



August 1, 2025

U.S. Department of Transportation
Office of the Under Secretary for Policy
250 M St SE
Washington, DC 20003

Re: Comments on DOT Interim Final Rule - National Environmental Policy Act
Docket No. DOT-OST-2025-0056

Dear Secretary Sean Duffy and NEPA Rule Making Team,

The Alliance for Tribal Clean Energy offers this comment in strong opposition to the Department of Transportation's (DOT) July 2025 interim NEPA rule changes. These revisions significantly reduce transparency and diminish tribal engagement in environmental reviews for transportation and infrastructure projects that affect Tribal lands, sacred sites, and clean energy potential.¹ The Alliance works to advance Tribal energy sovereignty and clean energy development while ensuring cultural heritage is protected and federal trust responsibilities are upheld. Even procedural revisions can significantly impact how DOT fulfills its federal trust responsibility and consultation obligations to Tribal Nations and how NEPA processes intersect with Tribal-led environmental stewardship and energy initiatives. These comments respond to DOT's request for input on the rationale for revisions, retention of categorical exclusions, emergency procedures, and broad regulatory updates, as outlined in the agency's notice of the update to DOT Order 5610.1C.²

This Order must also recognize that early and meaningful Tribal consultation is not a discretionary procedural step but a mandatory component of informed decision-making under the National Environmental Policy Act³ Incorporating provisions from SAFETEA-LU⁴, MAP-21⁵, the FAST Act⁶, IIA⁷, and the Fiscal Responsibility Act of 2023⁸ cannot come at the expense of DOT's statutory trust

¹ U.S. Department of Transportation, *National Environmental Policy Act Implementing Procedures*, Federal Register 89, no. 127 (July 3, 2025): 51365.

² U.S. Department of Transportation. *Policies and Procedures for Considering Environmental Impacts*. DOT Order 5610.1C. July 30, 1985.

³ *National Environmental Policy Act of 1969* (NEPA), 42 U.S.C. §§ 4321–4370h.

⁴ *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU), Pub. L. No. 109-59, 119 Stat. 1144 (2005).

⁵ *Moving Ahead for Progress in the 21st Century Act* (MAP-21), Pub. L. No. 112-141, 126 Stat. 405 (2012).

⁶ *Fixing America's Surface Transportation Act* (FAST Act), Pub. L. No. 114-94, 129 Stat. 1312 (2015).

⁷ *Infrastructure Investment and Jobs Act* (IIJA), Pub. L. No. 117-58, 135 Stat. 429 (2021).

⁸ *Fiscal Responsibility Act of 2023*, Pub. L. 118–5.



responsibility and government-to-government obligations under Executive Order 13175⁹ and DOT Order 5301.1A.¹⁰

I. Undermined Government-to-Government Consultation

DOT's rule removes key consultation triggers linked to NEPA, despite DOT Order 5301.1A and Executive Order 13175 requiring Tribal consultation regardless of formal NEPA status.¹¹ The rule weakens structured government-to-government engagement, making it easier for agencies to sideline Tribes.

DOT also claimed the rule had “no tribal implications” and declined Tribal consultation, directly contradicting its obligations under EO 13175 and internal DOT policy. This sets a harmful precedent where Tribes are excluded from rulemakings that substantively affect their lands, rights, and futures.

II. Fast-Tracking Infrastructure Projects Without Tribal Input

The rule implements FAST Act and BUILDER Act streamlining: single-lead agency designation, strict time and page limits, and narrower scoping. These provisions rush the process, often before Tribes can meaningfully participate.¹² Infrastructure projects like highway expansions and rail corridors may be approved without consideration of treaty rights, traditional knowledge, or cultural landscapes.

III. Inadequate Consideration of Environmental Justice and Cumulative Impacts

The revised NEPA rule reduces requirements for evaluating cumulative and indirect effects, impacts that Tribes experience most acutely due to long-standing environmental and policy injustices. By narrowing the definition of “major federal action,” the interim rule restricts the scope of environmental review, making it less likely that overlapping or long-term harms will be fully assessed.¹³ These changes are particularly harmful in Indian Country, where many Tribal Nations have endured the compounding effects of small-scale projects that, combined, have degraded natural and cultural resources, and have left Tribal

⁹ Exec. Order No. 13175, *Consultation and Coordination with Indian Tribal Governments*, 65 Fed. Reg. 67249 (November 6, 2000).

¹⁰ U.S. Department of Transportation, DOT Order 5301.1A, *Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes*, (2004).

¹¹ EO 13175; DOT Order 5301.1A.

¹² Pub. L. 118–5; BUILDER Act, Title VIII of the FRA.

¹³ U.S. Government Accountability Office, *Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects*, GAO-23-105928, March 2023.



communities with the responsibility of dealing with the rippling effects. Without robust analysis of cumulative impacts, such harm becomes increasingly invisible and unaddressed. To ensure meaningful Tribal engagement, Tribal knowledge and cultural resources must be central to any environmental review involving federally funded transportation projects.¹⁴

IV. Categorical Exclusions: Retention and Safeguards

The new Order implements limits imposed by the Fiscal Responsibility Act of 2023, including strict page and time caps on Environmental Impact Statements and Environmental Assessments, a narrowed definition of “major federal action,” and expanded use of categorical exclusions. These changes disproportionately affect Tribal Nations, who may lack the legal and technical staff to respond under compressed timelines. Without adequate safeguards, CEs risk authorizing projects with significant cumulative or cultural impacts on Tribal lands and sacred sites without any meaningful review or notice.

The interim rule encourages increased use of Categorical Exclusions (CEs) under 23 CFR Part 771.117 to meet strict NEPA deadlines imposed by the Fiscal Responsibility Act and BUILDER Act. While CEs are appropriate for routine projects, they are often applied to infrastructure actions that may still impact Tribal lands, sacred sites, or cumulative conditions.¹⁵ CE determinations frequently bypass Tribal input unless cultural impacts are already known or flagged, putting Tribes at risk of being excluded from decisions that affect their heritage and sovereignty. These changes disproportionately affect Tribes, who may lack the legal and technical staff needed to respond quickly to complex proposals under shortened timelines. Moreover, categorical exclusions risk authorizing activities with significant cumulative or indirect impacts on Tribal lands without any environmental review or notice to affected communities.

DOT must prohibit the use of CEs for actions with potential impacts on sacred sites, ancestral landscapes, or treaty-protected resources, including those off-reservation and on private lands where federal actions trigger NEPA obligations (36 CFR § 800.16(y)). Any application of a CE in culturally sensitive areas must require formal Tribal approval. DOT should establish Tribal-specific CEs to expedite Tribal-led renewable energy, agriculture, broadband, or cultural preservation projects on Tribal lands, recognizing the inherent sovereign right of each Tribe to determine the use and protection of its lands and resources. CEs must not be applied until a pre-NEPA Tribal cultural survey confirms no impacts to cultural resources, and a fully extraordinary circumstances review, as required under the Council of

¹⁴ U.S. Department of Transportation, DOT Order 5610.2C, *Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, 2021.

¹⁵ 23 CFR Part 771.117, *Environmental Review Procedures*, <https://www.ecfr.gov/current/title-23/chapter-I/subchapter-H/part-771/section-771.117>.



Environmental Quality’s NEPA regulations for categorical exclusions.¹⁶ In applying any CE, DOT must also ensure compliance with the “major Federal action” threshold.¹⁷

V. Emergency Procedures: Protecting Sacred Sites and Section 106/NAGPRA Compliance

Recognizing DOT’s need for emergency procedures to address urgent transportation and infrastructure concerns, such as natural disasters, hazardous conditions, or energy disruption, it is imperative that emergency NEPA provisions do not waive or compress Tribal consultation or cultural protection requirements. DOT must ensure that all emergency actions triggering NEPA include: immediate Tribal notification and consultation; cultural resource surveys and sacred site protections are not suspended under emergency determinations; Section 106 emergency procedures¹⁸ and NAGPRA inadvertent discovery provisions¹⁹ are explicitly preserved; and that post-emergency reviews include full Tribal input and mitigation for any cultural impacts.

VI. Broad Regulatory Updates and Cultural Landscapes

DOT’s NEPA procedures must explicitly protect cultural landscapes and sacred sites beyond current reservation boundaries, recognizing that historic displacement and land loss created arbitrary borders. This requires analyzing off-reservation and private lands when transportation actions affect Tribal cultural resources, codifying Tribal traditional ecological knowledge (TEK), and creating co-management pathways where DOT projects overlap ancestral lands.

These updates are necessary to fulfill the United States’ obligations under the United Nations Declaration on the Rights of Indigenous Peoples²⁰ to safeguard Indigenous cultural heritage and sacred sites.

Recommendations

To uphold its trust obligations and federal commitments to Tribal Nations, DOT must:

- Reinststate Tribal-specific consultation requirements within NEPA reviews;
- Ensure environmental reviews reflect cultural, cumulative, and climate impacts unique to Tribal Nations;
- Fund Tribal technical capacity for NEPA participation;
- Reopen the rule for public and Tribal comment before finalization.

¹⁶ 40 CFR § 1501.4(b)

¹⁷ 42 U.S.C. § 4336e

¹⁸ 36 CFR § 800.12

¹⁹ 25 U.S.C. § 3002(d)

²⁰ 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.



The Alliance for Tribal Clean Energy remains committed to working with DOT to build transparent, culturally respectful, and collaborative pathways for clean energy development and environmental stewardship. DOT'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 or the government-to-government relationship.

We urge DOT to adopt these recommendations and ensure that NEPA remains a cornerstone of cultural and environmental protection that centers Tribal Nations as co-equal decision-makers.

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
Alliance for Tribal Clean Energy

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