



MOUNT SHASTA BIOREGIONAL ECOLOGY CENTER

SAVE MOUNT SHASTA • SAVE MEDICINE LAKE HIGHLANDS • HONOR OUR MOUNTAIN ENVIRONMENT

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February 2, 2018

Mr. Tony Tooke, Chief
United States Forest Service
Department of Agriculture
1400 Independence Ave SW, Washington, DC. 20250

Submitted via email to: nepa-procedures-revision@fs.fed.us

Submitted via public participation portal to: <https://cara.ecosystem-management.org/Public-CommentInput?project=ORMS-1797>

RE: Comments in response to the Advanced Notice of Proposed Rulemaking, Request for Comment, National Environmental Policy Act Compliance (83 Fed. Reg. 302, Jan. 3, 2018)

The Mount Shasta Bioregional Ecology Center appreciates this opportunity to provide comments on the Forest Service's Advanced Notice of Proposed Rulemaking (ANPR) regarding National Environmental Policy Act (NEPA) compliance.

The Mount Shasta Bioregional Ecology Center (Ecology Center) is a nonprofit organization dedicated to protecting and restoring the outstanding natural environment and cultural values of Mount Shasta and its surrounding bioregion. The Ecology Center's experience with the Forest Service's implementation of NEPA has been continuous from 1988 to the present in the context of a wide range of issues and collaborations.

We were inspired by and agree with the comments on the ANPR by the Western Environmental Law Center, *et al*, and incorporate these comments by reference.

The intent and spirit of NEPA must not be diminished through weaker procedures

Any procedure implementing a law must be true to the intent and spirit of that law. In the course of almost five decades of NEPA review, agencies may have fallen into using the law in a routine manner, and it is good to periodically call to mind the original intent of NEPA, why it was (and is) needed. A statement that captures this is contained in the Senate Report of 1969 on NEPA at the time the law was being created:¹

Traditional policies were primarily designed to enhance the production of goods and to increase the gross national product.... But, as a nation, we have paid a price for our material

¹S. Rep. No. 91-296, 91st Cong., 1st Ess. (1969), quoted in The Legally Required Contents of a NEPA Environmental Impact Statement, Stanford Environmental Law Society, Stanford, California, 1976 (hereinafter: "Stanford Law Society").

well-being. That price may be seen today in the declining quality of the American environment.

As the evidence of environmental decay and degradation mounts, it becomes clearer each day that the Nation cannot continue to pay the price of past abuse. The costs of air and water pollution, poor land-use policies...can no longer be deferred for payment by future generations. These problems must be faced while they are still of manageable proportions and while alternative solutions are still available.

It is clear from the Senate Report that NEPA is intended as a tool to thoroughly examine decisions, and not just use it as another excuse to perpetuate poor decisions made in the past. NEPA was designed to remedy a situation that existed in the absence of a comprehensive policy to address environmental impacts. The situation NEPA was intended to remedy is described in the Report as follows:

Policy is established by default and inaction. Environmental problems are only dealt with when they reach crisis proportions. Public desires and aspirations are seldom consulted. Important decisions concerning the use and the shape of man's future environment continue to be made in small but steady increments which perpetuate rather than avoid the recognized mistakes of previous decades.

The Report makes it clear that NEPA is intended to change this situation:

Today it is clear that we cannot continue on this course. Our natural resources – our air, water, and land – are not unlimited. We no longer have the margins for error that we once enjoyed. The ultimate issue posed by shortsighted, conflicting, and often selfish demands and pressures upon the finite resources of the earth are clear.

Consequently, the Senate set goals for the statute:

- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;*
- (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;*
- (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;*
- (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;*
- (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and*
- (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.*

Any changes in regulations or procedures implementing NEPA need to be in keeping with the intent of the law as expressed by Congress' intent.

Analysis for the proposed action is lacking

It would be helpful for the Forest Service to provide an analysis of the reasons a change in the way NEPA is implemented may be needed. What is working and what isn't? What are the problems encountered through the present procedures? What kinds of projects are associated with these problems? It is understandable that after almost four decades, some adjustments to the way NEPA is implemented should be considered. However, the analysis we are encouraging should also correct misrepresentations that NEPA is the main cause of failures to implement needed projects.

Identify areas that actually need procedural change

The ANPR implies a generalized approach for changes – such as “streamlining,” “increasing efficiency,” and “completing more projects” – and thus risking outcomes that would not serve the intent of NEPA. Instead, we hold that it is important for any changes in procedures to target specific areas of implementation that actually need changing, because the procedures now in place have clearly resulted in many positive gains for the environment, in fulfillment of the intent of NEPA and do not need to be changed as a whole.

Projects that primarily benefit the environment should be clearly identified

One of the common complaints we hear is that even restoration projects benefitting the environment undergo excessive delays because of regulatory requirements under NEPA. To remedy this, it is important to create clearer criteria distinguishing between commercial and industrial projects such as timber sales, development proposals, and consent to energy leasing on the one hand; and on the other hand, actions and projects that clearly *benefit* the forest and grassland ecosystems, watersheds, fisheries, and wildlife that the Forest Service has a mandate to steward and protect in the name of the Public Trust that NEPA was conceived to uphold. Under this intent, criteria for screening projects that may qualify under categorical exclusions or “extraordinary circumstances” need to be made clearer and not expanded without justification that is congruent with the intent of NEPA.

Conclusion

In conclusion, for the reasons above, we support the analysis and recommendations made in the comments by the Western Environmental Law Center *et al.*

As President Richard Nixon affirmed in this regard in his 1970 State of the Union address during the time NEPA became law,

Restoring nature to its natural state is a cause beyond party and beyond factions ... It is a cause of particular concern to young Americans, because they, more than we, will wreak the

grim consequences of our failure to act on programs which are needed now if we are to prevent disaster later.²

With much appreciation for this opportunity to comment,

A handwritten signature in blue ink, appearing to read "Michelle Berditshevsky", with a stylized flourish at the end.

Michelle Berditshevsky, M.A.
Founder / Senior Conservation Consultant
MOUNT SHASTA BIOREGIONAL ECOLOGY CENTER

² Richard Nixon, *Annual Message to Congress on the State of the Union*, January 22, 1970.