

THE PRICE OF SPEED: HOW SEVEN COUNTY ACCELERATES NEPA RETRENCHMENT AND REDISTRIBUTES RISK

by Kelley Xuereb

Kelley Xuereb is a 2026 graduate of the University of California, Davis School of Law.

In 2025, the National Environmental Policy Act (NEPA) entered the most consequential period of retrenchment in its 55-year history. In a single year, the U.S. Supreme Court, the Donald Trump Administration, and bipartisan lawmakers took coordinated steps to dramatically curtail NEPA, codifying a unique political convergence around the premise that environmental review bottlenecks progress. That premise did not emerge in a vacuum. It grew, in part, from good-faith calls for faster construction of housing, public transportation, and clean energy, popularized by “abundance” advocates seeking to remove barriers to development. NEPA’s swift retrenchment illustrates how the Trump Administration is co-opting reformist momentum to erode core procedural safeguards without assuring material public benefits.

This Comment does not question the importance of addressing energy and infrastructure shortages. It instead argues that weakening NEPA as a mechanism to achieve those goals redistributes, rather than reduces, the costs of development. As a purely procedural statute, NEPA was designed to surface risks and force careful consideration of environmental and community impacts. It was born from an era defined by miles of oil-slicked beaches, rivers contaminated with radioactive waste, small towns devastated by disaster, and human lives lost. This history shows that the price of speed cannot be framed in economic terms alone.

Part I explores NEPA retrenchment within the rise of the “abundance movement” and its unique bipartisan appeal. Part II traces NEPA’s inception and evolution into the stable procedural framework that structured federal decision-making for over five decades. Parts III and IV examine the swift erosion of that framework through actions including

the *Seven County Infrastructure Coalition v. Eagle County* decision¹ and Trump’s Executive Order No. 14154.²

Part V pauses amid this doctrinal whiplash to reflect on NEPA’s public health and environmental successes beyond binary economic frames. Part VI revisits uranium mining in Utah and offshore drilling in Southern California in light of permitting reform, revealing a familiar reality where growth is privatized and risk is public. Part VII concludes.

I. The Abundance Movement Calls for Regulatory and Permitting Reform to Promote Development

A. *Abundance as a Response to Perceived Stagnation*

The cover of *Abundance*, written by journalists Ezra Klein and Derek Thompson, depicts utopian skyrisers existing harmoniously alongside lush forests, a sky blue river, and solar panel-lined fields. The book chronicles how America’s well-intended anti-growth policies of the 1970s now stymie solutions to modern problems: affordable housing, energy infrastructure, and a robust workforce.³ Instead, the authors propose a Third Way policy framework to address the “shortage of what’s needed to build a good life.”⁴

Isotopes of Ronald Reagan-era conservatism, New Deal policies, and the YIMBY movement⁵ can all be found in the abundance movement. Born from “deep frustration over Democratic leaders’ inability to build enough housing, provide clean streets, lower the cost of living and instill a sense of safety amid a drug addiction epidemic,” the movement turns on the idea that progress depends on reg-

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1. 605 U.S. 168 (2025).

2. Exec. Order No. 14154, 90 Fed. Reg. 8353 (Jan. 29, 2025).

3. See EZRA KLEIN & DEREK THOMPSON, *ABUNDANCE* (1st ed. 2025).

4. *Id.* at 20.

5. “YIMBY” stands for Yes, In My Backyard, which is a pro-housing social movement. See California YIMBY, *About Us*, <https://cayimby.org/about-us> (last visited Apr. 6, 2026).

ulatory reform.⁶ The term *abundance* was first popularized in a 2022 article by Thompson, diagnosing “manufactured scarcity” across health care, housing, higher education, transportation, and energy sectors.⁷ Thompson’s subsequent newsletter, and later the publication of *Abundance*, filled out a policy agenda grounded in supply-side expansion through accelerated permitting, looser zoning, incentivized capital investment, and streamlined regulations.⁸

Proponents of the abundance movement frame it as a bipartisan alternative to the stale binary of *spend more* versus *cut more*. Thompson says he would “prefer to focus on . . . perhaps the real problem: a national failure to increase the supply of essential goods.”⁹ Critics note that the movement’s top donors include billionaires like Michael Bloomberg and the Walton family, who stand to benefit from deregulation in ways reminiscent of the Reagan-era deregulatory agenda.¹⁰ To these critics, the abundance movement seems like a push for deregulation coupled with a latter-day version of trickle-down economics, which, although promoted as a path to broad economic prosperity, disproportionately benefited capital-rich industry.¹¹

B. Emergence of a Bipartisan Consensus for Permitting Reform

The abundance movement’s deregulatory ambitions collide with the purpose of the modern administrative state. Expanded through the 1960s and 1970s, the administrative state’s “animating obsessions were things that it wanted to prevent from happening, such as racial and gender discrimination, nuclear disasters, highways through central cities,

industrial accidents, dangerous toys, and environmental pollution.”¹² The U.S. Congress responded to these failures with a wave of prevention-oriented agencies, including the National Highway Traffic Safety Administration (1970), U.S. Environmental Protection Agency (EPA) (1970), Occupational Safety and Health Administration (1971), and Consumer Product Safety Commission (1972).

Today, a growing sense that the modern administrative state is unworkable has helped catalyze the rise of the abundance movement. In May 2025, over 30 lawmakers formed the bipartisan Build America Caucus. Rep. Josh Harder (D-Cal.) described the group’s intent as “making sure that things are built faster, better, cheaper.”¹³ In June, California Gov. Gavin Newsom tweeted that his administration is “urgently embracing an abundance agenda.”¹⁴ The governor’s tweet celebrated passage of A.B. 130 and S.B. 131, which codify statutory exemptions for urban infill housing developments under the California Environmental Quality Act (CEQA).¹⁵ They follow S.B. 149’s passage in 2023, which gave courts a 270-day window to resolve CEQA challenges in an effort to streamline lawsuits.¹⁶ Meanwhile, organizations like the Abundance Network and Abundance Elected Network are attracting hundreds of members across the country for “government that gets results.”¹⁷

The abundance agenda may have found an ally in the nation’s highest court. In a landmark 2025 decision, *Seven County Infrastructure Coalition v. Eagle County*, the Supreme Court offered a critique of NEPA that, while not doctrinally novel, was notable for its adoption of pro-abundance rhetoric. On behalf of a 5-3 majority, Justice Brett Kavanaugh wrote, “[a] 1970 legislative acorn has grown over the years into a judicial oak that has hindered infrastructure development ‘under the guise’ of just a little more process.”¹⁸ His opinion framed NEPA as a procedural burden rather than an environmental tool, import-

6. Dustin Gardiner, *How California’s Excesses Inspired the “Abundance” Craze*, POLITICO (Mar. 27, 2025), <https://www.politico.com/news/2025/03/27/california-abundance-craze-00253159>.

7. Derek Thompson, *A Simple Plan to Solve All of America’s Problems*, ATLANTIC (Jan. 12, 2022), <https://www.theatlantic.com/ideas/archive/2022/01/scarcity-crisis-college-housing-health-care/621221>.

8. KLEIN & THOMPSON, *supra* note 3.

9. Thompson, *supra* note 7.

10. Henry Burke & Vishal Shankar, *Who’s Behind Abundance Coachella?*, REVOLVING DOOR PROJECT (June 3, 2025), <https://therevolvingdoorproject.org/welcomefest/> (relying on publicly available data from the Federal Election Commission). This report analyzed donors and speakers at WelcomeFest, a centrist-Democrat conference that “convenes elected officials, media figures, journalists, and thought leaders to chart a new path forward for our party” and included *Abundance* co-author Thompson. *Id.*; Welcome team, *Home Page*, <https://www.welcome.team> (last visited Apr. 6, 2026). The report’s authors criticized the lineup, which included, for example, LinkedIn cofounder Reid Hoffman, who “strongly opposed the Biden administration’s anti-monopoly policies.” Burke & Shankar, *supra*. They argue, “[g]iven the WelcomeFest lineup, it’s clear that the donor class views Abundance as key to carrying out this self-serving crusade against populism.” *Id.* *Abundance* co-author Klein has acknowledged these criticisms, but said “I don’t believe, even if I would like to get money out of politics, we are going to get money out of politics in a full-on way, and end oligarchy, on the pace we need to decarbonize. We have to build things in the next couple years.” Ezra Klein, *Abundance and the Left*, N.Y. TIMES (Apr. 29, 2025), <https://www.nytimes.com/2025/04/29/opinion/ezra-klein-podcast-saikat-chakrabarti-zephyr-teachout.html> (transcript from *The Ezra Klein Show*).

11. See, e.g., David Jacobs & Lindsey Myers, *Union Strength, Neoliberalism, and Inequality: Contingent Political Analyses of U.S. Income Differences Since 1950*, 79 AM. SOCIO. REV. 752 (2014); MATTHEW SHERMAN, CENTER FOR ECONOMIC AND POLICY RESEARCH, A SHORT HISTORY OF FINANCIAL DEREGULATION IN THE UNITED STATES (2009).

12. Robert Saldin & Steven Teles, *The Rise of the Abundance Faction*, NISKANEN CTR. (June 4, 2024), <https://www.niskanencenter.org/the-rise-of-the-abundance-faction/>.

13. Nicolas Wu & Holly Otterbein, *House Democrat Starts “Abundance Movement”-Inspired Caucus*, POLITICO (May 8, 2025), <https://www.politico.com/news/2025/05/08/house-democrat-abundance-caucus-00333760>.

14. Governor Gavin Newsom (@CAGovernor), X (June 30, 2025, 8:31PM), <https://x.com/CAGovernor/status/1939889648744206429>.

15. Mack Carlson et al., *CEQA Infill Exemptions and “Near Miss” Streamlining—A Concrete Fix for California’s Housing Crisis?*, BROWNSTEIN (July 16, 2025), <https://www.bhfs.com/insight/ceqa-infill-exemptions-and-near-miss-streamlining-a-concrete-fix-for-californias-housing-crisis/>.

16. On November 6, 2023, Governor Newsom certified the Sites Reservoir Project, making it the first project certified under S.B. 149. Press Release, Sites Reservoir Project, California Certifies Sites Reservoir Under Senate Bill 149 for Streamlined Judicial Review (Nov. 6, 2023), <https://sitesproject.org/press-releases/press-release-california-certifies-sites-reservoir/>. Sites is an off-stream reservoir with a 1.5-million-acre-foot storage capacity. *Id.* Environmental groups have raised concerns over its ecological implications. See, e.g., Press Release, Friends of the River, Conservation Groups Undaunted by Court Ruling: Sites Reservoir Is a Bad Deal for Rivers, for Fish, and for California (June 5, 2024), https://www.friendsoftheriver.org/wp-content/uploads/2024/06/2024-06-05-PRS-RLS_Env-Grps-Respond-to-Sites-Ruling.pdf. See S.B. 149, 2023-2024 Leg., Reg. Sess. (Cal. 2023).

17. Abundance Network, *Home Page*, <https://www.abundancenetwork.com/> (last visited Apr. 6, 2026).

18. *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 184 (2025).

ing the abundance movement's foundational critique into federal jurisprudence.

II. The Evolution of NEPA and the Role of Courts and Agencies

Often described as the Magna Carta of environmental law, NEPA was signed into law by President Richard Nixon in 1970. This part traces NEPA's evolution from its origin, through judicial and administrative refinement, to a modern doctrine increasingly shaped by efficiency concerns and political pressure.

A. The Santa Barbara Oil Spill and the Costs of Pre-NEPA Decisionmaking

"It was horrific," Susan Hazard of Santa Barbara Waterfront recalls. "It was just oil all the way up as high as the high tide line. There were dead mammals, dead birds, dead fish."¹⁹ University of California Professor Emeritus Harvey Molotch reflected on the 1969 Santa Barbara Oil Spill similarly, describing, "[m]iles of beach—as far as the eye could see—covered in black oil."²⁰

In January 1969, an oil rig off the coast of Santa Barbara exploded in what was at the time the worst oil spill in U.S. history.²¹ The rig, known as Platform A, was drilling after the federal government granted Union Oil a waiver to operate. The government issued this waiver despite the rig having only 239 feet of protective steel casing, instead of the 300 feet required by federal law.²² The inadequate casing could not manage the mounting pressure and exploded.

By the time the outflow stopped 10 days later, over three million gallons of oil had spilled across the ocean floor.²³ "Viewers with their new color TVs were shocked to watch the beautiful Santa Barbara beaches turn black."²⁴ Images of volunteers cleaning oil-slicked birds drew national attention, but officials estimate nearly 90% of contaminated birds did not survive.²⁵ Union Oil President Fred Hartley minimized the spill, saying: "I don't like to call it a disaster, because there has been no loss of human life. I am amazed

at the publicity for the loss of a few birds."²⁶ The official bird death toll was 3,686.²⁷

The Santa Barbara community had rallied against oil drilling on its shores as far back as the 1890s.²⁸ "As technology advances allowed for deeper and deeper drilling in the open ocean, Santa Barbara residents worked to minimize the number of oil platforms in the channel."²⁹ In 1965, the Supreme Court ruled the federal government, not California, owned submerged lands beyond the Santa Barbara Channel's three-mile mark.³⁰ Immediately following the decision, "[t]he Johnson Administration fast tracked the approval process for offshore drilling."³¹ In fact, the "Administration was so sure that it would win the Supreme Court case that it planned for channel lease before the . . . decision."³²

Meanwhile, "county officials and various municipal leaders" raised objections and tried to negotiate with the U.S. Department of the Interior (DOI) for protections.³³ Residents organized anti-oil marches.³⁴ Testimony from public hearings "concerned aesthetics, geophysics, pollution and fish and wildlife, in addition to navigation matters."³⁵ Nevertheless, federal officials granted well permits despite documented community concerns, sometimes without even holding a public hearing, as was the case for Union Oil's platform construction permits.³⁶ Lacking a legal mechanism to compel the federal government to take their concerns seriously, "[the community] hadn't been able to weigh in" on the decision.³⁷

B. NEPA's Inception Reminds Us of the Pre-Regulatory Landscape

Before there was an Earth Day, an EPA, or NEPA, there was the 1966 New York City Smog, the Cuyahoga River Fire, and the 1969 Santa Barbara Oil Spill. Today, the spill is understood as a catalyst for the modern environmental movement and passage of NEPA.³⁸ The disaster captured

19. Kate Wheeling & Max Ufberg, "The Ocean Is Boiling": The Complete Oral History of the 1969 Santa Barbara Oil Spill, *PACIFIC STANDARD MAG.* (Apr. 18, 2017), <https://psmag.com/news/the-ocean-is-boiling-the-complete-oral-history-of-the-1969-santa-barbara-oil-spill/>.

20. *Id.*

21. Lila Thulin, *How an Oil Spill Inspired the First Earth Day*, *SMITHSONIAN MAG.* (Apr. 22, 2019), <https://www.smithsonianmag.com/history/how-oil-spill-50-years-ago-inspired-first-earth-day-1809720071>.

22. *Id.*

23. *Id.*

24. Teresa S. Spezio, *The Santa Barbara Oil Spill and Its Effect on United States Environmental Policy*, 10 *SUSTAINABILITY J.* 1, 2 (2018).

25. CALIFORNIA DEPARTMENT OF FISH & GAME, SECOND PROGRESS REPORT ON WILDLIFE AFFECTED BY THE SANTA BARBARA CHANNEL OIL SPILL 1, *available at* <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=167977>; Stephen R. Dujack, *Oil Spill Kicked Off Anti-Pollution Era*, 36 *ENV'T F.* 1 (Jan./Feb. 2019), <https://www.eli.org/the-environmental-forum/oil-spill-kicked-anti-pollution-era>.

26. Dujack, *supra* note 25.

27. CALIFORNIA DEPARTMENT OF FISH & GAME, *supra* note 25.

28. Daniel Haier, *'69 Oil Spill Leaves Mark on SB Environmentalism*, *DAILY NEXUS* (Jan. 28, 2005), <https://dailynews.com/2005-01-28/69-oil-spill-leaves-mark-on-sb-environmentalism/>.

29. Spezio, *supra* note 24, at 2.

30. *Id.*; *United States v. California*, 381 U.S. 139 (1965).

31. Spezio, *supra* note 24, at 4.

32. *Id.*

33. Malcolm F. Baldwin, *The Santa Barbara Oil Spill*, 42 *UNIV. COLO. L. REV.* 33, 33 (1970).

34. Haier, *supra* note 28.

35. Baldwin, *supra* note 33, at 34 (concerning a November 1967 public hearing on Phillips Petroleum's permit application).

36. "[L]ease sale documents acknowledged the concerns of Santa Barbara and California residents and officials, [but] they never took the concerns seriously." Spezio, *supra* note 24, at 4. The U.S. Army Corps of Engineers (the Corps) approved Phillips Petroleum's permit application "on terms conforming to the Phillips lease" roughly two months after hearing concerns. Baldwin, *supra* note 33, at 34. The following month Union Oil's "permits were obtained without a Corps hearing." *Id.*

37. Thulin, *supra* note 21.

38. Dujack, *supra* note 25 (quoting DANIEL A. VALLERO, *PARADIGMS LOST: LEARNING FROM ENVIRONMENTAL MISTAKES, MISHAPS, AND MISDEEDS* (Butterworth-Heinemann 2005)); Spezio, *supra* note 24, at 1-2.

national attention while illustrating the institutional costs of ignoring citizen concerns.

As one account explains, “[t]he federal government’s disregard of the concerns of the Santa Barbara residents and officials became the impetus for the reactive response to pass comprehensive environmental policy.”³⁹ At the same time, the disaster “imbued environmentalism with the kind of fervor that had already galvanized the push for women’s equality, civil rights, and peace in Southeast Asia.”⁴⁰ As we witness NEPA’s unprecedented retrenchment, history reminds us of the environmental disasters necessitating its inception.

In 1970, President Nixon signed NEPA into law “to create and maintain conditions under which man and nature can exist in productive harmony.”⁴¹ To achieve this, NEPA requires federal agencies to consider reasonably foreseeable adverse environmental effects from their proposed actions and to publish an environmental impact statement (EIS) or environmental assessment (EA) analyzing potential impacts.⁴² Federal agencies are also required to take public comment and evaluate a reasonable range of alternatives.⁴³ Additionally, NEPA established the Council on Environmental Quality (CEQ) to ensure federal agencies meet these obligations.

Importantly, NEPA does not prescribe any particular outcome. Instead, “[i]t is, at core, a public disclosure law” designed to give communities a procedural hook to compel agency consideration of environmental considerations.⁴⁴ It is the tool that communities like Santa Barbara lacked, one that would have required the federal government to at least acknowledge the risks of oil-slicked beaches, dead wildlife, and downstream health effects that were ultimately borne by residents.

C. The Courts’ Refinement of NEPA Over the Past 50 Years

1. Agency Discretion Over Judicial Interpretation: *Calvert Cliffs*, *Vermont Yankee*, and *Kleppe*

Over the next decade, a series of judicial decisions refined the role of NEPA and its place within the broader administrative state. *Calvert Cliffs’ Coordinating Committee, Inc. v. United States Atomic Energy Commission* was the first major NEPA ruling. Decided in 1971, the U.S. Court of Appeals for the District of Columbia (D.C.) Circuit ruled that the Atomic Energy Commission was required to consider the environmental impacts of licensing nuclear power

plants “to the fullest extent possible” regardless of whether a challenge was affirmatively raised.⁴⁵ The opinion opened by framing NEPA as an effort “to control, at long last, the destructive engine of material ‘progress.’”⁴⁶ It continued: “Therein lies the judicial role. In these cases, we must for the first time interpret the broadest and perhaps most important of the recent statutes: the National Environmental Policy Act of 1969.”⁴⁷

Calvert Cliffs’ was also emblematic of a broader judicial trend of the 1960s and 1970s. During this period, lower courts expanded the notice-and-comment rulemaking provisions of the Administrative Procedure Act (APA) to require “extensive procedural machinery.”⁴⁸ This included detailed public disclosure of agency evidence, opportunities for discovery, and comprehensive statements of basis and purpose.⁴⁹ At the time, fear that agencies were “vulnerable to industry capture” and “considerable support from the surrounding political and academic communities” motivated these decisions.⁵⁰ The courts viewed themselves as partners in ensuring the federal bureaucracy fulfilled Congress’ ambitions as the administrative state expanded.

In 1976, the Supreme Court published the landmark *Kleppe v. Sierra Club* decision. There, the Court considered environmental groups’ assertion that DOI was required to produce a single, comprehensive EIS evaluating the cumulative effect of multiple coal leases in the Northern Great Plains.⁵¹ The Court ruled against them, saying the EIS obligation only attaches to substantive plans, not speculative ones.⁵² The decision importantly emphasized agency deference, stating that “resolving these issues requires a high level of technical expertise, and is properly left to the informed discretion of the responsible federal agencies.”⁵³ This was a narrow interpretation of NEPA, advising that without contrary evidence, courts “must assume that the agencies have exercised this discretion appropriately.”⁵⁴

“For roughly a decade, the Supreme Court watched these developments (if it watched them at all) with apparent disinterest. In 1978, however, the Court spoke loudly and carried a huge club”⁵⁵ in *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, in which the Court “unanimously and stridently chastised the D.C. Circuit” for imposing procedural obligations on the Nuclear Regulatory Commission (NRC) that it said were not obligated by the APA, NEPA, or any other statute.⁵⁶ Instead, the Court ruled that NEPA was essentially procedural and could not be stretched by the courts to “further some

39. Spezio, *supra* note 24, at 2.

40. Wheeling & Ufberg, *supra* note 19.

41. 42 U.S.C. §4331(a).

42. *Id.* §4332(2); 40 C.F.R. §1508.1(i).

43. 42 U.S.C. §4332(2); 40 C.F.R. §1503.1.

44. Deborah A. Sivas, *Is the National Environmental Policy Act About to Be Dramatically Transformed?*, STAN. L. SCH. BLOG: ENV’T & NAT. RES. L. & POL’Y PROGRAM (Dec. 1, 2024), <https://law.stanford.edu/2024/12/01/is-the-national-environmental-policy-act-about-to-be-dramatically-transformed/>.

45. *Calvert Cliffs’ Coordinating Comm., Inc. v. United States Atomic Energy Comm’n.*, 449 F.2d 1109, 1115 (1971).

46. *Id.* at 1111.

47. *Id.*

48. Jack M. Beermann & Gary S. Lawson, *Reprocessing Vermont Yankee*, 75 GEO. WASH. L. REV. 856, 857 (2007).

49. *Id.*

50. *Id.*

51. *Kleppe v. Sierra Club*, 427 U.S. 390, 410-11 (1976).

52. *Id.* at 414.

53. *Id.* at 412.

54. *Id.*

55. Beermann & Lawson, *supra* note 48, at 858.

56. *Id.*; 435 U.S. 519, 549-58 (1978).

vague, undefined public good.”⁵⁷ The Supreme Court’s narrow reading in *Vermont Yankee* cemented NEPA as a purely procedural statute.

Together, these decisions interrupted the initial trend in the lower courts to expand the procedural reach of administrative statutes. Instead, the Supreme Court adopted a more narrow interpretation of NEPA’s obligations, establishing that substantive discretion rests with the agencies, not the courts, as long as appropriate procedures are followed.

2. Formation of a Unified NEPA Framework

During this same period, the executive branch worked to shape the evolution of NEPA. In 1977, President Jimmy Carter issued Executive Order No. 11991, directing CEQ to replace its previously nonbinding guidelines with binding regulations.⁵⁸ It is worth considering the extent to which the Order reflected the Supreme Court’s reluctance to impose additional procedural duties on agencies. However, the impetus was likely a response to the Carter Administration’s perception of document bloat as an early shortcoming of NEPA. As one account put it, “proverbial kitchen sinks were thrown in to resist anticipated litigation,”⁵⁹ which “in turn undermined NEPA’s goals. Busy administrators do not have time to read multivolume documents. Members of the public are deterred, not welcomed, by mountains of paperwork. If NEPA documents are not read, they cannot achieve their purpose.”⁶⁰

In response to the Order, CEQ undertook an extensive multi-year process involving interagency consultation, expert reviews, and broad public participation before issuing the final regulations.⁶¹ The new rules reduced the length of EISs to a “normal” 150 pages or less, allowed applicants to request time limits, required agencies to identify other permitting requirements, formalized the preparation of records of decision, and placed renewed emphasis on alternative analysis.⁶² As President Carter explained, “we do not want impact statements that are measured by the inch or weighed by the pound.”⁶³ For the first time, CEQ regulations directed action agencies to implement all of NEPA’s procedural provisions in a uniform, binding manner.

The Supreme Court promptly upheld these regulations as binding, establishing their credibility. In *Andrus v. Sierra Club*, the Court held that “CEQ’s interpretation of NEPA is entitled to substantial deference.”⁶⁴ The decision acknowledged that “in the past, we have been somewhat less inclined to defer to ‘administrative guidelines,’” but emphasized that CEQ’s binding regulations reflected a “detailed and comprehensive process, ordered by the

President” that justified judicial respect.⁶⁵ Together, CEQ’s regulations and *Andrus* mark a pivotal moment of NEPA’s evolution to a centralized, mandatory, executive-branch-led framework.

CEQ’s regulations were generally undisturbed for the next three decades.⁶⁶ Although lower courts continued to develop NEPA doctrine, “the eloquence of NEPA’s framers, echoed in the courts of appeals, has never reverberated in the Supreme Court.”⁶⁷ Of the roughly 15 significant NEPA cases subsequently decided by the Supreme Court, “in every case the Court has opted for a narrow construction of the law.”⁶⁸ Even so, these decisions continued to define the statute’s role. In 1989, the Court held that NEPA does not mandate agencies to adopt mitigation measures.⁶⁹ It also afforded a highly deferential “arbitrary and capricious” standard to agency decisions not to prepare EISs.⁷⁰ In 2004, the Court held that NEPA analyses are limited to effects that have a reasonably close causal relationship to the agency action.⁷¹

D. Modern Tensions and Demands for Efficiency

The original CEQ regulations were praised across ideological lines, hailed by entities as disparate as the U.S. Chamber of Commerce and the Natural Resources Defense Council as a workable framework for environment and development.⁷² Today, however, criticisms of NEPA are similarly bipartisan. In 2022, Oakland Mayor Libby Schaaf urged the Joseph Biden Administration to “streamline [the NEPA process] as much as possible,” saying the law can “slow, discourage, or prevent” solutions to housing shortages.⁷³ Republican leaders offer a parallel critique. Sen. Mitch McConnell (R-Ky.) described NEPA as granting “sweeping jurisdiction for federal bureaucrats to slow down all sorts of critical infrastructure.”⁷⁴

As Congress becomes increasingly polarized, federal legislative output has declined.⁷⁵ Yet, recent legislative successes demonstrate that NEPA reform has nonetheless achieved a degree of bipartisan political viability. In June 2023, President Biden signed the Fiscal Responsibility Act, which “made the most significant revisions to [NEPA]

57. 435 U.S. at 549-58.

58. Exec. Order No. 11991, 42 Fed. Reg. 26967 (1977).

59. Nicholas C. Yost, *The Background and History of NEPA*, in *THE NEPA LITIGATION GUIDE* 1, 13 (Albert M. Ferlo et al. eds., 2d ed. 2012).

60. *Id.*

61. *Id.* at 14.

62. *Id.* at 16-17.

63. *Id.* at 14.

64. 442 U.S. 347, 358 (1979).

65. *Id.*

66. Yost, *supra* note 59.

67. *Id.* at 12.

68. *Id.*

69. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989).

70. *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360 (1989).

71. *Department of Transp. v. Public Citizen*, 541 U.S. 752 (2004).

72. Yost, *supra* note 59, at 15.

73. Kelsey Brugger, *Oakland Mayor: NEPA Hurts Affordable Housing*, *E&E NEWS* (May 2, 2022), <https://subscriber.politicopro.com/article/eenews/2022/05/02/oakland-mayor-nepa-hurts-affordable-housing-00029192>.

74. *Senate Approved Resolution to Rescind NEPA Rules*, *NAT’L ASS’N MFRS.* (Aug. 5, 2022), <https://nam.org/senate-approves-resolution-to-rescind-nepa-rules-3-25744/?stream=series-input-stories>.

75. Francisco Tutella, *Political Polarization May Slow Legislation, Make Higher-Stakes Laws Likelier*, *PA. STATE UNIV.* (Jan. 26, 2024), <https://www.psu.edu/news/research/story/political-polarization-may-slow-legislation-make-higher-stakes-laws-likelier>.

since the statute was enacted in 1970.⁷⁶ The Act codified agency practices and introduced new amendments, notably narrowing the scope of review to actions “subject to substantial Federal control and responsibility.”⁷⁷

In July 2025, Trump signed a reconciliation package that amended NEPA to include §112, authorizing project sponsors to pay 125% of anticipated review costs in exchange for expedited environmental review.⁷⁸ Finally, in December 2025, the U.S. House of Representatives passed the Standardizing Permitting and Expediting Economic Development (SPEED) Act with 11 Democratic votes, similarly aimed at streamlining NEPA review.⁷⁹ As of this writing, that bill has stalled in the U.S. Senate.

What may appear to be doctrinal whiplash is better understood as layered retrenchment. Together, these measures reflect the growing political traction of framing NEPA as a procedural bottleneck in need of bipartisan reform.⁸⁰ This moment requires a closer examination of what “efficiency” means in the context of NEPA, and how metrics of speed and cost oversimplify the statute’s core function.

76. Jacob E. Aronson, *Significant Changes to the National Environmental Policy Act*, ALLEN MATKINS (May 23, 2024), <https://www.allenmatkins.com/real-ideas/luenr-update-2024-significant-changes-to-the-national-environmental-policy-act.html>.

77. 42 U.S.C. §4336e (2023). Prior to the passage of the Fiscal Responsibility Act of 2023, review was triaged by actions “potentially subject to substantial Federal control and responsibility.”

78. 42 U.S.C. §4336 (2025).

79. SPEED Act, H.R. 4776, 119th Cong. (2025).

80. The SPEED Act’s passage illustrates this growing traction. In 2023, H.R. 1 (Lower Energy Costs Act) passed the majority-Republican House 225-204, but with only four Democratic votes. In July 2025, House and Senate committees convened to discuss “bipartisan dealmaking on permitting after several Republican proposals failed to make the cut in the One Big Beautiful Bill Act.” Kelsey Brugger, *After Reconciliation, Lawmakers Return to Permitting*, E&E NEWS (July 21, 2025), <https://www.eenews.net/articles/after-reconciliation-lawmakers-return-to-permitting/>. During that time, Senate Majority Leader John Thune (R-S.D.) remarked, “I am hearing, believe it or not, some interest among Democrats in doing something on permitting reform. Because not only is it slowing down . . . conventional energy projects, but there are also renewable projects, things that Democrats support.” *Id.* Sen. Martin Heinrich (D-N.M.) described permitting as “one of the few places where we do have a fair amount of bipartisan room to work.” *Id.*

Two years after the passage of H.R. 1, the SPEED Act passed the House 221-196 with 11 Democratic votes. SPEED Act, H.R. 4776, 119th Cong. (2025). The bills were notably different, but both contained NEPA reforms. Several of the 11 Democratic votes are from representatives affiliated with pro-development caucuses and/or the abundance movement. Adam Gray (D-Cal.) is a member of the Build America Caucus, Marie Gluesenkamp Perez (D-Wash.) presented at WelcomeFest 2025, and Marc A. Veasey (D-Tex.) and Henry Cuellar (D-Tex.) serve on the American Energy Dominance Caucus, whose mission is to “increas[e] the production of all forms of American-made energy” as “America is rapidly facing a shortage of energy necessary.” Press Release, Congressman Chuck Fleischmann, Representatives Chuck Fleischmann and Marc Veasey Launch Bipartisan American Energy Dominance Caucus (Feb. 5, 2025), <https://fleischmann.house.gov/media/press-releases/representatives-chuck-fleischmann-and-marc-veasey-launch-bipartisan-american-energy-dominance-caucus>. Rep. Jarden Golden (D-Me.), who co-sponsored the bill, described how the SPEED Act “would modernize the National Environmental Policy Act (NEPA) to accelerate federal approval of energy development and other construction projects.” Press Release, Congressman Jared Golden, Golden’s Bipartisan Permitting Reform Bill Passes House Natural Resources Committee (Nov. 20, 2025), <https://golden.house.gov/media/press-releases/golden-s-bipartisan-permitting-reform-bill-passes-house-natural-resources-committee>. Had only the original four Democrats who sponsored H.R. 1 in 2023 voted in favor of the SPEED Act, the bill would have failed 214-203.

E. Examining Allegations of Excess

NEPA litigation is relatively rare, and the most demanding reviews are reserved for projects with the greatest potential for harm. A comprehensive study of 1,499 published and unpublished CEQ reports found that only one in roughly 450 NEPA decisions is litigated, and that the frequency of litigation has declined steadily.⁸¹ The study cites U.S. Government Accountability Office data estimating that *less than 1%* of the government’s roughly 51,000 NEPA documents prepared annually are EISs.⁸² That proportion translates to an average 513 EISs per year, 239 of which are litigable final EISs.⁸³

As a result, the “vast majority of federal actions that are subject to NEPA review are evaluated through an expedited analysis contained in either a CE [categorical exclusion] (95%) or an EA (5%).”⁸⁴ Further, there are roughly 115 NEPA lawsuits filed annually, representing a litigation rate of 0.22%, which comprises just 0.043% of civil environmental litigation where the federal government is a defendant.⁸⁵ Of this limited number of cases, the federal government only “lost” roughly 18% of the time.⁸⁶ “Losses” include agency withdrawal of a plan prior to a decision on the merits, even if withdrawal was voluntary.⁸⁷

It is important to note that EISs “are reserved for the most complex, contentious, and impactful 1% of federal projects.”⁸⁸ A lengthy or demanding review process may therefore reflect the underlying complexity of a project more than a structural defect of NEPA. In this sense, protracted review is not evidence of NEPA failures but of NEPA function, requiring careful agency review of a full scope of environmental consequences before taking an action.

Other analyses frame the data differently. For example, “approximately 30 percent of projects undergoing an EIS, the most involved type of review under NEPA, face litigation.”⁸⁹ Critics point to data that EISs have an average completion time of 4.5 years.⁹⁰ The average length of NEPA litigation is 23 months.⁹¹ Critics argue that these timelines cumulatively impose significant costs and delays, which discourage development. Many also contend that the mere threat of litigation adds to inefficiency. As one study explains, “[a]gencies have also clearly tried to structure projects so that they do not meet the threshold

81. John C. Ruple & Kayla M. Race, *Measuring the NEPA Litigation Burden: A Review of 1,499 Federal Court Cases*, 50 ENV’T L. 479, 479 (2020).

82. *Id.* at 485.

83. *Id.* at 492.

84. *Id.* at 521.

85. *Id.*

86. *Id.* at 510-11.

87. *Id.*

88. *Id.* at 521.

89. Bob Sternfels et al., *Unlocking US Federal Permitting: A Sustainable Growth Imperative*, MCKINSEY & CO. (July 28, 2025), <https://www.mckinsey.com/industries/public-sector/our-insights/unlocking-us-federal-permitting-a-sustainable-growth-imperative>.

90. Ruple & Race, *supra* note 81, at 496.

91. *Id.* at 497.

of ‘significant’ environmental impact required to produce an EIS.”⁹²

To complete projects, costly mitigation measures have emerged as a tool to avoid gridlock.⁹³ One example of this is Boston’s “Big Dig” project, a massive highway infrastructure project initially projected to cost \$2.6 billion.⁹⁴ Planners, “in an effort to avoid environmental litigation,” included more than 1,500 mitigation agreements adding up to half of the project’s total cost.⁹⁵ The project ultimately cost nearly \$15 billion and was completed eight years behind schedule.⁹⁶ However, despite the additional cost and time imposed by mitigation measures, the project successfully alleviated congestion, led to a 12% drop in carbon emissions, and created 300 acres of green space and nearly 30,000 trees and shrubs that are now home to species including osprey, hawks, bees, and butterflies.⁹⁷

Los Angeles’ Century Freeway is another example. The project was settled through a consent decree that included stipulations to create 1,175 housing units for displaced residents, establish an “Office of the Advocate for Corridor Residents,” and an Employment Action Plan to utilize female and minority employees and businesses, drawing criticisms for added length and cost.⁹⁸ In these high-profile examples, quantifying NEPA’s success has complications. A 1991 University of California Transportation Center study of the Century Freeway consent decree explains:

[i]n the minds of some, public policy was brought to where it should be: implementation of a mammoth urban freeway project would be informed by comprehensive analysis accessible to and influenced by those interested in outcomes. On the other hand, [some say] the decree sacrificed efficiency for a vague notion of openness in decision making and a perversion of the role of government and the rule of law.⁹⁹

Critics of NEPA cite costly mitigation measures and lengthy review timelines as evidence of the statute’s need for reform. But using efficiency as the metric of success misunderstands NEPA’s purpose, which is to compel the federal government to consider environmental harms. In other words, these examples reflect design rather than dysfunction. Nevertheless, these efficiency-based narratives are increasingly prevalent in proposed legislation,¹⁰⁰ academic

and policy articles,¹⁰¹ and even social media.¹⁰² The growing reach of these claims warrants consideration of their effects on environmental harm and risk, particularly as they begin to take on legal force through decisions like *Seven County*.

III. The Supreme Court Embraces Abundance Rhetoric

A. Case Overview

At issue in *Seven County* was the U.S. Surface Transportation Board’s (STB’s) decision to approve construction of an 88-mile railroad in Utah.¹⁰³ The railroad would connect Utah’s Uinta Basin to the national rail network, streamlining transport of crude oil in the basin to refineries along the Gulf Coast.¹⁰⁴ As part of its NEPA review, STB published a more than 3,600-page-long EIS analyzing the project’s environmental impacts.¹⁰⁵ The EIS recognized several “significant and adverse impacts” and other “minor impacts” that could occur as a result of the project, including disruptions to local wetlands, air pollution, and big game movement.¹⁰⁶ The EIS acknowledged potential downstream and upstream effects of increasing oil drilling and transport in the basin, but did not fully analyze these effects.¹⁰⁷ STB justified this lack of analysis by saying it would be “speculative,” as it possessed “no authority or control over potential future oil and gas development” and had “no role in approving or regulating the production, refining, or use” of the basin’s crude oil.¹⁰⁸

STB ultimately approved the project, finding the economic benefits outweighed environmental impacts.¹⁰⁹ Respondents including Eagle County, Colorado, and several nonprofits filed a petition for review in the D.C. Circuit. That court vacated the approval, ruling the EIS was insufficient because it failed to include effects from “increased oil drilling upstream . . . [and] increased oil refining downstream.”¹¹⁰ The Supreme Court reversed the D.C. Circuit’s decision. It ruled first that the lower court did not afford STB the “substantial judicial deference” required by NEPA.¹¹¹ Second, it ruled the EIS was sufficient because it did not need to include downstream

92. Michael Bennon & Devon Wilson, *NEPA Litigation Over Large Energy and Transport Infrastructure Projects*, 53 ELR 10836, 10843 (Oct. 2023), <https://www.elr.info/articles/elr-articles/nepa-litigation-over-large-energy-and-transport-infrastructure-projects>.

93. *Id.*

94. *The Big Dig and Spectacle Island’s Environmental Restoration*, NAT’L PARK SERV., <https://www.nps.gov/articles/000/the-big-dig-and-spectacle-island-s-environmental-restoration.htm> (last updated Jan. 15, 2026).

95. Bennon & Wilson, *supra* note 92, at 10843.

96. *The Big Dig and Spectacle Island’s Environmental Restoration*, *supra* note 94.

97. *Id.*

98. Joseph Di Mento et al., *Court Intervention, the Consent Decree, and the Century Freeway* (Working Paper No. 381, University of California Transportation Center 1, 31-34 Sept. 1991).

99. *Id.* at viii.

100. SPEED Act, H.R. 4776, 119th Cong. (2025).

101. Mark C. Rutzick, *A Long and Winding Road: How the National Environmental Policy Act Has Become the Most Expensive and Least Effective Environmental Law in the History of the United States, and How to Fix It*, FEDERALIST Soc’y (Oct. 16, 2018), <https://rtp.fedsoc.org/paper/national-environmental-policy-act/>; Jeremiah Johnson, *Johnson for Liberal Currents: The Case for Abolishing the National Environmental Policy Act*, PROGRESSIVE POL’Y INST. (Sept. 6, 2022), <https://www.progressivepolicy.org/johnson-for-liberal-currents-the-case-for-abolishing-the-national-environmental-policy-act/>.

102. Arnab Datta (@ArnabDatta321), X (Feb. 18, 2025, 5:26AM), <https://x.com/ArnabDatta321/status/1891841792858804581>.

103. *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 173 (2025).

104. *Id.*

105. *Id.*

106. *Id.* at 175.

107. *Id.*

108. *Id.* at 175-76.

109. *Id.* at 176.

110. *Id.* at 173-74.

111. *Id.* at 179.

or upstream effects “separate in time or place” from the project at hand.¹¹²

B. Seven County Clarifies and Reinforces Long-Standing Agency Deference

After *Loper Bright Enterprises v. Raimondo*, the 2024 Supreme Court decision that famously eliminated *Chevron* deference, courts review statutory interpretation de novo while an agency’s policy choices and factual determinations remain subject to the deferential arbitrary and capricious standard.¹¹³ *Seven County* provides clarity on judicial review of NEPA decisions post-*Loper Bright*, holding that courts should continue to afford substantial deference to noninterpretive agency decisions in the NEPA context.¹¹⁴

In *Seven County*, the Court predicated this delineation on the fact that NEPA is a purely procedural statute, reminding us that unlike other environmental statutes, “NEPA imposes no substantive constraints on the agency’s ultimate decision to build.”¹¹⁵ Its function is to ensure that agencies take a “hard look” at environmental consequences, not to mandate a particular outcome.¹¹⁶ Accordingly, “the adequacy of an EIS is relevant only to the question of whether an agency’s final decision . . . was reasonably explained.”¹¹⁷

The Court held that discerning requisite detail in an EIS is a primary issue of fact, which falls within an agency’s discretion and “should not be excessively second-guessed by a court.”¹¹⁸ Justice Kavanaugh’s opinion warns that “brevity should not be mistaken for lack of detail,” and that “courts should not insist on length as a prerequisite for finding an EIS to be detailed.”¹¹⁹ Additionally, the majority afforded deference in evaluations of whether an EIS sufficiently identifies significant environmental impacts,¹²⁰ holding, “[t]he agency may draw what it reasonably concludes is a ‘manageable line’—one that encompasses the effects of the project at hand, but not the effects of projects separate in time or place.”¹²¹ The Court said agencies have broad latitude to decide how far to go in considering indirect, cumulative, or geographically separate effects.¹²² It found STB’s argument that the proposed rail line was separate from any subsequent upstream drilling and downstream refinery operations “absolutely correct.”¹²³

In other words, *Seven County* reaffirmed deference to agency decisions and narrowly construed NEPA’s proce-

dural requirements, in line with previous Supreme Court decisions. By ruling that EISs are not required to include effects of separate or future activities, the decision is expected to ease the federal permitting process for developers. This is, on its face, a win for the abundance movement. Additionally, the case is notable for two reasons. First, the majority opinion adopts a deregulatory critique of NEPA as an obstacle to progress in a way that other major NEPA cases have avoided. Second, it downplays the relevance of CEQ’s regulatory framework, laying the groundwork for executive retrenchment of the regulations that have structured NEPA practice for the past 50 years.

C. A Love Letter to Abundance Theory

In tone as much as in doctrine, *Seven County* is a judicial endorsement of abundance theory, framing NEPA as an obstacle to growth rather than a mechanism for accountability. Justice Kavanaugh wastes little time before describing NEPA as a “procedural cross-check, not a substantive roadblock,”¹²⁴ adding that its aim is to “inform agency decisionmaking, not to paralyze it.”¹²⁵ As a result of NEPA, he wrote, “Fewer projects make it to the finish line. Indeed, fewer projects make it to the starting line.”¹²⁶ The opinion rattles off a myriad of infrastructure types that are “fewer and more expensive” and subject to “delay upon delay,” including “railroads, airports, wind turbines, transmission lines, dams, [and] housing.”¹²⁷ The majority sees its ruling as a “course correction of sorts . . . to bring judicial review under NEPA back in line with the statutory text and common sense.”¹²⁸

While the decision’s judicial skepticism of imposing extra-textual procedural obligations under NEPA is not unique, its rhetoric is, providing an explicit critique of NEPA as an obstacle to progress. The majority warned that NEPA has become a “blunt and haphazard tool employed by project opponents (who may not always be entirely motivated by concern for the environment) to try to stop or at least slow down new infrastructure and construction projects.”¹²⁹ Or, put more florally, that “a 1970 legislative acorn has grown over the years into a judicial oak that has hindered infrastructure development ‘under the guise’ of just a little more process.”¹³⁰

As others have observed, “[o]ne striking thing about Kavanaugh’s opinion is how closely it mirrors the rhetoric of liberal proponents of an ‘abundance’ agenda.”¹³¹ Additionally, while Justice Sonia Sotomayor wrote a concurring opinion joined by Justices Elena Kagan and Ketanji Brown Jackson, the 8-0 judgment “mirrors a growing bipartisan

112. *Id.*

113. See 603 U.S. 369 (2024).

114. *Seven Cnty.*, 605 U.S. at 169.

115. *Id.* at 180.

116. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

117. *Seven Cnty.*, 605 U.S. at 180.

118. *Id.* at 181.

119. *Id.*

120. *Id.* at 182-83.

121. *Id.* at 182 (quoting *Department of Transp. v. Public Citizen*, 541 U.S. 752, 767 (2004)).

122. *Id.*

123. *Id.* at 191.

124. *Id.* at 173.

125. *Id.*

126. *Id.* at 184.

127. *Id.*

128. *Id.*

129. *Id.* at 183.

130. *Id.* at 184.

131. Ian Millhiser, *The Supreme Court Wants to Make It Easier to Build*, *Vox* (May 29, 2025), <https://www.vox.com/scotus/414856/supreme-court-seven-county-eagle-railroad-abundance>.

consensus that NEPA has become too much of a burden to development.”¹³²

Rather than continuing the Court’s role in legitimizing and defining NEPA’s procedural boundaries, following the logic of *Calvert Cliffs*,¹³³ *Vermont Yankee*, and *Kleppe*, the Court embraced deference as a way to reduce procedural compliance altogether. This rhetorical shift places the judicial branch into the emerging narrative that procedural safeguards hinder national progress, a “victory for land developers as well as for traditional libertarians and for liberal proponents of an abundance agenda.”¹³³

IV. Executive Actions and Other Judicial Decisions Amplify Seven County

Seven County’s logic is being institutionalized across the political branches, marking an unprecedented acceleration of NEPA retrenchment. In 2017, former Santa Barbara city attorney Bill Cappello reflected on the 1969 oil spill, reminding us that, “[t]oday you have governmental agencies that monitor this. You can’t put a platform out without having a detailed plan on how you’re going to do it, what’s going to be involved, how you’re going to drill the wells, etc., etc. Then, there was nothing, no governmental agency. Zero.”¹³⁴ This quote captures over a half-century of NEPA practice and jurisprudence, before recent judicial and executive departures from the long-standing framework.

The first major post-*Seven-County* development came in November 2024, when the D.C. Circuit decided *Marin Audubon Society v. Federal Aviation Administration*.¹³⁵ There, a three-judge panel ruled that CEQ lacked legal authority to issue binding regulations implementing NEPA.¹³⁶ In a 2-1 split decision, the panel majority asserted that “no statutory language states or suggests that Congress empowered CEQ to issue rules binding on other agencies—that is, to act as a regulatory agency rather than as an advisory agency.”¹³⁷ According to these judges, CEQ’s power was derived from President Carter’s 1977 Executive Order, which makes it legally nonbinding.¹³⁸

To rationalize its departure from *Andrus*, the panel majority said deference to CEQ “cannot be credited in light of the Supreme Court’s ruling in *Loper Bright*.”¹³⁹ Notably, neither party had challenged CEQ’s authority,¹⁴⁰ nor was CEQ’s authority the basis of the decision, which turned solely on arbitrary and capricious review.¹⁴¹ While

the panel’s language was dicta, the discussion “represents a seismic departure from prior NEPA jurisprudence.”¹⁴²

Similarly, in February 2025, the U.S. District Court for the District of North Dakota vacated CEQ’s regulations on the grounds that CEQ lacks authority to issue binding regulations and instead only has the authority to make recommendations to the president.¹⁴³ The opinion reads, “[t]he truth is that for the past forty years all three branches of government operated under the erroneous assumption that CEQ had authority. But now everyone knows the state of the emperor’s clothing and it is something we cannot unsee.”¹⁴⁴ However, in July 2025, a U.S. Court of Appeals for the Eighth Circuit panel vacated the decision.¹⁴⁵ The panel sided with a coalition of states, including New York and Wisconsin, that argued the earlier decision was “in tension with” prior Supreme Court holdings.¹⁴⁶

In the midst of a shifting legal landscape, the executive branch undertook its own reforms. Two weeks before the North Dakota decision, Trump issued Executive Order No. 14154, Unleashing American Energy, which directed CEQ to rescind its NEPA regulations.¹⁴⁷ Just three weeks after the North Dakota decision, CEQ initiated that rescission by issuing an interim final rule to remove all existing implementing regulations.¹⁴⁸ The interim rule relied in part on *Marin Audubon* and the North Dakota decision to assert that CEQ lacks statutory authority to maintain the regulations after Executive Order No. 14154.¹⁴⁹ Federal agencies began updating their implementation procedures shortly after.

In September 2025, CEQ released its updated NEPA implementation guidance with some notable pro-abundance rhetoric. The White House press release accompanying the update reads, “[m]ajor infrastructure projects in the United States often take longer to receive Federal permits than to build, highlighting a failure in our system that stalls economic growth and hinders American competitiveness.”¹⁵⁰ It directs agencies to “account [] for the

132. *Id.*

133. *Id.*

134. Wheeling & Ufberg, *supra* note 19.

135. 121 F.4th 902, 912 (D.C. Cir. 2024).

136. *Marin Audubon* was brought by environmental groups challenging the Federal Aviation Administration’s reliance on a categorical exemption to increase flights over national parks without preparing an EA. *Id.*

137. *Id.*

138. *Id.* at 911.

139. *Id.* at 913.

140. *Id.* at 921.

141. *Id.* at 919.

142. Sarah Bordelon et al., *Marin Audubon Should Not Upend the NEPA Process*, HOLLAND & HART (Nov. 14, 2024), <https://www.hollandhart.com/marin-audubon-should-not-upend-the-nepa-process>. In January 2025, the D.C. Circuit denied petitions for rehearing en banc. *Marin Audubon Soc’y v. Federal Aviation Admin.*, No. 23-1067 (D.C. Cir. Jan. 31, 2025). The court explained the denial in a short opinion, writing, “the panel majority’s rejection of the CEQ’s authority to issue binding NEPA regulations was unnecessary to the panel’s disposition.” *Id.*

143. *Iowa v. Council on Env’t Quality*, 765 F. Supp. 3d 859, 878 (D.N.D. 2025).
144. *Id.* at 896.

145. *Iowa v. Council on Env’t Quality*, No. 25-1641-1707, 2025 U.S. App. LEXIS 19747 (8th Cir. 2025).

146. Stephen Lee, *Blue States Win Bid to Set Aside Federal Permitting Decision*, BLOOMBERG L. (July 31, 2025), <https://news.bloomberglaw.com/environment-and-energy/blue-states-win-bid-to-set-aside-federal-permitting-decision>.

147. NEPA.gov, *CEQ NEPA Rulemaking*, <https://ceq.doe.gov/laws-regulations/regulations.html> (last visited Apr. 6, 2026).

148. *Id.* The interim rule was adopted, without change, in January 2026. Removal of National Environmental Policy Act Implementing Regulations, 91 Fed. Reg. 618 (Jan. 8, 2026).

149. Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10610 (Feb. 25, 2025).

150. Press Release, The White House, CEQ Releases Guidance to Streamline NEPA Reviews (Sept. 29, 2025), <https://www.whitehouse.gov/articles/2025/09/ceq-releases-guidance-to-streamline-nepa-reviews/>.

United States Supreme Court’s recent landmark decision in *Seven County*,” while promising to “unleash American energy dominance and strengthen American leadership across critical sectors.”¹⁵¹ In January 2026, CEQ finalized its regulatory rescission.¹⁵² CEQ Chair Katherine Scarlett released a statement celebrating the final rule, stating “NEPA’s regulatory reign of terror has ended.”¹⁵³

To be fair, NIMBY¹⁵⁴ weaponization of environmental review is a genuine problem, building more is a worthy goal, and permitting changes may be a necessary reform.¹⁵⁵ But in the roughly one year since NEPA’s retrenchment accelerated, the projects moving forward are not green energy or affordable housing; they are uranium mines and offshore oil leases. The earnest ideals driving some proponents of NEPA reform have been co-opted to facilitate the very harms NEPA was designed to protect. Therefore, the question is not *whether to build*, but whether the price of speed is *worth paying*, and *who* is being asked to pay it?

V. The Impacts of NEPA Retrenchment on Our Environment and Public Health

As some celebrate NEPA’s retrenchment as a pro-growth victory, one should consider the costs. In 2025 alone, retrenchment has laid the foundation for permitting offshore drilling and uranium mining. These projects are severed from the abundance vision of clean energy and public

transit, illustrating how removing procedural safeguards does not ensure more of the *good stuff*, but just of *stuff*, without regard for what might be *good*.

Decisions concerning land use and infrastructure necessarily determine who bears risks and who receives benefits, and weakening NEPA removes the mechanisms that allow communities to participate in those determinations. “When the government wants to build a toxic waste incinerator in your neighborhood, run a dangerous pipeline past your child’s school, or put a massive, costly freeway on top of a wetland, [NEPA] gives you the right to find out and fight back.”¹⁵⁶ NEPA’s successes are difficult to quantify, but undoubtedly include improved public health outcomes, protected endangered species, and preserved public lands.¹⁵⁷ The following examples illustrate NEPA’s pivotal role.

A. Preventing Widespread Uranium Contamination in Utah

In 1986, NRC issued an EA approving Atlas Minerals’ plan to permanently store nearly 16 million tons of radioactive uranium mill tailings on the banks of the Colorado River, where it had piled the tailings during its mining process.¹⁵⁸ Litigants over the plan, including the Utah Division of Drinking Water, identified “high levels of contaminants in the Colorado River in direct association with the tailings pile . . . [and] extreme contamination of groundwater at the site.”¹⁵⁹ The Colorado River supplies drinking water to millions across Phoenix, Las Vegas, San Diego, and Los Angeles.¹⁶⁰

Elevated uranium levels in drinking water are linked to thyroid cancer, lung cancer, leukemia, decreased fertility, and kidney toxicity, including renal failure.¹⁶¹ In addition to impacts on human health, the U.S. Geological Service and U.S. Fish and Wildlife Service found that contamination in nearby shore waters was already “lethal to fish . . . [and] that the plan to cap tailings in place would jeopardize the endangered Colorado pikeminnow.”¹⁶² Atlas Minerals had not planned any groundwater remediation.¹⁶³ The Commission nevertheless approved the plan, issuing a finding of no significant impact.¹⁶⁴

Over the next two decades, NEPA litigation forced reconsideration of the agency’s decisions, Atlas Minerals filed for bankruptcy, and responsibility for the mine was

151. *Id.*

152. 91 Fed. Reg. 618.

153. Matthew Daly, *White House Finalizes Plan to Curb National Environmental Policy Act*, PBS News (Jan. 7, 2026), <https://www.pbs.org/newshour/politics/white-house-finalizes-plan-to-curb-national-environmental-policy-act>.

154. “NIMBY” stands for Not In My Backyard, officially defined as “a colloquialism signifying one’s opposition to the locating of something considered undesirable in one’s neighborhood.” Peter D. Kinder, “NIMBY,” *ENCYCLOPEDIA BRITANNICA*, <https://www.britannica.com/topic/NIMBY> (last visited Mar. 9, 2026).

155. An exploration of state and/or federal permitting reforms as an alternative to NEPA retrenchment is beyond the scope of this Comment, but I want to acknowledge examples of our current system’s flaws. See, for example, San Francisco’s 469 Stevenson St. project, which would build 495 apartment units in a parking lot. J.K. Dineen, *Big Fight Over Housing at Nordstrom Parking Lot Appears Over. But Will It Get Built?*, S.F. CHRON. (Dec. 9, 2022), <https://www.sfchronicle.com/sf/article/An-unnecessary-waste-of-time-After-months-17641823.php>. The project was significantly delayed after the city’s Board of Supervisors found the [CEQA] EIS inadequate. *Id.* The *San Francisco Chronicle*, quoting a representative from YIMBY Law, writes, “[f]orcing the project to undertake a \$750,000 study is ‘emblematic’ of how opponents of market-rate housing use the state’s environmental laws to ‘indefinitely delay projects.’” *Id.*

In Los Angeles (LA), oil company Warren Resources challenged the city’s law to “ban new wells and phase out all drilling within city limits” over what they claimed to be an inadequate environmental review. Emma Newburger, *Oil Companies Sue Los Angeles Over Ban on Oil and Gas Drilling*, CNBC (Jan. 11, 2023), <https://www.cnbc.com/2023/01/11/oil-companies-sue-los-angeles-over-ban-on-oil-and-gas-drilling.html>. The company wanted to continue drilling operations in LA’s Wilmington neighborhood, which has “some of the highest rates of asthma and cancer in the state.” *Id.*

For an international comparison of permitting reform efforts, see New Zealand’s Planning Bill [2025] (NZ) and Natural Environment Bill [2025] (NZ). The bills replace the country’s Resource Management Act of 1991 (RMA), attempting to reconcile criticisms that the RMA is slow, expensive, and confusing while requiring “environmental limits to protect the life-supporting capacity of the natural environment.” NEW ZEALAND GOVERNMENT, *BLUEPRINT FOR RESOURCE MANAGEMENT REFORM: A BETTER PLANNING AND RESOURCE MANAGEMENT SYSTEM 2025*, at 1, 7 (2025).

156. Steven St. John, *The People’s Environmental Law: National Environmental Policy Act*, EARTHJUSTICE (Jan. 9, 2023), <https://earthjustice.org/feature/national-environmental-policy-act>.

157. *Id.*

158. NEPA SUCCESS STORIES: CELEBRATING 40 YEARS OF TRANSPARENCY AND OPEN GOVERNMENT 12 (ENV’T L. INST. 2010), <https://www.eli.org/research-report/nepa-success-stories-celebrating-40-years-transparency-and-open-government> [hereinafter NEPA SUCCESS STORIES].

159. *Id.*

160. *Id.*

161. Geir Bjørklund et al., *Uranium in Drinking Water: A Public Health Threat*, 94 ARCHIVES TOXICOLOGY 1551, 1552 (2020).

162. *Id.*

163. *Id.*

164. *Id.*

eventually transferred to the U.S. Department of Energy (DOE). In 2005, DOE issued the final EIS, recommending relocation of the radioactive waste to an engineered disposal facility. By 2023, the remedial action was close to 90% complete, with over 14 million tons of radioactive waste removed from the Colorado River corridor.¹⁶⁵ While the decades-long fight was undeniably procedurally arduous, it is precisely what kept millions of tons of radioactive waste from leaching into the Colorado River and harming downstream communities and wildlife.

B. Community Input Strengthens Projects and Prevents Disaster

In 1998, a draft EIS for the Los Alamos National Laboratory failed to identify wildfire as a potential emergency scenario at the facility.¹⁶⁶ The U.S. Forest Service and DOI flagged the omission during NEPA's public comment period, leading to revisions that incorporated "comprehensive wildfire mitigation."¹⁶⁷ Less than a year later, a nearly 60,000-acre fire burned through one-third of the laboratory property.¹⁶⁸

Because of the EIS's mitigation action plan, work to reduce fuels around key facilities, thin trees, and maintain fire roads and breaks was already underway,¹⁶⁹ which reduced the fire's severity.¹⁷⁰ Officials relied on the EIS to communicate with downstream communities.¹⁷¹ Additionally, DOE used NEPA's emergency action provision to protect nuclear facilities and remove contaminated soils.¹⁷² NEPA's review process frequently reveals risks that agencies initially overlook. Here, interagency review improved the project's resilience, moderating what could have been a more devastating disaster. The EIS's mitigation action plan was estimated to reduce the impact of radiation from a site-wide fire by 92%.¹⁷³

NEPA's participatory structure similarly allows the public to identify mistakes in agency analysis. In 2009, a retired test pilot caught mathematical errors in a 1,500-page draft EIS prepared by the U.S. Army Corps of Engineers (the Corps) in coordination with multiple state agencies. The errors "substantially understated the risk profile of intro-

ducing nonnative oysters into the Chesapeake Bay . . . by several orders of magnitude."¹⁷⁴

The pilot's input prompted revisions to the final EIS and ultimately a decision that the ecological risks were too great to approve the action.¹⁷⁵ "Following the decision not to introduce non-native oysters in the Chesapeake Bay, Maryland and Virginia both initiated mechanism[s] to maintain and increase their native oyster populations."¹⁷⁶ As of 2024, the Chesapeake Bay Program, in partnership with the Corps and other organizations, had successfully restored nine oyster reefs across Maryland and Virginia.¹⁷⁷

VI. Who Bears the Cost of Getting It Wrong?

A. How to Analyze Costs and Risks

Critics, including the Supreme Court, abundance theorists, and the Trump Administration, contend that regulatory regimes like NEPA impose unduly burdensome delays. A recent U.S. Department of Agriculture press release celebrated CEQ's revisions, saying "[o]verregulation has morphed the NEPA process into bureaucratic overreach on American innovation."¹⁷⁸ Shorter permitting timelines, it argues, would accelerate construction, reduce costs, and unlock "pro-growth" investment. Consulting firm McKinsey & Company estimates that "\$240 billion to \$280 billion in infrastructure capital expenditures . . . enter the federal permitting process each year."¹⁷⁹ The firm argues reducing federal permitting by a single year could "unlock a minimum of \$22 billion in returns on invested capital among projects seeking approvals."¹⁸⁰ Additionally, it estimates that prolonged permitting can increase construction costs by 24% to 30% over project timelines.¹⁸¹

Klein and Thompson claim "the United States is notable for how much we spend and how little we get," comparing the cost of building a kilometer of rail (\$609 million in the United States) to other countries (\$267 million in Japan, for example).¹⁸² While the authors refrain from offering a definitive explanation for the disparity, they point to protracted reviews, lengthy negotiations,

165. Sophia Fisher, *UMTRA Hits 14 Million Tons Removed*, TIMES-INDEP. (Nov. 7, 2023), <https://www.moabtimes.com/articles/umtra-hits-14-million-tons-removed/>.

166. NEPA SUCCESS STORIES, *supra* note 158, at 14.

167. *Id.*

168. *Id.*

169. Office of NEPA Policy and Compliance, *Los Alamos Site-Wide EIS Analyzed Wildfire Impacts, Prompted Mitigation Actions*, DOE (June 2, 2000), <https://www.energy.gov/nepa/articles/los-alamos-site-wide-eis-analyzed-wildfire-impacts-prompted-mitigation-actions>.

170. *Id.*

171. *Id.*

172. NEPA SUCCESS STORIES, *supra* note 158, at 14.

173. Office of NEPA Policy and Compliance, *supra* note 169. The article further specifies: "With the completion of these actions, the Final EIS stated (conservatively) that the population dose from a site-wide fire would be reduced from an estimated 675 person-rem to 50 person-rem, thereby avoiding a potential for approximately 0.3 latent cancer fatalities."

174. NEPA SUCCESS STORIES, *supra* note 158, at 6.

175. *Id.*

176. Chesapeake Bay Program, Sustainable Fisheries Goal Implementation Team Oyster Tributary Restoration Decision Framework, https://www.chesapeakebay.net/files/documents/Oyster_Decision_Framework_v5.pdf.

177. Chesapeake Bay Program, *Oysters*, <https://www.chesapeakebay.net/issues/whats-at-risk/oysters> (last visited Apr. 6, 2026); NOAA Fisheries, *Chesapeake Bay: Oyster Restoration*, <https://www.fisheries.noaa.gov/topic/chesapeake-bay/oyster-restoration> (last visited Apr. 6, 2026).

178. Press Release, USDA, Secretary Rollins Rolls Back Overly Burdensome Environmental Regulations to Unleash American Innovation (June 30, 2025), <https://www.usda.gov/about-usda/news/press-releases/2025/06/30/secretary-rollins-rolls-back-overly-burdensome-environmental-regulations-unleash-american-innovation>.

179. Sternfels et al., *supra* note 89.

180. *Id.*

181. *Id.*

182. KLEIN & THOMPSON, *supra* note 3, at 77.

and onerous paperwork as increasing costs.¹⁸³ An abundance agenda, they argue, promises “real marvels in the real world . . . more homes and more energy, more cures and more construction.”¹⁸⁴

It is undeniably true that more efficient infrastructure will unlock benefits for individual Americans and the national economy. The average American driver, for example, spends 42 hours each year sitting in traffic.¹⁸⁵ This imposes an estimated cost of \$733 per driver “in lost time and productivity” and more than \$70 billion annually on the broader economy.¹⁸⁶ Better public transit infrastructure could reduce these losses and improve quality of life.

It is also true that technological innovation, particularly the development of affordable and accessible clean energy, is essential to meaningfully address climate change. *Abundance* describes how “[v]ertical greenhouses could feed far more people while using far less land . . . [and how] directly removing carbon dioxide from the air would become more plausible, giving us a path to reversing climate change over time.”¹⁸⁷ As the discussion below illustrates, however, the current trajectory of permitting reform ignores these sustainability-oriented goals. Instead, it is facilitating projects that replicate the very environmental risks NEPA was designed to prevent.¹⁸⁸

Recent energy policy reveals the disparity between the *Abundance* vision and Trump’s “energy dominance agenda.” For example, in July 2025, DOI announced that “wind and solar energy facilities will undergo an elevated review . . . including leases, rights-of-way, construction and operation plans . . . [to] further deliver on President Trump’s promise to tackle the Green New Scam.”¹⁸⁹ In

addition to protracting reviews, the Trump Administration is exploring extra-legal mechanisms to stall clean energy projects. In April 2026, Trump paid Bluepoint Wind and Golden State Wind a combined nearly \$900 million to forfeit leases to build offshore wind farms.¹⁹⁰ The month prior, he paid TotalEnergies nearly \$1 billion to abandon a similar project.¹⁹¹

As journalists note, “[t]he agreements are extraordinary transfers of taxpayer dollars to private companies for the purposes of throttling offshore wind power, a source of clean energy.”¹⁹² In lieu of developing renewable energy resources, “the companies have pledged to invest that money in oil and gas projects.”¹⁹³ “By dealing directly with developers, the administration may be able to avoid legal challenges.”¹⁹⁴ According to a 2024 survey, 77% of Americans support generating renewable energy on public lands, while just 33% support drilling for oil in the Arctic National Wildlife Refuge.¹⁹⁵ NEPA retrenchment removes a mechanism through which public opinion is actionable.

Additionally, framing NEPA as an impediment to this future ignores the crucial question: *who bears the cost of getting it wrong?* NEPA imposes no substantive obligation on agencies or project sponsors to bear the cost of erroneous analysis or failed mitigation. As one commentator observes, “[p]rovided that the procedural aspects of NEPA’s EIS are followed, there is no consequence to the agency or decision-maker for poor decisions. In fact, there is not even any type of obligation to follow up or ensure the accuracy of the predictions and determine the actual adverse environmental consequences.”¹⁹⁶

The absence of post-EIS monitoring “takes away any possible feedback that is needed to make better estimates and ultimately better decisions in the future.”¹⁹⁷ This means the costs of NEPA retrenchment are borne not by the entities with a vested interest in project approval, but by the public. However, the costs are difficult to quantify, in part because NEPA lacks accounting mechanisms. Instead, the consequences of rushed or insufficient environmental review are most visible in retrospect, by analyzing projects with inadequate review.

183. *Id.* at 77-79.

184. *Id.*

185. Gary Guthrie, *Study: Americans Spending More Time Doing “Life in the Slow Lane,”* CONSUMER AFFS. (Oct. 8, 2024), <https://www.consumeraffairs.com/news/study-americans-spending-more-time-doing-life-the-slow-lane-100824.html>.

186. *Id.*

187. KLEIN & THOMPSON, *supra* note 3, at 118-20.

188. I want to flag how environmental vulnerability by NEPA retrenchment is compounded by other Trump Administration rollbacks. For example, in February 2026, President Trump and EPA Administrator Lee Zeldin “announced the single largest deregulatory action in U.S. history,” rescinding the 2009 Greenhouse Gas Endangerment Finding that provided the legal basis for federal emission standards. Press Release, U.S. EPA, President Trump and Administrator Zeldin Deliver Single Largest Deregulatory Action in U.S. History (Feb. 12, 2026), <https://www.epa.gov/newsreleases/president-trump-and-administrator-zeldin-deliver-single-largest-deregulatory-action-us>. The Administration estimates the final rule will “sav[e] American taxpayers over \$1.3 trillion.” *Id.*

However, an EPA Regulatory Impact Analysis in March 2024 calculated that new emission standards would provide \$2.1 trillion in fuel saving, public health, and climate benefits over the next three decades. Courtney Lindwall, *How EPA Rollbacks Will Cost Us—in Dollars and Lives*, NAT. RES. DEF. COUNCIL (Feb. 18, 2026), <https://www.nrdc.org/stories/how-epa-rollbacks-will-cost-us-dollars-and-lives>. Additionally, the Biden Administration also estimated their proposed emission standards could “save individual drivers up to \$6,000 over the lives of their vehicles, thanks to reduced fuel and maintenance costs.” *Id.* This figure can be compared to the aforementioned study calculating that American drivers lose \$733 annually in “lost time and productivity.” Guthrie, *supra* note 185.

189. Press Release, DOI, Interior Ends Preferential Treatment for Unreliable, Subsidy-Dependent Wind and Solar Energy (July 17, 2025), <https://www.doi.gov/pressreleases/interior-ends-preferential-treatment-unreliable-subsidy-dependent-wind-and-solar>.

190. Maxine Joselow & Brad Plumer, *Trump Administration Will Pay More Energy Firms to Cancel Wind Farms*, N.Y. TIMES (Apr. 27, 2026), <https://www.nytimes.com/2026/04/27/climate/trump-administration-wind-farms.html>.

191. Maxine Joselow & Brad Plumer, *Trump Administration to Pay \$1 Billion to Energy Giant to Cancel Wind Farms*, N.Y. TIMES (Mar. 23, 2026), <https://www.nytimes.com/2026/03/23/climate/offshore-wind-gas-trump-total.html>.

192. *Id.*

193. *Id.*

194. Joselow & Plumer, *supra* note 190.

195. Jennifer Marlon et al., *Yale Climate Opinion Maps 2024*, YALE PROGRAM ON CLIMATE CHANGE COMMUN. (Aug. 28, 2025), <https://climatecommunication.yale.edu/visualizations-data/ycom-us/>.

196. Whitney Deacon, *The Bush Administration’s Attack on the Environment; Target: NEPA’s Environmental Impact Statement*, 10 MO. ENV’T L. & POL’Y REV. 147, 151-52 (2003).

197. *Id.* at 151.

B. *The Public Pays With Economic, Health, and Environmental Impacts*

The 1976 Grand Teton Dam collapse illustrates the stakes.¹⁹⁸ There, the Bureau of Reclamation dismissed the risk of dam failure as “too remote” to warrant analysis in the EIS.¹⁹⁹ The dam collapsed just six months after completion, killing 11 people, drowning 15,000 livestock animals, displacing 25,000 residents, flooding 300 square miles, and costing the government an estimated \$1 billion.²⁰⁰ No designer or builder was fired as a result.²⁰¹ The public suffered the environmental, economic, and human costs.

A second example highlights similar consequences of insufficient environmental review. In 2000, the Corps relied solely on industry information to approve over 5,712 limestone mining permits across Lake Belt, Florida.²⁰² Four years after mining began, the U.S. District Court for the Southern District of Florida ruled that several permits were improperly issued and required the Corps to prepare a new EIS considering environmental issues, including drinking water contamination, surface water quality, and wetland function.²⁰³

However, blasting agents used for the mining operations had already caused benzene contamination in the region’s water supply.²⁰⁴ Benzene, a carcinogen, was found at five times EPA’s allowable limit in areas that supply drinking water for over one million residents.²⁰⁵ “Had the Corps used NEPA properly from the beginning, they would have likely required use of alternative explosives from the start, drinking water contamination could have been avoided, and the funds required to clean up the contaminated wells would have been saved.”²⁰⁶

In both examples, agencies dismissed or failed to independently evaluate foreseeable risks. As a result, community impacts included contamination, damaged property, and loss of life. Codifying shortcuts to NEPA review in order to accelerate development risks repeating these failures, but on a much larger scale. Shortcuts would apply to the over 51,000 NEPA documents prepared annually, exponentially increasing the risks of bad decisionmaking on public health and the environment.²⁰⁷

The public maintains “strong, bipartisan majority” support for NEPA, with 73% of voters saying they “support NEPA and its requirement that federal agencies study and report on the environmental impacts of their actions.”²⁰⁸ This same poll found a majority of voters opposed the proposed pay-to-play provision and agreed with the statement that “reforming NEPA will have mostly negative impacts.”²⁰⁹

Meanwhile, the CEO of the American Petroleum Institute, the largest oil and gas trade group in the United States, described their “full-throated effort” and “major seven-figure” advertising campaign to promote permitting reform inside Washington.²¹⁰ Other groups joining the pro-reform campaign include the Independent Petroleum Association of America and the National Association of Manufacturers.²¹¹ So while reducing federal permitting by a single year could “unlock a minimum of \$22 billion in returns on invested capital among projects seeking approvals,” the spending suggests that initial benefits will flow toward investors and industry leaders.²¹²

Meanwhile, risks are shifted to taxpayers. A 2014 study estimated that air pollution costs the U.S. economy nearly \$800 billion annually and causes at least 100,000 premature deaths in the United States each year.²¹³ Emissions from industrial engines and equipment, construction, materials production, and oil and gas production alone account for nearly 26,000 premature deaths.²¹⁴ In 2021, cleanup of environmental contamination cost the federal government an estimated \$613 billion. Toxic air pollution in Louisiana alone is linked to 85 excess cancer cases per year.²¹⁵ National costs for cancer care were projected at nearly \$210 billion annually.²¹⁶

“Any place that’s experienced a climate-fueled storm, fire, or flood can speak to this financial toll.”²¹⁷ For example, the 2025 Los Angeles wildfires cost communities up

198. *Id.* at 152.

199. *Id.*

200. *Id.*; Josh Franzen, *The Bursting of the Teton Dam*, INTERMOUNTAIN HISTORIES (Sept. 6, 2017), <https://www.intermountainhistories.org/items/show/93>.

201. Deacon, *supra* note 196, at 152.

202. Elly Pepper, *Never Eliminate Public Advice: NEPA Success Stories*, NAT. RES. DEF. COUNCIL (Feb. 1, 2015), <https://www.nrdc.org/resources/never-eliminate-public-advice-nepa-success-stories>.

203. Florida Senate, House of Representatives Staff Analysis: HB 7121 (Apr. 4, 2007), https://flsenate.gov/Session/Bill/2007/7121/Analyses/20077121HENRC_h7121.ENRC.pdf; Notice of Intent to Prepare a Supplemental Environmental Impact Statement on Rock Mining in Wetlands in the Lake Belt Region of Miami-Dade County, FL, 71 Fed. Reg. 58592 (Oct. 4, 2006).

204. Pepper, *supra* note 202.

205. *Id.*; Isaiah Thompson, *Poisoned Well*, MIAMI NEW TIMES (Mar. 20, 2008), <https://www.miaminewtimes.com/news/poisoned-well-6363391/>.

206. Pepper, *supra* note 202.

207. Ruple & Race, *supra* note 81, at 485.

208. Catherine Fraser & Grace Adcox, *Voters Support NEPA, Opposed Congress’ Proposed “Pay to Play” Amendment*, DATA FOR PROGRESS (May 28, 2025), <https://www.dataforprogress.org/blog/2025/5/28/voters-support-nepa-oppose-congress-proposed-pay-to-play-amendment>.

209. *Id.*

210. Elizabeth Elkind, *Rapid Rise of AI Puts New Urgency on Congress to Unleash American Energy*, FOX NEWS (Sept. 23, 2025), <https://www.foxnews.com/politics/rapid-rise-ai-puts-new-urgency-congress-unleash-american-energy>.

211. Dana Drugmand, *Fossil Fuel Interests Applaud Trump Admin’s Weakening of Major Environmental Law*, NATION CHANGE (Jan. 15, 2020), <https://www.nationofchange.org/2020/01/15/fossil-fuel-interests-applaud-trump-admins-weakening-of-major-environmental-law/>.

212. Sternfels et al., *supra* note 89.

213. *Id.*; Ellis Robinson, *How Much Does Air Pollution Cost the U.S.?*, STAN. DO-ERR SCH. SUSTAINABILITY (Sept. 19, 2019), <https://sustainability.stanford.edu/news/how-much-does-air-pollution-cost-us>; Sumil K. Thakrar et al., *Reducing Mortality From Air Pollution in the United States by Targeting Specific Emission Sources*, 7 ENV’T SCI. & TECH. LETTERS 639 (2020).

214. *Id.*

215. *Tulane Study: Louisiana’s Severe Air Pollution Linked to Dozens of Cancer Cases Each Year*, TULANE UNIV. L. SCH. (June 21, 2021), <https://law.tulane.edu/news/tulane-study-louisianas-severe-air-pollution-linked-dozens-cancer-cases-each-year>.

216. National Cancer Institute, *Financial Burden of Cancer Care*, https://progressreport.cancer.gov/after/economic_burden (last reviewed Apr. 2025).

217. Lindwall, *supra* note 188.

to \$250 billion²¹⁸ and contributed to over 400 deaths.²¹⁹ In 2024, Hurricane Helene killed over 100 people, destroyed roughly 126,000 homes, and cost billions of dollars.²²⁰ These figures attempt to illustrate the externalities of retrenchment.²²¹ Put differently, capital saved on the front end inevitably reappears as environmental contamination, poor health outcomes, and taxpayer-funded cleanups.

C. Environmental Justice Communities Face Disproportionate Harm

The opening of *Abundance* paints the following picture: “You live in a cocoon of energy, so clean it barely leaves a carbon trace and so cheap you can scarcely find it on your monthly bill. The year is 2050.”²²² Similarly, the Trump Administration promises that reforming “burdensome and ideologically motivated regulations” will result in “American prosperity, including for those men and women who have been forgotten by our economy in recent years.”²²³

These quotes appeal to everyday Americans. But what they fail to address is how NEPA’s retrenchment redistributes environmental risk toward low-income communities, tribal nations, and communities of color who already bear disproportionate exposure to pollution and industrial hazards. For example, the 1.2 million Americans living in mountaintop removal mining communities are twice as likely to get cancer as those in non-mining communities.²²⁴ A survey of Navajo women found that “26% had concentrations of uranium that exceeded levels found in the highest 5% of the U.S. population, and newborns with equally high concentrations continued to be exposed to uranium during their first year.”²²⁵ In 2023, EPA had identified over

200 abandoned uranium mines on the Navajo Nation that it planned to remediate.²²⁶ The status of the abandoned mines is unknown as the Trump Administration works to permit new uranium mines in the area.²²⁷

Between 2012 and 2013, spills from oil and gas production released more than 26 million gallons of chemicals.²²⁸ In California, over 5.4 million people live within one mile of an oil and gas well, and 92% of them are people of color.²²⁹ An evaluation of fracking fluid constituents found that over 75% affect the skin, eyes, and respiratory and gastrointestinal systems; over 40% affect the central nervous system, brain, immune system, cardiovascular system, and kidneys; 37% are endocrine disruptors; and 25% are linked to cancer and mutations, subjecting these communities of color to higher rates of exposure.²³⁰ Benzene, the carcinogen found in Lake Belt’s drinking water supply, disproportionately impacts low-income communities.²³¹

In 2008, over one billion gallons of coal ash, a highly toxic byproduct containing arsenic, mercury, and lead, broke free from a federally owned fossil fuel plant in Kingston, Tennessee.²³² The federal government approved a plan to transport the waste to Uniontown, Alabama, where 90% of residents are African American and 40% live below the poverty line, despite “the continued objection of residents.”²³³ As of 2022, 50 cleanup workers had died and over 200 community members were sick from coal ash-related illness, including blood cancer, skin sores, and colon failure.²³⁴ Reflecting on the impact, one resident wrote, “I’ve asked over and over . . . why this coal ash was considered hazardous when it left Kingston, Tennessee, and the area of the spill was declared a superfund site, but then was no longer considered hazardous when it arrived in our community, a predominantly black town?”²³⁵

The story does not end there. In February 2026, the plant’s owner (Tennessee Valley Authority (TVA)), voted to “continue operating its Kingston and Cumberland

218. *Id.*; Roger Vincent, *Estimated Cost of Fire Damage Balloons to More Than \$250 Billion*, L.A. TIMES (Jan. 24, 2025), <https://www.latimes.com/business/story/2025-01-24/estimated-cost-of-fire-damage-balloons-to-more-than-250-billion>.

219. Jillian McKoy, *Death Count for 2025 LA County Wildfires Likely Hundreds Higher Than Official Records Show*, BOS. UNIV. SCH. PUB. HEALTH (Aug. 7, 2025), <https://www.bu.edu/sph/news/articles/2025/death-count-for-2025-la-county-wildfires-likely-hundreds-higher-than-official-records-show/>.

220. Lindwall, *supra* note 188.

221. Consider also the effects of NEPA retrenchment in conjunction with other actions by the Trump Administration to roll back environmental rules. As the Clean Air Act (CAA) is targeted, note that the Act’s 1990 amendments alone had an estimated \$2 trillion in benefits, exceeding costs by a factor of more than 30 to one. U.S. EPA, *Benefits and Costs of the Clean Air Act*, <https://www.epa.gov/clean-air-act-overview/benefits-and-costs-clean-air-act> (last updated Oct. 14, 2025). Additionally, the Trump Administration’s proposed repeal of Biden-era power plant standards will eliminate an estimated “\$390 billion in climate and health benefits—20 times the cost to industry.” Lindwall, *supra* note 188. Where NEPA requires agencies to surface and consider environmental risks, statutes like the CAA regulate actual emissions. Simultaneous retrenchment of both procedural checks and substantive standards will only compound economic and public health implications of each individually.

222. KLEIN & THOMPSON, *supra* note 3.

223. Press Release, *supra* note 150.

224. Jeff Biggers, *New Study Links Mountaintop Removal to 60,000 Additional Cancer Cases*, HUFFINGTON POST (July 27, 2011), available at <https://www.biologicaldiversity.org/news/center/articles/2011/huffington-post-07-27-2011.html>.

225. Mary Hudetz, *US Official: Research Finds Uranium in Navajo Women, Babies*, AP NEWS (Mar. 1, 2023), available at <https://www.congress.gov/118/>

[meeting/house/115368/documents/HHRG-118-II06-20230228-SD018.pdf](https://www.congress.gov/118/legislation/hrgs/115368/documents/HHRG-118-II06-20230228-SD018.pdf).

226. *Id.*

227. See *infra* Part VI (discussing uranium mining in Utah).

228. TANJA SREBOTNJAK & MIRIAM ROTKIN-ELLMAN, NATURAL RESOURCES DEFENSE COUNCIL, DRILLING IN CALIFORNIA: WHO’S AT RISK? 1, 7-8 (2014), <https://www.nrdc.org/sites/default/files/california-fracking-risks-report.pdf>.

229. *Id.* at 9.

230. *Id.*

231. Angela Carpenter & Marcus Wagner, *Environmental Justice in the Oil Refinery Industry: A Panel Analysis Across United States Counties*, 159 ECOLOGICAL ECON. J. 101 (2019).

232. Marianne Engelman-Lado et al., *Environmental Injustice in Uniontown, Alabama, Decades After the Civil Rights Act of 1964: It’s Time for Action*, AM. BAR ASS’N HUM. RTS. MAG. (May 21, 2021).

233. *Id.*

234. Plant owner Tennessee Valley Authority (TVA) contracted Jacobs Engineering, a private company earning \$15 billion in annual revenue, to conduct the cleanup. After Jacobs Engineering sent sub-contracted workers to clean the sludge, they soon noticed “the appearance of burning sores on their skin.” The cleanup workers reported asking Jacobs Engineer for protective gear, “but were refused items as basic as dust masks” and told “conditions at the impacted sites were safe for breathing and eating.” Global Atlas of Environmental Justice, *Kingston Fossil Plant, Harriman, Tennessee, USA*, <https://ejatlas.org/print/kingston-fossil-plant-harriman-tn> (last updated Apr. 25, 2023).

235. Engelman-Lado et al., *supra* note 232.

coal plants indefinitely,²³⁶ reversing its prior commitment to retire the plants due to “reliability challenges that are difficult to anticipate and expensive to mitigate” and “contrib[utions] to environmental, economic, and reliability risks.”²³⁷ Instead, it says the plants will now continue to operate alongside new methane gas power plants.²³⁸ As one account explains, “TVA is telling the people who live near these coal plants that they will breathe in toxic pollution from not one, but two major power plants.”²³⁹

The decision was made without public notice, a public comment period, or public hearings.²⁴⁰ Instead, the decision was quietly published in a supplemental EIS under the agency’s revised NEPA procedures, which became effective January 2026. The agency’s website claims the new procedures “will help TVA move projects forward more efficiently . . . and reduce unnecessary paperwork.”²⁴¹ However, the Kingston story encapsulates the precise dynamic this Comment warns against. Congressional Rep. Steve Cohen (D-Tenn.) describes how TVA’s decision “undermines the deliberate transparency that [NEPA] is designed to ensure,” adding “[t]he practical effect of this approach is to take the ‘public’ out of public power.”²⁴²

While NEPA does not guarantee environmental justice communities protection, it guarantees consideration. Removing the legal mechanism that compels agencies to consider community impacts, while accelerating development, increases the likelihood of mistakes and makes accountability discretionary for entities with a demonstrated record of prioritizing profits over communities.

D. Have We Learned Nothing?

1. Revisiting Utah’s Uranium Mines

Revisiting the Atlas Minerals uranium mill further shows how these risks materialize and how their burden is inequitably distributed. After sustained NEPA challenges, Atlas Minerals filed for bankruptcy in 1998, leaving behind a grossly inadequate reclamation bond “worth just \$4.25 million.”²⁴³ In 2000, the U.S. Bankruptcy Court approved Atlas’ plan for reorganization.²⁴⁴ Under its reorganization

plan, Atlas avoided liability for reclamation. The corporation emerged from bankruptcy with six million shares and redirected its operations to expanding lead-zinc-silver production in Bolivia.²⁴⁵

Congress transferred responsibility for the contaminated site to DOE, which, as of 2023, had removed 14 million tons of the uranium tailings.²⁴⁶ The agency will continue removing roughly one million tons of tailings annually through at least 2027. Then, the agency estimates two additional years of remedial work to “dispose of potentially contaminated equipment and intermodal containers, and install the cover on the disposal cell.”²⁴⁷ Additional efforts are underway to use groundwater extraction wells to clean up uranium and ammonia that have “leached into the groundwater at the site and migrated downstream into the Colorado River.”²⁴⁸

Over a decade later, taxpayers are contributing roughly \$67 million annually for the cleanup.²⁴⁹ Estimates put the project’s total cost between \$720 million and \$1 billion.²⁵⁰ Although NEPA successfully compelled cleanup, American taxpayers, not the mining company, paid the price. This case illustrates how project sponsors often evade financial responsibility, leaving the public to absorb the environmental and financial harms.

The federal government’s recent efforts to retrench NEPA turn back the clock, repeating the very mistakes that motivated NEPA’s enactment. Just 35 miles away from the Atlas Minerals site, in May 2025, DOI approved the Velvet-Wood uranium and vanadium mine, “the nation’s first project approved under a newly accelerated 14-day environmental review process.”²⁵¹ The mine was permitted just 11 days after the expedited EA.²⁵²

Local residents, conservation groups, and tribal nations have raised concerns of “radioactive ponds and waste rocks to local fauna, particularly critical raptor species; impacts on local resident’s livestock grazing and recreational uses

of Reorganization (Mar. 11, 1999), <https://www.nrc.gov/docs/ml0037/ML003733464.pdf>.

245. *Atlas Emerges From Bankruptcy*, N. MINER (Jan. 10, 2000), <https://www.northernminer.com/news/atlas-emerges-from-bankruptcy/1000163845>.

246. NEPA SUCCESS STORIES, *supra* note 158, at 12.

247. DOE, EM STRATEGIC VISION: 2024-2034, at 1, 30 (2024), <https://www.energy.gov/sites/default/files/2024-03/DOE%20EM%20Strategic%20Vision%202024%20FINAL%20sm.pdf>.

248. Anastasia Hufham, *As a Closed Utah Uranium Mill Seeks State Approval to Reopen, Taxpayers Are Still Paying to Clean Up Others*, TIMES-INDEP. (Nov. 5, 2024), <https://www.moabtimes.com/articles/as-a-closed-utah-uranium-mill-seeks-state-approval-to-reopen-taxpayers-are-still-paying-to-clean-up-others/>.

249. *Id.*

250. Multicultural Alliance for a Safe Environment, *Comparison of Regional Mill Tailings Site Cleanup Efforts*, <https://swuraniumimpacts.org/wp-content/uploads/2016/02/Regional-uranium-mill-cleanup-EJ-comparison.pdf> (last visited Apr. 6, 2026); Max Roth, *Moab Uranium Tailing Cleanup Still Going After 13 Years*, FOX 13 (May 12, 2021), <https://www.fox13now.com/news/local-news/moab-uranium-tailing-cleanup-still-going-after-13-years>.

251. Press Release, DOI, Interior Department Approves Utah Uranium-Vanadium Mine to Strengthen U.S. Mineral Security (May 23, 2025), <https://www.doi.gov/pressreleases/interior-department-approves-utah-uranium-vanadium-mine-strengthen-us-mineral>.

252. Press Release, Sierra Club, Southeastern Utah’s Velvet-Wood Uranium Mine Scheduled to Break Ground on November 6 (Nov. 4, 2025), <https://www.sierraclub.org/press-releases/2025/11/southeastern-utah-s-velvet-wood-uranium-mine-scheduled-break-ground-november>.

236. Press Release, Appalachian Voices, TVA Cuts the Public Out, Keeps Expensive and Dangerous Coal Plants Operating Indefinitely (Feb. 11, 2026), <https://appvoices.org/2026/02/11/tva-cuts-the-public-out/>.

237. Press Release, Appalachian Voices, Tennessee Valley Authority Goes Back on Commitment to Retire Dirty Coal Plants (Feb. 10, 2026), <https://appvoices.org/2026/02/10/tva-coal-plants/>.

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.*; TVA, *Updated TVA NEPA Procedures*, <https://www.tva.com/environmental-stewardship/environmental-reviews/nepa-detail/Proposed-Changes-to-TVAs-NEPA-Procedures> (last visited Apr. 6, 2026).

242. Press Release, Congressman Steve Cohen, Congressman Cohen Calls on TVA to Pause Vote on Changes to Kingston, Cumberland Fossil Plants Until Public Can Weigh In (Feb. 10, 2026), <https://cohen.house.gov/media-center/press-releases/congressman-cohen-calls-tva-pause-vote-changes-kingston-cumberland>.

243. NEPA SUCCESS STORIES, *supra* note 158, at 12.

244. Fax from James R. Jenson, Atlas Corporation, to Steven Burns, NRC, Joe Holonich, NRC, and Gil Maldonado, DOE, re: Atlas Corporation’s Plan

of the land; and the potential for groundwater contamination of the Burro Canyon Aquifer, which sits above the Navajo Aquifer.²⁵³ The Navajo Aquifer is a critical water source, serving as the primary drinking water source for 50,000 Indigenous people.²⁵⁴ Additionally, tribes question how rushed requests for review as part of the expedited process can meet the meaningful consultation requirements in NEPA and the National Historic Preservation Act (NHPA).²⁵⁵ Overall, opponents warn, “[p]ermitting uranium operations that impact sovereign tribal lands, water systems and national monuments without public or tribal consent is a violation of trust.”²⁵⁶ “These projects enrich foreign investors while endangering U.S. communities and sacred lands.”²⁵⁷

By contrast, the Trump Administration says the mine will reduce American dependence on foreign adversaries and provide economic benefits for the region.²⁵⁸ In April 2025, Anfield Energy, the company that owns and operates the mine, issued a preliminary economic assessment for the Slick Rock and Velvet-Wood projects, estimating a pre-tax value of \$238 million and a 40% yearly return on invested capital.²⁵⁹ Anfield’s plan of operation includes reclamation provisions estimating a cleanup cost of just \$513,435; BLM subsequently approved a surety of \$539,000.²⁶⁰ Anfield

Energy is based in Canada.²⁶¹ Like in the Atlas Minerals case, foreign sponsors will likely reap the biggest benefits while local communities bear the greatest risk.²⁶² The proposed mines are just 70 miles from the now federally run Atlas Minerals remediation site.²⁶³

2. Revisiting the Santa Barbara Oil Spill

In November 2025, the Trump Administration initiated the first of 30 lease sales in the Gulf of Mexico required by the One Big Beautiful Bill Act.²⁶⁴ DOI used “its own assessment” in lieu of NEPA guidelines to organize the lease sale of 80 million acres for offshore oil and gas drilling.²⁶⁵ Environmental groups quickly filed a NEPA lawsuit against the agency.²⁶⁶ A senior attorney with the Center for Biological Diversity (CBD) writes:

Trump’s plan to auction off millions of acres of our public waters to Big Oil is a wholesale assault on Gulf communities and endangered marine wildlife. If the industry can’t clean up the decaying oil platforms and thousands of idle wells already littering the Gulf, it shouldn’t be allowed to drill new wells.²⁶⁷

However, as of March 2026, the Administration was moving forward to rescind recently enacted bonding assurances, “reduc[ing] the financial requirements that some oil and gas companies must pay to ensure there is enough money to clean up offshore oil rigs and other equipment after drilling projects end, even if companies go bankrupt.”²⁶⁸ Agencies like the Bureau of Ocean Energy

253. *Id.*

254. Nicole Horseherder, *Water Is Life for the Navajo Nation*, HIGH COUNTRY NEWS (Feb. 22, 2013), <https://www.hcn.org/wotr/water-is-life-for-the-navajo-nation/>.

255. In response to approval of the Velvet-Wood Uranium Mine, some tribes expressed frustration with the rushed approval. For example, “Zuni Tribal Historic Preservation Officer Kurt Dongoske didn’t even realize the BLM reached out” adding, “oftentimes I will [respond]—with comments—and I never hear back from them.” See Gabriel Pietrorazio, *Trump Fast-Tracked Permitting a Utah Uranium Mine in Record 11 Days. Tribes Call It a Rubber Stamp*, KJZZ PHOENIX (Feb. 26, 2026), <https://www.kjzz.org/tribal-natural-resources/2026-02-26/trump-fast-tracked-permitting-a-utah-uranium-mine-in-record-11-days-tribes-call-it-a-rubber-stamp>.

More broadly, “[t]ribal leaders [have] expressed serious concerns” that NEPA and the NHPA “are being inconsistently applied, misinterpreted, or weakened under EO 14156.” They say “[t]he Department is failing to uphold its legal obligations under Sections 106 (NHPA) and NEPA by conducting perfunctory reviews, minimizing impacts on Tribal resources, and ignoring Tribal input.” See DOI, TRIBAL CONSULTATION ON EO 14210—INDIAN AFFAIRS WORKFORCE EFFICIENCY/PRODUCTIVITY AND EO 14156 NATIONAL ENERGY EMERGENCY—PERMITTING PROCEDURES: CONSOLIDATED POST CONSULTATION SUMMARY REPORT 16-17 (2025).

256. Andrew Christiansen, *Protesters Rally Against Velvet-Wood Uranium Mine: “Don’t Fast-Track Utah Into a Wasteland.”* TIMES-INDEP. (June 21, 2025), <https://www.moabtimes.com/articles/dont-fast-track-utah-into-a-wasteland-protesters-rally-against-velvet-wood-uranium-mine>.

257. *Id.*

258. Press Release, *supra* note 150.

259. Press Release, Anfield Energy, Anfield Welcomes the U.S. Government’s Efforts to Facilitate Domestic Uranium Mining (Apr. 29, 2025), <https://anfieldenergy.com/anfield-welcomes-the-u-s-governments-efforts-to-facilitate-domestic-uranium-mining>.

260. In May 2025, BLM published its EA “Finding of No Significant Impact” based on Anfield’s Plan of Operations. The Plan of Operations estimated reclamation costs at \$513,435. Under the expedited permitting process, BLM issued a surety determination just months later, saying: “Based on this office’s review of [Anfield’s] reclamation cost estimate, the required financial guarantee amount is hereby set at \$539,000 for reclamation of the Velvet-Wood operation.” On November 6, 2025, Anfield Energy held a “groundbreaking ceremony” celebrating the beginning of surface construction at the site. BLM, VELVET-WOOD MINE PLAN OF OPERATIONS MODIFICATION (2025) (DOI-BLM-UT-Y020-2025-0018-EA), [available at https://eplanning.blm.gov/Documents/?id=41973ef1-a7f2-f011-8406-001dd80ef717&spid=87b80693-a8f2-f011-8407-001dd803d067#; HAR-](https://eplanning.blm.gov/Documents/?id=41973ef1-a7f2-f011-8406-001dd80ef717&spid=87b80693-a8f2-f011-8407-001dd803d067#; HAR-)

OLD J. HUSTON, BRS INC., APPLICATION OF BEST AVAILABLE TECHNOLOGY TO RECLAMATION DESIGN AND INTEGRATION WITH MINE PLANNING, *available at* [261. Hufham, *supra* note 248.](https://eplanning.blm.gov/Documents/?id=41973ef1-a7f2-f011-8406-001dd80ef717&spid=87b80693-a8f2-f011-8407-001dd803d067#; BLM, Determination of Required Financial Guarantee Amount Ongoing Operations (Sept. 30, 2025) (T-23814), available at https://ogm.utah.gov/minerals-files/; Christiansen, <i>supra</i> note 256.</p>
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262. Currently, Anfield Energy is awaiting state permits to begin mining production, but the company began construction at the site in November 2025. Christiansen, *supra* note 256. At the time of writing, the latest inspection by Utah’s Department of Natural Resources cited public safety concerns, including a portal fence “not anchored to the ground and [that] had large gaps underneath,” a silt fence for protection of drainages/erosion control “not properly installed,” and “trash.” UTAH DEPARTMENT OF NATURAL RESOURCES, MINERALS REGULATORY PROGRAM INSPECTION REPORT (2025), *available at* <https://ogm.utah.gov/minerals-files/>.

263. Estimated from a Google Maps search, using coordinates made available online; U.S. EPA, *CERCLA Site Information: Atlas Mineral Corp Mill Site*, <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0800685> (last visited Apr. 6, 2026); Anfield Energy, *Velvet-Wood Project*, <https://anfieldenergy.com/velvet-wood-project/> (last visited Apr. 6, 2026).

264. Karen Zraick, *Environmentalists Sue to Stop Oil Lease Sales in the Gulf of Mexico*, N.Y. TIMES (Nov. 18, 2025), <https://www.nytimes.com/2025/11/18/climate/gulf-of-mexico-oil-lease-sale-lawsuit.html>.

265. *Id.*

266. Press Release, Center for Biological Diversity, Lawsuit Challenges First Offshore Oil Sale of New Trump Administration (Nov. 18, 2025), <https://biologicaldiversity.org/w/news/press-releases/lawsuit-challenges-first-offshore-oil-sale-of-new-trump-administration-2025-11-18>.

267. *Id.*

268. Risk Management and Financial Assurance for OCS Lease and Grant Obligations, 91 Fed. Reg. 11212 (proposed Mar. 9, 2026); Ian M. Stevenson, *White House Completes Review of Relaxed Offshore Oil Rule*, E&E

Management, which is “short tens of billions of dollars in bonding to cover costs to decommission offshore rigs” and has “previously failed to enforce decommission deadlines on companies,” thus assume greater decommissioning and/or cleanup liability.²⁶⁹

Back on the Santa Barbara coast, Sable Offshore Corporation is currently petitioning the federal government for expedited permits to resume oil drilling under the new NEPA policy.²⁷⁰ In October 2025, Sable was fined \$18 million by the California Coastal Commission for beginning pipeline construction without valid coastal development permits.²⁷¹ The company is also facing 21 criminal charges filed by the Santa Barbara district attorney, civil charges from the state attorney general for illegally discharging waste in local waterways, a shareholder lawsuit, and a public rebuke from the State Lands Commission for misleadingly claiming they “restarted production on the anniversary of the Refugio Beach oil spill.”²⁷² Approval would resume operations on “the exact same pipelines”²⁷³ that led to the 2015 Refugio Beach oil spill, which was the worst oil spill since the 1969 disaster, spilling 450,000 gallons of oil into the ocean.²⁷⁴

Yet again, the same mistakes appear ready to repeat themselves. On November 20, 2025, the Trump Administration hinted at re-permitting drilling in the Santa Barbara Channel when it announced plans to lease 34 offshore sites, including across Southern California.²⁷⁵ The Administration approved the plan just a few weeks later, arguing noncompliance with NEPA and other safety regulations was justified under Trump’s Executive Order.²⁷⁶ Conservation groups filed a lawsuit in the U.S. Court of Appeals for the Ninth Circuit requesting an emergency stay.²⁷⁷

In February 2026, Santa Barbara Superior Court Judge Donna Geck upheld a restraining order blocking Sable

from restarting production.²⁷⁸ However, the very same day, DOI issued a notice of intent to conduct a programmatic EIS for the lease sales, signaling the Administration’s intent to advance offshore drilling notwithstanding pending litigation.²⁷⁹ Then, in March, Trump invoked the Defense Production Act, a Cold War-era law, to restart production for the first time in over a decade.²⁸⁰

The move was immediately challenged and met with criticism.²⁸¹ California Governor Newsom described it as an attempt to “open California’s coast for [Trump’s] oil industry friends so they can poison our beaches.”²⁸² CBD attorney Talia Nimmer warns that “Californians will pay the price.”²⁸³ Since Sable restarted production in March, the California Coastal Commission has approved a third cease-and-desist order and an \$18 million fine for unpermitted work,²⁸⁴ the California Department of Parks and Recreation has filed a civil action to enjoin Sable for trespass,²⁸⁵ and community-based organizations are demanding a stop to the drilling.²⁸⁶ While Sable alleges Trump’s invocation of the Defense Production Act preempts the injunction, Judge Geck ruled that the Act “does not by itself permit violation of other federal law,” reaffirming that “the court is deeply concerned with noncompliance with the preliminary injunction.”²⁸⁷

As these open legal questions play out in real time, oil is already flowing from the Santa Barbara Channel over the objections of judges, state officials, environmental groups, and community members. A robust NEPA framework prevents the force, and speed, of unilateral decisionmaking. The Trump Administration touts Sable’s pipeline as “bringing a meaningful amount of oil production in the

News (Mar. 4, 2026), <https://politicopro.com/article/eenews/2026/03/04/white-house-completes-review-of-relaxed-offshore-oil-rule-00812257>.

269. Stevenson, *supra* note 268.

270. Letter from James C. Flores, Chairman and CEO, Sable Offshore Corp., to Doug Burgum, Secretary, DOI, and Chris Wright, Secretary, DOE, re: Request for Expedited Support of FPSO Santa Ynez Unit—Pacific OCS Area (Sept. 19, 2025), https://www.sec.gov/Archives/edgar/data/1831481/000183148125000071/a993_requestforexpeditedsu.htm.

271. Blanca Begert, *An Oil Company Running Into Rough Waters Off the California Coast Is Looking to Trump for Help*, INSIDE CLIMATE NEWS (Nov. 11, 2025), <https://insideclimatenews.org/news/11112025/sable-offshore-oil-drilling-california/>.

272. *Id.*

273. Adam Schiff, *Trump’s Grudge Against California Could Lead to the Next Major Oil Spill*, L.A. TIMES (Sept. 5, 2025), <https://www.latimes.com/opinion/story/2025-09-05/schiff-california-oil-spills>.

274. Brady Bradshaw, *Nine Years Since the Refugio Oil Spill*, SANTA BARBARA INDEP. (May 17, 2024), <https://www.independent.com/2024/05/17/nine-years-since-the-refugio-oil-spill/>.

275. Spencer Kimball, *Trump Plans Huge Oil Drilling Expansion Off California and Alaska Coasts*, CNBC (Nov. 20, 2025), <https://www.cnbc.com/2025/11/20/trump-offshore-oil-alaska-pacific-california-gulf-mexico.html>.

276. Press Release, Center for Biological Diversity, *Lawsuit Challenges Trump Moves to Restart California Coastal Oil Pipeline* (Dec. 26, 2025), <https://biologicaldiversity.org/w/news/press-releases/lawsuit-challenges-trump-moves-to-restart-california-coastal-oil-pipeline-2025-12-26/>.

277. *Id.*

278. *Center for Biological Diversity v. California Dept. of Forestry and Fire Prot.*, No. 25CV02244 (Cal. Super. Ct. Santa Barbara Cnty., Feb. 26, 2026) (tentative ruling on motion for reconsideration).

279. Press Release, Bureau of Ocean Energy Management (BOEM), *BOEM Announces Intent to Prepare Programmatic Environmental Impact Statement for Potential Offshore Oil and Gas Leasing in California* (Feb. 26, 2026), <https://www.boem.gov/newsroom/press-releases/boem-announces-intent-prepare-programmatic-environmental-impact-statement>.

280. Soumya Karlamangla, *Oil Begins Flowing Through California Pipeline Under Trump Order*, N.Y. TIMES (Mar. 16, 2026), <https://www.nytimes.com/2026/03/16/us/santa-barbara-oil-pipeline-trump.html>.

281. Alejandro Lazo, *Citing Iran Crisis, Trump Orders Santa Barbara Oil Pipeline Restart. California Will Fight It*, CAL MATTERS (Mar. 13, 2026), <https://calmatters.org/environment/2026/03/trump-emergency-sable-santa-barbara/>.

282. *Id.*

283. *Id.*

284. Margaux Lovely, *Sable Offshore Slammed With \$18 Million Fine at Marathon Coastal Commission Meeting in Santa Barbara*, SANTA BARBARA INDEP. (Apr. 10, 2025), <https://www.independent.com/2025/04/10/sable-offshore-slammed-with-18-million-fine-at-marathon-coastal-commission-meeting-in-santa-barbara/>.

285. Complaint for Injunctive Relief and Declaratory Relief, *California Dept. of Parks & Recreation v. Sable Offshore Corp.*, No. 26CV01759 (Cal. Super. Ct. Santa Barbara Cnty., Mar. 14, 2026).

286. See Tom Schultz, *The Fight Between Santa Barbara County and Sable Oil: What Happens Next?*, SANTA BARBARA NEWS-PRESS (Mar. 18, 2026), <https://www.newspress.com/2026/03/18/the-fight-between-santa-barbara-county-and-sable-oil-what-happens-next/>; Santa Barbara Independent (@sbindependent), INSTAGRAM, https://www.instagram.com/p/DWVPV5_yk1Fs/?img_index=6 (last visited Apr. 27, 2026).

287. *Center for Biological Diversity v. California Dept. of Forestry and Fire Prot.*, No. 25CV02244 (Cal. Super. Ct. Santa Barbara Cnty., Apr. 17, 2026) (tentative ruling on motion to dissolve or to modify preliminary injunction).

state of California.”²⁸⁸ Bloomberg, however, estimates the pipeline will produce just 0.05% of total oil production.²⁸⁹

That figure makes the Administration’s national energy security rationale difficult to justify against the environmental stakes. Further, nonprofit Save Our Shores reminds us that Sable’s infrastructure dates back to the 1970s, back to NEPA’s inception, warning the pipeline has “150 documented corrosion spots,” and that Sable has no ability to guarantee there won’t be “mistakes or negligence.”²⁹⁰ The procedural safeguards that arose from the disaster are being dismantled to resume the same aging pipelines, in the same waters, over the opposition of the same communities. Save Our Shores adds, “Let history be our warning.”²⁹¹

3. Risk Borne by Communities

On a recent podcast, Klein urged that “the only way to decarbonize is to build enough green so that we can move an advanced economy onto green energy and continue to power it.”²⁹² Permitting reform, Klein argues, is essential to this future. “All these statutes, these movements, these ideas, these court cases, these ways of looking at the world informed by the very potent environmentalism of the ‘70s and ‘80s, it’s not the right fit for our current problems.”²⁹³ Justice Kavanaugh’s *Seven County* opinion follows a similar logic, opining that “project opponents have relied on NEPA to fight even clean-energy projects—from wind farms to hydroelectric dams, from solar farms to geothermal wells.”²⁹⁴

This Comment does not question efforts to address energy and infrastructure shortages as an important goal, but instead critiques NEPA retrenchment as a mechanism to achieve it. NEPA reform proposals that shorten timelines and narrow requirements intensify risks by increasing the likelihood of error and further obscuring consequences. As University of California, Davis law professor Karrigan

Börk notes, “the public bears the risk of erroneous NEPA analyses and mitigation failures, with no real consequences to the agencies or project beneficiaries, weakening the protections the statute was designed to deliver.”²⁹⁵ Recall that NEPA is a purely procedural statute intended to surface risk and alternatives, not mandate particular action. NEPA reforms are degrading the mechanisms that make risk visible, contestable, and accountable, redistributing those risks from the project sponsors, who are often highly profitable corporations, and onto our communities.

VII. Conclusion

NEPA’s origin as a reaction to ecological devastation reminds us that regulatory procedure has a necessary role in the federal government. The increasingly pervasive, bipartisan support for permitting reform should indeed be afforded earnest consideration in light of today’s development goals. But as judicial decisions, like *Seven County*, and executive actions, including Trump’s Executive Order No. 14154, create legal levers to codify this retrenchment, it is important to reflect on the progress made under NEPA and the harms emerging under NEPA reform. Loosening procedural safeguards without reckoning with past harms is dangerous. The two 2025 projects described above and celebrated as victories for progress illustrate these stakes.

The Velvet-Wood uranium mine is moving forward in a region still struggling to clean up millions of tons of radioactive waste across hundreds of abandoned mines, waste that cost taxpayers upwards of \$1 billion and exposed families to uranium impacts over generations. Meanwhile, the Trump Administration recently announced new offshore drilling leases in Southern California, despite opposition from communities and environmental groups, echoing the dynamics of the Santa Barbara Oil Spill. Permitting reforms may well be necessary, but cannot proceed by repeating the same mistakes that necessitated NEPA.

288. Secretary Chris Wright (@SecretaryWright), X (Mar. 15, 2026), <https://x.com/secretarywright/status/2033239691290415141?s=46>.

289. Catherine Lucey et al., *Trump Officials Direct Sable to Resume California Oil Operations*, BLOOMBERG (Mar. 13, 2026), <https://www.bloomberg.com/news/articles/2026-03-13/trump-officials-direct-sable-to-resume-california-oil-operations>; Press Release, Governor Gavin Newsom, Governor Newsom Exposes Trump’s Sable Offshore Pipeline Lie: One Month of Oil, Prices Have Only Gone Up (Apr. 17, 2026), <https://www.gov.ca.gov/2026/04/17/governor-newsom-exposes-trumps-sable-offshore-pipeline-lie-one-month-of-oil-prices-have-only-gone-up/>. It is important to recognize that while the Trump Administration calls for energy independence through increased domestic production, the current gas shortages are due to conflict in the Strait of Hormuz. The Energy Information Administration has determined . . . “full restoration of flows will take months . . . [and] fuel prices will continue to rise.” Press Release, U.S. Energy Information Administration, Hormuz Closure and Related Production Outages Are Key Drivers in EIA’s Latest Forecast (Apr. 7, 2026), <https://www.eia.gov/pressroom/releases/press586.php>.

290. See Jady Polk, *What You Need to Know About the Oil Pipeline in Santa Barbara and How to Take Action*, SAVE OUR SHORES (Mar. 19, 2025), <https://saveourshores.org/sable-pipeline-coastal-commission-rally/>.

291. *Id.*

292. Talk Easy With Sam Frago, *Ezra Klein’s Call for “Abundance” in America: The Transcript* (Mar. 27, 2025), <https://talkeasypod.com/ezra-klein-the-transcript/>.

293. *Id.*

294. *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 183 (2025).

295. Karrigan Börk & Keith H. Hirokawa, *Reallocating Environmental Risk*, OHIO STATE L.J. (forthcoming 2026).