The Honorable Jomar Maldonado
Director for NEPA
Council on Environmental Quality
Oxfam America Comments for Docket Number, CEQ-2022-0005, the National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change

Dear Director Maldonado,

Oxfam appreciates the opportunity to submit comments in support of the Council on Environmental Quality's (CEQ) efforts to provide Federal agencies guidance on quantifying proposed actions' greenhouse gas (GHG) emissions, placing those GHG emissions in the appropriate context including disclosing relevant climate impacts, and identifying alternatives and mitigation measures to avoid or reduce emissions.

The transition to a low-carbon economy requires transforming national policies and infrastructure at a scale and pace unprecedented in the modern era. The Biden-Harris administration, through its executive orders and climate commitments at home and abroad, has embarked on efforts to address climate change while confronting environmental injustices, including those resulting from national development. The contributions of the National Environmental Protection Act (NEPA) and the role of CEQ's guidance to Federal agencies in NEPA implementation are fundamental to furthering the Administration's efforts towards a fairer and more just America.

Historically and still today, the National Environmental Protection Act process is the main avenue and key protection for those most impacted by infrastructure projects, who are disproportionately Black, Indigenous, rural, poor, women, and people of color, to influence projects' planning, development, and decision making processes. For energy projects in particular, NEPA is the preeminent tool to maximize sustainable and equitable outcomes for communities, the environment, Federal decision makers, and energy companies. Ensuring that NEPAis a tool for equity means that considering emissions is crucial but not enough; injustice based on gender, class, race and/or sexual orientation exacerbates how marginalized communities are harmed by climate change, as well as how they are likely to be impacted by infrastructure projects, and therefore must be considered.

As an organization focused on addressing root causes of inequality, Oxfam America sees NEPA is a fundamental tool for supporting a climate just future; CEQ's guidance is a key opportunity to provide clear parameters and tools to Federal agencies on how they can administer an intersectional, feminist approach to considering GHG emissions and climate impacts that achieves the Administration's stated goals of a more just future while addressing climate change.

We hope that the NEPA process and subsequent rulemaking regulations will reestablish and reaffirm the CEQ and U.S. Federal government's commitment to environmental justice and its efforts to address current and historic environmental injustice by strengthening environmental justice monitoring and enforcement when considering the emissions and climate change impacts of projects.

We are grateful for the opportunity to provide input into how CEQ can ensure NEPA is able to adequately promote environmental, climate, racial, and gender justice. We hope you find these recommendations useful and look forward to seeing the final version of this guidance as well as CEQ's Phase 2 Rulemaking for NEPA. Please contact Ashlee Thomas, ashlee.thomas@oxfam.org, with any questions or to discuss our comments in more detail.

Summary of Recommendations

1) **Guidance should include specific mention of and tools to address the disproportionate impacts to Black, Indigenous, rural, poor, women and of color communities in support of contextualizing GHG emissions and climate impacts of projects.**
2) **Consider the supply chain and lifecycle emissions when evaluating a projects' GHG emissions and climate impacts.**

Detailed Recommendations

1) **Guidance should include specific mention of and tools to address the disproportionate impacts to Black, Indigenous, rural, poor, and women in support of contextualizing GHG emissions and climate impacts of projects.**

The disproportionate impact of extractives industries infrastructure on Black, Indigenous, low income, and rural communities and women have been well established. Studies from the University of Cincinnati show pollution from fossil fuel infrastructure disproportionately harms the health of Black and Brown communities in the US, particularly in the Gulf South. Research shows gender based violence against Indigenous women is directly linked to extractive projects, including mines and oil and gas operations. In 2019, the Department of Justice completed a study that showed a 70% increase in violent crimes and a 30% increase in rape and sexual assault between 2006-2012 in the Bakken oil region of Montana and North Dakota. Since the Bakken oil boom, Indigenous communities have faced higher rates of human trafficking, sex trafficking and Missing and Murdered Indigenous Women (MMIW).

Renewable energy technologies and storage require minerals and metals extracted by mining companies. Under our current energy model, the World Bank estimates that over 3 billion tons of minerals and metals will be needed to deploy clean energy and storage to achieve a below 2°C future. In the US, the vast majority of these mineral reserves and resources, including 97% of nickel, 89% of copper, 79% of lithium and 68% of cobalt are located within 35 miles of Native American reservations. Considering this connection, we risk repeating the harms and injustices of the fossil fuel era unless tools, such as NEPA, explicitly account for and seek to mitigate them, yet CEQ's current guidance fails to address these harms.

At present, CEQ guidance states that NEPA reviews should provide the social cost of a project's GHG emissions even if no other costs or benefits are monetized, because it can help decision-makers and the public understand the effects of a project's GHG emissions. This is a significant change - as previously this has been a frequently litigated topic, and courts and the CEQ have not previously required agencies to use the social cost of GHGs to provide context for climate change effects outside of a cost-benefit analysis. CEQ guidance must define what factors should be considered by agencies when evaluating a project's social cost.

Oxfam recommends that the minimum 'social cost' factors to guide agencies' use of NEPA include gender, race, ethnicity, income level, geography, historical exclusion of non-white populations - and the cumulative impacts of energy infrastructure that have disproportionately been felt by communities because of these factors. These should be foundational when considering GHG emissions and climate change in decisions over infrastructure. Without these minimum considerations, the intended impact of this rulemaking--to secure a just and livable future--will go unfulfilled at the expense of the continued systems that disadvantage historically marginalized communities.

To integrate these factors into actionable guidance for Agencies, CEQ should:

- **Include requirements for agencies to undertake intersectional gender impact assessments as part of NEPA's Environmental Impact Statement (EIS), Environmental Impact Analysis (EIA), Tribal consultation and community engagement processes.** Intersectional gender

impact assessments help generate specific data about *who* within a community will likely be impacted by a project and in what ways, allowing for targeted mitigation strategies to be put in place. Assessments can be standalone or integrated into other impact assessment processes (human rights, social and environmental or other assessments) and conducted ex ante, periodic and ex post through processes to guarantee broad and diverse participation of impacted women and communities.

- Assessments, at a minimum, identify the gendered-project impacts on women, men, girls, boys, and gender-diverse groups and how these impacts intersect with race, Indigeneity, class, the siting of cultural, spiritual and historically important sites, and the health and environmental effects of other infrastructure projects. Community consultations and engagements should be conducted to integrate supportive qualitative data and to understand how identified impacts are further exacerbated, or alleviated, by power dynamics including access to and control of resources, access to and influence over the project's decision making processes, and access to anticipated project benefits. Without this data, the potential harms of a project on marginalized groups are likely to be overlooked and unintentionally replicated.
- One example the CEQ may consider is the Government of Canada's Impact Assessment Agency's Practitioner's Guidance on Conducting Gender-Based Analysis Plus. This was designed to support agency implementation of the *Impact Assessment Act, 2019* and its requirements for assessment of "the intersection of sex and gender with other identity factors" in project infrastructure.[1] Recommended best practices include sourcing information from multiple qualitative and quantitative sources and via various methods, including those that include the knowledge and lived experience of the community members; creating intersectional analysis that goes beyond statistical descriptions (percentage of Black women impacted, for example) to answering questions about social roles, relationships, and relative power among these factors that create disparities; and using this information to affect the decision-making process, including key mitigation measures the project would need to take if approved.

- **Integrate environmental justice principles to which the Administration has committed when considering cumulative impacts.** In light of Executive Order 12898, the White House Council on Environmental Quality (CEQ) issued Environmental Justice; Guidance Under the National Environmental Policy Act (December, 1997) (PDF). The CEQ updated NEPA guidance with regards to assessing cumulative impacts should recapitulate the following principles explicitly:
  - Consider the composition of the affected area to determine whether low-income, minority or Tribal populations are present and whether there may be disproportionately high and adverse human health or environmental effects on these groups.
  - Consider relevant public health and industry data concerning the potential for multiple exposures or cumulative exposure to human health or environmental hazards in the affected population, as well as historical patterns of exposure to environmental hazards
    - A Health Impact Assessment (HIA) is a systematic process for identifying the potential health effects of a new proposed action. The steps in an HIA can identify health disparities, which are a prime indicator of the existence of a disproportionate impact to minority, tribal or low–income communities.
  - Recognize the interrelated cultural, social, occupational, historical, or economic factors that may amplify the natural and physical environmental effects of the proposed action.

[1] Parliament of Canada. (2019). Assent to An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts. Retrieved 12 December 2022, from https://www.parl.ca/DocumentViewer/en/42-1/bill/C-69/royal-assent

    - Develop effective public participation strategies that are inclusive of gender and the language and cultural customs of the host community.
    - Assure meaningful community representation at the beginning of project conceptualization and throughout the project lifecycle.
    - While the most recent Environmental Justice guidance on NEPA implementation promotes seeking Tribal representation in the process and co-developing methods for assessing project impacts in alignment with Treaty rights, NEPA updated guidance should go further to promote the full recognition, participation, and Free, Prior, and Informed Consent (FPIC) of Tribes as it relates to development on/near their lands.

- **Promote transparency and accountability in agency implementation of these measures through a publicly available, centralized database managed by CEQ.** We recommend a publicly available site established and maintained by the CEQ that consists of project files relevant to the impact assessment process. This potential Registry tracks the project's progress through the assessment process related to defined social and climate considerations. The Registry is operated in a manner that allows access for anyone who is interested in a project or the impact assessment process to find information.
    - Transparency regarding the NEPA process has proven to increase efficiency. For example, the Federal Infrastructure Projects Dashboard was created in an effort to increase the efficiency of infrastructure development.[2] The Dashboard enables federal agencies to publicly track schedules and status information on pending federal infrastructure projects.[3] Publishing the schedule facilitates interagency cooperation by creating an incentive for agencies to resolve issues in a timely manner in order to meet the agreed upon schedule. [4]

2) Consider the supply chain and lifecycle emissions when evaluating a projects' GHG emissions and climate impacts.

As the largest historic polluter, the US has the greatest responsibility to countries around the world to phase out fossil fuels and rapidly reduce emissions to maintain the guardrail of limiting warming to 1.5 degrees Celsius. The rapid phase out of fossil fuels and scaling of renewable energy are required to keep temperature increases to a survivable level for current and future generations, with this decade being the most critical for limiting emissions. Fossil fuel development projects should not be considered for permitting in order for infrastructure development to be within national climate goals and science-based targets.

To support low-emissions infrastructure projects, the CEQ NEPA guidance should consider

- **The emissions from a project's supply chain and operational lifecycle in the assessment of a project's GHG emissions and climate impacts.** Full consideration of a project's emissions and its impacts should be considered beyond initial GHG emissions to include 1) a project's full life cycle emissions, including Scope 1, 2 and 3; 2) the emissions from already existing energy, waste and industrial facility infrastructure and its climate, social, and health impacts on the surrounding community; 3) future climate change projections for the site on which the infrastructure project is proposed; and 4) project developer plans to address these factors. This can be an opportunity to incentivize the lowest emissions possible for key processes like materials sourcing, construction, operation, and closure

[2]Helen Leanne Seassio, Legislative and Executive Efforts to Modernize NEPA and Create Efficiencies in Environmental Review, 45 Tex. Envtl. L.J. 317 (2015).
[3]Ibid
[4] Ibid

- **Define a threshold for when deeper assessment is required based on GHG emissions.** Currently, the guidance does not establish a significance threshold for when a project's GHG emissions necessitate preparation of a lengthier environmental impact statement rather than an environmental assessment. CEQ must include such a threshold, in line with U.S. and global commitments to limit warming to 1.5°C degrees, in the final version of the rulemaking for use by implementing Federal agencies.
- **Encourage agencies to use the CEQ guidance as a floor, not a ceiling, for assessing impacts.** CEQ should explicitly state that the guidance are minimum standards and procedures Federal agencies should adopt when revising their NEPA-related procedures. The guidance should encourage agencies to undertake an adaptive environmental management approach in implementing guidance. Adaptive management allows for robust monitoring and the space to make corrective changes to the project or mitigation plan to ensure that significant degradation does not occur. Agencies can improve environmental protection, get projects underway earlier, and dramatically reduce costs by monitoring actual impacts and modifying project management, rather than aiming to answer every potential question with certainty before a project is approved.