



USET

SOVEREIGNTY PROTECTION FUND

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*Transmitted Electronically
To regulations.gov*

March 27, 2025

Jomar Maldonado
Director for the National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

RE: Docket No. CEQ-2025-0002, Removal of National Environmental Policy Act Implementation Regulations

Dear Director Maldonado,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Council on Environmental Quality (CEQ) Interim Final Rule on the proposed removal of the CEQ regulations implementing the National Environmental Policy Act (NEPA) from the Code of Federal Regulations. CEQ has stated that this action is directed by [Executive Order \(EO\) 14154](#), “Unleashing American Energy” which aims to rescind all iterations of CEQ’s NEPA implementing regulations and rulemaking authority. CEQ is simultaneously working to issue guidance on the revision and enactment of agency-level NEPA implementation to expediate and simplify permitting approvals. The proposed interim final rule would be the most significant update to NEPA since 1978. With this in mind and in accordance with federal trust and treaty obligations, the promulgation of the proposed rule must be executed in a manner that ensures and preserves the opportunity for meaningful consultation with all 574 federally recognized Tribal Nations.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi’kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

USET SPF supports regulations that safeguard and protect our natural and environmental resources and cultural heritage. We also generally support efficiency and effectiveness, but this cannot be accomplished at the expense of Tribal sovereignty, health, spirituality, or culture. Any changes to NEPA regulations that minimize or forgo mandated Tribal consultation will have significant impact on Tribal Nations and our ability to protect and manage Tribal resources, sacred sites, and historic properties. In accordance with trust and treaty obligations, CEQ must strongly consider the intent and effects of the National Historic Preservation Act, the Antiquities Act, and the Native American Graves Protection and Repatriation Act on Tribal Nations when making any determination regarding potential changes to NEPA processes and regulations. These laws were all passed with the intention of upholding obligations to Tribal Nations by protecting important Tribal sites, items, and remains and must continue to be implemented under NEPA along with meaningful Tribal consultation requirements. Replacing CEQ's regulations with voluntary guidance and shifting NEPA rulemaking to federal agencies will result in confusion and, in many cases, the destruction of Tribal Nations' irreplaceable cultural resources. As CEQ considers changes to the NEPA regulations, it must ensure that its trust and treaty obligations remain paramount, both during this transition process and in forthcoming agency-level NEPA regulations.

Tribal Consultation Must Occur Prior to Any Revision to NEPA Regulations

The U.S. has long engaged in nation-to-nation, sovereign-to-sovereign relationships with Tribal Nations. It has also assumed an ongoing solemn, legal duty to Tribal Nations to ensure the protection of Tribal and individual Native lands, assets, resources, as well as treaty and trust rights. These obligations are, in part, embedded in statutes that fund essential programs and services for Tribal communities, funding that is legally required, regardless of political priorities.

In the Interim Final Rule, CEQ states that the impact of this rule would not significantly affect Tribal Nations or our communities. This is highly inaccurate. NEPA serves as a pivotal legal framework that ensures federal decision-making processes consider the rights and interests of Tribal Nations. Consultation with Tribal Nations through the NEPA review process is a critical method by which the federal government meets its trust and treaty obligations. In the absence of Tribal consultation, the rescission of NEPA regulations and replacement with voluntary guidance would be an abrogation of this responsibility. Historically, failures to effectively engage with Tribal Nations have caused irreversible damage and harm to Tribal resources and cultural practices. Despite the significance of the proposed revisions to NEPA regulations, there has been no Tribal consultation on this action thus far.

Tribal Consultation Must Be a Paramount Requirement in Any Reform to NEPA Regulations

CEQ's erroneous perception of lack of Tribal impact does not negate the federal government's responsibilities under [EO 13175](#) to conduct consultation. One of the guiding principles of EO 13175 is to establish regular and meaningful consultation and collaboration with Tribal Nations on federal policies that have Tribal implications including "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."

The NEPA process remains a key action in which the federal government upholds trust and treaty obligations to us, both in and around Indian Country. Thus, this federal policy undoubtedly affects Indian Country. Moreover, the [NEPA regulations](#) themselves emphasize the goal of preserving "historic, cultural, and natural aspects of our national heritage" and further acknowledge the unique implications Tribal sovereignty through the "designation of any ... Tribal agency... that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal to serve as a cooperating agency." Together, these key directives stress the obligation of government-to-government consultation

and the significance of NEPA to Tribal sovereignty. Tribal Nations must have a seat at the table for all federal decision making that may affect Tribal Nations' cultural resources, public health, or sovereignty—whether located on or off Tribal lands.

Efficient Transition of NEPA Reform

CEQ's accompanying [memo](#) to federal agency and department heads, states that, "...although CEQ is rescinding its NEPA implementing regulations at 40 C.F.R. parts 1500–1508, agencies should consider voluntarily relying on those regulations in completing ongoing NEPA reviews or defending against challenges to reviews completed while those regulations were in effect." With hundreds of active NEPA reviews, federal agencies must be required, not encouraged, to rely on the rescinded CEQ regulations. These critical projects must continue to move through the review process, without compromising quality. The memo fails to mention agencies' obligation to consult with Tribal Nations for their revision of implementing procedures. Until federal agencies go through their legally mandated, respective government-to-government consultations with Tribal Nations on any amendments to their NEPA processes and implementing regulations, continuing use of CEQ's regulations will ensure trust and treaty obligations are fulfilled and ensure efficient implementation. By abruptly removing the implementing regulations, CEQ neglects these duties and does not give agencies the structure and clarity they need to fulfill their treaty-based obligations throughout ceded and unceded lands and waters. Moreover, without clear regulatory replacements, CEQ will have turned the NEPA process into an inefficient, maladroitness procedure – one that lacks certainty. While we agree that the NEPA review process needs to be reexamined on Tribal Lands for projects being pursued by Tribal Nations, USET SPF strongly opposes the streamlining of NEPA processes on our traditional lands outside our jurisdictional boundaries without early engagement and clear and uniform consultation with Tribal Nations.

Tribal Nations have already experienced the harmful effects caused by an inconsistent approach to NEPA implementation. Federal agencies implementing the NEPA process often fail to fully consider the long-term and cumulative effects of large-scale projects. Tribal Nations have witnessed issues where no single agency takes full responsibility for large-scale projects and, therefore, those projects are approved through a piecemeal NEPA process that includes multiple agencies implementing their own NEPA review processes. These fragmented approval processes conducted by agencies can often overlook the cumulative effects of a large-scale project, especially those stretching over large geographical land bases that include a mixture of Tribal, public, and private lands. Additionally, every federal agency implementing its NEPA review processes currently has varying levels of Tribal engagement, coordination, and consultation, leading to confusion, wasted resources, and inconsistencies. The centralized CEQ regulations reduced the variability of consultations across agencies and streamlined the NEPA process. Without CEQ setting a standard for all federal agencies in the context of NEPA, irregular consultations will no doubt lead to decisions that infringe on Tribal sovereignty, disjointed determinations susceptible to judicial review, and prolonged outcomes.

Fully Fund and Provide Technical Assistance to Tribal Nations to Effectively Participate in Environmental Reviews

As part of our inherent sovereignty, Tribal Nations have oversight and authority for environmental and permitting reviews on Tribal Lands. However, project proposals and construction on our traditional homelands located outside of our jurisdictional boundaries often proceed with limited to no coordination with Tribal Nations. This can lead to irreparable harm to our sacred sites, areas of cultural significance, and critical natural resources such as nearby waterways essential for our communities. Just as the federal government has trust and treaty obligations to protect our cultural heritage and well-being, it also has obligations to empower us to exercise self-determination and utilize funds and other resources to protect what is important to us.

The resources available to Tribal Nations to fully participate in the NEPA review process have always been inadequate. Funding for Tribal Historic Preservation Officers (THPOs) has been largely stagnant for decades and will be further strained by a disparate approach to NEPA regulations. The CEQ and federal agencies implementing NEPA must support additional funding for Tribal Nations and THPOs to conduct NEPA reviews. This is especially important since this Administration is focused on major investments in natural resource development and energy infrastructure with the *Unleashing American Energy* agenda. With the forthcoming influx of development projects, we also need funding for our THPOs to conduct the necessary environmental, cultural, and historical reviews under NEPA and Sec. 106 of the National Historic Preservation Act. Providing sufficient resources for Tribal Nations to adequately participate in the NEPA review process and consultation activities will ultimately amount to expedited review and permitting timelines.

In addition, it is important to note that in instances where Tribal Nations have a THPO and/or a cultural or natural resources department dedicated to conducting environmental, cultural, historic preservation, and permitting reviews, these individuals and departments are often inundated with multiple projects and permit applications that exceed available capacity and resources. Reviews of these projects can also be lengthy because they are often broken into multiple, segmented reviews of a single project and span across multiple agency jurisdictions and oversight authorities. Additionally, these individuals and departmental staff may fulfill multiple roles within their Tribal government due to the historic and persistent failures of the federal government to fund its trust and treaty obligations, including appropriating the necessary resources for these positions. It is not uncommon for a THPO/cultural resource manager to also fulfill the role of a natural resource manager or serve in an emergency management role.

It should be noted that any reduction in federal permitting staff will further hinder the capacity of Tribal Nations to participate in NEPA reviews. These reviews require specific technical expertise and knowledge that Tribal Nations may not have in-house and thus rely on federal personnel to provide as part of trust and treaty obligations. Without these resources, Tribal consultation during the environmental review process amounts to an unfunded mandate, as we are not provided with the necessary resources and assistance to effectively participate in the processes. USET SPF stresses the significance of sufficient federal staffing to advance Tribal consultation and NEPA reviews.

For these reasons, we urge the federal government to uphold its trust and treaty obligations to Tribal Nations and propose appropriate funding for Tribal Nations to fully engage in the environmental review processes outside of our jurisdictional boundaries. This would benefit both the federal government and Tribal Nations by hastening review processes, limiting the potential for costly and lengthy litigation, and advancing the United States' development priorities.

Conclusion

While we support responsible consideration of environmental reforms, USET SPF will oppose any federal agency's NEPA revision or process that omits the required government-to-government consultation or provides subpar protection of cultural resources or public health. The ability of Tribal Nations to protect our environment, resources, sacred sites, and historic properties provided by NEPA regulations is vital to the health of future generations within Indian Country. In promulgating this Interim Final Rule, it is incumbent upon the CEQ to uphold their trust and treaty obligations by performing government-to-government consultation and continued protection of Tribal resources. USET SPF remains committed to protecting vital Tribal historic, cultural, and environmental reviews, as well as Tribal consultation requirements, as NEPA regulations are considered. This includes working toward a model that seeks Tribal Nation consent for federal action in recognition of our inherent sovereignty. We look forward to continued dialogue on these

revisions to NEPA regulations to ensure the protection of our natural, cultural, and historical resources. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Chief Kirk Francis
President
USET SPF



Kitcki A. Carroll
Executive Director
USET SPF