



Hereford Natural Resource Conservation District

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The Council on Environmental Quality,
ATTN: Horst Greczmiel,
Associate Director
National Environmental Policy Act Oversight,
722 Jackson Place NW,
Washington, DC 20503

January 26, 2012

Dear Mr. Greczmiel,

Reference the NEPA Draft Guidance "Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act". [FR Doc. 2011-31983 Filed 12-12-11; 8:45 am] **Federal Register** /Vol. 76, No. 239 /Tuesday, December 13, 2011 /Notices.

The language within the proposed Draft Guidance document attempts to contradict the language of the National Environmental Policy Act by stating that mandatory clauses can now be treated as optional. In creating a document intended to provide guidance for the federal agencies in implementing and carrying out the process that Congress intended through the NEPA, it is imperative that this document provide proper guidance which is informative and consistent with the mandatory nature of the Act rather than misleading the agency that certain actions inconsistent with the clear language within the Act are elective. In the document it is stated: *This guidance sets forth straightforward ways by which the CEQ Regulations, properly understood and applied, support these strategies.* The language proposed within the document is not straight forward and rather ambiguous and such misdirection to the agencies further perpetuates needless litigation, creates confusion, leads to inefficiencies in government, and duplication of efforts.

The language within the CEQ guidance document should reflect the mandatory language of the CEQ regulations developed by authority of the National Environmental Policy Act (NEPA) (Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1,



Hereford Natural Resource Conservation District

1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982). It is stated in **Sec. 104 [42 USC § 4334]**. Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply

with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

When the word “shall” is used in the Act or regulations, the guidance document must not contract that clear meaning. The guidance document must not replace any mandatory legal provision with a permissive word such as “should” or “may”.

The contradictory language that has been included in the **draft guidance document** is as such:

Coordinated and concurrent environmental reviews are appropriate whenever other analyses, surveys, and studies will consider the same issues and information as a NEPA analysis. Such coordination should be considered when preparing an EA as well as when preparing an EIS.

The goal should be to conduct concurrent rather than sequential processes whenever appropriate. In situations where one aspect of a project is within the particular expertise or jurisdiction of another agency an agency should consider whether adoption or incorporation by reference of materials prepared by the other agency would be more efficient.

The CEQ Regulations also require that a Federal agency preparing an EIS better integrate the EIS into non-Federal planning processes by discussing and explaining any inconsistency of a proposed Federal action with any approved State or local plan and laws. When preparing an EA or EIS, if an inconsistency with any approved Tribal, State, or local plan or laws exists, the Federal agency should describe the extent to which it will reconcile its proposed action with the non-Federal plan or law.

Versus

NEPA: 42 USC § 4321 Sec. 102 [42 USC § 4332]

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on –



Hereford Natural Resource Conservation District

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

NEPA should not become an after-the-fact process that justifies decisions that have entirely, or in large part, already been made.

versus

40 C.F.R. § 1502.2 Implementation, Title 40 - Protection of Environment

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (§1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

Conclusion: This guidance describes methods provided in the CEQ regulations that agencies preparing an EA or an EIS may employ to prepare concise and timely NEPA reviews. Using methods such as integrating planning and environmental reviews and permitting, coordinating multi-agency or multi-governmental reviews and approvals, and setting schedules for completing the environmental review will assist agencies in preparing efficient and timely EAs and EISs consistent with legal precedent and agency NEPA experience and practice.

versus

CEQ: PART 1500--Purpose, Policy, and Mandate, Sec. 1500.4 Reducing paperwork

Agencies shall reduce excessive paperwork by:

(k) Integrating NEPA requirements with other environmental review and consultation requirements (Sec. 1502.25).



Hereford Natural Resource Conservation District

(n) Eliminating duplication with State and local procedures, by providing for joint preparation (Sec. 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (Sec. 1506.3).

Hereford NRCD is one of 32 Natural Resource Conservation Districts in Arizona. Natural Resource Conservation Districts (NRCDs) are a local division of state government organized under State ARS §37 Chapter 6.

Conservation Districts create important unique partnerships between federal, state and local agencies to address natural resource concerns. District activities include watershed management, enhancement and restoration of riparian areas and integrated land use planning to improve water and air quality. Districts promote and provide for voluntary commitment to environmental laws by encouraging "best management practices".

As such we are stakeholders with legal standing. We will not accept the substitution of permissive language where NEPA regulations clearly present mandatory requirements. We strongly oppose this attempt to weaken NEPA.

Please add my name and address to the list of interested stakeholders in the outcome of this and other NEPA related matters.

Jack Ladd - Chairman
Hereford Natural Resource Conservation District