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Transmitted Electronically

August 4, 2025

Karen Budd-Falen
Associate Deputy Secretary
Department of the Interior
1849 C Street NW
Washington, DC 20240

RE: USET SPF Comments in Response to the DOI's Interim Final Rule on Rescinding its NEPA Implementing Regulations, Docket ID No. DOI-2025-0004

Dear Associate Deputy Secretary Budd-Falen,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Department of the Interior Interim Final Rule (IFR) to partially rescind its NEPA implementing regulations. DOI's IFR comes in response to the publication of the Council on Environmental Quality's (CEQ) February 25, 2025 Interim Final Rule (IFR), which rescinded certain procedures and guidance for federal agencies to implement NEPA. CEQ's IFR was issued in response to the issuance of Executive Order (EO) 14154, "Unleashing American Energy," and recent court decisions impacting federal agency implementation of NEPA. USET SPF is extremely concerned with DOI's decision to move forward in partially rescinding its NEPA regulations without consulting with Tribal Nations to ascertain the potential harmful effects this action could have on Tribal homelands, sacred sites, cultural and natural resources, and the public well-being of our citizens. Further, we object to DOI's decision to rescind concurrent, supplemental guidance on NEPA implementation in the Department Handbook of National Environmental Policy Act Implementing Procedures (516 DM 1).

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).

Background

CEQ's IFR concluded that the rescission of its NEPA implementing regulations did not carry implications for Tribal Nations or our communities, and that Tribal consultation was therefore not required in the rulemaking process. This conclusion is inaccurate and based on faulty reasoning. NEPA serves as a pivotal legal framework that ensures federal decision-making processes consider the rights and interests of Tribal Nations. Further, 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 binding NEPA regulations and their replacement with voluntary guidance is an abrogation of this responsibility. Historically, failures to effectively engage with Tribal Nations have caused irreversible damage and harm to Tribal resources, cultural practices, and public health. Despite the total proposed recall of NEPA regulations by CEQ's IFR, there has been no Tribal consultation on this action or on DOI's resulting actions.

With over 80 federal agencies mandated to comply with NEPA, any proposed revisions will inevitably impact Tribal Nations. This will impact our deployment of critical infrastructure like broadband, roads, energy grid, water and wastewater systems; fee-to-trust applications; cultural resources; and Tribal trust and treaty rights. Moreover, any NEPA proposed revisions will also impact the deployment of infrastructure on our traditional homelands outside of our current jurisdictional boundaries. The NEPA process plays a significant role for Tribal Nations and our communities, not just in the protection of our health and environment, but also of our traditional practices, sacred sites, and historic places. Natural resources are cultural resources, and their protection ensures cultural continuity and community well-being across generations.

CEQ Erred in Concluding that No Tribal Consultation was Required Regarding the Rescission of its NEPA Implementing Regulations.

Following CEQ's rescission of guidance on implementing NEPA regulations, DOI has also failed to conduct any consultation and outreach activities with Tribal Nations regarding the impacts of rescinding or revising its NEPA regulations. This conclusion is based on a fundamental misreading and misunderstanding of Tribal consultation obligations under Executive Order (EO) 13175 and the federal government's trust and treaty obligations. CEQ concluded that the IFR did not have Tribal implications, and that therefore Tribal consultation was not required, "because it does not impose substantial direct compliance costs on Tribal governments" and "does not preempt Tribal law." IFR § V.F. Yet, these are not exceptions to Tribal consultation requirements. To the contrary, they *add to*, rather than narrow or define, what it means for a policy to have "Tribal implications."

EO 13175, "Consultation and Coordination with Indian Tribal Governments," has for nearly twenty-five years required federal agencies to "have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." Sec. 5(a). The phrase "policies that have tribal implications" is defined as "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." Sec. 1(a). Given the stakes involved for Tribal Nations and communities in the NEPA review process, any NEPA policy revisions, much less wholesale rescissions of NEPA regulatory frameworks, clearly meet this standard and therefore require Tribal consultation.

Rather than rely on the appropriate standard for "Tribal implications," however, CEQ made its decision based on language taken out of context. Nowhere in the definition of Tribal implications is there a specific mention of compliance costs or preemption of Tribal law. That is because EO 13175 treats these factors, and others, as specific circumstances warranting *heightened* agency action beyond, *and in addition to*, the minimum requirements for Tribal consultation. While these factors may make it clearer to a federal agency that a policy has Tribal implications, their absence does not mean Tribal implications do not exist. The provision cited for CEQ's first justification provides in full that "no agency shall promulgate any regulation that has tribal implications, that imposes direct compliance costs, *and* that is not required by statute" without undertaking certain actions. Sec. 5(b) (emphasis added). Similarly, the provision cited for CEQ's second justification provides in full that "no agency shall promulgate any regulation that has tribal implications *and* that preempts tribal law." Sec. 5(c) (emphasis added). In both cases, it is apparent from the plain language of EO 13175 that the existence of Tribal implications is a question that is separate from, and in addition to, any question regarding compliance costs or Tribal law preemption. Despite this, CEQ provided no other justification for concluding that the rescission of its NEPA implementing regulations did not carry Tribal implications, and that Tribal consultation was therefore not required.[2] In keeping with CEQ's decision, DOI has also apparently determined that no Tribal consultation was required when it decided to publish its own Notice to revise or rescind its NEPA implementing regulations. Therefore, DOI's decision not to engage any consultation efforts with Tribal Nations in publishing this Notice is contrary to the consultation directives of EO 13175.

Tribal Consultation Must be a Paramount Requirement in Any Agency Reforms to NEPA Regulations or Policies

CEQ's erroneous conclusion that rescission of its NEPA implementing regulations lacked Tribal implications does not negate DOI's responsibilities to conduct Tribal consultation in revising or rescinding its own NEPA policies. As noted above, one of the guiding principles of EO 13175 is to ensure regular and meaningful consultation and collaboration with Tribal Nations in the development of federal policies. NEPA itself emphasizes federal agencies' "continuing responsibility" to "preserve historic, cultural, and natural aspects" of our environment in carrying out the statute's goals,[3] and acknowledge the unique implications of Tribal sovereignty by ensuring Tribal Nations have a seat at the table during the federal decision-making process through designation as a "cooperating agency."[4] Together, these key directives stress the significance of NEPA to Tribal sovereignty and the importance of the NEPA environmental review process to upholding the federal government's trust and treaty obligations, both in and around Indian Country. Further, CEQ's own NEPA implementation guidance, issued February 19, 2025, suggests "all agencies implementing procedures, at a minimum, should" include the establishment of "protocols for engaging with state, Tribal, territorial, and local government agencies." Thus, NEPA undoubtedly implicates Tribal rights and interests, and federal agencies must conduct Tribal consultation when revising their NEPA policies or regulations.

In addition, USET SPF emphasizes that the Department's Handbook 516 DM 1 does not provide guidance directing lead agencies to conduct outreach to affected Tribal Nations during the NEPA scoping process

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[2] Notably, EO 13175 also directs agencies to explore and use "consensual mechanisms for developing regulations, including negotiated rulemaking," where "issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights" may be involved. Sec. 5(d). NEPA implicates issues relating to all of these aspects, further emphasizing CEQ's and other federal agencies' obligations to engage in Tribal consultation—at a minimum—regarding changes to their NEPA implementation regulations and policies.

[3] 42 U.S.C. § 4331(b)(4).

[4] 42 U.S.C. §§ 4336a(a)(3), 4336e(2).

prior to determining whether a federal action will require an environmental assessment or an environmental impact statement. With the recission of the DOI's regulations implementing NEPA and the publication of the Handbook 516 DM 1, it is possible that an affected Tribal Nation may not receive notification or outreach to participate in an environmental assessment process at all, and that Tribal Nations may not be consulted early in development of an environmental impact statement as we rightfully should. Early consultation with Tribal Nations is critical to appropriately inform and shape an environmental impact statement's analysis, as well as avoid negative impacts down the road. Lack of a standalone requirement to conduct early consultation with Tribal Nations will result in information regarding the environmental impacts of a federal action on Tribal environmental and cultural resources being siloed, rather than integrated into the analysis. Further, under the DOI's proposed rescinded regulations and published Handbook 516 DM 1, DOI now states only that Responsible Officials will request the comments of affected Tribal Nations *at some point* "during the process of preparing an environmental impact statement," but does not mandate involvement at any particular stage. The removal of the requirement to consult early in the environmental review process with affected Tribal Nations is incompatible with EO 13175, which requires consultation with Tribal Nations on a government-to-government basis when considering federal actions that have Tribal implications.

Proposed Revisions to Categorical Exclusions Require Tribal Consultation

The proposed expansion of categorical exclusions (CATEX) across agencies necessitates a comprehensive review in consultation with Tribal Nations. While CATEXs have been utilized by agencies since the late 1970s, the current expansion of them is unprecedented. Moreover, agencies have no mandate from CEQ or otherwise, to make CATEX changes of this magnitude. 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. Our interests extend both to upholding and promoting the exercise of Tribal sovereignty through expanded CATEXs on Tribal lands and protecting our resources from potential harm if CATEXs are expanded for projects occurring off of Tribal lands.

NEPA Policies Must Ensure that Timelines for Review Explicitly Accommodate Meaningful Consultation with Tribal Nations

USET SPF emphasizes to DOI that any compressed review period outside the standard minimum 30–45 days limits Tribal consultation and our participation in these critical environmental reviews. These limitations undermine federal trust and treaty obligations to Tribal Nations that ensure the protection of Tribal resources in perpetuity. Historically, inadequate Tribal consultation has led to irreparable damage and harm to Tribal cultural, natural, and environmental resources and practices and costly litigation activities. Expedited reviews would directly jeopardize Tribal Nations' efforts to protect and preserve our religious freedoms and cultural heritage, conserve our culturally significant areas and species, and protect our water, air, and lands. DOI must not truncate review processes, including emergency procedures, at the cost of our culture and natural resources. Further, DOI must ensure early and ongoing engagement with Tribal Nations throughout this process.

No Delegation of Federal Consultation Obligations Under NEPA

The trust relationship exists between the federal government and Tribal Nations exclusively. With this in mind, we urge DOI that it must not delegate its consultation obligation under NEPA to third-party entities, which include non-profit organizations, industries/corporations, hired consultants and contractors, non-Tribal archaeologists and anthropologists, and other units of government. We have witnessed federal agencies rely on third-party industry consultants to conduct environmental assessments and environmental impact statements as the foundation for initial NEPA review procedures. These activities are often conducted without Tribal collaboration and consultation, which frequently result in findings of no significant

impact on our lands, and environmental, historic, and cultural resources. When other entities are party to or involved in federal actions, the federal government, as trustee, must exercise appropriate oversight in ensuring Tribal interests are not adversely impacted. Tribal Nations, and no other entity, are the final arbiters of whether a federal action impacts our governments, homelands, cultures, public health, or sacred sites.

Tribal Nations Must receive Full Funding and Technical Assistance 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 lands, 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.[5] 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, as THPOs will have to navigate procedures that vary by agency and potentially contend with unrealistically truncated review timelines.

Where Tribal Nations have a THPO and/or a cultural or natural resources department, these individuals and departments are often inundated with multiple projects and permit applications that exceed available capacity and resources. THPOs and departmental staff may also 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, for example. Review processes can be lengthy and burdensome because they are often broken into multiple, segmented assessments of a single project and span multiple agency jurisdictions and oversight authorities. Federal agencies implementing NEPA must support additional funding for Tribal Nations and THPOs to conduct NEPA reviews. 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 and potentially avoid costly litigation. Further, while the Department of the Interior is ultimately responsible for funding THPO offices, this funding is insufficient and requires a whole of government approach with each agency providing the necessary resources and technical support for these offices to effectively participate in NEPA review processes. DOI must work in a coordinated effort with other agencies to identify additional resources and technical assistance that can be leveraged to support THPOs and Tribal Nation participation in NEPA reviews.

[5] For example, EO 13175 applies "fundamental principles" to guide federal agencies' development and implementation of policies with Tribal implications, including that: "The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination." Sec. 2(c). Additionally, one of the policy goals articulated by EO 13175 is "to reduce the imposition of unfunded mandates upon Indian tribes." Pmbl. *See also* EO 13175 § 3(a) (providing that "[a]gencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments" when developing and implementing policies with Tribal implications).

Any Reduction in DOT 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 the federal government's trust and treaty obligations. Without these human 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. There must be sufficient DOIT staffing to advance Tribal consultation and NEPA reviews both inside and outside of our jurisdictional boundaries. Further, we are concerned that indiscriminate RIFs to agency personnel that provide services to Tribal Nations and/or citizens will inevitably result in the loss of critical institutional knowledge, further exacerbating disparities within Indian County. Entire program staff are being eliminated across the federal government through these workplace initiatives throughout the federal government without a plan for how to continue providing Tribal services.

DOI Must Support and Acknowledge Tribal Reserved Rights in NEPA Policies and Regulations

DOI should consider how federal actions may impact the reserved rights of Tribal Nations in its NEPA procedures. Tribal Nations reserve for themselves all our sovereign rights and authorities not otherwise lawfully relinquished by us via treaty and not taken from us by statute. As the U.S. Supreme Court explained long ago, a "treaty [i]s not a grant of rights to the Indians, but a grant of rights from them—a reservation of those not granted."[6] The U.S. Supreme Court has also long recognized Tribal Nations' "aboriginal" rights, including the right to use and occupy our homelands,[7] which "need not be 'based upon a treaty, statute, or other formal government action'"[8] and persist despite the encroachment of the United States, and outsiders before it, on Tribal Nations' homelands over time.[9] Indeed, by taking Tribal Nations' lands and resources, including through war and treaty-making, the United States assumed ongoing debt-based trust and treaty obligations to Tribal Nations and Native people.[10] Therefore, any DOI rescissions or revisions to NEPA must include consideration of potential impacts on Tribal reserved rights, such as subsistence hunting and fishing rights, in the NEPA process. DOI must recognize that Tribal Nations exercise these reserved rights to protect our natural environments, resources, sacred, cultural, and historic sites, lifeways, and the public safety and health of our communities and citizens. DOI must consider these impacts in the NEPA review and decision-making process.

Tribal Nations are Distinct from "Stakeholders" and the "Public"

Tribal Nations are and always have been inherently sovereign governments, a status that predates the arrival of outside forces and, while existing independently from the United States' affirmation by treaty or otherwise,[11] is recognized in the U.S. Constitution[12] and consistently by the U.S. Supreme Court.[13] Because of this, Tribal Nations have a unique government-to-government, Nation-to-Nation relationship

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[6] *United States v. Winans*, 198 U.S. 371, 381 (1905).

[7] *See, e.g.*, *Worcester v. Georgia*, 31 U.S. 515, 544 (1832); *Johnson v. M'Intosh*, 21 U.S. 543, 574 (1823); *Oneida Indian Nation of N.Y. v. Oneida Cnty*., 414 U.S. 661, 667 (1974).

[8] *Oneida*, 414 U.S. at 669 (citation omitted).

[9] *See, e.g.*, *Mitchel v. United States*, 34 U.S. 711, 746 (1835); *Sac & Fox Tribe of Indians of Okla. v. United States*, 383 F.2d 991, 998 (Ct. Cl. 1967).

[10] *See Morton v. Mancari*, 417 U.S. 535, 551–52 (1974); *Seminole Nation v. United States*, 316 U.S. 286, 296–97 (1942).

[11] *See, e.g.*, *Worcester*, 31 U.S. at 520 (explaining retained Tribal sovereignty is based on "the settled doctrine of the law of nations"); *Haaland v. Brackeen*, 599 U.S. 255, 308 (2023) (Gorsuch, J., concurring) (similar).

[12] U.S. Const. art. I, § 8, cl. 3 (Indian Commerce Clause); *id.* art. II, § 2, cl. 2 (Treaty Clause); *see also id.* art. VI, cl. 2 (Supremacy Clause); *id.* art. IV, § 3, cl. 2 (Territory Clause); *id.* art. I, § 2, cl. 3 (Indians Not Taxed Clause).

[13] *See, e.g.*, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55−56 (1978); *Brackeen*, 599 U.S. at 308 (Gorsuch, J., concurring).

with the United States. Therefore, DOI must not treat or define Tribal Nations as mere "stakeholders" or the "public" for NEPA purposes. Rather, Tribal Nations are owed consultation and coordination prior to any decision-making process, and in advance of any public scoping meetings with "stakeholders" and the "public," on NEPA projects that may directly or indirectly affect our rights or cultural and natural resources. Meaningful consultation includes timely notification to Tribal Nations, engagement of Tribal governments in the earliest stages of NEPA processes, and positively acting upon Tribal guidance and input. Inappropriately grouping Tribal Nations with "stakeholders" or the "public" would undermine Tribal consultation requirements, risking irreparable damage to our sacred sites and the public health and well-being of Tribal Nations across the country, in violation of the federal government's trust and treaty obligations.

Proposed Revisions to the "Purpose and Need" Requirement for Environmental Impact Statements Should Rely on the Original 1978 NEPA Regulations

The "purpose and need" section of an environmental impact statement requires agencies to describe the underlying purpose and need for a proposed agency action. This description then provides the basis for evaluating reasonable alternatives to meeting those goals, and agencies must still comply with these requirements when conducting NEPA reviews in response to applications for federal permits or other authorizations. However, the original 1978 definition of "purpose and need" was modified in 2020 and could be interpreted by agencies to prioritize an applicant's "goals" over the rights and priorities of Tribal Nations. Federal agencies must always consider the impacts of a proposed project or activity on the public health and environmental, natural, and cultural resources of Tribal Nations. Similarly, federal agencies must coordinate and communicate with Tribal Nations regarding project applications that may impact our people and environmental, natural, and cultural resources.

DOI's decision to rescind its regulation incorporating the CEQ definition of "purpose and need," which formerly required consultation with cooperating agencies on preparation of both environmental assessments and environmental impact statements, does not support the efforts of Tribal Nations to protect our people and environmental, natural, and cultural resources. In rescinding this regulation, DOI's Handbook 516 DM 1 now defines the statement of "purpose and need"—which shapes what alternatives are considered, in relation to an applicant's goals—as, "when the proposed action concerns a bureau's duty to act on an application for authorization, the purpose and need for the proposed action will also be informed by the goals of the applicant." Sec. 1.5(b)(1)(i); 2.2. This changes the fundamental parameters of an environmental review. The range of alternatives assessed in the NEPA process will be narrowed to those that meet the applicant's goals, rather than the federal agency's goals as defined in consultation with cooperating agencies. This framework uses a purportedly procedural step to substantively elevate an applicant's interests over other interests, including Tribal Nation interests.

NEPA Procedures Must Protect Sensitive Tribal Cultural information and Indigenous Knowledge from Public Disclosure and Interagency Sharing Without Tribal Consent

Tribal Nations are best positioned to identify what qualifies as sensitive information or Indigenous Knowledge that should be protected from public dissemination. Indigenous Knowledge refers to a body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribal Nations through interaction and experience with our environment. Tribal consultation often involves some disclosure of Indigenous Knowledge or otherwise sensitive information regarding Tribal cultural sites, resources, and practices, and what qualifies as sensitive is different for every Tribal Nation. Federal agencies must take steps to ensure such information, at the determination of the consulting or coordinating Tribal Nation, is

protected from disclosure to the public in NEPA rulemaking and documentation, and, to the greatest extent possible, shield it from Freedom of Information Act (FOIA) requests and other public disclosure laws.

Prior to the sharing of Indigenous Knowledge during consultation, there must be an established and respected high level of trust between the federal government and Tribal Leaders and our recognized cultural/spiritual leaders. This trust has been broken in the past and its restoration will require federal agencies to actively adopt, implement, and adhere to policies that provide the highest level of protection for Tribal Nations sharing sensitive Indigenous Knowledge. DOI must work with our Tribal Leaders and our recognized cultural/spiritual leaders to ensure that sensitive Indigenous Knowledge is protected from public disclosure to the greatest extent possible. Further, DOI officials receiving Indigenous Knowledge from Tribal Nations should not share this information with other federal agencies in the absence of express of free, prior, and informed Tribal consent. We should be the sole determiners regarding whether this information should be shared or withheld.

In addition, during Tribal consultation sessions and prior to the sharing of any sensitive or Indigenous Knowledge, DOI should inform Tribal Nations of the federal government's legal obligations for the release of information to the public under FOIA and other public disclosure laws. DOI officials must work with Tribal Leaders to ensure that any recording, taking of notes, or direct transcription of a consultation by machine or other methods does not create a record of sensitive Indigenous Knowledge and cultural information that could potentially be disseminated to or accessed by the public. Tribal Leaders should be notified in advance of any recording or transcription methods and have an opportunity to object to their use when Indigenous Knowledge or cultural information is divulged, and federal agencies must adhere to those objections. Furthermore, requests for the redaction of sensitive Indigenous Knowledge and cultural information from the consultation record or NEPA documentation should be allowed to be stated verbally during consultation sessions and in any follow-up written materials submitted to federal agencies.

Moving forward, DOI must develop guidance on how FOIA requests implicating Indigenous Knowledge should be handled, recognizing that we—and not the federal government—should be the sole and final arbiters in identifying what constitutes Indigenous Knowledge and sensitive information. First and foremost, upon the exchange of Indigenous Knowledge and other sensitive Tribal cultural information during consultation, DOI should actively work with Tribal Leaders to determine what information should be redacted from public dissemination and protected from FOIA requests and other public disclosure laws, and seek those redactions to the greatest extent allowable under the applicable legal authorities. Furthermore, federal agencies must inform Tribal Nations when FOIA requests are made to access our information and consult our Tribal Leaders, THPOs, and other individuals we expressly identify, such as our recognized cultural/spiritual leaders, as authorities in determining what information may be withheld or redacted, consistent with applicable law. Similarly, federal agencies should inform Tribal Nations when the agency receives these requests, including the identity of the requester and the information being requested.

Conclusion

USET SPF supports NEPA regulations that safeguard and protect Tribal Nations' right to our natural and environmental resources and cultural heritage. We also generally support the goals of efficiency and effectiveness, but we assert that this cannot be accomplished at the expense of Tribal sovereignty, health, spirituality, and culture. However, USET SPF is opposed to any and all NEPA regulatory or policy revisions that would undermine the federal government's trust and treaty obligations to consult with Tribal Nations and protect Tribal resources. USET SPF urges DOI to retain any NEPA regulations that would undermine upholding its trust and treaty obligations to Tribal Nations and would harm our homelands, sacred sites,

cultural and environmental resources, and the public health and safety of our citizens. 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

Kitcki A. Carroll
Executive Director