



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

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Megan Healy, Principal Deputy Director for NEPA
Council on Environmental Quality
730 Jackson Place NW
Washington D.C. 20503

Submitted electronically via Federal eRulemaking Portal at www.regulations.gov

Re: Council on Environmental Quality (Docket number CEQ-2025-0002) National Environmental Policy Act Implementing Regulations Removal (40 CFR Parts 1500 – 1508)

Dear Deputy Director Healy,

The State of Alaska (State) has reviewed the interim final rule removing the Council on Environmental Quality's (CEQ) National Environmental Policy Act (NEPA) implementing regulations published in the Federal Register on February 25, 2025 (Vol. 90, No. 36, 10610-10616). Please consider the following comments as federal agencies, such as the Bureau of Land Management, U.S. Army Corps of Engineers, and the U.S. Forest Service, work to develop their own NEPA implementing regulations.

This is a critical time in the federal permitting arena and efforts to streamline, modernize and increase efficiency are key to ensuring effective execution of recent Executive Orders (EOs) and implementing Secretarial Orders (SOs).

These include EO 14153 and SO 3422 Unleashing Alaska's Extraordinary Resource Potential, EO 14154 and SO 3418 Unleashing American Energy, EO 14156 Declaring a National Energy Emergency, SO 3417 Addressing the National Energy Emergency, and EO 14241 Immediate Measures to Increase American Mineral Production. These EOs commit to our nation to efficiently and effectively maximize the development and production of natural resources both within Alaska and throughout the Nation to address critical mineral and energy needs. This includes directives to expedite the permitting of natural resource projects to meet the Nation's needs. An inefficient NEPA process contributes to the lengthy and unpredictable permitting process that discourages the capital investments required for exploration and development. Commensurate delays contribute to higher costs and increased risk and can lead to projects becoming unviable and impacting economic and national security. Informed decisions about the environmental impacts of projects should coincide with efficient permitting processes that allow important infrastructure projects to move forward.

Generally, the state supports the CEQ guidance to agencies¹ that directs agencies to:

- Prioritize and expeditiously review project sponsor-prepared Environmental Assessments and Environmental Impact Statements (EISs)

¹ Memorandum for Heads of Federal Departments and Agencies, Implementation of the National Environmental Policy Act, February 19, 2025, Katherine R. Scarlett

- Adhere to NEPA deadlines established by Congress
- Consider only a reasonable range of alternatives to the proposed action that are technically and economically feasible
- Analyze “reasonably foreseeable” effects, as NEPA does not employ the term “cumulative effects”
- Acknowledge that proposed federal actions with “no or minimal funding” may not qualify as a “major federal action”; and
- Recognizing NEPA documents should not include an environmental justice analysis

Given the increasingly litigious nature of federal permitting, it is of utmost importance to ensure that promulgated implementing regulations are clear, concise, and are based in providing legally necessary information to decision-makers. Agencies must avoid creating ambiguity or additional processes that in turn lead to costly litigation and delays. Additionally, agencies should continue to follow existing practices for ongoing reviews – with any necessary adjustments for consistency with NEPA statutes, including Fiscal Responsibility Act of 2023 (FRA) revisions – to allow their timely, defensible completion, while concurrently and expeditiously developing implementing regulations as necessary.

Alaska supports robust participation by states in the NEPA process and the portions of the CEQ guidance to federal agencies that they should establish procedures for consulting with states, including the ability for states to gain cooperating agency and joint-lead status.² State agencies are a unique category of participants in NEPA proceedings because of our considerable expertise, authorities, and institutional structure – and most of all our sovereignty and inherent public interest obligations to our citizens. Early and thorough consultation with states is essential to constructive state participation and the overall success of the NEPA process.

State of Alaska Participation under NEPA

The effective and efficient administration of NEPA is critically important to Alaska in particular. The expansive nature of federal land holdings in Alaska, coupled with the scope of federal regulatory authorities, means that various levels of NEPA analyses are required for a wide range of activities in Alaska – from large-scale natural resource development projects that drive our economy and fiscal stability to local community infrastructure projects that provide electricity, drinking water, sewage, or broadband services to our rural residents. If NEPA is administered in an ambiguous, open-ended, and/or inefficient manner, all of these public needs are negatively affected. We believe the impacts to the public of projects being delayed, litigated, and redundantly reviewed must be carefully considered as individual federal agencies develop and adopt their own NEPA implementing regulations.

The State also directly serves various important roles in coordination with federal agencies under NEPA. Effective November 10, 2017, the Alaska Department of Transportation and Public Facilities (DOT&PF) entered the NEPA Assignment Program through a Memorandum of Understanding (MOU) with the Federal Highway Administration (FHWA), pursuant to 23 U.S.C. 327, thereby assuming decision-making responsibilities from FHWA for environmental review,

² Id.

consultation, or other actions required under NEPA and other federal environmental laws with respect to federal-aid highway projects in Alaska. The Alaska Department of Natural Resources (DNR), with regulatory authorities over State land and water, the Alaska Department of Fish and Game (ADF&G), with regulatory authorities over fish and wildlife resources on lands throughout the state and as the administrator of Pittmann- Robertson Act and Dingell-Johnson Act funds, and the Alaska Department of Environmental Conservation (DEC), with regulatory authorities over air and water quality, all regularly engage in the NEPA process as Cooperating Agencies in coordination with the DNR, Office of Project Management and Permitting (OPMP). The State's formal and structural commitment of resources to the NEPA process needs to be acknowledged and facilitated by federal agencies in their implementing regulations.

Alaska is Unique

Alaskans are proud of the rich biological and geologic resources in their state and understand the importance of responsible development to maintaining Alaska's pristine environment while also creating various economic opportunities for its citizens and the Nation. The State is a manager and regulator of responsible, dependable, and sustainable natural resources development. State laws and regulations protect the environment and emphasize planning, consultation, preparedness, and mitigation; and ensure that, from start to finish, environmental impacts are scrutinized and limited to the greatest extent practicable. Specifically, the Department of Natural Resources has management authority for state lands (*i.e.*, water, tidelands, and shorelands of navigable waters within the State), which include timber, mineral and energy resources, as well as world-class recreational opportunities. The Alaska Department of Fish and Game (ADF&G) successfully manages diverse biological resources, which include robust populations of fish, shellfish, plants, birds and wildlife, while providing ample opportunities for their utilization, development, and conservation. Resources in the state of Alaska are managed in the best interest of the economy and the well-being of the people of the State. Alaska's approach to resource management is highly effective, as we have maintained vast, interconnected ecosystems with healthy populations of fish and wildlife species that provide food, recreation, and economic benefits.

However, approximately 61 percent, roughly 223 million acres, of Alaska's lands are federal lands.³ *How these lands are utilized/managed, and having a voice in this utilization/management, is critically important to our State.*

Alaska National Interest Lands Conservation Act (ANILCA)

Alaska is different from the contiguous states both spatially and in the legal/regulatory environment. Spatially, Alaska is both the largest state and only arctic state. Alaska also has extremely limited transportation and public infrastructure systems. Most of its area is uninhabited, or extremely rural and sparsely populated to a degree seen in few other portions of the Lower 48. Congress recognized this distinct "starting point," even compared to fellow western states, in a unique framework of federal land and resource management in the Alaska National Interest Lands Conservation Act (ANILCA), passed in 1980. In ANILCA, Congress sought to preserve unrivaled natural values, wildlife populations, and wildlife habitat across Alaska's vast landscapes by setting aside roughly 40 % of Alaska as National Parks and Preserves, Forests, Monuments, Conservation

³ Federal Land Ownership: Overview and Data, Congressional Research Service, updated February 21, 2020. Accessed at [Federal Land Ownership: Overview and Data](#), March 6, 2025.

and Recreation Areas, Wilderness areas, Wild and Scenic Rivers, and Wildlife Refuges; and designating all but the Conservation and Recreation Areas as “conservation system units” (CSUs). However, Congress also struck an explicit and binding balance in ANILCA – that the lands not explicitly conserved would be managed in a way that recognized the need of Alaskans to use the land, and that federal lands not included in these CSUs were “necessary and appropriate for more intensive use and disposition.”⁴ This intensive use is directed for the non-CSU *federal* public lands – not to mention the significant statehood land entitlement provided to the State for the fundamental purpose of developing an economy, and the private lands provided to Alaska Native Corporations for the benefit of their Alaska Native shareholders. Congress recognized a “one size fits all” federal public lands regulatory framework would not work in Alaska, which cannot be overlooked in the course of any NEPA-related rulemaking. The State maintains that in many respects, this balance has not, and is not, being fully honored.

Congress also sought to provide the opportunity for rural residents to remain in their communities, and to balance the social and economic needs across all the residents of the State of Alaska. Part of this balance was the inclusion of Title XI, a section designed in part to recognize the infrastructure needs of the young state and challenges that the CSUs might pose to transportation and utility construction. Title XI allows for the construction of transportation and utility projects within CSUs, including within designated wilderness areas and wild and scenic river corridors.

Congress intended for Title XI procedures to be the only method of processing applications for Transportation and Utility Systems (TUS) in Alaska CSUs, national recreation areas, or national conservation areas. ANILCA Section 1101 states that Alaska’s transportation and utility network were “largely undeveloped” and that future development needs would “best be identified and provided for through an orderly, continuous decision-making process involving the State and Federal Governments and the public.”⁵ Congress also acknowledged that “the existing authorities to approve or disapprove applications for transportation and utility systems through public lands in Alaska are diverse, dissimilar, and, in some cases, absent,” and that to both minimize any adverse impacts of TUS projects and also “insure the effectiveness of the decision making process,” it was necessary to develop a “*single comprehensive statutory authority for the approval or disapproval of applications for such systems*” [emphasis added].⁶ In Title XI, Congress laid out the procedures for which NEPA would be carried out, limiting the completion of any draft environmental impact statement to nine months.⁷ The federal agencies must address projects conducted in Alaska under Title XI as they develop their implementing regulations. Federal agencies, when developing their own NEPA implementing regulations, must reference that, in Alaska, transportation and utility projects, as defined in ANILCA 1102(4) will follow the procedures outlined in ANILCA Section 1104, including the abbreviated NEPA timeline in Section 1501.10. Any NEPA regulations must conform with this operative statute for Alaska.

ANILCA and NEPA Consultation

Congress recognized the unique conservation value of the lands in Alaska and enacted ANILCA (Public Law 96-487, plus various amendments since 1980), that challenges federal land managers

⁴ ANILCA Section 101.

⁵ ANILCA Section 1101(a).

⁶ ANILCA Section 1101 (b)-(c).

⁷ ANILCA Section 1104(e).

to balance the national interest in Alaska's scenic and wildlife resources with recognition of the needs of Alaska's fledgling economy and infrastructure, and its distinctive way of life. Over 100 specific provisions of ANILCA require some form of federal agency consultation with the State of Alaska. The primary way we review federal planning documents and projects on federal lands is through reviews of federal agency NEPA documents.

Any NEPA changes must focus on achieving Congress' stated policies and goals for the Act. This includes that the federal government, in cooperation with State and local governments, "use all practical means and measures... to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."⁸ This means conservation cannot take precedence over the economic and social needs of Alaskans. Recent NEPA documents finalized in Alaska focus more on preventing or eliminating all damage to the environment and biosphere than on meeting Congressional intent that NEPA ensure balanced conservation where development and nature co-exist. The Congressionally directed balance must be restored.

The potential elimination of some public comment periods, as discussed in the preamble to the proposed rule withdrawal, Section C. "Notice-and-Comment Rulemaking Is Not Required" and in Section IV of the February 19, 2025 Guidance, may inhibit the ability of States to comment on federal permitting and planning documents. In many instances, this eliminates the opportunity for States to have a say in how agencies manage federal lands within their boundaries. This is especially critical for Alaska, as it is during these comment periods that we advocate for the unique land management prescriptions ANILCA placed on federal land managers. Robust participation by States in the NEPA process and federal agency consultation with States, including the ability for States to gain cooperating agency and joint-lead status, should be mandatory.

CEQ guidance to federal agencies on February 19, 2025⁹, which replaces the regulations at 40 CFR 1500 et seq., recommends that agencies provide between 30 and 60 days for public comment on proposed NEPA regulations, "to the extent that public comment is required."¹⁰ In its interim final rule, CEQ argues that its action falls within the Administrative Procedure Act (APA) exception for "interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. 553(b)(A). This potentially conflicts with the direction found in Executive Order 14154 "Unleashing American Energy" Sec. 2 (h) *to guarantee that all executive departments and agencies (agencies) provide opportunity for public comment and rigorous, peer-reviewed scientific analysis.*

Conservation is Not Preservation

In promulgating NEPA and later ANILCA, Congress recognized and directed federal agencies to maintain a balance between conservation and economic needs. In NEPA Section 101(a), Congress states its intent for "man and nature [to] exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." In ANILCA 101(d), Congress clearly stated that it believed it had found "a proper balance between the

⁸ NEPA Section 101(a).

⁹ Memorandum for Heads of Federal Departments and Agencies, Implementation of the National Environmental Policy Act, February 19, 2025, Katherine R. Scarlett.

¹⁰ Id. at page 7.

reservation of national conservation system units and those public lands necessary and appropriate for more intensive uses and disposition” as referenced above. The final regulations must achieve Congress’ stated policies and goals for NEPA including, in cooperation with State and local governments, “us[ing] all practical means and measures ... to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”¹¹ Preventing or eliminating all damage to the environment and biosphere equates to preservation – to the detriment of the public interest in development - rather than balanced conservation. The only direction regarding preservation is to “preserve important historic, cultural, and natural aspects of our natural heritage...”¹² and that “... each person has a responsibility to contribute to the preservation and enhancement of the environment”¹³. The State requests the federal agencies ensure any implementing regulations do not infer preservation over conservation, such as identifying the most “environmentally preferable” alternative.

The State frequently observes federal agency staff applying national policies in Alaska that do not clearly address the interplay between ANILCA and the federal agency’s national level policies. Federal agencies should aggressively consult with states, as directed in E.O. 14153, and should include Alaska specific provisions that address the uniqueness described here. Federal agencies must hold meaningful consultation with states during the development of any agency NEPA implementing regulations. The State’s goal in requesting consultation is to ensure federal agencies are aware of any potential impact to state management authorities and ensure that states (as unique as Alaska) can operate under the new regulations or guidance and avoid future conflicts.

Existing Agency Implementing Regulations

While many federal agencies already have their own NEPA implementing regulations, they should be reviewed in order to assess appropriateness and compatibility in light of the previously cited EOs meant to streamline and enable development of the Nation’s (and Alaska’s) mineral and energy resources, many of which are critical to ensuring a domestic supply for national security.

NEPA Must Remain a Purely Procedural Statute

As federal agencies work to create their own implementing regulations, it is imperative that they remain consistent with the intent of Congress that NEPA is a purely procedural statute. Case law has uniformly reinforced this decision for nearly half a century. NEPA should not be a primary regulatory mechanism for advancing goals of addressing climate change and environmental justice concerns.

Determine the Appropriate Level of NEPA Review

The State recommends that federal agencies focus on determining the appropriate level of NEPA review. Alaska has experienced the repeated use of full Environmental Impact Statement (EIS) selection and development for simple proposed projects. Given lower levels of analysis are available under law, federal agencies should be empowered to select and utilize Environmental Assessments and Categorical Exclusions, where appropriate. This could be supported by regulatory language. There has been a growing practice of NEPA implementation in Alaska where

¹¹ NEPA Section 101(a).

¹² NEPA Section 101(b)(4).

¹³ NEPA Section (c).

‘more environmental review is always better’ when, realistically, NEPA compliance could be fully achieved by utilizing the lower levels of review. Determining the appropriate level of NEPA analysis is important for proposed projects in order to offer the right balance in environmental assessment, without needlessly extending the review period and driving higher costs to develop.

Categorical Exclusions

In general, the State supports the efficient utilization of established categorical exclusions, including the shared application of other agencies’ established categorical exclusions when appropriate. The State requests to be involved in the development of categorical exclusions that are being proposed/developed and suggests consideration of the establishment of categorical exclusions on a state or regional level when appropriate. State or regional categorical exclusion may be a beneficial way for federal agencies to address the unique challenges and status of land management in Alaska. For example, the State recommends federal agencies establish a categorical exclusion for projects funded through the Pittman-Robertson Wildlife Restoration Act or Dingell- Johnson Act funds, especially when constructed on non-federal lands.

Environmental Assessments

Federal agencies should consider including qualifiers to direct when a supplemental environmental assessment is warranted to avoid vagueness and leaving too much discretion to individual actors and litigious parties to lobby for unnecessary and burdensome review. These burdens affect the project applicant, federal agency, and the participating public – as well as the broader public interest in projects proceeding, as recognized in NEPA.

Findings of No Significant Impact

The State recommends agencies consider language regarding “a mitigated finding of no significant impact,” acknowledging that while some project impacts will occur, the significance can be lessened through the inclusion of appropriate mitigation.

Lead Agencies

The State would encourage federal agencies to partner with interested state agencies and allow them to serve as joint lead agencies, particularly when the proposed activities involve development on state land and numerous state authorizations are required. In considering which entities may serve as a joint lead agency, the degree to which the entity has regulatory authority, land management responsibilities, and land ownership should be weighed as considerations.

Deadlines and Schedules for the NEPA Process

The State also recommends federal agencies include parameters to follow when establishing or extending review deadlines. Federal agencies should make necessary updates or extensions *in consultation* with cooperating agencies and the applicant or project sponsor. In Alaska, the majority of leading federal agencies take the approach of developing the schedule in isolation and then impose it on cooperating agencies and project sponsors, despite concerns raised about the difficulty cooperators may be experiencing, or the potential impact of successive extensions on the project sponsor, or the reality of seasons and environmental cycles in Alaska.

Cover

Federal agencies should continue to publish the estimated total cost to prepare both the draft and final environmental impact statement on the document cover. The cost of the environmental review should be transparent to the public. These direct costs are significant, and the indirect costs are often an order of magnitude greater. This is information the public should be apprised of.

Conclusion

A predictable, fair, and efficient NEPA process is critical for responsible development in Alaska and across the nation, especially considering current efforts to promote domestically sourced energy and minerals, including critical minerals. All of these publicly necessary pursuits generate jobs and sustain our national economy and are especially vital to Alaska's success as a state that is founded on responsible resource development and management. Continued changes to NEPA over the past several years have contributed to regulatory uncertainty and hesitancy among project proponents, which needs to be resolved with efficient, consistent processes. Federal agencies also need to refocus on efficiently conducting NEPA reviews that are currently or soon to be underway, to avoid delay while they consider CEQ's Feb 19, 2025 guidance and develop their agency implementing regulations. Federal agencies must critically evaluate their processes while developing any implementing regulations to ensure a baseline level of consistency, predictability, and robustness that is in line with the original intent and spirit of NEPA and do not unnecessarily pander to the limited, but often vocal, opposition to sound and reasoned development within our nation.

The State commends the years long efforts by CEQ to modernize, simplify, and accelerate the NEPA process. We encourage the CEQ to continue to guide federal agencies to conduct effective engagement with state, local, and tribal entities, and the public. Thank you for the opportunity to provide input on this final interim rule.

Sincerely,



Kate Harper

Associate Director, Office of Project Management and Permitting
Alaska Department of Natural Resources

CC: State agency review team