



IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

September 29, 2023

Council on Environmental Quality  
730 Jackson Place NW  
Washington, DC 20503

Re: ***Reconsideration of Council on Environmental Quality  
National Environmental Policy Act Implementing  
Regulations Revisions Phase Two (Docket ID CEQ-  
2023-0003)***

The Attorneys General of Iowa and the 21 undersigned States respectfully submit these comments in response to the Council on Environmental Quality's (CEQ) Revisions of the National Environmental Policy Act's (NEPA) Implementing Regulations Revisions Phase Two (Proposed Rule).<sup>1</sup>

CEQ's Proposed Rule serves as a dramatic example of federal and administrative overreach. Rather than serve its long-term goals of collecting information about large development projects, the Proposed Rule injects major substantive considerations into the NEPA process. In doing so, the Proposed Rule turns NEPA on its head, and turns it farther away from the effective reform process started in 2020. This radical and illegal climate power grab goes far beyond CEQ's delegated authority.

Congress passed NEPA to achieve laudable goals: to reduce delays and promote better decision-making consistent with national environmental policy.<sup>2</sup> Tasked with NEPA's

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<sup>1</sup> National Environmental Policy Act Implementing Regulations Revisions Phase Two, 88 Fed. Reg. 49924 (Aug. 31, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-01-27/pdf/2023-00269.pdf> [hereinafter Proposed Rule].

<sup>2</sup> See Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43304, 43307 (July 16, 2020) ("2020 Rule").

implementation, CEQ issued initial guidelines for NEPA in 1970 and has modified those rules since. But despite its goals, NEPA's implementation has led to increased complexity and has slowed or prevented the development of important infrastructure and other projects.<sup>3</sup> In response, President Trump's proposed 2020 rule sought to fix the accumulated problems with NEPA implementation. President Biden's CEQ rolled back those fixes and now seeks to go even further.

The States are concerned that CEQ's Proposed Rule will hinder NEPA's purported goal of facilitating better-informed agency decisions. That harms a broad array of federal and nonfederal projects and activities. Moving farther away from the 2020 Rule<sup>4</sup> will continue to reduce clarity. The 2020 Rule aligned with CEQ's original 1978 NEPA regulations by incorporating longstanding interpretations and realigning the regulations with NEPA's purpose to facilitate timely agency action through informed decision-making.

Like the original 1978 regulations, the 2020 regulations balanced priorities and resources "to reduce paperwork, to reduce delays, and at the same time to produce better decisions [that] further the national policy to protect and enhance the quality of the human environment."<sup>5</sup> In promulgating the 2020 Rule, CEQ pursued those goals by considering (and, ultimately, both rejecting and adopting) a wide range of proposed updates to the old regulations to reflect CEQ's experience with NEPA. That experience, accrued over several decades, intended to resolve problems and issues that had arisen during agency NEPA practice during that period.

CEQ's Phase One Rule<sup>6</sup> undid much of the good that the 2020 Rule put forward. Delays in obtaining necessary NEPA review may

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<sup>3</sup> *Id.* at 43304.

<sup>4</sup> *See generally id.*

<sup>5</sup> *Id.* at 43307.

<sup>6</sup> National Environmental Policy Act Implementing Regulations Revisions, 87 Fed. Reg. 23453 (May 20, 2022), available at <https://www.federalregister.gov/documents/2022/04/20/2022-08288/national-environmental-policy-act-implementing-regulations-revisions>.

cause stakeholders to experience monetary losses and force changes to project specifications, mitigation, or design. Preconstruction delays for projects—whether they be for utility-scale solar or other energy infrastructure—may also impact the economy by hurting project timelines, domestic supply chains, and the jobs required to complete those projects.

CEQ should withdraw the proposed change. The Proposed Rule transforms NEPA from a procedural to substantive statute, ignores relevant case law and exceeds CEQ’s statutory authority under NEPA, increases costs and uncertainty, and imposes real harm. We, therefore, urge CEQ to withdraw the Proposed Rule.

## I. Background

A nearly unanimous Congress and President Nixon enacted NEPA in 1969.<sup>7</sup> Soon after, President Nixon issued Executive Order 11514, *Protection and Enhancement of Environmental Quality*, asking CEQ to issue guidelines implementing section 102(2)(C) of NEPA.<sup>8</sup> CEQ followed by issuing interim and then final guidelines to introduce the concept of environmental assessments (EAs) and environmental impact statements (EISs).

In 1977, President Carter issued a new executive order, directing CEQ to issue regulations for implementing section 102(2)(C) of NEPA and requiring that federal agencies comply with those regulations.<sup>9</sup> CEQ promulgated regulations responsive to that Executive Order in 1978.<sup>10</sup> Those 1978 regulations are found to reflect the fundamental principles behind NEPA regulations.<sup>11</sup>

CEQ made minor typographical amendments to the 1978 implementing regulations in 1979. CEQ substantively amended one provision in 1986 but otherwise left the regulations largely

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<sup>7</sup> 88 Fed. Reg. 49924

<sup>8</sup> E.O. 11514, *Protection and Enhancement of Environmental Quality*, 35 Fed. Reg. 4247 (Mar. 7, 1970), sec. 3(h).

<sup>9</sup> E.O. 11991, *Relating to Protection and Enhancement of Environmental Quality*, 42 FR 26967 (May 25, 1977).

<sup>10</sup> Implementation of Procedural Provisions, 43 FR 55978 (Nov. 29, 1978).

<sup>11</sup> 88 Fed. Reg. at 49927.

unchanged until 2017.<sup>12</sup> On August 15, 2017, President Trump issued Executive Order 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*, which directed CEQ to establish an interagency working group to propose changes to NEPA regulations.<sup>13</sup>

That began CEQ's thorough rulemaking process. CEQ considered more than one million comments, from a diverse set of commenters.<sup>14</sup> Incorporating those suggestions, that proposed rule intended to increase effectiveness of NEPA regulations through modernization, embracing the original CEQ regulations' goals of reducing paperwork and delays, and promoting better decision-making consistent with the national environmental policy set forth in section 101 of NEPA.<sup>15</sup> Each of the 1978 goals was to be improved, without going beyond the historical role played by NEPA regulations.

On President Biden's first day in office, he issued Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, which called on federal agencies to review regulations issued by the Trump administration and to rescind any rules implementing Trump's Executive Order 13807. That blanket rescission included a specific admonition to CEQ to review its policies for consistency with Executive Order 13990.<sup>16</sup> CEQ did just that. CEQ reviewed the 2020 Rule and, consistent with Executive Order 13990, began to reverse the prior Administration's work.<sup>17</sup>

First, CEQ issued an interim rule in 2021 reversing the 2020 Rule's tasking of federal agencies to make their procedures

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<sup>12</sup> *Id.*

<sup>13</sup> E.O. 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*, 82 Fed. Reg. 40463 (Aug. 24, 2017)

<sup>14</sup> See Docket No. CEQ-2019-0003, <https://www.regulations.gov/document/CEQ-2019-0003-0001>.

<sup>15</sup> 87 Fed. Reg. 43304.

<sup>16</sup> 88 Fed. Reg. 49928.

<sup>17</sup> *Id.*

consistent with 2020 Rule.<sup>18</sup> That change undid all the good work of the prior 2020 Rule,

Next, on October 7, 2021, CEQ issued its “Phase One” proposed rule. Phase One sought to roll back many of the 2020 Rule’s salutary changes.<sup>19</sup> That included three changes highlighted in the Proposed Rule: “First, CEQ proposed to revise 40 CFR 1502.13 to clarify that agencies have discretion to consider a variety of factors when assessing an application for authorization by removing a requirement that an agency base the purpose and need on the goals of an applicant and the agency’s statutory authority. CEQ also proposed a conforming edit to the definition of ‘reasonable alternatives’ in 40 CFR 1508.1(z). Second, CEQ proposed to remove language in 40 CFR 1507.3 that could be construed to limit agencies’ flexibility to develop or revise procedures to implement NEPA specific to their programs and functions that may go beyond CEQ’s regulatory requirements. Finally, CEQ proposed to revise the definition of ‘effects’ in 40 CFR 1508.1(g) to restore the substance of the definitions of ‘effects’ and ‘cumulative impacts’ contained in the 1978 regulations.”<sup>20</sup>

Having attempted to roll back the 2020 Rule, the Proposed Rule self-consciously acknowledges that this is a “broader rulemaking to revise, update, and modernize the NEPA implementing regulations.”<sup>21</sup> Among the goals and priorities embodied in the proposed rule are to “ultimately promote better informed Federal decisions that protect and enhance the quality of the human environment, including by ensuring climate change, environmental justice, and other environmental issues are fully accounted for in agencies’ decision-making process.”<sup>22</sup>

CEQ’s Proposed Rule goes too far. It improperly transforms NEPA from its longstanding roots as a procedural statute to a more substantive statute—with commensurate obligations and

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

impositions on entities that seek regulatory approval for important projects. The definition ignores longstanding precedents that should have guided CEQ’s approach. And the Proposed Rule will both slow development and introduce significant costs to future projects.

## II. ANALYSIS

### **a. CEQ’s Revisions Improperly Transform NEPA from a Procedural and Informational Statute into a Substantive Statute.**

CEQ is improperly attempting to transform NEPA from a procedural and informational statute into a substantive one. That is part of a broader Biden Administration goal of turning NEPA into a tool to accelerate an “energy transition” away from traditional sources of energy and towards renewable generation. Just as EPA did in the Clean Power Plan, CEQ is acting as if Congress at some point passed an “Energy Transition Act”—but of course it passed no such law. Even under last term’s Democratic trifecta, Congress failed to authorize the policy that CEQ now seeks to administratively enact. Yet CEQ here still seeks to impose the Biden Administration’s will despite no authorization from Congress.

CEQ’s intent to expand NEPA beyond its procedural nature is clear from the Proposed Rule’s plain text. The Proposed Rule removes language from current regulations “that describes NEPA as a purely procedural statute” because, CEQ contends, that neglects NEPA’s “broader goals.”<sup>23</sup> But those “broader goals” refer to Congress’s aspirational statements set forth elsewhere in the statute, *see* 42 U.S.C. §§ 4321, 4331,<sup>24</sup> and not to the actual requirements enacted in NEPA’s “business end”—the section that delineates the agency’s study of its major actions, *see* 42 U.S.C. § 4332(C).

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<sup>23</sup> 88 Fed. Reg. 49930.

<sup>24</sup> *See id.* at 49924.

Section 4332(C)'s requirements are narrow in scope and unmistakably procedural rather than substantive.<sup>25</sup> Indeed, courts interpret NEPA to require agencies to consider significant environmental impacts before they act and to offer those views to the public.<sup>26</sup> But as a procedural statute, courts have never interpreted NEPA to require agencies to prioritize environmental concerns over other priorities. The Proposed Rule does just that. It does so by imposing a double standard creating separate requirements for projects that depend on whether a proposed project fits into a favored or disfavored category.

Under that double standard only actions with “significant adverse effects” require an EIS.<sup>27</sup> So an action with purported beneficial effects and no significant adverse effects will not require an EIS. And projects like those creating “green” energy will be presumptively exempt. That is the clearest evidence that CEQ is seeking to turn NEPA into a substantive and transformative tool.

That standard first appeared in CEQ's January 2023 NEPA Greenhouse Gas (GHG) Guidance. The GHG guidance excused favored projects, like those building renewable energy production, from detailed GHG analysis. That exemption rests on a blanket, ex ante, and unsubstantiated assumption that renewable projects' emissions will be small or short-lived.<sup>28</sup> Yet disfavored projects like projects building traditional energy production will be required to meet stringent requirements. They now must not only undergo

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<sup>25</sup> This remains true even after the amendments to NEPA in this year's Fiscal Responsibility Act. See Pub. L. No. 118-5, 137 Stat. 10.

<sup>26</sup> See, e.g., *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351–53 (1989) (while “one important ingredient of an EIS is the discussion of steps that can be taken to mitigate adverse environmental consequences,” NEPA only requires a “reasonably complete discussion of possible mitigation measures,” and “it would be inconsistent with NEPA's reliance on procedural mechanisms—as opposed to substantive, result-based standards—to demand the presence of a fully developed plan that will mitigate environmental harm before an agency can act”). See also, e.g., *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 206 (D.C. Cir. 1991) (“NEPA not only does not require agencies to discuss any particular mitigation plans that they might put in place, it does not require agencies—or third parties—to effect any.”); *High Country Conservation Advocs. v. United States Forest Serv.*, 951 F.3d 1217, 1223 (10th Cir. 2020) (noting that NEPA “is strictly a procedural statute” that “does not mandate substantive results”) (internal quotations omitted).

<sup>27</sup> 88 Fed. Reg. 49924, 49936.

<sup>28</sup> See 88 Fed. Reg. 1204–05.

analysis of the project’s own GHG emissions, but also may need to account for upstream and downstream emissions related to the project (*e.g.*, for oil and gas infrastructure projects, upstream extraction, and downstream consumption/combustion).<sup>29</sup> So while there very well may be an environmental impact from building a utility solar farm, it may be exempted from some of NEPA’s regulations. But any project using a traditional energy source will find itself facing significantly more onerous requirements.

The Proposed Rule details another example of favored treatment beyond a subset of green energy projects.<sup>30</sup> In that example, CEQ describes a forest restoration project that may have a short-term adverse effect on a species by displacing it from the area while the project is carried out but have a long-term beneficial effect on the species by reducing the risk that wildfire will destroy the habitat altogether. The agency would consider both effects in assessing whether the action significantly impacts the species and might determine that the overall impact would not be significantly adverse and, therefore, not require an EIS. This example highlights the distinct categories of favored and unfavored projects.

Congress, in enacting NEPA, did not authorize CEQ to create this distinction between favored and unfavored projects. That distinction is not based on NEPA’s text, and by creating such a scheme flouts the Major Questions Doctrine. In *West Virginia v. EPA*, 142 S. Ct. 2587 (2022), the Supreme Court found that the Clean Air Act did not give EPA the authority to reshape the nation’s fuel mix. If Section 111 of the Clean Air Act, which is and has historically been a substantive, regulatory statute, did not give EPA license to reshape the nation’s electric generation mix, then NEPA certainly does not give CEQ that authority to reshape energy development through other means.

Another aspect of the “double standard” is evident in CEQ’s proposal to allow for “innovative” NEPA approaches.<sup>31</sup> Under that

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 49936.

<sup>31</sup> *Id.* at 49957 *et seq.*



provision, CEQ can grant a request for modification to authorize agencies to pursue innovative approaches to comply with NEPA to address extreme environmental challenges. But CEQ gives a very broad list of examples of such “extreme” challenges, which again imposes value judgments into what should be a procedural and informative process. Even worse is that the final item in the list covers potentially any environmental impact, including “sea level rise or increased wildfire risk, or bolstering the resilience of infrastructure to increased disaster risk from the effects of climate change; water scarcity; degraded water or air quality; species loss; disproportionate and adverse effects on communities with environmental justice concerns; imminent or reasonably foreseeable loss of historic, cultural, or Tribal resources; and impaired ecosystem health.”<sup>32</sup> Depending on how CEQ chooses to interpret that part of the Proposed Rule, it could end up defeating its own attempt through the double-standard to streamline the process for some favored projects. Then, all projects will suffer from these overly burdensome requirements.

Through this alternative compliance provision, CEQ appears to be reserving for itself the discretion whether to approve agency requests to undertake “innovative” approaches. And, further, to articulate no meaningful criteria for when and how to approve these requests, which suggests that this new “innovative” approach will function in a “double standard” manner to ease analytical requirements on favored projects or to increase requirements on disfavored ones.

### **b. CEQ Ignores Key Caselaw from the Supreme Court and D.C. Circuits in Adopting a Maximalist Approach.**

CEQ ignores key caselaw from the Supreme Court and D.C. Circuit whose teachings bear little resemblance to the maximalist approach to NEPA analysis taken in the proposal. In *Department*

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<sup>32</sup> *Id.*

of *Transportation v. Public Citizen*, 541 U.S. 752 (2004), the Supreme Court held that an agency did not need to consider certain information under NEPA where the agency had no discretion to alter its action based on that information. In other words, an agency’s NEPA analysis is properly limited by the scope of the agency’s authority.

In keeping with *Public Citizen*, the D.C. Circuit decided a line of related cases.<sup>33</sup> In those cases, the court accepted the Federal Energy Regulatory Commission’s (FERC) rationale that it did not consider downstream/combustion emissions in its NEPA analysis. Those cases rose on a request to authorize a liquified natural gas export terminal under Natural Gas Act Section 3 because FERC itself does not authorize export of the fuel (the Department of Energy does that), only the export facility itself.

This provides further evidence that the Proposed Rule is CEQ’s attempt to turn NEPA into a substantive statute. Its re-introduction of language allowing agencies to consider reasonable alternatives outside their jurisdiction vastly expands the potential impact NEPA may have on agency decisions.<sup>34</sup> But whether an agency has any authority under NEPA to consider an “alternative” to its contemplated action, where the “alternative” is outside the agency’s jurisdiction, is arguable (and stands in at best severe tension with *Public Citizen*). CEQ may be contemplating that an agency faced with, for example, a request for authorization of a new gas pipeline or a new fossil-fired power plant may choose to consider the “alternative” of a solar or wind generation project. That will transform NEPA into an “energy transition” tool, but it bears no resemblance to the text or purpose of NEPA itself. And just as the Supreme Court rejected such an attempt to force major policy changes through EPA without an act of Congress, so too does this attempt run afoul of prior court decisions limiting agency autonomy without Congressional authorization.

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<sup>33</sup> See *Sierra Club v. FERC*, 827 F.3d 36 (D.C. Cir. 2016); *Sierra Club v. FERC*, 827 F.3d 59 (D.C. Cir. 2016); *EarthReports, Inc. v. FERC*, 828 F.3d 949 (D.C. Cir. 2016).

<sup>34</sup> 88 Fed. Reg. 49949.

Moreover, the Proposed Rule seeks to remove language from the 2020 Rule emphasizing that agencies may have other statutory obligations or restrictions that conflict with NEPA compliance.<sup>35</sup> Removing that language conflicts with existing case law because it indicates that an agency may be obligated to comply with NEPA. After the salutary effort in the 2020 Rule to try to bring NEPA compliance within the bounds of authorized law, the Proposed Rule will so far broaden NEPA’s application that it is almost certain to run afoul of these precedents.

CEQ’s Proposed Rule ignores those holdings. Whether it is the Major Questions Doctrine or the D.C. Circuit, the Proposed Rule vastly expands NEPA’s reach without accounting for the recent precedents intended to curtail agency authority to act without Congress.

**c. CEQ is Introducing Open-Ended and Amorphous Concepts into NEPA that will Impose Real Costs, Create Slowdowns, and Increase Uncertainty.**

CEQ is introducing open-ended, amorphous concepts into requirements for NEPA analysis. These ambiguous concepts will slow down the permitting process and create legal uncertainty. Simultaneously, CEQ is removing references currently in the regulations to comments focused on economic and employment impacts.

CEQ’s rationale for those actions conflicts with its approach taken to other issues in the same proposal such as climate and environmental justice. But it tracks the proposal’s overarching—and unlawful—goal: to turn an informational, procedural, outcome-neutral statute into a transformative tool to shape our economy and society to the Administration’s chosen policy goals.

The Proposed Rule includes broad requirements for agencies to analyze climate and environmental justice issues, with vague or no guardrails on “when enough is enough,” *i.e.*, when agencies have

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<sup>35</sup> See 88 Fed. Reg. at 49933, 49934.

considered enough factors to comply with NEPA. For example, CEQ proposes adding language that would require agencies to consider “other requirements” and factors beyond “statutory requirements” in determining the degree of the effects of their actions.<sup>36</sup> The proposal, however, fails to specify what these requirements are and how to weigh them.

While the Proposed Rule seeks to impose consideration of environmental justice, there is no authority to consider disparate impacts or environmental justice within NEPA. While environmental justice has been a component in NEPA reviews since 1994,<sup>37</sup> environmental justice has not been specifically included in or defined by NEPA regulations since then. The Proposed Rule seeks to define “environmental justice” as “the just treatment and meaningful involvement of all people so that they are fully protected from disproportionate and adverse human health and environmental effects and hazards, and have equitable access to a healthy, sustainable, and resilient environment.”<sup>38</sup> The proposed definition matches the definition proposed by this Administration in Executive Order 14096, which directed all of government to consider environmental justice in its NEPA process.<sup>39</sup>

The Proposed Rule would also incorporate climate change and environmental justice into the definition of “effects.”<sup>40</sup> The issue with such a sweeping definition is that it is nearly impossible for an agency to show causation between any one project and adverse climate change or environmental justice outcomes—again injecting uncertainty into what is supposed to be a streamlined process.

In other contexts, environmental justice has led to inappropriate consideration of protected factors in decision-making. To the extent CEQ did consider race or other

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<sup>36</sup> See 88 Fed. Reg. at 43936.

<sup>37</sup> E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 Fed. Reg. 7629 (Feb. 16, 1994).

<sup>38</sup> 88 Fed. Reg. at 49961 (proposing to amend 40 C.F.R. § 1508.1(k) to include a definition of environmental justice).

<sup>39</sup> E.O. 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All*, 88 Fed. Reg. 25251 (April 21, 2023).

<sup>40</sup> 88 Fed. Reg. 49986.

constitutionally suspect categories—particularly as a “central consideration”—the Proposed Rule plainly violates the constitutional command of Equal Protection. *See, e.g., Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 143 S. Ct. 2141 (2023); *Ricci v. DeStefano*, 129 S. Ct. 2658, 2683 (Scalia, J., concurring).

The current approach of “[l]imit[ing] inquiry to statutory requirements” has the advantage of being a clear, administrable rule. Adding an open-ended “other requirements,” by contrast, will leave an agency unsure of when it has considered enough factors in its analysis. That uncertainty will lead to front-end delays and back-end litigation risk. How can a court determine whether an NGO plaintiff is correct that the agency didn’t consider enough of these “other requirements” in its initial planning? And even if a court adjudicated that issue, the guidance is vague enough that other courts in other jurisdictions could come to conflicting outcomes. Such a regulatory patchwork stands to create real harm, particularly given the lack of certainty for the Proposed Rule’s consistent application.

Similarly, references in the Proposed Rule to “meaningful” public engagement and public participation introduce a fuzzy, unpredictable, un-analyzable element into the NEPA process. The 2020 CEQ regulatory revision was largely motivated by a desire to streamline and simplify what had grown over the decades since NEPA’s enactment into a sprawling, byzantine, insiders’ game. Project reviews were taking too long, taking up too many pages, sprawling into subject areas beyond what Congress intended, and slowing down or deterring needed permits and other actions.

Many, if not most, supporters of the NEPA amendments in the recent FRA intended to similarly streamline the process, as evidence by those amendments’ adoption of key aspects of the 2020 rule. But CEQ here is adding or restoring (from the original 1978 regulations) elements that will cause *longer, broader-ranging* reviews and *less* legal certainty. The Proposed Rule is therefore in tension not only with the original statute, but also with Congress’s intent in amending NEPA earlier this year.

Moreover, the proposed rule is arbitrary and capricious. The Administrative Procedure Act requires CEQ “to engage in reasoned decisionmaking, and directs that agency actions be set aside if they are arbitrary or capricious.” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1905 (2020) (cleaned up). Courts will evaluate whether the Proposed Rule “was based on a consideration of the relevant factors and whether there has been a clear error of judgment.” *Id.* (cleaned up). So among other evidence, CEQ must show that it “examined the relevant data and articulated a satisfactory explanation for [its] decision, including a rational connection between the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (cleaned up). “Unsubstantiated or bare assumptions” are not enough. *Nat. Res. Def. Council v. EPA*, 31 F.4th 1203, 1207 (9th Cir. 2022) (cleaned up).

The Proposed Rule also rolls back provisions established by the 2020 rule increasing requirements on what public comments must contain to be considered by agencies. CEQ proposes to delete language describing the types of impacts that a comment should cover, including the reference to economic and employment impacts because it is inappropriate to “single out these considerations for special treatment and unduly burdensome to expect commenters to address economic and employment impacts.”<sup>41</sup> This is an odd explanation, because the proposal is at the same time requiring analysis (and implicitly “singling out” as worthy of comment) other issues that are not on the face of the NEPA statute.

Overall, the Proposed Rule increases uncertainty and imposes costs with little benefit. It exceeds CEQ’s authority and does so in a way that is harmful to broad and beneficial development.

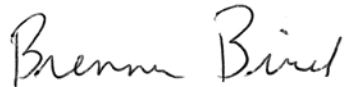
### III. Conclusion

For these reasons, the Council on Environmental Quality should withdraw the Proposed Rule. We look forward to your response.

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<sup>41</sup> 88 Fed. Reg. 49952.


Respectfully submitted,



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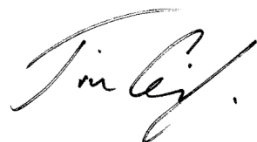
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