UUSJ Unitarian Universalists for Social Justice
UU advocacy in the nation's capital

March 10, 2020

Mary B. Neumayr
Chief of Staff
Council on Environmental Quality
730 Jackson Place
Washington, DC 20503

Re: Public Comments on Council on Environmental Quality, Notice of Proposed Rulemaking, Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (Docket Number CEQ-2019-0003) (January 10, 2020).

Dear Ms. Neumayr:

Unitarian Universalists for Social Justice (UUSJ) submits these comments on the Proposed Rulemaking because the proposal undermines our long-standing commitment to a clean and healthy environment and our belief that vulnerable communities must have a meaningful voice in federal decisions that affect them. We are joined in these comments by organizations and individuals, listed below, that share our commitment and concerns.

Section 101 of NEPA makes clear that "it is the continuing responsibility of the Federal Government to use all practicable means" to "fulfill the responsibilities of each generation as a trustee of the environment for succeeding generations." 42 U.S.C. 4331(b)(1). NEPA has greatly contributed to fulfilling this vital trusteeship responsibility to future generations, by requiring federal agencies to make more environmentally-conscious decisions, by giving affected communities a voice in decisions, and by encouraging all of us to be better stewards of our natural world. Indeed, NEPA has become a model internationally for responsible planning and implementation of projects that affect the environment.

The existing CEQ regulations implementing NEPA have played an important part in assuring that the purposes of NEPA are fulfilled. But when we look at the proposed revisions to the regulations, we have to wonder why such significant changes are being considered. It would appear from the explanations offered that the primary goal is to make it easier for federal agencies to move forward with projects such as pipelines and highways. *See, e.g.,* CEQ *Press Release: CEQ Issues Proposed Rule to Modernize its NEPA Regulations* ("streamlining environmental reviews will accelerate the construction of much needed roads, bridges, transit, railroad, and port projects"). We fear that this single-minded focus has blinded CEQ to the central purpose of NEPA.

We know that vulnerable communities struggling with poverty and racism often bear the brunt of health problems caused or contributed to by poorly-planned federal projects. NEPA is a critical tool for ensuring that the voices of these communities are not drowned out by powerful economic interests. Over the past four decades, NEPA has motivated federal agencies to engage with these communities and consider less damaging alternatives, resulting in positive gains to the environment and health and needed protections for air, water, wildlife, endangered species, and significant historical and cultural sites. We cannot sit by silently as these protections are withdrawn.

We describe in detail below how in our view the proposed revisions violate the purposes of NEPA by significantly limiting the analysis of environmental impacts and alternatives that NEPA requires and by reducing the ability of affected communities to meaningfully participate in decisions that significantly affect their health and the quality of their environment. In light of the great number of unacceptable changes described in the NPRM, we urge CEQ to withdraw this proposal and leave in place the current regulations.

1. Reduced Opportunities for Affected Communities to be Heard.

CEQ itself has made clear that "[e]arly and meaningful public participation in the federal agency decision making process is a paramount goal of NEPA." CEQ Environmental Justice Guidance notes at p. 13. As CEQ there notes, the NEPA process fosters community engagement with federal agencies and with project proponents, and often leads to better mutual understanding by all sides and agreements that all sides can live with. Regrettably, the proposed Rule will sharply limit the ability of communities to participate in federal decisions, contrary to the intent of the statute. This will leave communities feeling left out of the process and will encourage conflict and litigation rather than engagement and mutual agreement. Worse, the proposed Rule will permit many damaging federal actions to escape analysis from community participation entirely, and will limit the scope of analysis for actions still subject to NEPA in ways that ensure that important deleterious effects are ignored. This unacceptable result is manifested in several of the proposed revisions.

a. *Expansion of Categorical Exclusions.* The proposed revisions will encourage agencies to find new ways to exclude their actions from any form of NEPA review, leaving affected communities with no chance to have their voices heard. The revisions state that agencies shall prepare Environmental Assessments or Environmental Impact Statements only for actions that "cannot" be categorically excluded. Proposed section 1501.4(b)(2). In the past, federal agencies were at least partially restrained from excluding damaging actions from NEPA by the ban on excluding actions where certain identified "extraordinary circumstances" (like the presence of endangered species) were present. Section 1501.4(b)(1) of the proposed revisions, however, would allow agencies to exclude actions from NEPA review even in the presence of extraordinary circumstances; an agency need only claim that it has designed a project so as to "mitigate" the damage to those resources. In this and other ways, the revisions encourage agencies to find reasons to exclude actions from NEPA review. As a result, communities will be barred from any participation in decisions that affect their health and welfare.

b. *Unrealistic Constraints on Public's Ability to Comment.* The proposed Rule would limit the public comment period for both EISs and EAs to 30 days. *See* proposed section 1503.3(b). This is a substantial

departure from present practice, particularly for EISs, which often contain complex and detailed analysis that takes time to digest even for the most sophisticated parties. Only comments submitted within these tight time frames can be considered by the action agency, and comments not timely submitted, no matter how important, cannot be raised in any court challenge to the agency action. Other unreasonably stringent requirements apply; for instance, a commenter suggesting changes in a proposal to avoid adverse impacts must "describe the data sources and methodologies supporting the proposed changes." *See* Proposed section 1503.3(a).

These limitations ignore the fact that vulnerable communities impacted by federal decisions often lack the financial and organizational resources needed to quickly analyze the implications of proposed federal actions for their health and well-being and to respond effectively. Indigenous communities are likely to face additional barriers of language, culture and geographic distance that will make compliance with these strict and formalistic requirements impossible in many cases.

Finally, we are concerned about the fact that CEQ is only allowing 60 days for comment and providing only two sites for public hearings on these very extensive proposed revisions to its NEPA regulations. We believe this demonstrates a hostility to public input that is at odds with the letter and spirit of NEPA.

c. *Inflexible Time Limits for Preparation of NEPA Documents.* Proposed Section 1501.10(b) would establish presumptive time limits of one year to complete an Environmental Assessment (EA) and two years to complete an EIS. While these time frames may be workable for some federal actions, they ignore that many federal projects are of great size and complexity, affecting thousands of potentially vulnerable communities, ecosystems and cultural sites. These presumptive time limits will inevitably lead agencies to curtail the time they would otherwise spend on needed analysis and outreach to affected communities. For complex projects, both the agencies and the public will be deprived of adequate opportunity to understand the environmental implications of projects. Poorer decisions will result, endangering the public.

2. Unwise and Unauthorized Limits on the Scope of Analysis of Impacts.

NEPA was enacted because federal agencies were narrowly focusing on programmatic objectives while neglecting the effects of their actions on health and the environment. Since its enactment, both CEQ and the courts have emphasized that, to achieve the goals of NEPA, agencies must broadly consider environmental values and examine a range of alternatives, including alternatives that avoid environmental degradation. The proposed Rule goes in the opposite direction by permitting agencies to restrict their analysis in ways that are bound to hurt the environment generally and communities that already suffer from pollution.

a. *Removal of the Requirement to Consider Cumulative and Indirect Effects of Actions.* It is well-established that people in poor neighborhoods in America suffer more from unhealthy air and other environmental problems than people in wealthy neighborhoods. Negative impacts like this usually do not stem from single projects but from multiple sources such as highways, power plants, factories, municipal waste facilities and others.

The current NEPA regulations assure that federal agency projects near poor neighborhoods are not considered in a vacuum, but instead with full consideration of all other sources of pollution that may combine with and interact with pollution from the particular federal action. The current CEQ regulations specifically require agencies to consider the "impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." 40 C.F.R. 1508.7. The current regulations also wisely require agencies to analyze effects that are "indirect," that is "effects caused by the action that are later in time or further removed in distance but still reasonably foreseeable." 40 C.F.R. 1508.8(b).

This common-sense approach is thrown out by the proposed revisions. The proposed definition of "effects" in the proposed revisions conspicuously omits the familiar and necessary requirements that consideration of effects include cumulative and indirect effects. *See* proposed section 1508.1(g). This will make it easy for agencies to simply ignore the fact that proposed actions will add to the harmful cumulative effects of other existing or planned sources of pollution. Federal agencies will take this as a green light to myopically focus only on the impacts of their own actions without considering how those impacts may combine with other sources of pollution to gravely harm communities.

Climate change is the clearest example of a problem that demands consideration of the cumulative effects of multiple actions and decisions by federal and non-federal entities. It is low income communities and communities of color that are likely to suffer the most from global warming's negative impacts, since their neighborhoods are most at risk from larger floods, stronger hurricanes and more catastrophic wildfires. The current requirement for considering cumulative effects ensures that federal agencies will consider how actions such as approval of new fossil fuel developments will contribute to global warming, and ensures consideration of alternatives that reduce greenhouses gasses. The current requirement for consideration of "indirect" effects also helps ensure that agencies do not omit consideration of important issues such as whether their actions will encourage private actors to engage in polluting activities.

Under the proposal Rule, however, potential effects that are "remote in time, geographically remote, or the result of a lengthy causal chain," or that the agency "has no authority to prevent[,] or would happen even without the agency action" will no longer be part of NEPA analyses. Proposed section 1508.1(g)(2). Because climate change would virtually never have a "reasonably close causal relationship" to any one particular action, it appears that CEQ intends that agencies will no longer consider climate impacts in their NEPA analysis. Refusal to consider the most significant environmental problem of our time is hardly consistent with the purpose of NEPA.

b. Narrowed Consideration of Alternatives. It has often been said that consideration of alternatives is the heart of the NEPA process. Despite the importance of considering alternatives, particularly to communities that would suffer from adoption of poorly-analyzed alternatives, CEQ is proposing to constrain the range of alternatives that an EIS must consider. An agency can refuse to consider an otherwise reasonable alternative to a private company's proposed project if the agency decides that the

alternative is not technically and economically feasible or does not meet the purpose and the need of the applicant. *See* proposed section 1508.1(z). This focus on the needs of private applicants as a way to limit consideration of alternatives is counter to NEPA's purpose of preserving the environment for the public in general.

It is also vitally important that Environmental Assessments (EAs) as well as EISs consider alternatives, since the great bulk of agency actions that receive NEPA analysis are studied only in EAs. Yet, in the proposed revisions, CEQ provides that an agency does not need to include a detailed discussion of each alternative in an EA, and does not need to include any detailed discussion of alternatives that it eliminated from study. Simply because a proposal doesn't meet an agency's criteria for preparing a full EIS doesn't suggest that careful consideration of a wide array of alternatives isn't needed.

We urge CEQ to step back and seriously consider whether these proposed changes are consistent with NEPA's central purposes. Among those purposes are that the government should be a trustee of the earth and its natural resources for the benefit of future generations and that it should encourage meaningful participation in government decisions by communities affected by federal agency action. We believe that any sincere reflection on this question will reveal that the proposed changes fail to carry out these central purposes of NEPA and threaten impacted communities and future generations with untold damage. We urge CEQ to drop this misguided effort to revise the current regulations.

Sincerely,

Unitarian Universalists for Social Justice

Unitarian Universalist Association

United Methodist Women

Interfaith Center for Corporate Responsibility

Unitarian Universalist Ministry for Earth

Iowa Unitarian Universalist Witness Advocacy Network

Unitarian Universalists for a Just Economic Community

Terry Lowman, Ames, Iowa

Lavona Grow, Arlington, Virginia

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