**NAEP 2016 Annual Conference: Cohen NEPA Summit Panels**

On December 2 and 3, 2014, the Environmental Law Institute, the Nicholas Institute for Environmental Policy Solutions at Duke University, and Perkins Coie LLP sponsored a two-day conference on the National Environmental Policy Act (NEPA). Entitled the Cohen NEPA Summit, the conference honored the work and lifelong service of William M. Cohen who, before his death in 2010, was one of the nation’s leading NEPA practitioners, instructors, and mentors. The dual purposes of the conference were to examine how and whether NEPA has achieved its objectives and to identify possible improvements in implementing NEPA. Approximately 45 NEPA experts attended the conference, representing a broad spectrum of stakeholder interests, including the federal government, states, private companies, non-profit groups, and academia.

On Wednesday April 13th the NEPA Track at the NAEP Annual Conference will present a series of panel discussions on the Cohen NEPA Summit. Panelists include many attendees from the Cohen Summit and key leaders of NEPA practice. The panels will both disseminate the recommendations generated by the Cohen NEPA Summit and solicit ideas from conference attendees on how to improve NEPA practice. The Cohen NEPA Summit panel sessions will be followed by a summation by panel chairs over lunch on Thursday April 14th. The sessions are:

Wednesday April 13

## Organize NEPA’s Role in Government and Recommit Senior Leadership

Chair: Dinah Bear; panelists: Ray Clark, Michael Dombeck, Lynn Scarlett

A key theme from the Cohen NEPA Summit is the role NEPA actually does or does not play in decision-making. The current organizational structure in most federal agencies may not lend itself to ensuring that key people are in the right position to influence decisions that should benefit from the analysis coordinated under NEPA. Staff managing the NEPA process have been cut in many agencies and remaining staff may have little or no experience or training in managing the NEPA process. Organizational placement can affect the integrity and value of the NEPA process for a given project or program. The successful use of NEPA to solve environmental issues and blend environmental goals with social, economic, security, and other needs occurs when senior managers get involved, and agencies do not simply defer to consultants. NEPA is much more than a document, it is at the heart of how an agency carries out its public tasks in a responsible way, while using the best science and accountability tools. To truly embrace the letter and spirit of the statute, the leadership of an agency must be engaged in its implementation.

## Maximize the Flexibility of the CEQ Regulations for Open Government as NEPA Intended

Chair: Don Baur; panelists: Ted Boling, Ron Lamb, Mark Squillace

The CEQ regulations are now nearly 40 years old. However, current NEPA practice generally fails to take into account the flexibility built into these regulations, and thus one of the quickest and simplest ways to reinvigorate NEPA could be CEQ guidance on using the regulations in new and exciting ways. Further, one of the central tenets of NEPA is to promote transparency. However, some current NEPA practice does not promote transparency to the degree that it could and should. The Cohen NEPA Summit participants recognized that lack of transparency in NEPA limits the ability of NEPA to influence decision-making, and makes analyses of NEPA itself problematic. Better access to documents, data, and personnel would improve public and agency involvement. Actions that might further this goal include the establishment of a publicly accessible, searchable website or set of websites with all pending and completed EAs and EISs, including geolocation. EPA’s “NEPA Assist” is a recent example of this type of tool.

## Invest in Streamlining

Chair: Michael Smith; panelists: Al Ferlo, Shannon Stewart, Fred Wagner

While there is much talk and Congressional support for “streamlining” NEPA, there are few analyses with details regarding what investments may be required that would be more than a one-dimensional “do it faster.” Discussion throughout the Cohen NEPA Summit cited the inefficiencies and delays that are basically caused by a lack of funding. Inadequate funding currently causes some delays when there is too few staff and when the staff involved does not have sufficient training to manage the NEPA process efficiently. Some work on this subject has been done by separate agencies, such as the FHWA for their “Every Day Counts” initiative. Further, an investment in monitoring and adaptive management may reduce the amount of time required to complete an analysis. It could also bring maturity to environmental impact analysis. There is almost always pressure to get a document done at the cheapest price point. This really is often a stranded investment because all the predictions about long-range impacts are fraught with potential errors and all the mitigation that is promised is not delivered, and the mitigation that is delivered is not monitored to ensure its effectiveness.

## Develop a 21st Century Environmental Impact Assessment Structure

Chair: Ray Clark; panelists Rick Cornelius, Ron Deverman, Matthew Lindstrom

One of the most challenging ideas discussed at the Cohen NEPA Summit was a total reimagining of NEPA as a fully iterative process for the 21st century. However, the summit workgroups largely focused on applying adaptive management as a technique to expedite the process, acting in the face of uncertainty, incorporating monitoring, and ensuring mitigation is executed. This one change could fundamentally alter the existing practices so that the methods improve and data are not lost. Because NEPA practice is the product of 40 years of case law, it may be difficult to change the practice without rethinking the NEPA regulations. But, in order to reinvigorate NEPA for the 21st century, some participants believed that certain steps must be taken now without contradicting existing case law. Provocative ideas from the summit that this panel will discuss include: expand the use of adaptive management to act in the face of uncertainty; introduce sanctions and required remedies for mitigation failure; engage the public in monitoring; conduct more aggressive public and analytical scoping; provide rearranged and more readable web-based documents; and combine the Final EIS and Record of Decision.

Thursday April 14

Hot Topic Lunch

Report by panel chairs and discuss next steps, moderated by David Mattern