

How the Federal Government Should Prepare for Climate Emergencies:

*The Natural Conjunction of Rapid Response Policy with
Climate Change Mitigation, Economic Development and Energy Security*

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A. Introduction

The rapid response policy that is the subject matter of this paper refers to preparation for the potential emergencies associated with climate change. The purpose of a rapid response plan is to prepare for any large general disruption. A climate emergency is structurally no different than any other great national disruption. Emergency in this context refers to the rapid or abrupt shift that causes transition to a new state in weeks or months rather than gradually over years. Under this scenario, humanity does not have the opportunity or capability to adjust to the new reality over a period of time. The focus of this policy is, therefore, to avoid (mitigate) or respond to these exigent conditions.

There are a myriad of potential avenues for climate change related emergencies and disasters. The prime risk when dealing with preparations for climate change is the assumption that it is a long term process with little sense of immediacy in terms of effects. However, history shows (and scientists predict) that climate change can be abrupt and show widespread effects within a short time.¹ Several times in the past, the global climate has changed dramatically within a short timeframe, in tipping point or threshold type systems, such as a disruption of the thermohaline circulation or large scale volcanic eruptions. In addition, any climate change, regardless of speed, will also create extreme events at all states along the change timeline. For example, abrupt changes in temperature will inevitably be accompanied by severe storms and changes in precipitation patterns.

Predictions regarding the potential impacts of global warming are well documented.² For example, in May 2008 the U.S. Climate Change Science Program issued a report on the Scientific Assessment of the Effects of Global Change on the United States.³ The report documents the numerous adverse impacts global warming is already having on the United States

¹ See, e.g., James Hansen, et al., *Dangerous Human-made Interference with Climate*, 7 Atmospheric Chemistry and Physics 2287 (2007) (Discussion of tipping point such that it is impossible to avoid dangerous climate change based on research conducted jointly by NASA and Columbia University's Earth Institute), [hereinafter "Hansen, et al."]

² E.g., Terry Barker, et al., Intergovernmental Panel on Climate Change, IPCC 2007: Summary for Policymakers (2007), available at <http://www.ipcc.ch/pdf/assessment-report/ar4/wg3/ar4-wg3-spm.pdf>; IPCC Fourth Assessment Report, Climate Change 2007, Working Group II Report "Impacts, Adaptation, Vulnerability" (2007), available at <http://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-chapter1.pdf>; Hansen, et al., *supra*. See also, Naomi Oreskes, *Beyond the Ivory Tower: The Scientific Consensus on Climate Change*, Science Magazine 1686 (Dec. 2004) (This paper reviewed 928 studies published in peer reviewed journals to determine the number providing evidence against the existence of a link between anthropogenic emissions of carbon dioxide and climate change. "Remarkably, none of the papers disagreed with the consensus position." "This analysis shows that scientists publishing in the peer-reviewed literature agree with IPCC, the National Academy of Sciences, and the public statements of their professional societies. Politicians, economists, journalists, and others may have the impression of confusion, disagreement, or discord among climate scientists, but that impression is incorrect.")

³ *Scientific Assessments of the Effects of Global Change on the United States, A Report of the Committee on Environmental and Natural Resources*, National Science & Technology Council (May 2008), available at <http://www.climate-science.gov/Library/scientific-assessment/>.

and the likely future impacts on the nation, including impacts to human health, water supply, agriculture, transportation, and biodiversity. In addition, the national security community has already recognized the danger to national security posed by global climate change and is already studying the implications of global climate change for U.S. national security interests.⁴ This is discussed further in Section C below.

As scientists continue to make predictions regarding the severity of the impacts of global warming, and climate change has come to be regarded as a national security threat in the nation's highest intelligence circles, rapid response becomes a key component of climate change policy.

The Presidential Climate Action Project (PCAP) was created to develop a comprehensive action plan to address climate change nationally. Over the course of approximately two years this plan has been developed through the combined expertise of respected groups and individuals from around the country who are from science, policy, legal and other backgrounds.⁵ The Presidential Climate Action Plan or *PCAP Report* transforms policies into action items that can be taken at the federal level by, for example, Congress or the President to address climate change. As implied by the name of the project, PCAP is giving special focus to those actions that the President of the United States may take.

In July 2008, PCAP held a conference in Racine, Wisconsin at which its advisory board and national climate experts came together to advise PCAP on the form and content of the final Climate Action Plan. Participants included respected individuals from around the country with legal, policy, scientific and other expertise. In addition to the plenary sessions, participants were divided into three working groups.⁶ The Rapid Response Working Group (Working Group 2) was charged with the following issue: How should the President prepare for climate-related emergencies? The list of participants is included in Appendix A. This paper is based on the framework and specific proposals for action that were developed by the PCAP Rapid Response Working Group during the conference. The table included in Appendix B summarizes many of the specific action items developed by the group to address the three objectives of a rapid response plan: prevention, response, and recovery.

Section B of this paper summarizes the framework and concepts advanced by the Rapid Response Working Group during the July conference and Section C describes the major themes that emerged during the three sessions of the Working Group. These themes permeate the proposals that the group developed and should shape the development of a national rapid

⁴ See, e.g., Statement for the Record of Dr. Thomas Fingar, Deputy Director of National Intelligence for Analysis and Chairman of the National Intelligence Council before the House Permanent Select Committee on Intelligence and the House Select Committee on Energy Independence and Global Warming, *National Intelligence Assessment on the National Security Implications of Global Climate Change to 2030* (June 25, 2008), available at http://media.npr.org/documents/2008/jun/warming_intelligence.pdf; Congressional Record House, H5101, H5105 (June 9, 2008); Testimony of Sherri Goodman, General Counsel, Center for Naval Analysis, Executive Director, Military Advisory Board, before the House Committee on Energy & Commerce, Subcommittee on Energy and Air Quality (June 26, 2008), [hereinafter "Goodman"], available at <http://securityandclimate.cna.org/testimony/transcripts/Goodman%20Testimony%20Jun%2026%2008%20final.pdf>.

⁵For information about, and publications commissioned by, the PCAP go to: <http://www.climateactionproject.com/>.

⁶ Results of the Working Group were presented in plenary sessions for feedback from the full conference. For more information regarding PCAP go to: <http://www.climateactionproject.com/>.

response plan that is realistic, means to be effective, and capitalizes on the natural synergies with economic, energy security and climate mitigation policies. The focus of this paper is the development of a national plan and the President's role in this process. Thus, a review of existing authority for relevant federal action is central. Section D provides some background for and a brief summary of federal emergency authority. Although in the past Presidents have relied on inherent authority during times of crisis, emergency authority has largely become normalized in the United States. That is, to the extent they can be, emergencies are anticipated and regulated. Further, presidential authority pursuant to an authorization from Congress is a much firmer basis for executive action and conforms to U.S. constitutional principles. Thus, Section E summarizes the most significant legislation in terms of federal emergency authority relevant to climate change policy. The analysis in Section E is not intended to be exhaustive in terms of all emergency legislation applicable but rather focuses on key statutes that can provide the authority to advance major aspects of the rapid response policy measures. This legislation is analyzed in terms of executive authority and the plan advanced by the Working Group. Section F concludes the report with a summary of findings regarding the President's authority to advance certain aspects of a climate change rapid response plan.

B. Framework and Key Concepts

The following summarizes the framework and key concepts developed by the Rapid Response Working Group.⁷ The purpose of a rapid response plan is to prepare for a large general disruption. A climate emergency is structurally no different than other great national disruptions. In all cases, an effective response depends on effective local leadership and capabilities. Thus, the rapid response plan should be a high level initiative to strengthen national and local resilience. The key objectives for the national plan should include: (1) decentralization; (2) building resiliency into key systems, e.g., food, water, electricity, housing and communication; and (3) developing capabilities to enable local capabilities.

The plan developed naturally into three phases which coincided with three time frames:⁸ (1) pre-event (prevention and planning); (2) immediate response (measures to be taken during the hazard); and (3) long term response (recovery). Action items for each of these phases were developed (see Appendix B) and key concepts in each of these phases emerged. Because pre-event activities include planning, the pre-event phase encompasses elements of all three phases and a significant amount of the group's work focused here. Examples of pre-event goals include: (1) planning for the continuity of government operations; (2) adequately empowering the Federal Emergency Management Agency (FEMA); (3) empowering and equipping local officials; (4) broadening the concept of national security to include environment, energy and economy; (5) amending executable contingency plans for the continuity of operations (COOPs) government-wide to include climate and other disruptive crises.⁹ Examples of pre-event projects include: (1)

⁷ This is based on participation in and notes from the Working Group.

⁸ Accord 42 U.S.C. § 5195a.

⁹ Federal Executive Branch departments and agencies are charged with developing viable and executable contingency plans for the continuity of operations (COOP). COOP planning facilitates the performance of department/agency essential functions during any emergency or situation that may disrupt normal operations. FEMA, Federal Preparedness Circular 65 (July 26, 1999) (superseded by revision dated June 15, 2004), *available at* <http://www.fas.org/irp/offdocs/pdd/fpc-65.htm>.

empowering local communities with projects such as a “Craig’s List” for resources, a web-based video game for developing local resilience, a system that promotes and enables the trading of ideas and solutions across the nation, and an “Inconvenient Truth” type of movie; (2) developing smart grids for power delivery; (3) developing support for and encouraging the use of plug-in hybrids; (4) enacting a new coastal zone management statute; and (5) charging the U.S. Secretary of Agriculture to lead an interagency initiative to plan for large scale disruptions.

Examples of the goals for the immediate response include: (1) maintaining law and order; (2) restoring basic services; and (3) dealing with refugees and instability. Examples of the goals for long term recovery include: (1) federal government support of local authorities in rebuilding; (2) the evolution of an emergent process; and (3) a bottom-up orientation, that is, a system that is based on strong communities and strong local capabilities.

Appendix B summarizes many of the specific action items developed by the group to address the three phases of a rapid response plan. Table B is not intended to be an exhaustive list of proposals necessary for a comprehensive rapid response plan. These proposals portray, or exemplify, the type of action that should be included in a rapid response plan. Some of these items are broad policy changes such as broadening our concept of national security, while others are very specific action items such as developing a “Craig’s List” of resources available to local communities.

C. The Key Themes that Should Shape the National Plan

The work of the group led to the emergence of themes that permeated the proposals that developed. The larger themes that developed from the discussion are as follows, policy makers and/or polices should: (1) operate pursuant to a broader and thus more realistic concept of national security; (2) recognize and promote the synergies between rapid response policy and climate change mitigation, economic development, and energy security policies; (3) reflect that the local nature of rapid response is key; (4) establish the appropriate federal role and capitalize on the unique capabilities of the federal government; (5) integrate climate change impacts into all planning at the federal and local levels; (6) address deficiencies in FEMA; and (7) develop effective messaging and appointments at the federal level. These themes are summarized here. Specific action items from Appendix B will be reviewed in terms of these themes and the authority to implement them in Section E.

1. Develop Policy Pursuant to a Realistic Concept of National Security

Our modern reality is that national security is not limited to potential military conflicts with adversaries or domestic insurrections, and thus a national policy limited in this way will fall short in terms of protecting America and its population. National security embodies the realities of our economy, energy policy and the potential impacts of climate change and all three are inextricably intertwined. The national security consequences of these issues should be fully integrated into national security and national defense strategies.

President Franklin Roosevelt took the connection between national security and U.S. economic conditions to its limit, attacking the Depression as if it were a military conflict. Although he has been criticized for attempting to rely on the presidential Commander in Chief power to justify executive action on domestic issues, the link between our economy and national security is undeniable. During that period, Congress passed a number of emergency provisions to address the economic impacts of the Depression. In the 1970s, subsequent to the OPEC oil embargo, the link between energy policy and national security became pronounced.¹⁰ As a result of energy shortages and the economic impacts of these shortages, including the drastic increase in energy prices and general inflation, Congress passed a number of emergency measures to address energy issues (largely shortages). In addition to the physical hazards that are predicted to result from climate change, climate change impacts and policy will affect our economy as well as our access to energy (and our energy policy and economy are themselves inextricably intertwined).

As early as 2003, the grave danger to national security posed by global climate change was recognized by the Pentagon's Defense Advanced Planning Research Projects Agency. This agency-commissioned report:

. . . explores how such an abrupt climate change scenario could potentially de-stabilize the geo-political environment, leading to skirmishes, battles, and even war due to resource constraints such as: 1) Food shortages due to decreases in net global agricultural production 2) Decreased availability and quality of fresh water in key regions due to shifted precipitation patterns, causing more frequent floods and droughts 3) Disrupted access to energy supplies due to extensive sea ice and storminess.¹¹

More recently, the U.S. Intelligence Community prepared a National Intelligence Assessment on the National Security Implications of Global Climate Change to 2030 based on a National Intelligence Priorities Framework review in 2006.¹² Although the NIA is classified, testimony provided by Dr. Thomas Fingar, Chairman of the NIC, to the House Permanent Select Committee on Intelligence and House Select Committee on Energy Independence and Global Warming on June 25, 2008, was made public. One of the conclusions of the NIA is that “global climate change will have wide-ranging implications for US national security interests over the next 20 years.”¹³ Some examples of domestic impacts provided in Mr. Fingar’s testimony include possible increases in the severity of storms in the Gulf, increased demand for energy resources, disruptions in U.S. and Arctic infrastructure and increases in immigration from resource-scarce regions of the world. In addition, thawing in and around Alaska, water shortages in the Southwest and storm surges on the East and Gulf Coasts will involve costly repairs, upgrades, and modifications. A warming climate also will encourage wildfires throughout the

¹⁰ See Boundaries I, Chapter IV(C)(1), (2) (discussion of causes and impacts of oil embargo).

¹¹ Congressional Record House, H5101, H5105 (June 9, 2008).

¹² Statement for the Record of Dr. Thomas Fingar, Deputy Director of National Intelligence for Analysis and Chairman of the National Intelligence Council before the House Permanent Select Committee on Intelligence and the House Select Committee on Energy Independence and Global Warming, *National Intelligence Assessment on the National Security Implications of Global Climate Change to 2030* (June 25, 2008) [hereinafter “Fingar”], available at http://media.npr.org/documents/2008/jun/warming_intelligence.pdf.

¹³ *Id.* at 4.

longer summers. Current infrastructure design criteria and construction codes may be inadequate for climate change and exacerbate vulnerability to increasing storm intensity and flooding. A number of active coastal military installations in the continental U.S. are at a significant and increasing risk of damage, as a function of flooding from worsened storm surges in the near-term. In addition, two dozen nuclear facilities and numerous refineries along U.S. coastlines are at risk and may be severely impacted by storms.¹⁴

Further, the United States will need to anticipate and plan for growing immigration pressures. Although sea level rise is probably a slow and long-term development, extreme weather events and growing evidence of inundation will motivate many to move sooner rather than later. Almost one-fourth of the countries with the greatest percentage of population in low-elevation coastal zones are in the Caribbean, so assisting these populations will be an imminent task. As climate changes spur more humanitarian emergencies, the international community's capacity to respond will be increasingly strained. The United States, in particular, will be called upon to respond. The demands of these potential humanitarian responses may significantly tax U.S. military transportation and support force structures, resulting in a strained readiness posture and decreased strategic depth for combat operations.¹⁵

Other organizations that analyze national security issues have come to similar conclusions. For example, Sherri Goodman, General Counsel of the Center for Naval Analysis (CNA) and Executive Director of the CNA's Military Advisory Board (MAB), provided testimony regarding the MAB's examination of the national security implications of climate change. The MAB concluded that "global climate change is and will be significant threat to our national security and in a larger sense to life on earth as we know it."¹⁶ The potential destabilizing impacts of climate change include: reduced access to fresh water; impaired food production, health catastrophes – especially from vector- and food-borne diseases; and land loss, flooding and the displacement of major populations.¹⁷ "Projected climate change poses a serious threat to national security. The predicted effects of climate change over the coming decades include extreme weather events, drought, flooding, sea level rise, retreating glaciers, habitat shifts and the increased spread of life-threatening disease. These conditions have the potential to disrupt our way of life and to force change in the way we keep ourselves safe and secure."¹⁸

Ms Goodman goes on to explain:

Climate change, national security and energy dependence are a related set of global challenges. Dependence on foreign oil leaves us more vulnerable to hostile regimes and terrorists, and clean domestic energy alternatives help us confront the serious challenges of global climate change. Because the issues are linked, solutions to one affect the others. The path to mitigating the worst security consequences of climate change involves reducing global

¹⁴ Fingar, *supra* at 16-17.

¹⁵ *Id.* at 17.

¹⁶ Goodman, *supra* at 2.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 3.

greenhouse gas emissions. There is a relationship between carbon emissions and our national security. The more we can reduce our reliance on fossil fuels, especially those imported from countries that would do American harm, the more we can reduce the security costs America may pay late.¹⁹

These observations and conclusions must be embraced government-wide by policy makers at the top level of government, and rapid response policy must embody relevant economic, energy and climate mitigation issues.

2. Promote Synergies with Economic, Climate Change Mitigation and Energy Security Strategies

As explained above, concepts of economics, energy security and climate change mitigation are inextricably linked. Many of the policies or plans that promote one of these policies also promote one or more of the others. For example, a shift in our energy policy away from carbon based energy sources reduces our reliance on foreign oil producers, promotes new industry and job growth domestically and reduces the nation's carbon emissions. Thus, the benefits of this one policy shift improve energy security, promote economic development and mitigate the causes of climate change. The reverse is also true, that a policy in one of these areas, if not aligned with the others, can negate the impact of the others. Thus, the alignment of these policy areas is crucial.

This also exemplifies another point; climate change policy should not be viewed as just a problem but as an opportunity. Many of the policies advanced by the Rapid Response Working Group are the same as those that support a low carbon economy, thus they have economic and environment benefits and support energy self sufficiency. Further, effective capacity building at the local level should align with local economic and community development. Rapid response policies should be developed with these synergies in mind and these synergies should be exploited.

3. Reflect that the Local Nature of Rapid Response is Key

The reality is that when disasters hit, the first responders are local. In the twenty-first century, local governments confront challenges from natural and man-made disasters. Thus, local communities must have the capabilities to implement any rapid response plan, and local communities must have a substantial role in developing such a plan. Key stakeholders such as state and local governments who will be first responders must be directly involved in developing response plans.²⁰

Each level of government - federal, state, and local - has a role to play in managing emergencies. The federal government, acting

¹⁹ *Id.* at 5.

²⁰ See, GAO, *Influenza Pandemic: Further Efforts are Needed to Ensure Clearer Federal Leadership Roles and an Effective National Strategy*, GAO-07-781 (Aug. 14, 2007) (highlights the importance of involving all stakeholders, especially state and local government, in the context of developing the National Strategy for Pandemic Influenza).

through the Federal Emergency Management Agency, plays a significant role in mitigating the effects of natural disasters and helping to develop protective predisaster strategies. The state government plays a crucial role in mobilizing resources and coordinating responses to disasters. But local government, especially county government, has perhaps the most important operational role to play in protecting the public. The local government, after all, is the unit of government closest to the affected public and therefore the most accountable.²¹

Without a substantial role for local communities emergency response plans run the likely risk of failure:

Ineffective responses to imminent emergencies can leave a local government unable to make the most of resources otherwise available to manage emergencies and ameliorate their effects on the public. Failure to define roles well in advance may result in poorly managed responses to natural disasters by state [or federal] officials unfamiliar with local conditions and by local officials constrained by real or perceived state[or federally]-imposed limitations.²²

Further, resiliency is dependent on local capabilities. A system that is centralized, in a disaster, will fail. An understanding of local conditions (and needs) is key, as is the ability to survive temporarily cutoff from centralized resources. Thus, many of the Working Group's proposals were aimed at developing stand alone capabilities (e.g., smart grids, solar powered radios, local gardens etc.) The needs of local resiliency will vary substantially between communities, for example, local food supply in rural areas versus urban areas. Thus, participation by stakeholders in all locales is important.

Further, the reality is that if a local community has no stake in the plan implementation may fail. Whether it is a legal requirement or not, in an operational context there may not be time for state or federal authorities to involve the judicial process to enforce an emergency management plan within a recalcitrant municipality. Such intergovernmental conflict is best resolved before an emergency develops.²³

²¹ David G. Tucker and Alfred O. Bragg, III, *Florida's Law of Storms: Emergency Management, Local Government, and the Police Power*, 30 STETLR 837, 838 (Winter 2001) (footnotes omitted) [hereinafter "Tucker, et al."] This article contains a good discussion of the law under which local governments must navigate through disasters using Florida as an example. It includes a discussion of the relationships between and roles of state, local, and federal governments in managing emergencies, particularly the federal role in mitigation and pre-disaster planning. Florida was chosen as an example because "leading climatologists predict an increase in the number and severity of hurricanes in the coming decades. Florida is more susceptible to hurricanes than any other state. . . . Florida also is threatened by wildfires, which result from a dangerous combination of droughts and lightning." *Id.* at 837-8.

²² *Id.* at 838.

²³ Tucker, et al., *supra* at 861.

Rapid response planning will be both a top down and bottom up process. Implementation plays out at the local level. Thus, policies must reflect real local conditions and effective policies cannot be developed without the bottom up part of the process. The Federal role should support local action and local independence.

4. Develop Appropriate Role for Federal Government

As stated in the prior subsection, the development of rapid response policy is both a top down and bottom up process. Federal and local stakeholders should be viewed as partners in this process. Key aspects of the federal role should include: leadership, coordination of activities, fiscal relief and technical support. As will be reviewed in Section E below, this role is embodied in federal legislation; with the proper prioritization and leadership it can be implemented in this manner.

5. Incorporate Climate Change Impacts into all Emergency Planning Processes

As described in Section A²⁴ and subsection 1 above, climate change impacts are and will be broad and far reaching. Thus, these potential impacts must be planned for both vertically at the federal, state and local levels and horizontally, government-wide. The planning requirements in federal legislation are reviewed in Section E below. To have an effective rapid response plan climate change should be incorporated into all of these requirements.

6. Correct Critical Deficiencies in FEMA

The federal government plays an important role in efforts to plan for, prevent and recover from emergencies and disasters, especially through various coordination activities and through fiscal support including fiscal relief for disaster victims. The federal government acts in these situations primarily through FEMA. A major reorganization to improve homeland security was undertaken in 2002. The Department of Homeland Security (DHS) was established by the Homeland Security Act.²⁵ The creation of DHS resulted in a reorganization of the executive branch on a scale not experienced since the establishment of the Department of Defense half a century ago. FEMA has been relocated to DHS as a “distinct entity within the Department.”²⁶ Under the 2002 reorganization DHS has the dominant role in implementing the national strategy for homeland security. In 2006, the Post Katrina Act made organizational changes within DHS to consolidate emergency preparedness and emergency response functions within FEMA.

Notwithstanding the 2002 reorganization (and possibly, in part, because of it), the response to Hurricane Katrina in 2005 exemplified major deficiencies in our response to natural disasters at all levels. These failures were documented by, for example, the GAO.²⁷ In response to these

²⁴ See especially, footnote 3, *supra*.

²⁵ U.S.C. for HSA. See also Relyea, CRS Report.

²⁶ 6 U.S.C. § 316a.

²⁷ GOV'T ACCOUNTABILITY OFF., REP. NO. GAO-06-246T, HURRICANES KATRINA AND RITA: PRELIMINARY OBSERVATIONS ON CONTRACTING FOR RESPONSE AND RECOVERY EFFORTS (Nov. 8, 2005) [hereinafter GAO-06-246T]; GOV'T ACCOUNTABILITY OFF., REP. NO. GAO-06-442T, HURRICANE KATRINA: GAO'S PRELIMINARY OBSERVATIONS REGARDING PREPAREDNESS, RESPONSE, AND RECOVERY (Mar. 8, 2006) [hereinafter GAO-06-442T].

notable deficiencies, Congress passed the Post Katrina Emergency Management Reform Act in 2006 (Post Katrina Act).²⁸ However, subsequent to this Act, the GAO has identified numerous major deficiencies that still remain.²⁹ As FEMA is the primary federal agency in planning and response to national emergencies, it is critical that these deficiencies are addressed. Section E addresses this.

7. Prioritize at Highest Level Messaging and Appointments

As learned by the problematic response to Hurricane Katrina, appointments in emergency management positions are critical. Those considered for appointment must have the necessary experience and qualifications. Not only is their background important, but their understanding of emergency management as well. This includes a full understanding of the breadth of rapid response policy, its linkages with economic, energy security and climate change strategies, and the priorities established in emergency management legislation (e.g., key role of local stakeholders at all levels). Federal appointments are addressed in Section E below.

Further, the way in which information is relayed is critical. As pointed out earlier in this section, implementation of a rapid response plan takes place at the local level. Thus, messaging must be developed that connects with local first responders and local populations (for example, to understand the existence of threats and to heed evacuation warnings). This should be considered in terms of both the substance and form of information that is relayed. It must be accurate, timely and resonate with the targeted audience. Relevant provisions of federal legislation that should be utilized are identified in Section F below.

D. Overview of Federal Emergency Authority

The focus of this paper is the President's role in developing and implementing a national plan. Thus, a review of the authority for relevant federal action is necessary. There are three foundations that have been used to support presidential exercise of emergency power in the past: implied, inherent and delegated authority. The Constitution makes no mention of emergency or governmental procedures and powers. Implied authority is when the President looks for emergency power in the logical extensions and implications of the words of the Constitution. Inherent authority, viewed as highly questionable, lies above and outside of the Constitution. Delegated authority refers to congressionally delegated authority through statutory authorizations. These foundations are analyzed in some detail in a prior report commissioned by the PCAP, *The Boundaries of Executive Authority: Using Executive Orders to Implement Federal Climate Change Policy ("Boundaries I")*.³⁰ The conclusion of that analysis is that presidential action pursuant to a clear, express authorization from Congress most obviously

²⁸ Department of Homeland Security Appropriations Act of 2007, Title VI, Pub. L. No. 109-295, 120 Stat. 1355 (2006).

²⁹ William O. Jenkins, Jr., Director Homeland Security and Justice, GAO, *Emergency Management: Observations on DHS's Preparedness for Catastrophic Disasters*, GAO Testimony-08-868T (June 11, 2008) [hereinafter GAO-08-868T]; William O. Jenkins, Jr., Director Homeland Security and Justice, GAO, *Emergency Management: GAO Responses to Post-hearing Questions for the Record*, GAO-08-1003R (July 15, 2008) [hereinafter GAO-08-1003R].

³⁰ Alaine Ginocchio, et. al., *Boundaries I*, 139-145 (February 2008) available at http://www.colorado.edu/law/eesi/Boundaries_Executive_Authority.pdf.

conforms to our constitutional scheme of government; thus, the President is on the firmest ground when citing statutes as the source of his asserted powers.³¹

Although the purpose of this analysis is not to advocate for the use of “inherent authority” as the anticipated basis for executive action, a few comments should be made.³² Under exigent circumstances, presidents in the past have relied upon “inherent” presidential authority. Although “inherent authority” is viewed as highly questionable by both the courts and legal scholars, it has not been completely nullified.³³ However, until recently presidents have resorted to inherent authority to address crises or emergencies in a common manner: (1) the basis of presidential authority was made publicly; and (2) the President works in tandem with Congress.³⁴ The first allows the system of checks and balances to operate to check any overextension of presidential authority; the second allows post hoc ratification by the legislature when immediate action, not possible by a deliberative body such as Congress, is necessitated. Any use of inherent authority should be as a last resort and should use the approach described above to maintain a minimal level of legitimacy and credibility. The preferred route, and that which is the route explored in this paper, is authority provided via statutory delegations.

As one legal author has noted, “The United States has tended to normalize its emergencies.”³⁵ By this she means that emergencies generally feature standardized procedures that regularize and contain them, these procedures are specified in ordinary law, and that during any given year there will be multiple federal emergencies or disasters declared.³⁶ Thus, emergencies in America are generally part of normal government and not exceptional.³⁷ The procedure for declaring federal emergencies is established by the National Emergencies Act of 1976 (NEA),³⁸ and the emergency powers that can be invoked are found in a multitude of statutory provisions throughout the U.S. Code.

The NEA seeks to normalize the process by which national emergencies are declared and terminated, and emergency provisions of law are invoked. The Act does not define emergency or grant any emergency authority.³⁹ It requires a public declaration by the President that declares the emergency as well as the emergency powers the President evokes. Further, it limits federal

³¹ *Id.* at 45.

³² In terms of domestic policy inherent and delegated authority are most relevant.

³³ See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 72 S. Ct. 863, 96 L. Ed. 1153 (1952).

³⁴ Kim Lane Scheppele, *Emergency Powers and the Constitution*, 40 *GALR* 835, 857-862 (October 2007) [hereinafter “Scheppele”]. This article explores the difference in the use of “inherent authority” by the G. W. Bush administration and all prior administrations. The manner in which inherent authority has been used by the G.W. administration differs substantially from prior administrations in two key respects: 1) he has been secretive about the legal basis for his actions; and 2) he has not gone to Congress for post hoc ratification. *Id.*

³⁵ *Id.* at 839-40.

³⁶ This includes both small and large emergencies (or “disasters” and “emergencies”). For example, in 2005 there were 47 federally declared emergencies and disasters (this does not include state declared emergencies and disasters). Emergencies and disasters are declared for hurricanes, floods, areas otherwise affected by water and wind, and snow; they can also be declared for states affected by evacuees from emergencies. In many of the areas under the declaration, the state may not even appear in crisis and there is no visible ongoing threat. Scheppele, *supra* at 841-2.

³⁷ *Id.* at 840.

³⁸ 50 U.S.C. §§ 1601-1651.

³⁹ For a summary of the NEA provisions see *Boundaries I, supra* at 149-50.

emergencies to one year unless extended by another public declaration, and establishes a procedure by which Congress may end an emergency.

Apart from the Constitution, but resulting from its prescribed procedures, there are statutory grants of power for emergency conditions.⁴⁰ The President is authorized by Congress to take some special or extraordinary action, ostensibly to meet the problems of governing effectively in times of exigency. Sometimes these laws are only of temporary duration.⁴¹ There are also various stand-by laws which convey special emergency power once the President formally declares a national emergency activating them. In 1973, a special committee established by Senate Resolution, the Special Committee on the Termination of the National Emergency, identified 470 provisions of federal law which delegated extraordinary authority to the executive in time of national emergency.⁴² A review of the delegations reveals that provisions relate primarily to wartime government activities and some are responses to economic emergencies.⁴³

These statutes show, however, that emergencies have been brought inside the constitutional order by being normalized in the ordinary legislative process. Emergencies are anticipated, regulated, and regularly suspend constitutional business-as-usual upon a declaration by the President. Nonetheless, they are typically small emergencies, ones that have been normalized as part of the constitutional and legal structure of the state. They require no overt suspension of the Constitution, no radical revision of what the Constitution means as a normal matter. They are now part and parcel of the structure of the American constitutional order. Congress has set up a system of standby presidential authority to act without explicit congressional concurrence in the event the President feels there is a state of emergency.⁴⁴

⁴⁰ See HAROLD C. RELYEA, NATIONAL EMERGENCY POWERS, CRS REPORT FOR CONGRESS 98-505 at summ. (Updated Nov. 13, 2006) [hereinafter, "Relyea 2006"] (discussion of debate over whether to grant emergency power to executive).

⁴¹ HAROLD C. RELYEA, NATIONAL EMERGENCY POWERS, CRS REPORT FOR CONGRESS 98-505 3 (Updated Sept. 18, 2001) (hereinafter, "Relyea 2001"). An example of this is the Economic Stabilization Act of 1970, which gave the President emergency authority to address a crisis in the nation's economy. Specifically, it allowed the President to impose certain wage and price controls for about three years before it expired automatically in 1974. *Id.*

⁴² *Id.* at 9.

⁴³ EMERGENCY POWERS STATUTES, S. REP. NO. 93-549 (1st Sess. 1973) (hereinafter "Emergency Powers Statutes") (Congressional research staff compiled a list of emergency powers given to the President in virtue of the states of emergency.) For example:

7 U.S.C. §§ 1158, 1332, 1371, 1743, and 1903 allow the President or the Secretary of Agriculture to alter standard regulations of trade in certain commodities during periods of national emergency when the national emergency is related to commodity supplies.

10 U.S.C. §§ 506, 511, 519, 565, 599, 671a, 671b, and 672 relate to the President's power to activate military reserve units and extend tours of duty during periods of war or national emergency.

10 U.S.C. §§ 2663 and 2664 permit the heads of the military branches, in wartime, to take control of private property and use its natural resources immediately after filing a petition to condemn the property.

12 U.S.C. §§ 95, 95a, and 249 give the executive branch power to more extensively regulate the Federal Reserve System and consumer credit during war or national emergency.

The list goes on for 63 pages.

⁴⁴ Schepelle, *supra* at 846-7. (The author goes on to describe how U.S. law got to this point).

* * * * *

For the most part, American emergency legislation has generally been inserted bit by bit into ordinary statutes as a kind of escape clause to the normal operation of each law. When the American President declares an emergency, which he can do either under one or more of these statutes or as a general matter pursuant to his direct Article II constitutional powers, the President is then given the power to pick and choose which emergency provisions he would like to use-and when. As a result, the President's use of emergency powers often happens in a parallel legal universe, not one that steps outside the law to contain a crisis. Congress often legislates an emergency mode in many statutes that it passes; a declaration of the President (under few restrictions as to what would justify the declaration) switches the operation of the statute from normal mode to emergency mode. But the emergency mode is not outside the law; it is an alternative within the law, explicitly provided for by law.⁴⁵

Although these grants of authority provide the President with the strongest foundations for emergency power, they also narrow any implied powers. The authorities available to the executive in time of national crisis or under other exigent circumstances have come to be increasingly rooted in statutory law. The discretion available to a Civil War President in his exercise of emergency power has been harnessed, to a considerable extent, in the contemporary period.⁴⁶ Furthermore, due to greater reliance upon statutory expression, the range of this authority has come to be more circumscribed, and the options for its use have come to be regulated procedurally through the NEA.⁴⁷

Thus, inherent authority may be necessary for unforeseen exigent circumstances, but the focus of this paper is on normalized emergency authority.

E. Key Legislation that Shapes Current Federal Authority

The following is a review of key legislation relevant to the rapid response policy that is the subject matter of this report. Key statutes relevant to domestic emergencies in general are

⁴⁵ *Id.* at 855.

⁴⁶ The first of these was enacted in 1792, 1 Stat. 264-265. This provision provided for the calling forth of the militia to suppress insurrections and repel invasions, as Congress anticipated something more than forceful opposition to the collection of a federal excise tax on whiskey. Relyea 2001, *supra* at 5. There was an exponential escalation of the creation of standby powers during the period from the Truman administration to the Nixon years. Phillip J. Cooper, *By Order of the President: The Use and Abuse of Executive Direct Action*, note 1, at 39 (2002). This can be illustrated by the growth of congressional delegations. During the Franklin Roosevelt administration there were approximately 99 emergency delegations to the President, by 1973 that number had risen to 470. See *Boundaries I* at 149.

⁴⁷ Relyea 2001, *supra* at 18.

reviewed. This includes the following: (1) Title 42, Chapter 68 of the U.S. Code, Disaster Relief (includes the Robert T. Stafford Disaster Relief and Emergency Assistance Act); and (2) Title 6 of the U.S. Code, Domestic Security. The Stafford Act, Chapter 68 of Title 42, is composed of six subchapters:

- Subchapter I. Findings, Declarations, and Definitions (§§ 5121-5122)
- Subchapter II. Disaster Preparedness and Mitigation Assistance (§§ 5131-5134)
- Subchapter III. Major Disaster and Emergency Assistance Administration (§§ 5141-5165d)
- Subchapter IV. Major Disaster Assistance Programs (§§ 5170-5189e)
- Subchapter IV-A. Emergency Assistance Programs (§§ 5191-5193)
- Subchapter IV-B. Emergency Preparedness (§§ 5195 - 5197h)
- Subchapter V. Miscellaneous (§§ 5201- 5208)

The two portions of Title 6, Domestic Security, that are central to this analysis are:

- 1) Chapter 1, Homeland Security, Subchapter V, National Emergency Management; and
- 2) Chapter 2, Emergency Management (which includes the Post Katrina Emergency Management Reform Act of 2006).

Four points especially relevant to climate change policy and the President's role emerge from this analysis. First, the President has substantial discretion and authority in all phases of emergencies from planning to recovery. Second, mitigation is a concept that permeates the emergency management legislation and policy it embodies. Third, involvement at the local level⁴⁸ is a key component in all stages of this policy. Fourth, there are numerous entry points in the existing legislation to address climate change rapid response.

1. Broad Authority Delegated Directly to the President

The Stafford Act: Title 42, Chapter 68 of the U.S. Code, Disaster Relief

The Stafford Act, passed in 1974, is the law under which federal emergencies are declared. The intent of the law is “to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from disasters”⁴⁹ This includes responding to all manner of domestic hazards, disasters and emergencies natural and man-made. This includes, but is not limited to, hurricanes, typhoons, fires, floods, earthquakes, tornados, massive explosions, and terrorist attacks. There are four types of “emergencies” that can be declared by the President and acted upon under the Stafford Act: major disaster; emergency; 10-day emergency authority; in an area in which the federal government has “primary responsibility.”⁵⁰

⁴⁸ “Local” in this section means everything below federal, e.g., state, municipality, town, etc.

⁴⁹ 42 U.S.C. § 5121.

⁵⁰ 42 U.S.C. §§ 5122(1) & (2) (emergency and major disaster), 5170 (major disaster), 5191(a) & (b) (emergency and federal “primary responsibility,”) 5170b(c) (10-day authority). See also, Major Christopher B. Walters, *Responding to National Disasters and Emergencies: A Contract and Fiscal Law Primer*, 2007-OCT Army Law 35, 37-40 (2007) [hereinafter “Walters”].

The first situation is when the President declares a “major disaster” in response to a natural catastrophe or emergency, regardless of cause, anywhere in the United States and its territories.⁵¹ This declaration requires the affected state's governor to request federal assistance after being unable to effectively respond with only state resources, and to guarantee that the state will certify compliance with all cost-sharing provisions of the Stafford Act. There is no dollar amount or time limit on such federal assistance. The second situation is when the President declares an “emergency,” defined as “any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lesson or to avert the threat of a catastrophe” in the United States and its territories.⁵² The governor of the affected state must meet the same criteria as in a major disaster, but must also define the specific type and amount of federal support required. The third category is the President's “10-day emergency authority” during which DOD assets may be used on an emergency basis to “preserve life and property.”⁵³ The governor for the affected state must request federal assistance. The emergency work is limited to ten days for clearing and removing debris and wreckage, and temporarily restoring essential public facilities and services. The fourth category is when an emergency exists in an area for which the Federal Government has “primary responsibility” for response pursuant to the Constitution and federal law.⁵⁴ As this authority arises in an area where the Federal Government has “primary responsibility,” such as over areas with exclusive, concurrent, or proprietary jurisdiction, the state governor need not request aid.

In addition to establishing the procedure for declaring emergencies, delegating authority for determining how much federal money will be spent and where, administering federal funds during emergencies, providing a legislative mechanism through which other laws may be suspended or overridden by the President to cope with a crisis, and for providing technical support and grants to States for developing response and mitigation plans, the Stafford Act is the governing authority directing the military to support civil authorities in protecting lives, property, and the public health and safety.⁵⁵

The President has broad and substantial authority through delegations.

The Stafford Act provides a congressional grant of power to the President to determine the existence of an emergency, which is defined as:

. . . any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property

⁵¹ 42 U.S.C. §§ 5122(2), 5170.

⁵² 42 U.S.C. §§ 5122(1), 5191(a).

⁵³ 42 U.S.C. § 5170b(c).

⁵⁴ 42 U.S.C. § 5191(b).

⁵⁵ For a good summary of the Stafford Act and federal responses to natural disasters domestically, see Walters, *supra*. The purpose of this primer is to provide the judge advocate deploying in support of a domestic disaster or emergency a quick overview of the federal response scheme, highlight some lessons learned and unusual issues that arose in the past, and identify a recent addition to the Federal Acquisition Regulation (FAR) resulting from Hurricane Katrina. *Id.* at 35.

and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.⁵⁶

The delegation is directly to the President and is general, thus quite broad in terms of presidential discretion. There are no further guidelines in the Act to assist the President in determining when something constitutes an emergency. As one legal scholar summarizes, “[t]he President is given complete discretion in deciding when his powers kick in.”⁵⁷

Further, Chapter 68 is replete with other delegations specifically to the President. Almost without exception the many powers and authorities granted under Chapter 68 (all five titles) are specifically delegated to the President. Through statutory delegations the President is allowed the discretion to determine how much federal money will be spent and where, a power customarily reserved to the Congress; procedural rules established by other statutes for administering federal funds may be overridden in a presidentially declared emergency; and the Act provides a legislative mechanism through which other laws may be suspended or overridden by the President to cope with a crisis.⁵⁸ For example, in Subchapter II, Disaster Preparedness and Mitigation Assistance, all of the delegations are explicitly to the President. This includes, but is not limited to, establishing a program of disaster preparedness, providing technical assistance to states to develop plans, making grants to states to develop preparedness and mitigation plans and establishing a program to provide technical and financial assistance to states and local government to assist in implementing predisaster hazard mitigation measures.⁵⁹

An example of the type of authority the President has in an emergency is as follows: “In any emergency, the President may:”

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe, including precautionary evacuations;

⁵⁶ 42 U.S.C. § 5122(1). See Schepelle, *supra* at n.28. The original bill included a definition of emergency that was limited primarily and explicitly to natural disasters:

‘Emergency’ means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a disaster. Disaster Relief Act Amendments of 1974, Pub. L. No. 93-288, § 102, 88 Stat. 143, 144 (1974) (current version at 42 U.S.C. § 5122(1) (2000)). The present language broadening emergencies to include any catastrophe without reference to other natural disasters was added in 1988. Disaster Relief and Emergency Assistance Amendments of 1988, Pub. L. No. 100-707, § 103, 102 Stat. 4689, 4689 (1988) (codified as amended at 42 U.S.C. § 5122(1) (2000)).

“Major Disaster” is defined in a similar manner. 42 U.S.C. § 5122(2).

⁵⁷ Schepelle, *supra* at 843.

⁵⁸ 42 U.S.C. §§ 5141, 5170. See Schepelle, *supra* at 843.

⁵⁹ 42 U.S.C. §§ 5131-5133.

(2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;

(3) provide technical and advisory assistance to affected State and local governments for--

(A) the performance of essential community services;

(B) issuance of warnings of risks or hazards;

(C) public health and safety information, including dissemination of such information;

(D) provision of health and safety measures; and

(E) management, control, and reduction of immediate threats to public health and safety;

(4) provide emergency assistance through Federal agencies;

(5) remove debris in accordance with the terms and conditions of section 5173 of this title;

(6) provide assistance in accordance with section 5174 of this title;

(7) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance; and

(8) provide accelerated Federal assistance and Federal support where necessary to save lives, prevent human suffering, or mitigate severe damage, which may be provided in the absence of a specific request and in which case the President--

(A) shall, to the fullest extent practicable, promptly notify and coordinate with a State in which such assistance or support is provided; and

(B) shall not, in notifying and coordinating with a State under subparagraph (A), delay or impede the rapid deployment, use, and distribution of critical resources to victims of an emergency.

(b) General

Whenever the Federal assistance provided under subsection (a) of this section with respect to an emergency is inadequate, the President may also provide assistance with respect to efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe, including precautionary evacuations.⁶⁰

⁶⁰ 42 U.S.C. § 5192 (federal emergency assistance).

Authority throughout Chapter 68 is broad; that is, general parameters are given but details are left to the President. Throughout the statute the President is given the authority to adopt, alter or amend regulations or establish procedures or standards as may be necessary to implement the Act.⁶¹ There is sufficient discretion to permit the President to incorporate the themes advanced by the Working Group for emergency plans that include consideration of climate change and these themes are consistent with the purpose and goals of the statute.

Similarly, a substantial amount of authority is delegated to the FEMA Administrator throughout the Chapters and Subchapters of Title 6 reviewed for this report. The DHS, in which FEMA is housed, is an executive department. In regard to executive departments, it is presumed that the President is constrained only by the requirement that he “not direct any act beyond the bounds of an administrator’s legal authority.”⁶²

2. Presidential Authority through Organizational Structure and Duties

In addition to the authority and broad discretion directly delegated to the President in relevant legislation, the organizational structure supports broad executive authority. A major agency reorganization took place in 2002 pursuant to the Homeland Security Act. Most nonmilitary executive organizational units with key roles in homeland security are now housed under the umbrella of one department, the Department of Homeland Security (DHS).

The Federal Emergency Management Agency (FEMA) is the primary federal agency responsible for disaster relief in the U.S. FEMA’S primary mission is “to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.”⁶³

The President has substantial authority over FEMA.⁶⁴ The head of FEMA is the Administrator, who is appointed by the President, by and with the advice and consent of the Senate.⁶⁵ FEMA is housed in the DHS which is an executive department and much of the Administrator’s role is to “advise” and “assist” the President. For example, the Administrator is “the principal advisor to the President,” the Homeland Security Council, and the Secretary for all matters relating to emergency management in the United States,⁶⁶ and “[t]he Administrator, as the principal advisor

⁶¹ E.g., 42 U.S.C. § 5201(a)(1) (“The President may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this chapter [entire Stafford Act], and he may exercise any power or authority conferred on him by any section of this chapter either directly or through such Federal agency or agencies as he may designate.”) See also, e.g., 42 U.S.C. §§ 5155 (establish procedures), 5156 (establish standards), 5164 (prescribe rules and regulations), 5165a (require particular practices).

⁶² See Boundaries I, Chapter VI; Peter M. Shane, *Independent Policymaking and Presidential Power: A Constitutional Analysis*, 57 GEO. WASH. L. REV. 596, 609 (1989). See also, Elaine Ginocchio, *The Boundaries of Executive Authority: An Evaluation of Priority Proposals from the Presidential Climate Action Project*, Chapter I(C) (July 2008), available at http://www.colorado.edu/law/eesi/BEA_ii.pdf (relevance of delegation directly to agency) [hereinafter “Boundaries II”].

⁶³ 6 U.S.C. § 313(b)(1).

⁶⁴ See Boundaries I, Chapter VI (discussion of agency attributes).

⁶⁵ 6 U.S.C. § 313(c)(1).

⁶⁶ 6 U.S.C. § 313(c)(4)(A).

on emergency management, *shall provide advice to the President, the Homeland Security Council, or the Secretary on a particular matter when the President, the Homeland Security Council, or the Secretary requests such advice.*⁶⁷ Further, the Administrator’s responsibilities include “*assisting the President in carrying out the functions under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§ 5121 et seq.) and carrying out all functions and authorities given to the Administrator under that Act,*”⁶⁸ “*assisting the President in carrying out the functions under the national preparedness goal and the national preparedness system and carrying out all functions and authorities of the Administrator under the national preparedness System,*”⁶⁹ and keeping the President, Congress, and the States advised of the status of emergency preparedness in the United States.⁷⁰

The emergency management organizational structure is detailed in subsection 4 below. In addition to the Secretary of DHS and Administrator of FEMA, the President appoints, with the advice and consent of the Senate, some key FEMA deputy directors.⁷¹ The President also establishes an interagency task force to coordinate the implementation of predisaster hazard mitigation programs administered by the Federal Government,⁷² and designates in FEMA a Small State and Rural Advocate.⁷³ Upon his declaration of a major disaster or emergency, the President appoints a Federal coordinating officer.⁷⁴ The FEMA Administrator appoints the Regional Administrator for each of the ten regional FEMA offices and the members of the National Advisory Council.⁷⁵ Each Regional Administrator establishes a regional advisory council.⁷⁶ The President cannot make the appointments that are statutorily the Administrator’s (or the Regional Administrators’) appointments. However, the President does have legitimate influence over the activities of the Administrator.⁷⁷ For example, the President can consider the type of appointments a potential Administrator would make as a selection criteria for that position.

3. Mitigation on Equal Footing with Other Emergency Priorities

One of the themes that emerged in the Working Group was the natural conjunction of many of the rapid response proposals with climate change mitigation. That is, activities that promote preparedness or recovery have the dual benefit of reducing carbon emissions or promoting carbon sinks. In addition, avoiding or preventing a hazardous or catastrophic event is an appropriate strategy for emergency planning in and of itself.

⁶⁷ 6 U.S.C. § 313 (c)(4)(B)(ii) (emphasis added).

⁶⁸ 6 U.S.C. § 314(a)(8) (emphasis added).

⁶⁹ 6 U.S.C. § 314(a)(19).

⁷⁰ 42 U.S.C. § 5196(b). See also, e.g., 42 U.S.C. § 5196b (Administrator needs written approval of President to duplicate effort).

⁷¹ 6 U.S.C. §§ 313(c), 321c, 321e.

⁷² 42 U.S.C. § 5134.

⁷³ 42 U.S.C. § 5165d.

⁷⁴ 42 U.S.C. § 5143.

⁷⁵ 6 U.S.C. §§ 317(a), (b), 318.

⁷⁶ 6 U.S.C. § 317(e)(2).

⁷⁷ See Boundaries I, Chapter VI. See also Boundaries II, Chapter I(C).

Federal emergency legislation includes mitigation as an emergency response strategy and places it on equal footing with the other emergency priorities such as preparation, protection, response and recovery. For example, emergency management is defined as: “the governmental function that coordinates and integrates all activities necessary to build, sustain, and improve the capability to prepare for, protect against, respond to, recover from, or mitigate against threatened or actual natural disasters, acts of terrorism, or other man-made disasters.”⁷⁸

Mitigation is included in the national preparedness goals: “The President, acting through the Administrator, shall complete, revise, and update, as necessary, a national preparedness goal that defines the target level of preparedness to ensure the Nation's ability to prevent, respond to, recover from, and mitigate against natural disasters, acts of terrorism, and other man-made disasters.”⁷⁹

Mitigation is also included in the guidelines on target capabilities: “Not later than 180 days after October 4, the Administrator, in coordination with the heads of appropriate Federal agencies, the National Council on Disability, and the National Advisory Council, shall complete, revise, and update, as necessary, guidelines to define risk-based target capabilities for Federal, State, local, and tribal government preparedness that will enable the Nation to prevent, respond to, recover from, and mitigate against all hazards, including natural disasters, acts of terrorism, and other man-made disasters.”⁸⁰ Similarly it is included in the preparedness priorities: “In establishing the guidelines under subsection (a) of this section, the Administrator shall establish preparedness priorities that appropriately balance the risk of all hazards, including natural disasters, acts of terrorism, and other man-made disasters, with the resources required to prevent, respond to, recover from, and mitigate against the hazards.”⁸¹

The duties and responsibilities of the FEMA Administrator and other emergency program officials clearly include mitigation. For example, FEMA’s primary mission is as follows: “. . . to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.”⁸² Further mitigation is included repeatedly in the specific activities the Administrator should take. For example, “the Administrator shall”:

(A) lead the Nation's efforts to prepare for, protect against, respond to, recover from, and mitigate against the risk of natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents;

* * * * *

⁷⁸ 6 U.S.C. § 701(7).

⁷⁹ 6 U.S.C. § 743(a).

⁸⁰ 6 U.S.C. § 746(a).

⁸¹ 6 U.S.C. § 746(e).

⁸² 6 U.S.C. § 313(b)(1).

(D) integrate the Agency's emergency preparedness, protection, response, recovery, and mitigation responsibilities to confront effectively the challenges of a natural disaster, act of terrorism, or other man-made disaster;⁸³

Advice on mitigation options shall be included in the Administrator's advice to the President and others.⁸⁴ Further, in delineating the Administrator's responsibilities 6 U.S.C. § 314(a) states as follows: "The Administrator shall provide Federal leadership necessary to prepare for, protect against, respond to, recover from, or mitigate against a natural disaster, act of terrorism, or other man-made disaster, including" Three of the items in this list of responsibilities that are especially relevant are as follows:

(9) carrying out the mission of the Agency to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a risk-based, comprehensive emergency management system of—

(A) mitigation, by taking sustained actions to reduce or eliminate long-term risks to people and property from hazards and their effects;

(B) preparedness, by planning, training, and building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;

(C) response, by conducting emergency operations to save lives and property through positioning emergency equipment, personnel, and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services; and

(D) recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards;

* * * * *

(10) increasing efficiencies, by coordinating efforts relating to preparedness, protection, response, recovery, and mitigation;

* * * * *

⁸³ 6 U.S.C. § 313(b)(2).

⁸⁴ 6 U.S.C. § 313(c)(4)(B).

(18) developing a national emergency management system that is capable of preparing for, protecting against, responding to, recovering from, and mitigating against catastrophic incidents . . .⁸⁵

Mitigation is also specifically included in the responsibilities of the regional administrators,⁸⁶ the regional advisory councils,⁸⁷ and the National Advisory Council,⁸⁸ and mitigation is an activity supported by the National Infrastructure Simulation and Analysis Center.⁸⁹

Funding and technical assistance is also explicitly extended to mitigation. The Stafford Act, which delegates authority expressly to the President, is replete with the explicit inclusion of mitigation as a goal and activity. The intent expressed by Congress is “to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by . . . (5) encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations”⁹⁰ Subchapter II, Disaster Preparedness and Mitigation, explicitly includes mitigation in technical assistance and funding requirements throughout. For example, 42 U.S.C. § 5131, Federal and State disaster preparedness programs states as follows:

(a) Utilization of services of other agencies

The President is authorized to establish a program of disaster preparedness that utilizes services of all appropriate agencies and includes--

(1) preparation of disaster preparedness plans for mitigation, warning, emergency operations, rehabilitation, and recovery;

* * * * *

(b) Technical assistance for the development of plans and programs

The President shall provide technical assistance to the States in developing comprehensive plans and practicable programs for preparation against disasters, including hazard reduction, avoidance, and mitigation; for assistance to individuals, businesses, and State and local governments following such disasters; and for recovery of damaged or destroyed public and private facilities.

⁸⁵ 6 U.S.C. § 314(a).

⁸⁶ 6 U.S.C. § 317(c)(2).

⁸⁷ 6 U.S.C. § 317(e)(3).

⁸⁸ 6 U.S.C. § 318(a).

⁸⁹ 6 U.S.C. § 321.

⁹⁰ 42 U.S.C. § 5121(b).

Further, throughout the Subchapter mitigation is included in funding goals, state plan parameters, program requirements and technical assistance requirements.⁹¹

Assistance for mitigation measures is available during any federally declared major disaster (Subchapter IV) and during any federally declared emergency (Subchapter IV-A). Assistance for hazard mitigation measures is also available in areas that have, in the past, been affected by a major disaster or emergency.⁹²

Mitigation is not defined or limited to any specific act or acts in the statutes. Further, the predicted impacts of climate change fit within the scope of events that are covered by these statutes. The planning provisions in Title 6 apply largely to hazardous events which includes “natural disasters, acts of terrorism, and other man-made disasters” and risks thereof.⁹³ For provisions related to “emergencies” and “major disasters” (Stafford Act), the declaration of these events is left largely to the discretion of the President as explained in subsection 1 above.

4. The Role of Local Stakeholders is a Priority

As noted earlier, throughout this section local means anything below the federal level, e.g., state, municipality, town, etc. Throughout the Stafford Act local stakeholders are given a partnership role and the federal role is one of leadership, support and assistance. For example, the purpose of subchapter IV-B Emergency Preparedness is as follows: “to provide a system of emergency preparedness for the protection of life and property in the United States from hazards *and to vest responsibility for emergency preparedness jointly in the Federal Government and the States and their political subdivisions. . . . The Federal Government shall provide necessary direction, coordination, and guidance, and shall provide necessary assistance, as authorized in this subchapter so that a comprehensive emergency preparedness system exists for all hazards.*”⁹⁴ This is consistent with the top-down, bottom-up process advanced by the Working Group.

Further, the organizational structure and roles of the entities established to carry out key functions in emergency management provide numerous entry points for local stakeholder involvement. The President could maximize this involvement by prioritizing and emphasizing this selection criteria in the appointment process (see subsection 2 above). As described earlier, there was a major federal reorganization to consolidate key departments with key roles in homeland security into one agency, the DHS. The DHS Secretary is appointed by the President with the advice and consent of the Senate. FEMA is housed in DHS as “a distinct entity within

⁹¹ See, e.g., 42 U.S.C. §§ 5131(c), (d) (grants for state plans and programs), 5133 (predisaster hazard mitigation); 5165 (requirements for mitigation plans and additional funding).

⁹² 42 U.S.C. § 5170c. As one author notes, this assistance is typically applied to areas affected by flooding, although it is not limited statutorily to this use. Tucker, et al., *supra* at 865-66 (“Although the Act does not make eligibility for mitigation assistance contingent on the occurrence of any particular kind of disaster, such assistance is commonly provided to mitigate the effects of flooding. Under the Hazard Mitigation Grant Program, the owner of a structure in a zone known to be vulnerable to flooding may receive assistance to pay for construction to raise the structure to a safe elevation.”) (references omitted).

⁹³ See, e.g., 6 U.S.C. §§ 313(b)(1), 314, 318, 725, etc.

⁹⁴ 42 U.S.C. § 5195 (declaration of policy, emphasis added).

the Department.”⁹⁵ The head of FEMA, the administrator, is appointed by the President with the advice and consent of the Senate, as are some key FEMA deputy directors.⁹⁶

Ten regional FEMA offices are also established “as identified by the Administrator” and the Regional Administrators are appointed by the Administrator, “after consulting with State, local, and tribal government officials in the region.”⁹⁷ “In selecting a Regional Administrator . . . the Administrator shall consider the familiarity of an individual with the geographical area and demographic characteristics of the population served by such Regional Office.”⁹⁸ The responsibilities of the Regional Administrators are consistent with the concepts advanced by the Working Group that are key to an effective rapid response policy. For example, emphasis is placed on working “in partnership” with local and regional players: “The Regional Administrator shall work in partnership with State, local, and tribal governments, emergency managers, emergency response providers, medical providers, the private sector, nongovernmental organizations, multijurisdictional councils of governments, and regional planning commissions and organizations in the geographical area served by the Regional Office to carry out the responsibilities of a Regional Administrator under this section.”⁹⁹

Further the role of the Regional Administrator promotes local stakeholder involvement (and the appropriate role of the federal government). For example, the Regional Administrators shall ensure effective coordinated and integrated regional preparedness; assist in the development of regional capabilities; coordinate effective regional communications capabilities; coordinate with the private sector to help ensure private sector preparedness; and assist State, local, and tribal governments to pre-identify and evaluate suitable sites where a multijurisdictional incident command system may be established.¹⁰⁰

The DHS Secretary shall establish the National Advisory Council; the members are appointed by the Administrator.¹⁰¹ Emphasis is placed on members who represent cross sections geographically, as well as substantively, and government and private sector representation from State, local and tribal entities.¹⁰² The Council’s role is to advise the Administrator on all aspects of emergency management. “The National Advisory Council shall “incorporate State, local, and tribal government and private sector input in the development and revision of the national preparedness goal, the national preparedness system, the National Incident Management System, the National Response Plan, and other related plans and strategies,” and “ensure input from and coordination with State, local, and tribal governments and emergency response providers” on the administration and assessment of grant programs administered by DHS.¹⁰³

⁹⁵ 6 U.S.C. § 316(a).

⁹⁶ 6 U.S.C. §§ 313 (c), 321c, 321e.

⁹⁷ 6 U.S.C. § 317(a), (b).

⁹⁸ 6 U.S.C. § 317 (b)(2)(B).

⁹⁹ 6 U.S.C. § 317 (c)(1).

¹⁰⁰ 6 U.S.C. § 317 (c)(2)(A), (B), (C), (I).

¹⁰¹ 6 U.S.C. § 318.

¹⁰² See also 6 U.S.C. § 318(c)(1)(C), (E), (H).

¹⁰³ 6 U.S.C. § 318(b)(1), (2).

Each Regional Administrator shall establish a Regional Advisory Council.¹⁰⁴ “A State, local, or tribal government located within the geographic area served by the Regional Office may nominate officials, including Adjutants General and emergency managers, to serve as members of the Regional Advisory Council for that region.”¹⁰⁵ Each Regional Advisory Council shall:

- (A) advise the Regional Administrator on emergency management issues specific to that region;
- (B) identify any geographic, demographic, or other characteristics peculiar to any State, local, or tribal government within the region that might make preparedness, protection, response, recovery, or mitigation more complicated or difficult; and
- (C) advise the Regional Administrator of any weaknesses or deficiencies in preparedness, protection, response, recovery, and mitigation for any State, local, and tribal government within the region of which the Regional Advisory Council is aware.¹⁰⁶

Pursuant to the Stafford Act, the President also establishes an interagency task force, chaired by the head of FEMA, for the purpose of coordinating the implementation of predisaster hazard mitigation programs administered by the Federal Government.¹⁰⁷ In addition to representatives of relevant Federal agencies, membership shall include representatives of State and local government organizations.¹⁰⁸

Immediately upon his declaration of a major disaster or emergency, the President shall appoint a Federal coordinating officer to operate in the affected area.¹⁰⁹

The President shall designate in the Federal Emergency Management Agency a Small State and Rural Advocate.¹¹⁰

As noted in subsection 2, the purpose and intent of these provisions, to incorporate local stakeholder involvement at all levels, should be given maximum effect. The President should make this clear by issuing a policy statement, formally (by directive) or informally, and make this a criteria and consideration in the appointment process.

5. Incorporate Climate Change Impacts into Planning Processes

Subchapter IV-B of the Disaster Relief Chapter addresses emergency preparedness. The FEMA Administrator has the authority to prepare the Federal response plans and programs for the emergency preparedness of the U.S, direct such plans and programs, prepare and coordinate such plans with State efforts, and delegate to other departments and agencies appropriate emergency

¹⁰⁴ 6 U.S.C. § 317(e)(1).

¹⁰⁵ 6 U.S.C. § 317(e)(2).

¹⁰⁶ 6 U.S.C. § 317(e)(3).

¹⁰⁷ 42 U.S.C. § 5134.

¹⁰⁸ 42 U.S.C. § 5134(c).

¹⁰⁹ 42 U.S.C. § 5143.

¹¹⁰ 42 U.S.C. § 5165d.

responsibilities.¹¹¹ Grants to States for the development of the plans, programs and capabilities for disaster preparedness and prevention are authorized by the President, as is the technical assistance to the States in developing these plans, and technical assistance to State and local officials to ensure effective disaster warning.¹¹²

Additional details for emergency planning documents and processes are found primarily in Chapter 2 (§§ 701-811) and Subchapter 5 of Chapter 1 (§§ 311-321m) in Title 6 of the U.S. Code. These delegations are primarily to the Administrator, although 6 U.S.C. § 753 sets forth the President’s responsibilities in terms of the National Response Plan (NRP), discussed below.

There are three key policy documents:¹¹³ (1) the National Response Plan (describes what should be done and by whom); (2) the National Incident Management System (describes how it should be done) and (3) the National Preparedness Goals (describes how well it should be done).¹¹⁴ As reported by the GAO, FEMA is behind on all of these planning documents and processes (see subsection 6 below).¹¹⁵

In terms of the NRP, the Administrator shall provide federal leadership in consolidating existing Federal Government emergency response plans into a single, coordinated national response plan.¹¹⁶ It has been superseded by the National Response Framework (NER).¹¹⁷ The NRF describes the doctrine that guides national response actions and the roles and responsibilities of officials and entities involved in response efforts. A key aspect of this plan is the clarification of roles and responsibilities.¹¹⁸ The Guidelines for the NRP (or NRF) are quite broad, thus the Administrator has substantial discretion.¹¹⁹ In carrying out planning and preparation responsibilities the Administrator is to adopt an “all-hazards approach.”¹²⁰ Climate change impacts fit within the hazards that should be considered in the NRP. In addition to the President’s role as the chief executive, the President has specific duties in support of the NRP as delineated by 6 U.S.C. § 753.

In terms of the National Preparedness Goals (NPG) and National Preparedness System (NPS), the Administrator assists the President in carrying the functions under the NPG and NPS.¹²¹ The

¹¹¹ 42 U.S.C. § 5196.

¹¹² 42 U.S.C. §§ 5131(b),(c), 5132(b).

¹¹³ In provisions of Title 6 (Homeland Security) reviewed for this report, there are at least a dozen planning documents, activities or systems/centers referenced in Chapter 2 and Subchapter 5 of Chapter 1 (e.g., National Integration Center, 6 U.S.C. § 319, National Disaster Recovery Strategy, 6 U.S.C. § 771; National Disaster Housing Strategy, 6 U.S.C. § 772; Guidelines for individuals with disabilities, 6 U.S.C. § 773; federal response capability inventory 6 U.S.C. § 751; Nat planning scenarios 6 U.S.C. § 745, National Infrastructure Simulation and Analysis Center, 6 U.S.C. § 321, etc.)

¹¹⁴ See GAO-08-868T at summ. (This report provides a good description of the various planning documents and stages of development for these documents.)

¹¹⁵ GAO-08-868T, *supra*; GAO-08-110R, *supra*.

¹¹⁶ 6 U.S.C. § 314(a)(6).

¹¹⁷ GAO-08-868T, *supra*. at summ.

¹¹⁸ *Id.*

¹¹⁹ See e.g., 6 U.S.C. § 319(b)(2); 6 U.S.C. § 743 (b).

¹²⁰ 6 U.S.C. § 314(b).

¹²¹ 6 U.S.C. § 314(C)(19).

NPG and NPS are described in subsection 3 above. The NPG has been superseded by the National Preparedness Guidelines.¹²²

The National Incident Management System (NIMS) is “a system to enable effective, efficient, and collaborative incident management.”¹²³ In terms of the NIMS, the Administrator shall provide leadership building this comprehensive system to respond to attacks and disasters.¹²⁴ The guidelines for the NIMS are quite broad, thus the Administrator has substantial discretion.¹²⁵ Again, the “all-hazards approach” applies. Climate change impacts fall within the events that should be considered in these planning processes.

In terms of the specific proposals advanced by the Working Group in Appendix B, support for many of those that relate to planning and analysis find support in the provisions of Title 6 reviewed for this report largely because climate change impacts fall within the parameters of these provisions. For example, proposals advanced by the Working Group include analyzing climate change catastrophic scenarios through simulations, and improving training and planning through web based simulations (or video games). Specifically, § 321 regarding the national simulation and analysis center, § 745 requiring the Administrator to develop planning scenarios to reflect the relative risk requirements of “all hazards,” and § 764 requiring the President to establish a national exercise simulation center, all support the advancement of these proposals.

6. Correct FEMA Deficiencies

Recall that DHS has the dominant role in implementing the national strategy for homeland security and that emergency preparedness and emergency response functions have been consolidated within FEMA. As a result, FEMA is the DHS entity charged with leading and supporting the nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery and mitigation. As set forth in Section C, even after the reorganization of federal entities to centralize the leadership of many homeland security activities under a single federal department, DHS, and passage of the Post Katrina Act, critical deficiencies continue to exist in federal efforts to prepare for, prevent, mitigate the effects of, respond to, and recover from domestic disasters, natural or man-made. In 2005 and 2006, the GAO issued two reports on deficiencies in these efforts.¹²⁶ In 2008, GAO conducted a follow-up review and found that DHS has not yet fulfilled its responsibilities as set forth by statute and presidential directive.¹²⁷ The focus of the review was on preparation for and response to major and catastrophic disasters which require substantial federal coordination with and assistance to state and local responders.¹²⁸ Numerous critical deficiencies are identified as remaining outstanding in the GAO’s testimony before the House Subcommittee on Management,

¹²² GAO-08-868T, *supra* at summ.

¹²³ 6 U.S.C. § 701(12).

¹²⁴ 6 U.S.C. § 314(a)(5).

¹²⁵ 6 U.S.C. § 314(b).

¹²⁶ GAO-06-246, *supra*; GAO-06-442T, *supra*.

¹²⁷ GAO-08-868T, *supra*; GAO-08-1003R, *supra*. In addition to responsibilities assigned by statute there are more than 20 Homeland Security Presidential Directives that define DHS’s and other federal agencies’ roles. GAO-08-868T, *supra* at 5.

¹²⁸ GAO-08-868T, *supra* at 1.

Investigations, and Oversight (Committee on Homeland Security) and answers to follow up questions from the Subcommittee. Some examples are as follows:

- DHS needs to better integrate stakeholders in its revision of key policy documents such as the NRF. “DHS deviated from the work plan it established for the revision process [to the NRF] that envisioned the incorporation of stakeholder views throughout the process and did not provide the first full revision draft to non-federal stakeholders for their comments and suggestions before conducting a closed, internal federal review of the draft.”¹²⁹
- Efforts to clearly define and understand roles and responsibilities for an effective and coordinated response to a catastrophic disaster are not completed. This is especially important during a transition period between administrations.¹³⁰
- Efforts to develop operational plans to guide other federal agencies’ response efforts are incomplete. For example, “DHS is responsible for, but has not yet completed, leading the operational planning needed for an effective national response. Two essential supplements to the new NRF --the Federal Partner Response Guide and DHS’s Integrated Planning System-- are still under development.”¹³¹
- Efforts to develop metrics for assessing federal capabilities are incomplete. The agency is still establishing a process to measure the nation’s overall preparedness based on the Target Capabilities List and has not yet developed a complete inventory of all federal response capabilities such as communications capabilities.¹³²

This is not intended to be a comprehensive list of the GAO’s findings. The point is that review of and action on these deficiencies should be made a priority by the next administration, and in this process climate change impact should be incorporated into the review and action.

F. Conclusions

The President has the authority to advance a national rapid response policy that emphasizes the key themes advanced by the Rapid Response Working Group (and include many of the specific proposals in Appendix B). These themes are consistent with the provisions of federal emergency management statutes and the policies they embrace or otherwise fall within the discretionary authority delegated in the legislation. Although there are some specific proposals that remain within state (or local) control such as changing water law and developing smart grids, the President has the authority to implement or prioritize many of the proposals advanced by the Working Group summarized in Appendix B.

¹²⁹ GAO-08-868T, *supra* at 8-9.

¹³⁰ GAO-08-868T, *supra* at 10.

¹³¹ GAO-08-868T, *supra* at 11-14.

¹³² GAO-08-868T, *supra* at 15-17.

National Security Priorities. As the commander in chief, the President has substantial authority in determining national security priorities.¹³³ With the observation by those in the highest levels of the national security community that support the conclusion that climate change is a national security issue, see Section C above, the President has sufficient authority to establish climate change as a national security issue. He also has sufficient authority to explicitly broaden the definition of national security to include economic and energy issues, which merely articulates the reality of our modern world.

Aligning Policies. The President has sufficient authority to set government-wide goals and priorities for the efficient effective operation of the federal government.¹³⁴ The reality is that rapid response policy is inextricably intertwined with climate change mitigation, economic development and energy security. Many of the policies or plans that promote one of these policies also promote one or more of the others. The reverse is also true, that a policy in one of these areas, if not aligned with the others, can negate the impact of the others. Thus, the alignment of these policy areas is crucial and the President has the authority to, formally through a directive or informally, impose this alignment government-wide to foster positive outcomes in multiple policy goals.

Mitigation and Local Stakeholder Involvement. Many of the proposals advanced by the Working Group are based on two themes that find substantial support in federal emergency legislation: (1) prioritizing local stakeholder involvement; and (2) climate change mitigation as rapid response policy. As set forth in Section E above these two themes find sufficient support in federal emergency management legislation and are consistent with the policies embodied by that legislation. To effectuate these strategies, the President can highlight and prioritize these aspects of federal emergency legislation through his authority as the chief executive and enumerated duty to take care that the laws are faithfully executed.

The Appropriate Role for the Federal Government. This is essentially the other side of local stakeholder involvement. The Stafford Act and the relevant provisions of homeland security legislation establish a partnership role between the federal government and local stakeholders. The Federal role is one of leadership, support, expertise and assistance. This embodies the bottom-up, top-down process advanced by the Working Group and capitalizes on the unique role and capabilities of the federal government. The legislatively established roles should be effectuated to the maximum extent possible. For example, the President can affirm his administration's commitment to this aspect of federal emergency management in a substantial way by issuing a directive to this effect.

Appointments. Appointments have critical impact on the implementation of policy and are especially important to federal emergency management. As set forth in Section E, pursuant to the organizational structure established by emergency management legislation the President makes appointments to many key positions. Those considered for appointment must have the necessary experience and qualifications and an understanding of the breadth of rapid response policy, its

¹³³ U.S. Const. art. II, § 3 (commander in chief power). See also the mission and role of security agencies, e.g. Boundaries II, *supra* at 42 (the mission and role of the National Intelligence Council and the Department of National Intelligence).

¹³⁴ See Boundaries II, *supra*.

linkages with economic, energy security and climate change strategies, and the priorities established in emergency management legislation.

Messaging. The way in which information is relayed is also critical to emergency management. Messaging must be developed that connects with local first responders and local populations. There is sufficient authority in federal emergency management legislation to advance this objective. For example, 42 U.S.C. § 5132 requires the President to insure that all appropriate Federal agencies are prepared to issue warnings of disasters to State and local officials. In addition it provides for technical assistance to State and local governments for effective warnings.

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**Rapid Response Policy:
Emergency Preparedness for the Potential Impacts of Climate Change**

This table reflects many of the ideas developed by the Rapid Response Working Group that met in July 2008 at the Wingspread Conference. These proposals exemplify the themes that emerged and that should shape an emergency preparedness plan (see Section B of the Report). It is not intended to be an exhaustive list of proposals necessary for a comprehensive rapid response plan. These proposals portray, or exemplify, the type of action that should be included in a plan that recognizes the serious implications of climate change and means to effectively prepare for them. The table includes both broad policy proposals as well as more particularized or detailed action items.

<p>Pre-Event:</p> <p>Policy, Preparation and Planning</p>	<p>Undertake a World War II style national effort</p> <p>Reprioritize: nationwide redefinition of priorities</p> <p>Acknowledge a more realistic concept of national security which includes climate, economy, and energy</p> <p>Redefine emergency power realistically (to include, for example, conservation and possibly impact water law under certain circumstances)</p> <p>Amend plans to include climate change impacts, e.g. amend the National Response plan to include catastrophic climate change scenarios, direct federal agencies to amend COOPs to include climate crises, direct the interagency task force</p> <p>Emphasize messaging that resonates at the local level and is supported by accurate information (e.g., an Inconvenient Truth type of movie, a video game, etc.)</p> <p>Invest in eco-system services</p> <p>Focus on decentralization and empowering communities</p> <p>Align with goals of economic revitalization: Economic Stimulus II addressing, for example, community block grants, energy efficiency, mitigation/adaptation, carbon pricing, long term production, tax credits, etc.</p> <p>Align with energy security policy: Energy Independence Project addressing, for example, transportation, biofuels, etc.</p> <p>Realign the Department of Homeland Security to be more</p>
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	<p>effective, for example, terror funds for local use and available to fund the necessary preliminary steps.</p> <p>Empower the Federal Emergency Management Agency appropriately</p> <p>Implement a new Coastal Zone Management Act</p> <p>Restore science budget</p> <p>Build agency capability to monitor and predict, e.g., determining weaknesses, analysis</p> <p>Ensure continuity of operations</p> <p>Analyze corporate supply chain</p> <p>Charge Secretary of Agriculture with appropriate mandates and priorities, for example, sustainability and impact of significant sector changes</p> <p>Base federal plans on local policy for resilience, including specific needs of urban, suburban and rural areas</p> <p>Promote the legalization of rooftop water collection</p> <p>Provide central inventory for scarce resources, i.e., a “Craig’s List” of resources such as car pools, food, etc.</p> <p>Provide capacity to support key functions off-grid, especially emergency functions, such as, communications, emergency medical services and government operations</p> <p>Decouple power grid: CaliforniaModel, Smart Grid – resilient and funds itself</p> <p>Encourage use of and develop infrastructure for plug-in hybrid or solar powered vehicles</p> <p>Expand reserve police corps</p> <p>Promote “Victory Gardens”</p> <p>Consider resource allocation in advance (e.g. National Guard/Volunteers; civil conservation corps)</p>
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	<p>Add to overall emergency preparation & existing responders</p> <p>Improve education, training and equipping of local officials for full range of potential impacts (e.g., arctic melting, increased hurricanes, flooding, coastal erosion, refugee issues, etc.)</p> <p>Develop web -based training to enhance community preparedness and emergency response</p> <p>Develop a video game: network online, incorporates whole system, has real implications</p> <p>Prepare National Response Framework (DHS/FEMA) that include emergency support and incident annex on catastrophic climate change scenarios</p>
<p>Immediate Response</p>	<p>Fulfill Appropriate Goals:</p> <ul style="list-style-type: none"> Preserve life Maintain law & order Restore essential services: food, water, power, housing Protect property <p>Execute an effective evacuation plan</p> <p>Develop distributed capacity for: water purification; power (e.g., smart grids); food (e.g., local gardens, Craig’s List, supply chain analysis); communication (e.g., solar powered radio’s,) (see Pre-Event section of table)</p> <p>Make improvements in media to assist in post-event controls such as refugee issues</p> <p>Develop housing strategy that aligns with other policy goals, such as climate change mitigation e.g., mobile green, geodesic domes</p>
<p>Long Term Response:</p> <p>Recovery</p>	<p>Consider the following Issues:</p> <ul style="list-style-type: none"> Restoration of infrastructure Health Issues Disaster recovery corps – socialization of recovery Rationing and conservation Sector impacts, e.g., impact on agriculture as sector