HOUSE COMMITTEE ON NATURAL RESOURCES

HEARING ON MODERNIZING NEPA FOR THE 21ST CENTURY

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Room 1324 Longworth House Office Building

INTRODUCTORY REMARKS

Thank you for the invitation to appear before the House Natural Resources Committee to testify on the issue of how to modernize the National Environmental Policy Act (NEPA) for the 21st century. I appreciate the opportunity to testify, and hope that my remarks will assist the Committee.

By way of background, I was asked to serve as Deputy General Counsel for CEQ with President Reagan's administration in 1981. The Council on Environmental Quality (CEQ) is the agency established by Congress with responsibility for overseeing the National Environmental Policy Act. In 1983, I was appointed as General Counsel, which was then and remains a non-career position. In that role, I had responsibility for oversight of implementation of NEPA. I served in that position through both terms of President Reagan's administration and that of President George H. W. Bush. I resigned from CEQ in October, 1993, and resumed responsibilities as General Counsel in January, 1995. I was General Counsel at CEQ during the Clinton and the George W. Bush administrations until the end of calendar year 2007, when I retired from federal service. My husband and I moved to Tucson, Arizona last year and I continue to be active in the field of environmental law generally and NEPA specifically.

THE NATIONAL ENVIRONMENTAL POLICY ACT

As the title suggests, the National Environmental Policy Act, this country's environmental magna carta, sets forth this country's policies regarding the environment. In discussing NEPA, it is good to begin with a reminder of those policies:

"*CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY*

Sec. 101 [42 USC § 4331].
(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned

public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --
1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources." 42 U.S.C. § 4331.

Congress sought to ensure that federal agencies implemented these policies by mandating a process by which executive branch agencies would analyze the environmental and related social and economic impacts of a proposed action and reasonable alternatives to the proposed action to meet a particular purpose and need identified by an agency. It also established CEQ to oversee implementation of the Act.

What is often referred to as "the NEPA process", or more globally, the environmental assessment impact process, reflects a common sense approach to decision making. Basically, federal agencies identify a need to take action, develop a proposed action and identify reasonable alternatives and analyze the effects of the various alternatives. As stated in CEQ's regulation at 40 C.F.R. §1502.14, the "heart" of an EIS is the alternatives section; without alternatives, the analysis simply documents a decision already made instead of actually informing it. As then Governor Fruedenthal of Wyoming put it once, "The National Environmental Policy Act is not about what we do or do not like. Rather, it is about displaying a true range of alternatives to address the issues raised during the planning process." Letter from Governor David Freudenthal to Rawlins Field Office, Bureau of Land Management, March 15, 2005.

In my view, the most exciting development in NEPA has been the formulation of truly reasonable alternatives developed by citizens, often coalitions composed of people representing diverse constituencies, who present an alternative to an agency and see it analyzed in an EIS and on occasion, ultimately chosen in whole or part as the agency's

decision. That's seems to me to be a true living example of democracy in action. In the context of federal agency decision making, NEPA is the law that provides the broadest, most systematic way for citizens to know what their government is going to do before it happens and to be involved in the analysis leading up to the government's decision. It has had an enormous impact in this country and around the world.

Under CEQ's regulations implementing the procedural provisions of NEPA, each department and agency identifies the anticipated level of environmental impact, based on its experience, that typically result from undertaking the type of actions it normally undertakes to fulfill its mission. Actions that have significant impact on the environment require preparation of an environmental impact statement (EIS). In 2012, the last year for which CEQ has posted the number of EISs prepared, there were 397 draft and final EISs prepared – spread out over the 85 some federal agencies. By far, the preponderance of federal actions come under either categorical exclusions (CEs), which require no written documentation under CEQ's regulations. The next most common type of proposed federal action triggers the need to prepare an environmental assessment (EA), which may conclude in either a Finding of No Significant Impact or a decision to prepare an EIS. Public and intergovernmental participation requirements are commensurate with the level of impacts. There is a considerable amount of flexibility under the CEQ regulations as to how agencies can implement the NEPA process. There are also time tested provisions for emergency situations related to actions that would normally require an EIS and provisions for dispute resolution.

At its heart, the NEPA process is grounded in certain basic beliefs about the relationship between citizens and their government. Those core beliefs include an assumption that information matters, that citizens should actively participate in their government, that the NEPA process should be implemented with both common sense and imagination, and that there is much about the world that we do not yet understand. NEPA also rests on a belief that the social and economic welfare of human beings is intimately interconnected with their environment.

STATE AND LOCAL GOVERNMENTS' ROLE IN THE NEPA PROCESS

In NEPA and the CEQ regulations implementing it, states and local governments are afforded special roles in the NEPA process. Under Section 102(2)(D) of NEPA, an EIS for a federal action funded through a grant program to states may be prepared by a state agency if (i) the agency has statewide jurisdiction and has the responsibility for such action; (ii) the responsible federal official furnishes guidance and participates in such preparation; (iii) the responsible federal official independently evaluates such statement prior to its approval and adoption, and (iv), the responsible federal official provides early notification to, and solicits the views of, any other state or any federal land management entity of any action or any alternative thereto which may have a significant impact related to the action and prepares a written assessment of any disagreements among such agencies for inclusion into the EIS. Additionally, there are several grant programs which delegate responsibility for NEPA to the grant recipient; for example, the

Department of Housing and Urban Development's Community Development Block Grant Program and the Urban Development Action Grant program.

Under CEQ's regulations, a state or local government agency can be either a joint lead agencies, typically used when the state has a so-called "little NEPA" law to avoid doing the process twice, or assert jurisdiction by law or special expertise to become a cooperating agency. If there is state law or local ordinance in addition but not in conflict with NEPA, federal agencies are instructed to cooperate in fulfilling those requirements so that one document will comply with applicable laws at all levels of government. 40 C.F.R. §1506.2.

During the 1990's, CEQ received many complaints from county commissioners in the West, especially from Wyoming and New Mexico, about being denied cooperating agency status. In looking into those complaints, we determined that these grievances had legitimacy. CEQ then guidance documents on cooperating agencies, including quite specific guidance regarding county and state governments, and instituted an annual reporting requirement for federal agencies regarding cooperating agencies. At present, CEQ is working on a series of memoranda that compare and contrast State and local environmental review requirements with federal requirements, as well as providing contacts for each jurisdiction.

Finally, in the past few years, there have been Congressional moves to delegate NEPA compliance in whole or part to states. This has been particularly been true for federal highway activity, which long operated under Section 102(2)(D) of NEPA explained above for preparation of EISs. Legislation now allows states to assume responsibility for determining which activities are categorically excluded; for example, earlier this year, the Federal Highway Administration published the 3rd renewal of a Memorandum of Understanding with the state of Utah in which the State assumes responsibility for determining whether certain highway projects can be categorically excluded from written NEPA compliance as well as assuming responsibility for thirty environmental laws for those actions (while excluding government to government consultation with tribes).

Additionally, the recently passed so-called "FAST Act" allows up to five states to substitute state requirements for environmental review for federal review requirements where state requirements are "at least as stringent" as the federal requirements proposed to be replaced. 30 U.S.C. § 330(d)(1)(A). CEQ recently published, for public review and comment, proposed criteria for determining which states have requirements that qualify under this Act.

CAUSES OF DELAY

There is a perception that compliance with NEPA causes significant delays in approval of large numbers of proposed actions. Sometimes that is true and sometimes it is not.

When NEPA Is the Reason

It is important to acknowledge that in the relatively few instances when proposed actions trigger the need to prepare an EIS, the potential consequences are extremely significant and ones that the affected community likely may live with for decades if not centuries, depending on the nature of the action. Time taken for the purpose of doing an excellent job of analysis and public involvement is time well spent. It is also important to understand that citizens need some real time to review document and write comments – more time than "streamlined" provisions provide. For example, during my tenure at CEQ, the New Mexico Cattle Growers Association and New Mexico Wool Growers Association both advocated for mandatory 90 day comment periods on all environmental assessments. That's not the current rule, but they emphatically reminded us that for many in rural America, 30 days is simply not a sufficient comment period.

It is true, though, that the NEPA process is delayed at times, whether for preparation of EISs, EAs or even processing categorical exclusions – for reasons that have nothing to do with the protection of the environment, our communities or public lands. In my experience, there are two related reasons for that, both dealing with issues of capacity within agencies: lack of staff with responsibility for NEPA implementation and lack of training.

I am not aware of any systematic accounting of staff capacity for NEPA implementation within federal agencies that charts the personnel trend over the past few decades. But my experience is that the trend has been very much in the wrong direction – that is, dramatically down. When I first entered public service in 1981, major departments and agencies typically had or were building a multi-disciplinary staff to implement NEPA and a network of field offices. For example, the Office of Environmental Coordination for the Forest Service "had national responsibility for leadership, NEPA policy and procedures, training and oversight. It also had agency responsibility for coordination and liaison with other agencies. In 1989 we decided to greatly expand our national training effort to ensure that all of our people at the field level and all of the knowledge they needed to make environmentally sound and defensible decisions . . . . [the staff] did an outstanding job of developing a national program that involved training a cadre of trainers from all the Regions. These people then went back to their Regions and developed their Regional Cadre and passed the training to all of the National Forests in their Regions." Personal communication from David Ketcham, first Director of the Office of Environmental Coordination, to Dinah Bear, July 14, 2017.

Since that time, agency capacity in all of these aspects has been severely diminished. In some cases, offices have been disbanded; in others, additional responsibilities have been assigned to the point that the capacity for NEPA work is severely diluted. In one of the worst situations I've seen, an agency decided not to fill NEPA positions on the theory that "everyone" would do NEPA. The Task Force on Improving NEPA established by this Committee in 2005 identified this as an issue and the situation seems to have gotten worse since then. Recently, at the University of

Arizona, Dr. Kirk Emerson, in the School of Government and Public Policy has been working with public land agencies and "we have learned through some of our public land agency interviews, most of the time costs for conducting NEPA right now are due to limited staff. NEPA projects wait in line, until staff are available to do the work." Personal communication from Dr. Kirk Emerson to Dinah Bear, November 19, 2017.

Further, and importantly, the capacity for NEPA training within the agencies has been decimated. Far too many employees learn "on the job" in ways that do not provide a solid foundation for understanding how to do the job. Staff who are not fully trained in implementing NEPA are often end up doing a lot of extra work in an attempt to make sure they are doing the right thing. I recall one gentleman who came to a long overdue NEPA training course after being assigned NEPA responsibilities for an entire region six months prior to the workshop. He had no background whatsoever in NEPA when he was assigned the job of advising staff throughout the region on difficult NEPA issues. He had faithfully written down every question that came to him that he couldn't answer and brought them to the workshop for answers. These kinds of situations are big problems in the real world – not a NEPA problem, but a training and management issue.

In the past few years, Congress has passed a number of "streamlining" provisions in transportation authorization bills as well as the FAST Act to expedite the NEPA process for infrastructure projects. A number of those provisions make sense; some, in my view, go too far. Executive Order 13807 also seeks to expedite the review process with a goal of completing environmental review processes within two years and issuing a single Record of Decision for infrastructure projects. Independently over the past decade, CEQ has taken a number of steps to both increase transparency regarding the progress of the environmental review for infrastructure projects and to reduce delays. However, these measures will not succeed if the federal agencies lack skilled staff to implement them.

Delegating NEPA responsibilities to the states or local governments does not automatically solves the capacity problem. Indeed, depending on the state or local government, there may be even less capacity to undertake the process. A 2003 GAO report found that 69% of transportation stakeholders reported that both state departments of transportations and federal environmental agencies lacked sufficient staff to handle their workloads. *Highway Infrastructure: Stakeholders' Views on Time to Conduct Environmental Reviews of Highway Projects", GAO-03-545, p. 5.* It would be good to have this analysis updated.

When NEPA Is Not the Reason

Little systematic research has been done by neutral organizations on the causes of delay in terms of federal decision making. GAO underscored the paucity of information about NEPA implementation in a 2014 report, *Little Information Exists on NEPA Analysis* (GAO-14-369). Such research that does exist relates almost exclusively to federal highway actions. Since at least the mid-1990's, the General Accounting Office/General Accountability Office (GAO), and the Congressional Research Service

(CRS), have prepared a series of reports, remarkably consistent in their findings, regarding the construction of highway projects and the relationship of environmental laws generally and NEPA specifically to decisionmaking timelines. This type of analysis is needed more broadly if agencies and/or legislators are going to be able to formulate successful approaches to reducing delays. In short, the GAO and CRS reports find that a number of federal projects have indeed been delayed or stopped but for reasons that have nothing to do with NEPA, although NEPA usually gets the blame. Reasons include lack of funding, changes in the proposal by applicants, assessment by applicants that the project is no longer desirable for a variety of reasons, opposition from citizens and state and local governments. *See, for example, The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress",* CRS 7-5700, R42479, April 11, 2012.

RECOMMENDATIONS FOR MODERNIZING NEPA IN THE 21ST CENTURY

Increase capacity and cut contracting

As discussed above, in my view, the lack of trained staff within government agencies is a major cause of delay in the NEPA process. Changes in the law or regulations won't make a difference if there is no who knows about those changes and is equipped to implement them. For example, many people concerned about delay in NEPA advocate for expanded use of categorical exclusions. I think we've reached if not surpassed the limit of acceptable CEs and instead the effort should be directed to ensuring that agencies understand how to use them. CEQ requires no paperwork to utilize a categorical exclusion once it is established, although many agencies do require at least some documentation. However, there have been found instances of agencies preparing literally hundreds of pages of documents to justify the use of a categorical exclusion. The point is that just mandating the use of a categorical exclusion doesn't work if there is no staff to implement it or the staff that is there doesn't know how to handle a categorical exclusion. Why does such a thing happen? Lack of training is the primary answer. Further, agencies who don't have the capacity to implement seldom have competent oversight either. And CEQ, which is ideally situated to do both generic, across-the-board and more focused oversight, itself suffers from serious staff shortages. For too many years during its 47 year tenure, CEQ has only had one or possibly two people charged with overseeing about 85 agencies in the executive branch. At other times, it has had a staff of five to seven professionals. At that staff level, CEQ can do some serious oversight work. With only one or two people, only the firestorm of the day can be addressed.

As the result of these capacity problems, when possible, agencies now generally hire consultants to prepare NEPA documentation and often to run the public involvement process. There are many consulting firms that include personnel who are knowledgeable about the NEPA process and do a good job from a technical perspective (there are also some, of course, who are not up to the task). However, whatever a consultant's expertise, using outside personnel inevitably delays the process, whether by virtue of the procurement process or the need for oversight and review from agency staff that may be unavailable or under qualified. In fact, the EIS processes I've seen done in, for example,

two years, have been conducted solely by qualified agency staff with support of agency leadership. Further, routinely contracting out NEPA work dilutes much of the point of the process by often removing agency staff from direct contact with the people most interested, concerned and affected by the proposed action.

Recommendations: Congress should direct agencies, through the appropriations process, to prioritize ensuring that agencies have adequate trained, competent staff to implement the NEPA process. Congress should also continue to authorize shared resources between state and federal agencies, as they have done to expedite both highway funding and certain projects designed to mitigate risk of fire near communities. The executive branch should implement the provisions in FAST-41 authorizing a system to collect fees from infrastructure project sponsors to fund environmental review personnel in agencies with adequate safeguards to ensure the independence of agency staff.

If doubt still exists as to the validity of these concerns, Congress should direct CEQ or the National Academy of Sciences to engage in a comprehensive study of current federal agency NEPA staffing issues, including capacity, training and retention and recruitment of experienced staff. Further, CEQ should ensure that agency decisionmakers understand the basic purposes and requirements of NEPA and encourage them to work with their staff to implement NEPA in a flexible and creative manner. Additionally, I would urge a study be undertaken by CEQ and the Office of Management Budget jointly to compare the costs of undertaking NEPA review through the use of consultants with the cost of maintaining a small core of competent agency staff. The latter would be, as the GAO has reported, challenging but not impossible if it is a multi-year study and agencies are given direction on budgeting and accounting for future fiscal years.

Finally, Congress should pause and evaluate before passing further streamlining provisions. Before the measures mandated passed by Congress in the 2012 MAP-21 transportation authorization bill had been implemented, Congress passed further streamlining requirements in the FAST Act that caused confusion and delay in implementing these measures. *Vulnerabilities Exist in Implementing Initiatives Under MAP-21 Subtitle C to Accelerate* Project Delivery, Office of the Inspector General, March 6, 20107. The combination of FAST-41, Executive Order 13807 and other measures taken by the administration is a lot for understaffed agencies to implement and should be evaluated prior to further measures.

Increase efficiency by using 21st century technology

One obvious suite of measures that the federal government should take to bring NEPA into the 21st century is to be utilize 21st century technology in a manner that both reduces the amount of time needed for preparation of NEPA analyses and utilizes the vast amount of information stored in NEPA documents to evaluate and improve analyses.

Almost fifty years of data and analyses contained in NEPA documents and paid for by taxpayers' money should be a treasure trove of information for both the public and

private sectors. NEPA analyses cover all parts of the country, contain ecological, social and economic data and after five decades, should be readily available for trends analysis. Technical tools such as natural language processing, text mining and spatially explicit information retrieval as well as modern machine reading systems such as PaleoDeepDive could be utilized to facilitate access to this information. Imagine the boon to analyses and the understanding on the part of all interested parties if 50 years of information about, for example, the ecology, economy and communities of the Central Valley of California – or national forests in Idaho – or the colonias along the U.S. Mexico border – were available within a day. Yet today, no such system exists. Indeed, even obtaining EISs, let alone environmental assessments, which have no central filing system, can be very challenging and if a person does dig such documents out of the National Archives, there is no shortcut to going through each document individually in hard copy.

CEQ has identified the need to use information technology tools to improve the efficiency and management of NEPA reviews and has promoted the use of various IT tools such as NEPAassist geospatial systems for preparation of NEPA documents. However, the agency's limited resources do not currently allow it to tackle the larger issues of making available EISs and other valuable NEPA documents, both past and present, easily accessible on a government-wide basis.

While advocating for better use of 21st century technology, I also want to stress that it must be remembered that almost one quarter of Americans still do not have access to speedy internet service, especially in rural areas. Agencies must not entirely abandon production of hard copy documents.

Recommendation: CEQ should be funded and directed to establish (either managed by CEQ directly or by an appropriate institution) a publicly available data base with sophisticated search capability for NEPA documents for the entire executive branch. This effort should include the promulgation of technical guidelines for electronic submission of NEPA documents going forward into the 21st century.

Improve the quality and integration of economic, health and social impact analysis in the NEPA process

Senator Henry Jackson stated during the Senate debate on NEPA's passage, "An environmental policy is a policy for people. Its primary concern is with man and his future. The basic principle of the policy is that we must strive, in all that we do, to achieve a standard of excellence in man's relationship to his physical surroundings. If there are to be departures from this standard they will be exceptions to the rule and the policy. And as exceptions they will have to be justified in the light of public scrutiny." Congressional Record-Senate, October 8, 1969, p. 29056. The core term in NEPA's requirement to analyze the effects of proposals for federal action is the impact on "the human environment" and the policies set forth in the Act, cited at the beginning of this testimony, talk about fulfilling the, "social, economic and other requirements of present and future generations of Americans. The effects to be analyzed in either an EA or an

EIS include cultural, economic, social, aesthetic, historic and health impacts. 40 C.F.R. § 1508.8.

However, the quality of social and economic analysis is, as a general rule, far below that analysis of what are thought of as traditional fields of environmental study (i.e., air, water, wildlife). Often, social impacts and economic impacts are blurred together and merged into something labeled "socioeconomic effects" that essentially is a data dump of information that may or may not be relevant. Further, with some exceptions, human health impacts are frequently overlooked or shortchanged in NEPA analyses. *See,* National Research Council, *Improving Health in the United States: Health Impact Assessment* (advocating for improved integration of health impacts into the NEPA process as relevant) (2011), available at https://www.nap.edu/catalog/13229/improving-health-in-the-united-states-the-role-of-health.

Some of the shortchanging of analysis regarding impacts on human beings is due to a misunderstanding of both the CEQ regulations and applicable case law. Those misunderstandings, in turn, have left already understaffed agencies bereft, for the most part, of any expertise related to human health, community welfare, and economics and a proposed action's impacts on all of the above. Some citizens, whether western ranchers, residents of inner cities or Native Alaskans, have concluded that the law has no room for consideration of impacts on human beings. This feeling undercuts citizens' sense of mattering to federal agencies, weakens agencies' understanding of the communities they serve and it is wrong as a matter of law.

Recommendation: CEQ should be directed to work with federal agencies to identify obstacles to accomplishing professionally competent economic, social and health analyses and to promote recruitment of personnel with these types of credentials to joint agency staff or partnerships with appropriate entities, such as public health organizations. As needs are identified and as appropriate, CEQ should also publish guidance or handbooks on particular issues of common concern regarding analyses of these types of impacts.

Make the process count by making mitigation binding

For understandable reasons, the post-decisional aspects of NEPA gets short shrift from everyone. The NEPA process is primarily a predecisional process and the work and energy focuses on informing that decision. NEPA does not require agencies to mitigate adverse impacts and nothing in NEPA makes mitigation measures that are included in decisions automatically binding. Yet it is rare, if not impossible, to find a decision document following the NEPA process that does not include mitigation measures. And in some cases, considerable resources have been invested in the process of designing mitigation. But are those mitigation measures implemented? And if so, do they have the desired effect? The answers to these questions are largely unknown. As a general rule, little to no monitoring takes place. So the taxpayers don't know if commitments made by an applicant or agency are carried out and none of us know the

effectiveness of those measures if they have been implemented. This is not a good situation, either from the perspective of the resources being impacted or citizens' trust in their government to carry out commitments. Both Congress and citizens should expect better from federal agencies.

In 2011, CEQ issued guidance to federal agencies regarding mitigation and monitoring. *Memorandum for Heads of Federal Departments and Agencies on Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact*. In part, the guidance is based on the excellent, common sense Department of the Army regulation at 32 C.F.R. part 651, Appendix C, which requires proposed mitigation measures to be a line item in the proponent's budget or equivalent funding document and/or include the mitigation commitment in a legally binding document (for example, permits or grants). It mandates a monitoring and enforcement program for adopted mitigation and provides for situations in which mitigation measures are not implemented.

The CEQ guidance also discussed how the integration of Environmental Management Systems (EMS), used extensively in the private sector, or other data or management systems can be integrated into the monitoring mitigation commitments. These are especially useful systems for monitoring compliance in the context of infrastructure developments.

Recommendation: Either the National Academy of Sciences or CEQ should be tasked to initiate a review of both the implementation and effectiveness of mitigation measures for both agency-initiated and applicant sponsored actions in selected agencies and report back to committees of jurisdiction within 1 year. The report may suggest concrete steps to be taken by either Congress or CEQ depending on the findings.

Elevate the role of tribal governments in NEPA

I want to end with perhaps the most egregious oversight in NEPA – the role of tribal governments. While perhaps understandable (although not acceptable) in 1969 when NEPA was passed; and less so in 1978 when the CEQ regulations were issued, it is completely unacceptable now. The CEQ regulations on their face confine cooperating agency status for tribes to situations where the effects of a proposed action are felt on reservations. 40 C.F.R. § 1508.5 Most Native Americans live off reservation in the continental United States and with one small exception, Alaska Natives do not live on reservations at all. Tribal governments must be recognized as being on a level playing field with local and state governments and afforded all due respect as potential joint lead and cooperating agencies and should be able to execute all other responsibilities afforded state and local agencies. Short changing the role of tribal governments in NEPA implementation perpetuates a second class status for tribes that never was appropriate but is even less so in the 21st century.