



**SOCIETY *for*
HISTORICAL
ARCHAEOLOGY**

Barbara J. Heath

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Mr. Edward A. Boling

Associate Director for the National Environmental Policy Act

Council on Environmental Quality

730 Jackson Place, NW

Washington, DC 10503

RE: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, Docket CEQ-2019-0003

Dear Mr. Boling,

I write on behalf of the membership of the Society for Historical Archaeology (SHA). The SHA is the world's leading scholarly society devoted to the archaeology and material culture of the modern world (A.D. 1400-present). Our 1,200 members include cultural resource management professionals, academic archaeologists and anthropologists, graduate students, and other subject-matter experts with an interest in historic preservation. Members of our organization participate in our national preservation program as terrestrial and underwater archaeologists, as cultural resource managers for federal agencies, as curators and conservators of federal historical and archaeological collections, and in many other capacities. SHA appreciates the opportunity to comment on the Council of Environmental Quality's (CEQ) Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA).

The SHA opposes the updated regulation. The proposed changes to NEPA will directly and adversely affect the historical archaeological heritage that our membership works to protect, a heritage of great value to communities across the country. The updated regulation establishes new threshold criteria that will result in fewer federal actions subject to NEPA review. The implementation of these criteria, combined with federal agency discretion to determine the need for NEPA review, will result in significant impacts to our nation's cultural heritage. Currently, projects with a federal nexus must consider their potential impacts on cultural resources, including historical archaeology sites. Specifically, removing some types of projects from NEPA review, even if they have this federal nexus, will lead to the loss of historical archaeological resources and cultural sites, and thereby impact American communities.

The proposed NEPA regulations also redefine the analysis of effects by removing distinctions between direct and indirect effects; using ambiguous and confusing terminology such as "reasonably foreseeable" and "have a reasonably close causal relationship to the proposed

action or alternatives.” This redefinition of “effects” reduces what is currently considered under an indirect effects analysis. This change would result in the loss of historical archaeological sites associated with our nation’s many and diverse communities.

We are also concerned that the lack of clarity in the proposed regulation, through the use of undefined or poorly conceived terms and concepts, will lead to increased litigation, project delays and increased project costs, all consequences that are in direct opposition to CEQ’s intent of the proposed changes. Many of SHA’s members are employed in the cultural resource management sector and are actively engaged in assisting federal agencies in streamlining and enhancing the NEPA review process, and those associated with other environmental laws and regulations. The proposed NEPA regulation will greatly diminish and even negate such efforts given the lack of clarity and concept and terminology ambiguity, and as a result of increased project-specific litigation that will arise from the numerous problems with the proposed regulation changes.

The new regulation will also unnecessarily limit public involvement by restricting the scope of public comments, shortening the comment period, banning those who did not publically comment from pursuing litigation in court, and encouraging the use of bonds in court cases, essentially placing an unnecessary roadblock to public access to the court system. The public would only be allowed to comment on the “completeness” of the review rather than the purpose and need of a project, and stakeholders and the public would be limited to a 30-day review period following notice of the availability of an Environmental Impact Statement (EIS). These proposed changes, if implemented, will reverse decades of progress by the federal government, working cooperatively with private-sector historic preservationists, to engage communities in decision-making that affects their heritage and the preservation of places important to their histories and contemporary identities. Involving the public minimizes an agency’s risk and results in better public projects.

For 50 years, NEPA has served the American public, industry, and government well, balancing the needs of economic development with environmental conservation and historic preservation. The proposed changes to the regulations are not only unnecessary, but will introduce uncertainty to the process, result in damage to the human environment, and lead to years of litigation. As I have outlined here, it is important to maintain NEPA as currently written to ensure continued communication and informed decision making on the future of important historical places on the American landscape.

Thank you for the opportunity to comment on the proposed regulations.

Sincerely,

A handwritten signature in cursive script that reads "Barbara J. Heath". The ink is dark and the signature is fluid, with a large initial 'B' and a stylized 'H'.

Barbara J. Heath, Ph.D.
President, Society for Historical Archaeology