SOCIETY FOR AMERICAN ARCHAEOLOGY

August 4, 2025

US Army Corps of Engineers
Attn: CECW
441 G Street NW
Washington, DC 20314–1000

RE: RIN 0702–AB02

Dear Sir or Madam,

The Society for American Archaeology (SAA) appreciates this opportunity to comment on the US Army Corps of Engineers' (USACE) interim final rule to rescind the USACE regulations implementing the National Environmental Policy Act (NEPA) for the Army Civil Works program, except for the section concerning Categorical Exclusions.

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 This E.O. rescinded President Carter's E.O. 11991, which was the legal basis upon which CEQ issued its NEPA rules.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 USACE 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 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 short of the above requirements. We offer the following specific questions and suggestions:

1. The interim final rule severs the but-for causal relationship, thus adversely affecting the ability to combine NEPA and NHPA reviews. NHPA considers the Area of Potential Effect to be applied literally. If there is a permit for a bridge, and a housing development cannot proceed without that bridge, then there are reasonably foreseeable effects to cultural resources (taking into account the entire project area—bridge and housing development). Condensing the study area will not parallel with NHPA and will create adverse effects to cultural resources. Further, a Traditional Cultural Property, as a resource, may exist both within and outside a USACE permit area. The but-for analysis should continue for cultural resource evaluations.

2. The interim final rule makes the District Engineer solely responsible for determining the appropriate level of review. Will there be an appeal process?

3. The concept of "no new research" should be carefully weighed when analyzing cultural resources. Historic resources not considered eligible to the National Register some years ago may now meet the 50-year rule.

The SAA urges the USACE to address these important issues with the interim final rule and its new NEPA implementing procedures.

Sincerely,

Christopher D. Dore
President