

## **SUMMARY OF THE CURRENT ISSUES ON ENVIRONMENTAL JUSTICE AND STATE “MINI-NEPAS”**

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### **I. Overview:**

Environmental review processes found in the National Environmental Policy Act (NEPA) and state equivalents, so-called “mini-NEPAs”, can be beneficial for addressing environmental injustice. Community members and environmental justice (EJ) advocates can use these environmental review processes to fight against the disproportionate exposure to environmental harms, such as poor air and water quality, which low-income and minority continue to face. Because many environmental decisions that impact low-income and minority community members occur at the state and local levels, it is essential to look at little NEPAs as tools to advance EJ.

Most mini-NEPAs, like the federal NEPA, are procedural and can be limited in their ability to prevent and redress harms to humans and the environment caused by government-supported projects. NEPA and many mini-NEPAs call for government agencies to review government actions, including government-funded actions that may or will significantly impact the human environment. Most of the mini-NEPAs and the federal NEPA mandate review processes but do not require a particular outcome. Under most of these laws, the government permits environmentally damaging projects to go forward, even though project proponents have forgone viable mitigation measures and less destructive alternatives. Therefore, there is a tendency for many to dismiss NEPA and mini-NEPAs due to their “lack of teeth.” Additionally, some mini-NEPAs do not have any implementing regulations. These pitfalls give many community members and activists reason to lack faith in them.

However, mini-NEPA environmental review requirements can serve as a viable avenue in addressing EJ issues. Many U.S. states and territories have created EJ and environmental review laws and policies that provide oversight and accountability for non-federal actions with significant EJ impacts. Many states created their NEPA-like statutes and provisions shortly after the enactment of NEPA. Sixteen states, the District of Columbia, Puerto Rico, Guam, and a few local governments have established environmental review statutes or executive orders that are akin to the federal NEPA.

Perhaps the most important tool within an environmental policy act for addressing EJ is the mandate for cumulative impact analysis. Many mini-NEPAs require agencies to evaluate the cumulative impacts of proposed projects. As defined by the federal NEPA, cumulative impacts are the sum of the incremental impacts of a proposed action when added to other past, present, and reasonably foreseeable future actions. The requirement of cumulative impacts analysis is especially important in the EJ context because almost no other pollution control statute requires it. This lack of governance over the incremental direct and indirect effects of projects significantly affecting the environment has resulted in the systemic overburdening of low-income communities and communities of color. The issue of disparate impacts of the Coronavirus

pandemic is just one example of the repercussions of failing to address cumulative impacts properly. The low-income and communities of color that have been disproportionately exposed to pollution for generations are more likely to die from the virus. Most mini-NEPAs have defined cumulative impacts and addressed the need for cumulative analysis by making it a requirement of EISs.

While cumulative impacts analysis requirements are pertinent to advancing EJ, states must have the ability to identify where their low-income, minority communities are located to evaluate adequately the disproportionate impacts that these communities face. Nearly all mini-NEPAs that have cumulative impact analysis requirements for EISs have a concomitant EJ mapping tool to locate the communities that are in proximity to sources of pollution. EJ mapping tools can combine data on environmental harms, demographics, and other vulnerability factors of communities. A good example of a state EJ mapping tool is CalEnviroScreen. This tool “identifies California communities that are most affected by multiple sources of pollution and are most vulnerable due to their health and socio-economic status.” The mapping tools CalEnviroScreen and EPA’s EJScreen have paved the way for many other states and community partners to create mapping tools for their areas.

Setting a clear standard and maintaining an informed community that participates in state regulatory processes promote accountability. Although some mini-NEPAs are relatively weak, most mini-NEPAs have at least some provisions that communities can utilize for the advancement of EJ. The mini-NEPAs like California’s CEQA and Connecticut’s CEPA can be used as examples that other state and local governments can follow. These model mini-NEPAs show that it is possible to conduct environmental review processes that can protect and empower vulnerable communities.

**II. Summary of Findings:**

**State Mini-NEPA Components Compared**

State/Territory	EJ Provision	Cumulative Impacts	EJ Mapping Tool	Substantive Provision (Alternatives/Mitigation)	Public Participation	Permitting	Mini-NEPA Applies to Projects Permitted by:	
							State Only	State & Local
California		X	X	X	x	x		x
Connecticut		X	X		x			
District of Columbia		X		X	x			x
Georgia		X	X		x			
Guam								x
Hawaii		X			x			x
Indiana								
Maryland			X					
Massachusetts	x		X	X	x	x	x	
Minnesota		X	X	X	x			x
Montana		X		X	x		x	
New Jersey	x	X	X	X	x			x
New York	x	X	X	X	x			x

North Carolina		x	X					
Puerto Rico					x	x		x
South Dakota		x					x	
Virginia		x			x			
Washington		x	X		x			x
Wisconsin		x			x		x	

**III. Emerging Issues and Future Trends:**

The Council on Environmental Quality (CEQ) regulations under the federal NEPA experienced significant tumult during the Trump Administration, with suspect new regulations that were challenged in federal court by many parties, then partially overturned by the Biden Administration<sup>1</sup>, with a promise by the Biden CEQ to more fully address EJ in a second round of regulatory amendments.<sup>2</sup>

As the federal NEPA goes through these changes, mini-NEPAs can today, immediately, address state and local issues that the federal NEPA cannot even under the best of legal circumstances. Additionally, some mini-NEPAs do not have any implementing regulations. Mini-NEPA environmental review requirements can serve as a viable avenue in addressing cumulative environmental issues, like environmental injustice. At the same time, advocates should push for more aggressive and effective policies, regulation, and legislation at both the federal and state level.

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<sup>1</sup> See Biden Revisions to NEPA Regulations now in effect, The National Law Review (May 23, 2022). <https://www.natlawreview.com/article/biden-revisions-to-nepa-regulations-now-effect>.

<sup>2</sup> See, e.g., Response by White House Council on Environmental Quality to CEQ Environmental Justice Advisory Committee, Report to Congress pursuant to the Federal Advisory Committee Act, May 20, 2022. [https://www.epa.gov/system/files/documents/2022-05/CEQ\\_Response\\_to\\_the\\_WHEJAC\\_May\\_2021\\_Recommendations.pdf](https://www.epa.gov/system/files/documents/2022-05/CEQ_Response_to_the_WHEJAC_May_2021_Recommendations.pdf).