



August 1, 2025

Department of Defense
Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency
Regulatory Directorate
4800 Mark Center Drive, Mailbox #24, Suite 05F16,
Alexandria, VA 22350-1700

Re: Comments on the DoD's Army Department Interim Final Rule Rescinding the Department of the Army Regulations Implementing the National Environmental Policy Act (NEPA)

RIN 0702-AB02 | 32 CFR Part 651

Dear Secretary Hegseth and NEPA Rulemaking Team,

On behalf of the Alliance for Tribal Clean Energy, we submit these comments regarding the Department of the Defense's (DoD) July 3, 2025, interim final rule rescinding and revising Department of the Army's regulations implementing the NEPA. These comments respond to DoD's request for comment on the interim final rule.

1. Tribal Sovereignty in Military NEPA Actions

The whole of the United States government, including the six branches of the military, is beholden to the federal trust and treaty obligations between Tribal Nations and the federal government. The history of this legal and political relationship is clearly stated in Executive Order 13175¹, which the Army cites in this rulemaking. We strongly disagree with the Army's opinion that the rescission and revision of NEPA regulations do not "have a substantial effect on Indian Tribal Governments". There are several provisions of the rescinded NEPA regulations that provided much needed protection for Tribal lands. Therefore, we believe that this rescission is in violation with existing directives.

For example, in 32 CFR § 651.4(q)(10), proponents were required to coordinate with Tribal governments and Tribal Historic Preservation Officers who have an interest in or jurisdiction over a resource that may be impacted by the proposed action. This subsection goes on to direct proponents to identify potential impacts to, and consult with as appropriate, American Indian, Alaskan Native, or Native Hawaiian lands, resources, or cultures. These and several other sections of the Army's NEPA provisions served as preventative measures against the desecration of sovereign Tribal lands. By removing these protections, the Army risks failing to uphold trust and treaty obligations.

¹ Exec. Order No. 13175, *Consultation and Coordination with Indian Tribal Governments*, 65 Fed. Reg. 67249 (November 6, 2000).



2. Tribal Consultation Requirements

Executive Order 13175 and DoD Instruction 4710.02 require the Army to engage in meaningful government-to-government consultation with Tribal Nations when appropriate.² In addition, these directives call for accurate resource identification. Both of these activities are administratively and financially burdensome for Tribes who are often understaffed and underfunded. By removing and rushing environmental review procedures, the Army will be making it even more difficult for Tribes to engage at the level required by law. Consultation periods may be shortened or bypassed entirely, resulting in the entirely avoidable and illegal disturbance of sacred sites, burial grounds, and other irreplaceable cultural resources.

To avoid these harms, we recommend the Army amends its ruling to mandate early, pre-NEPA cultural mapping that is conducted in collaboration with affected Tribes. Doing so will add a layer of protection for sacred and cultural resources when categorical exclusions are considered. Requiring pre-NEPA cultural mapping early in the project planning process aligns with Section 106 of the National Historic Preservation Act³ and reflects the Department of Defense's own cultural resource management policy⁴, which emphasizes early coordination and avoidance of adverse impacts. Integrating early Tribal cultural review will assure the Navy complies with the Fiscal Responsibility Act's statutory timelines while ensuring that later litigation or delays due to inadequate consultation are avoided, consistent with Executive Order 14154⁵.

3. Categorical Exclusions

The Army's decision to retain the categorical exclusions listed in Appendix B of 32 CFR § 651 cannot stand alone without added protections for culturally significant sites and government-to-government consultation. The construction and demolition activities that receive a categorical exclusion are of specific concern for Tribal Nations. The categorical allowance of "new construction on a previously undisturbed site", coupled with the blanket rescission of NEPA safeguards, create a significant risk for the disturbance of cultural resources.⁶ We suggest that the Army implement mandatory cultural mapping in collaboration with all relevant Tribes. Granting categorical exclusions for actions occurring on or near Tribal lands without Tribal consent undermines Tribal sovereignty. In implementing any categorical exclusion, the Army must also ensure actions meet the "major Federal action" threshold as defined in 42 U.S.C. § 4336e, and apply extraordinary circumstances review consistent with 40 CFR 1501.4(b) whenever Tribal cultural or historic properties may be impacted. The role of categorical exclusions is to streamline permitting for actions that will not pose a risk to the surrounding environment and communities. To ensure that

² U.S. Department of Defense. *DoD Instruction 4710.02: DoD Interactions with Federally Recognized Tribes*. Washington, DC: U.S. Department of Defense, September 24, 2018.

³ United States Code. *National Historic Preservation Act*. 54 U.S.C. § 306108 (2014).

⁴ U.S. Department of Defense. *DoD Instruction 4715.16: Cultural Resources Management*. Washington, DC: U.S. Department of Defense, September 18, 2018.

⁵ Fiscal Responsibility Act of 2023, Pub. L. 118-5; Executive Order 14154, *Unleashing American Energy*, 90 Fed. Reg. 19 (January 29, 2025).

⁶ Department of Defense. *Appendix B to Part 651-Categorical exclusions*. In *Title 32: National defense* (32 C.F.R. pt. 651, app. B). U.S. Government Publishing Office.



Appendix B achieves that goal, we recommend that the Army adopt the above changes and in doing so, uphold and respect Tribal sovereignty and the federal government's trust and treaty obligations.

4. Section 106 and NAGPRA Protections

We call on the Army to clarify that their NEPA revisions do not abrogate the obligations of Section 106 and NAGPRA, which cannot be waived under streamlined, categorical, or emergency procedures. Early cultural review is critical to avoid disturbing culturally significant sites. The Supreme Court emphasized in *Seven County Infrastructure Coalition v. Eagle County*,⁷ that the NEPA process is where these substantive protections are operationalized. The Army's decision to rescind its NEPA process based on the Court findings is purely procedural, and does not absolve the government of its responsibility to Tribal Nations.

Conclusion

Federal obligations to Tribal Nations must be upheld by all segments of the United States government. In doing so, the Army should ensure that their NEPA framework protects sacred sites, cultural landscapes, and sovereignty while maintaining efficiency. These protections are also essential to support Tribal-led energy development that aligns with cultural preservation and environmental stewardship. We respectfully request that the Department of the Army and DoD hold a dedicated Tribal consultation session before finalizing the Department-wide NEPA procedures.

We request these recommendations be incorporated into final DoD NEPA procedures to safeguard Tribal heritage and uphold the federal trust responsibility.

With respect and in service to Tribal Nations,

A handwritten signature in black ink that reads "Chéri A. Smith".

Chéri A. Smith (*Mi'kmaq*)
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⁷ *Seven County Infrastructure Coalition v. Eagle County*, 145 S. Ct. 1497 (2025).