

# United States Senate

WASHINGTON, DC 20510-4705

February 25, 2020

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

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

Dear Ms. Neumayr:

For the past half century, the National Environmental Policy Act (NEPA) has provided a roadmap that ensures our government evaluates the full environmental, economic, social, and public health impacts of federal actions. NEPA has been so effective because it forces federal agencies to prove their decisions are in the public interest, represent a wise use of taxpayer dollars, and will hold up to judicial scrutiny. This law is the reason communities can fight to protect the air we breathe, the water we drink, and the public lands we cherish. This law has protected salmon and forestry resources in Washington state that are critical elements of our regional economy. That is why I am very concerned about the Administration's proposals to undermine and weaken long-standing NEPA regulations and believe such a controversial and wide-ranging proposal deserves a public hearing in the Pacific Northwest.

Washington state is rife with examples of how requiring public engagement and robust environmental impact statements result in better outcomes with more public support. The NEPA process for the I-90 Snoqualmie Pass East Project resulted in designing and funding a better project that achieves transportation and safety needs while also using scientific data to incorporate critical wildlife corridors to reconnect Washington's north and south Cascades. Public participation resulted in a broad coalition of supporters that helped secure state funding and was critical to ensuring this investment also included safe passage for spawning bull trout, migrating elk, and other wildlife. NEPA has also ensured numerous bridge construction, culvert replacement and repair, and seawall installation projects can move forward in a way that maintains protection, and in some cases, restores wild Pacific salmon and other species.

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These are just a few of many examples of how engaging the public in the NEPA review process helps ensure the effective and efficient use of taxpayer dollars in Washington state. It demonstrates why we should encourage, not erode, the ability of Washingtonians to voice their opinions on federal projects in their backyard. It shows why Americans should continue to have the right to comment on any project nationwide that impacts our shared public lands which all Americans own and have a responsibility to steward for future generations.

For these reasons I believe CEO's January 10, 2020 proposal to reduce public input will actually slow rather than streamline project timelines. Some of the proposed revisions – including narrowing the number of projects covered by NEPA, reducing the scope of alternatives that must be considered, and strict page limits– ignore decades of judicial rulings requiring agencies to take a “hard look” at environmental consequences and verify that their final decisions are not arbitrary and capricious. Forcing agencies to rush the review process by limiting the time and length of a review not only reduces the public's ability to participate but results in incomplete analysis, poor decision-making, and legal uncertainty that will end up delaying projects rather than accelerating them.

Similarly, the President's claims that existing NEPA procedures are holding back infrastructure investment or that curtailing the permitting process will save money are demonstrably false. The reality is that funding shortfalls, not NEPA, are the primary reason for the delay in many federal projects. As the U.S. Treasury Department noted, “a lack of funds is by far the most common challenge to completing” major infrastructure projects, a situation that is exemplified by the backlog of Army Corps of Engineers projects that have completed all environmental reviews but lack funding to implement.

I am also concerned the CEO's rewrite will allow federal agencies to retroactively apply the new regulations to pending NEPA reviews, as proposed in section §1506.13 “Effective date.” Giving agencies the option to change the rules midway through a review will likely result in further delays as development of the Environment Impact Statement (EIS) and Environmental Assessments could effectively have to start over. Opening up ongoing NEPA processes will also bring a great deal of legal risk, since courts have consistently held that agency NEPA decisions must not be arbitrary and capricious. Allowing agencies to retroactively apply these new standards and disregard existing scientific documentation that has already been developed for many high-profile reviews such as the Columbia River System Operations EIS and the Pebble Project EIS will create costly uncertainty, risk, and economic impacts.

Washington state has benefited greatly from the required review process and is proud that the landmark legislation was originally authored by our own U.S. Senator Henry “Scoop” Jackson and was signed into law by President Nixon after receiving overwhelming bipartisan Congressional support. As Senator Jackson said in February 1969 when he introduced NEPA on the Senate floor, “we must do more to anticipate environmental problems and develop strategies for their resolution before they assume crisis proportions. It is far cheaper-in human, social, and economic terms-to anticipate these problems at an early date and to find

alternatives," and that NEPA should "require that representatives from all elements of our national life - industry, the university, Federal, State, and local government - participate in forming this policy." Senator Jackson's words have proven prescient and he would likely decry CEQ's misguided proposal.

My constituents need additional opportunities to review and comment on these changes, especially since public involvement is a cornerstone of NEPA. If CEQ were to listen, they would hear loud and clear from the Pacific Northwest that natural resources like salmon fuel a multibillion-dollar commercial, recreational, and Tribal fishing economy. The NEPA process is a crucial safety net that ensures natural resources and the jobs they support will continue to thrive as we make science-based investments in federal infrastructure projects. Just as public involvement in the NEPA process has improved countless federal projects, this proposal needs the benefit of additional public involvement so it can be improved.

Sincerely,

A handwritten signature in cursive script, reading "Maria Cantwell". The signature is written in dark ink and is positioned above a horizontal line.

Maria Cantwell  
United States Senator