



## **Summary Reports and Comments**

NAEP 2016 Annual Conference  
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### **Introduction**

On December 2-3, 2014, the Environmental Law Institute, Nicholas Institute for Environmental Policy Solutions at Duke University, and the Perkins Coie law firm sponsored a “Summit” in Washington, D.C. to consider current issues associated with the National Environmental Policy Act (NEPA). The conference was in honor of the late Bill Cohen, a leading NEPA legal practitioner with a distinguished career at the Department of Justice and in private practice. The Summit included about 50 leading experts on NEPA, representing a cross-section of attorneys, governmental policy officials, academic experts, and scientists from a wide range of stakeholder parties. The Cohen Summit resulted in the publication of a report issued in January 2015 to the Council on Environmental Quality (CEQ) summarizing the key findings and recommendations of the program participants.

The Cohen Summit Report (attached) served as the basis for detailed discussions at the 2016 annual conference of the National Association of Environmental Professionals (NAEP) on April 11-14, in Chicago. Specifically, four panels convened on April 13 to discuss the major themes from the Cohen Summit:

- Organize NEPA’s Role in Government and Recommit Senior Leadership
- Maximize Flexibility of the CEQ Regulations
- Invest in Streamlining
- Developing a 21st Century Impact Assessment Structure

Each panel included experts in the field and included discussion with the knowledgeable audience at the NAEP Conference. A summary panel to discuss the four topics convened on April 14.

This report summarizes the discussion and recommendation developed at the NAEP Conference, further refining the main themes of the Cohen Summit. In addition, the report includes written comments submitted by NAEP Conference participants. This report will be submitted to CEQ and serve as part of the record of the Cohen Summit for further consideration, discussion, and action.



## The Cohen Summit Panels—Panel Reports

### **Organize NEPA's Role in Government and Recommit Senior Leadership**

**Panel Moderator and Panelists:** Dinah Bear, Attorney (former General Counsel, Council on Environmental Quality), Panelists: Ray Clark, former Associate Director, CEQ, Deputy Assistant Secretary, Department of the Army; Michael Dombeck, former Acting Director, BLM, former Chief, U.S. Forest Service; Lynn Scarlett, former Assistant Secretary, Policy, Budget and Administration, and former Deputy Secretary, Department of the Interior.

**Panel Topic:** To discuss the NAEP finding that a serious concern among NEPA practitioners is a real and/or perceived disconnect between the NEPA process and decisionmakers, and to review recommendations coming from the Cohen Summit on how to address that gap and identify other possible means of involving senior leadership in the NEPA process.

**Cohen Summit Findings:** The starting point for the panel was discussion of the NAEP survey that concluded that without the commitment by senior agency leadership to embrace the letter and spirit of NEPA, it is difficult for an agency to commit to the goals of Section 101. Further, adequate funding and an environmental staff that can effectively communicate with decisionmakers were identified as key challenges. Summit participants considered education and training at all levels to be essential and also identified a possible role for an agency Chief Sustainability Officer who would report to the head of the agency and would help ensure that NEPA analyses are integrated with agency decision-making processes at the highest levels.

**Panel Discussion:** The panel discussion began with all panelists reflecting on their experiences with NEPA in the course of their roles as agency decisionmakers.

- Two of the panelists noted success in the context of the NEPA process with large landscape, multi-level, multi-agency processes. In some instances, these processes were the catalyst for development of a collaboratively developed alternative.
- The other panelist agreed that the programmatic level was a scale at which there was more likely to be a significant degree of success, but observed that too often NEPA analyses were overlooked or diminished at that scale and pushed down to the project level.
- Panelists gave specific examples of where NEPA staff interacted with agency decisionmakers and made a difference in the process. Also noted, however, was the fact that no senior decisionmaker can become involved in the NEPA process for every proposed action and that education and clear organizational lines were important.



- Agency capacity (agency staff, funding) to rigorously evaluate proposals via the NEPA process was noted by panelists as a very significant problem that is getting worse. It is impossible to have a meaningful process if the agency lacks capacity to participate in it.
- The panelists discussed the proposal for a Chief Sustainability Officer that came out of the Cohen Summit. There was not a consensus among the panelists on this point. Panelists varied as to whether they believed the position would be seen as extraneous and actually isolated from the mainstream agency activities, whether it would raise visibility for these issues, or would actually be helpful.
- Audience attendees discussed several issues with panelists focusing, in particular, on issues involving capacity and training.
- The role of contractors in the NEPA process was also raised. A suggestion made by an audience attendee that CEQ publish guidance on various procurement contract types, such as design-bid-build or design-build contracts for those circumstances where such contracts are appropriate was favorably received.

### **Maximize Flexibility of the CEQ Regulations**

**Panel Moderator and Panelists:** Don Baur, Perkins Coie LLP; Panelists: Ted Boling, Council on Environmental Quality; Ron Lamb, U.S. Marine Corps; Mark Squillace, University of Colorado School of Law

**Panel Topic:** To consider whether the CEQ NEPA regulations at 40 C.F.R. Parts 1500-1508 are adequate for environmental impact review today and what, if any, action should CEQ take to provide new rules or guidance.

**Cohen Summit Findings:** The starting point for the panel was discussion of the Cohen Summit consideration of the need to revise the regulations. The Summit did not conclude that the regulations had to be changed, but that at the least new guidelines are needed, especially to address adaptive management, better use of science and technology, expanded use of communication platforms, new shared databases, and greater use of expertise from outside the government.

**Panel Discussion:** The panel discussion, informed by comments and questions from the audience, resulted in the following conclusions:

- There was unanimous agreement that the regulations have served their purpose very well and serve as a strong example of agency regulatory process at its best.



- While there was not consensus as to whether the regulations should be revised, some thought new guidance would be sufficient; others thought new regulations were needed to make reasonable mitigation measures mandatory, and to lay out a process for simplifying NEPA compliance in exchange for committing to a robust adaptive management program.
- The CEQ's NEPA Forty Most Asked Questions guidance has held up well since issued in 1981, but a more contemporary guidance document is needed because some of the questions are no longer relevant, and others have more current and effective answers that could be provided.
- Abuse of the categorical exclusion (CE) process is too common (e.g., anecdotes of 100+ page CE documents); better guidance is needed on when it is proper to use CEs, informed by examples.
- Analytical NEPA documents are too long and complex, with extraneous information, and this problem is often the result of the desire to minimize litigation risk.
- Litigation risk is generally drawn from several areas: purpose and need; alternatives; and cumulative and indirect impacts. CEQ guidance would be useful on what constitutes adequate NEPA compliance for these and other litigation "hot topics."
- As suggested above, adaptive management can reduce the complexity of EISs and EAs while also lessening litigation risk. Guidance and perhaps new rules are strongly needed to describe how adaptive management can become an effective NEPA tool, with a particular focus on using it early in the process and being very clear how monitoring, assessment, and adaptation will be carried out throughout the life of the proposed action.
- Guidance also is needed on mitigation, because agencies often rely on mitigation to reduce the scope of impacts so that an EA rather than an EIS can be used. The guidance should explain what constitutes legitimate mitigation that truly offsets project impacts and how it can be measured to reduce impacts, using multiple examples.
- Applicants and consultants are given too much leeway in defining the scope and content of NEPA documents, and guidance is needed to define the appropriate level of activity and how agencies can manage their involvement.



## **Invest in Streamlining**

**Panel Moderator and Panelists:** Michael D. Smith, Principal, ENERCON; Panelists: Al Ferlo, Partner, Perkins Coie; Shannon Stewart, Principal Technical Associate, Environmental Science Associates (ESA); Fred Wagner, Principal, Beveridge & Diamond

**Panel Topic:** This panel addressed the fact that 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 in Washington, D.C. in December 2014 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. The panel focused on presentation and discussion of examples of how the agencies have developed guidance that has substantially improved their NEPA process.

**Panel Discussion:** The panelists made the following comments:

### Al Ferlo – Perkins Coie

- Most streamlining initiatives are concocted by people who have not actually prepared a NEPA document before.
- Just putting up a schedule doesn’t work.
- People forget: we have 40 years of practice doing this.
- You don’t need new streamlining provisions to do a lot of this.
- MAP-21, FAST Act, etc. are not the total solution—we’re creating new bureaucracies to create efficiency. It’s a D.C. solution—a new one to fix the broken one.
- It’s been done for big, high-profile projects. 150 people locked in a building in Rosslyn, VA for the Roadless Rule EIS—less than one year completion time.



- The impact of litigation for adding time to the NEPA process should not be underestimated.
- 40 years of case law—how much does it really take now to 100% bulletproof a NEPA document?

#### Shannon Stewart – ESA

- Training is key to streamlining and decreasing delays in the NEPA process.
- Public involvement processes should be individualized for each project.
- Eliminating issues from analysis is not done aggressively enough in most cases, and is a very effective technique for streamlining.
- Don't reinvent the mitigation wheel each time (adds time).
- Agencies need to get cumulative impacts analysis under control—focus on the incremental contribution of your project, not on the rest of the world.
- More streamlined approaches will likely need a more sophisticated NEPA staff than currently exists in many agencies.

#### Fred Wagner – Beveridge & Diamond

- Streamlining comes up over and over again because there's a need for it.
- We can respond without throwing out the core principles inherent in the NEPA Statute and the CEQ Implementing Regulations.
- FHWA's Everyday Counts Initiative a success—reduce completion time by 50%; heavily frontload the whole process; concurrent permitting; Programmatic Agreements (Indiana bat).
- Don't blame the lawyers (involve them at the beginning, not the end).
- Experience to date with the Federal Dashboard process illustrates that schedules are important.
- Combining the FEIS and the ROD has been shown to be an effective streamlining mechanism for DOT.
- Statute of Limitations (not a huge deal, but drives NGOs to frontload comments).



- Who does the NEPA at federal agencies; Government-wide NEPA SWAT team.
- Repeal Section 309 of CAA—“the process is essentially completely useless.”
- Biggest legal complaint trend—modeling challenges.
- In the end, this should not be about “faster, quicker” but “better.”

#### Panel Session Audience Comments

- Most of the examples given by the panel are in the context of land management agencies and may not work for other agencies; please provide advice on how to streamline for other agencies and project types.
- We need an official definition of streamlining in the NEPA context.
- Agency NEPA regulations need to be updated more frequently to integrate streamlining and other process improvements on a more timely basis.
- Agencies need to let planning “get out ahead” of the NEPA process at times to prevent the frequent late-in-the-game tinkering of alternatives that end up causing NEPA process delays.
- EPA’s Section 309 Review Process is useful and commenters are usually highly professional and often offer comments that force reconsideration of important issues in NEPA analyses.
- Streamlining needs to occur both with federal agencies and consultants.
- Senior leadership needs to support quality reviews of analyses, and resources and staff need to be programmed and supported for reviews.
- Scopes of work for consultants need to include/prioritize streamlining right from the start.
- More case studies of successful streamlining examples are needed, and need to be disseminated to practitioners.



## **Developing a 21st Century Impact Assessment Structure**

**Panel Moderator and Panelists** (in their role relevant to the panel): Ray Clark, President of RiverCrossing Strategies (former Associate Director, CEQ); Panelists: Rick Cornelius, founder of The Environmental Company and former Office of the Navy General Counsel; Ron Deverman, Associate Vice-President and Principal Environmental Planning Manager for HNTB and past President of National Association of Environmental Professionals (NAEP); David Mattern, Senior Manager, Parametrix.

**Panel Topic:** This panel addressed the formidable task of reimagining EIA in the face of existing case law, Congressional uncertainty, and reluctant NEPA advocates and practitioners.

**Cohen Summit Findings:** Although this idea was put forth as a total reimagining of NEPA as a fully iterative process for the 21st century, the 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. 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 that were discussed and debated 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.

**Panel Discussion:** In preparation for the conference the panel jointly developed a proposition: The Council on Environmental Quality Regulations, drafted in 1978, were a good example of flexible regulations, and honored the National Environmental Policy Act in spirit and form. Some of the most important provisions of the CEQ regulations have seen major advances in the understanding of ecosystems, the ability to gather and manage environmental data, and there has been a complete revolution in the way Americans receive information and the way they communicate between and among other Americans and institutions. An entire industry, unimagined in the 1970s, has been built on how NEPA is implemented. All these changes require a review of the CEQ regulations to determine whether they should be modified to meet the needs of the human environment as we understand it at the beginning of the 21st century. This panel makes the case that a new Administration should undertake such a review as a priority of the new Chair of CEQ.





The panelists made the following comments:

Rick Cornelius – The Environmental Company

NEPA Impact Analysis and Decision Making

- Scientists and NEPA professionals who write EISs do have the ability to provide decisionmakers and the public with enough understanding of the potential environmental impacts of a proposed action to balance the requirements of the mission with environmental protection.
- If a proposed action requires an EIS, the decisionmaker should be involved in the entire process of developing the document and if the document is an EA or Categorical Exclusion, the decisionmaker may not be involved and may in fact not have the appropriate information to decide whether that NEPA documentation is adequate.
- A survey of NEPA practitioners found that by far the most important element in a good NEPA program is senior level involvement.
- Moving toward an “Adaptive Management” approach is neither a cure-all nor can it be done under current CEQ regulations and case law. Agencies would resist because of cost, uncertainty, and the perceived continuous cycle of NEPA analysis and documentation.
- It will be very difficult to get Federal agencies General Counsels to modify the way they recommend compliance with NEPA, unless and until CEQ modifies the NEPA Regulations and clearly detail to agency Counsel and the Department of Justice a new avenue to accomplishing the NEPA mission.
- The regulations need to consider the current state of technology and science and social media, which allows the public and the decisionmaker the ability to meet the goals set forth in Section 101.

Ron Deverman – HNTB and NAEP

Public Involvement – Community Engagement

- Public involvement in the 21st century is first of all more about communication, collaboration, and dialogue with residents and stakeholders. While technology advances provide us with better tools, a 21st Century EIA process is more about learning how to interact with people on a personal level.



- Real collaboration with resource and regulatory agency staff, public officials, stakeholders, and interest groups will result in greater local knowledge and understanding, and better, more well-thought-out project solutions.
- In the 21st century we are really practicing “community engagement,” much better words than public involvement, which is tied closer to information exchange.
- It is important to build “bridges of interest” between the sciences and the humanities, mathematics and the arts.
- To do such will require training or retraining federal employees and their contractors.

#### David Mattern – Parametrix

##### The Business of NEPA

- Today there is what can only be described as a substantial industry that makes a business in some aspect of complying with NEPA.
- In recent years as budgets have been tightened, more and more NEPA work has been turned over to the private sector. Agencies don’t track those costs, and there is no government-wide mechanism to do so.
- When contractors work on environmental impact assessment they are providing professional services and most often work on a time and materials not-to-exceed contract. This means for the contractor incentive from a business perspective is for a generous budget on lots of work, preferably without competing for add-ons.
- Exacerbating this “more is of course better” mindset are the agencies directing or participating in environmental impact assessments who are largely divorced from the consequences of their action or inaction.
- Building on discussions at the Cohen Summit, alternative business models should be developed that give financial incentives for results actually achieved by environmental impact assessments:



- Protecting or improving the environment (preventing bad or creating good environmental effects);
- Consensus (acceptance by stakeholders, both public and private); and
- Efficiency (both in time and effort).
- After winning a project, the contractor would be periodically evaluated at phased milestones using jointly agreed to criteria and then paid according to what they have achieved.
- Some aspects of NEPA practice such as general support, strategic advice, and on-call rapid response are all examples of types of services where the simple labor-based model works best.
- We should initiate a collaborative effort to develop and refine these ideas and other alternative business models and put them into action through a working group formed by NAEP, the Environmental Law Institute, and the American Council of Engineering Companies (ACEC). The results should be reported to CEQ.

During the audience question and answers period, none of the comments, verbal or written, addressed alternative business models. As a general subject contracting seemed to hit a nerve, with both support for and frustration with current practice expressed by both agency and consultant staff. Some think current practice, while perhaps cumbersome, is effective and gives good accountability. The frustrations were often with the effort required, inability to efficiently control the work, and barriers to entry.

One NAEP member suggested the Federal government could develop best practices in agency contracting, including best practices for contracts below the simplified acquisition threshold. The commentator noted that something like this is useful if it is included in CEQ guidance or OMB guidance and a sampling is contracted of contracting officers from the federal agencies.



## **The Cohen Summit Panels—Audience Comments on Panel Reports**

*Note: Words in square brackets mean the handwriting was illegible, so an assumption was made; comments are reported verbatim.*

### **Session:**

#### **Organize NEPA's Role in Government and Recommit Senior Leadership**

Agree training is critical for environmental planners. Another best practice is training within agencies on Statements of Work (SOWs), especially for NEPA and natural resources work.

Training:

- NEPA and environmental regulation training should be compulsory for all federal employees involved in advance planning, environmental analysis, and land or resource management.
- NAEP membership should be encouraged as a means of staying current on the state-of-the-practice.

How do you view the recent trend in Congress, at least as it relates to transportation, to delegating the role of the federal government in NEPA, ESA, NHPA, etc. to states?

Excellent session—great job!

The issue of capacity was raised and briefly explored but, other than expanding training in NEPA, no real solutions were proposed. The fact remains that if you don't have enough resources to fulfill your responsibilities, something doesn't get done or gets done poorly. In the meantime, the current Administration continues to issue more areas that require attention in any NEPA analysis, e.g., GHG. Something has to give. Suggestions for thought: to improve focus of NEPA, CEQ issues certain generic Categorical Exclusions, e.g., standard personnel actions, certain real property transactions (ROW use, leasing) with the use of a Record of Environmental Consideration (see Army regs.).

It will be helpful to agencies if CEQ publishes guidance on various contract types, such as a design-bid-build or design-build contracts, etc.

There was an overwhelming agreement that NEPA training is needed. I would like to see NAEP offer a basic awareness NEPA training for newly appointed NEPA personnel as well as something that I could bring my environmental coworkers and management to.

DOI established 22 Landscape Conservation Cooperatives, which are intended to be self-directing. They have all established steering committees and are addressing landscape-level environmental issues. Why are NEPA professionals not involved in any of these organizations?



**Session:**  
**Maximize Flexibility of the CEQ Regulations**

Adaptive management, while good in theory, poses challenges in application. At a regulatory agency such as the one I work, the agency has strict limitations on the actions they can take after an action has been taken. Guidance or regulations needs to be cognizant of those limitations and provide sufficient flexibility. As an example, FDA must approve a food additive if it has been proven safe for the intended use. In some cases it specifically states that safety is tied solely to human health. The agency may only revoke an authorization due to human health concerns, or in response to “abandonment” (no longer made/sold request). Environmental concerns can be addressed prior to authorization but not after.

Do you believe that the NEPA statute empowers regulatory agencies to impose mitigation measures on permittees outside of the agency(ies)’s inherent (organic) regulatory mission? Do you feel that the CEQ Regulations need to be amended to address this question?

On issue at public participation, I see a wide variety of approaches and level of involvement/participation within individual agencies. There seems to be some differences related to the types of actions, whether the public involvement is likely to address contentious issues, and the degree to which the agency action proponent (for agency-initiated actions) has already informally decided on the proposed action prior to completion of the NEPA process. On adaptive management, can this be used effectively for EAs and CEs within the current regulations? Is guidance or even revision needed? Also, do current regulations allow for uncertainty?

Public participation is a bigger issue for EAs than EISs. By the time a NEPA document becomes an EIS, agencies generally, not FERC, do a good job of reaching out to the public. Navy/Marine Corps do different public participation in the 9th Circuit (West Court) and 4th Circuit (East Court).

Agencies are required to review their NEPA Regulations every 7 years. Why shouldn't CEQ be held to the same standard? Guidance have a different legal meaning than regulation. We need regulations on subjects like global warming/climate change!

#1: With decreasing available funds for public infrastructure more sponsors are exploring innovative procurement methods that were not imagined when regs. were developed. How can regs. adapt to the needs of private investors in PS arrangements or design-build contractors to clear a project with limited design information but also provide certainty of its feasibility for clearance?

#2: Is there room for adopting private sector planning analysis in a [mainly] public (federal) project when a federal nexus was not anticipated?



In regards to user-friendly documents, it seems like we should look to Europe for some inspiration. I forever will remember sitting with a Norwegian representative of Statoil and his sharing of their environmental document for a project—very streamlined. In the U.S. it appears that we equate massive documents with credibility. If we move to streamline our process and documentation, we'll need to find a way to gain the public's trust and maintain credibility. There needs to be better guidance or regulations for categorical exclusions. They make up the bulk of NEPA decision making yet there is nothing to even state if documentation is needed, much less the form it should take. Just within my agency there is tremendous disparity ranging from detailed extensive decisions to no decision making and at times even question as to whether a review is even performed. CEQ input would go a long way to resolving these types of issues. It would also be helpful to know when the documentation needs to be made public.

Categorical Exclusions, if thoughtfully crafted and balanced, are a form of resource conservation on the part of agencies. The increase in the use of CEs is almost certainly, at least in part, a response to the increasing number of areas of NEPA analysis and the decreasing resources or capacity that agencies have to carry them out. CEs are valuable tools and should not be discounted out of hand. They're a form of "streamlining."

How is GIS being utilized for public outreach? GIS products are generally accepted by younger generations and can easily provide visual summary.

Educate the public on how to effectively comment on a NEPA document. Letter writing campaigns from NGOs do not help with decision-making.

CEQ's "40 Most Asked Questions" should be reviewed and those that are no longer applicable or used should be deleted.

CEQ regs. should expand on the use of EAs and additional guidance should be provided. I work for a regulatory agency in which categorical exclusions are widely used and our NEPA process is very different from that of larger agencies such as DOE, or DOI, or Transportation. Flexibility in the CEQ regs. is very important because every agency is different and handles NEPA evaluation in a way that works for their specific action.

It's interesting that the first measure of a NEPA process is "time" not "effectiveness." WRT public involvement: It would be useful to try to shift public and agency focus from public "comment" toward public "engagement."

My experience is that most federal agencies are not aware of most of the CEQ Regulations and often dismiss them. They view as "guidance" that may or may not be followed versus "laws" that must be followed.



I would like to see more guidance on Categorical Exclusions and EA/FONSI documents. I have been learning that organizations' Categorical Exclusions range from a checklist to a 5-10 page document more resembling an EA. Which way is correct? Guidance on preparation of Categorical Exclusions would be appreciated.

**Session:  
Invest in Streamlining**

Better training, yes; more streamlining, no. We have had almost 50 years of 'streamlining.' Training those that practice or implement NEPA; train those that 'plan' projects to encourage early involvement.

Streamlining to me is cutting time in duplicate comment periods outside NEPA. Getting all federal agencies on the same process. For example, why can't NEPA comment periods count for the 45-day objection period that occurs on FS permits or the comment period the USACOE has to issue or permit. Public comments have been received in NEPA; why duplicate the process. Getting all agencies on the same page at the beginning or following the same process is streamlining. All fed. agencies need the same NEPA process.

There have been several references to writing a report based on this summit; when writing, please keep non-land management agencies in mind while drafting. Many of the recommendations presented and discussed work for BLM, Forest Service, etc. But they aren't as applicable for agencies which don't manage thousands of acres and have large environmental staffs. We have a lot of small facilities and diverse operations (not on our own land). Just please keep others in mind.

HUD, FDA, and possibly other agencies have in their implementing regulations put the responsibility for preparing EAs on industry. While this is not feasible for every agency, there is a lesson to be learned that agencies can in their regulations make it possible to adopt documents from other sources including those prepared under SEPA's.

I've seen a lot of ideas and techniques to streamline, but I've never seen a definition of streamlining in the NEPA context.

I can honestly say I don't know what streamlining NEPA even means. We need this to be defined.

Recommendation for Report: Consider including a recommendation regarding agency implementing procedures. These procedures should be written in a way to maximize flexibility and are updated regularly. They need to be living documents which evolve with the agency. In



my opinion there are many procedures which are [static] and “stuck” requiring old practices and an old way of thinking.

Great panel! Something touched on but not discussed in much detail is the need to let planning get out enough ahead of an EA or EIS so as to minimize the amount of subsequent “alternatives tinkering”—i.e., the continual refinement/changes made way past the point they should be. Thanks!

I could not disagree more with Fred Wagner’s suggestion that we repeal §309 of the Clean Air Act. In my experience, EPA’s NEPA staff are very professional and frequently offer thoughtful comments that force consideration or reconsideration of important issues. To streamline:

- Within both land agencies and consultants
- Build a culture where senior-level quality reviews are mandatory
- Create accessible checklists for quality reviews—share with document preparers
- Devote enough resources (time and money) to quality reviews
- Internally resolve problems prior to legal review and prior to public review

Benefits: (1) Fewer adverse draft document comments, and (2) less litigation risk. It seems that some of the Cohen Summit NEPA courses are a little difficult to digest in an applicable way when being relatively new to being a NEPA practitioner. I was impressed by all of the presenters, though. They clearly know the content that they’re discussing. Fred Wagner is an engaging speaker!

Some of the discussion seemed a little more opinion-based rather than information-sharing-based. Interesting! But, if possible, I would have enjoyed more of a “to do” type presented. I’d like to second the suggestion of having specific case studies of unique NEPA projects including highlights of the process, public involvement, conclusions, etc.

As Ron Lamb mentioned in HTL conversation, I support the idea of a mentoring program and suggest implementing a buddy system for the next conference that pairs seasoned NEPA individuals with those of us that are more green and looking for these learning opportunities. IMHO, the SOW must be written with the idea of streamlining in place. Organization of the consultant’s time ensuring adequate IDT attendance and management. How the contract is written, I think, does play into streamlining and participation in the IDT process.

**Session:**  
**Developing a 21st Century Impact Assessment Structure**

To summarize David’s concerns—I think the suggestion is to develop best practices in agency contracting, including best practices for those contracts below the simplified acquisition





threshold. Generally, the options now are Arch. + Eng. Services – MAC-IDIQ, or FFP (could be LPTA). [ic-cost-Prog. Roster] (especially one [main] contract for NEPA/natural resources). Some agencies do inter-agency agreement with national labs and other agencies. Government agencies need to appreciate NEPA as a process with thoughtful analysis and not treat it like commodity services.

The issue with applicants to prepare an EIS is that they won't have the ability to do a proper cumulative environmental analysis provided they won't get information from their competitors. The question about the contracting process being broken really depends on the agency doing the contracting. The same is true with a contractor doing inherently government work. Some agencies do very well and others do not. DOD, DOE, DOI good; others not, Dept. of Labor. Yates made a good point—we just kept talking....

### **Summary: Luncheon Recap**

Why not develop idea of interagency interdisciplinary NEPA teams to solve issues of resource constraints and lack of seasoned NEPA personnel (staff in-house).

I felt rather beat up by the conference in general. I have been a government employee for 25 years. There seem to be an undercurrent of the government is doing NEPA wrong! There was an astounding lack of understanding of how the average NEPA document is developed and make its way through the government system. My assumption was this was an opportunity to learn from each other not tear down each other. I hope that the tone will become inclusive not exclusive. NAEP needs to take a leadership role in creating a website where successful notices, environmental documents, and public outreach processes can be posted in a centralized location that practitioners can use to see examples. Particular emphasis should be placed on environmental documents that have successfully withstood legal challenges.

Capacity issue: Perhaps one potential approach is to work with CEQ to further define or redefine “significant” and attempt to eliminate wholesale a lot of actions that would otherwise need NEPA analysis. This would at least allow agencies to focus their limited resources upon the things that really count. A difficult proposition—yes. But at least worth considering.

As a recent graduate focusing on NEPA, it has been overly discouraging to find that most of these issues have been present for 40 years and no significant progress made. There is a need for change in policy, specifically regulation on language and cooperation/communication between agencies.