Thomas O. Nelson
199 South Pathfinders Circle
The Woodlands, Texas 77381

October 17, 2006

NEPA Modernization (CE)
Attn: Associate Director for NEPA Oversight
722 Jackson Place N.W.
Washington DC 20503

Re: Comments on Proposed Guidance
Council on Environmental Quality
The National Environmental Policy Act
Establishing, Revising, and Using Categorical Exclusions under the National Environmental Policy Act

Dear Sir or Madam:

I am writing to express my strong opposition to your proposed guidance: Establishing, Revising, and Using Categorical Exclusions under the National Environmental Policy Act.

In the September 19, 2006 Federal Register Notice of your proposal you state that the proposed guidance was developed in part to "...eliminate the need for unnecessary paperwork and effort under NEPA for categories of actions that normally do not warrant preparation of an environmental impact statement (EIS) or environmental assessment (EA)." The quoted portion, as well as the entire stated purpose for guidance, is commendable, and I fully support guidance consistent with the stated purpose.

Unfortunately, most of your proposed guidance will do the opposite, and will certainly have a chilling effect on all agency use of any categorical exclusion (CE) now and in the future.

Your proposed guidance:

- Will require a substantial internal agency processes for development and monitoring their CEs, which will take significant time and resources, and which offer many more opportunities for court action and other administrative roadblocks to be thrown in the way of legitimate actions and activities,
- Mandates that any Federal agency obtain written approval from CEQ prior to their establishment of any CE. This is much more than mere guidance; this is a change in regulation. If CEQ chooses not to drop this portion of the guidance entirely, at a minimum you must re-propose these requirements as regulation.
- Directly countermands Congress' Section 390 CEs, which are statutory and beyond the jurisdiction of CEQ
- Would significantly reduce the ability of land managing agencies, most notably the Bureau of Land Management (BLM) and Forest Service (FS) to use any of the recent statutory CE contained in Section 390 of the Energy Policy Act
- Will cause new delays in the current BLM and FS processing of drilling permits under Section 390 CEs. In reality, this guidance will likely preclude these CEs from applying in the majority of cases, thus requiring agencies to prepare an EA instead.
- The cost of the preceding bullet exceeds the threshold for impacts under the Small Business Regulatory Enforcement Fairness Act, and at a minimum should be re-written and re-proposed in a manner which so complies. The guidelines will have

substantially more than $100 million annual effect on the oil and gas industry alone, without even factoring in economic effects on the nation's economy.

- Is in direct conflict with the letter and intent of Executive Order 13212 "Actions to Expedite Energy-Related Projects.

I urge you to withdraw your proposed guidance and either reconsider and entirely rewrite it to be consistent with your stated purpose and with other relevant US laws and Executive Orders, or withdraw it permanently. Our country and citizens should not be burdened by the intrusive and burdensome approach you have proposed for implementing national environmental policy as directed by Congress in the National Environmental Policy Act.

Sincerely,

Thomas O. Nelson

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Cc: U.S. Congressman Kevin Brady
US Senator Kay Bailey Hutchison
US Senator John Cornyn