August 4, 2025

(*Submitted via https://www.regulations.gov, Docket No. FHWA-2025-0007*)

U.S. Department of Transportation, 1200
New Jersey Avenue SE, West Building
Ground Floor, Room W12–140,
Washington, DC 20590

RE: Department of Transportation, Revision of National Environmental Policy Act Regulations, Interim Final Rule, Request for Comments, Docket Number FHWA-2025-0007

Dear Sir or Madam:

The National Trust for Historic Preservation respectfully submits the following comments in response to the U.S. Department of Transportation's Interim Final Rule for implementing the National Environmental Policy Act (NEPA) as applied to the Federal Highway Administration, Federal Transit Administration, and Federal Railroad Administration. We appreciate that the Department has provided this opportunity.

Founded in 1949, the National Trust is a privately funded nonprofit organization chartered by Congress to protect America's historic places, and to "facilitate public participation" in historic preservation. 54 U.S.C. § 312102(a). Through our stewardship of historic sites, partnerships with preservationists across the country, and role in federal policy, the National Trust has long advocated for thoughtful and transparent planning processes that preserve the nation's irreplaceable cultural and historic resources.

Preserving our nation's historic and cultural places is a cornerstone of good policy – good for our economy, good for our environment, and good for our communities. Federal efforts to protect these cherished resources not only breathe new life into cities, towns, and neighborhoods nationwide, but they also ignite a deep sense of national pride. The Administration's commitment is crucial to ensuring that federal actions are based on thoughtful consideration of their impacts on these vital assets, and will ensure that this important work of safeguarding our heritage continues for generations to come.

NEPA plays a vital role in ensuring that federal agencies assess and consider the environmental impacts of their actions, including effects on historic properties. NEPA's statutory provisions include a requirement that federal agencies "preserve important historic, cultural, and natural aspects of our national heritage," 42 U.S.C. § 4331(b)(4). The procedural protections enshrined in NEPA—particularly through its public engagement

requirements and analysis of alternatives—have been instrumental in preserving places of historical and cultural significance, many of which would otherwise have been lost or irrevocably damaged.

The National Trust recognizes the economic and social benefits from regulations that clarify the standards and procedures governing NEPA reviews. By reducing uncertainty and inefficiency, strong regulations would ideally encourage greater investment, foster increased transparency, and promote early coordination to support timely permit approvals. The National Trust supports these objectives, but it will be important to ensure that the regulations require adequate consideration of impacts to historic and cultural resources.

The National Trust's primary interest in NEPA is ensuring that federal agencies adhere to statutory requirements and take appropriate measures to consider our national heritage. In particular, the requirements of 42 U.S.C. § 4332(2)(C), which includes a thorough analysis of environmental impacts and alternatives, have been instrumental in preserving many of our nation's most important historic places. The National Trust frequently participates in NEPA public comment opportunities to help inform those considerations, and we are grateful for the many positive, consensus-driven outcomes that we have achieved in collaboration with federal agencies through those engagements.

We also note that NEPA and the National Historic Preservation Act (NHPA) are intended to function in a coordinated and efficient manner, with their respective review processes—NEPA analysis and Section 106 consultation—designed to be integrated rather than duplicative. When coordinated early in project planning, these processes support timely and informed federal decision-making while ensuring meaningful consideration of environmental and cultural resources. By aligning these reviews from the outset, agencies avoid redundant efforts, reduce delays, and meet compliance obligations more efficiently, while still upholding the intent of both statutes to protect valuable environmental and historic resources. The National Trust urges federal agencies to issue NEPA regulations in a manner that ensures continued coordination with the NHPA, recognizing this integration as essential to effective project planning and resource protection.

To facilitate timely and unified federal reviews, NEPA requires that each notice of intent to prepare an environmental impact statement include a request for public comment on proposed agency action. 42 U.S.C. § 4336a(c). This engagement allows communities to provide early input regarding the proposed actions and their potential impacts on historic and cultural resources. Citizens, organizations, and stakeholders can then identify local concerns and suggest alternatives that federal agencies need to consider. This early invitation for public comment helps to minimize delays, legal challenges, and negative impacts. Public participation at the local level aligns with democratic principles and frequently leads to more successful projects that better reflect local needs and values.

We have concerns that the Department's proposed revisions to its NEPA regulations may diminish the scope and effectiveness of environmental reviews in ways that could harm historic and cultural resources. Limiting the types of actions that require environmental

assessments or environmental impact statements may overlook significant threats to historic sites, particularly those affected by indirect or cumulative impacts.

While the National Trust supports the Department's compliance with federal preservation laws, including the National Historic Preservation Act (NHPA), and its commitment to intergovernmental coordination, particularly in cases involving Tribal or federally recognized cultural sites, the potential use of mitigation measures to justify a CE application, even when extraordinary circumstances are present, creates a greater risk of inconsistent decision-making, allowing certain routine or low-impact projects to proceed without full Environmental Assessments (EAs) or Environmental Impact Statements (EISs), and raises concerns when mitigation is used to avoid formal review.

Without clear procedural safeguards, mitigation decisions may lack enforceability and public scrutiny. Specifically, the discretion granted to the agencies could result in the delayed or inconsistent application of Section 106 consultation requirements, particularly if the agency determines that effects on historic resources are not significant. There is a risk that early consultation with State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs) could be bypassed or minimized, undermining NHPA compliance.

To ensure the Department's NEPA reform fully aligns with the Section 106 process, the following improvements are recommended.

- Mandate consultation triggers: Include clear procedural requirements that SHPO/THPO consultation must occur whenever an action may affect historic properties, regardless of whether those effects are deemed "significant" under NEPA.

- Document mitigation decisions: Require formal documentation of all mitigation measures used to support a CE determination, including how those measures ensure no adverse effects under Section 106.

- Promote early consultation: Embed consultation as an early-stage requirement, not a post-hoc justification, to preserve the integrity of intergovernmental collaboration and ensure meaningful input from Tribal and cultural stakeholders.

In *Seven County Infrastructure Coalition v. Eagle County*, No. 23-975, 605 U.S. ___ (May 29, 2025), the U.S. Supreme Court affirmed that NEPA is a procedural statute, requiring agencies to prepare an adequate report, but not dictating specific substantive outcomes based on environmental review. Understanding where to draw a "manageable line" of NEPA analysis regarding historic and cultural resources, as determined by individual federal agencies, has the potential for inconsistent application without qualified historic preservation review. With greater responsibility and oversight of historic and cultural resources residing with individual federal agencies, successful implementation will require early coordination and engagement with historic preservation professionals to help ensure NEPA analysis is both reasonable and effective.

Specific Areas of Concern:

- **Ensuring Adequate Analysis of Cumulative Impacts to Historic and Cultural Resources**. Although the *Seven County Infrastructure* case curtails consideration of "reasonably foreseeable" impacts under NEPA, the Section 106 regulations explicitly require consideration of "reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative." 36 C.F.R. § 800.5(a)(1). When the Section 106 review process under the NHPA is integrated with the NEPA process, it is crucial to continue assessing the reasonably foreseeable impacts on historic and cultural resources as required by Section 106. Dismissing such impact assessment from the NEPA process risks failing to comply with Section 106, and would not provide adequate oversight or mitigation.

- **Diminished Community-Driven Engagement**. Public engagement is foundational to NEPA and critical to identifying historically significant sites, especially those of Tribal Nations, underserved communities, and others whose voices have historically been minimized or excluded from the federal decision-making process.

- **Compressed Timelines Without Safeguards**: While efficiency is important, imposing arbitrary limits on review periods may hinder agencies' ability to fully consult with State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), and other stakeholders, as required under Section 106 of the National Historic Preservation Act. 36 C.F.R. §§ 800.3, 800.16(f).

Recommendations

To ensure that the NEPA process continues to safeguard historic resources as Congress intended, the National Trust urges the Department to:

- Retain meaningful analysis of cumulative and indirect impacts on historic resources, in order to ensure compliance with the National Historic Preservation Act;

- Preserve robust opportunities for early and effective public participation;

- Ensure strong coordination between NEPA and Section 106 of the National Historic Preservation Act; and

- Provide adequate time and resources for agencies to conduct thorough environmental and cultural resource reviews. The National Trust suggests evaluating how best to meet statutory requirements through enhanced staffing resources.

The National Trust for Historic Preservation firmly believes that historic preservation and environmental stewardship are mutually reinforcing objectives. Federal efforts to protect our nation's historic and cultural resources play a vital role in revitalizing communities, supporting local economies, and strengthening Americans' connection to our shared

heritage. Effectively implementing the National Environmental Policy Act is essential to safeguarding the places that embody the full breadth of the American story—national parks and battlefields, Tribal sacred sites, rural landscapes, and urban landmarks.

We appreciate the opportunity to provide comments, and we remain available as a resource as you continue to develop implementing regulations. We respectfully urge the Department to ensure that any revisions to NEPA implementation remain faithful to the statute's original purpose: to promote informed decision-making, safeguard irreplaceable environmental and cultural resources, and facilitate meaningful public engagement. Recognizing and considering historic and cultural resources is not a hindrance to progress, but rather a pathway to more resilient and community-driven development. With thoughtful updates and continued consultation, the NEPA process can continue to protect historic places while advancing the nation's infrastructure and sustainability goals.

Sincerely,

Carol E. Quillen
President and CEO

cc: Colleen Vaughn, Federal Preservation Officer, U.S. Department of Transportation
Travis Voyles, Vice Chair, Advisory Council on Historic Preservation
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