SOCIETY FOR AMERICAN ARCHAEOLOGY

August 4, 2025

Ms. Megan Blum
Office of Environmental Policy and Programs
Federal Transit Administration
East Building
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: RIN 2132–AB51

Dear Ms. Blum,

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(FTA) interim final rule to revoke procedures implementing the Council of Environmental Quality's (CEQ) now-rescinded regulations concerning the National Environmental Policy Act (NEPA).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

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 This E.O. rescinded President Carter's E.O. 11991, which was the legal basis upon which CEQ issued its NEPA rules.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 the FTA must proceed with updating its NEPA policies. Nevertheless, it is imperative that the agency's revised NEPA procedures ensure that (1) the impacts of any particular undertaking upon 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 carried out. In particular, conflating the amended NEPA rules with Section 106 of the National Historic Preservation Act (NHPA) will change the congressional intent of cultural resources reviews under the NHPA. It is important to remember that NHPA specifically calls out 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 effects 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 new changes to the NEPA regulations.

It is in this vein that we offer the following specific recommendations to the proposed policies:

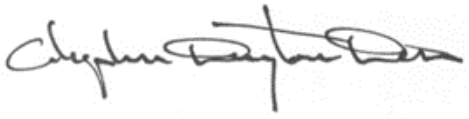
1. Background
    a. Paragraph 2: the document claims that 23 CFR Part 771 needs to remove cross references to the CEQ regs and stand on its own, but removal of the cross references doesn't just weaken Part 771, the proposed changes appear to go well beyond what is necessary to ensure the Part is functionally stand-alone.
    b. Paragraph 3: the document does not appear to define "reasonably foreseeable."
2. Section-by-section analysis
    a. 771.105c—we are concerned about their addition of the term "reasonably foreseeable" as the standard for evaluating the social, economic, and environmental impacts of a proposed project if there is *any* effort to curtail public comments. This seems like an avenue to dismiss public concerns as items that weren't reasonably foreseeable. In fact, for cultural resources no one can define "reasonably foreseeable" until an analysis of existing and potentially buried archaeological sites is carried out and/or tribes have identified a Traditional Cultural Property per the NHPA. Any analysis of "reasonably foreseeable" effects should include determination of impacts to existing or potential buried cultural resources before making a decision.
    b. 771.109—the document proposes clarification that 23 CFR part 771 only applies to major federal actions, but the current amendments show a "reserved" spot, rather than listing hard definitions of what constitutes actions considered "non-major." This needs clarification because currently it reads as though what constitutes a major action might be at the whims of the Secretary of Transportation or other administration officials. Any actions not subject to NEPA as major actions need to be defined and agreed upon as categorical exclusions.

c. 771.115—the document proposes to update terminology and language from the NEPA Amendments and removes language that previously reflected consistency with the CEQ regulations, but the language in the CEQ regulations was rescinded because the Supreme Court ruled that the CEQ lacked the authority to issue them, not because they were poorly implemented. As this section only outlines the classes of actions under NEPA, it is not clear why it would need to be changed.
d. 771.141—Reliance and Adoption Efficiencies: "inserted to address situations where an environmental document is not prepared in accordance with 23 U.S.C. 139, but the administration determines that the proposed action is substantially the same as the action covered in the existing environmental document." This should clarify *who* in the administration is making the determination. Ideally, it needs to be a decision made by the relevant SME.

3. Regulatory Analysis and Notices
    a. Under *Executive Order 12866, Executive Order 14192, and DOT Regulatory Policies and Procedures*—the document asserts that EO 12866 requires cost benefit analyses of regulatory alternatives but also says that because EO 14192 is a *deregulatory* action, no economic impact data is necessary, nor can the government reasonably undertake that "difficulty." Environmental deregulations will inevitably result in externalities for which *someone* has to pay.
4. In general, we are concerned with the lack of public involvement in the environmental review process. Particularly for transportation agencies such as FTA, where many of these projects happen in large urban areas, the involvement of the public is a crucial component of environmental reviews. For FTA, where neighborhoods and communities will be impacted in both positive and negative ways, public participation is imperative.
5. Finally, transportation agencies must remember that they are subject to Section 4(f) of the Department of Transportation Act of 1966 and therefore in their NEPA analysis they must identify the locations of historic properties.

We strongly urge the FTA to amend the interim final rule to write regulations that reflect the intent of NEPA and provide clarity for staff and developers alike. Clarity and uniformity will generate predictability and reduce the threat of litigation.

Sincerely,



Christopher D. Dore
President