



August 1, 2025

U.S. Army Corps of Engineers
Attn: CECW
441 G Street NW
Washington, DC 20314-1000

RE: Comments on the U.S. Army Corps of Engineers' Interim Final Rule - National Environmental Policy Act Implementing Regulations

Dear Secretary Hegseth and NEPA Rulemaking Team,

On behalf of the Alliance for Tribal Clean Energy, we submit these comments regarding the U.S. Army Corps of Engineers' (Corps) July 3, 2025, interim final rule rescinding and revising the Corps' regulations for implementing the National Environmental Policy Act (NEPA) for the Army Civil Works Program¹, with the exception of projects subject to categorical exclusion. Although this rule applies to the Army Civil Works NEPA procedures, the Corps must ensure that the forthcoming update to Department of the Army (DA) permit NEPA procedures preserves and strengthens Tribal consultation and cultural protections, including those currently addressed in 33 CFR Part 325, Appendix B.

This interim final rule eliminates Appendix B references in the Civil Works context, retains existing categorical exclusions under § 230.9, and shifts NEPA implementation to new Department of Defense (DoD) wide procedures developed in response to the 2023 Fiscal Responsibility Act² and the rescission of the Council on Environmental Quality (CEQ) NEPA regulations³. While the Corps cites these changes as the rationale for this action, they cannot justify weakening the enforceable Tribal consultation standards or cultural protections embedded in prior Corps-specific regulations.

For Section 408 permissions under the Rivers and Harbors Act⁴, which affect waterways and riverbanks of deep cultural and spiritual significance to Tribal Nations, NEPA review must fully account for Tribal treaty rights, sacred waterways, and submerged cultural sites.

While the Supreme Court clarified that NEPA is a procedural statute in *Seven County Infrastructure Coalition v. Eagle County*, 145 S. Ct. 1497 (2025), procedural changes must still ensure robust Tribal engagement and full compliance with Section 106⁵ of the National Historic Preservation Act and the Native American Graves Protection and Repatriation Act (NAGPRA).⁶

¹ 33 CFR Part 230

² Pub. L. 118-5

³ 90 FR 10610

⁴ 33 U.S.C. § 408

⁵ 36 CFR § 800.16(y)

⁶ 25 U.S.C. § 3002(d)



Rationale for the Revisions

I. Protecting Tribal Sovereignty, Cultural Sites, and Cultural Integrity

The Corps' rationale for rescinding existing regulations for the Civil Works Program and promulgating DoD-wide NEPA procedures raises profound concerns for Tribal Nations. Shifting core protections into a one-size-fits-all, non-codified guidance document is problematic because guidance lacks the force of law and cannot ensure the enforceability of the Corps' federal trust obligations under Executive Order 13175⁷ and 54 U.S.C. § 300101⁸.

This approach raises concerns for democratic transparency and public accountability, as it allows the DoD and its agencies to make legal procedural changes through internal guidance rather than codified regulation, reducing public notice and the ability of Tribes to hold agencies accountable.

The repeal of the Corps' responsibilities under NEPA regulations and the DoD issuance of non-codified procedures have the potential to significantly harm government-to-government relationships between Tribes and federal agencies. For Army Civil Works activities and DA permits, NEPA is one of the few procedural tools Tribal Nations can use to protect lands, waters, treaty rights, and cultural resources through consultation and public comment. Rescinding NEPA regulations reduces transparency and public accountability in federal decision-making by facilitating and streamlining development projects without meaningful Tribal input and government-to-government engagement.

We recommend codifying, under both the DoD's updated procedures and the Corps' future DA permit updates, the federal trust responsibility and government-to-government relationship with Tribes directly into NEPA implementing regulations. This action would ensure that regulatory text, not mere guidance, protects Tribal sovereignty and cultural heritage. The Corps should also carry forward all Tribal consultation and cultural resource protections currently contained in Appendix B into any future permit specific NEPA procedures.

In addition to codified provisions, 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* and the *National Historic Preservation Act*. The Corps should also establish NEPA consultation timelines that account for the limited capacity of many Tribal governments to review Civil Works and DA permit actions, ensuring that tribal consultation is substantive and not a procedural box-checking exercise.

Streamlining Army Civil Works and DA permit projects subject to NEPA risks compounding existing disproportionate impacts on Tribal Nations, who are often overburdened by short federal review timelines and lack of technical resources. These accelerated timelines hinder Tribes' ability to engage as sovereign

⁷ *Executive Order* No. 13175, "Consultation and Coordination with Indian Tribal Governments," 65 *Fed. Reg.* 67249 (Nov. 9, 2000).

⁸ 54 U.S.C. § 300101



nations whose traditional lands, waters, and resources are directly impacted by activities such as dredging, fill, levee construction, flood management, and waterway alterations under Section 408 permissions.⁹

We urge the Corps to reinstate NEPA procedures requiring DoD agencies to consult and meaningfully engage with Tribal Nations on all Civil Works and DA permit actions that could affect Tribal lands, waters, treaty rights, and cultural resources. We further urge the Corps 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 obligations¹⁰ and aligns with federal policy under Executive Order 13007¹¹ on sacred sites.

II. Categorical Exemptions Considerations

Categorical exclusions (CEs) can streamline NEPA review but pose significant risks if applied without Tribal oversight. The Corps should prohibit CEs for any Civil Works or DA permit action with potential impacts to sacred sites, ancestral landscapes, or treaty-reserved resources, including those located off-reservation.¹²

The DoD's updated NEPA guidance does not explicitly cite any role for Tribal governments in decisions surrounding CEs. The Corps should require formal Tribal approval before applying a CE in any area that affects Tribal lands, cultural resources, or ancestral landscapes to ensure that Indigenous governments have a decisive role in protecting their heritage.

The DoD and Corps 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 determine which projects they want to pursue on Tribal lands. In addition, no CE should be applied to Civil Works or DA permit actions until a pre-NEPA Tribal cultural survey confirms that no cultural resources will be affected, consistent with CEQ's extraordinary circumstances provisions.¹³ Finally, the Corps 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. For Civil Works projects and DA permits, the Corps should ensure that any emergency action following 33 CFR § 230.8 and triggering immediate Tribal notification and consultation, do not suspend cultural surveys and sacred sites protections under

⁹ 33 U.S.C. § 408(b)(1)

¹⁰ 36 CFR § 800.1(c)

¹¹ *Executive Order* No. 13007, "Indian Sacred Sites," 61 *Fed. Reg.* 26771 (May 29, 1996).

¹² 40 C.F.R. § 1501.4(b) (2024); 33 C.F.R. § 230.9 (2024).

¹³ 40 CFR 1501.4(b)



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 procedures¹⁴ and the protections for inadvertent discoveries under NAGPRA.¹⁵

Broad Regulatory Updates

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

Any revisions to the Corps' NEPA regulations, both at the Department-level and agency level, should 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. For Civil Works and DA permit actions, NEPA analysis must include impacts to cultural sites and ancestral landscapes on private lands when federal actions, permitting, or funding are involved, as required under NHPA Section 106¹⁶.

The Corps and DOD agencies should codify the role of Tribal traditional ecological knowledge (TEK) and enable co-management agreements for joint stewardship of federal lands overlapping Tribal cultural territories.

We recommend that the Corps' 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.¹⁷

V. Section 106 and NAGPRA Protections Under Clawbacks

NEPA revisions should 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 Corps' updated NEPA regulations and DoD procedures for the Army Civil Works program 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 Corps and DoD to adopt these recommendations and codify safeguards that ensure Tribal

¹⁴ 36 CFR § 800.12

¹⁵ 25 U.S.C. § 3002(d)

¹⁶ 36 CFR § 800.16(y)

¹⁷ 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.



Nations are not simply consulted but are treated as co-equal decision-makers in the NEPA process for Civil Works and DA permit activities. 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. We appreciate your attention to this matter and look forward to continuing our work with the Department, its agencies, and offices to advance energy justice and self-determination in Indian Country.

With respect and in service to Tribal Nations,

A handwritten signature in black ink that reads "Chéri A. Smith". The signature is fluid and cursive, with the first name being the most prominent.

Chéri A. Smith (*Mi'kmaq*)
President & CEO
Alliance for Tribal Clean Energy

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