



August 1, 2025

Department of the Interior
Office of Environmental Policy and Compliance
1849 C Street NW
Washington, D.C. 20240

Re: Comments on DOI Interim Final Rule - National Environmental Policy Act Implementing Regulations

RIN 1090-AB41 | 43 CFR Part 46

Dear Secretary Burgum and NEPA Rulemaking Team,

On behalf of the Alliance for Tribal Clean Energy, we submit these comments regarding the Department of the Interior's (DOI) July 3, 2025, interim final rule rescinding and revising DOI's NEPA implementing regulations. These comments respond to DOI's request for input on the interim final rule, including the rationale for the revisions, the treatment of categorical exclusions, emergency procedures, and other regulatory updates.

Rationale for the Revisions

I. Protecting Tribal Sovereignty and Cultural Integrity

DOI's stated rationale for rescinding existing regulations and relocating procedural content to a Handbook raises profound concerns for Tribal Nations. Moving core protections into guidance is problematic because guidance lacks the force of law and risks undermining the enforceability of DOI's federal trust obligations. Procedural revisions must explicitly recognize that meaningful Tribal consultation and cultural resource identification require sufficient resourcing and time. Without this, any streamlined NEPA process risks violating the federal trust responsibility under *Executive Order 13175*¹ and the *National Historic Preservation Act*.² In aligning with the Fiscal Responsibility Act of 2023 and Executive Order 14154, DOI must recognize that early and meaningful Tribal engagement is essential to meeting NEPA's statutory deadlines while preventing later delays caused by inadequate consultation.

We urge the DOI to require early pre-NEPA cultural mapping with affected Tribal Nations to identify sacred sites and cultural landscapes before alternatives are finalized or categorical exclusions are applied. This fulfills *Section 106 obligations*³ and aligns with federal policy under *Executive Order 13007*⁴ on sacred sites.

We further recommend codifying the federal trust responsibility and government-to-government relationship with Tribes directly into NEPA implementing regulations, ensuring that regulatory text, not only guidance, upholds protections for Tribal sovereignty and cultural heritage.

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).

II. Protecting Tribal Sovereignty and Cultural Integrity

Categorical exclusions (CEs) can streamline NEPA review but pose significant risks if applied without Tribal oversight. DOI should prohibit CEs for any action with potential impacts to sacred sites, ancestral landscapes, or treaty-reserved resources, including those located off-reservation. The agency must require formal Tribal approval before applying a CE in any area of cultural significance to ensure that Indigenous governments have a decisive role in protecting their heritage.

The DOI should also establish Tribal-specific CEs to expedite Tribal-led renewable energy, infrastructure, or cultural preservation projects on Tribal lands, recognizing that it is the sovereign right of each Tribe to decide what happens on their lands. In addition, no CE should be applied until a pre-NEPA Tribal cultural survey confirms that no cultural resources will be affected, consistent with CEQ's extraordinary circumstances provisions. Finally, DOI should provide transparent justification and public reporting for all CE use to prevent misuse as a substitute for thorough environmental review.

Emergency Procedures

III. Upholding Section 106 and NAGPRA

While emergency NEPA provisions are sometimes necessary, they must not waive or compress Tribal consultation, Section 106 review under the National Historic Preservation Act, or compliance with the Native American Graves Protection and Repatriation Act. DOI must ensure that any emergency declaration triggers immediate Tribal notification and consultation,⁵ that cultural surveys and sacred site protections are not suspended under emergency determinations, and that post-emergency reviews include full Tribal input and mitigation for any impacts to cultural resources or ancestral landscapes. This approach is consistent with the Section 106 emergency procedures and the protections for inadvertent discoveries under NAGPRA.⁶

Broad Regulatory Updates

IV. Cultural Landscapes, Co-Management, and Indigenous Knowledge

Any revisions to DOI's NEPA regulations must explicitly protect sacred and cultural areas beyond current reservation boundaries, recognizing that those boundaries are products of historic dispossession and do not reflect the true extent of Tribal territories. NEPA analysis must include impacts to cultural sites and ancestral landscapes on private lands when federal actions, permitting, or funding are involved. The trust responsibility and *NHPA Section 106*⁷ extend to such undertakings regardless of ownership.

The DOI should codify the role of Tribal traditional ecological knowledge (TEK)⁸ as best available science and enable co-management agreements for joint stewardship of federal lands overlapping Tribal cultural territories.

⁵ 36 CFR § 800.12

⁶ 25 U.S.C. § 3002(d)

⁷ 36 CFR § 800.16(y)

⁸ U.S. Office of Science and Technology Policy, *Guidance for (United States) Federal Departments and Agencies on Indigenous Knowledge* (Nov. 30, 2022).



We also recommend that DOI's regulations reflect the United States' obligations under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), including Articles 11 and 12, which protect Indigenous cultural heritage and sacred sites.⁹ DOI NEPA procedures must also ensure that the reasonable range of alternatives analyzed includes options that fully avoid or minimize impacts to sacred sites and Tribal cultural landscapes.¹⁰

V. Section 106 and NAGPRA Protections Under Clawbacks

NEPA revisions must explicitly reaffirm that Section 106 consultation and NAGPRA obligations are non-discretionary and cannot be bypassed or compressed under streamlined or categorical procedures. Early NEPA scoping is essential to identify and avoid sacred sites and burial grounds proactively.

Conclusion

The DOI's NEPA regulations must balance efficiency with enforceable protections for Tribal sovereignty, sacred sites, cultural survival, and the federal trust responsibility. Streamlining cannot come at the expense of Tribal rights, nor can it diminish the government-to-government relationship enshrined in *treaties, federal law, and Executive Order 13175*.

We urge the DOI to adopt these recommendations and codify safeguards that ensure Tribal Nations are not simply consulted but are 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*, *Executive Order 13007*, and the *United Nations Declaration on the Rights of Indigenous Peoples*. If NEPA is to remain a cornerstone of 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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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.

¹⁰ 42 U.S.C. § 4332(2)(C)(iii).