

March 10, 2020

Via regulations.gov

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

Re: Proposed Changes to NEPA Regulations, CEQ Docket No. CEQ-2019-0003

Dear Ms. Neumayr:

Charles River Watershed Association (“CRWA”) submits the following comments on the notice of proposed rulemaking published by the Council on Environmental Quality (“CEQ”) to amend the procedural regulations under the National Environmental Policy Act (“NEPA” or the “Act”). 85 Fed. Reg. 7 (Jan. 10, 2020). CRWA’s mission is to protect, preserve, and enhance the Charles River and its watershed through science, advocacy, and the law. Since the organization was founded in 1965, CRWA has worked to ensure a clean and healthy Charles River for all who utilize it.

For the last 50 years, NEPA has ensured the best possible outcomes for major federal projects affecting the human environment across the country. Through the NEPA process, government, industry, and citizens all receive crucial information related to project impacts on both the human and natural environment. The proposed amendments to the regulations are contrary to the purpose of the statute. CRWA opposes many of the proposed changes, including but not limited to: widening of the scope of excluded projects, curtailing the consideration of alternatives, ignoring cumulative effects, and implementing exclusionary comment thresholds.

The proposed regulations run contrary to the letter and aims of the statute

Congress passed NEPA with an aim to “promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man.” 42 U.S.C. § 4321. The proposed rulemaking runs contrary to the statutory aims of NEPA by removing several key aspects of the current regulatory scheme that are crucial to upholding the Act’s goal of environmental protection. CRWA is very concerned about the impacts of the proposed regulations on future projects in our watershed and opposes these changes.

Consideration of alternatives should not be limited

Consideration of project alternatives should not be limited as proposed. The consideration of alternatives, including the no action alternative, is an integral part of the NEPA process. Through examining the possibility and impacts of project alternatives, agencies can reach a final decision that is best for all parties involved. Several provisions of the proposed rulemaking,

including removing the requirement to consider “all” reasonable alternatives and eliminating the requirement that agencies consider alternatives outside their jurisdiction, would result in an incomplete alternatives analysis. *See* 85 Fed. Reg. 1701-02 (Jan. 10, 2020). Any regulatory maximum on the number of alternatives considered would be similarly problematic. *See id.* at 1702.

The scope of excluded projects should not be broadened

There should be no further regulatory exclusion of major federal projects from NEPA. Under the current regulatory scheme, only those projects with significant environmental impacts are required to comply with the full scope of the NEPA review process. The Government Accountability Office (“GAO”) estimates that only 1% of NEPA analyses are full Environmental Impact Statements (“EIS”). U.S. Gov’t Accountability Office, Nat’l. Env’tl. Policy Act: Little Info. Exists on NEPA Analysis GAO-14-369 (Apr. 2014). In other words, the universe of projects subject to full NEPA review is already limited.

The creation of categories of excluded actions has the potential for abuse, as well as the likelihood of overlooking all of the potential environmental damage caused by a proposed agency action – specifically what NEPA was enacted to prevent. Furthermore, there should not be a minimum federal spending requirement to trigger NEPA requirements. *See* 85 Fed. Reg. 1709. When federal funds of any amount are being spent, communities and stakeholders are owed government transparency and accountability in the form of NEPA review. In a related vein, categorical exclusions should not be utilized when extraordinary circumstances are present. *See* 85 Fed. Reg. 1696

Cumulative effects should continue to be considered

The terms “cumulative” and “indirect” should not be removed from the definition of “effects.” The practical outcome of removing the requirement that agencies study cumulative environmental impacts is that they will no longer have to address contributions to or effects of climate change. If agencies are no longer required to consider climate change as part of their NEPA review, they will be free to ignore the amount of greenhouse gas emissions a project will release, as well as the effects that climate change impacts like sea level rise will have on a project.

The stakeholder review process should not be weakened

The proposed regulations would limit the ability of citizens and other stakeholders to have their voices heard before a final decision is made. By amending the language in part 1503 of the regulations, CEQ is proposing to raise the technical threshold required for comments to be considered by the agency. 85 Fed. Reg. 1703. These new requirements will have the effect of silencing comment writers, limiting the ability of the people most harmed by projects to voice their legitimate concerns.

NEPA in the Charles River Watershed

NEPA plays a critically important role in projects in the Charles River Watershed, a role that would be undermined by the proposed regulatory changes. For example, a Massachusetts

Department of Transportation and Federal Highway Administration project in Boston is currently undergoing NEPA review. The highway runs along the Charles River and is adjacent to densely populated neighborhoods. Through the NEPA process, stakeholders have an opportunity to weigh in on the project's environmental impacts like increased stormwater runoff and flooding, noise and air pollution, and water quality degradation. The agencies must also consider the effects of climate change on the project through the NEPA process. This is especially important because this area is already prone to flooding and will only become more so in the future.

Previously, NEPA provided a platform to study and select the Zakim Bridge in Boston as the preferred alternative to cross the Charles River as part of the Big Dig. By including all stakeholders and alternative ideas in the process, the final result was a bridge that simultaneously provided traffic solutions and became a defining component of the city's skyline. The Zakim Bridge is not only a Boston icon, but has won awards nationally for its novel engineering.

We urge CEQ to withdraw this entire regulatory proposal and instead work to enforce the sensible and lawful provisions of the current CEQ regulations. Thank you for considering these comments. Please feel free to contact me with any questions at hmill@crwa.org or 781-788-0007 x 234.

Sincerely,



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General Counsel & Policy Director

Emily K. Mitchell, Esq.
Legal Volunteer