



August 1, 2025

Department of Energy
1000 Independence Ave., SW
Washington, D.C. 20585

Re: Comments on DOE Interim Final Rule - Revision of National Environmental Policy Act Implementing Procedures

RIN 1990-AA52 | 10 CFR Parts 205 and 1021

Dear Secretary Wright and NEPA Rulemaking Team,

On behalf of the Alliance for Tribal Clean Energy, we submit these comments regarding the Department of the Energy's (DOE) July 3, 2025, interim final rule rescinding and revising DOE's NEPA implementing regulations. These comments respond to DOE's request for input on the rationale for revisions, retention of categorical exclusions, emergency procedures, and broad regulatory updates as set forth in the agency's notice.

1. Upholding Trust and Treaty Obligations & Protecting Tribal Sovereignty

The DOE's rationale for rescinding and revising National Environmental Protection Act procedures presents a great threat to Tribal Nations. Without the protections provided by NEPA, Tribes lose one of their most important tools for protecting their sovereign lands. The proposed changes to the NEPA implementation would increase the burden placed on Tribes to protect their sacred sites, traditional ecologies, and natural resources. As such, any revision to NEPA procedures that does not strengthen Tribal consultation and cultural resource identification procedures risks violating federal Trust and Treaty obligations.

The DOE's NEPA procedures should codify, not merely reference, the federal trust responsibility and the government-to-government relationship with Tribal Nations as required under Executive Order 13175¹ and federal statutes. To avoid the potentially catastrophic loss of irreplaceable cultural resources, DOE should require early pre-NEPA cultural mapping in coordination with affected Tribes to identify sacred sites, burial grounds, and cultural landscapes prior to any alternatives being finalized or categorical exclusions applied, consistent with Section 106 of the National Historic Preservation Act.²

To avoid the potentially catastrophic loss of irreplaceable cultural resources, we urge the DOE to work with Tribal Nations to identify sacred sites and cultural landscapes before any ruling is finalized. This fulfills *Section 106 obligations*³ and aligns with federal policy under *Executive Order 13007*⁴ on sacred sites. In addition, we recommend the DOE codify federal trust and treaty obligations as well as government-to-government relationship with Tribes in their revised NEPA implementation.

¹ *Executive Order* No. 13175, "Consultation and Coordination with Indian Tribal Governments," 65 *Fed. Reg.* 67249 (Nov. 9, 2000).

² 54 U.S.C. § 300101.

³ 36 CFR § 800.1(c)

⁴ *Executive Order* 13007, "Indian Sacred Sites," 61 *Fed. Reg.* 26,771 (May 29, 1996).



2. Removing Necessary Protections

In this filing, the DOE states that it is justified in rescinding and revising its NEPA procedures because it will result in more projects being built. What the agency seemingly fails to consider is whether these projects will be built at the cost of, rather than to ultimately benefit, the American public. Projects that are NEPA compliant have, by definition, met the necessary standards of community and environmental protection. If companies are allowed to bypass this process, we risk subjecting our most vulnerable communities to the severe negative impacts of irresponsible energy infrastructure development.

For Tribal Nations, the threat of development at the cost of Tribal lands and cultural resources is not new. From the Pick-Sloan Flood Control Act of 1944⁵ to the health complications associated with nearby power plants, Tribes across the country have borne the brunt of irresponsible development for generations. Removing and revising Environmental Impact Statement procedures in the absence of increased Tribal consultation requirements is unacceptable. Therefore, we recommend the DOE amends this ruling to reflect the need for improved protections for Tribal lands.

DOE must also ensure that any narrowing of “major Federal action” under the Fiscal Responsibility Act of 2023⁶ does not exclude projects with foreseeable impacts on Tribal cultural resources, sacred sites, or treaty-reserved rights, including those outside of current reservation boundaries.

3. Trading Reliability for Flexibility

The DOE’s rationale behind this ruling intends to streamline the NEPA process and make it easier for projects to be developed within fast-tracked timeframes. However, by defining this ruling as guidance, the DOE is actually increasing uncertainty and promoting inconsistency for projects across lands and waters that cross multiple jurisdictions. Tribes and states retain the right to require responsible environmental impact reviews. The changes made to 10 CFR Part 1021 only serve to muddy the waters in those areas with overlapping jurisdiction. Projects may still be required to maintain the same environmental impact documentation in order to abide by state or Tribal laws. The DOE risks leading developers astray by signalling a loosening of environmental review requirements.

In addition, the ease of revision that the DOE touts in this ruling does not implicitly serve to de-risk projects. In fact, with multi-year project timelines and a constantly shifting political climate, stakeholders cannot adequately plan to be in compliance with the DOE’s NEPA standards. For these reasons, we recommend that the DOE codify this ruling as a regulation.

In codifying this rule, DOE must also include a clear extraordinary circumstances standard for categorical exclusions, consistent with the Council on Environmental Quality’s NEPA regulations for CEs⁷, that triggers full environmental review whenever Tribal cultural resources or sacred sites may be affected.

Conclusion

⁵ Flood Control Act of 1944, Pub. L. No. 78-534, 58 Stat. 887 (1944).

⁶ 42 U.S.C. § 4336e

⁷ 36 CFR § 800.16(y)



The DOE's updated NEPA regulations must reflect and uphold the federal government's commitment to protecting Tribal sovereignty, sacred sites, and cultural resources. Streamlined permitting at the expense of Tribal rights is unacceptable, dangerous, and an affront to trust and treaty obligation.

We urge the DOE to adopt these recommendations and codify safeguards that ensure Tribal Nations are consulted and treated as co-equal decision-makers in the NEPA process. Protecting sacred sites, cultural landscapes, and the integrity of Tribal homelands, including those beyond current reservation boundaries, is not discretionary; it is a legal and moral obligation of the United States under the *National Historic Preservation Act*, the *Native American Graves Protection and Repatriation Act*⁸, *Executive Order 13007*, and the *United Nations Declaration on the Rights of Indigenous Peoples*⁹. So long as NEPA represents cultural and environmental protection, it must center Tribal sovereignty and uphold the cultural continuity of the First Peoples of this land.

With respect and in service to Tribal Nations,

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

Chéri A. Smith (*Mi'kmaq*)
President & CEO
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⁸ 25 U.S.C. § 3002(d)

⁹ United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), arts. 11–12.