

November 22, 2021

Submitted via Regulations.gov

The Honorable Brenda Mallory
Chair, Council on Environmental Quality
730 Jackson Place, N.W.
Washington, D.C. 20503

Re: Docket No. CEQ–2021–0002, Council on Environmental Quality Notice of Proposed Rulemaking, National Environmental Policy Act Implementing Regulations Revisions

Dear Chair Mallory:

On behalf of our millions of members and supporters across the country, the undersigned **232 conservation, faith, justice, and community organizations and businesses** appreciate the opportunity to comment on the Council on Environmental Quality (CEQ)'s Notice of Proposed Rulemaking (NPRM) for the National Environmental Policy Act (NEPA) Implementing Regulations Revisions, which we understand constitutes the first Phase in CEQ's efforts to restore robust NEPA protections.¹

Our organizations appreciate the importance that CEQ has placed on restoring essential protections that were eliminated by the disastrous 2020 NEPA Rule enacted by the Trump administration.² However, we urge CEQ to use this Phase 1 rulemaking to fully restore the 1978 CEQ NEPA implementing regulations as the baseline for NEPA planning. A Phase 2 rulemaking should then build on the 1978 CEQ NEPA regulations to facilitate robust participation in the NEPA process by vulnerable communities and ensure that NEPA reviews equitably evaluate impacts on public health, safety, and wellbeing.

CEQ Should Fully Restore the 1978 CEQ NEPA Regulations as the Baseline for NEPA Planning

The 1978 CEQ NEPA regulations correctly implemented NEPA's critical action-forcing procedures that include giving the public a voice in major federal decisions that affect the environment, carefully reviewing the environmental impacts of proposed actions, and rigorously and objectively investigating less environmentally harmful alternatives. Reviews carried out under the 1978 CEQ NEPA regulations helped expose the true cost of environmentally damaging and ill-conceived proposals, leading to better solutions and substantial savings for federal taxpayers.³

As noted above, we urge CEQ to use this Phase 1 rulemaking to vacate the 2020 NEPA Rule and fully restore the 1978 CEQ NEPA implementing regulations as the baseline for NEPA planning. The deeply flawed and illegal changes in the 2020 NEPA Rule are stifling public input, dramatically limiting evaluation of alternatives, and purging informed, science-based decision-making from the federal environmental review process. These changes threaten the health, safety, and well-being of people and wildlife across the country. These changes should not be allowed to stand.

¹ Many of our organizations will also be submitting individual comments and/or joining other group comments.

² Council on Environmental Quality. "Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act." 85 Fed. Reg. 43304, (Jul. 16, 2020).

³ While NEPA implementation has been far from perfect, the information and public involvement obtained through the NEPA process has provided enormous benefits to people, wildlife, and the environment across the country.

We also urge CEQ to move swiftly to a Phase 2 rulemaking to build on the 1978 CEQ NEPA regulations to facilitate robust participation in the NEPA process by vulnerable communities and ensure that NEPA reviews equitably evaluate impacts on public health, safety, and wellbeing. We also urge that CEQ ensure robust public input opportunities in that Phase 2 rulemaking.

Comments on the Changes Proposed in the NPRM

As noted above, our organizations strongly support the prompt reinstatement of the 1978 CEQ NEPA regulations in their entirety. We also provide the following comments on the changes proposed in the NPRM:

- 1. Reinstatement of the 1978 CEQ NEPA Regulation language on Purpose and Need (§ 1502.13):** Our organizations strongly support this change, which requires federal agencies to consider the interests of the public and environmental objectives in NEPA reviews. The 2020 NEPA Rule improperly revised the “Purpose and Need” language to prioritize the goals of private industry over the public interest by requiring federal agencies to base a proposed project’s purpose and need on the goals of the project applicant.
- 2. Reinstatement of the 1978 CEQ NEPA Regulation definitions of direct, indirect and cumulative effects (§ 1508.1(g)) and the elimination of the various limitations on the analysis of impacts imposed by the Trump administration:** Our organizations strongly support these changes, which require federal agencies to assess the full suite of impacts from a proposed action, including such things as: climate change, rising sea levels, stronger and more frequent storms, the long term impacts of toxic pollution, the risks of new levees diverting floodwaters onto other communities, and the loss of wetlands caused by reservoir management practices that starve a river of the water flows needed to sustain those wetlands. Critically, the assessment of cumulative (and other impacts) are essential for assessing whether the siting or operation of a project or facility will disproportionately impact Tribes, communities of color, and economically disadvantaged communities. The 2020 NEPA Rule improperly eliminated the language requiring these critical impact assessments.
- 3. Reinstatement of the 1978 CEQ NEPA Regulations requirement that the CEQ Rules are the floor for other agencies’ NEPA regulations:** Our organizations strongly support this change, which restores the ability of federal agencies to develop more protective agency-specific NEPA regulations to better meet the program requirements within which those agencies operate. The 2020 NEPA Rule eliminated this agency flexibility by directing that the CEQ regulations represented the “ceiling” for NEPA implementation which could not be exceeded.
- 4. Proposed changes to the definition of “Reasonable Alternatives” (§ 1508.1(z)):** Our organizations strongly urge CEQ to use this Phase 1 rulemaking to reinstate the entirety of the 1978 CEQ NEPA Regulations description of Alternatives (§1502.14 of the 1978 CEQ NEPA Regulations). The NPRM’s proposed definition of alternatives (while better than the definition in the 2020 NEPA Rule) excludes key language that will allow agencies to ignore effective and environmentally sound alternatives in their NEPA analyses. The proposed language will also lead to substantial confusion and unnecessary delays as agencies and the courts grapple with the requirements established by the new definition. Critically, CEQ should reinstate the

requirements for agencies to “**rigorously explore and objectively evaluate all reasonable alternatives**” including “**reasonable alternatives not within the jurisdiction of the lead agency.**”

- 5. Proposed approval of Categorical Exclusions in place as of September 2020 (§ 1507.3(a)):** Our organizations oppose this provision. While we understand that categorical exclusions in place as of that date were issued under the 1978 NEPA Regulations, we believe a number of those categorical exclusions should not have been approved and that others have been abused and need to be revisited. For example, the Trump administration adopted a number of categorical exclusions that will lead to extensive harm to people and wildlife.

These changes are essential for ensuring that NEPA reviews meaningfully assess alternatives and evaluate impacts—including climate change—in order to identify effective solutions that can best protect the environment, wildlife, and communities.

At a minimum, CEQ should also address the following additional critical items in this Phase 1 Rulemaking: (1) eliminating the 2020 NEPA Rule’s requirement for members of the public to provide highly detailed, technical comments in order for their comments to be fully considered; (2) eliminating the 2020 NEPA Rule’s barriers to challenging NEPA reviews in court; and (3) reinstating the 1978 NEPA Regulations’ prohibition on allowing applicants with admitted financial interest in the outcome of a NEPA review from preparing those reviews, which can introduce fatal biases into the the decision-making process and undermines the public’s faith in the integrity of the review process.

The 2020 NEPA Rule is wreaking havoc on communities, wildlife, and the environment. While we greatly appreciate the importance that CEQ has placed on restoring essential protections eliminated by this rule, we believe it is essential—and fully supported by the extensive record on the 2020 NEPA Rule—that CEQ use this Phase 1 rulemaking to fully reinstate the 1978 CEQ NEPA regulations as the baseline for NEPA planning. Doing so would restore critical protections for people and wildlife while setting the stage for a robust Phase 2 rulemaking that could focus on facilitating participation in the NEPA process by vulnerable communities and ensuring that NEPA reviews equitably evaluate impacts on public health, safety, and wellbeing.

Thank you for the opportunity to provide comment on this rulemaking.

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