



August 20, 2018

Mr. Edward A. Boling
Associate Director for the National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Re: Advance Notice of Proposed Rulemaking Regarding an Update to the
Regulations for Implementing the Procedural Provisions of the National
Environmental Policy Act, Docket CEQ-2018-0001

Dear Mr. Boling,

The Coalition for American Heritage appreciates the opportunity to comment on the Council of Environmental Quality's Advance Notice of Proposed Rulemaking regarding its implementing regulations for the National Environmental Policy Act ("NEPA"). The Coalition for American Heritage ("Coalition") is an advocacy coalition that protects and advances our nation's commitment to heritage preservation. Supported by the American Cultural Resources Association, the Society for American Archaeology, the Society for Historical Archaeology, and the American Anthropological Association, the Coalition collectively represents 300,000 cultural resource management professionals, academic archaeologists and anthropologists, and other subject experts with an interest in NEPA implementation. Many of our members serve as consultants to project applicants engaged in federal projects and facilitate compliance with NEPA. Additionally, many of our members serve the federal government agencies by helping ensure compliance with NEPA regulations.

The Coalition is a strong proponent of concurrent, synchronized, timely, and efficient environmental review. Sweeping changes to regulations that have been painstakingly developed and refined over the last 50 years are not necessary. Frustrations with the NEPA process primarily arise in the arena of *implementation*, not with the regulations themselves. Accordingly, we direct our comments here to four main topics: the importance of NEPA as a critical tool for government oversight; the lack of NEPA contribution to project delays; the impact of funding on effective NEPA implementation; and the importance of developing efficient and clear agency guidance.

NEPA is a Critical Mechanism for Local Community Input – And it Improves Projects

The National Environmental Policy Act is a bipartisan effort to ensure public participation in government decision-making. For over 50 years, it has proven to be an effective tool for government accountability. NEPA provides opportunities for local communities to provide input on federal projects before irreversible decisions have been made, preventing hasty or wasteful decisions that do not account for unintended consequences. NEPA is also an important tool to ensure that public dollars are spent wisely, as the environmental review process helps the federal government assess whether proposed infrastructure projects will have unexpected costs and consequences.

NEPA's requirement to consider alternatives is a powerful tool to mediate among multiple government priorities and multiple agency initiatives. Major success stories include the protection of the Colorado River (the source of drinking water for millions of Americans) from uranium tailings through the NEPA process on the Moab Uranium Millsite, and the NEPA review at Joshua Tree National Park, which identified an alternate route for a military training flight pattern that was better for military training, park visitor experience, and natural and cultural resources.

The NEPA review process has both environmental and economic benefits. A 2012 Congressional Research Service report concluded that the NEPA process strengthens projects and reduces project time and costs, because the process identifies and avoids problems that might arise in later stages of project development¹. In addition, a 2014 Government Accountability Office (GAO) report on NEPA costs and benefits found that senior officials across several federal agencies agree that NEPA review “financially and environmentally improved” projects² by encouraging greater consideration of alternative project designs and making better design decisions.

NEPA Is Not A Major Cause of Project Delays

Recognizing the need to prevent NEPA from overreaching, federal agencies have revised NEPA regulations over the years. As a result, detailed environmental review is limited only to proposed projects that may significantly affect the quality of the human and natural environment. Ninety-five percent of the actions the federal government undertakes each year that are subject to NEPA review are resolved through categorical exclusions, with less than five percent completed as environmental assessments, and less than one percent requiring preparation of detailed environmental impact statements.

¹ Luther, Linda. 2012. The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress. Congressional Research Service Report 7-5700. Page 36.

https://environment.transportation.org/pdf/proj_delivery_stream/crs_report_envrev.pdf

² U.S. Government Accountability Office. 2014. National Environmental Policy Act: Little Information Exists on NEPA Analyses. GAO-14-370. <https://www.gao.gov/products/GAO-14-370>

Federal agencies have also coordinated their reviews, resulting in a more efficient process. For example, the Council on Environmental Quality (CEQ) and the Advisory Council on Historic Preservation have developed guidance to streamline project reviews by integrating the NEPA process with the Section 106 process of the National Historic Preservation Act. Their 2013 handbook³ provides a series of options and guidance for coordinating reviews and ways in which federal agencies can tailor these processes to the needs of various situations. Federal regulations (36 CFR 800.14) already allow agencies to efficiently review projects by using alternate procedures such as programmatic agreements, and agencies regularly make use of such streamlining procedures. Importantly, such methods maintain an essential voice for public input while still reducing review complexity. To address Questions 1-3 and 16-17, and 19-20 in the Notice of Proposed Rulemaking, the Coalition observes that there is already considerable flexibility within NEPA regulations, and there is no need for the CEQ to revise these regulations to reiterate points already made within CEQ guidance.

Despite the creation of extensive guidance to streamline the process, NEPA has developed a false reputation for delaying infrastructure development and government decision-making. Both Republican and Democratic administrations have undertaken numerous studies that have thoroughly examined NEPA and rejected claims that NEPA delays projects. The Congressional Research Service⁴ has repeatedly concluded that NEPA is not a major cause of project delay. When delay occurs, it is more often caused by factors entirely outside of the NEPA process, such as lack of funding. According to a December 2016 report of the U.S. Department of Treasury⁵, lack of funding is “by far the most common challenge to completing” major transportation infrastructure projects.

Data also shows NEPA litigation is rare. According to a CEQ survey, litigation was filed against the agency in only 0.2 percent of actions subject to NEPA between 2001 and 2013⁶. The 2014 GAO report concluded that such cases decreased by 30 percent in 2011 from the annual average between 2001 and 2008, and that the federal government often prevails in such litigation⁷. Under the current regulations, NEPA is not a vehicle for frivolous litigation.

The Coalition therefore concludes in the negative to Questions 4-13 in the Advance Notice of Proposed Rulemaking. The scope of NEPA review is not a major cause of project delay, so the presumption of NEPA delays should not be used as a rationale for adjusting federal regulations that currently strike a nuanced balance between development, local community patrimony, and environmental quality.

³ The Council on Environmental Quality and Advisory Council on Historic Preservation. 2013. NEPA and NHPA: A Handbook for Integrating NEPA and Section 106.

[http://www.achp.gov/docs/NEPA NHPA Section 106 Handbook Mar2013.pdf](http://www.achp.gov/docs/NEPA_NHPA_Section_106_Handbook_Mar2013.pdf)

⁴ Luther 2012.

⁵ AECOM 2016. 40 Proposed U.S. Transportation and Water Infrastructure Projects of Major Economic Significance. Page 2. <https://www.treasury.gov/connect/blog/Documents/final-infrastructure-report.pdf>

⁶ NEPA Litigation CEQ Reports. <https://ceq.doe.gov/ceq-reports/litigation.html>

⁷ GAO 2014, 21.

Effective NEPA Implementation Requires Funding and Logistical Support

Data from multiple sources over a period of many years demonstrate that the CEQ regulations are not a common cause for delay. Further, we observe that higher funding levels for agency personnel to process reviews and for agencies to conduct early stage planning will further reduce any delays that do exist. Currently, federal agency capacity varies widely. We observe that permitting agencies frequently lack the resources to get involved with early stage NEPA planning when conflicts could be avoided. Some agencies, such as the Bureau of Land Management, have invested in planning tools and processes that increase predictability. Congress and the administration should support these efforts.

Another area where funding would bolster NEPA implementation is through support of the Historic Preservation Fund (HPF), which supports State Historic Preservation Offices (SHPOs) and Tribal Historic Preservation Offices (THPOs) to review federal projects. Congress has authorized \$150 million for the HPF but has never appropriated the full amount. Greater support in this arena could further reduce review time on the historic preservation side by increasing the number of reviewing technical staff and allowing more efficient scheduling of technical studies.

We note the CEQ's suggestions in the Advance Notice regarding facilitating agency use of environmental studies, new technologies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews (Questions 2 and 15). This objective aligns with an initiative the Coalition strongly supports: the need for greater digitization and integration of cultural resources data (including previous surveys, National Register decisions, and analysis). Given technological developments in the last decade, GIS planning tools offer a powerful opportunity to save project proponents time and money and make better decisions on project alternatives. Greater funding for state and tribal historical preservation offices will allow considerable improvements to data digitization, analysis, and review. Increased funding will facilitate the development of these types of software tools, which are already well established in the planning process for natural resources. Providing sufficient funding is the critical component to enhancing early planning tools, as the current NEPA regulations do not inhibit these sorts of activities in any way.

Individual Agencies Should Develop Best Practices for Their Own NEPA Implementation

The objectives of One Federal Decision MOU are admirable and, as the MOU demonstrates, efforts to coordinate federal reviews are already feasible within federal agency guidance⁸. The various federal agencies that implement NEPA have developed their own regulations and guidance specific to the activities of those agencies. Because NEPA is implemented by these agencies and not the CEQ, it is appropriate for agencies to develop their own specific

⁸ Memorandum of Understanding: Implementing One Federal Decision Under Executive Order 13807. <https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2-1.pdf>

guidance. For example, the Federal Highway Administration (FHWA) has developed an excellent model to coordinate its NEPA reviews as a single process. This approach includes an accessible and public Environmental Review Toolkit⁹, several web-based tools for project planning, checklists for FHWA offices and state Departments of Transportation, and a “Planning and Environment Linkages” approach that encourages holistic consideration of environmental, community, and economic goals in early transportation planning.

With regard to Question 5 in the Advance Notice, which asks whether NEPA documents can better focus on significant issues that are relevant to decisionmakers and the public, the issue is not in the CEQ regulations but in individual agency implementation of the regulations. Agency personnel are too often unclear on what is required for a NEPA document to be legally sufficient; as a result, they sometimes include excessive information or require too much of project proponents. This problem can easily be addressed by developing personnel handbooks that describe, in plain English, what is legally required of a NEPA document. For example, the American Association of State Highway and Transportation Officials (AASHTO) has developed a handbook¹⁰ titled “Preparing High-Quality NEPA Documents for Transportation Projects.” The handbook describes methods to streamline and simplify NEPA documents, including an analysis of what information needs to be included and how to effectively present information to the reader. This handbook is an excellent template for agencies to tailor the requirements of their own unique projects.

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The Coalition for American Heritage believes that development and preservation and environmental values can be balanced as Congress intended, and that NEPA plays an essential role in providing local communities a voice on federal undertakings. We are confident that these objectives can be accomplished while also honoring our commitment to the preservation of our national heritage, which is also in the public interest.

Thank you for the opportunity to comment on this advance notice. Please do not hesitate to contact us with any questions on these comments.

Best regards,



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Coalition for American Heritage
www.heritagecoalition.org

⁹ Federal Highway Administration. Environmental Review Toolkit.
https://www.environment.fhwa.dot.gov/nepa/nepa_projDev.aspx

¹⁰ American Association of State Highway and Transportation Officials. 2014. Preparing High-Quality NEPA Documents for Transportation Projects. <http://environment.transportation.org/pdf/programs/pg15-1.pdf>