



SOCIETY FOR AMERICAN ARCHAEOLOGY

November 9, 2021

Ms. Amy B. Coyle
Deputy General Counsel
Council on Environmental Quality
730 Jackson Place NW
Washington, D.C. 20503

RE: CEQ-2021-0002

Dear Ms. Coyle,

The Society for American Archaeology (SAA) greatly appreciates this opportunity to comment upon Phase 1 of the proposed revisions to the regulations implementing the National Environmental Policy Act (NEPA). As outlined in our previous comments over the past four years, SAA believes that some changes to NEPA regulations can be made in order to ensure improvement of the timeliness of project reviews. It is our belief, however, that the alterations made by the previous administration were mostly misguided, and heavily biased in favor of the interests of project proponents at the expense of other stakeholders, and whose impacts—if allowed to be fully realized—would be highly detrimental to both our irreplaceable cultural and environmental resources. Further, it is our opinion that the 2020 amendments failed to produce the regulatory efficiencies that were sought. As such, we greatly appreciate the current Council on Environmental Quality’s (CEQ) attempt to rectify this damage, and recognize it as a good first step. There are also two key issues, however, the SAA calls upon CEQ to address in future rulemakings.

The SAA is an international organization dedicated to the research, interpretation, and protection of the archaeological heritage of the Americas. With more than 7,000 members, the Society represents professional, student, and avocational archaeologists working in a variety of settings, including government agencies, colleges and universities, museums, and the private sector.

There are several immediate and beneficial changes that the proposed rule makes to the 2020 regulations: the repeal of the Trump administration’s changes to ‘reasonable alternatives’; the return of NEPA compliance to being a ‘ceiling’ rather than a ‘floor’ for environmental protection measures; and restoring the proper analyses for ‘direct,’ ‘indirect,’ and ‘cumulative’ effects. The SAA strongly supports all of these modifications, in particular the latter, as ‘indirect’ and “cumulative effects’ considerations are required in order for NEPA to be compatible with the evaluation requirements under Section 106 of the National Historic Preservation Act. This is the

only way that these reviews can run concurrently, thus saving time and money for project managers and stakeholders alike.

As mentioned above, however, certain problems with the Trump NEPA regulations would remain unaddressed by these proposed revisions. First, under the existing rules, as written by the preceding administration, agencies are authorized to arbitrarily decide that non-federal actions that meet an undefined “minimal” level of federal involvement are exempt from NEPA requirements under the Threshold Applicability Analysis [§1501.1]. Further, agencies are allowed to designate certain federal projects as “non-major” [§1507.3] based on an arbitrary percentage level.

Second, the proposed changes before us do not rectify the Trump changes that unwisely limited public involvement in the NEPA process. As we said last year, “one of the fundamental goals of NEPA is to incorporate, to the maximum extent practicable, the viewpoints of the public on development projects that use public funds and/or lands. This is to ensure that the mistakes of pre-NEPA project and facilities construction are not repeated.” It is vital that the Biden administration’s future rulemaking on NEPA address these matters. While it is our understanding that the CEQ intends the Phase 2 rulemaking to not only repair the damage caused by the 2020 changes, but to also broaden and deepen the effectiveness of the NEPA regulations overall, it is essential that the intent of the pre-2020 provisions in question be maintained in whatever new language is developed.

We look forward to working with CEQ in the weeks and months ahead.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah L. Nichols".

Deborah L. Nichols, Ph.D., RPA
President