



COLORADO COUNCIL OF PROFESSIONAL ARCHÆOLOGISTS

P.O. Box 40727
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February 3, 2006

NEPA Task Force
Committee on Resources
1324 Longworth House Office Building
Washington, D.C.

Re: Comment on the Initial Findings and Draft Recommendations of the Task Force on Improving and Updating the National Environmental Policy Act.

Dear Resource Committee and Task Force Members,

The Colorado Council of Professional Archaeologists (CCPA) is an organization dedicated to promoting professionalism in archaeology, protecting the historic and prehistoric resources in the State of Colorado, and disseminating the results of archaeological research in Colorado to the professional community and the public at large. Many of our members work on federal lands, live in communities bordering or surrounded by federal lands, and many have been involved in NEPA projects.

It is the view of our membership that NEPA has significantly improved the quality of life in Colorado, particularly in the rural areas of the state. Prior to NEPA, private interests with the support of the federal government conducted projects with little regard for the effect the projects had on local communities and the state. These projects often resulted in significant damage to the economic, social, and natural environment. NEPA has provided the average citizen with a vehicle to participate in decisions that often have a significant affect on his or her community.

That said CCPA recognizes that all statutes, policies, and programs need to undergo periodic review and adjustments over time, and NEPA is no different. We recognize that the NEPA process is often time consuming, expensive, and fraught with problems. Unfortunately, the draft recommendations offered by the task force appear to be designed to limit citizen participation and limit the scientific analysis of the effects of federal actions. We are very doubtful that these proposed changes will be beneficial for the taxpayers of the United States. Taken as a whole, it is the opinion of CCPA that the draft recommendations will not improve the NEPA process and, in fact, render NEPA impotent. Comments on specific recommendations are presented below.

Group 1 – Addressing Delays in the Process

Recommendation 1.1: Amend NEPA to Define a “Major Federal Action.”

If not defined properly, the determination of what is and is not a “major federal action” will be used to circumvent NEPA. The definition should be broad enough to include most of the actions now covered under NEPA, but adjusted to exclude projects that will have minimal impact. The definition should also include language that prevents actions from being sub-divided into smaller units that can avoid NEPA analysis.

Recommendation 1.2: Amend NEPA to add mandatory timelines for the completion of NEPA documents

The timelines in the draft recommendations appear to be completely arbitrary. Certainly, some NEPA efforts drag on for far too long. In our experience the most delays occur because the federal agency is understaffed, shoddy analysis leading to protests is occurring, or stakeholders have been excluded. The staffing levels of federal land managing agencies in the western United States have been systematically reduced since the 1980s. Some improvement in staffing levels is now apparent, but staffing increases in the federal agencies would go a long way in reducing the time NEPA analysis consumes. Rather than imposing arbitrary timelines, CCPA recommends that the stakeholders negotiate time frames during the scoping process for actions.

Recommendation 1.3: Amend NEPA to create unambiguous criteria for the use of categorical Exclusions, Environmental Assessments, and Environmental Impact Statements

CCPA agrees that unambiguous criteria are needed to define the CE, EA, and EIS. We take issue with amending NEPA to state that “temporary activities or other activities where environmental impacts are clearly minimal” are to be evaluated under the CE. Who makes this determination? What is clearly minimal environmental impact to one group may not be clear to another. This sounds like an attempt to broadly expand categorical exclusions. CCPA recommends setting criteria and definitions using the federal rule-making process where all stakeholders and tax paying citizens can comment.

Recommendation 1.4: Amend NEPA to address supplemental NEPA documents

Supplemental documentation is often needed to clarify environmental impacts. The decision to use or not use supplemental documentation should be based exclusively on need. If the information is needed for the environmental analysis, it should not be excluded.

Group 2 – Enhancing Public Participation

Recommendation 2.1: Direct CEQ to prepare regulations to giving weight to localized comments

No taxpaying citizen or the groups representing citizens should be excluded from the NEPA process or one group given more weight over another. Federal actions taking place on public lands with public dollars is in the interest of all taxpayers. This is nothing more than an attempt to exclude portions of the population.

Recommendation 2.2: Amend NEPA to Codify the EIS page limits set forth in 40 CFR 1502.7

This page limit (150 – 300) is completely arbitrary and another attempt to limit analysis. The analysis should be no longer or shorter than needed to cover the subject. Artificially limiting the length of the length of the analysis document is not a way to improve the analysis.

Group 3 – Better Involvement of State, Local, and Tribal Stakeholders

Recommendation 3.2: Direct CEQ to prepare regulations that allow existing state environmental review process to satisfy NEPA requirements

This should only occur where state regulations and statutes are more stringent than NEPA. Environmental laws in most western states with federal lands are weak and ineffective. Western states, in particular Colorado, will not conduct proper analysis. This is also an improper abdication of federal responsibilities to the states, which, if it is to occur, will serve to disenfranchise federal taxpayers and improperly limit input into the NEPA process. It would also become a federal mandate, possibly an unfunded mandate.

Group 4 – Addressing Litigation Issues

Recommendation 4.1: Amend NEPA to create a citizen suit provision

This entire provision appears to be crafted to limit citizen suits and further disenfranchise taxpayers. Judicial review is critical to maintain separation of powers and protect citizens. CCPA finds that this recommendation is completely unacceptable and quite probably unconstitutional.

Recommendation 4.2: Amend NEPA to add a requirement to “pre-clear” projects

The meaning of this recommendation is really fuzzy. CEQ by its very nature is a political organization. We suspect “pre-clear” simply a term to allow the CEQ to get around NEPA requirements.

Group 7 – Additional Authority for the Council on Environmental Quality

Recommendation 7.1: Amend NEPA to create a “NEPA Ombudsman” within the CEQ

As this recommendation reads, this “ombudsman” would have the authority to override agency decisions. This appears to simply be a vehicle for stakeholders to end run the agencies if they don’t like the decision resulting from the NEPA analysis. Since the CEQ is a political body, we assume this “ombudsman” would be a political appointment. As other recommendations in this draft, this is nothing more than an end run around NEPA.

While the idea of “ombudsman” is good to mediate disputes, authority should rest with the lead federal agency.

Group 8 – Clarify the meaning of Cumulative Impacts

Recommendation 8.2: Direct CEQ to promulgate regulations to make clear which types of future actions are appropriate for consideration under the cumulative impact analysis

If actions are “reasonably foreseeable”, then what is the problem. Overall, our federal government does a very poor job at forecasting the results of our policies. If a future action or result is reasonably foreseeable, it should be considered in the analysis. There is no reason to put blinders on NEPA.

Thank you very much for consideration of our comments.

A handwritten signature in black ink, appearing to read "Ted Hofer". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Ted Hofer
President
Colorado Council of Professional Archaeologists