



SOCIETY FOR AMERICAN ARCHAEOLOGY

September 28, 2023

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

RE: CEQ-2023-0003

Dear Ms. Coyle,

The Society for American Archaeology (SAA) lauds the Council on Environmental Quality's (CEQ) proposed revisions to the regulations implementing the National Environmental Policy Act (NEPA), taking into account changes to NEPA by the Fiscal Responsibility Act, and providing for regulatory review efficiency and certainty, scientifically sound decision-making, and greater consideration for climate change and environmental justice impacts. We believe the proposed revisions can also enhance cultural resources protections.

The SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With more than 5,500 members, the SAA represents professional and avocational archaeologists, archaeology students in colleges and universities, and archaeologists working at tribal agencies, museums, government agencies, and the private sector. The SAA has members throughout the United States, as well as in many nations around the world.

The SAA congratulates the CEQ for developing and promulgating this document. We support the agency's efforts to lead the nation in addressing the environmental challenges looming ahead, as well as the social impacts that those challenges create. While supportive of the overall thrust of the proposed revisions to NEPA regulations, we see specific areas for improvement and for continued mechanisms to protect all our nation's resources.

Our specific comments follow:

§1500.2(f)—“practicable,” within the context of efforts “to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment” is a subjective term and needs a more tailored definition.

§1501.3—regarding “Appropriate Level of NEPA Review”: the proposed rule could be read to

mean that the agency will make this decision prior to any public input. Could an agency opt to use a categorical exclusion on an undertaking with no stakeholder involvement? This also applies to sections §1501.3(a) Applicability and §1501.3(c) Levels of NEPA review.

§ 1502.16(11)—environmental consequences: the SAA strongly supports the proposed rule’s taking into account urban quality, historic and cultural resources, and the design of the built environment when evaluating environmental consequences for the action and alternatives. The reuse and conservation of the built environment—including historic structures—is something that federal policy should encourage whenever possible. Historic preservation is a generator of economic growth at both state and local levels. According to a 2021 report by the Crow Canyon Archaeological Center, heritage tourism generated \$10.5 billion in direct spending and \$650 million in state and local tax revenue and supported 79,000 jobs in Colorado. A new report by PlaceEconomics estimates that since 2014, Frankfort, Kentucky, has realized \$19 million in direct, indirect, and induced labor income through historic rehabilitation activities, and the Kentucky Historic Tax Credit was used to rehabilitate 90 historic residential, commercial, and institutional buildings, thus generating more than \$31 million in private investments.

§ 1506.2—elimination of duplication with state, tribal, and local procedures: the SAA strongly supports this provision. It will create new ways to comply with NEPA and result in faster actions to protect cultural resources, which are experiencing adverse impacts from climate-related changes at a faster rate than project delivery is addressing those impacts. It remains essential, however, that the elimination of duplicative procedures does not result in public and tribal consultation steps being reduced to the point of meaninglessness. Even consultation carried out under emergency compliance situations can still be effective.

§ 1506.3(d)—categorical exclusion determinations: while attractive from a time-saving perspective, the ability of one agency to adopt another’s NEPA categorical exclusions presents some concerns, particularly regarding undertakings that fall within more than one agency’s jurisdiction. If one agency applies a categorical exclusion to a project because it has jurisdiction over a small portion of the project, would another agency—perhaps the lead agency—be able to adopt that categorical exclusion despite having jurisdiction over a much larger or different portion of the undertaking? Without full public disclosure, agencies could be tempted to use categorical exclusions as a way around preparing an Environmental Assessment or Environmental Impact Statement. While the inclusion of “potential adverse effects on historic properties or cultural resources” in the definition of “extraordinary circumstances” (§ 1508.1) would seem to mean that a categorical exclusion is not allowed if extraordinary circumstances are present, including historic and cultural properties, the SAA feels that this topic needs more explanation.

§ 1506.12—innovative approaches to NEPA reviews: define emergencies to disambiguate from urgent situations. This section promotes innovative approaches to complying with NEPA, including in cases of “imminent or reasonably foreseeable loss of historic, cultural, or Tribal resources.” Again, while the SAA appreciates the CEQ seeking to find new ways to improve overall compliance efficiency, the SAA wants to be certain that issues of urgency will not be conflated with emergencies that require near-immediate action and used to justify the loss of the public’s ability to comment on specific actions. Natural disasters, for example, are different in

the speed of their impacts. The threat posed by rising sea levels to archaeological sites presents a different time frame than that of a wildfire or approaching hurricane. We believe this section needs greater specificity.

§ 1508.1—definitions: the SAA strongly supports the inclusion of definitions relating to effects that are direct, indirect, and cumulative; disproportionate adverse effects to environmental justice communities; climate change; and both beneficial and adverse effects. We also applaud the provision concerning definitions for equitable access to a clean environment for cultural and subsistence practices. These will go far toward addressing the environmental justice needs of regulatory stakeholders.

In conclusion, the nation's cultural resources, and the archaeological record in particular, are fragile, irreplaceable, and very susceptible to damage from environmental degradation, the impacts of climate change, and careless development. Once the knowledge and history that are contained within those resources are lost, they cannot be recovered, and tangible connections to our shared cultural past are severed forever. Protecting them not only protects our past but also benefits our economy today.

We greatly appreciate the direction that this new phase of revisions to NEPA implementing regulations is taking, and we look forward to working with you in the months ahead.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Sandweiss', with a stylized flourish at the end.

Daniel H. Sandweiss, Ph.D., RPA
President