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Brenda Mallory, Esq.
Chair, Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503
Submitted via download to [Federal eRulemaking Portal](#)

Re: Comments on the National Environmental Policy Act Implementing Regulations (Phase 1)

Dear Chair Mallory:

On behalf of BP America Inc. (hereinafter, “bp”),¹ we are pleased to submit comments in support of the Council for Environmental Quality’s (“CEQ’s”) Phase 1 proposed revisions to the National Environmental Policy Act (“NEPA”) Implementing Regulations (“Phase 1 rulemaking”).

In 2020, bp set an ambition to reach net zero by 2050 or sooner, and to help the world get there too. bp’s ambition is supported by ten aims—five to help us become a net zero company, and five to help the world achieve net zero—that, collectively, set us on a path consistent with the goals of the Paris Climate Agreement.² One of bp’s aims for helping the world achieve net zero is advocating for reasonable and workable policies to achieve this goal.

bp has a 150-year history in America and is committed to the United States for the long-term. We have a larger economic footprint in the United States than in any other country—we invested more than \$130 billion here between 2005 and 2020. bp’s business activities support more than 230,000 jobs across the country—including 10,000 direct employees nationwide—and we contributed more than \$60 billion to the national economy in 2020. bp is one of America’s largest oil and natural gas producers and the largest marketer of natural gas in North America. We currently operate ten wind assets in the United States and maintain an interest in six solar energy facilities.

¹ BP America Inc. is a subsidiary of BP plc. “bp” is used interchangeably herein to refer to BP America, plc, another subsidiary, or the group of companies collectively.

² *Getting to Net Zero*, bp, <https://www.bp.com/en/global/corporate/sustainability/getting-to-net-zero.html> (last visited Nov. 17, 2021).

Consistent with our net zero aims and ambition, bp strongly supports the inclusion of sound greenhouse gas (“GHG”) and climate change analysis as part of the review of federal agency actions under NEPA. Such analysis is crucial not only to ensure that policy makers and the public are well-informed about the implications of agency decisions for the energy transition and for climate change, but also to facilitate the permitting of projects that will help the United States, and the world, achieve net zero.

bp agrees that NEPA is more than a “check-the-box” paperwork exercise.³ Indeed, bp believes that in implementing NEPA, federal agencies should be driven by the principle that, because climate change presents an urgent global challenge, building out the technology and infrastructure needed to address that challenge is also an urgent imperative. In addition, consistent with our support of the goals of the Paris Agreement, bp believes that NEPA must promote a just transition—one that delivers quality jobs and supports the livelihood of local communities.

Over the coming decades, the world will need to invest trillions of dollars in low carbon technologies. Within the energy sector alone, the Energy Transitions Commission reports that achieving net zero by 2050 will require approximately \$1.6 trillion in new investments globally per year over the next three decades.⁴ bp has stepped up to the plate and is making significant investments. Through the first half of 2021, bp spent \$1.1 billion in low carbon investments—more than twice the amount we invested in 2019.⁵ By 2025, we aim to devote \$3 to \$4 billion per year to low carbon investments.⁶ By 2030, we aim to increase this to \$5 billion per year.⁷ bp envisions making many of these investments in the United States.

Achieving net zero requires not only investments in renewable and low carbon energy, but also strategies for carbon dioxide removal, such as carbon capture and sequestration, as well as reducing emissions from the conventional oil and gas operations that are necessary to serve the world’s needs as it undertakes this challenging transition. One of bp’s aims, for example, is reducing the emissions associated with the carbon in our upstream oil and gas production by 35-40% from 2019 to 2030. These improvements will themselves require major capital investments, which we are also aiming to make. NEPA needs to be part of a well-functioning and workable environmental review and permitting regime that serves *all* facets of the energy transition, from lowering the carbon footprint of oil and gas operations to expanding investments in lower carbon energy sources, including wind, solar and hydrogen.

³ National Environmental Policy Act Implementing Regulations Revisions (“Phase 1 Proposal”), 86 Fed. Reg. 55,757, 55,762 (Oct. 7, 2021) (to be codified at 40 CFR pts. 1502, 1507, and 1508).

⁴ Energy Transitions Commission, *Making Mission Possible: Delivering a Net-Zero Economy* 54 (Sept. 2020), <https://www.energy-transitions.org/wp-content/uploads/2020/09/Making-Mission-Possible-Full-Report.pdf>.

⁵ bp, *2Q 2021 Quarterly Results (Gas & Low Carbon Energy Tab)* (2021), <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/xlsx/investors/bp-second-quarter-2021-results-group-databook.xlsx>.

⁶ Press Release, bp, *From International Oil Company to Integrated Energy Company: bp Sets Out Strategy for Decade of Delivery Towards Net Zero Ambition* (Aug. 4, 2020), <https://www.bp.com/en/global/corporate/news-and-insights/press-releases/from-international-oil-company-to-integrated-energy-company-bp-sets-out-strategy-for-decade-of-delivery-towards-net-zero-ambition.html>.

⁷ *Id.*

For these reasons, bp supports CEQ's proposed revisions, which revert to earlier, longstanding definitions of "effects" and "cumulative effects" in NEPA's implementing regulations. Returning to these previous definitions alleviates some of the confusion and uncertainty that has arisen over whether federal agencies should engage in robust climate change and GHG analyses as part of NEPA. The revisions help to clarify that such analyses are important and necessary as we chart our path forward.

To be effective, NEPA must ensure sound environmental analysis while also creating certainty for the private sector businesses and investors that will drive GHG reductions. Further, it is crucial that CEQ provide a clear, well-structured, transparent, and efficient framework for reviewing infrastructure projects, given the pressing nature of the climate crisis and the fact that we are operating in a dynamic energy market that requires innovators to move nimbly. If the NEPA process fails to adequately consider the benefits of these projects or unnecessarily subjects them to regulatory delay or redundancy, it risks deterring capital investments in the United States and jeopardizing the ability to achieve net zero by 2050.

Thus, while bp supports CEQ's Phase 1 rulemaking proposal, bp emphasizes that it is only a first step, and that more work is needed if CEQ is to establish a reasonable and workable framework for environmental review and permitting of major infrastructure projects. Attention must be paid in subsequent rulemakings and federal agency guidance to procedural reforms and improvements that will further streamline and improve the NEPA process. The energy transition depends on it.

Below, we provide our comments on the three main revisions in CEQ's Phase 1 rulemaking. In addition, in response to CEQ's intent to broadly revisit the 2020 NEPA Regulations in Phase 2, we share our insights on how CEQ can promote efficient and effective environmental reviews and increased regulatory certainty.

bp's Comments on CEQ's Proposed Revisions to the National Environmental Policy Act Implementing Regulations (Phase 1 Rulemaking)

CEQ's Phase 1 rulemaking proposes three main revisions to the NEPA implementing regulations, as amended in 2020:

1. Restoring the definition of "direct" and "indirect" effects (40 CFR 1508.8), and "cumulative impacts" (40 CFR 1508.7), from the 1978 NEPA Regulations so that each reference to these terms through 40 CFR parts 1500 through 1508 would include direct, indirect, and cumulative effects⁸;
2. Restoring language from the 1978 NEPA Regulations that allows for agency discretion in developing and relying on statements of purpose and need (40 CFR 1502.13) and

⁸ Phase 1 Proposal, 86 Fed. Reg. 55,757, 55,762. Although the phrase "cumulative impacts" is used in the text of the NEPA Regulations, the terms "effects" and "impacts" are synonymous under NEPA. For the sake of consistency in these comments, bp refers to "cumulative impacts" as "cumulative effects."

making a conforming edit to the definition of “reasonable alternatives” (40 CFR 1508.1(z))⁹;

3. Clarifying that while agency NEPA procedures need to be consistent with the CEQ’s NEPA regulations, agencies have the discretion and flexibility to develop procedures beyond the CEQ regulatory requirements (40 CFR 1507.3).¹⁰

Below, bp provides comments on each proposed revision. bp then discusses key recommendations and principles for CEQ’s consideration as it prepares the next phase of this two-part rulemaking.

I. Returning to the prior definitions of “effects”

bp supports CEQ’s proposal to return to the definition of “direct,” “indirect,” and “cumulative” effects from the 1978 NEPA Regulations. As discussed below, bp believes that these definitions provide a reasonable framework for conducting sound, consistent GHG and climate change analyses under NEPA and for facilitating projects that will help the United States achieve net zero. bp agrees with CEQ that regulatory certainty is necessary to “ensure that the NEPA process fully and fairly considers the appropriate universe of effects, such as air and water pollution, greenhouse gas emissions that contribute to climate change, and effects on communities with environmental justice concerns.”¹¹

In addition, restoring these definitions relating to “effects” will help ensure that the long-term climate change benefits of projects that will drive the energy transition are adequately assessed. Indeed, as CEQ observes, “[u]se of the terms ‘direct’ and ‘indirect’ [effects] also can help explain both adverse and *beneficial* effects over various timeframes.”¹² CEQ provides an illustrative example of a utility-scale solar facility that is worth repeating here. As CEQ points out, such a facility “could have short-term direct adverse effects, such as land impacts associated with construction.”¹³ But as part of a federal agency’s climate change analysis associated with such a project, the agency must also recognize that:

[t]he facility also could have *long-term indirect beneficial effects*, such as reductions in air pollution, including greenhouse gas emissions, from the renewable energy generated by the solar facility that displaces more greenhouse gas-intensive energy sources (such as coal or natural gas) as an electricity source for years or decades into the future. Consistent with CEQ’s proposed restored definition, such indirect effects could be caused by the action to authorize a new solar facility, and would be later in time or farther removed in distance yet still reasonably foreseeable. *Fully evaluating the effects of the facility would require identifying and evaluating both the direct and indirect effects of the proposed action.*¹⁴

⁹ *Id.* at 55,760.

¹⁰ *Id.* at 55,761.

¹¹ *Id.* at 55,763.

¹² *Id.* (emphasis added).

¹³ *Id.*

¹⁴ *Id.* (emphasis added).

bp supports this kind of holistic direct and indirect “effects” analysis for assessing the long-term climate change benefits of infrastructure projects and believes that CEQ’s proposal to restore the previous definitions of “effects” will enable agencies to engage in such analysis. bp is itself making significant investments in renewable energy, with an aim of developing renewable energy capacity of 20 gigawatts by 2025 and 50 gigawatts by 2030.

But this holistic analysis for assessing the climate change benefits of infrastructure projects should not be limited to renewable energy. It should extend to a wide variety of infrastructure projects that are needed to achieve net zero goals by mid-century or sooner. This diverse set of projects would include, for example, projects relating to: renewable fuels for vehicles and sustainable aviation fuels for air travel; Carbon Capture Utilization and Storage (“CCUS”) projects; the siting of pipelines necessary to transport carbon dioxide and hydrogen; electric vehicle infrastructure; energy storage and battery technology; and building out the transmission network necessary to bring lower carbon energy sources to the marketplace.

We also see low carbon hydrogen playing a critical role in achieving the goals of the Paris Agreement. Both green and blue hydrogen can provide solutions in different regions on the way to decarbonizing the United States energy system, and each will have infrastructure needs. New dedicated CCUS, carbon dioxide, or hydrogen infrastructure, for example, will be required for transport and storage of carbon dioxide and hydrogen, for refueling heavy duty transport, and distribution and use for home heating. bp aims to achieve a 10% share across blue and green hydrogen in core markets globally by 2030.

Moreover, natural gas – increasingly decarbonized over time – will play a key role for decades to come in getting the world to net zero, and we are integrating our existing natural gas capabilities with significant growth in low and zero carbon businesses and markets.¹⁵ Natural gas supports higher penetration of intermittent renewable resources in the power sector by providing firmer flexible supply and by stabilizing the grid. It also is key to lowering industrial emissions, particularly in non-OECD countries, supports decarbonization in the transport sector, and is key to delivering the transition to hydrogen. At the same time, bp recognizes that reducing methane emissions from the oil and gas sector is critically important for addressing climate change. bp’s United States onshore business, bpx energy (“bpx”), is a leader in understanding the challenge posed by methane emissions and is actively engaged in finding new ways to reduce them, including infrastructure investments. For example, bpx recently started up “Grand Slam,” an electrified, highly automated, centralized processing facility in the Permian Basin, our largest U.S. onshore location. Grand Slam reduces methane emissions by replacing or eliminating the need for gas-driven equipment (including compressors and generators) and by reducing flaring through a sophisticated separation and compression system. Grand Slam is a promising model that can be replicated across bpx’ s operations. bpx plans to spend upwards of \$1 billion on similar infrastructure by 2025.

¹⁵ The U.S. Energy Information Agency (“EIA”), for example, calculated that between 2005 and 2019, shifts in the fuel mix for electricity generation in the United States has resulted in cumulative CO₂ emissions reductions totalling 5,475 MMmt—and EIA specifically found that the shift to natural gas is responsible for more than 60% of these reductions. EIA, *U.S. Energy-Related Carbon Dioxide Emissions, 2019* 13 (Sept. 2020), https://www.eia.gov/environment/emissions/carbon/pdf/2019_co2analysis.pdf.

For NEPA to play its part in encouraging businesses to invest in all of these facets of the energy transition in the United States, NEPA must promote regulatory certainty and the efficient, accurate assessment of a project's significance for climate change. To that end, it will be important for CEQ to emphasize that there are important limitations on the scope of direct, indirect, and cumulative effects that may be considered. When agencies extend their analysis of direct, indirect, and cumulative effects beyond reasonable bounds, it leads to unnecessary delays and counterproductive results. bp believes that these limitations are captured in the regulatory requirement that direct, indirect, and cumulative effects must be strictly limited to effects that are "reasonably foreseeable"—a requirement that CEQ's proposal will retain.

As CEQ observes, the "effects" definition it seeks to restore "does *not* require that agencies disclose every possible effect; rather, the standard under NEPA has long been whether effects are reasonably foreseeable."¹⁶ This standard is supported by extensive case law, and CEQ should use the final Phase 1 rulemaking as an opportunity to remind agencies not to exceed its scope in order to keep the NEPA process reasonable and workable.¹⁷ Re-emphasizing this important point in the final Phase 1 rulemaking will help ensure that CEQ's revisions promote regulatory certainty for all stakeholders.

II. Eliminating language that was added to the definitions of "purpose and need" and "reasonable alternatives"

bp agrees with CEQ that it is unnecessarily restrictive to limit agencies to considering only the applicant's goals in assessing "purpose and need" and "reasonable alternatives."

As CEQ noted in its Phase 1 rulemaking, and as the courts have observed, NEPA reviews that are narrowed in this respect could sometimes exclude reasonable alternatives.¹⁸ And as CEQ notes, the public interest is a relevant factor that must be considered.¹⁹

At the same time, consistent with NEPA's intent, the plain meaning of its text, and case law,²⁰ bp agrees with CEQ that an agency's assessment of reasonable alternatives may not be unconstrained or boundless. As CEQ observes, the alternatives evaluated must still meet the test of being reasonable—*i.e.*, the alternatives must be "technically and economically feasible."²¹ Any alternatives evaluated must be realistic as a practical matter, and the project proponents input on what is practicable should be given considerable weight. While CEQ notes this in its Phase 1 rulemaking proposal,²² bp urges CEQ to reinforce this principle in its final rulemaking. bp concurs with CEQ's observation that a "boundless analysis of alternatives" is inconsistent with NEPA's purpose,²³ and indeed, unrestrained consideration of unreasonable or speculative alternatives risks delaying projects without corresponding benefits.

¹⁶ Phase 1 Proposal, 86 Fed. Reg. 55,757, 55,766 (emphasis added).

¹⁷ *Id.* at 55,763 (citing *Sierra Club v. Fed. Energy Regul. Comm'n*, 867 F.3d 1357, 1371–72 (D.C. Cir. 2017) (observing that the phrase "reasonably foreseeable" was "key" in assessing indirect effects)).

¹⁸ *Id.* at 55,760–61 (citing *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 666 (7th Cir. 1997)).

¹⁹ *Id.* at 55,760.

²⁰ *Id.* (citing *HonoluluTraffic.com v. Fed. Transit Admin.*, 742 F.3d 1222, 1230 (9th Cir. 2014)).

²¹ *Id.* at 55,760.

²² *Id.* at 55,761.

²³ *Id.* at 55,760.

Even if CEQ's proposal is adopted, bp notes that it should remain generally appropriate for an agency to focus primarily on the applicant's goals in its assessment of the purpose and need for a project and its reasonable alternatives. As appropriate, CEQ should encourage agencies to limit the scope of reasonable alternatives analysis to maintain a reasonable and streamlined review and decision process.

III. Removing limitations on agency NEPA procedures for implementing CEQ's NEPA regulations

As a general matter, bp supports consistency across agencies in how NEPA is implemented. To facilitate capital investments in the dynamic and rapidly evolving energy market, investors need a degree of regulatory certainty to get projects reviewed and approved under clear guidelines and on relatively predictable timeframes. Consistency is particularly important since more than 80 agencies implement the NEPA regulations, each of which operates under different spheres of regulatory jurisdiction, with unique missions and circumstances.

bp believes that a proper balance between regulatory certainty and agency flexibility can be achieved by allowing agencies some degree of flexibility to develop their own NEPA implementing regulations, so long as they stay within the bounds of their respective jurisdictions, and so long as they do so with the oversight of CEQ and through rulemaking proceedings in which stakeholders can provide input.

At the same time, CEQ must ensure that flexibility in establishing agency-specific implementing regulations does not conflict with federal efforts to streamline and expedite the permitting and review process. CEQ must also take steps to ensure that this flexibility does not cause projects necessary for the energy transition to experience unreasonable delays.²⁴ Indeed, as part of its oversight role, CEQ should consider prohibiting agencies from deviating from the key procedural requirements in CEQ's regulations that are designed to streamline the review and decision-making process, unless the agency can demonstrate that its regulations achieve the same or better degree of efficiency as CEQ's regulations.

IV. Recommendations for Phase 2 rulemaking

bp recognizes that determining the precise scope of, and methodologies for, GHG and climate-related analysis is a complex issue. We look forward to working with CEQ on future regulations and/or guidance on how best to address these issues.

In addition, bp strongly supports the need for better interagency coordination, reduced duplication of agency efforts, and avoiding unnecessary interagency disputes, conflicts, or other delays. As the multi-agency Federal Permitting Improvement Steering Council recognized in its 2021 *Recommended Best Practices for Project Review and Permitting for Infrastructure*

²⁴ As one example, the project applicant for the Cape Wind Energy Project, an off-shore wind energy facility, submitted its project application in 2001, but the final environmental impact statement was not completed until more than a decade later in 2012. See U.S. Dep't of Energy, *Final Environmental Impact Statement for the Proposed Cape Wind Energy Project* (Dec. 2012), https://www.energy.gov/sites/default/files/DOE-EIS-0470-Cape_Wind_FEIS_2012.pdf.

Projects report,²⁵ federal agencies need to ensure that timely decisions are made regarding environmental reviews and authorizations.

bp understands that these issues will be addressed in CEQ's Phase 2 rulemaking, where CEQ has pledged to "broadly revisit" the 2020 NEPA Regulations. bp encourages CEQ to consider retaining important procedural improvements that were enacted in the 2020 regulatory amendments, as well as to explore further revisions aimed at ensuring efficient and effective environmental reviews, providing regulatory certainty to federal agencies and project proponents, promoting better decision making consistent with NEPA's statutory requirements, and meeting environmental, climate change, and environmental justice objectives.²⁶

Below, we share our recommendations on some of the key procedural principles that we believe CEQ should focus on in Phase 2:

1. **Requiring greater coordination among federal, state, tribal, and local agencies in the NEPA process.** As noted above, a variety of different agencies participate in NEPA reviews, and each agency brings specialized knowledge to the table. Tackling a problem as complex as climate change requires coordination among various agencies, and NEPA should capitalize on the benefits of combined agency knowledge to provide informed reviews. At the same time, greater coordination among the numerous agencies involved in any given project is needed to streamline the process and avoid inconsistencies and delays. CEQ's 2020 amendments to the NEPA regulations adopted a number of these ideas, and they should be retained and improved upon.
2. **Reducing paperwork by, among other things, encouraging and expanding the use of categorical exclusions.** CEQ's 2020 amendments also included several changes intended to reduce the amount of NEPA documentation required so that agency resources are appropriately focused on new, potentially significant impacts. For example, CEQ expanded the concept of functional equivalency, through which agencies can determine that documentation prepared to comply with another statute or Executive Order can fulfill the agency's responsibilities under NEPA. CEQ also expanded the practice of document adoption by allowing agencies to adopt environmental assessments and categorical exclusion ("CE") determinations prepared by other agencies. CEQ also enacted revisions to expand the use of CEs, including authorizing agencies to adopt another agency's CE determination for proposed actions that are "substantially the same," and establishing procedures that have allowed agencies to rely on a CE listed in another agency's NEPA procedures.

All together, these types of procedural improvements should help to reduce duplicative efforts, minimize unnecessary reviews by steering more federal actions through the CE process, and allow agencies and project proponents to focus resources on new significant impacts. CEQ should retain these reforms and use the Phase 2 rulemaking as an opportunity to expand on them.

²⁵ Fed. Permitting Improvement Steering Council, *Fiscal Year 2021 Recommended Best Practices for Project Review and Permitting for Infrastructure Projects 1* (2021), https://www.permits.performance.gov/sites/permits.dot.gov/files/2021-04/FY%202021%20Best%20Practices%20Report_Final.pdf.

²⁶ Phase 1 Proposal, 86 Fed. Reg. 55,757, 55,759.

3. **Providing additional guidance for NEPA reviews of clean energy, renewable energy and CCUS Projects, and the infrastructure required to support them.** If properly structured, NEPA can play a constructive role in the siting and permitting of the major infrastructure build-out that will be necessary to make the energy transition possible. Among other tools, CEQ could consider expanding NEPA’s use of programmatic environmental impact statements for certain types of infrastructure projects, under certain circumstances and where appropriate, if doing so would streamline and expedite their siting and permitting.

As just one example—and considering its importance to the energy transition—special attention should be paid to how agencies will review CCUS projects under NEPA. CEQ has confirmed that the Biden administration is “committed to accelerating the responsible development and deployment of CCUS to make it a widely available, increasingly cost-effective, and rapidly scalable solution across all industrial sectors.”²⁷ To that end, the 2010 Interagency Report on CCUS recommended that, where appropriate, agencies could consider preparing programmatic environmental impact statements covering environmental issues that are common to CCUS projects, which could facilitate the preparation of shorter environmental assessments (via “tiering”) for individual CCUS projects or components of such projects. CEQ has not yet issued guidance on how to address climate impacts with regard to CCUS projects. Now is the time for CEQ to consider doing so.

Working with industry experts and other stakeholders, CEQ should consider developing guidance and providing resources designed to assist agencies in reviewing CCUS projects and associated infrastructure in an environmentally sound and streamlined manner.²⁸ This guidance could include, among other things, suggestions for how agencies may ensure public input and participation in a meaningful but efficient manner, as well as how agencies may effectively address environmental justice issues at an early phase of the project’s development in order to ensure that community concerns are adequately addressed in a timely manner. Agencies should also receive guidance on the importance of CCUS and other energy transition infrastructure projects in ameliorating the impacts of climate change on vulnerable populations and in ensuring a just energy transition.

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²⁷ CEQ, *Council on Environmental Quality Report to Congress on Carbon Capture, Utilization, and Sequestration* 6, <https://www.whitehouse.gov/wp-content/uploads/2021/06/CEQ-CCUS-Permitting-Report.pdf>.

²⁸ *Id.* at 40.

bp appreciates the opportunity to provide these comments to CEQ, and we look forward to sharing further insights on future rulemakings. Please feel free to contact me at Downey.Magallanes@bp.com or Heidi Keller at Heidi.Keller@bp.com if you have any questions.

Sincerely,

Downey Magallanes
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