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OF THE
UNITED STATES OF AMERICA

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Re: Draft Guidance, “Consideration of the Effects of Climate Change and Greenhouse Gas Emissions.”

The U.S. Chamber of Commerce, the world’s largest business federation representing the interests of more than three million businesses and organizations of every size, sector and region, submits these comments in response to the Council on Environmental Quality’s (CEQ) draft National Environmental Policy Act (NEPA) guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions.

NEPA was enacted in 1969, when the United States had very few laws in place to protect the environment. The goal of Congress in enacting NEPA was to ensure more awareness about the environment in federal decision making. However, in recent years NEPA has become the tool-of-choice used by special interest groups to block projects and thwart federal decisions through litigation, even where local communities strongly favor the projects.

The Chamber opposes incorporation of climate change into the NEPA analysis. The explicit purpose of NEPA, as stated in the regulations, is “not to generate paperwork—even excellent paperwork—but to foster excellent action.”¹ However, applying NEPA to greenhouse gases in the manner discussed in CEQ’s draft guidance could open the floodgates to lawsuits by environmental groups and other Not In My Back Yard (NIMBY) activists to delay or stop projects. It could

¹ 40 C.F.R. § 1500.1(c).

accomplish the exact *opposite* of what NEPA is supposed to do, and bog projects down with endless lawsuits and paperwork while stopping construction and related economic activity.

Rather than argue theory on this point, the Chamber is prepared to present the facts.² These comments will provide a review of projects challenged to date under NEPA or state “little NEPA” statutes on climate change grounds. As detailed below, environmental groups and other NIMBYs do not limit their climate lawsuits to coal-fired power plants; shopping malls, big-box retailers, hotels and even residential developments have been sued on climate grounds. Often the real reason for challenging the project has little to do with climate change; it is a means to an end, another tool in the NIMBY tool belt.

Projects Challenged via NEPA or “little NEPAs” on Climate Grounds

Project Name	Type	Location(s)	Details
Napa Junction ³	Retail	CA	Napa Junction is the creation of a new downtown area within the City of American Canyon and the start of Main Street for the City. It is a mixed-use project that includes a 3-acre Main Street Park, 216 unit apartment complex, 100 room hotel, 215,000 square feet of retail and retail services anchored by the only Wal-Mart Supercenter within the Bay Area.
New Mexico Oil and Gas Lease Sale ⁴	Energy	NM	Environmental groups protested the BLM’s New Mexico oil and gas lease sale of April 2008 on climate grounds.
EPAct Advanced Coal Gasification Tax Credits ⁵	Energy	IN, FL, MS, NC, KY, CA, and TX	Environmental groups challenged DOE for failing to conduct NEPA analysis of nine advanced coal gasification projects authorized by Energy Policy Act of 2005.
The Shops at Santa Anita ⁶	Retail	CA	800,000 square foot shopping mall next to Santa Anita Race Track.

² These facts have been drawn primarily from two sources: (1) a web-based list entitled “Climate Change Litigation in the U.S.” compiled by Michael B. Gerrard and J. Cullen Howe at Arnold & Porter LLP, available at <http://www.climatecasechart.com>; and (2) the Chamber’s own *Project No Project* web site (<http://www.projectnoproject.com>), a compilation of energy projects stalled or stopped by NIMBY activists in recent years.

³ *American Canyon Committee United for Responsible Growth v. City of American Canyon* (Napa Co. Sup. Ct. 2007).

⁴ *Amigos Bravos v. BLM* (D. N.M. Feb. 2010).

⁵ *Appalachian Voices v. Bodman* (D. D.C., filed March 2008).

⁶ *Arcadia First v. City of Arcadia* (L.A. Co. Sup. Ct. May 2008).

I-95 Intercounty Connector ⁷	Transportation	MD	Proposed highway project, the Intercounty Connector, would connect I-95/US 1 in Prince George's County, Maryland and I-270 in Montgomery County, Maryland.
Black Mesa Complex	Energy	AZ	Kayenta and Black Mesa coal mines, which have been in operation since the early 1970s.
BCP and T-US Power Lines	Energy	CA	Permits and rights-of-way to build electricity transmission lines within the United States and across the United States-Mexico border to connect new power plants in Mexico with the power grid in Southern California.
Sierra Pacific Industries Logging Projects ⁸	Forestry	CA	15 plans by Sierra Pacific Industries to conduct logging in California forests.
West-Wide Energy Corridor ⁹	Energy	NV, MT, WY, CO, NM, AZ, UT, ID, WA, OR, CA	Energy transmission corridor authorized by EPAct 2005 to facilitate future siting of oil, gas, and hydrogen pipelines, as well as renewable energy development projects and electricity transmission and distribution facilities on Federal lands in the West.
City of Banning residential development ¹⁰	Residential	CA	1,500 home development project (consisting of a school, neighborhood park and cluster of homes) proposed to be built in remote, undeveloped area.
Desert Hot Springs Palmwood Project ¹¹	Residential & Commercial	CA	Palmwood Project consists of 2,700 homes, 1 million sq. ft. of commercial space, 400-unit hotel, commercial amphitheatre, and 45 holes of golf courses, on undeveloped land northwest of the city.
City of Perris Wal-Mart ¹²	Retail	CA	520,000 square foot retail space to be occupied by a Wal-Mart Supercenter retail store.
Van Der Kooi Dairy ¹³	Agricultural	CA	Proposed Van Der Kooi Dairy district, containing 3200 milk cows.
Yucca Valley Wal-Mart ¹⁴	Retail	CA	Proposed Wal-Mart Supercenter retail store in the Town of Yucca Valley
Five-Year Leasing Program for the	Energy	AK	New five-year Leasing Program included an expansion of previous lease offerings in the

⁷ *Audubon v. Department of Transportation* (D. Md. 2007).

⁸ *Center for Biological Diversity v. Cal. Dept. of Forestry* (Tehama Co. Sup. Ct., filed Aug. 2009); *Center for Biological Diversity v. Cal. Dept. of Forestry* (Cal. Sup. Ct., filed Jan. 2010).

⁹ *Center for Biological Diversity v. Cal. Public Util. Comm.* (Cal. Supreme Ct., filed Jan. 2009).

¹⁰ *Center for Biological Diversity v. City of Banning* (Riverside Co. Sup. Ct. 2006).

¹¹ *Center for Biological Diversity v. City of Desert Hot Springs* (Riverside Co. Sup. Ct. Aug. 2008).

¹² *Center for Biological Diversity v. City of Perris* (Riverside Co. Sup. Ct. Mar. 2008).

¹³ *Center for Biological Diversity v. San Joaquin Valley Air Pollution Control District* (Fresno Co. Sup. Ct., filed Oct. 2008).

¹⁴ *Center for Biological Diversity v. Town of Yucca Valley* (Cal. Sup. Ct. May 2009).

Outer Continental Shelf ¹⁵			Beaufort, Bering, and Chukchi Seas off the coast of Alaska.
Richmond Refinery ¹⁶	Energy	CA	Proposed expansion of Chevron oil refinery.
Northwest Forest Plan ¹⁷	Forestry	WA	Forest management and species conservation plan for 24.5 million acres of forest land.
El Charro retail plan ¹⁸	Retail	CA	1.5 million square feet of retail space, including a factory outlet center, in the City of Livermore.
Sacramento 50 Bus/Carpool Lanes ¹⁹	Transportation	CA	13-mile High Occupancy Vehicle (HOV) lane.
OPIC international fossil fuel projects ²⁰	Energy	Int'l	Chad-Cameroon Oil Pipeline Project; Sakhalin Oil Field Project; West Seno I and II Oil and Gas Fields Project; Cantarell Oil Field Project; the Hamaca Heavy Crude Oil Development Project; and Dezhou Coal-Fired Power Plant Project.
Smith Creek Vegetation Project ²¹	Forestry	MT	35-acre Livingston Ranger District of the Gallatin National Forest; area has historically experienced wildfires. U.S. Forest Service timber removal plan challenged for effects on climate change.
March Business Center ²²	Commercial	CA	Warehouse facility to be built as a reuse project on former March Air Force Base.
South Fowl Snowmobile Trail ²³	Transportation	MN	Snowmobile trail connecting McFarland Lake to South Fowl Lake along a route that is adjacent to the Boundary Waters Canoe Area Wilderness in northeastern Minnesota.
Lawrence Berkeley National Laboratory ²⁴	Government	CA	Proposed expansion of the Lawrence Berkeley National Laboratory.
Laidlaw Energy Biomass Plant ²⁵	Energy	NY	16.5-acre tract to be developed into woody biomass renewable energy plant.
DM&E Powder River Basin Rail Project ²⁶	Transportation	WY	Dakota, Minnesota & Eastern Railroad Corporation (DM&E) proposed 280 miles of new rail line to reach the coal mines of Wyoming's

¹⁵ *Center for Biological Diversity v. U.S. Dept. of Interior* (D.C. Cir., filed July 2007).

¹⁶ *Communities for a Better Environment v. City of Richmond* (Cal. Sup. Ct., filed Sept. 2008).

¹⁷ *Conservation Northwest v. Rey* (W.D. Wash. Dec. 2009).

¹⁸ *El Charro Vista v. City of Livermore* (Alameda Co. Sup. Ct. July 2008).

¹⁹ *Environmental Council of Sacramento v. California Dept. of Transp.* (Sac. Co. Sup. Ct. July 2008).

²⁰ *Friends of the Earth v. Mosbacher* (N.D. Cal. 2007); *Friends of the Earth v. Watson* (N.D. Cal. 2005).

²¹ *Hapner v. Tidwell* (D. Mont. Oct. 2008)

²² *Health First v. March Joint Powers Auth.* (Ca. App. Ct. June 2009).

²³ *Izaak Walton League of America v. Kimbell*, 516 F. Supp. 2d 982 (D. Minn. 2007).

²⁴ *Jones v. Regents of the Univ. of Calif.* (Cal. Sup. Ct. March 2010)

²⁵ *Laidlaw Energy v. Town of Ellicottville* (N.Y. App. Div. Feb. 2009).

²⁶ *Mayo Foundation v. Surface Transp. Bd.*, 472 F.3d 545 (8th Cir. 2006).

			Powder River Basin and to upgrade nearly 600 miles of existing rail line in Minnesota and South Dakota.
Minnesota Steel taconite mine ²⁷	Industrial	MN	\$1.6 billion project involving the reactivation of a taconite mine and tailings basin near Nashwauk, in Itasca County.
Montana oil and gas leases ²⁸	Energy	MT	38,000 acres of oil and gas leases throughout Montana
Columbia River Channel Improvement Project ²⁹	Transportation	OR, WA	Proposed deepening of Columbia River navigation channel to increase shipping capability.
Chittenden County Circumferential Highway ³⁰	Transportation	VT	Four-lane, limited access highway extending approximately 15.8 miles from I-89 in Williston, north and west through Essex to Vermont Route 127 in Colchester.
West Elk Methane Venting Project ³¹	Energy	CO	Proposal to vent methane from mine (as a safety measure) would create 168 methane drainage wells on 146 well pads and construct nearly 23 miles of new road.

As these projects illustrate, NEPA is already in use to stop projects of all types—residential, commercial, agricultural and industrial. When it comes to NIMBY lawsuits, the Chamber views the past as an excellent predictor of the future, and expects that the number and types of claims listed below will only proliferate once CEQ issues formal guidance on applying NEPA to greenhouse gases. The Chamber believes the only way to avoid such an outcome is not to use NEPA to regulate greenhouse gas emissions, period.

Sincerely,



William L. Kovacs

²⁷ *Minnesota Ctr. for Env. Advocacy v. Holsten* (Dist. Ct. Itasca Co., filed 2007).

²⁸ *Montana Environmental Info Ctr. v. BLM* (D. Mont., filed Dec. 2008).

²⁹ *Northwest Environmental Advocates v. National Marine Fisheries Serv.*, 460 F.3d 1125 (9th Cir. 2006).

³⁰ *Senville v. Peters*, 327 F. Supp. 335 (D. Vt. 2004).

³¹ *WildEarth Guardians v. U.S. Forest Serv.* (D. Col., filed Oct. 2008).