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Permitting Transmission Lines Under the New New Deal – the Tension Between Delivering Alternative Energy and Environmental Review

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ABSTRACT

Some of the primary components of the new Administration's economic stimulus package are large infrastructure projects for improving transportation, energy production and transmission. President Obama's call for "energy independence" has already spurred a new wave of alternative energy projects, but much of that development is occurring in remote areas. As a result, utilities face bottlenecks in delivering power to the population centers where most of their customers reside. There is a national consensus that increasing transmission capacity is critical to realizing the benefits of additional alternative energy sources.

The biggest difference between the current public works program and the one undertaken during the New Deal is the existence of environmental regulation and review statutes. It is no longer tenable to simply bull-doze roads or put up new power lines without extensive environmental review under NEPA, the ESA and the Clean Water Act. Furthermore, the regulation of greenhouse gas emissions as pollutants under the Clean Air Act is now required by the Supreme Court's decision in Massachusetts v. EPA. As a result, assessing climate change impacts from new development has already become a component of EIS's and EIR's performed under state environmental review statutes and is becoming more frequent in environmental review under NEPA. Given this reality, this paper will discuss the tension between achieving two environmentally beneficial goals – delivery of power from alternative energy sources while fulfilling the requirements of environmental statutes such as NEPA, the ESA, the Clean Water Act and Clean Air Act.

Introduction

In December 2008, Congressman Jay Inslee (R-WA) announced his support for the construction of a major expansion of the Bonneville Power Administration's transmission system, increasing the capacity of the system to serve the large population centers west of the Cascade Mountains.[1] The situation in the Pacific Northwest is being replicated all over the country – while state-of-the-art windmills are being developed in the Columbia River Gorge and elsewhere east of the Cascade Mountains in Washington and Oregon, most of the customers for that power live hundreds of miles away, primarily along the I-5 corridor between Seattle and Portland.

An additional 4,700 megawatts of wind-generated electricity are expected to come on line in the next five years.[2] As alternative energy development accelerates, the need for additional transmission capacity will also accelerate, with utilities facing challenges to the development of that capacity under NEPA and other environmental review statutes.

The need for new transmission capacity is made even more urgent by the new Administration's economic stimulus package, which relies heavily on large public works projects for infrastructure improvement as a means for spurring needed economic growth. But unlike the public works programs of the 1930's, the New New Deal must contend with the need to comply with environmental review under NEPA, the Clean Air Act and the Endangered Species Act. It is no longer tenable to cut roads through national forests, to fill wetlands and to destroy habitat in the name of economic development and recession-recovery – a fact being demonstrated by the response to the designation of National Interest Energy Transmission Corridors.

Review of National Interest Energy Transmission Corridors under NEPA

In November 2008, the departments of Energy, Agriculture, Defense and the Interior Department's Bureau of Land Management ("BLM") released a Final Programmatic Environmental Impact Statement ("FEIS") proposing to designate more than 6,000 miles of energy transport corridors on federal lands in 11 Western States. The FEIS was prepared in connection with the implementation of the Energy Policy Act of 2005.[3] The proposed energy corridors are a means of facilitating the siting of oil, gas, and hydrogen pipelines, as well as electricity transmission and distribution facilities on federal lands located in 11 western states.[4] BLM's FEIS[5] was the culmination of a process that began in 2005, when Congress authorized the Energy Department and BLM to study and designate pathways for the development of pipelines, power lines and other energy infrastructure.[6]

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[1] *See* "Northwest may blaze U.S. path to green grid," *Seattle Times* (December 15, 2008), which can be viewed at this link.

[2] *Id.*

[3] Pub.L. 109-58. The Energy Policy Act was codified at 16 U.S.C. § 824 *et seq.*

[4] The states in which the corridors are planned are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

[5] The Energy Department's press release announcing publication of the FEIS and a link to the FEIS can be viewed here.

[6] *Id.*

Prior to the passage of the Energy Policy Act, no federal agency could authorize the siting of new electric transmission lines in any state; however, the Act authorized the Secretary of Energy to designate National Interest Energy Transmission Corridors ("NIETCs") in "any geographic area that experiences electric energy transmission constraints or congestion that adversely affects consumers."[7] The Energy Department had originally designated NIETCs in the mid-Atlantic region and the Southwest in October 2007. The FEIS analyzed 6,055 miles of designated energy corridors, each of which is approximately 3,500 feet wide.

Under the Energy Policy Act, the federal government can condemn private property for the acquisition of rights of way for transmission corridors. Condemnation authority is delegated to the Federal Energy Regulatory Commission. The Act requires that, prior to exercising condemnation authority, FERC must find: (1) that the state where the transmission lines are to be constructed lacks authority to approve the siting of the facilities or to consider interstate benefits; (2) that the applicant for the construction of the transmission line does not provide retail service in the state were the line is to be constructed; (3) that the state siting authority has failed to approve the application within one year; or (4) that it has attached conditions that will prevent congestion reduction or make the new line economically infeasible.[8]

BLM plans to issue a record of decision on the Western corridors in early 2009. Because BLM's FEIS is a programmatic EIS, each specific project proposed for construction within the designated NIETC corridors will still have to acquire the necessary rights of way from landowners and undertake its own individualized environmental review. In addition, since programmatic review of the designated corridors does not authorize specific projects, there was no need to undertake consultation under the Endangered Species Act.[9] Consequently, individual projects will need to be assessed to determine whether ESA consultation is necessary.

Opponents Criticize NIETC Corridor Designation as an "Extension Cord to Coal Country"

Environmental groups and some members of Congress have been critical of the BLM's FEIS. In a statement issued following publication of the FEIS, the Wilderness Society said that "the plans cannot be considered a success because they inadequately address renewable energy, cut out the public's right to protest, and will turn national monuments and wildlife refuges into industrialized energy corridors."[10] Representative Raul Griljalva (D-AZ), chairman of the Natural Resources Committee's National Parks and Forests Subcommittee, characterized the corridors as "a giant extension cord to existing coal sources." Rep. Griljalva's statements were made during an oversight hearing held on April 15, 2008, held by the House of Representatives Subcommittee on Energy and Mineral Resources & Subcommittee on National Parks, Forests and Public Lands on

[7] Authorization for the Energy Secretary to designate NIETCs appears at section 216(a)(2) of the Act, 16 U.S.C. § 824(a)(2).

[8] *See* 16 U.S.C. § 824p(b).

[9] *See* K. Ling, "Few Changes in final EIS on Western Energy corridors," *Greenwire* (November 21, 2008), which can be viewed at this link (subscription required).

[10] *See* statement by Nada Culver of the Wilderness Society, *quoted in* Greenwire article, cited in full in note 9.

the West-Wide Energy Corridor Process. His remarks have been quoted repeatedly by those opposed to the NIETC process.[11]

The conflict over the NIETCs pits the need to expand energy production, particularly alternative energy production, with the growing demand to incorporate climate change analyses in environmental review of newly proposed projects. Writing in the last fall's edition of *Natural Resources & Environment*, Aaron Lax noted that the primary difference driving environmental review of the new corridors when compared to the situation at the beginning of the Bush Administration was the need to include climate change analysis as part of NEPA review:

> In 2001, when the Bush administration's National Energy Policy recommended that Congress grant authority to obtain rights of way for electricity transmission lines to address reliability and congestion concerns, energy security was primarily a stand-alone policy because of the lack of scientific consensus on global climate change. Further, pressure to incorporate climate change analyses in NEPA review process did not exist, as it does today.[12]

Litigation under NEPA Follows Designation of Transmission Corridors

Five separate lawsuits challenging the Energy Department's designation of NIETC corridors have already been filed. The petitioners maintain that their goal is not to stop the construction of transmission lines, but instead to force compliance with NEPA. A statement by one of the attorneys representing the Natural Resources Defense Council is typical: "This lawsuit is not about stopping transmission projects. We recognize the need for increased investment in transmission solutions across the country. But we need to ensure that these transmission corridor designations take place in compliance with federal environmental law."[13]

Opponents have argued that a programmatic EIS like the one prepared for the western states NIETC corridors is also required for the Energy Department's October 2007 order designating the mid-Atlantic and southwest corridors, claiming that the designation qualifies as "major federal action" under both NEPA[14] and applicable CEQ regulations.[15] The Energy Department has countered that the designations do not require NEPA review because they do not, in and of themselves, permit or preclude construction of any specific transmission project.[16]

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[11] *See, e.g.*, "West Wide Energy Corridor: An Extension Cord for Coal Fired Power Plants," which can be viewed at this link; and "USA Energy Corridors: A Plan for Big Energy and Nothing Else," available at this link. Representative Griljalva's "Report on the Bush Administration Assaults on our National Parks, Forests and Public Lands," can be viewed here.

[12] Mr. Lax' article, entitled "A High Wire Balancing Act: Federal Energy Transmission Corridors," appeared in *Natural Resources & Environment*, Vol. 23, Number 22 (Fall 2008). It may be viewed at this link.

[13] *See* news release by the Wilderness Society: "Lawsuit Aims to Correct Errors in DOE's Transmission Corridor Designations," quoting Anjali Jaiswal, an attorney for NRDC, one of the petitioners in the case. The news release may be viewed here.

[14] 42 U.S.C. § 4332(C).

[15] 40 C.F.R. § 1508.18 (governing projects and programs that are conducted and regulated by federal agencies and involving federal agency rulemakings).

[16] *See* Lax, *supra* at Note 12.

Litigation over Transmission Lines Provides an Example of the Confluence of Environmental Review and Responses to Climate Change

Carol Browner, President Obama's designate for "Energy Czar," has already called for EPA to reconsider its previous failure to decide whether greenhouse gases ("GHGs") endanger health or welfare, the legal trigger for regulating GHGs under the Clean Air Act.[17] Industry groups are already calling Ms. Browner's recommendation a mistake. William Kovacs, vice president of the U.S. Chamber of Commerce, said: "If we're embarking on a new infrastructure program that's going to involve building a lot of roads and bridges, the last thing we want to do is hold it up with CO_2 regulations."[18]

The conflict between the need for the development of new infrastructure and environmental review is not new – the potential for such disputes arose when NEPA was first adopted, though the climate change element of the conflict was brought into sharper focus when the Supreme Court rejected the Bush administration's position that GHGs were not air pollutants under the Clean Air Act in *Massachusetts v. EPA*.[19] But while the use of the Clean Air Act as a basis to demand assessment of the climate change impacts may be new, there is a long history of litigation under NEPA and other statutes seeking review of the environmental impacts of government-approved projects, permits and programs. The following is a survey of some of the cases filed under NEPA, the Clean Air Act and the ESA.

NEPA Cases

Since 1990, federal courts have required agencies to consider GHG emissions under NEPA,[20] but have generally deferred to the agencies' climate change assessments. In *Border Power Working Group v. Department of Energy*,[21] the Southern District of California ruled that the Department of Energy failed to assess GHG emissions associated with a proposal to connect the southern California power grid with two coal-fired plants in Mexico. The district court subsequently approved the Department's EIS, which briefly discussed climate change. In its EIS, DOE determined that the project would increase global GHG emissions by 0.088%, and the United States' GHG emissions by 0.023%, and concluded that "[t]he expected impacts to global climate change would be negligible."[22]

Similarly, the Eighth Circuit also held that federal agencies have an obligation to assess GHG emissions for certain projects. *Mid-States Coalition for Progress v. Surface Transp. Bd.*,[23] involved the Surface Transportation Board's approval of new railroad lines that would allow low-

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[17] *See* J. Weisman, S. Power, "Obama Picks Team to Guide Energy, Environment Agendas," *Wall Street Journal* (December 11, 2008), available through this link.

[18] *Id.*

[19] 127 S. Ct. 1438 (2007).

[20] *See City of Los Angeles v. Nat'l Highway Transp. Safety Bd.*, 912 F.2d 478 (D.C. Cir. 1990) (per curiam) (holding that the NHTSB failed to assess GHG emissions and climate change impacts when reducing the corporate average fuel economy standards by 1 mpg).

[21] 260 F. Supp.2d 997 (S.D. Cal. 2003).

[22] This statement appeared in the Final Environmental Impact Statement for the Imperial-Mexicali 230-kV Transmission Lines (December 2004) at 4-59.

[23] 345 F.3d 520 (8th Cir. 2003).

sulfur coal from the Powder River Basin in Wyoming to be transported to power plants in the Midwest. The Eighth Circuit held that increased coal consumption, and associated GHG emissions, were a reasonably foreseeable consequence of the project, and concluded that the Board should have considered air quality issues in its EIS.[24] The Board prepared a supplemental EIS in 2005, which assessed emissions associated with the project, but concluded that they would not have significant environmental impacts. In December 2006, the Eighth Circuit upheld that Board's EIS.[25]

A decision by the Northern District of California suggests a likely focus of future climate change litigation under NEPA. In *Friends of the Earth v. Mosbacher*, the court held that two federal agencies providing funding and loan guarantees for overseas projects were not required to prepare EISs because the agencies did not wield decision-making authority sufficient to convert foreign energy projects into federal actions.[26] In dicta, however, the court noted that it "would be difficult … to conclude that [there is] a genuine dispute that GHGs do not contribute to global warming," and suggested that future NEPA climate change litigation would be focused on whether a particular agency's action was the but-for cause of effects on the domestic environment.[27]

Perhaps the clearest statement of the requirement to undertake climate change analysis under NEPA came in the Ninth Circuit's unanimous decision in *Center for Biological Diversity v. National Highway Traffic Safety Administration*.[28] The case arose out of challenges to new automobile fuel efficiency standards for light trucks and SUVs developed by the National Highway Traffic Safety Administration, with the Ninth Circuit taking the unusual step of ordering NHTSA to prepare an EIS assessing carbon dioxide emissions attributable to the new standards, as well as the actual environmental effects associated with climate change. In light of the Ninth Circuit's emphatic declaration that the "impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impact analysis that NEPA requires agencies to conduct,"[29] federal agencies will be hard pressed to avoid evaluating climate change impacts for a broad range of projects requiring approvals or permits, such as energy facilities and transmission lines, casinos, landfills, mines, and transportation projects.

Cases Brought Under the Clean Air Act

While *Massachusetts v. EPA* is certainly the most prominent decision clarifying the federal government's authority to regulate GHGs under the Clean Air Act, it was by no means the first case to raise the claim that the Act provided authority to regulate greenhouse gases. In *Coke Oven Environmental Taskforce v. EPA*,[30] ten states, two cities and three environmental groups challenged EPA's refusal to regulate CO_2 emissions from power plants under EPA's regulations governing stationary sources. Following the decision in *Massachusetts*, the petitioners asked the

[24] *Id.* at 548-50.

[25] *Mid-States Coalition for Progress v. Surface Transp. Bd.*, Appeal No. 06-2031 (8th Cir. Dec. 28, 2006).

[26] 488 F. Supp.2d 889, 910-912 (N.D. Cal. 2007)

[27] *Id.* at 918 n.19.

[28] 538 F.3d 1172 (9th Cir. 2008)

[29] *Id.* at 1217.

[30] D.C. Cir. No. 06-1131 (filed April 7, 2006).

D.C. Circuit to vacate EPA's New Source Performance Standards and undertake new rulemaking in light of *Massachusetts*.

On December 11, 2007, the Eastern District of California held in *Central Valley Chrysler-Jeep, Inc. v. Goldstone*,[31] that "both EPA and California … are equally empowered through the Clean Air Act to promulgate regulations that limit the emission of greenhouse gases, principally carbon dioxide, from motor vehicles."[32] The opinion in *Central Valley Chrysler-Jeep, Inc.* relied heavily on the decision in *Massachusetts v. EPA*, as well as an earlier decision by the Vermont District Court in *Green Mountain Chrysler v. Crombie*,[33] which had upheld the State of Vermont's right to regulate greenhouse gas emissions from new vehicles. In addition to *Green Mountain*, in *Lincoln-Doge, Inc. v. Sullivan*,[34] the District Court for the District of Rhode Island allowed a challenge to Rhode Island's vehicle emissions regulations to go forward.

In *Central Valley Chrysler-Jeep*, the court pointed to the Supreme Court's decision in *Massachusetts* to support its conclusion that "there is no necessary conflict between the Clean Air Act's purpose to protect health and welfare and [the federal law providing authority to issue federal CAFE standards] purpose to establish maximum feasible fuel efficiency standards."[35]

Cases Demanding Review under the ESA

In two opinions, a federal district court required NOAA Fisheries and the U.S. Fish and Wildlife Service (the Services) to analyze climate effects on species during consultations performed under Section 7 of the Endangered Species Act.[36] Analysis of potential jeopardy to endangered species requires examination of both direct and indirect effects on the relevant species and its critical habitat, "together with the effects of other activities that are interrelated or interdependent with that action that will be added to the environmental baseline."[37] Accordingly, climate change effects can be an element of the environmental baseline analyzed during consultation.[38]

The Department of Interior listed the polar bear as a threatened species in May 2008 as a result of diminishing sea ice (*i.e.*, habitat loss) caused by climate change.[39] Many opponents of the listing

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[31] Eastern District of California, Case No. CV-F-04-6663(AWI LJO) (Docket No. 656). ("Order").

[32] Order at 55.

[33] 508 F. Supp.2d 295 (D. Vt. Sept. 12, 2007).

[34] Slip Opinion, ___ F. Supp.2d ___, 2007 U.S. Dist. LEXIS 94618 (D. R.I., December 21, 2007).

[35] Order at 26-27.

[36] *See Pacific Coast Fed'n of Fishermen's Ass'ns v. Gutierrez*, No. 06-00245, 2008 U.S. Dist. LEXIS 31462 (E.D. Cal. April 16, 2008); *Natural Resources Def. Council v. Kempthorne*, 506 F.Supp.2d 322 (E.D. Cal. 2007). The Endangered Species Act is codified at 16 U.S.C. §§ 1531 *et seq*.

[37] 50 CFR § 402.02.

[38] Under USFWS regulations, the "environmental baseline" includes, among other impacts, all "past and present impacts of all Federal, State, or private actions and other human activities in the action area[.]" *Id.*

[39] Dep't of the Interior, Fish and Wildlife Service, Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Polar Bear (*Ursus maritimus*) Throughout its Range; Final Rule, 50 CFR Part 17, 73 Fed. Reg. 28212-28303 (May 15, 2008); *see also* Dep't of the Interior, Fish and Wildlife Service, Special Rule for the Polar Bear (*Ursus maritimus*) Throughout its Range; Final Rule, 50 CFR Part 17, 73 Fed. Reg. 28305-28318 (May 15, 2008); Memorandum from H. Dale Hall (USFWS) to Regional Directors, Regions 1-9 (May 14, 2008); Memorandum from M. Myers (USGS) to Director,

argued that the listing would open the litigation floodgates, enabling environmental groups to challenge a broad spectrum of greenhouse gas-emitting activities under the ESA. However, Interior limited the regulatory impact of its decision by indicating that consultation will not be required simply because a federal agency authorizes a project that will emit greenhouse gases.[40]

Negotiating the Tension Between the Need for New Infrastructure and Environmental Review

As demonstrated by the litigation that has already accompanied the designation of NIETCs and the additional cases outlined above, the new infrastructure investment proposed by the Obama Administration must contend with the necessity of complying with firmly-entrenched environmental review required by NEPA, the ESA, and the Clean Air Act. In order to navigate between competing environmentally beneficial values – the desire to promote renewable energy while maintaining the integrity of the environmental review process – it will be necessary to address issues such as these:

- Does NEPA require only identification of impacts and potential mitigation of impacts – i.e., will an EIS be a disclosure document or will identified mitigation measures be required to be implemented, which is how many state environmental statutes (California's CEQA and Washington's SEPA, for example) currently operate?
- Should GHG guidelines be uniform for all projects, or should they be project-specific? How will compliance with those guidelines be measured?
- In the event of significant impacts, may a permitting agency mandate a smaller project if it would have less impact? Conversely, would it be preferable from a national perspective or based on the need to foster economic development for FERC to override state and local permitting concerns, based on application of the Energy Policy Act?
- In the event that mitigation is not required to be implemented, how will mitigation be assured? Will the purchase of offsets or credits count as acceptable mitigation, or will project proponents be required to modify projects or produce their own mitigation for impacts?
- Will assessment of impacts be required across-the-board, or only for projects that exceed a certain threshold of significance?
- Particularly for inter-state projects such as large transmission lines, how will impacts outside of a particular jurisdiction (a state for example) be assessed? Some multi-state climate change compacts, such as the Western Climate Initiative, have multiple members located both inside and outside the United States. Will impacts be assessed within member states, or will regional assessment be required?

USFWS, Subject: The Challenges Of Linking Carbon Emissions, Atmospheric Greenhouse Gas Concentrations, Global Warming, and Consequential Impacts (May 14, 2008) (issued concurrently with the final listing rule).

[40] Memorandum from H. Dale Hall (USFWS) to Regional Directors, Regions 1-9 (May 14, 2008), available at this link. *See also* Special Rule for the Polar Bear (*Ursus maritimus*) Throughout its Range; Final Rule, 50 CFR Part 17, 73 Fed. Reg. 28305-28318 (May 15, 2008) ("the best scientific data currently available does not draw a causal connection between [greenhouse gas] emissions resulting from a specific Federal action and effects on listed species or critical habitat by climate change, nor are there sufficient data to establish the required causal connection to the level of reasonable certainty between an action's resulting emissions and effect on species or critical habitat.").

Responses to these issues are already being developed at the state and local level. This is because much of the innovation in addressing climate change issues has taken place within the states and local municipalities. For instance, there is a growing trend in state and local climate policy to require project developers and local governments to assess GHG emissions in environmental review documents, and in some instances requiring mitigation to reduce the GHG impacts of development. In 2007, the State of Massachusetts issued administrative regulations under which developers and state agencies are required to quantify GHG emissions and assess GHG mitigation measures in their environmental review documents under the Massachusetts Environmental Policy Act.[41] King County, Washington adopted a policy in October 2007 requiring both the direct and indirect GHG emissions from a project to be identified and evaluated when environmental review of a project is required under Washington's State Environmental Policy Act.[42] While the initial policy required quantification only, mitigation requirements are currently being developed.

The State of California enacted new legislation at the end of 2008 which uses streamlined environmental review as a means of incentivizing developers to incorporate GHG reduction strategies in to new residential and mixed-use projects.[43] This approach reflects similar efforts that have been undertaken by municipalities all over the country, which have used property tax credits, expedited permit processing and grants to encourage development of commercial and mixed use projects meeting minimum LEED criteria.[44]

These sorts of approaches may offer a template for the use of innovative techniques to maintain environmental review processes, while providing incentives that would allow those proposing infrastructure projects to expedite environmental review. They might require the development of uniform criteria for assessing impacts or the creation of a menu of acceptable mitigation options

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[41] A copy of the MEPA Greenhouse Gas Emissions Policy and Protocol can be obtained at http://www.mass.gov/envir/mepa/pdffiles/misc/ghgemissionspolicy.pdf. The regulations are applicable to: (1) projects where the state is the project proponent or is providing financing; (2) private projects that require a state air quality permit; or (3); private projects that will generate more than a specified number of new vehicle trips per day.

[42] Information on the King County Greenhouse Gas Executive Order can be found at http://www.metrokc.gov/permits/publications/news/Sepa07Aug31.aspx.

[43] California Senate Bill 375, which was signed by Governor Arnold Schwarzenegger (R) on September 30, 2008, includes transportation funding incentives to promote dense, transit-oriented development and provide relaxed review under California's Environmental Quality Act for projects that satisfy sustainable community criteria.

[44] Baltimore County, Maryland provides property tax credit to commercial buildings that achieve LEED Silver certification for ten consecutive years. Honolulu provides a one-year exemption from real estate taxes for all new commercial, resort, hotel and industrial construction that achieves LEED certification. If a private commercial, office, industrial or multi-family project in Babylon, New York achieves LEED certification, the town will refund the certification fees paid to USGBC by the developer. Local governments such as Miami-Dade County, Florida; Costa Mesa, California; Issaquah, Washington; Chicago; San Francisco and Burbank, California, offer some form of expedited permit processing and reduced permit fees to private projects, depending on the level of rating and sustainability achieved. King County, Washington established a green building grant program that offers from $15,000 to $25,000 in grants to developers who meet a minimum of LEED Silver certification. Seattle allows greater heights and/or greater maximum floor area if a project achieves a LEED Silver rating, along with contributing to affordable housing and other public amenities.

that could be adopted as part of the permit application process. In addition, project proponents would be well advised to engage stakeholders early in the review process and incorporate those stakeholders' input in their project planning as a means of avoiding disputes and potential litigation over environmental review. NEPA's existing public comment process provides one avenue for this dialogue, and some project proponents have agreed to accept mediated discussions with stakeholders as a means of incorporating input with the hope of avoiding litigation.

Addressing these issues will be a critical part of the environmental assessment of the infrastructure that will be needed to realize the full benefit of alternative energy development. Unlike the public works projects of our grandparents' generation, environmental assessment has become an integral component of the development of this new infrastructure. It will be necessary to include such review if the New New Deal is to be viewed as a success, since achieving economic recovery may no longer be achieved by simply running roughshod over applicable regulations or appropriate environmental review.