

This document has been prepared as part of the implementation project of Legal Pathways to Deep Decarbonization (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute [2019]) (LPDD). For background information on the project, see <https://lpdd.org>

Proposed NEPA Amendments: Evaluating Beneficial Impacts

- **Summary:** Congress should revise the National Environmental Policy Act (NEPA)¹ to require federal agencies to fully consider the positive (or beneficial) impacts, in addition to the negative impacts, of proposed projects.
- **Issue to be Addressed:** The potential benefits of projects necessary to achieve a decarbonized economy may not be fully disclosed in the NEPA process. NEPA is the process through which agencies consider the potential environmental impacts of projects and provide the public an opportunity to comment on those projects. NEPA requires agencies to evaluate the “environmental impact of the proposed action.” 42 U.S.C. § 4332(C)(i). The Council on Environmental Quality (CEQ) has interpreted NEPA to require consideration of both beneficial and adverse impacts, even though it is not explicitly stated in the statute.² In the interest of efficiency, the CEQ regulations also direct agencies to “focus on significant environmental issues.” 40 CFR § 1502.1. As a result, agencies tend to provide detailed analysis of only the adverse environmental impacts of projects in the immediate term and provide limited discussion about the project’s potential benefits over the long term.³ This focus can provide an imbalanced picture of the project’s impacts, potentially fomenting public opposition to projects.
- **Recommendations:** To provide certainty and consistency, agencies should be required to consider the beneficial impacts of projects under NEPA.⁴
 - **Option 1:** Amend NEPA.

42 U.S. Code § 4332⁵

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¹ 42 U.S.C. § 4331 et seq.

² 40 C.F.R. § 1501.3(b)(2)(ii) (“In considering the degree of the effects, agencies should consider . . . [b]oth beneficial and adverse effects.”).

³ “For example, a utility-scale solar facility could have short-term direct effects, such as adverse construction and land impacts. The facility also could have long-term indirect beneficial effects, such as reductions in air pollution, including greenhouse gas emissions, from the renewable energy generated by the solar facility that displaces more greenhouse gas-intensive energy sources (such as coal or natural gas) as an electricity source for years or decades into the future.” National Environmental Policy Act Implementing Regulations Revisions, 87 Fed. Reg. 23453-01, 23,467 (Apr. 20, 2022).

⁴ Note that some states include language that gives agencies discretion to evaluate beneficial impacts. *See, e.g.*, Revised Code of Washington 43.21C.031(2) (“An environmental impact statement is required to analyze only those probable adverse environmental impacts which are significant. Beneficial environmental impacts may be discussed.”).

⁵ Amending language in red, italics and underscored

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

- (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, *and*
- (vi) any beneficial environmental and socioeconomic effects of the proposed action, including but not limited to the potential—*

(a) contribution to international, national, state, or local climate or greenhouse gas reduction commitments,

(b) reduction in greenhouse gas emissions or other air pollutants as compared to alternatives,

(c) enhancement in the energy independence or energy security of the United States, and

(d) reduction in energy costs for consumers.

- **Option 2:** Revise the text of proposed section “Streamlining Process for Authorizations and Reviews of Energy and Natural Resources Projects.”

(a) Definitions.—In this section:

...

(3) PROJECT.—The term “project” means a project—

(A) proposed for the construction of infrastructure—

- (i) to produce, generate, store, or transport energy;
- (ii) to capture, remove, transport, or store carbon dioxide; or
- (iii) to mine, extract, beneficiate, or process minerals; and

(q) Consideration of Beneficial Impacts.

(1) IN GENERAL.—When preparing any environmental document under this section, the agency must identify and disclose both the adverse effects of the proposed action and any beneficial environmental and socioeconomic effects of the proposed action, including but not limited to the potential—

(A) contribution to international, national, state, or local climate or greenhouse gas reduction commitments;

(B) reduction in greenhouse gas emissions or other air pollutants as compared to alternatives;

(C) enhancement in the energy independence or energy security of the United States; and

(D) reduction in energy costs for consumers.