



December 26, 2018

Deputy Secretary David Bernhardt  
U.S. Department of Interior  
1849 C Street, N.W.  
Washington, DC 20240

***Re: Denial of Public Access to DOI environmental review portals***

Secretary Zinke:

We ask you to immediately re-activate the Department of Interior's portals for public comment that have been wrongly and inappropriately blocked, in violation of the Department's own policies and procedures for government shutdowns. Blocking public access to these websites violates the core principles of public participation in environmental review processes as mandated by the National Environmental Policy Act (NEPA).

The Bureau of Land Management's ePlanning website (<https://eplanning.blm.gov/epl-front-office/eplanning/>), National Park Service's Planning, Environment and Public Comment (PEPC) website (<https://parkplanning.nps.gov/>), and U.S. Fish and Wildlife Service's ECOS website (<https://ecos.fws.gov/>) have all been blocked of 9:00 A.M. Pacific Standard Time on Wednesday, December 26<sup>th</sup>. All three have messages relating that the pages have been taken down due to the government shutdown.

Blocking these websites denies public access to information relevant to open and ongoing comment and protest periods; this undermines or forecloses the public's ability to participate in those NEPA processes, including BLM's Greater Sage-Grouse Land Use Plan Amendment Revisions and several oil and gas leasing environmental review documents. Notably, for many projects, ePlanning is *the only* mechanism through which to submit public comment.

The Department of Interior has specific procedures for website maintenance during government shutdowns. That policy, available at <https://www.doi.gov/guidance-interior-digital-properties> and archived at <https://bit.ly/2Ly8gEZ> for posterity, clearly instructs Interior staff to leave websites online in the case of a shutdown. Specifically it states:



Interior websites, including bureau and office-specific websites, will remain online, as permitted by their current contracts and support arrangements. As editing of all sites will be limited at best, be certain that your site is in the information state that you would need it to be in for a potentially extended period. This would likely include a single message, alerting readers to the lack of updates and monitoring.

During a shutdown, following the normal shutdown window, furloughed employees may not use any means to access editing, analytics or any other non-public aspect of any Interior website. Reading or accessing government websites using means allowed to the general public is permitted.

Secondly, blocking Department of Interior websites has also potentially violated the public participation requirements under NEPA. NEPA requires federal agencies to provide opportunities for public participation in their decisions that could affect the environment. *See Trustees for Alaska v. Hodel*, 806 F.2d 1378 (9th Cir. 1986) (“One of the policies of NEPA is to encourage and facilitate public involvement in decisions concerning environmental issues”); *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 349 (under NEPA, the public is entitled to “play a role in the decision-making process and the implementation of that decision”).

The CEQ regulations implementing NEPA specifically direct federal agencies to encourage and facilitate public involvement “to the fullest extent possible,” 40 C.F.R. § 1500.2, and identify public scrutiny as an “essential” part of the NEPA process, *id.* § 1500.1(b). *See also id.* § 1501.4(b) (Agencies must “involve . . . the public, to the extent practicable”); *id.* § 1506.6 (“Agencies shall: . . . (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures”). They also provide that “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b).

The Ninth Circuit has ruled that “[a]gencies must give the public an adequate predecisional opportunity to participate in and inform the agency’s NEPA analysis and decisionmaking process.” *See Bering Strait Citizens for Responsible Res. Dev. v. U.S. Army Corps of Eng’rs*, 524 F.3d 938, 953 (9th Cir. 2008). The public “must be given an opportunity to comment on draft EAs,” *Citizens for Better Forestry v. U.S. Dep’t of Agric.*, 341 F.3d 961, 970 (9th Cir. 2003), and provided “sufficient environmental information . . . to weigh in with their views and thus inform the agency decision-making process.” *Bering Strait*, 524 F.3d at 953. “A complete failure to involve or even inform the public” is insufficient. *See Citizens for Better Forestry*, 341 F.3d at 970. *See also Sierra Nevada Forest Protec. Campaign v. Weingardt*, 376 F. Supp. 2d 984, 992 (E.D. Cal. 2005) (“the agency must offer significant pre-decisional opportunities for informed public involvement in the environmental review process”).



We further note that website blockage appears limited to the Department of the Interior; the U.S. Forest Service's NEPA portal has not been blocked during the shutdown ([https://data.ecosystem-management.org/nepaweb/nepa\\_home.php](https://data.ecosystem-management.org/nepaweb/nepa_home.php)). This suggests that leadership at Interior, unlike other departments, and consistent with its other efforts to cut public participation from public lands decision-making, took the extraordinary step of actively violating internal policy to deny the public access to environmental review portals.

We hereby request a blanket extension on all NEPA comment or protest periods which were open as of 12:00 A.M. on December 22, 2018, for a duration as long as the government continues to be shutdown, to be commenced upon the government being re-funded. For comment or protest periods which expire during the shutdown, we are requesting they be reopened for a duration as long as the government continues to be shutdown, to be commenced upon the government being re-funded.

Granting such an extension as is being requested would demonstrate a good-faith effort on behalf of Department of Interior to adequately involve the public in environmental review processes, as is mandated by regulation and law. A denial of such an extension would violate regulation and law, and may be subject to legal action.

Sincerely,

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