

March 10, 2020

Mary B. Neumayr
Chair
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Re: Docket No. CEQ-2019-0003, Notice of Proposed Rulemaking, Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

Dear Ms. Neumayr:

On behalf of our millions of members and supporters across the country, the undersigned XX organizations urge the Council on Environmental Quality (CEQ) to withdraw the Notice of Proposed Rulemaking (NPRM) and retain the existing CEQ regulations that properly implement the National Environmental Policy Act (NEPA).¹

The deeply flawed and illegal changes in the NPRM would silence public input and purge informed, science-based decision-making from the federal environmental review process. They would put industry, developer, and polluter interests before public health and safety, and before the health of our waters, lands, air and wildlife. The changes create significant risks for frontline and indigenous communities that are already disproportionately harmed by pollution, flooding, and climate change.

NEPA is a critical tool for saving lives and protecting the environment for the health, safety, and well-being of future generations. The existing CEQ regulations correctly implement NEPA's action forcing procedures that include giving the public a voice in federal decisions that affect the environment, carefully reviewing the environmental impacts of proposed actions, and investigating less environmentally harmful alternative actions. Reviews carried out under the current regulations have exposed the true cost of environmentally damaging and ill-conceived proposals, leading to better solutions and substantial savings for federal taxpayers.²

For example, NEPA review led to an inter-agency agreement halting construction of a dangerous new levee, protecting vulnerable Mississippi River communities from flooding, preventing the loss of 50,000 acres of wetlands, and saving taxpayers more than \$345 million. NEPA review of a Corps of Engineers' proposal to dredge California's Bolinas Lagoon showed that the project would cause extensive harm to one of the most pristine tidal lagoons in California and was not necessary. The misguided proposal was then abandoned, saving taxpayers \$133 million, and the non-federal sponsor developed a community-supported plan to restore and manage the lagoon. NEPA review protected public health and the environment by allowing a coalition of tree planters, rural residents and scientists in the Pacific Northwest to work with the Forest Service to develop an effective, less-costly, and safer nonchemical weed control alternative in lieu of toxic herbicides.

¹ Many of our organizations will also be submitting individual comments and/or joining other group comments urging CEQ to withdraw the NPRM.

² 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.

The changes proposed in the NPRM would unravel the vital protections provided by NEPA, threatening the health, safety, and well-being of people and wildlife across the country. Among many other unacceptable and illegal changes, the NPRM would:

- 1. Eliminate NEPA review for many projects:** The proposal attempts to exclude many projects from environmental review and public input under NEPA. Among other things, the NPRM creates new tests for determining whether NEPA applies at all to a project (including by changing the definition of “major federal action”) and allows agencies to exempt a project from NEPA review by determining that some other type of analysis would serve the same purpose. These changes could allow agencies to move forward with controversial projects – including building pipelines, roads, dams, floodgates, and levees – without any NEPA review or opportunity for public comment.
- 2. Ignore severe environmental, public safety, and health impacts:** The proposal would severely limit the types of impacts examined during a NEPA review. The NPRM’s directive that analysis of cumulative effects “is not required” would eliminate review of a project’s role in increasing climate change and many other types of harm. It would also dispense with review of rising sea levels, stronger storms, and other climate change impacts on the effectiveness and resilience of a proposed project. Agencies could also ignore many types of severe impacts based on the NPRM’s elimination of all references to “indirect” effects, and its directive to review only impacts with a “reasonably close causal relationship” to the proposed action. These changes could let agencies ignore the long-term impacts of toxic pollution from gold or copper mines; the risks of new levees diverting floodwaters onto other communities; and loss of wetlands caused by reservoir management practices that starve a river of the water flows needed to sustain those wetlands.
- 3. Allow projects to be approved even if critical scientific and technical information is missing:** The proposal would give agencies the green light to make decisions without scientific and technical information essential to making a reasoned choice among project alternatives. The NPRM specifically states that agencies “are not required to undertake new scientific and technical research to inform their analyses.” This could let agencies approve navigation infrastructure, major river dredging projects, reservoir operating plans, and large flood projects without conducting the research needed to understand the impacts of those projects on flooding, habitat loss, or ecosystem health.
- 4. Significantly weaken the review of alternatives:** The proposal would significantly weaken the assessment of alternatives during a NEPA review, dramatically undermining NEPA’s fundamental purpose of exploring less environmentally harmful approaches to achieving the project purpose. The NPRM eliminates the requirements to “rigorously explore and objectively evaluate all reasonable alternatives” and to consider reasonable alternatives not within the jurisdiction of the lead agency. The NPRM instead directs a much less extensive review, requiring only that agencies “evaluate reasonable alternatives to the proposed action.”
- 5. Allow agencies to ignore critical public input:** The proposal creates loopholes that could let federal agencies ignore public comments, effectively silencing the communities and individuals

that could be harmed most by a federal action. The NPRM would let agencies ignore public comments that they deem are not “specific” enough or do not include reference to data sources or scientific methodologies. The NPRM improperly places the burden on the public to list *any and all* possible impacts of a proposed project; to provide specific language changes; and to “explain why an issue raised is significant” to the consideration of impacts to the environment, the economy, employment and potential alternatives. Comments most likely to be ignored include those from the general public; those from frontline communities without resources to fund technical reviews; and those that rely on traditional knowledge rather than technical data. The NPRM also creates new hurdles to challenging a flawed environmental review in court.

6. **Allow project applicants to write their own environmental reviews without conflict of interest safeguards:** The proposal eliminates longstanding safeguards designed to protect the independence and integrity of environmental reviews. Under the current regulations, the federal agencies prepare NEPA reviews and agencies can only hire consultants to assist in a NEPA review after obtaining disclosures of any conflicts of interest or financial stakes in the project the contractor would be reviewing. The NPRM, however, lets companies prepare their own NEPA reviews – despite their clear interest in obtaining project approval. Agencies could also hire contractors without obtaining a conflicts of interest disclosure.

The changes proposed in the NPRM would wreak havoc on communities, wildlife, and the environment. We urge CEQ to withdraw the NPRM and retain the existing NEPA implementing regulations that have properly served the nation for more than 40 years.

Sincerely,