



November 22, 2021

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

Re: National Environmental Policy Act Implementing Regulations Revisions, CEQ-2021-0002

Dear Ms. Coyle,

The Coalition for American Heritage appreciates the opportunity to comment on the Council on Environmental Quality's (CEQ) National Environmental Policy Act (NEPA) Implementing Regulations Revisions. The Coalition for American Heritage ("Coalition") is an advocacy coalition that protects and advances our nation's commitment to heritage preservation. Supported by the Society for Historical Archaeology and the American Anthropological Association, the Coalition collectively represents 350,000 cultural resource management professionals, academic archaeologists and anthropologists, and subject matter experts with an interest in NEPA implementation. Many of our members serve as consultants to project applicants and facilitate compliance with NEPA. Additionally, many of our members serve federal government agencies by helping ensure compliance with NEPA regulations.

In general, the Coalition supports CEQ's proposed Phase I approach to rolling back portions of the 2020 rule. As we stated in our comments submitted in March 2020, the 2020 revisions to CEQ's regulations violated both the spirit and letter of NEPA, and introduced uncertainty and risk to communities and development projects. The following comments outline our support of the revisions thus far, and also describe additional changes CEQ should make in revising its implementing regulations. In particular, CEQ should eliminate the threshold analysis, improve public involvement, and reinstate the definition of "significantly" to include unique resources.

I. We support CEQ's proposed changes to the 2020 rule.

a. We strongly support the reinstatement of the definition of effects.

We fully support CEQ's reinstatement of the 1978 regulations as it pertains to the consideration of indirect and cumulative effects and alternatives analyses. Limiting the effects considered in the NEPA review process can only harm communities by failing to consider significant impacts and acting on poor agency decisions based on incomplete information. Requiring consideration of indirect and cumulative effects and the use of alternatives analyses helps to inform agencies in their consideration of alternatives that could avoid or minimize effects to natural, cultural, and community resources.

b. We support the reinstatement of the broader purpose and need descriptions.

We also support CEQ's return to the original definition of purpose and need descriptions. The 2020 regulations required agencies, in preparing an Environmental Impact Statement (EIS), to only describe the purpose and need in light of the applicant's needs. The 2020 requirement, however, is contrary to the purpose of NEPA altogether, as agencies should be reviewing the purpose and need of a project from an objective standpoint, and with proper consideration of alternatives. We thus support CEQ's decision to repeal this revision and return to the original provision.

c. We support the reinstatement of the 1978 regulations allowing federal agencies to require heightened standards of review.

Finally, we support CEQ's decision to reinstate the 1978 regulations position as a minimum standard for other federal agencies' NEPA regulations. The 2020 revisions included language that would supersede other agencies' regulations if those regulations were inconsistent with CEQ's, and also prohibited any regulations that required more review unless such measures could be proven to increase efficiency. These revisions were completely contradictory to the spirit and letter of the NEPA statute, and served only to introduce uncertainty and risk to projects and communities. Permitting federal agencies to require heightened standards specific to the agency's needs is much more in line with the purpose of NEPA, and CEQ is right to repeal these 2020 revisions.

II. We urge CEQ to consider further changes to the 2020 rule.

The 2020 regulations eliminated many important protections under NEPA, and we encourage CEQ to reinstate the wording from the 1978 regulations for the following provisions, at a minimum:

a. CEQ should eliminate the threshold applicability analysis.

CEQ should prioritize repealing the "threshold applicability analysis" found within the 2020 definition for "major federal action." This new definition was meant to limit the number of projects undergoing NEPA review. Under the current regulations, an agency can unilaterally decide—without an advance rulemaking—that a certain project does not have to be subject to NEPA. No further analysis is required. This confers a unilateral decision-making authority on agencies that eliminates the opportunity for public input to help better anticipate unintended consequences of agency decisions. Giving agencies discretion to decide that certain projects are not subject to NEPA review cloaks what should be a transparent decision-making process. This provision undermines public trust and confidence in fair and consistent application of the law. CEQ should prioritize the repeal of the provision.

b. CEQ should remove the limits on public involvement.

The current regulations limit the ability of the public to comment on the potential impacts of a project and provide information critical to agencies' decision-making, something CEQ should repeal in this round of rulemaking. Multiple studies conducted have confirmed that public input and involvement in the NEPA process improves success in development projects by accounting for risks early in the planning stage. The 2020 regulations limit the subjects on which the public

can comment, establishes arbitrary deadlines for EAs and EISs, and imposes unduly high barriers to challenging agency decisions. As CEQ evaluates its regulations in this rulemaking, we encourage the agency to prioritize public involvement that supports the fundamental goal in NEPA of giving the public a voice in federal decision making.

c. CEQ should reinstate a key definition.

Finally, CEQ should reinstate the 1978 regulations' definition of the word "significantly" which was eliminated from the 2020 regulations. Under the 1978 rule, in determining the significance of a potential action, the agency considers a list of ten different factors, including, "[u]nique characteristics of the geographic area such as proximity to historic or cultural resources . . .". The 2020 rule, in contrast, drastically cut back these considerations, requiring only three factors. The 2020 regulations eliminated the reference to unique resources, including cultural ones, and eliminates the term entirely from the definitions section. The removal of this definition put resources at risk, and introduced unnecessary ambiguity, and CEQ should reverse the change at its earliest opportunity.

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In conclusion, the Coalition supports CEQ's proposed Phase I approach to partially reinstating the 1978 CEQ regulations. NEPA and the corresponding regulations should allow for robust review and public involvement in development, all of which ultimately helps communities and developers alike. Thank you for the opportunity to comment on the proposed rule, and we look forward to reviewing CEQ's Phase II revisions.

Best regards,



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