



CREATING GOOD JOBS, A CLEAN ENVIRONMENT, AND A FAIR AND THRIVING ECONOMY

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BlueGreen Alliance Comment on the Council on Environmental Quality (CEQ) National Environmental Policy Act Implementing Regulations Revisions Phase 2

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The BlueGreen Alliance (BGA) unites labor unions and environmental organizations to solve today's environmental challenges in ways that create and maintain quality jobs and build a clean, prosperous, and equitable economy. Our partnership is firm in its belief that Americans don't have to choose between a good job and a clean environment—we can and must have both. The Bipartisan Permitting Reform Implementation Rule, CEQ's proposed National Environmental Policy Act (NEPA) Implementing Regulations, are a demonstration of this principle, and we thank you for the opportunity to provide comment.

Over the last decade, we have witnessed the worsening impacts of climate change. To avoid the most catastrophic consequences of climate change, we must put America on a pathway of reducing its emissions to net zero emissions by 2050, and ensure we are solidly on that path by 2030. To do so, clean energy, transmission, and a range of other infrastructure deployment must grow rapidly. This includes increasing renewable energy as well as boosting transmission capacity as much as 2-3 times from current levels. At the same time, America's current infrastructure consistently gets barely passing grades because our systems are in dire need of repair and modernization.¹

By investing to grow clean energy and modernize our grid; repair our failing roads, bridges, and water systems; improve the efficiency and health of our buildings; and transform our transportation systems, we can boost our economy and create millions of good jobs while also reducing pollution, combatting climate change, and making our communities healthier and safer. Done right, it will also create middle-class jobs and economic opportunity for people in the communities in which they reside. Thanks to the Bipartisan Infrastructure Law, Inflation Reduction Act, and CHIPS and Science Act, as well as the tireless work of agencies across the administration to implement this legislation, the infrastructure investment gap is narrowing, and investments are being deployed rapidly to meet this need.

However, none of this is achievable if projects do not get built and challenges exist to achieving the scale and pace of deployment needed to achieve these goals. These include inadequate agency staffing and coordination, competing agency priorities, insufficient data and information sharing across agencies and with applicants, complex compliance requirements, and a lack of early engagement with environmental justice and frontline communities, unions, and other stakeholders in the process. All of these challenges can be barriers to timely and rigorous environmental review and project completion. While NEPA is not responsible for, nor can it solve, all of these challenges, it is an important part of the process and CEQ's proposal directly addresses a number of these barriers.

We believe the proposed standards put forward by CEQ seek to strike an important balance between a) establishing and clarifying processes that promote transparent and effective environmental review and public participation in infrastructure decisions; b) ensuring climate change and environmental justice are addressed in project reviews; and c) prioritizing the resources and processes needed to ensure efficiency in the review process so that projects move forward and deliver benefits to communities and workers quickly. This includes implementing changes made under the Fiscal Responsibility Act (FRA) as well as additional provisions put forward by CEQ under this rulemaking.

We believe the following provisions in particular are key to achieving our holistic goals.

Data & Transparency

Data sharing and transparency in the NEPA process are critically important. The proposed rule clarifies and requires a number of important improvements related to data and transparency. This includes a requirement for Environmental Assessments (EAs) to include a unique identification number that can be used for review tracking purposes; provisions related to the use of agency websites and other information technology, including requiring agencies to provide on their websites, or other information technology tools, their agency NEPA procedures and a list of EAs and EISs that are in development and complete; and a requirement for agencies to incorporate material, such as planning studies, analyses, or other relevant information, into environmental documents, for public review and reference. These provisions will promote transparency and efficiency in the NEPA process and ensure that federal and state agencies, project sponsors, key stakeholders, and the public will be able to track the progress of environmental reviews and access other key information as projects move through the NEPA process.

Process Efficiencies

The proposed rule builds on the Fiscal Responsibility Act to implement a number of provisions that will help improve project outcomes and increase efficiency in the NEPA process. This includes:

- **Programmatic Environmental Reviews and Tiering.** We support CEQ’s proposal to encourage agencies to engage in programmatic environmental reviews as a “best practice” for broad federal actions. Programmatic analyses, which set out the broad view of environmental impacts and benefits of a type of project and/or a similar geographic area, can be relied on later for project-specific assessments and therefore provide greater efficiency in preparing NEPA compliance documentation for individual projects by reducing repetitive analysis. We also support the proposal that for tiered documents, agencies must discuss the relationship between the tiered analysis and the previous review. Site-specific impacts not considered in the PEIS should be considered at the project level.
- **Designating a Lead Agency.** We support continued efforts to ensure and clarify the role of “Lead Agency” in the environmental review process. Designating a lead agency for coordination of project review to coordinate with other agencies, develop a schedule for review, compile environmental reviews, and generally drive the process is a key way to ensure efficiency, accountability, and effective review.
- **Timelines and Page Limits.** We appreciate CEQ’s efforts to uphold the rule of law and implement provisions in the FRA related to timelines and page limits for environmental review. This includes codification in the FRA of page limits for Environmental Assessments and Environmental Impact Statements and well as important clarifications like when to begin the clock in measuring the timelines.

We also acknowledge CEQ’s efforts to implement provisions in the FRA related to the use of categorical exclusions. While categorical exclusions can be an important tool to increase efficiency in the environmental review process, it is important that categorical exclusions be applied only when there is sufficient evidence that a given project will not cause unreasonable harm to communities and the environment. Furthermore, categorical exclusions applied across agencies should adhere to an “apples to apples” approach, ensuring that categorical exclusions are only applied to projects with comparable circumstances. These should be used judiciously to encourage efficient reviews where practical without limiting robust stakeholder engagement.

Climate Change and Environmental Justice

We commend CEQ for clearly outlining a process of incorporating environmental justice and climate change among the list of environmental impacts that must be considered in a NEPA review. This includes taking into consideration the impacts of climate change. Climate change is straining – and will further strain – our infrastructure. Sea level rise, extreme weather events, and more will compromise systems from tunnels, bridges, and roads to ports and harbors. In urban communities, essential services like energy and water supply are interdependent, so climate-related disruptions of one system will most likely result in disruptions in others. It is critical that permitting decisions are made with these impacts in mind. Furthermore, it is essential for science-based foreseeable effects to be

considered in the decision-making process. In addition, CEQ should make clear the scopes of emissions that will be considered in the review process with respect to a project's climate impacts, and the full benefits of a project for climate mitigation or adaptation should be considered.

The inclusion of environmental justice, defined to include that people “are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices,” is also critically important.

While many agencies have already been including climate change and environmental justice in their reviews, and are to an extent already required to do so under existing case law, this rulemaking provides clarity and certainty and a clearer framework to support agencies in evaluating impacts and project sponsors in communicating with agencies. This is not only important for the public and key stakeholders to have access to this information and be able to engage on these topics through the NEPA process, but it will also help agencies form legally sound and defensible reviews and avoid unnecessary project delays and litigation. In short, it will reduce project risk.

Community Engagement

We commend CEQ's efforts to modernize and expand community engagement in the NEPA process. In its proposed rule, CEQ rightly emphasizes the importance of public engagement in the NEPA process, including with communities of color, low-income communities, Indigenous communities, and Tribal communities. Agencies should play a key role in facilitating and driving this engagement and we support the proposed requirement that agencies designate a Chief Public Engagement Officer to be responsible for facilitating community and labor engagement across the agency. This person should have the qualifications necessary to build trust and effectively guide stakeholders through the NEPA process, including providing technical assistance to communities. We would encourage an expansion of this to include the provision of technical support and other assistance to project sponsors, to affirm they are fulfilling requirements and encourage and support their engagement of the public, communities, and key stakeholders as well. It is critical to ensure that the individual who serves in this role is a neutral and trusted expert with experience with stakeholder engagement and is at a level of seniority and experience to be effective in this role.

Conclusion

In conclusion, we believe the standards as proposed, with our recommendations above, will help clarify and improve the permitting processes, promote transparency and public participation, and ensure reviews take a holistic view of project impacts. Ultimately, we

believe this rule will help projects move forward and deliver benefits to communities and workers quickly. We thank CEQ for its proposal and for the opportunity to provide comment.

ⁱ American Society of Civil Engineers (ASCE). 2021 ASCE Infrastructure Report Card. 2021. Available online: <https://infrastructurereportcard.org/>