



Committee on Transportation and Infrastructure
U.S. House of Representatives

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March 10, 2020

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

Re: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, Docket ID, CEQ-2019-0003

Dear Chairman Neumayr:

On January 10, 2020, the Council on Environmental Quality (CEQ) published a notice of proposed rulemaking in the *Federal Register* titled “Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act.”¹ I write to express support for CEQ’s efforts to modernize and clarify the outdated implementing regulations for the National Environmental Policy Act (NEPA) through this proposed rule. NEPA is a procedural statute meant to ensure that federal, state, and Tribal agencies, decision-makers, project stakeholders, and the general public are informed of the potential environmental impacts of certain proposed projects.² NEPA requires that the environmental consequences of potential actions that require federal permits, funding, approval, or other actions are assessed and made known publicly.³

The current NEPA regulations were issued more than forty years ago and have not been significantly changed since that time.⁴ CEQ’s proposed rule presents an opportunity to provide a long overdue, commonsense update and make crucial changes to how we execute transportation and infrastructure projects across the country. Without question, as our infrastructure evolves to

¹ Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 1684 (Jan. 10, 2020) [hereinafter NEPA NPRM].

² 42 U.S.C. § 4321 et seq.

³ *Id.*

⁴ National Environmental Policy Act – Regulations, 43 Fed. Reg. 55,978 (Nov. 29, 1978).

accommodate the growing pressure on our transportation system brought on by the demands of an ever-increasing global economy and rapidly changing needs, we must not remain tied down to an outdated policy that was developed to serve different times and technologies.

NEPA and its implementing regulations apply to virtually every major federal action potentially affecting the human environment. As the White House recently noted, “[m]any projects involving the construction of roads, bridges, highways, airports, transmission lines, conventional and renewable energy projects, broadband deployment, and water infrastructure”⁵ must first undergo the NEPA process before proceeding. The fact that the United States spends roughly \$400 billion per year on infrastructure nationwide illustrates how many projects potentially must undergo the NEPA process.⁶

Unfortunately, experts have described the current NEPA process to Congress as “fundamentally broken.”⁷ NEPA reviews have become unnecessarily lengthy, overly burdensome, and subjective, resulting in assessments that may serve negligible value. Further, NEPA is frequently employed as a weapon to delay or stop crucial infrastructure growth, including critical safety and maintenance upgrades to highways, railroads, bridges, ports, and waterways. As CEQ noted, the average time for a federal agency to conduct a NEPA review is roughly four and a half years, with many reviews taking more than six years to complete.⁸ The length of an Environmental Impact Statement (EIS) – a core NEPA requirement for some projects – now averages more than 600 pages despite recommendations by CEQ to limit EISs to fewer than 150 pages.⁹ Prolonging the NEPA process does not necessarily improve environmental protections. For example, Australia and Canada, which have environmental protections comparable to the United States, conduct reviews in less time while outperforming America in measures of environmental quality.¹⁰ Moreover, opponents of infrastructure development projects routinely delay or completely shut down projects through complex and protracted litigation challenging the adequacy of an agency’s NEPA review.¹¹

⁵ Presidential Message on the 50th Anniversary of the National Environmental Policy Act (Jan. 1, 2020), *available at* <https://www.whitehouse.gov/briefings-statements/presidential-message-50th-anniversary-national-environmental-policy-act/>.

⁶ LEAH BROOKS AND ZACHARY LISCOW, BROOKINGS INSTITUTION, *INFRASTRUCTURE COSTS* (Aug. 2019), *available at* https://www.brookings.edu/wp-content/uploads/2019/08/WP54_Brooks-Liscow_updated.pdf.

⁷ *On Paving the Way for Funding and Financing Infrastructure Investments*, Hearing Before the H. Comm. on Ways and Means, 116th Cong. 12 (Jan. 29, 2020) (statement of DJ Gribbin, Founder, Madrus LLC), *available at* https://gop-waysandmeans.house.gov/wp-content/uploads/2020/01/Gribbin_Ways-and-Means-Testimony_Final.pdf. [hereinafter Gribbin].

⁸ *Fact Sheet: CEQ’s Proposal to Modernize its NEPA Implementing Regulations* (Jan. 09, 2020), *available at* <https://www.whitehouse.gov/wp-content/uploads/2020/01/20200109FINAL-FACT-SHEET-v3-1.pdf>.

⁹ *Id.*

¹⁰ Gribbin, *supra* note 7 (noting that “Australia manages an average approval time of 3.5 years and is looking to accelerate that performance in its once-a-decade review of its environmental protection law. Canada similarly sets a timeline of two years to complete environmental assessments. Despite the fact that these countries complete their assessments more rapidly than the United States, they still outrank the U.S. on Yale University’s Environmental Performance Index. Evidently, countries need not compromise efficiency to achieve environmental outcomes”); See also Thomas J. Madison, *Rebuilding our infrastructure requires rethinking environmental permitting* (Mar. 6, 2020), *available at* <https://thehill.com/blogs/congress-blog/politics/486346-rebuilding-our-infrastructure-requires-rethinking-environmental>.

¹¹ Mary B. Neumayr, *A Needed Update to the Nation’s Environmental Rules*, WASH. EXAMINER, (Jan. 9, 2020), *available at* <https://www.washingtonexaminer.com/opinion/op-eds/a-needed-update-to-the-nations-environmental->

The difficulties with the current NEPA process negatively affect segments of our country's infrastructure where inaction and delays harm communities and our economy. These issues are why national labor and commerce groups strongly support NEPA modernization.¹² Delaying infrastructure projects leads to tremendous loss of investment and cripples the labor force when jobs are put on hold or never materialize. For example, a regional airport expansion project in New Mexico was delayed more than 20 years, with an investment of more than \$20 million.¹³ Similarly, NEPA-related issues stalled a \$170 million traffic congestion improvement project in Michigan for 16 years.¹⁴ These are only a couple of the multitude of examples around the Nation in which NEPA has delayed or terminated projects, resulting in substantial negative economic and societal impacts.

Ironically and troublingly, the current NEPA process has also contributed to delays or the stoppage of crucial infrastructure projects that would improve the environment. Opponents of pipelines have used NEPA to try and halt projects like the Keystone XL pipeline despite the fact that pipelines have been proven to be safer and more environmentally friendly than other modes of energy transport.¹⁵ Even more environmentally damaging, NEPA-related issues delayed a light rail transit project that was estimated to remove roughly 17,000 vehicles from the road – thus, significantly reducing emissions – for roughly 14 years.¹⁶

CEQ's proposed implementing regulations take several much-needed steps to modernize, streamline, and clarify the NEPA process so our Nation can efficiently meet our construction needs for transportation and other infrastructure without compromising environmental protections. Notably, the proposed regulations do not remove environmental protections or prevent an agency from discussing the environmental impacts of a proposed action.

The proposed rule makes several important changes to give agencies more flexibility to discuss the issues they deem most important; ensure that agencies discuss matters within their expertise; enhance coordination with state, local, and Tribal governments; and encourage greater

[rules](#) (stating that “[m]ore lawsuits have been brought under NEPA than under any other environmental statute. Delays in reviews and decision-making can hold back the American economy. Such delays slow the development of critical infrastructure, including roads, bridges, highways, water infrastructure, transmission lines, and conventional and renewable energy projects, and they deter future investment in projects that would enhance the quality of life for states, tribes, and communities across the country.”) [hereinafter Neumayr].

¹² Unlock American Investment, *About*, available at <https://www.unlockamericaninvestment.com/about/>.

¹³ J.R. Logan, *Taos County Planning Commission to Hear Airport Appeal March 4*, TAOS NEWS, (Feb. 28, 2015), available at <https://www.taosnews.com/stories/taos-county-planning-commission-to-hear-airport-appeal-march-4,33482>.

¹⁴ Greg Chandler, *Final Hurdle Passed for Buying M-231 Bypass in Western Ottawa County*, GRAND RAPIDS PRESS, (Posted April 24, 2010; updated Apr. 3, 2019), available at https://www.mlive.com/news/grand-rapids/2010/04/final_hurdle_passed_for_buying.html.

¹⁵ See Pamela King and Hannah Northey, *Trump's efforts to spur projects hit NEPA wall*, E&E NEWS, (Apr. 8, 2019), available at <https://www.eenews.net/stories/1060148569>; see also Brigham A. McCown, *Why Pipeline Opposition Undermines Environmental Progress And Safety*, FORBES, (Jan 17, 2019), available at <https://www.forbes.com/sites/brighammccown/2019/01/17/why-pipeline-opposition-undermines-environmental-progress-and-safety/#1838b22447f2>.

¹⁶ Unlock American Investment, *Purple Line Transit System* (Jan. 21, 2020), available at <https://www.unlockamericaninvestment.com/2020/01/22/purple-line-transit-system-maryland/>.

public outreach and input.¹⁷ The proposed regulations set commonsense and practical timelines for the completion of an Environmental Assessment or EIS.¹⁸ They also set page limits for environmental documents that are both reasonable and flexible, depending on the proposed project.¹⁹ The proposed regulations emphasize early coordination with stakeholders, other agencies, and governmental entities, as well as early identification of potential issues to avoid delays and ensure that focus remains on the most important environmental issues.²⁰ Finally, the proposed rule offers several updates and clarifications that remove vague and outdated sections of the current regulations, making them easier to comply with and more relevant to current and future projects.²¹

Given these positive changes, it is not surprising that the proposed rulemaking has a high amount of diverse support from stakeholders committed to improving our infrastructure. These groups include representatives of truckers, railroads, general contractors, building trades, labor, road construction, and energy companies that understand the problems with the current rule and the need for these critical updates.²² Native American Tribes, who control and manage their own unique infrastructure, also support these changes.²³

I commend CEQ's thorough public outreach and procedural due diligence as it makes these important updates. As CEQ recently advised Congress, it has been working with the public on this matter since June 2018, when CEQ published an Advance Notice of Proposed Rulemaking seeking public comments, before even drafting updates to the implementing regulations.²⁴ In response, CEQ received more than 12,500 comments.²⁵ Since that time, CEQ has engaged in extensive public outreach, including several stakeholder meetings, two lengthy public hearings on this proposed rule, and the receipt of more than 150,000 comments for review within a sixty day window.²⁶

The United States' infrastructure needs are growing and rapidly changing with the creation of new technologies and innovations. We cannot afford to sacrifice the economic and environmental benefits these developments would bring because of outdated regulations and counterproductive policies. We need a thorough but *efficient* review process that meets our Nation's infrastructure needs while protecting human health and the environment. This update to the NEPA implementing regulations will provide the changes we need for a Twenty-First Century America. Accordingly, I urge CEQ to finalize these proposed regulations.

¹⁷ NEPA NPRM, *supra* note 1.

¹⁸ *Id.* at 1717.

¹⁹ *Id.* at 1715; 1719.

²⁰ *Id.* at 1713.

²¹ Gribbin, *supra* note 7.

²² Neumayr, *supra* note 11.

²³ Kelsey Brugger, *Some Tribal Leaders Support Trump NEPA Overhaul*, E&E NEWS, (Feb. 14, 2020), available at <https://www.eenews.net/greenwire/stories/1062351015/search?keyword=NEPA>.

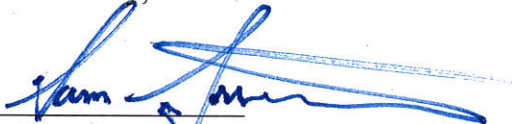
²⁴ Letter from the Hon. Mary Neumayr, Chairman, CEQ, to the Hon. Peter DeFazio, Chairman, H.Comm. on Transportation and Infrastructure, et al. (Mar. 4, 2020).

²⁵ *Id.*

²⁶ *Id.*

If you have questions regarding these comments please contact Drew Feeley with the Committee at (202) 225-9446.

Sincerely,



Sam Graves
Ranking Member

CC: Chairman Peter A. DeFazio