

# OUTDOOR ALLIANCE

November 19, 2021

The Honorable Brenda Mallory  
Chair, Council on Environmental Quality  
730 Jackson Place N.W.  
Washington, DC 20503

**Re: Docket number, CEQ-2021-0002, Council on Environmental Quality Notice of Proposed Rulemaking, National Environmental Policy Act Implementing Regulations Revisions, 86 FR 55757 (Oct. 07, 2021)**

Dear Chair Mallory,

Outdoor Alliance thanks you and your colleagues at the Council on Environmental Quality for your leadership in addressing substantive issues with the 2020 regulations that implement the National Environmental Policy Act. NEPA is a bedrock environmental law that our community interacts with in a variety of ways. Rock climbers provide critical feedback to local land managers on things such as climbing management plans, recreation permits, and fee structures; backcountry skiers and mountain bikers assist agency officials with land management and travel management plans; and kayakers share insights regarding Wild and Scenic River eligibility and river management issues such as dam removals. Last year, when the BLM announced it would auction off 85,000 acres surrounding Moab, Utah, including the very popular Slickrock trail, thousands of outdoor enthusiasts spoke out against the proposal using opportunities for public comment afforded to them by NEPA.<sup>1</sup>

Outdoor Alliance supports CEQ's Phase 1 proposal, and we agree that, "the 2020 regulations may have the effect of limiting the scope of NEPA analysis, with negative repercussions for environmental protection and environmental quality,

---

<sup>1</sup> Outdoor Alliance, BLM Plans to Auction Off Land That Includes Moab's Iconic Slickrock Trail, <https://www.outdooralliance.org/blog/2020/2/20/blm-plans-to-auction-off-land-that-includes-moabs-iconic-slickrock-trail> (Feb. 20, 2020).



# OUTDOOR ALLIANCE

including in critical areas such as climate change and environmental justice.”<sup>2</sup> We argued this point throughout the previous administration’s rulemaking process and support CEQ in rectifying the deeply flawed regulations from 2020. Outdoor Alliance supports CEQ’s decision to: 1) remove problematic language regarding the purpose and need and alternatives, ensuring that NEPA is properly driven by science and public input rather than by narrow private interests (40 CFR 1502.13); 2) eliminate the “ceiling” provision, ensuring that agencies have the necessary discretion to pursue robust analysis and fulfill NEPA’s mandates (40 CFR 1507.3); and 3) restore the requirement to analyze direct, indirect, and cumulative impacts by returning to the definition of “effects” from the 1978 regulations (40 CFR 1508.1(g)).

CEQ’s phase 1 proposal will enhance clarity on NEPA implementation and better effectuate NEPA’s statutory requirements. We also believe that it is essential that CEQ expeditiously begin Phase 2 of this process and work to completely restore the protections afforded by the 1978 Rule and further explore opportunities to comprehensively integrate environmental justice and climate change into the regulations.

## Who we are:

Outdoor Alliance is the only organization in the U.S. that unites the voices of outdoor enthusiasts to conserve public lands and waters and ensure those lands and waters are managed to embrace the human-powered recreation experience. Outdoor Alliance is a coalition of ten member-based organizations representing the human powered outdoor recreation community. The coalition includes Access Fund, American Canoe Association, American Whitewater, International Mountain Bicycling Association, Winter Wildlands Alliance, The Mountaineers, the American Alpine Club, the Mazamas, Colorado Mountain Club, and Surfrider Foundation and represents the interests of the millions of Americans who climb, paddle, mountain bike, backcountry ski and snowshoe, and enjoy coastal recreation on our nation’s public lands, waters, and snowscapes. The community we represent has a strong interest in ensuring that vitally important places are protected and managed in a way that embraces the human-powered experience.

---

<sup>2</sup> Council on Environmental Quality. “Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act.” 85 Fed. Reg. 43304, (Jul. 16, 2020).



# OUTDOOR ALLIANCE

Outdoor Alliance and our member organizations have extensive experience with the NEPA implementation process, particularly in the context of land management decision-making, including forest planning and BLM resource management plan development, river management, travel management, recreation management, and other decisions regarding the use of natural resources. We work at all levels of the NEPA process, from participating in collaborative groups, to submitting comments and meeting with agency decision makers, to participating in the objection resolution process, and, on rare occasions, as NEPA-related litigants. These experiences have provided us with an informed perspective on NEPA policies and practices.

Members of our coalition expressed concern about CEQ's 2020 changes to the rules that implement NEPA at every stage of the public process. Outdoor Alliance submitted a joint comment on the 2020 Rule, calling attention to many concerns including, but not limited to, the abdication of agency responsibilities to private entities, the blatant barriers to public participation and legal accountability, the restrictions placed on NEPA's scope and the transparency of the review process, and changes to critical language such as "effects" and "major federal actions." We are encouraged to see that several of these issues will be addressed in the Phase 1 process but continue to advocate for the complete rescission of the 2020 Rule.

Our member organizations are not immune to difficulties presented by the environmental review process. We also work on projects like trail building and other recreation infrastructure improvement projects that require navigating the NEPA process and can understand the interest in making the process more efficient and predictable. We believe, however, that those efficiencies must not come at the expense of NEPA's core values.

## **Outdoor Alliance Support for Phase 1 Proposed Rule:**

- 1. Outdoor Alliance supports the removal of problematic language that improperly defines the purpose and need and alternatives of a proposed project, ensuring that NEPA is properly driven by science and public input rather than by narrow private interests (40 CFR 1502.13)*

The purpose and need section of an EIS/EA sets forth the rationale and intention for the agency's proposed action. Selecting the purpose and need is a critical step for any federal project as it inevitably outlines the host of alternatives and effects



# OUTDOOR ALLIANCE

that the agency must analyze. The 2020 NEPA Regulations modified this provision by adding language that requires the agency to base the purpose and need on the goals of the applicant rather than the discretion of the agency. This concerned Outdoor Alliance for many reasons. Allowing applicants to draft their own purpose and need statement will improperly and arbitrarily limit federal agencies' analysis of the alternatives to proposed actions. Such an action introduces unnecessary bias from project applicants who have a particular interest in the project's completion and the types of alternatives analyzed. To reflect the best reading of the NEPA statute, the purpose and need should rather be driven by all relevant stakeholder interests, public input, and scientific review.

Additionally, the 2020 Rule re-defined "reasonable alternatives" to substantially narrow the scope of alternatives considered by the action agency. Outdoor Alliance agrees with the CEQ that reasonable alternatives should not be boundless but most certainly should be "sufficient to permit a reasoned choice."<sup>3</sup> Under the 2020 Rule, alternatives cannot be explored and discussed thoroughly in order to comply with the intent and requirements of section 4332(2)C of NEPA. We support a return to a standard requiring agencies to prescribe to the rule of reason in identifying all reasonable alternatives. We are concerned by the retention of the "technically and economically feasible" language constraining reasonable alternatives and encourage CEQ to return to the previous reliance on guidance stating that, "Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant."

- 2. Outdoor Alliance supports the removal of the "ceiling" provision by adjusting NEPA procedures and ensuring that agencies have the necessary discretion to pursue robust analysis and fulfill NEPA's mandate (40 CFR 1507.3).*

The "ceiling" provision from the 2020 Rule requires that agencies look at the CEQ regulations as a cap on their discretion for environmental analysis rather than a starting point. Under the 2020 Rule, action agencies were arbitrarily limited from exploring robust NEPA review within their unique programs, which made the decision-making process unnecessarily complex and disjointed from agency expertise and, in certain cases, state requirements. As pointed out in the Notice of

---

<sup>3</sup>Natural Resources Defense Council v. Morton, 458 F.2d 827 (D.C. Cir. 1972).



# OUTDOOR ALLIANCE

Proposed Rulemaking, the 2020 rule inhibits state and federal coordination to the extent that it would “prevent Federal agencies from adopting NEPA procedures that integrate with state review processes that have more stringent requirements and procedures.”<sup>4</sup> The 2020 Rule runs afoul of the plain text of NEPA §102 (4332) which requires all agencies of the federal government to analyze the impacts of their decisions “to the fullest extent possible.” If Agencies cannot fully execute analysis of alternatives in “good faith objectivity”<sup>5</sup> under the 2020 Rule, the government is thereby exposed to litigation and further timely and costly inefficiencies in the environmental review process.

For these reasons, Outdoor Alliance supports CEQ’s decision to revise §1507.3(a) and (b) to clarify that agencies have the necessary discretion and flexibility to develop and use NEPA procedures beyond the CEQ regulatory requirements. Correcting this issue with the 2020 Rule will prompt better decision-making within agencies, improve outcomes for our environment and communities, and spur innovation that advances NEPA’s substantive policies.

- 3. Outdoor Alliance supports restoring the requirement to analyze direct, indirect, and cumulative impacts by returning to the definition of “effects” from the 1978 regulations (40 CFR 1508.1(g)).*

Under NEPA, federal agencies have for the last fifty years been required to study a proposed action’s direct, indirect, and cumulative impacts. However, the 2020 Rule redefined the definition of “effect” or “impacts” (§1508.1(g)) to encapsulate a very narrow set of direct impacts, arbitrarily abandoning long-standing legal precedent of the term and upsetting well grounded case law. This action frustrated clear congressional intent and NEPA’s core statutory purpose to “analyze reasonably foreseeable impacts of a proposed action.”<sup>6</sup>

Outdoor Alliance welcomes the revision of §1508.1(g) to restore the substance of the term “effects” to that contained in the 1978 NEPA Regulations. Eliminating direct, indirect, and cumulative impacts from the definition of “effects” led to confusion amongst agencies and prevented a full and fair interpretation of all

---

<sup>4</sup> 85 Fed. Reg. 43304.

<sup>5</sup> Environmental Defense Fund, Inc. v. Corps of Engineers of United States Army, 470 F.2d 289 (8th Cir. 1972).

<sup>6</sup> Dubois v. U.S. Dept. of Agriculture, 102 F.3d 1273, 1286 (1st Cir 1996).



# OUTDOOR ALLIANCE

effects from a proposed project and its alternatives. We agree that this reinstatement will facilitate “reason based-decision making that protects public health and the environment,” perhaps most notably by providing clarity to agencies that they must analyze the impacts of their decisions on climate change.<sup>7</sup>

Outdoor Alliance also supports the revision of §1508.1(g)(3) by restoring the definition of “cumulative impacts.” As we laid out in previous comments, analyzing indirect and cumulative effects is critical to the NEPA process, because, “[f]or many projects, these secondary or induced effects may be more significant than the project’s primary effects” and must be addressed “[i]f impact statements are to be useful.”<sup>8</sup> Like many other concerned organizations, we viewed the dismissal of cumulative impacts as a direct threat to our world’s climate. Greenhouse gas (GHG) emissions from federal energy projects like oil and gas lease sales collectively pose significant threats to our biosphere. According to a 2018 United States Geological Survey report, energy development and infrastructure projects on federal public lands account for 25% of our nation’s GHG emissions.<sup>9</sup> Not only do these emissions further exacerbate the effects of climate change, the projects themselves often overlap with, or compete for access to, the same lands our members frequent to recreate. More than 60% of America’s climbing areas exist on federally managed public lands, according to the Access Fund, and many areas have been directly impacted by energy development. Agencies cannot consider the environmental impact of a project or its effects on the human environment in good faith without considering indirect and cumulative effects, especially those related to climate change. This has been litigated and concluded many times.<sup>10</sup>

Beyond climate change, a project’s other indirect or cumulative effects often have a severe impact on outdoor recreation and Outdoor Alliance’s interests—and analysis of these effects presents opportunities for Outdoor Alliance, our member organizations, and our community to add value to NEPA processes. As one example, indirect and cumulative impacts are critical in the context of Federal

---

<sup>7</sup> 85 Fed. Reg. 43304.

<sup>8</sup> *Davis v. Coleman*, 521 F.2d 661, 675-677 (9th Cir. 1975).

<sup>9</sup> Merrill, M.D., Sleeter, B.M., Freeman, P.A., Liu, J., Warwick, P.D., and Reed, B.C., 2018, Federal lands greenhouse emissions and sequestration in the United States—Estimates for 2005–14: U.S. Geological Survey Scientific Investigations Report 2018–5131, 31 p., <https://doi.org/10.3133/sir20185131>.

<sup>10</sup> *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41 (D.D.C. 2019).





# OUTDOOR ALLIANCE

Energy Regulatory Commission (FERC) review of hydropower licensing, where even a relatively small project can combine with other factors to degrade environmental quality in a large watershed. Similarly, when outdoor recreationists are pushed off of a given landscape because of development activities, it is important that agencies consider the indirect effects of that displacement, including on nearby resources and local economies. Analyzing these effects is fundamental to NEPA's goal of promoting science-based, environmentally-focused land and water use policy. We agree that the consideration of cumulative impacts is important to fully inform agency decision-makers and support the proposed revisions §1508.1(g)(3).

Finally, Outdoor Alliance supports removing limitations on the effects analysis to ensure agencies may avoid confusion, litigation, and inconsistent application of their NEPA reviews, all of which erode NEPA's efficiency and result in lengthy delays for project applicants. Specifically, we support the removal of the "close causation" (§1508.1(g) and "but for" (§1508.1(g)(2) limitations in the 2020 Rule's definition of effects. We believe that these restrictions create confusion for agencies on which effects to consider in their analyses and frustrate agency procedures and practices which have evolved over fifty years to properly account for scientific understandings of environmental outcomes as well as court decisions. We agree with the decision to revert the definition to conform with the 1978 Regulations.

\* \* \*

Outdoor Alliance and our member organizations appreciate the opportunity to provide feedback on the Proposed Rule and thank CEQ for beginning to address the troubling aspects of the 2020 NEPA Regulations. We remain committed to assisting the agency as it navigates the implementation of this rulemaking and begins the second phase of this process. CEQ must also move urgently and go further to address systemic environmental injustices and make meaningful progress on the climate crisis. We encourage the CEQ to begin intentional stakeholder outreach as soon as feasibly possible, particularly to EJ communities, to inform the Phase 2 rulemaking.



# OUTDOOR ALLIANCE

Best regards,



Louis Geltman  
Policy Director  
Outdoor Alliance



Taylor Luneau  
Policy Manager  
American Alpine Club

cc: Adam Cramer, Chief Executive Officer, Outdoor Alliance  
Chris Winter, Executive Director, Access Fund  
Beth Spilman, Executive Director, American Canoe Association  
Mark Singleton, Executive Director, American Whitewater  
Kent McNeill, CEO, International Mountain Bicycling Association  
Todd Walton, Executive Director, Winter Wildlands Alliance  
Tom Vogl, Chief Executive Officer, The Mountaineers  
Mitsu Iwasaki, Chief Executive Officer, American Alpine Club  
Sarah Bradham, Interim Executive Director, the Mazamas  
Keegan Young, Executive Director, Colorado Mountain Club  
Chad Nelson, Chief Executive Officer, Surfrider Foundation

