



CITY OF HOUSTON

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Mayor

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Via Federal eRulemaking Portal: <https://www.regulations.gov>

Mary B. Neumayr, Chair, Council on Environmental Quality
730 Jackson Place, N.W.
Washington, D.C. 20503

Re: Docket No. CEQ-2019-0003 Notice of Proposed Rulemaking Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act

Dear Chair Neumayr:

The City of Houston appreciates the opportunity to submit comments on the Council on Environmental Quality's (CEQ) Notice of Proposed Rulemaking to update the regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA). Houston supports changes to the NEPA regulation that will enable us to advance infrastructure projects quicker and at lower cost without negatively affecting the environment.

Background

The City of Houston is the fourth largest city in the United States. With our fast growing population, Houston is poised to be the third most populous city in the second half of the decade. In addition to the City's need to invest in its infrastructure to address its expanding population, it has been significantly impacted by hurricanes and storm events, including, most recently Hurricane Harvey. The City's planned capital budget for disaster recovery alone is over \$1.1 billion. The City is committed to delivering projects quickly and cost effectively and is particularly focused on disaster mitigation so that its infrastructure can survive future flood events.

Comments

1. Disaster Recovery Projects Should Be Expedited Through the Environmental Review Process

The City of Houston supports CEQ's clarification regarding emergencies that agencies may consider alternative arrangements for complying with NEPA that are necessary in the event of an emergency, such as a disaster, and that CEQ can appropriately provide for exceptions to requirements of CEQ's regulations to address extraordinary circumstances not addressed by

agency implementing procedures. The City also supports CEQ clarifying that where emergency circumstances make it necessary to take an action with significant environmental impact without observing NEPA regulations the federal agency taking the action should consult with CEQ about alternative arrangements for complying with the requirements of NEPA.

Because multiple agencies administer disaster funds, it can be challenging for project sponsors to efficiently navigate the environmental review process. The City urges CEQ to clarify that agencies, such as the Federal Emergency Management Agency (FEMA), the Department of Housing and Urban Development (HUD) and the Army Corps of Engineers should coordinate and develop plans for expedited environmental reviews of disaster recovery projects. This is particularly true where projects are being constructed in the same footprint of previous projects and either should be able to proceed with a categorical exclusion or with an environmental assessment that advances in a coordinated and expedited fashion.

2. Projects with Minimal Federal Funding or Minimal Agency Involvement Should Not be Considered a Major Federal Action Subject to NEPA.

The City also supports CEQ's proposal to change the definition of major federal action so that non-federal projects that receive only minimal federal funding would not require a NEPA analysis. CEQ correctly notes that narrowing what is a major federal action will reduce costs and delays for projects. The preamble to the proposed rule references projects that include a very small percentage of federal funding to help design an infrastructure project. CEQ requests comments on whether there should be a threshold (percentage or dollar figure) for minimum federal funding for a project to be considered a major federal action. CEQ also requests comments on whether federal financial instruments, including loans and loan guarantees, should be considered non-major federal actions.

Houston recommends that only projects that receive more than 20 percent of their funding from federal funds should be considered a major federal action. Imposing a time consuming environmental review adds costs and delay, which is not justified when a project has a minimal amount of federal funds. Delaying projects that will reduce congestion, minimize flooding or have other public benefits can have a negative impact on the environment. For that reason, NEPA should apply only to projects that have a more significant federal funding component. Likewise, federal loan and loan guarantee program proceeds should not trigger NEPA. Project sponsors must repay these funds with interest and, therefore, if the only federal funds in a project are proceeds of a loan or loan guarantee, the project should not be considered a major federal action.

3. Applicability of Categorical Exclusions

In response to CEQ's request for comment on the application of categorical exclusions, the City recommends that CEQ give lead agencies broad flexibility in applying categorical exclusions. We support the proposal that agencies be able to use other agencies' categorical exclusions and have discretion to modify a proposed action so that it fits within a categorical exclusion when there are extraordinary circumstances that otherwise would make an environmental assessment or environmental impact statement more appropriate. Undertaking environmental assessments

and environmental impact statements take considerable time and delay and often can be designed in a way that a categorical exclusion is appropriate.

4. Consideration of Reasonable Alternatives

The City supports CEQ's proposal to add a new definition of "reasonable alternatives" and clarify that lead agencies are not required to provide detailed consideration of alternatives that are infeasible, ineffective, or inconsistent with the purpose and need for the agency's action. Local project sponsors spend significant resources planning projects and it is costly to have to reevaluate alternatives that already have been rejected as part of the environmental review process. The City also supports the rule clarifying that a reasonable alternative must also consider the goals of the applicant based on the agency's statutory authorization to act when the agency's action involves a non-federal entity and, where the agency action is in response to an application for a permit or other authorization. When the City is seeking a permit from the Army Corps of Engineers for a highway project, but not also seeking federal funds, for example, the scope of review should be limited to the Army Corps of Engineers' statutory authorization. Such an approach will expedite projects without impacting the environment.

We appreciate your consideration of our comments.

Sincerely,



Bill Kelly
Director of Government Relations.