9 March 2020

Dear Members of the Council on Environmental Quality,

We are writing in regard to Docket No. CEQ-2019-0003, Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA). On behalf of eight New Hampshire non-governmental environmental organizations, we voice our strong opposition to this proposed rule revising regulations implementing the National Environmental Policy Act (NEPA, or Act). We urge CEQ to withdraw the proposed regulations and rethink its approach.

The proposed rule undermines the integrity of the public comment process upon which our members rely for the opportunity to inform the development of significant Federal projects. It also threatens the natural resources that are of great importance to New Hampshire's economy, the quality of our state's outdoor recreation, and the clean air and clean water enjoyed by our residents and visitors alike.

Imposing arbitrary time and page limits for the most complex projects, and changing the purpose and need, the scope of alternatives, and the definition of effects fundamentally changes the scope of NEPA implementation. Such changes are detrimental to agencies, who could be exposed to increased litigation risk, and the public and stakeholder groups, who will find it harder to engage with inconsistent NEPA processes and document formats, and who may remain unaware of undisclosed effects.

Existing regulations and guidance better inform decision makers and protect the public interest than does the proposed rule. Consequently, our objections extend to the entirety of the proposed rule change. We highlight here a subset of our reasons for opposition.

We oppose the proposed revision of the definition of effects, including the elimination of the requirement to disclose direct, indirect, and cumulative effects. Removal of the requirement to consider cumulative effects (1508.1(g)(2)), and the potential removal of the requirement to consider indirect effects (page 1708), omits measurable and significant ecological effects from consideration by decision makers and disclosure to the public. For instance, the mortality of hoary bats at wind projects is projected to be cumulatively sufficient to drive the species extinct.[1] Indirect and cumulative effects also explain how upstream developments affect downstream sources of drinking water, how cumulative discharges change air quality indicators, or how changes in traffic patterns affect public health. We strongly object to the proposed rule's implication that these significant effects do not merit public consideration. Decision makers and the public must be informed of such effects in order to evaluate the tradeoffs associated with any action, as NEPA requires.

We object to CEQ's removal of any agency obligation to consider climate change. Courts have upheld that greenhouse gas emissions are within the scope of effects that agencies must consider. Further, the effects of climate change on public health, biodiversity, air quality, water quality, and the frequency of floods, droughts, and fires, are reasonably foreseeable and reasonably certain to occur. The public and private costs of a changing climate are already escalating and will continue to do so for the foreseeable future. Given that Federal actions cumulatively have a significant effect on major emissions sources including agricultural practices, transportation, and energy extraction, agencies have an obligation to consider the effects of their actions on emissions, including their cumulative effects on climate change.

We reject the way the proposed regulations actively deny agencies' accountability to the public interest by equating an agency goals and an applicant's needs (e.g. 1502.13; 1508.1(z)) and constraining the range of alternatives agencies can consider. Neither is in keeping with the Act's intent to require decision makers across the government to "attain the widest range of beneficial uses of the environment without degradation" (among other requirements of the Act's sections 101 and 102). Equating agency and applicant needs when setting the purpose and need, or when defining alternatives, preordains project approval and undermines the purpose and integrity of the NEPA process. Constraining an agency to consider only alternatives within its own statutory jurisdiction is also inconsistent with the Act's mandate for "interdisciplinary" analyses that utilize "all practicable means" for "the Federal government" as a whole (not just a single agency) to pursue short- and long-term public and environmental interests. We oppose the limitation of alternatives to those that meet applicant needs as inconsistent with the law and with the government's responsibility for the resources it holds in the public trust.

The proposed time and page limits undermine, rather than enhance, the transparency and efficiency that Congress, presidents, and CEQ have repeatedly emphasized (see attached

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[1] Frick, W.F., E.F. Baerwald, J.F. Pollock, R.M.R. Barclay, J.A. Szymanski, T.J. Weller, A.L. Russell, S.C. Loeb, R.A. Medellin, and L.P. McGuire. 2017. "Fatalities at wind turbines may threaten population viability of a migratory bat." in *Biological Conservation*, 209(2017):172-177.

comments on 1500.5(g); 1501.1(e); 1501.10; 1502.2(c); 1502.7; 1502.9(d); 1502.25; 1506.4; and 1508.1(dd)). Page and time limits target problems that affect less than 1% of NEPA documents (GAO 2014), while creating more problems than they solve. They increase an agency's litigation exposure from inadequate consideration as the agency rushes to meet arbitrary limits. If an agency fails to describe a significant effect in its attempt to meet arbitrary time and page limits, the public may not recognize the potential effects on their interests. The page and time limit exemptions process is unnecessarily political and creates unneeded bureaucratic delays. Plenty of existing guidance is targeted at minimizing unnecessary delays. Proper implementation of existing procedure negates the need for regulatory revision to address delays, and we oppose the cascading consequences of imposing arbitrary time and page limits.

These are a few of the rule's many faults that are inconsistent with the intention of the Act and letter of the law. Some of our organizations are also submitting more detailed comments on the proposed rule. This letter reflects the alarm shared across the New Hampshire environmental community at the ways the proposed rule undermines the integrity of the NEPA process.

Appreciation and enjoyment of the outdoors is one of the primary factors that attracts people to live in or visit New Hampshire.[2] Outdoor recreation in New Hampshire supports $8.7 billion in consumer spending, and 79,000 direct jobs.[3] Our tourism industry brings an estimated $5.5 billion to the state annually, from visitors who come to see our glorious fall foliage, ski or hike in the White Mountains, recreate on our lakes and rivers, and explore our seacoast.[4] Because New Hampshire does not have a state law equivalent to NEPA, NEPA is the primary mechanism for the public to provide input on Federal projects that affect the natural and environmental resources that form the bedrock of our state's culture and economy. To protect these resources, we strongly oppose the proposed rule, and urge its withdrawal.

Thank you for the opportunity to comment.

Sincerely,

Susan Arnold
Vice President of Conservation
Appalachian Mountain Club

Rob Werner
NH State Director
League of Conservation Voters

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[2] Stay Work Play. 2019. "Survey administered by RKM Research Inc. for Stay Work Play New Hampshire."

[3] Outdoor Industry Association. 2020. "New Hampshire". https://outdoorindustry.org/state/new-hampshire/

[4] Dean Runyan Associates. 2018. "The Economic Impact of Travel on New Hampshire." https://www.visitnh.gov/getmedia/c30143e8-49ac-4c37-86d3-6eeb61c75823/NHImpact2011-2017.pdf

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