the National Park Service and others, conduct “programmatic” environmental impact assessments for their land use plans, but these are done area-by-area, and often turf battles prevent agencies that manage adjacent lands from cooperating on a single, unified planning approach to regional issues (even within the same agency across state boundaries). Construction agencies, military agencies, health agencies, energy agencies and the rest do not have any explicit means to examine either the strategic nature of their programs or the environmental consequences from taking certain positions or conducting certain activities. Everything from the space program to public health to levee construction to weapons development should benefit from a longer-term and larger-scale examination in an environmental context.

The Council should take the lead in developing strategic planning tools to solve this very serious problem. Obvious initial candidates for a broader examination are our national energy policy and our response to global warming, especially infrastructure adaptations.

For example, the US does not have any coherent national or regional facility siting strategy for new (or traditional) communication or energy facilities, from oil wells to cell phone towers, solar and wind farms to transmission line corridors. The Energy Policy Act of 2005 explicitly removed the states from siting decision authority for Liquefied Natural Gas (LNG) terminals, wave energy farms, geothermal facilities, and transmission line corridors. *No* environmental considerations are included in the Federal siting criteria for “national interest” electric transmission corridors (listed in Section

1221 of the Act, amending Section 216 of the Federal Power Act). As it stands, an individual energy or communication or pipeline company can simply apply to the pertinent regulatory agency, complete some single-media third-party environmental reports (not apply an “interdisciplinary approach” to the problem as is required by the language of both NEPA and its implementing regulations), and win approval for its project, no matter how many (or how few) other projects are being proposed, and with no mechanism for formal consideration of locational or technology alternatives. Oregon right now is going through this scenario with three separate proposed LNG terminals, of which none, one, two, or three could be approved by the Federal Energy Regulatory Commission, without consideration of which location (if any) would be the least environmentally harmful or the most environmentally beneficial in the long run. And none of the discussion at the Federal level recognizes that the State of Oregon recently completed an Energy Plan setting new, higher targets for renewable energy and outlining plans for reducing reliance on energy from non-renewables, such as LNG.

The Council should take the lead in developing facility siting guidelines that would be binding on agencies such as FERC and FCC, in collaboration with the affected agencies and states.

For example, the Western Governors’ Association had to develop a regional Wildlife Corridors initiative because the Federal land managing agencies, who control most of the lands in the west and whose uncoordinated projects have created the need for a coordinated response, have failed to do so. The Council should be leading the way to convene interagency efforts to develop long-range plans for wildlife and other environmental resources, while helping fulfill the nation’s desires for energy independence.

4. The Council Should Contribute to Restoring US Leadership in the World Environmental Community

Today the Council’s web site touts its role in the present administration’s climate policy, National Parks programs, wetlands initiatives, and the like. But our climate policy is an international embarrassment, our National Parks maintenance and inholding acquisition needs have never been greater, and according to the Heinz Center’s *State of the Nation’s Ecosystems 2008* report cited above, our wetlands continue to decline in quantity and quality. We can and should do better.

The Council can truly play a crucial role in revitalizing America’s stature overseas, and reclaiming the leadership we initiated by enacting the National Environmental Policy Act nearly 40 years ago. As Environmental Advisor to the President, the Chairman should be leading America’s engagement in the international debates on environmental security, global climate change, endangered species conservation, heritage site preservation, social equity, sustainability, and what we want for our planet – our “human environment” – in 2025, 2050, 2100, and beyond.

For example, the National Environmental Policy Act contains language mandating consideration of the environmental effects of US actions abroad, and also specifically requires that agencies

...recognize the worldwide and long-range character of environmental problems and, where consistent with the environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment....

The Council itself, and its Chairman through the role of Director of the President's Office of Environmental Quality, should be doing just that with respect to Agenda 21, the Kyoto Protocol, environmental initiatives of the World Bank and other such entities, and the United Nations Environment Programme. We have been seriously remiss in these duties.

The US has been noticeably absent from leadership during the most important international environmental debates of the 21st century so far – about the consequences of climate change, including food security and infrastructure adaptation – and the Council is the logical entity to take the lead in the next administration, in conjunction with US EPA and other agency, academic, and NGO scientists and policy makers.

For example, the Council should reconvene and chair or collaborate with the President's Council on Sustainable Development, a public-private entity that vanished at the end of the Clinton administration, but that should be reconstituted. Either Council should serve as the US's mechanism for working with the European Union, the Association of SE Asian Nations (ASEAN), the BRIC nations (Brazil, Russia, India, China) and other international consortia on environmental issues of mutual interest, benefit, and need.

For example, food security continues to be an insurmountable problem for many of the world's peoples, yet our annual Farm Bill contributes very little to either the discussion or the solution. The Council should participate more directly in legislative discussions and analyses, in keeping with the mandate of NEPA to pursue "productive and enjoyable harmony" for all.

For example, our Smithsonian Institution has been continuing its leadership in what used to be called the international Man and the Biosphere (MAB) program until Senator Jesse Helms removed the US from official participation in that program during the 1990s; the Smithsonian renamed their department "Monitoring and Biodiversity," but retained the functions (and the acronym). The Council should cooperate with the Smithsonian Institution in acquiring data, conducting evaluations, and providing assessments of the American ecosystem as a component of worldwide environmental systems, thus making sure Federal agency decision making does not cause untoward damage to ecosystem components outside our borders.

How To: Tools for Bringing US Environmental Impact Assessment into the 21st Century

Reconstitute the Council Itself

The President should locate and nominate three people who meet the qualifications listed in Section 202 of the National Environmental Policy Act to serve as members of the Council, and select one as the Chairman, who will also become (absent changes in the existing situation) the Director of the President's Office of Environmental Quality, and thus essentially the Environmental Advisor to the President.

The President should consider splitting the Council and the Office again (as they were prior to the Clinton administration), so that the Council can focus on restoring its role under NEPA and on bringing American environmental impact assessment practice in line with the rest of the world. In

any case, the language of the National Environmental Policy Act should guide the actions of the Council.

Enhance Council Staff

Existing staff should be retained at least for the near term, as continuity of programs is essential. Council staff should be quickly augmented with specialists in environmental sciences, specifically those listed in the Act itself: the natural and social sciences and the environmental design arts. Enhanced and focused internship and fellowship programs, Intergovernmental Personnel Act assignments, and other tools should be used to ensure the breadth and number of staff needed to carry out the Council's mandated duties.

Create Additional Council Authority

The Council was never given oversight authority in NEPA, nor has it sought such authority through amendment of the Act. Perhaps it is time for this to change.

Over the years the Council has prepared various kinds of "guidance" – memos, handbooks, letters, reports, etc. – but it has not had authority to promulgate any of this material as regulations after the initial set of implementing regulations was completed in 1978 under the authority of Executive Order 11514. This should be remedied at least through a new Executive Order directing the Council to create new regulations covering current practices in environmental impact assessment:

- specific definitions for "significant issue," "purpose and need," "past, present, and reasonably foreseeable actions," "emergency," "connected actions" and other terms of art currently defined in memos and letters or not at all (some individual agencies have defined these terms in their own internal directives, and some of these definitions are very helpful)
- codification of guidance contained in documents such as the "40 Most Frequently Asked Questions" (1983), "Considering Biodiversity under NEPA" (1993), "Pollution Prevention" (1993), "Environmental Justice" (1997), "Cumulative Effects" (1997), and others
- sector guidelines or standards for major types of Federal actions (roads, dams, pipelines, wind farms, forestry, recreation, airports, etc.)
- adoption of the precautionary principle, strategic environmental impact assessment, and other fundamentals of current best practice
- specific focus on the policies contained in Section 101 of NEPA to complement the now-traditional emphasis on the procedural requirements of Section 102: how do we measure an agency's decisions against the Section 101 policy yardstick?

Improve Council Communications

The Council should inaugurate a nationwide training program, containing basic concepts, tools and methods for accomplishing required tasks, and good examples from past and ongoing projects and programs from the breadth and depth of US agency actions.

The Council's web site should be brought into the 21st century, and made user-friendly for both agency and non-agency users. It should contain resources for practitioners, such as rules and guidance; examples; data links; methodology links; statistics (in conjunction with US EPA, which

maintains the archive of Environmental Impact Statements) on studies conducted, tied to a geographic data base; and be maintained timely. Environment Canada has developed a useful pilot project to geo-tag environmental impact assessments so that project proponents can know what areas have already been studied and with what result.

Council publications should be widely distributed in hard copy and via the Internet in a way that is timely, user-friendly, and aimed at their intended audience. The *Citizen's Guide*, for example, should be excerpted and distributed for display in all Federal agency public spaces where actual citizens may come across it.

The Council should use cost-effective 21st century technology to communicate with agency staff and their consultants, NGOs, citizen groups, and the media: blogs, listserves, Podcasts, and periodic teleconferences or video broadcasts. The Council should consider developing a wiki to store and disseminate examples, data, reports, draft policies, and the like.

The Council should consider collaborating with US EPA on creating a searchable document-based database of all Environmental Impact Statements filed since 1970, to avoid duplication of effort and to enable the “gray literature” to see the light of day. A worthwhile pilot project has been completed at Edwards Air Force Base, California, and should be emulated on a national basis.

The Council should engage with other experts in setting standards, developing methodologies, determining indicators, and otherwise participating in the grand enterprise of environmental impact assessment as it is done today all over the world. Creating lists of best practices, checklists or other job aids for the practitioner, inspiring speeches and publications aimed at leading the way, and materials focused on accomplishing the purposes for which NEPA was enacted – all are worthy tasks the Council should pursue.

Enhance the Council's Leadership Role

The Council should develop and conduct its own national award program for outstanding environmental decision making, with awards presented by the President. This should be in conjunction with programs conducted by the Office of the Federal Environmental Executive (a tiny office focused mainly on environmental management systems and ISO 14001), US EPA, the National Association of Environmental Professionals, or others, but it needs to be high-profile and it needs to be focused on the purposes and policies articulated in the National Environmental Policy Act.

As outlined above, the Council should convene or chair or participate in meetings addressing the most pressing environmental issues of the 21st century rather than sitting on the sidelines.

And finally, the Council should remember why it exists at all:

...to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation....

and begin again to assume its vital role in these efforts.