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Surface Transportation Board

395 E Street, SW

Washington, DC 20423-0001

ATTN: Danielle Gosselin, Director of the Office of Environmental Analysis

Via online portal at <https://www.stb.gov/proceedings-actions/e-filing/>

Re: Permitting Reform-Environmental Review Process [Docket No. EP 779]

Dear Director Gosselin:

The American Cultural Resources Association (ACRA), the trade association for companies specializing in cultural resource management (CRM), is submitting comments to the Surface Transportation Board (Board) in response to its notice of proposed rulemaking (NPRM) entitled *Permitting Reform-Environmental Review Process* [Docket No. EP 779].

ACRA member firms undertake much of the legally mandated CRM studies and investigations in the United States and employ thousands of professionals, including archaeologists, architectural historians, ethnographers, historians, and an increasingly varied group of other specialists. To help guide smart, sustainable economic development and safeguard important historic and cultural heritage assets, ACRA members apply specialized research skills within a framework of federal, state, local, and/or Tribal law and facilitate an open dialog where every stakeholder has a voice.

ACRA supports efforts to make the National Environmental Policy Act (NEPA) process more efficient and effective. But we remain concerned that the recent elimination of Council on Environmental Quality's (CEQ) NEPA implementing regulations will invite more litigation, delay undertakings, prevent public engagement, and threaten historic and cultural places without consideration of how federal actions may impact them.

As ACRA stated in our March 2025 comments on the rescinding of CEQ's NEPA regulations:

"Delegating NEPA rulemaking to individual federal agencies will likely lead to inconsistent and uneven implementation of NEPA, causing confusion and delay as agencies and stakeholders are forced to navigate a patchwork of varying regulatory schemes. ACRA member firms report that among the biggest obstacles to timely and efficient environmental and cultural resource review is the vast disparity in how agencies – and even between different regional offices within agencies – interpret and enforce federal statutes. This will be especially difficult for smaller agencies lacking adequate staff or expertise, and may create an imbalance in the interpretation of the law. In addition, this

challenge is likely to grow as federal agencies lose experienced subject-matter experts due to recent layoffs and resignations.”¹

With these points in mind, we wish to offer some comments on the Board’s NPRM.

Agency Obligations Under Section 106

NEPA often works in tandem with the other federal laws, including the National Historic Preservation Act (NHPA), the nation’s cornerstone law protecting cultural and historic properties. But they are distinct statutes that place specific requirements upon federal agencies.

NHPA establishes that the federal government has a responsibility in protecting our nation’s cultural and historic resources and properties as they are physical manifestations of our nation’s heritage. Section 106 of the NHPA is the primary vehicle for identifying and protecting historic properties; it requires any federal department or independent agency “having authority to license any undertaking” to “take into account the effect of the undertaking on any historic property.” The NHPA also created the Advisory Council on Historic Preservation (ACHP) and gave it the authority to “promulgate regulations as it considers necessary to govern the implementation” of Section 106 “in its entirety.” Those regulations can be found at 36 CFR Part 800 (ACHP 800 regulations).

Section 106 and the ACHP 800 regulations provide a clear, consistent roadmap that enables undertakings to progress while considering their potential impact on the country’s cultural heritage. They provide a multitude of ways to make the process more efficient, such as the ability to create programmatic agreements and program comments. Consultation is the key to Section 106 as it gives all interested parties a voice in the process. This includes citizens and federal Tribes, to which the federal government has a government-to-government trust responsibility. The Section 106 process as established in statute and regulations promote open collaboration among stakeholders so conflicts are addressed early in the process. This early engagement typically results in the swift approval of the majority of infrastructure projects.

Any changes to the Board’s NEPA regulations do not release it from its obligations under Section 106 of NHPA and its accompanying regulations.

Agency Procedures Aligning NEPA and NHPA

NEPA and Section 106 of NHPA often work in tandem, meaning that any changes to the NEPA process used by the Board will inevitably affect cultural resource reviews under NHPA.

ACRA is encouraged by the fact that the Board proposes to maintain provisions in the regulations regarding historic preservation reviews and further to stipulate the requirement that undertakings are subject to Section 106. That said, the compressed timeframe for environmental assessment (EA) and environmental impact statement (EIS) documents could constrain the amount of time available to complete the Section 106 process, which provides essential

¹ ACRA Comments on *Removal of National Environmental Policy Act Implementing Regulations* (Docket No. CEQ-2025-0002), March 27, 2025

information required for the NEPA review. It will be essential for the Board to ensure that changes to NEPA, including the addition of new categorical exclusions and changes in the delegation of authority within the Board staff, do not result in harm to historic properties.

Protection of Cultural and Historic Assets

In addition to fostering consistency across federal agencies, CEQ's NEPA regulations had ensured that agencies upheld the law's intent to, among other purposes, "[p]reserve important historic, cultural, and natural aspects of our national heritage." (40 CFR § 1500.1) The CEQ regulations required all federal agencies to consider, in analyzing the intensity of effects of a proposed action, the degree to which the "action may adversely affect unique characteristics of the geographic area such as historic or cultural resources, parks, Tribal sacred sites, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas" and the "degree to which the action may adversely affect resources listed or eligible for listing in the National Register of Historic Places." (40 CFR § 1501.3)

These provisions emanate from the plain language in NEPA, which states that "it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may," among other goals, "preserve important historic, cultural, and natural aspects of our national heritage . . ." (42 USC § 4331)

These provisions are particularly resonant today, as the nation celebrates its 250th anniversary this year, and align with the spirit of President Trump's January 29, 2025, Executive Order *Celebrating America's 250th Birthday* (E.O. 14189), whose purpose is, among other things, "to honor the history of our great Nation."

Therefore, ACRA appreciates the Board's preservation of language in the current regulations (49 CFR 1105.8) regarding the historic review and reporting process (proposed move to 49 CFR 1105.14).

Comments on Specific Provisions

ACRA offers the following comments on specific proposals in the NPRM.

Changes in Delegated Authority

The Board proposes to delegate authority to the Director of the Office of Environmental Analysis (OEA) (Director) to serve as the agency official for purposes of the NHPA, including determining whether a proposed federal action is an undertaking and, if so, whether it is a type of activity that has the potential to cause effects to historic properties, and to determine the applicability of section 110(k) of the NHPA (proposed sections 1011.2; 1011.7). Under the current regulations, these duties are delegated to the Board's Chief Counsel.

ACRA has no objection to this change, noting that the Board's Federal Preservation Officer (FPO) serves within the OEA. ACRA encourages the Director to engage the FPO on determinations regarding undertakings.

Definition of "Effects or Impacts"

The Board proposes to add a definition of "effects or impacts," which would mean "changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives." The definition stipulates that effects could include "historic . . . or cultural effects" (proposed section 1105.4).

ACRA is concerned that, in the context of historic properties, this definition could cause confusion with the existing definition of "effects" in the ACHP's 800 regulations.² ACRA recommends the Board provide additional definition and clarification on this matter prior to final rulemaking.

Historic Reports

ACRA is encouraged that the Board plans to retain the language of 49 CFR 1105.8 – regarding the historic review and reporting process - as a new 49 CFR 1105.14.

ACRA urges the Board to ensure this language is in the final rule.

Cultural Resources Content in EAs/EISs

The Board proposes to add a provision under the section regarding content that is required in an EA or EIS, stating that "[i]f historic review is required, a section 106 review under the implementing regulations (36 CFR part 800) for the NHPA must be conducted." (proposed section 1105.16)

ACRA is pleased that the Board has included this provision. Many CRM firms report that some federal agencies do not start their Section 106 reviews in a timely manner or in coordination with their NEPA reviews. The result can be rushed Section 106 reviews or costly delays to important infrastructure projects.

This is the case even though the ACHP regulations stipulate that "[a]gencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner."

ACRA encourages the Board to reiterate this point in its guidance and training for staff.

² Effect means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register. (36 CFR § 800.16(i))

Noise and Vibration Content in EAs/EISs

The Board proposes to amend the current regulations' provisions regarding noise impacts to: 1) include the term "vibration;" and 2) to remove the requirement to state whether the proposed action would cause an increase in noise levels of three decibels Ldn or more or an increase to a noise level of 65 decibels Ldn or greater, and replace it with language requiring environmental noise and vibration analysis "to characterize any effects resulting from the proposed action" (proposed section 1105.16).

ACRA notes that noise and vibration can affect historic properties in several ways. Vibrations can adversely impact the structural soundness of historic structures. Noise can adversely affect the integrity of a property's environment. For example, noise can disturb sacred sites where Tribal nations conduct ceremonies. This is why the ACHP, in its regulations, lists the "[i]ntroduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features" as an example of an adverse effect under NHPA (36 CFR 800.5(a)(2)(v)).

ACRA supports the inclusion of "vibration" into the provision on noise impacts. ACRA also recommends that the Board consider language that more clearly ensures that the effects of both noise and vibrations on historic properties are considered.

Conclusion

As ACRA stated in its 2025 comments to CEQ, "When President Richard Nixon signed NEPA into law in January 1970, the intent was to protect our nation's environment, including our cultural and historic heritage, from harm without the input of stakeholders, including American citizens. As our nation prepares to celebrate our 250 years of existence, those ideals are more essential than ever."

We look forward to working with you to ensure an efficient and consistent NEPA regulatory framework that keeps faith with the intent of the statute.

Sincerely,



Amanda Stratton
Executive Director