

February 22, 2020

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Council on Environmental Quality  
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Submitted via: <https://www.regulations.gov/comment?D=CEQ-2019-0003-0001>

RE: Docket Number CEQ-2019-0003

**Your Comment Tracking Number: 1k4-9f63-fr03**

Dear Chairperson Neumayr,

This correspondence provides comments on the proposal to modify the existing Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act. The following comments on the Notice of Proposed Rulemaking (NPR) supplement comments submitted for the advance notice of proposed rulemaking Docket No. CEQ-2018-0001 (**Attachment A**).

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Attachment A – Advance Notice of Proposed Rulemaking Comments

Attachment B – Objection Response Letter Mountain Valley Project Forest Plan Amendment

Attachment C – USDA Forest Service Proposed NEPA Rule Comments

Attachment D – Thunder Basin National Grasslands DEIS and Draft Plan Amendment Comments

## Introduction

### Comment regarding characterization and rationale for modernizing and clarifying CEQ NEPA regulations:

The CEQ Federal Register Notice summary fails to identify any substantive need for change to the existing regulations that is consistent with the purpose, policy, and goals of the National Environmental Policy Act (NEPA). Over the life of the existing CEQ regulations, the understanding and application of NEPA has evolved through public involvement and adjudication, which has successfully established NEPA direction and practices that support the intent and purposes of the National Environmental Policy Act.

The proposed rule does not modernize regulatory direction; instead, the proposal would revert to agency development practices that predate the National Environmental Policy Act. The proposed regulations are clearly not aligned with Section 101 [42 USC § 4331(a)] of the National Environmental Policy Act which states that:

*“The Congress, recognizes the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population. growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizes further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social economic, and other requirements of present and future generations of Americans. (b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --*

- 1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;*
- 2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;*
- 3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;*

4. *preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;*
5. *achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and*
6. *enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.*

*(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.”*

## **I. Background**

### **Comment on existing guidance documents, court decisions, and delays:**

Many of the NEPA decision challenges and delays described in this section are not the result of the current CEQ regulations, but instead the delays are a product of unrealistic political motivated mandates that favor resource development over protecting the environment and biosphere. In addition, many of the delays are agency self-inflicted due to politically driven reviews from the highest levels in government for the purpose of micromanaging field-level decisions.

I found through decades of experience with the U.S. Forest Service that the current CEQ regulations have facilitated balancing and integrating the management of natural resources on National Forest System lands. I performed duties as a responsible official, natural resource planner, and resource management specialist. Specific to National Forest System lands, I believe that the current CEQ regulations have assisted in achieving the purpose, policies, and goals of the National Environmental Policy Act (42 U.S.C § 4321 and § 4331).

### **A. National Environmental Policy Act**

#### **Comment on NEPA purposes:**

Any revised CEQ regulations should further describe that:

*“The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --*

*(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;*

*(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations; ...*  
*(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;*  
*(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment...;*  
*(H) initiate and utilize ecological information in the planning and development of resource-oriented projects....” (NEPA, Section 102 [42 USC § 4332])*

Most importantly, CEQ regulations must continue to promote securing accurate and professional documents. The regulations must require accurate documents as the basis for sound decisions. As provided by Section 102(2)(A) of NEPA, the documents must draw upon all the appropriate disciplines from the natural and social sciences, plus the environmental design arts. The lead agency must be responsible for the professional integrity of environmental documents and ensure that there are process requirements established to ensure this result. NEPA documents must include a list of people who helped prepare documents and list their professional qualifications. Responsible officials must encourage professional integrity and ensure that an interdisciplinary approach is followed.

The background description should be supplemented to address the role of CEQ as envisioned by the National Environmental Policy Act. Section 204 [42 USC § 4344] should be included when describing the basis for and CEQ’s role in developing the regulations. This section states that:

*“It shall be the duty and function of the Council --*

- 1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 204 [42 USC § 4344] of this title;*
- 2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;*
- 3. to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the*

*extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;*

- 4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;*
- 5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;*
- 6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;*
- 7. to report at least once each year to the President on the state and condition of the environment; and*
- 8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request."*

Any revised CEQ regulations must demonstrate the relationship between regulations and findings attributed to performing the duties of CEQ as described in law.

## **B. Council on Environmental Quality Regulations, Guidance, and Reports**

### **Comment on CEQ's performing duties to implement the purposes and policies of NEPA:**

I appreciate that in the past the CEQ has performed its duties and responsibilities to provide clarifying direction to address questions where rulemaking was not warranted. I continue to rely on the "*Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*" guidance. These regulations have resulted in consistent interpretations and effective implementation of NEPA.

CEQ should eliminate guidance for time limitations and page limits. The length of time to address the requirements of Title I of NEPA is often controlled by the limitations of agency budgets, availability of resource management specialists, and Department oversight and unrealistic guidance. Online access to documents and search functions make the production and review of documents far more efficient than that of 20 or more years ago. Time limitations and page limits are not required by NEPA. Mandating a maximum page limit is arbitrary and should be eliminated from any final rule.

In my experience, lengthy documents are often a result of insufficient information that results in excessive creative writing in an attempt by resource planners to justify a proposed action. The best approach to having effective and shortened documents is to fully staff and fund interdisciplinary teams and to secure adequate information for necessary analyses.

## **D. Statutory Developments**

### **Comment on direction in recent legislation for environmental reviews:**

I appreciate this summary of the congressional guidance regarding accelerated environmental reviews, including improved interagency coordination, concurrent reviews, and increased transparency. Unfortunately, many of these mandates have been unfunded and do not recognize the various missions of agencies to implement Acts of Congress. The listed changed conditions do not demonstrate a need to modify the existing CEQ regulations. The existing regulations have enabled effective and timely reviews of major actions.

### **Comment on codifying case law:**

The introduction describes a lofty goal of the proposed regulations. However, the proposed CEQ regulations do not add clarity to the implementation of NEPA. The proposed changes in many cases do not support the purposes of the National Environmental Policy Act. I am strongly opposed to deleting existing direction just because the current administration feels that the regulation hampers decision making, especially the proposed elimination of long-standing terminology as found in existing 40 CFR 1508.

## **E. Presidential Directives**

### **Comment on Presidential directives:**

I appreciate this list of Presidential mandates. However, Presidential mandates do not trump NEPA and other related laws. In some cases, Presidential directives have led to unfunded mandates that attempt to circumvent laws.

## **II. Summary of Proposed Rule**

### **Comment regarding CEQ characterization of modernizing NEPA:**

The proposed CEQ regulations fail to modernize NEPA processes. Instead, the proposed regulations would eliminate processes that have proven to lead to decisions that recognize effects on the human environment. Delays and costs are most often a result of politics and insufficient resources to support reasoned decision making and not that of the current CEQ regulations.

The proposed regulations would unreasonably increase the burden on the public to understand the agency proposed action. To fully comprehend the scope of a proposed action, scoping as envisioned by the proposed regulations would need to describe the proposal in detail, including fully developing and presenting the affected environment and potential environmental consequences of the action in the scoping document. If this new section is to be adopted by CEQ, it should be amended to require agencies to provide detailed proposal information and

relevant geospatial data as part of scoping. In addition, the public must be allowed a reasonable amount of time to review a proposed action, which I believe should be 90 days.

To effectively “modernize” regulations, interdisciplinary teams must be adequately funded for appropriate studies, analyses, and reviews if guidance is to facilitate more efficient, effective, and timely NEPA reviews by Federal agencies. Any new CEQ regulation must recognize that CEQ regulations will not effectively control the accomplishment of unfunded and unreasonable mandates. CEQ regulations must not inadvertently discourage natural resource agency staff from being diverted from planning where there is a need to address emergencies, such as forest and rangeland fires.

The One Federal Decision Policy (E.O. 13807) is concerning for it appears that this directive is to control multiple agencies even though these agencies have various and differing legal mandates. Any CEQ regulations that addresses an OFD policy must guard against suggesting that a cooperating agency must support the lead agencies decision. The OFD will likely subject agencies, such as the U.S. Fish and Wildlife Service, to political oversight to ensure that a predetermined proposed action is approved. A recent example of this occurring is where the Forest Service abdicated its responsibilities to the BLM in the decision for the Mountain Valley Pipeline project. The objection response letter inappropriately describes that, *“The Forest Service has a limited decision space with the Mountain Valley Project and Equitrans Expansion Project (hereinafter referred to as MVP), and, therefore, must consider these objections within the scope of its role as a Cooperating Agency”* (**Attachment B**).

## **A. Proposed Changes Throughout Parts 1500-1508**

### **Comment regarding consistency, improving clarity, and correcting grammatical errors:**

Regulations must use the term “possible” to be consistent with the plain language of the National Environmental Policy Act. The term “practicable” would substantially alter the requirement of law.

I am opposed to modifying the terms and definitions that are found in 40 CFR 1508. The existing definitions are well understood and effectively contribute to implementing the purposes and policy of the National Environmental Policy Act.

## **B. Proposed Revisions To Update the Purpose, Policy, and Mandate (Part 1500)**

### **Comment on the proposed policy and mandate sections:**

It appears that CEQ is assuming that the Court will grant deference to the government for adopting any new NEPA regulations regardless of the soundness of the direction. However, the proposed regulations do not provide for the purposes of the National Environmental Policy Act,



are based on myths regarding issues with implementation of the current regulations, and therefore are not reasoned and should not be pursued.

CEQ should recognize the need for robust scientific and technical analyses. CEQ should establish guidance that is reflective of issues that are described by Feldman and Nichols of Holland and Hart in 2017:

*“Litigation arguments regarding or even conclusory judicial statements about “deference” to an agency’s NEPA decision making on scientific or technical issues oversimplify the complex balancing and inquiries which courts are directed to undertake in reviewing both the process and substantive issues inherent in evaluating agency use of scientific and technical information under NEPA. A reviewing court at best must struggle to comprehend the agencies’ assessments and conclusions regarding environmental effects and to judge their compliance with NEPA in light of the rule of reason, hard look, and arbitrary or capricious formulations of the standard of review.*

*Where agency NEPA documents are unartfully drawn, incomplete, or otherwise lacking in clarity and comprehensibility, a reviewing court may have little choice but to delve more deeply into the substantive subject matter underlying agency conclusions in an attempt to discern whether, or to what degree, the agency has failed to meet those standards. At the least, less clearly drafted and supported NEPA documents will offer an invitation to conscientious judges to venture into the realm of agency expertise in an effort diligently to review agency action and ensure the agency’s implementation of NEPA’s twin goals of informed decision making and informed public disclosure....”*

CEQ must abandon the proposed 1500.3(b), “Exhaustion,” provision. It is unreasonable to require exhaustive comments based on limited information found in a normal Notice of Intent publication regarding a proposed action. If such a burden is to be placed on commenters, then agencies must be required to fully develop a proposed action as would be normally found in a DEIS with discussions of the affected environment and environmental consequences. Requiring a 30-day objection to a summary of a NOI is not reasonable and is inconsistent with reduction in paperwork requirements and the intent of NEPA.

The “remedies” provision should be dropped from further considerations. The provision would lead to less public participation in planning processes. The public should be encouraged to be involved in the planning of Federal projects and help guard against agency political biases. What is readily apparent in the discussion in this part is the inappropriate role that CEQ is taking in advocating for the elimination of processes that have been effective in protecting the environment and meeting the purpose and policy of NEPA (42 USC § 4321 and § 4331). CEQ should focus on the legislatively described CEQ functions and not expand those duties to

promote energy and commerce functions. The role of CEQ is clearly described as the duties and function of the Council (42 USC 4344).

CEQ inappropriately elevates requirements to reduce paperwork in proposed 1500.4 by adding a general list of requirements without proper context. The discussion found should be eliminated, and where in support of the National Environmental Policy Act, the direction should be embedded in the sections found in Part 1501.

**Comment on environmental consequences of decisions, other appropriate considerations, and delays in decision making:**

CEQ purpose is clearly described in NEPA and any revised regulations should narrowly reflect those responsibilities to implement the purposes and policies of the Act. Many delays in natural resource agency decision making is more of a function of Department oversight of field-level decisions and not due to existing CEQ NEPA processes. The existing CEQ regulations should not be amended to further facilitate Presidential based direction that is not based on the purpose and intent of NEPA.

**Comment on Federal agencies NEPA regulations:**

Numerous NEPA actions brought by citizens in federal court have contributed substantially to setting standards for agency and judicial interpretation of the National Environmental Policy Act requirements. The duties NEPA imposes have led to increased awareness of environmental factors and have changed the approaches to environmental problems taken within federal agencies. In addition, the Court has reaffirmed the full disclosure mandate necessary to implement the broad policy goals of the statute, and emphasized the important role for public involvement in realizing NEPA's aims. Further, it has stressed the importance of agencies applying a "hard look" to questions of environmental impact.

The U.S. Forest Service recently proposed NEPA regulations (Federal Register June 13, 2019 (84 Fed. Reg. 27544-27559)). I believe that the proposed Categorical Exclusion (CE) changes to Forest Service NEPA compliance procedures would ultimately decrease efficiency and undermine public confidence in USDA Forest Service decision-making. In brief, I am opposed to the proposed Forest Service NEPA rule changes because they:

- Significantly diminish public oversight, input and involvement of project level decisions;
- Did not adequately address Schedule of Proposed Actions, their frequency of publication or publication of proposed projects before decisions are made;
- Allow for too much discretion by line-officers regarding eliminating or truncating the public's involvement in the management of the national forests;
- Fail to ensure that National Scenic and Historic Trails, National Recreation Areas, National Monuments, National Scenic Area, and National Scenic Highway are recognized and protected as Congressionally designated areas since they are not listed in

§ 220.5(b)(1)(iii), which will lead to many types of designated areas not being appropriately considered when addressing extraordinary circumstances;

- Allow for actions that will substantially degrade National Scenic Trail resources, qualities, and values;
- Establish that the responsible official is to determine, without any required analyses or public involvement, as to whether a proposed action would have “likely adverse effects” (proposed rule) instead of simply “potential effects” (existing rule) upon the described extraordinary circumstances resource conditions;
- Favor commercial visitor use over private use in Primitive and Semi-Primitive Non-Motorized Recreation Opportunity Spectrum settings where overall visitor use numbers may be limited;
- Allow incompatible resource uses in Primitive and Semi-Primitive Non-Motorized ROS settings;
- Allow for degrading the scenic integrity of landscapes;
- Reduce protections for Roadless Areas;
- Encumber multiple use programs where lands/non-recreation special use permits are issued;
- Allow road building without appropriate analysis and public input;
- Allow commercial/non-commercial timber harvests up to 4,200 acres with a CE; and
- Inappropriately overrides permitting and resource management direction that is found in the Forest Service Manual and Forest Service Handbook Series 2000 National Forest Resource Management directives.

I urged the Forest Service not to proceed with the National Environmental Policy Act changes that were proposed. The Department of Agriculture should have recognized that the proposed NEPA Rule is no substitute for integrated resource planning as implemented through the National Forest Management Act (NFMA), designated area legislation guidance, related regulations, and the resource management direction that is found in Forest Service Manual and Forest Service Handbook Series 2000 National Forest Resource Management directives.

The proposed U.S. Forest Service regulations referred to CEQ regulations for additional guidance as described in proposed 36 CFR 220.1:

*Forest Service Statement: The FR Notice describes scope as, “This part supplements and does not lessen the applicability of the CEQ regulations, and is to be used in conjunction with the CEQ regulations and USDA regulations at 7 CFR part 1b.”*

*Comment: This direction must be retained in the final rule, since the existing and proposed 36 CFR 220 regulations do not always reflect the intent and all of the parts of the 40 CFR 1500 regulations.*

However, the proposed CEQ regulations if adopted would no longer provide regulatory protection for achieving the purposes and policy of NEPA, and therefore, have the effect of

weakening the proposed U.S. Forest Service proposed NEPA regulations. To address this concern, any new CEQ NEPA regulatory guidance must provide for the withdrawal of Federal agency specific NEPA regulations and direct that any new Federal agency NEPA regulations provide for public comments on agency specific NEPA regulations. Comments submitted on the proposed Forest Service NEPA regulations are incorporated into these comments by reference and are found in **Attachment C**.

**Comment on the effectiveness of CEQ previous guidance:**

I appreciate this recognition in the proposed regulations that CEQ has in the past effectively provided meaningful direction to facilitate the implementation of the National Environmental Policy Act. The CEQ direction has greatly benefitted my efforts as a decision maker and resource management specialist to implement natural resource programs for over three decades on National Forest System lands. CEQ has appropriately addressed the Council duties as recognized in 42 USC § 4344.

**Comment on NEPA document decision timelines and page limits:**

I disagree with the CEQ conclusion that the revisions to the CEQ regulations would *advance more timely reviews and reduce unnecessary paperwork....* New regulations are not warranted. Timelines are more of a function of political oversight, inadequate interdisciplinary skills, budgets, and unrealistic expectations than the existing CEQ regulations. In my experience, I have found that the existing CEQ regulations provide for the effective implementation of the National Environmental Policy Act. Page limits are not required by NEPA and are not an appropriate indicator for adequate analyses and disclosure and should be eliminated in any modified CEQ regulations.

**C. Proposed Revisions to NEPA and Agency Planning (Part 1501)**

**1. NEPA THRESHOLD APPLICABILITY ANALYSIS (§1501.1)**

**Comment on threshold analyses:**

I am opposed to including this part, especially the proposed guidance that states, “*where environmental review and public participation procedures under another statute are functionally equivalent to those required by NEPA.*” For example, National Forest Management Act regulations 36 CFR 219 could incorrectly be deemed as being equivalent to NEPA processes; however, there are fundamental differences between NFMA and NEPA where existing CEQ regulation processes result in better decisions on National Forest System lands. Implementation of the Forest Service 36 CFR 219 and Bureau of Land Management 43 CFR 1600 regulations without NEPA processes would not result in achieving the purposes and policy of NEPA (42 USC § 4321 and § 4331). In addition, the Comprehensive Plans as required by the National Trails System Act and Wild and Scenic

Rivers Act is narrow and do not replace the purposes and policy of NEPA. NEPA is unique in that it requires a detailed statement by responsible officials that describes:

- i. the environmental impact of the proposed action,
- ii. any adverse environmental effects which cannot be avoided should the proposal be implemented,
- iii. alternatives to the proposed action,
- iv. the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- v. any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. (42 USC 4332)

## 2. APPLY NEPA EARLY IN THE PROCESS (§ 1501.2)

### **Comment on modifying degree of compliance terminology:**

The proposed changes do not support the purpose and policy of the National Environmental Policy Act. Instead, the changes appear to be only a strategy to litigation proof NEPA analyses and limit public involvement. The existing language of 40 CFR 1501.2 must be retained with exception that “insure” could be changed to “ensure.” “Shall” could be changed to “must” in order to reflect current usage of the degree of compliance modifiers.

## 3. DETERMINE THE APPROPRIATE LEVEL OF NEPA REVIEW (§ 1501.3)

### **Comment on levels of NEPA review:**

The proposed modification would not provide for clarity due in part to new terms and considerations. For example, the proposal to change “context” to “potentially affected environment” is not comprehensible unless CEQ is proposing to allow for analyses with no ground truthing, which does not meet the purpose of NEPA. The existing § 1508.27 direction must be retained.

## 4. CATEGORICAL EXCLUSIONS (CES) (§ 1501.4)

### **Comment on Categorical Exclusions:**

CEQ should consider the following language for any CE direction: *“The mere presence of one or more of these resource conditions does not preclude use of a [CE]. It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist. If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA. If the responsible official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS.”*

Non-mandatory mitigation measures cannot be used in the determination of effects on extraordinary circumstances.

Proposed actions that may have an effect on extraordinary circumstances must follow public involvement processes that would be appropriate for Environmental Assessments or Environmental Impact Statements to help ensure that potential direct and indirect effects are considered in the determination as to whether or not a CE is appropriate.

## 5. ENVIRONMENTAL ASSESSMENTS (EAS) (§1501.5)

### **Comment on Environmental Assessments and incorporation of compliance by reference:**

Any final CEQ revised regulation must provide direction which states that when the action is to take place on Federal lands that Proposed Actions and the Purpose and Need must clearly describe the consistency with the purposes for which the Federal land area is established. For example, projects within a National Scenic Trail selected rights-of-way must be consistent with the nature and purposes for which the National Scenic Trail was established.

The notice describes that, *“This may include incorporation by reference to the records related to compliance with other environmental laws such as the National Historic Preservation Act, Clean Water Act, Endangered Species Act, or Clean Air Act....”* In this case and in general, CEQ should avoid using the helping verb “may,” since it suggests that permissions must be granted throughout before an agency can undertake a process or procedure. In this case, I recommend that CEQ describe that, *“An agency should incorporate by reference to only public available records that demonstrate compliance with environmental laws such as the National Historic Preservation Act, Clean Water Act, Endangered Species Act, Clean Air Act, Wilderness Act, Wild and Scenic River Act, and National Trails System Act.”*

Page and time limits are arbitrary, since such limits are not efficiency and disclosure indicators, and should be removed from any future CEQ regulation. The proposed Environmental Assessment direction is overly restrictive and confusing and should be discarded. Instead, the 40 CFR 1501.3 direction should be retained, since it is well established and understood.

Any revised CEQ regulations must clearly state that Environmental Assessments must take a hard look at the effects of the proposed action and alternatives on the environment even if this means that any prescribed timelines and page limits are exceeded.

## 6. FINDINGS OF NO SIGNIFICANT IMPACT (FONSI) (§ 1501.6)

### **Comment on Finding of No Significant Impact:**

In general, the proposed CEQ direction regarding mitigation is overstated, since mitigation has been determined to be none binding. Instead, any proposed action that would reduce impacts should integrate actions into the proposal (proposed action). Such integrated proposed elements would therefore be binding as with any other part of the proposed action and alternatives.

## 7. LEAD AND COOPERATING AGENCIES (§§ 1501.7 AND 1501.8)

### **Comment on Lead and Cooperating Agencies:**

The OFD policy is an unfunded mandate for cooperating agencies. The OFD policy should not be a major factor in mandating or even influencing the coordination requirements of any final CEQ regulations.

## 8. SCOPING (§ 1501.9)

### **Comment on Scoping:**

The proposed change to 40 CFR 1501.7 is unnecessary, since the current NOI process is effective. The NOI must not be published until a proposed action is developed to the extent that would allow for the meaningful and specific public comments.

The OFD policy must not be a primary consideration for any scoping process change. The OFD policy is unsustainable due to in part the various missions and priorities of agencies and limited resources including staffing and budgets. Coordination amongst agencies should instead be addressed through MOU cooperating agency agreements.

I am opposed to modifying the 40 CFR 1508.25—Scope direction. The existing definition is well understood and effective in providing direction for addressing the scope of analyses.

CEQ should consider adding direction that a DEIS must be published for review and comment within two years of a scoping notice or the proposal must be rescoped.

## 9. TIME LIMITS (§1501.10)

### **Comment on Time Limits:**

The discussions in this part demonstrate that the proposed regulations are not designed to promote purposes of NEPA, but instead to arbitrarily facilitate developments at the expense of understanding effects on the environment. The current CEQ regulations are effective and efficient when allowed to be implemented as intended. Establishing time limits through revised CEQ regulations is inappropriate without also establishing exceptions due

to political oversight, emergencies priorities, and limited resources including staffing and budgets. On the other hand, regulations could address that if a decision is delayed for more than two years from scoping that it must be re-scoped or issued in draft soliciting comments on changed conditions and information.

#### 10. TIERING AND INCORPORATION BY REFERENCE (§§ 1501.11 AND 1501.12)

##### **Comment on Tiering and Terminology:**

Title 40 Part 1508—Terminology and Index—should be retained and include the current definitions. The existing regulations that would be affected by this section are well understood and effective and should not be modified. The proposed changes are unnecessary and would create uncertainty and chaos for the foreseeable future.

### **D. Proposed Revisions to Environmental Impact Statements (EISs) (Part 1502)**

#### **Comment on page limits and timelines:**

Establishing a maximum page length and timeline to complete an EIS would be arbitrary. Page length is not equated to substance and timelines are often outside of the control of the assigned responsible official. If adopted, any new regulations must include provisions for exceptions due to emergencies and Department oversight and controls.

#### 1. PAGE LIMITS (§ 1502.7)

##### **Comment on Page Limits:**

CEQ regulations cannot control agency staffing and budgets. Page limit guidance should not be included in any revised regulations.

#### 2. DRAFT, FINAL AND SUPPLEMENTAL STATEMENTS (§ 1502.9)

##### **Comment on Draft and Supplemental Statements:**

A BLM Determination of NEPA Adequacy is not a NEPA document but rather is an administrative convenience which “confirms that an action is adequately analyzed in existing site-specific NEPA document(s) and is in conformance with the land use plan.” BLM, National Environmental Policy Act Handbook H-1790-1. A DNA does not itself provide NEPA analysis.

Similar to the BLM requirement to perform additional NEPA analyses if a plan is amended or revised, Forest Plan amendments are also subject to additional NEPA analyses and documentation. Site-specific NEPA analysis and disclosure should continue to be subject to the identification of changed conditions and new information.



The public should be notified of supplemental information reports, determinations of NEPA adequacy, and other such analyses. The public should also be given an opportunity to object to such determinations. Actions associated with such determinations should be prohibited to occur for at least 30 days after a decision and the public is notified.

### 3. EIS FORMAT (§§ 1502.10 AND 1502.11)

#### **Comment on Format:**

Cost estimates should exclude those costs associated with Department oversight and any resulting required modifications to local officials proposed action and alternatives. Interagency review costs should also be itemized for each agency that is involved in a review process.

### 4. PURPOSE AND NEED (§ 1502.13)

#### **Comment on Purpose and Need:**

On National Forest System lands and other Federal lands, the purpose and need must recognize the purposes for which an area was established, especially where congressional designations are affected. An example of overlooking a congressionally designated area is found in a recent U.S. Forest Service DEIS for the Thunder Basin National Grasslands described that, *“The purpose of this proposed plan amendment is to:*

- *provide a wider array of management options to respond to changing conditions;*
- *minimize prairie dog encroachment onto non-Federal lands;*
- *reduce resource conflicts related to prairie dog occupancy and livestock grazing;*
- *ensure continued conservation of at-risk species; and*
- *support ecological conditions that do not preclude reintroduction of the black-footed ferret.”*

In comments provided on the DEIS, on pages 8 and 9, I described in part that, *“The statements of purpose and need for the Amendment must be revised to clarify the intent and to provide for the purposes for which the Thunder Basin National Grasslands were established. The purpose and need statements must clearly recognize the ecological purposes of the grasslands and requirements of the ESA, which should be addressed by adding the following statements that reflect the purposes identified in the Bankhead-Jones Farm Tenant Act: Preserving natural resources and protecting fish and wildlife populations and habitat... The Bankhead-Jones Farm Tenant Act of 1937, as amended (7 U.S.C. § 1010) must be a fundamental legal basis for describing the purpose and need of the proposed action and the alternatives to be analyzed. The legislation describes that, “The Secretary is authorized and directed to develop a program of land conservation and land utilization, in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion, reforestation, preserving natural resources, protecting fish and wildlife, developing*

*and protecting recreational facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and surface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety, and welfare, but not to build industrial parks or establish private industrial or commercial enterprises.” (Attachment D).*

The “need for action” (or change) must be based upon a comparison of the baseline conditions and desired conditions. This comparison establishes both the “scope” of and the “need” for action. The “scope” of and the “need” for the proposed actions establish the basis for determining the reasonable range of alternatives. The purpose and need description should represent the “problem to be solved.” Defining the scope appropriately (and refining as necessary through the early steps of the National Environmental Policy Act process) improves the overall efficacy of the National Environmental Policy Act document. How broadly or narrowly the scope is described affects the range of reasonable alternatives that can meet the need, which in turn affects how well the range of alternatives and the selected alternative respond to this need. There should be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action and the purposes for which an area is established where a project is located on Federal lands.

Identifying conditions that are within federal control and those that require action by entities not within the decision-making agency’s control is helpful in the early stages of NEPA analyses. A federal agency should not necessarily eliminate options or alternatives outside of its jurisdiction from consideration in the National Environmental Policy Act process if the options present reasonable alternatives to meet the need. However, an agency may only take actions that are within the agency’s legal authority. Regulations that clarifying who is responsible for achieving desired conditions will help to establish early in the process the key authorities or participation by others needed to achieve the overall desired conditions. On National Forest System lands and other Federal lands, the purpose and need must be consistent with the purposes for which an area is established.

## 5. ALTERNATIVES (§ 1502.14)

### **Comment on Alternatives:**

NEPA requires federal agencies to include alternatives to the proposed action within an EIS (42 U.S.C. 4332(2)(C)). The alternatives analysis is the heart of a NEPA document, and any NEPA implementing regulations direct agencies to rigorously explore and objectively evaluate all reasonable alternatives, including appropriate mitigation measures to reduce the potential impacts of the action on the environment.

The identification and evaluation of alternative ways of meeting the purpose and need of

the proposed action must continue to be critical to the National Environmental Policy Act analysis. Regulations must describe that the lead agency or agencies must objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for being eliminated. Reasonable alternatives are those that substantially meet the purpose and need. If the agency is considering an application for a permit or other federal approval, the agency should still consider all reasonable alternatives. Reasonable alternatives should include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant. Regulations should require that agencies be obligated to evaluate all reasonable alternatives or a range of reasonable alternatives in enough detail so that a reader can compare and contrast the environmental effects of the various alternatives.

Aspects of an action that are inter-related (e.g., the kinds and amounts of use and the facilities that support that use) should be considered during this process and required by any new regulation. If the purpose and need for action suggest a change from the existing condition, or if there are unresolved conflicts regarding alternative uses of resources, then any new regulation should require a “hard look” at the effects of a reasonable alternatives.

## 6. AFFECTED ENVIRONMENT & ENVIRONMENTAL CONSEQUENCES (1502.15 & 1502.16)

### **Comment on Affected Environment and Environmental Consequences:**

The Affected Environment must continue to be separate from discussions of environmental consequences for readability and to promote a clear understanding of the environment that would be affected by a proposed action.

The affected environment should be describe as consisting of the environment of the area(s) to be affected. Put another way, the affected environment should describe that the existing condition of the resources that could be impacted by implementing any of the alternatives. When applicable, the affected environment should discuss resource condition trends and identify contributing factors. Such information can provide a basis for considering how a changing, dynamic environment could affect conclusions that are reached regarding the environmental consequences of implementing any of the alternatives under consideration.

The affected environment must serve as the baseline for predicting changes to the human environment that could occur if any of the alternatives under consideration, including the no-action alternative, are implemented. The affected environment is separate and distinct from the no-action alternative, which describes current management rather than the

current state of affected resources, and discloses how the current condition of affected resources would change, if current management were to continue.

Any new regulation should direct that NEPA reviews take a “hard look” at impacts that alternatives under consideration would have on the human environment if implemented. This means that there must be evidence that the agency considered all foreseeable direct, indirect, and cumulative impacts, used sound science and best available information, and made a logical, rational connection between the facts presented and the conclusions drawn. Analyzing impacts means considering how the condition of a resource would change, either negatively or positively, as a result of implementing each of the alternatives under consideration. A written impact analysis that focuses on significant issues should be included in the environmental consequences section of a NEPA document. A written impact analysis should: (1) describe the impacts that each of the alternatives under consideration would have on affected resources; (2) use quantitative data to the extent practicable; (3) discuss the importance of impacts through consideration of their context and intensity; and (4) provide a clear, rational link between the facts presented and the conclusions drawn.

The description of direct impacts must be retained in any new regulations. Direct impacts should be described as the impacts which are caused by the action and occur at the same time and place. Indirect impacts are impacts which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. In addition to direct and indirect impacts, agencies must be required to analyze the cumulative impacts of each alternative. A cumulative impact is an impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions). A cumulative impact analysis must consider the overall effects of the direct and indirect impacts of the proposed action, when added to the impacts of past, present, and reasonably foreseeable actions on a given resource.

The description of cumulative impacts must be retained in any new regulations. To assess cumulative impacts, regulations should describe that an assessment will need to identify past, present, and reasonably foreseeable future actions that affect the same resources as the proposed action or alternatives. Past, present, and reasonably foreseeable future actions are not limited to agency actions, but could be actions taken or proposed by any federal, state, or local government or a private entity, and are actions that are not included in the proposal or alternatives under consideration. To be considered under the cumulative analysis section of the EA or EIS, past actions should have ongoing impacts that are presently occurring. Reasonably foreseeable future actions include those federal and non-federal activities not yet undertaken, but sufficiently likely to occur, that a decision maker should take such activities into consideration in reaching a decision. This includes, but is not

limited to, activities for which there are existing decisions, funding, or proposals. Reasonably foreseeable future actions do not include those actions that are highly speculative or indefinite. It is important to note that past, present, and reasonably foreseeable future actions are limited to human actions, meaning they are attributable to specific individuals or entities. Naturally occurring incidents, such as insects and disease infestations, are not actions per se and therefore the effects of these types of incidents should be considered as part of the affected environment rather than as part of a cumulative impact analysis.

The need to address cumulative effects to fulfil the disclosure purpose of NEPA is demonstrated in recent a DEIS for amending the plan direction for the Thunder Basin National Grasslands. The DEIS narrowly addressed the effects of the proposed action while ignoring effects of other actions that occur on the same landscape. In comments I noted on page 23 that, *“The DEIS fails to describe the Past, Present, and Reasonably Foreseeable Activities and Stressors Relevant to Cumulative Effects Analysis for wildlife resources. A supplemental DEIS must disclose the cumulative effects of oil, gas, and coal development; commercial livestock grazing; recreational shooting; and boundary management zone actions on wildlife populations and habitats”* (**Attachment D**). A reasoned decision cannot be made without knowing the effects of all actions and activities that are occurring locally and at larger analysis scales.

## 7. SUBMITTED ALTERNATIVES, INFORMATION, & ANALYSES (1502.17 & 1502.18)

### **Comment on Alternatives, Information, and Analyses:**

If this section is to be adopted, it should describe that scoping is to include a fully developed proposed action and an effects analysis for the proposed action that is similar to that which would be found in an EA or EIS. This would allow for enough detail where substantive comments could be submitted in response to a scoping notice. At least 90 days should be allowed for public comments.

## 8. OTHER PROPOSED CHANGES TO PART 1502

### **Comment on Exorbitant:**

CEQ regulations must retain the use of the term exorbitant, since it is reflective of the direction in NEPA. Overall costs must not include costs associated with reviews, oversight, direction, and redrafting that is generated by officials at a higher organizational level than that of the responsible official.

**Comment on Methodology and Scientific Accuracy:** CEQ should retain the current language of 40 CFR 1502.24 Methodology and scientific accuracy, which states that:

*“Agencies shall insure [or restated as ‘must ensure’] the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.”*

Any supplemental information should describe that if reliable existing information is available regarding the affected environment and environmental consequences it should be used. In addition, interdisciplinary teams that are formed may identify new information that is needed to inform the decision. The discussion regarding remote sensing and statistical modeling is narrow and inappropriate for regulations and should be deleted.

CEQ should recognize the need for robust scientific and technical analyses. CEQ should establish guidance that is reflective of issues that are described by Feldman and Nichols of Holland and Hart in 2017:

*“Litigation arguments regarding or even conclusory judicial statements about “deference” to an agency’s NEPA decision making on scientific or technical issues oversimplify the complex balancing and inquiries which courts are directed to undertake in reviewing both the process and substantive issues inherent in evaluating agency use of scientific and technical information under NEPA. A reviewing court at best must struggle to comprehend the agencies’ assessments and conclusions regarding environmental effects and to judge their compliance with NEPA in light of the rule of reason, hard look, and arbitrary or capricious formulations of the standard of review.*

*Where agency NEPA documents are unartfully drawn, incomplete, or otherwise lacking in clarity and comprehensibility, a reviewing court may have little choice but to delve more deeply into the substantive subject matter underlying agency conclusions in an attempt to discern whether, or to what degree, the agency has failed to meet those standards. At the least, less clearly drafted and supported NEPA documents will offer an invitation to conscientious judges to venture into the realm of agency expertise in an effort diligently to review agency action and ensure the agency’s implementation of NEPA’s twin goals of informed decision making and informed public disclosure.*

*As the law of NEPA continues to evolve, and agency reliance upon more complex and technical scientific methodologies and information in natural resource management and decision making continues to grow, federal agencies, NEPA practitioners, and*

*stakeholders must recognize and adapt to the shifting standards for scientific information and analysis under NEPA.*

*In particular, those charged with the development and use of NEPA documents need to ensure that the use of scientific information and analyses in NEPA documentation is clear, transparent, and understandable to both the lay public and the lay judiciary. Accomplishing this requires careful attention to:*

- (1) using the most up-to-date information available;*
- (2) identifying limitations in models, methodologies, and information and disclosing them in the National Environmental Policy Act document;*
- (3) where multiple and conflicting data sets, models, or other methodologies for impact assessment exists, comparing and contrasting their strengths and weaknesses, and explaining in the National Environmental Policy Act document the basis for selecting one data set or methodology over another, or for considering multiple methods and data sets in the analysis;*
- (4) documenting the source and basis for key assumptions, standards, and data used in the National Environmental Policy Act document;*
- (5) erring on the side of transparency and, in the language of one early NEPA case, ensuring that stubborn problems are not “otherwise swept . . . under the rug”;*
- (6) considering and addressing responsible opposing scientific views; and*
- (7) where data gaps exist, either filling the gaps or explaining why doing so would be too costly or infeasible.*

*These and related efforts will produce improved environmental analyses and NEPA documents, and ultimately better agency decisions, thus meeting the underlying goals of the National Environmental Policy Act process. Greater awareness of the types of impact assessment and scientific issues being encountered by the agencies and reviewed by the courts can guide NEPA practitioners, agencies, and stakeholders in meeting NEPA’s requirements for high-quality information and accurate scientific analysis.”*

It is essential that CEQ’s scientific and technical guidance provide for the highest quality and credibility if CEQ is to carry out its responsibilities to protect human health and the environment. Honesty and integrity in its activities and decision-making processes are vital if the American public is to have trust and confidence in CEQ’s direction. CEQ should develop guidance that is similar to that found in H.R. 1709 - Scientific Integrity Act of the 116<sup>th</sup> Congress.

## **E. Proposed Revisions to Commenting on Environmental Impact Statements (Part 1503)**

### **Comment on Technology:**

Responses to comments is a critical part of addressing public concerns and opportunities. Any modified CEQ regulations should retain in full the language found in existing 40 CFR 1503.4—Commenting.

## **H. Proposed Revisions to Other Requirements of NEPA (Part 1506)**

### **Comment on other Agencies Categorical Exclusions:**

Federal agencies have different missions and situations where established CE categories may not be applicable to another agency. The proposal to adopt other agency's CE categories is inappropriate and should be eliminated from any revised CEQ regulations.

Agencies should be required to notify any public that has requested to be on mailing lists for proposed actions categories, including those actions that may be considered for a CE. For example, the U.S. Forest Service Schedule of Proposed Actions listing often exclude projects that are of public interest where specific notification should be warranted.

## **I. Proposed Revisions to Agency Compliance (Part 1507)**

### **Comment on Determination of NEPA Compliance and other Agencies Categorical Exclusions:**

I am opposed to proposed § 1507.3(b)(6), where agencies may document any agency determination that compliance with the environmental review requirements of other statutes or Executive Orders serves as the functional equivalent of NEPA compliance, including under statutes that may be “functionally equivalent,” including the Clean Air Act, the Ocean Dumping Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act. Unless clearly exempted by legislation, the requirements of NEPA and supporting CEQ regulations must continue to be required for examining environmental issues.

Furthermore, I am opposed to CEQ proposed direction to add a new paragraph (c), which would provide that agencies may identify actions that are not subject to NEPA in their agency NEPA procedures; instead, scoping should be required of all actions that may affect the quality of the human environment. These changes should not inform the new § 1501.1, “NEPA threshold applicability analysis,” section, which I am also opposed.

Federal agencies have different missions and situations where established CE categories may not be applicable to another agency. The proposal to adopt other agency's CE categories is inappropriate and should be eliminated from any revised CEQ regulations. Agencies should be



required to notify any public that has requested to be on mailing lists for proposed actions, including those actions that may be considered for a CE. For example, the U.S. Forest Service SOPA listings often exclude projects that are of public interest where specific notification should be warranted.

Geospatial data used in analysis must be made readily available to the public as part of all NEPA analyses and disclosures.

## **J. Proposed Revisions to Definitions (Part 1508)**

### **Comment on changes to definitions:**

CEQ should retain Part 1508 and include the current CEQ definitions in any revised regulations. These terms are well established and understood. Reorganization of regulations that would address this part is not warranted. The existing definition of effects is accepted and understood and should not be modified.

### **Comment on definition of Cumulative Impact:**

I am opposed to modifying the definitions of Cumulative impact (1508.7) and effects (1508.8). The CEQ proposes to make amendments to simplify the definition of effects by consolidating the definition into a single paragraph and striking the specific references to direct, indirect, and cumulative effects. Furthermore, CEQ proposes that analysis of cumulative effects, as defined in CEQ's current regulations, would not be required and that effects should not be considered significant if they are remote in time, geographically remote, or the result of a lengthy causal chain. The proposal would provide the potential for excluding impacts of climate change in project evaluations. Again, I am opposed to these changes for they would lead to non-professional and incomplete analyses of effects.

The proposed change is not supported by the science of disclosing effects and established processes and procedures. Such a change would result in undue political pressure on resource specialist to provide only laymen effects discussions instead of providing for the scientific integrity of effects disclosure. The proposed simplification of effects determination does not change the reality of what is required for a professional effect analysis. Any revised CEQ regulations must retain the definitions of environmental consequences (1502.16), effects (1508.8), and cumulative impacts (1508.7).

### **Comment on Federal Projects:**

The discussion regarding minimal Federal involvement must clearly state that any such guidance would only be for projects that are not located on National Forest System and other Federal lands. For example, oil and gas developments could be fully funded with no federal

funds, while being totally dependent on Federal lands, where NEPA EA and EIS processes must be applicable.

**Comment on Mitigation Measures:**

Any revised NEPA regulations should describe that prescribed mitigation measures should be avoided, but instead be included as an integral part of the proposed action and alternatives considered in detail.

**Comment on Word Counts:**

Word counts are not correlated with the substance of discussions and readability and should be eliminated from any revised CEQ regulation.

**Comment on Reasonably Foreseeable:**

The idea of using an ordinary person standard should not be relevant to NEPA processes. Reasonably foreseeable must be viewed as a professional evaluation that is usually a result of an interdisciplinary resource specialist deliberation. Reasonably foreseeable future actions should be defined by available information on resource occurrences, past and present activities or uses and trends, economics, existing project proposals and other reliable indications of anticipated activities, and other identified factors specific to the cumulative effects area of analysis.

**Comment on Significantly:**

The current definition or use of significantly is accepted and operational and should be retained in any revised CEQ regulations.

## **K. CEQ Guidance Documents**

**Comment on Presidential Orders:**

I do not support the proposed approach to implement NEPA policy and technical advice through Presidential order. The withdrawal of current CEQ memorandum guidance is not and would not be appropriate and would be arbitrary. Instead, any revised CEQ regulations should adopt the well-established CEQ guidance. The President has demonstrated no accountability to providing for the purposes of NEPA, so Presidential directives under this administration would likely be inconsistent with law.

## **L. Additional Issues on Which CEQ Invites Comment**

**Comment on Final Provisions of any new CEQ regulation:**

Any modification to the existing CEQ guidance should be addressed in a Federal Register Notice.

**Comment on Greenhouse Gas Emissions:**

CEQ should continue to provide GHG guidance that is consistent with the purpose and policy of NEPA. CEQ's *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews* memorandum of August 1, 2016, should have been retained.

### **III. Rulemaking Analyses and Notices**

#### **C. National Environmental Policy Act**

##### **Comment on Rulemaking and Notices:**

The proposed CEQ regulations do not contribute to the purposes and policies of NEPA (42 U.S.C. § 4321 and § 4331) and should be withdrawn from further consideration. Instead of pursuing finalization of the proposed modifications to the existing CEQ regulations, CEQ should, “gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act... and to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy,” and other duties and functions of the Council (42 USC 4344).

### **IV. Conclusion**

##### **Comment on the implementation of the National Environmental Policy Act:**

The National Environmental Policy Act, Section 2 [42 U.S.C. § 4321], states that “*The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.*”

Senate Report 91-296 of 1969 on pages 4 and 5 describes that:

*“The inadequacy of present knowledge, policies, and institutions is reflected in our Nation's history, in our national attitudes, and in our contemporary life. We see increasing evidence of this inadequacy all around us: haphazard urban and suburban growth; crowding, congestion, and conditions within our central cities which result in civil unrest and detract from man's social and psychological well-being; the loss of valuable open spaces; inconsistent and, often, incoherent rural and urban land-use policies; critical air and water pollution problems; diminishing recreational opportunity; continuing soil erosion; the*

*degradation of unique ecosystems; needless deforestation; the decline and extinction of fish and wildlife species; faltering and poorly designed transportation systems; poor architectural design and ugliness in public and private structures; rising levels of noise; the continued proliferation of pesticides and chemicals without adequate consideration of the consequences; radiation hazards; thermal pollution; an increasingly ugly landscape cluttered with billboards, powerlines, and junkyards; and many, many other environmental quality problems.*

*Traditional national policies and programs were not designed to achieve these conditions. But they were not designed to avoid them either. And, as a result, they were not avoided in the past. They are not being avoided today.*

*Traditional policies were primarily designed to enhance the production of goods and to increase the gross national product... The American people enjoy the highest standard of living in the world. Our technological ability is unrivaled. But, as a nation, we have paid a price for our material well-being. That price may be seen today in the declining quality of the American environment.*

*As the evidence of environmental decay and degradation mounts, it becomes clearer each day that the Nation cannot continue to pay the price of past abuse. The costs of air and water pollution, poor land-use policies and urban decay can no longer be deferred for payment by future generations. These problems must be faced while they are still of manageable proportions and while alternative solutions are still available...*

*In spite of the growing public recognition of the urgency of many environmental problems and the need to reorder national goals and priorities to deal with these problems, there is still no comprehensive national policy on environmental management. There are limited policies directed to some areas where specific problems are recognized to exist, but we do not have a considered statement of overall national goals and purposes..."*

*Senate Report 91-296 of 1969 on page 17 describes that, "Natural beauty, increased recreational opportunity, urban esthetics and other amenities would be important byproducts of a national environmental policy. They are worthy and important public objectives in their own right. But the compelling reasons for a national policy are more deeply based. The survival of man, in a world in which decency and dignity are possible, is the basic reason for bringing man's impact on his environment under informed and responsible control. The economic costs of maintaining a life-sustaining environment are unavoidable. We have not understood the necessity for respecting the limited capacities of nature in accommodating itself to man's exactions, nor have we properly calculated the cost of adaptation to deteriorating conditions. In our management of the environment we have exceeded its adaptive and recuperative powers, and in one form or another we must now*

*pay directly the costs of maintaining air, water, soil, and living space in quantities and qualities sufficient to our needs. Economic good sense requires the declaration of a policy and the establishment of a comprehensive environmental quality program now. Today we have the option of channeling some of our wealth into the protection of our future. If we fail to do this in an adequate and timely manner, we may find ourselves confronted, even in this generation, with an environmental catastrophe that could render our wealth meaningless and which no amount of money could ever cure."*

Abandoning the existing CEQ regulations as proposed would once again result in the nation having no effective comprehensive national policy on environmental management. The proposed CEQ regulations fail to establish or even maintain guidance that provide for the purposes of NEPA. Any revised CEQ regulation must continue to promote securing more accurate, professional documents. Regulations must require accurate documents as the basis for sound decisions. Regulations must promote and draw upon all the appropriate disciplines from the natural and social sciences, plus the environmental design arts. The lead agency must be responsible for the professional integrity of environmental documents and the requirements established to ensure this result, such as special provisions regarding the use of data provided by an applicant. A list of people who helped prepare documents, and their professional qualifications, must continue to be included in the EIS to encourage professional responsibility and ensure that an interdisciplinary approach is followed.

NEPA is designed to promote consideration of potential effects on the human environment that would result from proposed Federal agency actions, and to provide the public and decision makers with useful information regarding reasonable alternatives to improve the environmental outcomes of Federal agency actions. NEPA ensures that the environmental effects of proposed actions are taken into account before decisions are made and informs the public of significant environmental effects of proposed Federal agency actions, promoting transparency and accountability concerning Federal actions that may significantly affect the quality of the human environment.

The National Environmental Policy Act in Sec. 202 [42 USC § 4342] describes that:

*"There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of*

*and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.”*

NEPA is our basic national charter for protection of the environment. Better analysis and decisions are the ultimate goal of the National Environmental Policy Act process. NEPA’s twin aims are to ensure that federal agencies take a hard look at the environmental impacts of their proposed actions before taking an action and to ensure that agencies provide relevant information to the public so the public can play a role in both the decision-making process and the implementation of the decision. By focusing the agency’s attention on the environmental consequences of its proposed action, NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after an agency has committed resources.

I recognize that the Chairman of the Council has skills necessary to lead CEQ. However, the proposed regulations do not demonstrate responsiveness to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment. The proposed regulations if adopted would lead to degradation of the environment as a result of inadequate analyses and disclosures that are needed to support rational decision making. Robust CEQ NEPA guidance is more important than ever if we are to avoid environmental catastrophe that would render our wealth meaningless and which no amount of money could ever cure.

The 1978 CEQ regulations effectively, *“provide all Federal agencies with efficient, uniform procedures for translating the law into practical action... the... regulations... accomplish three principal aims: to reduce paperwork, to reduce delays, and at the same time to produce better decisions which further the national policy to protect and enhance the quality of the human environment”* (43 FR 55990, Nov. 28, 1978). The Council has not demonstrated that the proposed CEQ NEPA rules are consistent with the purposes and policy of NEPA (42 USC 4321 and 4331). Specifically, it would not be in compliance with the Administrative Procedures Act for the Council to reject the existing CEQ regulations where changes to the CEQ regulations are based on narrow Presidential orders such as E.O. 13771 that promote developments over balancing environmental concerns.

In conclusion, the proposed rule does not provide for the purposes and policy of the National Environmental Policy Act and should be withdrawn from further consideration.