



SOCIETY FOR AMERICAN ARCHAEOLOGY

August 4, 2025

Ms. Carrie Abravanel
Office of NEPA Policy and Compliance
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

RE: RIN 1990-AA52

Dear Ms. Abravanel,

The Society for American Archaeology (SAA) appreciates this opportunity to comment on the Department of Energy's (DOE) interim final rule to revoke procedures implementing the Council of Environmental Quality's (CEQ) now-rescinded regulations concerning the National Environmental Policy Act (NEPA).

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 nearly 7,000 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.

Previously, NEPA and National Historic Preservation Act (NHPA) reviews could be combined for streamlining purposes. The changes being proposed, however, are now in direct conflict with the mission and requirements of NHPA, which is not a procedural law in the same manner of NEPA. NHPA has requirements that are more focused and require different types of analyses than NEPA. For example, NHPA necessitates inventory and evaluation, meaning it may require a field survey and an eligibility evaluation of historic properties (e.g., buildings and archaeological sites). The 1992 amendments to NHPA *mandate* consultation with tribes to identify properties of religious and cultural significance. This is not in NEPA. NEPA does not give agencies the legal right to connect a NEPA categorical exclusion with a NHPA undertaking, thereby unilaterally excluding tribal consultation and forgoing any identification of a potential property of religious or cultural significance. Under the circumstances, all references to NHPA should be removed, and NHPA should continue as a stand-alone piece of legislation.

Regarding NEPA implementation, the April 2025 repeal of CEQ's NEPA regulations was carried out under Executive Order (E.O.) 14154 (issued January 29, 2025). This E.O. rescinded President Carter's E.O. 11991, which was the legal basis upon which CEQ issued its NEPA rules. Further, on May 29, 2025, the Supreme Court issued its decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*. In that ruling, the Court held that NEPA is fundamentally a procedural law in which courts must give "substantial deference" to "reasonable agency conclusions" underlying that agency's NEPA procedures.

Given the above, the SAA understands that the DOE must proceed with updating its NEPA policies. Nevertheless, it is imperative that the Department's revised NEPA procedures ensure that (1) the impacts of any particular undertaking on natural resources and historic properties are taken into account in project planning, (2) meaningful and comprehensive consultation with federally recognized tribal governments is carried out during planning and construction, and (3) that the public—in particular local communities affected by an undertaking—has adequate input into the process.

The new NEPA procedures must also take into account their impact on how other reviews are conducted. In particular, conflating the amended NEPA rules with Section 106 of NHPA will change the congressional intent of cultural resources reviews under NHPA. It is important to remember that NHPA emphasizes the need to consult with tribes and Native Hawaiians on properties of religious and cultural significance. The new NEPA changes focus on direct effects, while under NHPA the impact to properties of religious and cultural significance are often indirect effects. Visual and noise intrusions can adversely affect the tribal need to conduct historically important gatherings and ceremonies. NHPA requires consideration of cumulative impacts regardless of any changes to the guidelines and practices implementing NEPA.

Unfortunately, the SAA finds the procedures outlined in the interim final rule to fall far short of the above requirements. We offer the following comments and suggestions to the proposed policies:

The DOE's reliance on categorical exclusions depends heavily on the assertion that "previously disturbed" project areas do not contain undiscovered historic properties, or any historic properties at all. The reliance on previous disturbance in the decision to identify a project as a categorical exclusion ranges from fiber optic cables to powerlines, energy storage facilities, wind turbines, particle accelerators, biomedical facilities, and more. In fact, archaeological deposits are often found under existing buildings and previously disturbed areas. Before identifying any of these project types as a categorical exclusion there needs to be an analysis of the potential for finding archaeological resources within or immediately under a proposed project that ostensibly meets the criteria of "disturbed." We are concerned that the identification of areas as "previously disturbed" will be used too liberally in an attempt to avoid having to carry out reviews.

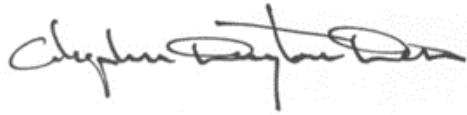
The sections regarding the transfer of land (B1.25) is confusing and assumes that said transfer is going *out* of federal ownership as opposed to coming into the federal government. In addition,

any transfer of land that contains cultural resources must include a protective covenant in order to be considered a categorical exclusion.

In conclusion, we are concerned that too heavy a reliance on the “previously disturbed” designation will lead to poor decision-making and adverse outcomes on potential cultural resources. Further, regardless of a categorical exclusion, NHPA will still require federal agencies to consult with tribes on properties of “religious and cultural significance.”

Given the above we ask that the Department extend the comment period for an additional 30 days to allow for a more detailed analysis.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher D. Dore". The signature is fluid and cursive, with a large initial "C" and a stylized "D" at the end.

Christopher D. Dore
President