



OPTIMIZING WHITE HOUSE AND CABINET AGENCIES' ROLES In Implementing Federal Climate Change Initiatives

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Front Cover: The Ivanpah Solar Electric Generating System in California's Mojave Desert. Credit: US Department of Energy/Gilles Mingasson/Getty Images for Bechtel
Above: President Obama Meets with his Cabinet in the White House. Credit: Wikimedia Commons/Pete Souza

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INTRODUCTION

This paper summarizes the conclusions reached in a comprehensive Stanford Law School report¹ that reviewed the relative effectiveness of six climate change initiatives that required cross-governmental cooperation among the White House (and, in one case, a Governor's office) and multiple agencies. The paper (and the underlying report) confirm that White House has an important role to play in helping to coordinate and guide complex, multi-agency implementation challenges, and that it has succeeded in doing so in some cases. The paper also indicates, however, that the White House's tendency to create multiple White House-centric task forces and other, one-of-a-kind management structures with purported responsibility to oversee how governmental services are delivered has, in several cases, degraded clarity of mission and accountability, and led to sub-optimal results.

The paper concludes that the next President should devote more disciplined attention on how important Administration initiatives are structured to produce optimal results. When it comes to implementing climate change priorities that have been set by the White House, responsibility should rest primarily with cabinet agencies that have the budget, staff, expertise and jurisdiction to deliver on policy promises. For implementation, the White House role typically should focus on facilitating coordination among cabinet secretaries and, where appropriate, assisting them in developing common, cross-agency implementation programs and tools.

¹ Mr. Hayes compiled and edited this report based on a submission completed by a Stanford Law School policy lab that he taught in the spring of 2015. The following students participated in drafting portions of the report on which this paper is based: Claudia Antonacci; Adam Bowling; Eeshan Chaturvedi; Siddharth Fresa; Heather Kryczka; Neil Raina; Caitlin Troyer; and Michelle Wu. The 106 page underlying report is available online at <https://law.stanford.edu/education/only-at-sls/law-policy-lab/practicums-2014-2015/energy-and-environmental-governance/106>

BACKGROUND AND SUMMARY

Over the years, successive White House administrations have taken a common approach when developing policy options in response to important issues like climate change. Typically, a senior White House lead is identified to drive policy development. The lead staffer then works in consultation with the relevant White House offices and cabinet agencies to identify and analyze policy options, solicit input on the options, and facilitate a decision-making process that pulls in the relevant cabinet and subcabinet officials through a series of “deputies” meetings (typically involving Deputy Secretaries for important policy decisions). The President then makes the final call and sets the policy direction for the Administration, in consultation with his or her top staff and relevant cabinet secretaries.

While the White House’s policy making process is well established, the broader apparatus of the federal government needs to be activated when it comes to implementing new policies. That is why, as a general matter, the White House should look to the cabinet agencies that have the budget, staff, expertise and jurisdiction to convert policy pronouncements into new, on-the-ground realities.

Unfortunately, these general rules of thumb can become blurred, especially for high-priority initiatives that require coordination among multiple agencies. Indeed, the White House’s propensity to assert overall responsibility for Administration priorities can erode the lines of authority and accountability when it comes to implementing new policies – even though the White House is poorly situated to “take charge of” how its policies are implemented by cabinet agencies.²

The Obama Administration’s climate change initiatives provide a good laboratory for evaluating the relative effectiveness of White House involvement in how agencies implement climate-related initiatives. Toward that end, a Stanford policy lab class evaluated six case studies that the federal government (and, in one instance, the State of California) has applied to facilitate interagency coordination in the climate change context. In each of these cases, the federal (or state) government and its customers sought operational results, not policy pronouncements. And in each of these cases, success largely turned on whether the interagency approach pursued by the agencies and/or the White House (or, in California’s case, the Governor’s Office) was itself well designed and well executed.

As illustrated in the six case studies summarized below, the executive branch frequently makes a number of serious mistakes when setting up initiatives that require coordinated execution across multiple agencies. In particular:

- Initiatives that blur the lines between policy-making and implementation are rarely effective from an implementation perspective. Some Executive Orders, for example, create White House-centric task forces that are well-positioned to gather information that might feed into a policy development process but that have diffuse organizational structures led by one or more White House offices that are ill-equipped to implement new directives across several agencies in a coordinated way.
- As a corollary, many processes that are styled as “interagency” in nature, and which are led by White House offices, generate a catalogue of agency-specific programs or initiatives that are rolled up into reports. Because they are not built with and around the leadership of the agencies that have to execute on new Administration-wide policy initiatives, these White House’s interagency efforts typically are not structured to take on the hard work of figuring out how to convert conflicting or incompatible agency programs into well-coordinated, cross-agency implementation efforts that will advance new, government-wide directives. This is unfortunate. The White House could play a valuable role if it were to focus on facilitating coordination cabinet secretaries and, where appropriate, assisting them in developing common, cross-agency implementation programs and tools. Remarkably little attention has been devoted to this important role.

2 See David J. Hayes, “The White House Needs to Learn When to Delegate,” *Washington Monthly* (July 15, 2015) http://www.washingtonmonthly.com/ten-miles-square/2015/07/the_white_house_needs_to_learn056594.php.

- White House-led implementation efforts also are typically disconnected from the budget process, despite the fact that budgetary augmentation often is needed to implement new Administration priorities. The failure of the Office of Management and Budget to prepare budget cross-cuts that review whether and how agency-specific implementation budgets match up also represents a missed opportunity to facilitate closer coordination among agency implementation efforts.
- Many initiatives are wrongly presumed to be first-of-a-kind undertakings that require new organizational structures, when workable, closely related existing structures may already exist.
 - Before deciding how to optimally structure a new implementation initiative, a disciplined review should be undertaken of how related tasks are currently being implemented by the relevant agencies.
 - If and when an affirmative decision is made to move in a new direction organizationally from the status quo, it is important to provide clarity on how the new structure will replace or otherwise relate to existing interagency task forces, MOUs, or other working arrangements.

The Stanford review of climate-related initiatives also identified key factors that are positive indicators of potential success for complex, multi-agency implementation efforts:

- Clear and unambiguous leadership and accountability to implement top line, White House-backed policy initiatives is an essential ingredient for success.
 - While the White House must play an important role in helping to facilitate implementation efforts, primary leadership and accountability to implement Administration priorities should typically be placed in the appropriate agency or agencies. Preferably, to avoid confusion and dilution of responsibility, only a single White House office should be identified as the White House lead.
 - Consideration should be given to designating cabinet official(s) and his or her staff(s) to lead, and have over-all accountability for, multi-agency implementation efforts, backed by the White House. Designation of this responsibility should be clearly and publicly articulated.
 - Decisions about the nature and scope of the implementation exercise, and the appropriate agency lead(s), need to be made collaboratively with the agencies that are most knowledgeable about, and will need to “own,” the implementation tasks.
- Inclusion of metrics and results-oriented reporting mechanisms in the Executive Order (or equivalent) directive will help clarify and underscore the purpose of the exercise and facilitate transparency and accountability. Initiatives that are focused on execution and on-the-ground results should embrace performance metrics and results-oriented reporting mechanisms. They should not be generating reports that simply catalogue individual agency programs.
 - Metrics should be developed in concert with the implementing agencies to enable truth-testing and to facilitate agency buy-in. In that regard, it is important to survey and take into account relevant existing agency programs, or interagency initiatives, when setting metrics and evaluating how to optimize agency participation in implementation efforts that cut across agency lines.
- As a practical matter, the effective implementation of White House initiatives often requires the active participation and support of regional and local federal officials from participating agencies. Accordingly, consideration should be given at the outset for how best to facilitate regional cooperation and buy-in.
- Implementation of high-level initiatives will almost always be improved if key stakeholders – such as state and local partners, tribes, and key interest groups – are asked to provide their input on how the feds might best approach the implementation challenge before the Administration finalizes its implementation strategy.

A final note on the important role of having the right people in place to guide complex agency implementation efforts:

- There is no question that the personal skills of the individuals involved in implementing complex governmental undertakings that cut across agency lines and that forthrightly address “turf” issues play a huge role in the success or failure of the endeavor. This is why appointments to high-level positions should take into account leadership skills, personal qualities, and experience. It also is true, however, that while having the right people involved in interagency efforts can sometimes overcome organizational dysfunction, complex interagency initiatives have a much higher likelihood of success when they are built on a sound institutional and organizational architecture.

ANALYSIS OF CLIMATE-RELATED CASE STUDIES

The Stanford review addressed the design and execution of interagency coordination efforts in six climate change contexts:

1. Responding to Climate Impacts on Natural Resources Managed by the Federal Government
2. Using Geographic Mapping Tools to Make Climate Change Impact Data Available Across Agencies and with Stakeholders
3. Federal Interagency Efforts to Address Climate Impacts to Critical Infrastructure
4. Reducing the Federal Government's Carbon Footprint
5. Implementing State-Wide Greenhouse Gas Reductions in California
6. Coordinating the Siting of Major Renewable Energy Projects on Public Lands

While it is hazardous to make general conclusions about the relative success of complex, on-going initiatives, the Stanford review found that the first three interagency climate change efforts that it examined were not well designed and, as a result, they have had mixed success. In contrast, the last three initiatives were better conceived, and executed, and have generated more success. Taken together, the case studies reinforce the observations made above regarding the importance of devoting more disciplined attention on how important Administration initiatives are structured to produce optimal results.

The discussion below summarizes key points that are more fully laid out in the Stanford policy lab's final report. As noted above, the complete 106 page underlying report is available online at <https://law.stanford.edu/education/only-at-sls/law-policy-lab/practicums-2014-2015/energy-and-environmental-governance/106>

1. Responding to Climate Impacts on Natural Resources Managed by the Federal Government

Climate change already is affecting our nation's natural resources due to warmer temperatures, shifts in participation patterns, rising sea levels, and more frequent and intense extreme weather events. Current and future impacts include droughts and wildfires; loss of snow cover and melting glaciers; flooding, erosion, and inundation of coastal areas; coral bleaching; insect infestations; and changes in habitats and species loss.³ Many of these impacts will have broad, negative consequences on a wide range of ecosystem services, including access to clean water and healthy forests and rangelands.

3 U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-253, CLIMATE CHANGE: VARIOUS ADAPTATION EFFORTS ARE UNDER WAY AT KEY NATURAL RESOURCES MANAGEMENT AGENCIES 7-8 (2013), available online at <http://www.gao.gov/assets/660/654991.pdf>.

The federal government has a major role in addressing climate change-related impacts on our natural resources because it has direct stewardship responsibility over a major proportion of our natural resources. By way of example, the federal government has direct responsibility for managing more than 700 million acres of land—or about 30 percent of the nation’s total acreage—along with offshore marine resources.⁴ These responsibilities implicate water supplies, coastal resources, threatened and endangered wildlife, and fishery and marine resources in offshore waters. The federal government is also in a unique position to assist state and private natural resource managers in addressing climate impacts by sharing information about the nature and scope of expected impacts on resources and potential response strategies.

Because the federal government’s wide-ranging resource management responsibilities are divided among a number of agencies, there is a premium on developing effective interagency coordination mechanisms and common, cross-agency implementation programs and tools to address climate impacts efficiently and effectively.

During the first term of the Obama Administration, a White House-led Climate Change Adaptation Task Force was the primary interagency effort utilized to address climate impacts on natural resources. It triggered an offshoot interagency effort focused on addressing freshwater resources. Two other resource-specific interagency efforts also moved forward in the first term, including the White House-led National Oceans Council and the Congress-directed National Fish, Wildlife and Plants Climate Adaptation Strategy. After the President issued his Climate Action Plan in June 2013, the Administration decided to “reboot” its interagency climate adaptation activities in the second term, leading to the issuance of a 2014 report entitled *Priority Agenda: Enhancing the Climate Resilience of America’s Natural Resources*.

Key lessons from the first term’s climate change adaptation efforts include:

- The Climate Change Adaptation Task Force was staffed by the White House’s Council on Environmental Quality (CEQ). It focused on developing general, high-level policy approaches to adaptation; it did not seriously address implementation issues raised by the multiple federal agencies that were confronting common climate impact issues affecting shared natural resources.
 - By failing to engage the leadership of the natural resource agencies in a focused coordination effort, the Task Force stood by as virtually all of the federal natural resource agencies developed their own stove-piped adaptation and resilience programs. This unfortunate situation recently prompted the Advisory Committee on Climate Change and Natural Resource Science to observe that “the rapid development of these [natural resource agency climate change] programs, and the ever-expanding list of potential partners in these endeavors, suggests a pressing need for significant investments in coordination.”⁵
- The three resource-specific interagency efforts touching on climate change also had limited effectiveness, for a variety of reasons:
 - Two agencies with a major stake in freshwater issues—the Department of Interior and EPA—took the lead in developing an interagency approach to addressing climate impacts on freshwater resources. Because the project was being led by two agencies with significant expertise and experience, the freshwater interagency workgroup focused on implementation issues and identified a series of practical deliverables and outcomes. Unfortunately, however, because the workgroup was a subset of the White House-led Climate Change Task Force, it did not receive top-level budget or implementation attention from the White House or the Departments.
 - The National Ocean Council (NOC) is a White House-led interagency effort that focuses on climate change and other impacts on oceans. Most observers commented that the NOC effort has been disappointing. Key concerns have been the sprawling and somewhat disorganized nature of the effort, with the relatively weak White House engagement loosely overseeing more than twenty-five agencies and offices that had widely varying levels of commitment to the effort. Without strong leadership in

4 *Id.* at 2.

5 COUNCIL ON CLIMATE PREPAREDNESS AND RESILIENCE CLIMATE AND NATURAL RESOURCES WORKING GROUP, PRIORITY AGENDA: ENHANCING THE CLIMATE RESILIENCE OF AMERICA’S NATURAL RESOURCES (2014) [hereinafter PRIORITY AGENDA], available online at https://www.whitehouse.gov/sites/default/files/docs/enhancing_climate_resilience_of_americas_natural_resources.pdf.

the White House or at top levels of the key agencies, the exercise produced lengthy documents that tended to chronicle what individual agencies were doing and did not tackle difficult interagency overlap and implementation issues.

- The National Fish, Wildlife and Plants Climate Adaptation Strategy, like the freshwater interagency initiative, was largely driven by the key federal wildlife agencies (e.g., the U.S. Fish & Wildlife Service) and by companion state agencies. The White House only had nominal involvement in the initiative. The primary focus of the exercise was policy development and the participants were largely pleased with the results. A coordinating body has been established to help with implementation, but the effort is proceeding at a lower level, and without significant funding support.
- The Administration's more recent efforts over the past two years to adopt a new framework for better interagency cooperation in the area of climate impacts on natural resources holds more promise for successful integration of cross-agency efforts. The framework builds on existing agency priorities, draws input from a Task Force of state, local and tribal stakeholders, and is a clear Presidential priority—features that position it well for success. Of special note is the fact that an agency-led Climate and Natural Resources Working Group has been set up under E.O. 13653. By entrusting the agencies to take ownership of the issues, a much more ambitious avenue for interagency action has emerged in the report that the interagency agency working group released in October 2014.

2. Using Geographic Mapping Tools to Make Climate Change Impact Data Available Across Agencies and with Stakeholders

The federal government is taking a number of steps to better manage the resources for which it is directly responsible in the face of climate change. While careful stewardship of federally managed natural resources is important in its own right, the federal government also is uniquely positioned to assist local and state authorities who are attempting to understand and deal with climate impacts on properties and infrastructure for which they are responsible. Those impacts already are affecting many key sectors, including vulnerable coastal infrastructure and regional water supplies and a variety of land uses, ranging from our coasts, floodplains, forests, farms and wildlife.⁶ As a result, state, regional and local officials are particularly eager to access authoritative information about impacts so that they can respond by developing sensible adaptation and resilience strategies.⁷

The federal government currently has available data that are potentially valuable for state and local decision makers, and it is developing new tools to help land and water managers make good decisions. In particular, a number of federal agencies have developed sophisticated maps that are populated by robust data sets compiled and curated by government scientists, which can provide a visual window into how climate change–related impacts are affecting local resources. Google Maps™ and other private services have popularized these GIS (Geospatial Information System) tools for every-day use. When it comes to depicting climate impacts on infrastructure and resources, however, GIS mapping services need to draw upon reliable and constantly updated scientific data sets that can be “mashed together” on GIS-based maps.

Coordinating the collection of diverse data sets in a common format and developing standards and protocols to ensure their integrity presents a classic case example in which interagency coordination and cooperation is needed.

6 U.S. Fish & Wildlife Service. *Rising to the Urgent Challenge: Strategic Plan for Responding to Accelerating Climate Change*. (Nov. 2012) at 7, available online at <http://www.fws.gov/home/climatechange/pdf/CCStrategicPlan.pdf>. USDA Forest Service. *USDA Forest Service Climate Adaptation Plan*. (2014) at 61, available online at http://www.usda.gov/oce/climate_change/adaptation/Forest_Service.pdf.

7 *Priority Agenda: Enhancing the Climate Resilience of America's Natural Resources*. Council on Climate Preparedness and Resilience (Oct. 2014) at 4. See generally, ESRI, *GIS for Federal Government: Building a National GIS Community*. (available online at <http://www.esri.com/library/brochures/pdfs/federalbro.pdf>)

The Federal Geographic Data Committee (FGDC) has been utilized since 1990 as the interagency coordination mechanism to develop common standards and protocols for GIS-based data and mapping products. In the last two years, in connection with the President's Climate Action Plan, the Administration has initiated a new effort to provide easier access to GIS-based data and mapping services through its "Climate Data Initiative" and the development of a related "Climate Resilience Toolkit."

Lessons learned from the FGDC's longstanding interagency efforts, and the Obama Administration's more recent climate-related data initiatives, provide insights into the ingredients of successful interagency coordination initiatives. Key takeaways include:

- Despite operating relatively well, the great acceleration in technology and data is beginning to overwhelm the lower-level and low-key FGDC interagency effort. The new demand for GIS mapping services, fueled by the need for climate impact information and other landscape-level informational needs, has triggered largely uncoordinated, agency-by-agency investments in IT and mapping software and services—leading to large expenditures and a poor user experience, as users typically must search for relevant data inefficiently, often on an agency-by-agency basis.
- Because the FGDC governance structure relies on volunteer help from the relevant agencies and does not have a history of commanding buy-in from cabinet and White House office leaders, the FGDC does not appear to have the institutional heft to force more interagency coordination in providing GIS data and mapping services.
- The Administration's Climate Data Initiative and Resilience Toolkit are intended to provide centralized, easy access to key GIS mapping tools, but the Administration has not identified a governance structure that will accomplish that difficult interagency coordination task.
 - Current participants in the effort describe the Climate Data Initiative as being run by a "coalition of the willing." Turnover among key volunteers could significantly set back progress on the initiative.
 - The Administration has not explained how its new climate data initiative—which is being loosely overseen by the Council on Climate Preparedness and Resilience—relates to the long-established, interagency Federal Geographic Data Committee. Disconnected interagency efforts around closely aligned issues create confusion and weaken the effectiveness of interagency efforts.
- Experts indicate that the federal government's push to develop more customer-friendly access to helpful, climate-related, GIS-based data and mapping tools through *Geoplatform.gov* and *Data.gov* (enhanced by the Climate Data Initiative and the Resilience Toolkit) will likely require full-time database management staff, operating with state-of-the-art software and IT tools. This points to the need to put a shared services model in place. To do so will require a strong interagency governance structure that will marry ongoing, agency-specific data generation and curation activities with a government-wide center of excellence that will use modern IT tools, and a dedicated staff, to provide efficient access to useful data and analysis. Neither the FGDC nor the more recent Administration climate data initiative have the type of strong interagency governance structure necessary to address this requirement.

3. Federal Interagency Efforts to Address Climate Impacts to Critical Infrastructure

The Stanford study includes a full discussion of the shortcomings of each of the five initiatives that have been launched in recent years to address climate change adaptation and resilience issues as they affect our nation's infrastructure. As discussed in the report, the key takeaways associated with each initiative include:

Federal Task Force. The first initiative was launched in 2009 under Executive Order 13514, "Federal Leadership in Environmental and Energy Performance," which directed the Interagency Climate Task Force to recommend ways that federal policies and programs could better prepare the Nation for the impacts of climate change. This effort was one of the first concerted interagency attempts to focus on and develop a coordinated policy around climate change impacts.

The Task Force issued reports in 2010 and 2011. As discussed in the Stanford study, the 2010 report identified policy approaches that might guide adaptation efforts.⁸ The follow-on 2011 report engaged in a cataloging exercise of agency-specific efforts.⁹ It exhibited minimal meaningful agency coordination across mission spaces. The catalog of agency initiatives demonstrates that in the absence of a clear implementation guidance or structure for cross-agency coordination, agencies defaulted to a siloed approach.

Infrastructure Resilience Working Group. The second, related initiative was launched in 2013, with the issuance of a follow-on Executive Order 13653, “Preparing the United States for the Impacts of Climate Change.” The new Executive Order replaced the Climate Change Adaptation Task Force with the Council on Climate Preparedness and Resilience, one component of which is the Infrastructure Resilience working group. The Department of Homeland Security (Office of Infrastructure Protection) and the Department of Energy chair the working group.

While it is too early to tell precisely how this effort will unfold, the current emphasis by the Council and working group appears to be on sharing information, rather than seeking to reduce the proliferation of agency-based efforts. For example, although the group aims to “forge new interagency partnerships where appropriate,” neither the Council nor the working group have identified a specific mechanism for addressing jurisdictional overlaps. In its Climate Change Adaptation Plan, for example, the Department of Energy (DOE) states that, through its participation in the Council on Climate Preparedness and Resilience and other interagency working groups, it will share “best practices” with other federal departments and agencies. There appears to be little effort to develop consistent implementation approaches across agencies.

Infrastructure Resilience Guidelines. A third initiative grew out of the Hurricane Sandy disaster. In December 2012, President Obama signed an Executive Order establishing the Hurricane Sandy Rebuilding Task Force to lead the long-term rebuilding effort in the region, while ensuring that rebuilt structures and systems were more resilient to current and future risks, particularly from climate change impacts. The President designated the Secretary of Housing and Urban Development, Shaun Donovan, as the Task Force chair. Secretary Donovan and the Task Force were charged with working across the Administration, and closely with the affected states and local jurisdictions, to identify and work to remove obstacles to resilient rebuilding in a manner that addressed current and future risks and promoted the long-term sustainability of communities and ecosystems in the affected region. The President directed the Task Force to deliver a rebuilding strategy within six months of the Executive Order.

In August 2013, the Task Force released the Hurricane Sandy Rebuilding Strategy, which established a set of guidelines for investing the appropriated funds to ensure, among other things, that the region was rebuilt with better resiliency to future risks, including climate change.¹⁰ As a key part of its work, the Task Force developed new “Infrastructure Resilience Guidelines.” The guidelines focused on the disaster at hand and developed a single, central set of guidelines that were used by all agencies in distributing Sandy recovery funds. The Task Force also recommended the guidelines be applied in a whole-of-government manner nationally, and beyond disaster recovery.

To implement the goal of broadening the applicability of infrastructure resilience guidelines beyond the Hurricane Sandy context, the Department of Homeland Security’s National Protection and Programs Directorate, with support from White House National Security Staff, initiated an interagency process to assess the value and feasibility of expanding the guidelines’ use. This effort was led by an independent evaluation of the guidelines’ implementation by the RAND Corporation.

8 INTERAGENCY CLIMATE CHANGE ADAPTATION TASK FORCE, PROGRESS REPORT OF THE INTERAGENCY CLIMATE CHANGE ADAPTATION TASK FORCE: RECOMMENDED ACTIONS IN SUPPORT OF A NATIONAL CLIMATE CHANGE ADAPTATION STRATEGY 4 (2010), available online at <https://www.whitehouse.gov/sites/default/files/microsites/ceq/Interagency-Climate-Change-Adaptation-Progress-Report.pdf>.

9 INTERAGENCY CLIMATE CHANGE ADAPTATION TASK FORCE, FEDERAL ACTIONS FOR A CLIMATE RESILIENT NATION: PROGRESS REPORT OF THE INTERAGENCY CLIMATE CHANGE ADAPTATION TASK FORCE 6 (2011), available online at https://www.whitehouse.gov/sites/default/files/microsites/ceq/2011_adaptation_progress_report.pdf.

10 HURRICANE SANDY REBUILDING TASK FORCE, HURRICANE SANDY REBUILDING STRATEGY 14 (2013) [hereinafter SANDY 2013], available online at <http://portal.hud.gov/hudportal/documents/huddoc?id=hsrebuildingstrategy.pdf>.

The RAND report confirmed that the development of infrastructure guidelines in the context of the Hurricane Sandy recovery effort was a positive step that reinforced the importance of developing common adaptation and resilience approaches across the government. The RAND report noted, however, that at least six federal initiatives had encouraged adoption of an integrated interagency approach to resilience principles in the years leading up to and following Sandy. The proliferation of initiatives had reinforced the importance of issue but, in the absence strong, consistent and coordinated leadership by White House and cabinet secretaries, agencies were continuing to develop their own ways of addressing infrastructure adaptation and resilience needs.

The National Infrastructure Protection Plan. The fourth initiative involves the development of the “National Infrastructure Protection Plan.” The NIPP has been developed under the Homeland Security Act of 2002, which directed the Department of Homeland Security (DHS) to develop a comprehensive plan for ensuring the security of the Nation’s critical infrastructure. In response to this directive, DHS released the first National Infrastructure Protection Plan (NIPP) in 2006. The Department updated the plan in 2009. In 2013, President Obama issued Presidential Policy Directive 21 (PPD-21), Critical Infrastructure Security and Resilience, which directed DHS to update the NIPP once again.¹¹ PPD-21 directed DHS to update the NIPP in coordination with Sector Specific Agencies; other relevant Federal departments and agencies; state, local, tribal, and territorial entities; and critical infrastructure owners and operators.

In December 2013, DHS released the latest update to the NIPP, which is intended to guide the national effort to manage risk to the nation’s critical infrastructure, in conjunction with national preparedness policy.¹² The NIPP 2013 was developed through a process that included private sector entities, State and local governments, Federal departments and agencies, non-governmental organizations, and academia.

The NIPP envisions “[a] Nation in which physical and cyber critical infrastructure remain secure and resilient, with vulnerabilities reduced, consequences minimized, threats identified and disrupted, and response and recovery hastened.” According to the Department, the NIPP provides the structure for integrating the critical infrastructure security and resilience initiatives into a coordinated effort across all stakeholders (including federal departments and agencies). As such, the NIPP is intended to provide a central policy to guide efforts related to infrastructure security and resilience across federal departments and agencies.

To implement this policy, the NIPP established a coordinating structure. It has organized critical infrastructure into 16 sectors and designated a federal department or agency as the lead for each sector. These lead agencies are referred to as sector-specific agencies. In addition to the sector-specific agencies, the NIPP identified two primary federal components of the partnership structure as follows:

- Federal Senior Leadership Council (FSLC): includes officials from each sector-specific agency and other Federal departments and agencies with a role in critical infrastructure security and resilience.
- Government Coordinating Councils (GCCs): includes representatives from various levels of government to enable “interagency, intergovernmental, and cross-jurisdictional coordination within and across sectors and partner with SCCs on public-private efforts.”

The NIPP development experience demonstrates that neither FSLC nor any other federal body is effectively serving this purpose. For example, the NIPP includes a “Supplemental Tool: Incorporating Resilience into Critical Infrastructure Projects,” which recommends steps decision makers can take to promote resilience in infrastructure projects. This list is more comprehensive than the Infrastructure Resilience Guidelines that emerged from the Hurricane Sandy process, but it overlaps with the guidelines in many ways, serving as yet another redundant and confusing set of guidelines regarding infrastructure resilience.

11 Presidential Directive on Critical Infrastructure Security and Resilience; DCPD-201300092 (2013).

12 U.S. DEPARTMENT OF HOMELAND SEC., NIPP 2013: PARTNERING FOR CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE 8 (2013) [hereinafter NIPP], available online at http://www.dhs.gov/sites/default/files/publications/NIPP%202013_Partnering%20for%20Critical%20Infrastructure%20Security%20and%20Resilience_508_0.pdf.

One method for achieving a more streamlined approach would be to ensure that all departments and agencies consistently apply the NIPP framework and principles. Unfortunately, it seems that DHS is not currently well positioned to effectively lead this effort. The Government Accountability Office (GAO) released a report in September 2014 regarding interagency coordination of infrastructure vulnerability assessment efforts. It candidly stated that “DHS is not positioned to manage an integrated and coordinated government-wide approach for assessments as called for in the NIPP because it does not have sufficient information about the assessment tools and methods conducted or offered by federal entities external to DHS with [critical infrastructure] responsibilities.”¹³

The GAO recommended that DHS explore the viability of using a single assessment methodology to consolidate its assessment tools and methods with those of other agencies. This recommendation is consistent with that made in the RAND report, which called for the streamlining of federal approaches to infrastructure resilience.

With its articulated interagency structure, the FSLC could lead this effort. However, it is unclear whether the FSLC, as currently structured, will be able to drive effective change. The DHS Office of Infrastructure Protection leads the FSLC and NIPP implementation efforts, which are purely interagency initiatives without White House oversight. The Office is a third tier DHS subcomponent, which, without significant attention from the DHS Secretary — much less the White House — may not have the political stature to effectively push for toward a comprehensive, cross-agency, streamlined federal approach to infrastructure resilience.

Furthermore, in the past, DHS has not had the same expertise in the climate change arena enjoyed by agencies such as EPA and NOAA. This likely undercuts its credibility among other departments and agencies, and decreases its ability to effectively lead the effort. Finally, while the FSLC charter calls for executive-level agency participants, anecdotal evidence suggests that current participants do not have the necessary decision-making authority within their own agencies to effectively push for change. Thus, while the FSLC may be senior-level interagency coordinating structure on paper, cooperation across peer agencies is unlikely to materialize without any White House involvement or authority.

Thus, as it now stands, the NIPP and its Supplemental Tools appear to be yet another “interagency” infrastructure resilience effort that overlaps with other federal initiatives in the same space.

Federal Resource Guide for Infrastructure Planning and Design. In recognition of the fact that it is most effective to build in climate change resilience principles during the early design phases of a project, President Obama issued a Presidential Memorandum in January 2015 entitled “Expanding Federal Support for Predevelopment Activities for Nonfederal Domestic Infrastructure Assets” as a complement to his Build America Investment Initiative, which had been launched in July 2014.¹⁴ The January 2015 Presidential Memoranda called on the Departments of Agriculture, Commerce, Labor, Housing and Urban Development, Transportation, Energy, and Homeland Security, and the Environmental Protection Agency to educate grantees and the public on the benefits of predevelopment and on Federal resources available to support pre-development activities.¹⁵

In May 2015, this interagency group released the Federal Resource Guide for Infrastructure Planning and Design (the Guide). The Guide adds to the already confusing array of uncoordinated infrastructure resilience guidance provided by the federal government. The predevelopment principles articulated in the Guide overlap significantly with the Hurricane Sandy Infrastructure Resilience Guidelines, as well as those articulated in the NIPP Supplemental Tool discussed above. Yet, neither of these resources is mentioned in the Guide. As such, it appears to represent a missed opportunity to add clarity to the current patchwork of agency-by-agency efforts.

13 U.S. GOV'T ACCOUNTABILITY OFFICE. GAO-14-506, DHS ACTION NEEDED TO ENHANCE INTEGRATION AND COORDINATION OF VULNERABILITY ASSESSMENT EFFORTS 37 (2014), available online at <http://www.gao.gov/products/GAO-14-507>.

14 BUILD AMERICA INVESTMENT INITIATIVE INTERAGENCY WORKING GROUP, RECOMMENDATIONS OF THE BUILD AMERICA INVESTMENT INITIATIVE INTERAGENCY WORKING GROUP 7 (2015) available at <http://www.treasury.gov/resource-center/economic-policy/Documents/Build%20America%20Recommendation%20Report%201-15-15%20FOR%20PUBLICATION.pdf>.

15 Presidential Memorandum on Expanding Federal Support for Predevelopment Activities for Nonfederal Domestic Infrastructure Assets; DCPD-201500034 (2015).

The participating departments and agencies do not bear the full blame for this duplicative effort. The Guide is directly responsive to the Presidential Memorandum, which called on the group to provide best practices in the area of infrastructure predevelopment. As the RAND analysis suggested above, an excess of White House mandates on a particular subject can aggravate already superfluous and incongruent agency efforts. These mandates can trigger reactive agency attempts to fulfill presidential requirements on paper, without taking broader stock to the larger landscape of an issue. If departments and agencies are going to move beyond reactive, ad hoc, and siloed approaches, rather than ask for new reports, the White House should clearly require, and assist, departments and agencies in detangling, consolidating, and streamlining current guidance and efforts.

4. Reducing the Federal Government's Carbon Footprint

Early in his first term, President Obama challenged the federal government to “lead by example” by issuing Executive Order 13514 and establishing sustainability performance goals and an annual reporting framework for the federal government.¹⁶ The initiative is significant, given that the federal government is the single largest energy consumer in the United States¹⁷—it occupies approximately 500,000 buildings, operates more than 600,000 vehicles, and purchases more than \$500 billion of goods and services each year.¹⁸

Five and one-half years later, on March 19, 2015, President Obama took the unusual step of issuing revised and updated federal sustainability goals—and the mechanisms adopted to attain those goals—by signing Executive Order 13693.¹⁹ The new executive order incorporated management lessons learned from the initial implementation efforts of E.O. 13514, including a recognition of the need to fully engage agencies in implementation efforts.

The interagency process put in place by the President to oversee efforts to reduce the federal government's carbon footprint (and achieve other sustainability goals) has worked quite well. It arguably represents the most successful of the interagency efforts reviewed in this report. The key drivers for this successful interagency process include the following points:

This interagency process was focused, from the start, on the *implementation* of a climate change policy directive, in the form of executive orders, to reduce the federal government's carbon footprint (and achieve other sustainability objectives). This contrasts with many interagency efforts that involve the development of a unified *policy* approach for the federal government. While the White House is the natural lead when it comes to developing government-wide policy prescriptions, interagency efforts that focus on how best to implement or operationalize policy directions must defer to, and rely heavily on, agency leadership and expertise to be successful. These executive orders have largely achieved this important balance, as demonstrated by the following characteristics:

- Agencies were actively involved in drafting and reviewing the executive orders. As a result, there was agency buy-in for the metrics and processes established under the executive orders.
- Agency-led working groups established under the executive orders developed guidelines and best practices for groups of agencies that had similar operational characteristics.

16 *Federal Leadership in Environmental, Energy, and Economic Performance*, Exec. Order No. 13514, 74 Fed. Reg. 52,117 (Oct. 5, 2009) [hereinafter Exec. Order 13514].

17 *Cutting the Federal Government's Energy Bill: An Examination of the Sustainable Federal Government Executive Order: Hearing Before the Fed. Fin. Mgmt., Gov't Info., Fed. Servs., & Int'l Sec. Subcomm. of the S. Comm. on Homeland Sec. and Governmental Affairs*, 111th Cong. 5 (2010) (statement of Nancy Sutley, Chair, Council on Env'tl. Quality).

18 *Id.*

19 *Planning for Federal Sustainability in the Next Decade*, Exec. Order No. 13693, 80 Fed. Reg. 15,871 (Mar. 19, 2015) [hereinafter Exec. Order No. 13693].

- The executive orders' heavy reliance on agency experts to develop guidance that satisfies high-level goals set by the White House reflects a mature organizational approach that acknowledges the limitations of White House policy staff in establishing practical, workable guidelines for meeting sustainability goals.
- The two executive orders' recognition that significant interagency coordination needs to occur at the regional level illustrates the orders' practical emphasis on implementation. Not surprisingly, enhancing regional cooperation has been one of the biggest challenges under the orders; additional mechanisms may be needed to make more progress in this area.

The policy goals that drove the interagency process were clearly defined and provided metrics upon which agencies' operational success could be measured:

- The agencies were required to produce Strategic Sustainability Performance Plans and report on their results.
- The executive orders included reporting mechanisms that provided performance incentives.

Performance was taken into account during internal budget reviews with OMB; supplemental funds were provided for project investments that yielded proven results.

Agency performance results were made available to the public, in support of the President's commitment to transparency and open government.

5. Implementing State-Wide Greenhouse Gas Reductions

California has long been at the forefront of climate change policy innovation. Starting in the late 1990's, California's political leadership, backed by strong public support, responded to the global threat of climate change. The California Legislature's passage of AB1493 in 2002²⁰—the first legislation in the world to regulate greenhouse gas emissions from passenger vehicles—was an early example of the state's commitment to addressing climate change.²¹ Governor Arnold Schwarzenegger and the California legislature followed up in 2006 with enactment of one of the most comprehensive climate change statutes ever passed, the Global Warming Solutions Act—commonly known as AB32.²² Governor Jerry Brown has continued in this tradition by setting ever-higher targets for GHG emissions reductions and clean energy generation in the state.

While these laws provide the statutory framework for addressing greenhouse gas emissions in California, implementation of their complex requirements falls on the administrative agencies of state government, led by the Governor's Office. A number of state agencies have roles and responsibilities that need to be coordinated to achieve California's aggressive climate change goals. Those agencies include: the California Air Resources Board (CARB), a department of the California Environmental Protection Agency (Cal-EPA), which is responsible for regulating air pollution and reducing greenhouse gases; the California Energy Commission (CEC), which is responsible for energy policy and planning; the California Public Utilities Commission (CPUC), which regulates investor-owned utilities and other entities providing energy, transportation, and water services and helps with consumer protection; and the California Independent System Operator (CAISO), which is an independent non-profit entity (established by state law but not a state agency) that manages a substantial portion of California's power grid.

20 2002 Cal Stats. Ch. 200 (A.B. 1493) (West).

21 *E2 Advocacy Projects: California Clean Cars Campaign*, ENVTL. ENTREPRENEURS, available online at <https://www.e2.org/jsp/controller?docName=campaignDisplay&activityName=CalifCleanCars1493> (last visited May 19, 2015).

22 Cal. Health & Safety Code § 38500 (West 2015).

The interagency process used to launch the complex regulatory mandates included in California's AB32 holds a number of lessons that may be pertinent to federal efforts to coordinate agency climate change-related implementation efforts. The key drivers for this successful interagency process included the following:

- The Governor's Office, representing the state's chief executive, played a key role in overseeing the interagency process. Importantly, however, the Governor's Office did not seek to directly manage the process, but instead was part of it, and available to step in and enforce discipline among the agencies involved, when necessary. This model of participation by the chief executive — without purporting to be “in charge” of the implementation effort — offers a blueprint that could be useful when crafting White House involvement in interagency implementation activities.
- The California climate change legislation explicitly designated a single state agency (the California Air Resources Board, CARB) to direct a structured, interagency implementation effort. With the legitimacy afforded by the legislation and the Governor's backing, CARB was able to organize a collaborative effort that took full advantage of other agencies' input and expertise by maintaining strong lines of communication among the agencies throughout the process.
- In addition to CARB's leadership and overall accountability, the Climate Action Team—established under AB32—was divided into a number of crosscutting subgroups that enabled relevant agencies to work together to develop emissions reduction goals that made sense for all of the agencies involved. This type of hands-on involvement by agencies is a critically important element in successful interagency implementation efforts.
- All parties involved understood the importance of the task of implementing the groundbreaking elements of California's pioneering climate change law. There was a unity of purpose shared across the many agencies involved.
- As with the executive orders related to reducing the federal government's carbon footprint, AB32 included clear metrics that led to more defined goals for each agency. Success (or failure) could be identified, and measured, with each agency having an identified subset of the state's overall goal for which they were responsible.

6. Coordinating the Siting of Major Renewable Energy Projects on Public Lands

When the Obama Administration took office in January 2009, the Department of the Interior had not issued a single permit for a utility-scale solar project on its expansive public lands. Given the burgeoning interest in renewable energy, and the Southwest's powerful solar resource, a backlog of over four hundred renewable energy project applications had piled up. The new Administration wanted to move forward with clean energy projects on public lands, but because BLM's customary permitting process often took four or five years for large projects, Interior could not proceed in a “business as usual” manner and achieve its policy goals.²³

Secretary Salazar and his senior team recognized that effective interagency coordination would be needed to implement a successful permitting strategy for utility-scale solar and other renewable energy projects on the public lands. Multiple bureaus in the Interior Department needed to sign off on renewable energy permits, including agencies that might be negatively impacted by major renewable energy projects, such as the U.S. Fish & Wildlife Service, the U.S. Park Service, and the Bureau of Indian Affairs. With these conflicting agency interests under one roof, Interior was in a unique position to experiment with new approaches for facilitating a more timely and effective interagency permitting process.

23 David J. Hayes, *Leaning on NEPA to Improve the Federal Permitting Process*, 45 *Env'tl. L. Rev.* 10018, 10018 (2015).

Instead of the typical interagency challenge in which the White House oversees a process involving several different Departments with differing missions, the renewable energy context had the Secretary of the Interior acting in the White House role, overseeing an “interagency-type” coordination process (technically, an intraagency coordination process) involving several different bureaus with differing missions within the same Department. The approach taken by Secretary Salazar and his team in addressing this interagency permitting challenge was successful. DOI improved the pathway to solar and wind energy permit processing from an average of four years to one and a half years.²⁴ The Department achieved the 2005 Environmental Policy Act’s goal of siting 10,000 megawatts of renewable energy three years ahead of schedule.²⁵ Key takeaways from this “interagency” process include:

- **Leadership Mandate:** Early on, Interior Secretary Ken Salazar issued Secretarial Order 3285A1, which established renewable energy siting as a priority of the Department and established a new intraagency approach among Interior’s bureaus to facilitate permitting decisions and improve environmental results.
- **Top-Level, Hands-On Engagement:** The Interior Department formed a “Strike Team”—made up of senior decision-makers from each bureau, and managed with a representative of the Secretary—to develop and manage an efficient permitting process that respected the interests of all of the impacted agencies and stakeholders. The hands-on coordination by the Secretary’s office demonstrated the priority of the interagency effort, and the office’s willingness to troubleshoot issues for the agencies was key to the effort’s success. (There are parallels to OMB’s involvement in the infrastructure permitting modernization effort, discussed below.)
- **Early Planning and Conflict Prevention:** Interior’s interagency permitting process institutionalized early planning and conflict prevention by bringing in potentially impacted bureaus and key stakeholders to meet with project developers on the front end to identify potential fatal flaws in projects and provide an opportunity to retool projects to reduce or eliminate objections. Leadership from the Secretary’s Office played an important role in facilitating this process.
- **Finding Budget Support for Priority Needs:** The Secretary’s Office recognized that improved permitting would require more resources, and it maximized available financial tools to bring support to the effort. This contrasts with many interagency coordination efforts in which discussion of serious budget issues is taboo.
- **Focus on Implementation and Results:** This approach required an emphasis on implementation and decision-making by the principals involved. High-level individuals in the Secretary’s office and senior positions in the bureaus had to commit to the process and be accountable for results. This differed from many interagency policy efforts that revolve around report writing and the chronicling of policy improvements. Here, the emphasis was on action-oriented implementation activities, proceeding in real time.

The White House has applied some of the lessons learned from the Interior experience across the Administration through the President’s Modernizing Infrastructure Permitting Initiative. This is an ambitious and important interagency implementation effort. Important takeaways from the effort include:

- The Office of Management and Budget has invested significant White House resources in this interagency implementation effort. It is unusual for the White House to dedicate significant staff time to a project, but the benefits of the commitment have been substantial, enabling OMB to obtain a deeper understanding of the difficulties of coordinating the permitting of complex projects across several agencies.

24 U.S. Gov’t Accountability Office, GAO-13-189, *Renewable Energy: Agencies Have Taken Steps Aimed at Improving the Permitting Process for Development on Federal Lands* 18 (2013) [hereinafter “GAO Report”].

25 Steve Black & Neal Kemkar, *Obama Administration Efforts to Expand Domestic Energy Production: A View from Public Lands*, A.L.I. (Feb. 2013) at 1

- OMB has married its investment in staff time with a commitment to learn from, and adopt, best permitting practices employed by leading permitting agencies (e.g., Department of the Interior; Department of Transportation).
- There is a significant question how the permitting reforms gained through the OMB-led infrastructure permitting modernization effort can be institutionalized so they do not fall away as personnel and Administrations change. This is a serious issue for many interagency implementation efforts. In this case, there are viable legislative and regulatory actions that can be taken to lock in the operational approaches that have been piloted through the initiative.²⁶ Congress recently took a helpful step in that regard by codifying some administrative permitting reforms for large infrastructure projects in its recent enactment of the FAST Act.²⁷

CONCLUSION

The Stanford Law School report reviewed in this paper acknowledges that the White House has an important role to play in helping to coordinate and guide complex, multi-agency implementation challenges, and that it has succeeded in doing so in some cases. It is equally true, however, that the White House's tendency to create multiple White House-centric task forces and other, one-of-a-kind management structures with purported responsibility to oversee how governmental services are delivered has, in several cases, degraded clarity of mission and accountability, and led to sub-optimal results.

The next President should devote more disciplined attention to structuring important Administration initiatives in a manner that will produce optimal results. When it comes to implementing climate change priorities that have been set by the White House, responsibility should rest primarily with cabinet agencies that have the budget, staff, expertise and jurisdiction to deliver on policy promises. For implementation, the White House role typically should focus on facilitating coordination among cabinet secretaries and, where appropriate, assisting them in developing common, cross-agency implementation programs and tools.

²⁶ David J. Hayes, *Leaning on NEPA to Improve the Federal Permitting Process*, 45 *Env'tl. L. Rev.* 10018, 10018 (2015).

²⁷ David J. Hayes, *Congress Just Enacted New Permitting Requirements for Energy Projects: Did You Miss It?* (December 10, 2015), *available online at* <https://law.stanford.edu/2015/12/10/congress-just-enacted-new-permitting-requirements-for-energy-projects-did-you-miss-it/>

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