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Testimony of the United South and Eastern Tribes Sovereignty Protection Fund
For the Record of the Senate Committee on Environment and Public Works
"Hearing to Examine the Federal Environmental Review and Permitting Processes, Part II"

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Environment and Public Works with the following testimony for the record of the January 28, 2026 "Hearing to Examine the Federal Environmental Review and Permitting Processes, Part II." Last year, the Committee held a hearing on February 19, 2025, to begin its focus on addressing issues associated with environmental reviews and other permitting procedures for infrastructure projects. The Committee has renewed its effort to revisit these issues and has stated its commitment to seek common, bipartisan agreement on practical solutions to revise federal environmental review and permitting procedures.

While USET SPF agrees that reform is needed to streamline infrastructure deployment by removing overtly cumbersome and bureaucratic barriers hindering the development of necessary infrastructure, we remind Congress that these efforts must not come at the expense of the federal government's trust and treaty obligations to protect the public health and cultural lifeways of Tribal communities, both within and outside our current jurisdictional boundaries. We emphasize that any reform of these processes must have explicit requirements for prompt and early inclusion of and consultation with Tribal Nations. In addition, Tribal Nations must also be empowered to exercise our inherent sovereignty to efficiently conduct these reviews and permitting activities on our lands. This obligates Congress to appropriate funds and resources required for these endeavors, and federal agencies to provide the necessary technical assistance to support infrastructure deployment on Tribal lands.

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 Turtle Island.[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).

The United States has long engaged in a Nation-to-Nation, sovereign-to-sovereign relationship with Tribal Nations. Tribal Nations are and always have been inherently sovereign governments, a status that predates the arrival of colonizing forces and exists independently from the United States' affirmation, by treaty or otherwise. While not dependent on external affirmation, it is nevertheless significant that Tribal Nations' inherent sovereignty is embedded in the U.S. Constitution, has been consistently reaffirmed by the U.S. Supreme Court, and is further reinforced in hundreds of treaties, statutes, and other legal proclamations.

Despite this background, the United States has taken for itself nearly all two billion acres of land over which Tribal Nations originally governed, and it now enjoys the immense value of those lands and the resources they contain. Through this taking by war, treaty-making, and other coercive means, the United States assumed an ongoing solemn, legal duty to Tribal Nations—a debt that manifests in trust and treaty obligations to provide services and funding to Tribal Nations, Tribal communities, and Native people, and to ensure the protection of Tribal and individual Native lands, assets, and resources.

USET SPF strongly supports robust and strengthened national infrastructure and energy independence, especially on Tribal lands. However, any reforms to environmental review and permitting processes for infrastructure build-out—in Indian Country and beyond—must not occur at the expense of Tribal consultation, sovereignty, sacred sites, cultural resources, and public health. We remind the Committee that as it pursues efforts to streamline and create efficiencies in current environmental review and permitting processes, it must uphold its trust and treaty obligations to ensure proper safeguards are in place and strengthened to protect our lands and communities.

Therefore, prior to developing and introducing legislation to reform federal environmental review and permitting processes, it is imperative that the Committee consult with Tribal Nations to receive input on how to improve these processes while protecting Tribal cultural, environmental, and natural resources. This is especially important since the Committee did not have Tribal witnesses to provide testimony at either the February 19, 2025 or January 28, 2026 hearing to examine federal environmental review and permitting processes. USET SPF reminds the Committee that—in recognition of our Nation-to-Nation relationship and federal trust and treaty obligations—the federal government must consult with Tribal Nations on federal actions affecting us. Further, any legislation developed and considered by the Committee must explicitly direct agencies involved in deploying or funding infrastructure projects to conduct prompt and early Tribal consultation on project activities, as well as any rulemaking associated with implementation of laws within the Committee's jurisdiction. These consultation activities must occur prior to permitting submissions and well in advance of the development of deployment plans or construction activities. Bringing Tribal Nations in at the project development stage will ensure an abbreviated permitting process, limit litigation risk, and ensure project success while protecting critical Tribal cultural, environmental, and natural resources, as well as the public health of our communities.

Federal Agencies Have Initiated Revisions or Rescissions of NEPA Implementing Regulations Without Engaging in Tribal Consultation

Throughout 2025, USET SPF engaged with numerous agencies in response to several published Interim Final Rules (IFRs) and Requests for Comment to rescind and/or revise regulations implementing the National Environmental Policy Act (NEPA). These actions were taken by agencies in response to NEPA amendments in the Fiscal Responsibility Act of 2023 (P.L. 118-5), the issuance of Executive Order (EO) 14154, "Unleashing American Energy," and to comply with the Council on Environmental Quality's (CEQ) IFR on "Removal of [NEPA] Implementing Regulations" adopted on February 25, 2025—which has now become a Final Rule effective as of January 8, 2026. Following publication of CEQ's IFR in February 2025, USET SPF submitted comments to CEQ on March 27, 2025, stressing concerns regarding the absence of

Tribal consultation *prior* to any revision or rescission of CEQ's NEPA implementing regulations. However, CEQ has proceeded in adopting the Final Rule—again, absent formal Tribal consultation—and has removed all iterations of its regulations implementing NEPA from the Code of Federal Regulations.

In reviewing CEQ's Final Rule, USET SPF notes that the agency acknowledged the receipt of several comments submitted by Tribal Nations and Tribal organizations in response to the 2025 IFR. Many of these comments stressed the absence of CEQ engaging in Tribal consultation activities *prior* to rescinding CEQ's NEPA implementing regulations. However, CEQ has asserted that neither the IFR nor this Final Rule alters federal agencies' consultation duties to Tribal Nations. Specifically, CEQ's Final Rule stated that pursuant to EO 13175, "Consultation and Coordination with Indian Tribal Governments," agencies *must* consult with Tribal Nations prior to promulgation of regulations with Tribal implications. CEQ further stated that the concerns raised by Tribal commenters regarding the rescission of CEQ's NEPA regulations in response to the 2025 IFR were "speculative," and that agencies would continue to implement NEPA consistent with agency-specific NEPA implementing procedures *and* EO 13175. However, this reasoning has proved false since several federal agencies initiated IFRs and Requests for Comment throughout 2025 to revise and/or rescind agency-specific NEPA implementing regulations, and none of these agencies initiated formal, government-to-government consultation with Tribal Nations.

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

In recognition of our inherent sovereign status, any reform to environmental and permitting processes must meaningfully acknowledge the federal government's trust and treaty obligations to engage in government-to-government consultation with Tribal Nations outside regular "stakeholder" and "public engagement" processes. Unfortunately—as aforementioned—CEQ's January 8, 2026 Final Rule failed to recognize that federal agencies pursued efforts to revise and/or rescind agency-specific NEPA implementing regulations following the 2025 IFR and did not engage in formal Tribal consultation obligations under EO 13175. This absence of Tribal consultation by federal agencies can be directly traced to CEQ's IFR, which inappropriately concluded that the rescission of CEQ's NEPA implementing regulations would not have Tribal implications and therefore did not require Tribal consultation. CEQ erroneously reasoned that Tribal consultation was not required "because [the IFR] 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 has for nearly 25 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 EO 13175 provision cited for CEQ's first justification in the 2025 IFR 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] Since the 2025 IFR was adopted—without changes—by the January 8, 2026 Final Rule, these invalid assertions and justifications remain.

Congress Must Act to Preserve and Improve Tribal Consultation Requirements on Environmental Reviews and Permitting Procedures

Though still early to determine the impact CEQ's Final Rule will have on Tribal Nations, lands, and cultural, environmental, and natural resources, USET SPF remains concerned about the potential harms of this action. The rescission of CEQ's NEPA implementing regulations removes overarching CEQ guidance for agency-specific NEPA implementation, which creates an environment for agencies to conduct a piecemeal approach on how to implement NEPA, and engage (or not) in formal consultation with Tribal Nations. We assert that rescission of these regulations will further complicate environmental review and permitting processes across federal agencies, since Tribal Nations will have to navigate multiple varied processes based on agency-specific NEPA implementing regulations.

In addition, some agencies have gone so far as to examine other implementing regulations outside the scope of CEQ's IFR on NEPA. In response to EO 14154, the 2025 CEQ IFR, and recent court decisions, the Federal Communications Commission (FCC) issued a Notice of Proposed Rulemaking (NPRM) on August 7, 2025. The FCC has asserted in its NPRM that its Section 106 National Historic Preservation Act (NHPA) regulations are inextricably tied to its NEPA implementing regulations. The FCC's NPRM has inappropriately conflated its decision to revise its NEPA implementing regulations to include potential revisions to its Section 106 NHPA regulations, which are outside the scope of directives in EO 14154, the 2025 CEQ IFR, and the recent court decisions on NEPA implementation. While the FCC is still in the process of reviewing comments received in response to its August 2025 NPRM and has not adopted a Final Rule, or further rulemaking, to revise its NEPA and NHPA implementing regulations, this has already contributed to future regulatory uncertainty and concern for the protection of Tribal cultural and natural resources.

As aforementioned, following the issuance of the 2025 CEQ IFR, several federal agencies published proposals to revise and/or rescind portions of agency-specific NEPA implementing regulations. These agency proposals proceeded without engaging in prior and informed Tribal consultation, which underscores the necessity of CEQ's overarching NEPA implementing regulations and the failure of federal agencies to adhere to the Tribal consultation directives under EO 13175. Therefore, it is critical that—as the Committee

[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.

looks to reform environmental review and permitting processes—there is an explicit recognition and requirement that agencies *must* consult with Tribal Nations in the early stages of an infrastructure project proposal and throughout a project's construction period.

In addition, USET SPF notes that during the January 28, 2026 hearing, there was bipartisan and witness testimony consensus that "stakeholders" and the "public" must be involved and engaged early in environmental review and permitting processes to support the planning and deployment of infrastructure projects. USET SPF urges the Committee to go further in this recognition by explicitly requiring that agencies engage in formal, government-to-government consultation with Tribal Nations separate from "stakeholder" and "public" engagement processes. We remind the Committee that Tribal Nations are uniquely situated due to the federal government's solemn, legal trust and treaty obligations. Federal agencies must be required to engage in formal government-to-government activities early and throughout project proposal and construction activities. In addition, Congress must appropriate the necessary funds for Tribal Nations to hire the required personnel and technical experts to fully participate in environmental review and permitting processes, while also ensuring that the necessary federal personnel are in place to provide technical assistance to Tribal Nations to efficiently and effectively move towards project completion.

Additional Tribal-Specific Recommendations to the Committee for Reform of Environmental Review and Permitting Procedures

Prior to introducing legislation, it is imperative that the Committee consult with Tribal Nations to gather input on how to improve federal environmental review and permitting processes. We remind the Committee that any draft legislation must direct agencies that are directly deploying or funding infrastructure projects to conduct prompt and early consultation on program activities prior to permit submission and development of deployment plans or construction activities with a goal of achieving consent for federal action. Bringing Tribal Nations in at the project development process/stage will ensure an abbreviated permitting process, limit litigation risk, and ensure project success while protecting critical Tribal cultural, environmental, and natural resources.

For these reasons, USET SPF offers the following recommendations to the Committee to improve and safeguard Tribal lands, cultural lifeways, sacred sites, natural and environmental resources, and public health—

- **Congress must explicitly protect and recognize Tribal consultation requirements in any reforms to environmental reviews and permitting processes.** Federal laws such as NEPA and Section 106 of the NHPA serve as pivotal legal frameworks to ensure that federal decision-making processes consider the rights and interests of Tribal Nations—both within and outside of our jurisdictional boundaries. These statutes require that Tribal Nations have an opportunity to provide input on and review of federal actions that may harm our cultural, environmental, and natural resources, ensuring that federal actions avoid damage to these resources and averting potential costly litigation activities. The ability of Tribal Nations to protect our environment, resources, and sacred sites is vital to the health and cultural well-being of current and future generations within Indian Country. Therefore, USET SPF emphasizes to the Committee that the requirement for Tribal consultation through these review processes is a critical method by which the federal government can meet and uphold its trust and treaty obligations. Federal agency adoption of revisions or rescissions to NEPA, the NHPA, and permitting regulations in the absence of Tribal consultation is an abrogation of these solemn, legal obligations.

Further, failure to provide adequate timeframes for Tribal consultation risks violating the statutory obligations embedded in NEPA and the NHPA, disregarding the very intent behind these statutes. These laws were enacted by Congress with the intention of upholding trust and treaty obligations to Tribal Nations to protect important natural, environmental, and cultural resources. They were meant to honor the unique legal, diplomatic relationship between the federal government and Tribal Nations—relationships rooted in centuries of sovereign-to-sovereign engagement and formalized through the U.S. Constitution, treaties, statutes, executive orders, and judicial decisions. NEPA and the NHPA must continue to be implemented along with meaningful Tribal consultation requirements, ensuring adequate time, respectful engagement, and sufficient resources for Tribal Nations to participate. As the Committee pursues efforts to reform federal environmental review and permitting procedures, it must strengthen and preserve federal requirements to engage in early, meaningful consultation with Tribal Nations. Indian Country supports and has a vested interest in the goals of energy independence and investment in critical infrastructure, but it cannot come at the expense of the federal government's trust and treaty obligations to Tribal Nations to protect our religious freedom, cultural heritage, and natural and environmental resources. Further, and in consultation with Tribal Nations, the Committee should consider developing legislative proposals to empower Tribal Nations with signatory authority for NEPA approvals on Tribal lands. This action would greatly support Congress and the Administration's goals of streamlining environmental review and permitting on Tribal lands while supporting inherent Tribal sovereignty and self-determination to improve the functionality of these processes for project proposals.

- **Any potential revisions to categorical exclusions must immediately require Tribal consultation.** Throughout 2025, several federal agencies proposed revisions to categorical exclusions (CATEX), but, again, proceeded without engaging in formal, government-to-government consultation with Tribal Nations. While CATEXs have been utilized by agencies since the late 1970s, the proposed expansion of their use in the various 2025 agency IFRs and Requests for Comment was 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 within our outside of our current jurisdictional boundaries. 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.

- **Any amendment to NEPA must ensure that timelines for review explicitly accommodate and require meaningful consultation with Tribal Nations.** Any legislative proposal advanced by the Committee to amend NEPA to compress review periods 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. The federal government must not truncate review processes, including emergency procedures, at the cost of our culture and natural resources. Further, the federal government must ensure early and ongoing engagement with Tribal Nations throughout this process.

- **Congress must not allow federal agencies to delegate federal consultation obligations under NEPA.** The trust relationship exists between the federal government and Tribal Nations exclusively. With this in mind, we remind the Committee that the federal government 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 our 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.[3] 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)—who often operate in dual capacities for Section 106 NHPA and NEPA environmental reviews—has been largely stagnant for decades and will be further strained by a disparate approach to revising NEPA regulations, as THPOs will have to navigate procedures that vary by agency and potentially contend with unrealistically truncated review timelines. This is especially concerning now that CEQ has adopted a Final Rule rescinding its NEPA implementing regulations and agencies are now revising, or reverting to outdated, agency-specific regulations.

  It is also important that the Committee recognizes that 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. Yet federal agencies expect Tribal Nations to adhere to unreasonable review timelines that fail to acknowledge these persistent funding failures. It is not uncommon for a THPO or cultural resource manager to also fulfill the role

[3] 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).

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. Congress must ensure that federal agencies implementing NEPA have the necessary resources and personnel to support Tribal Nations and THPOs to conduct NEPA reviews. This also includes providing sufficient resources for Tribal Nations to adequately participate in the NEPA review and permitting processes and consultation activities to, ultimately, result in expedited review and permitting timelines and potentially avoid costly litigation.

- **Any further reduction in federal permitting staff will inextricably exacerbate the capacity of Tribal Nations to participate in NEPA and permitting reviews.** These reviews require specific technical expertise and knowledge that Tribal Nations may not have on staff due to federal funding shortfalls for such positions. Thus, we may have to rely on federal personnel to provide technical assistance to fill these gaps 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 federal staffing to advance Tribal consultation and NEPA and permitting reviews both inside and outside of our jurisdictional boundaries. Further, we are concerned that indiscriminate reductions in force (RIFs) to agency personnel that provide services to Tribal Nations, Tribal communities, and Native people will inevitably result in the loss of critical institutional knowledge, further exacerbating disparities within Indian County. Entire program staff have been eliminated through RIFs throughout the federal government without a plan for how to continue providing Tribal services. Congress must acknowledge the impact this has had on environmental review and permitting capabilities for projects across Indian Country, and it must ensure that any environmental review and permitting reform legislation includes specific line-item appropriations for the hiring of federal personnel required to execute these procedures.

- **Congress and federal agencies must support and acknowledge Tribal reserved rights in NEPA policies and regulations.** Congress must require agencies to consider how federal actions may impact the reserved rights of Tribal Nations in their 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."[4] The U.S. Supreme Court has also long recognized Tribal Nations' "aboriginal" rights, including the right to use and occupy our homelands,[5] which "need not be 'based upon a treaty, statute, or other formal government action'"[6] and persist despite the encroachment of the United States, and outsiders before it, on Tribal Nations' homelands over time.[7] 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. Therefore, any legislative or regulatory revisions to NEPA must include consideration of potential impacts on Tribal reserved rights, such as subsistence hunting and fishing rights, in the NEPA process. Federal

[4] *United States v. Winans*, 198 U.S. 371, 381 (1905).
[5] *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).
[6] *Oneida*, 414 U.S. at 669 (citation omitted).
[7] *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).

agencies 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. Federal agencies must consider these impacts in the NEPA review and decision-making process.

- **Tribal Nations are distinct from "stakeholders" and the "public."** As aforementioned, Tribal Nations are and always have been inherently sovereign governments. Because of this, Tribal Nations have a unique government-to-government, Nation-to-Nation relationship with the United States. Therefore, federal agencies 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.

- **NEPA procedures must protect sensitive Tribal cultural information and Indigenous Knowledge from public disclosure, including via Freedom of Information Act (FOIA) requests, and prevent interagency sharing of this information and knowledge 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. When federal agencies engage in formal consultation with Tribal Nations, it 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. Congress must enact legislation that requires federal agencies to 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 FOIA requests and other public disclosure laws.

  We remind the Committee that, prior to the sharing of Indigenous Knowledge during consultation activities, there must be an established and respected high level of trust between the federal government and Tribal Leaders and our recognized cultural and 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. Federal agencies must be required to work with our Tribal Leaders and our recognized cultural and spiritual leaders to ensure that sensitive Indigenous Knowledge is protected from public disclosure to the greatest extent possible. Further, Congress must ensure that federal agencies receiving Indigenous Knowledge from Tribal Nations must 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 arbiters 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, federal agencies should be required to 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. Federal agency staff must be required to 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 Congress must ensure that federal agencies are required to adhere to those objections. Furthermore, Tribal 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, federal agencies 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, federal agencies 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 and 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 acknowledges the need to modernize and streamline federal environmental review and permitting processes in Indian Country. Critical Tribal infrastructure projects continue to face uncertainty, delays, and associated increased costs. Yet, these changes cannot come at the cost of Tribal consultation rights and the protection of our cultural and environmental resources. Agencies must carry out NEPA consistently, per the statute, and Congress is positioned at an opportune time to guide federal agencies on how these efforts can be conducted appropriately in consultation and partnership with Tribal Nations.

USET SPF remains committed to protecting vital Tribal historic, cultural, and environmental reviews and permitting processes, as well as Tribal consultation requirements, as the Committee considers efforts to streamline these processes. This includes working toward a model that seeks Tribal Nation consent for federal action in recognition of our inherent sovereign equality. However, we remind the Committee that we remain opposed to any environmental review and permitting policy revisions that would undermine the federal government's trust and treaty obligations to engage in early, meaningful consultation with Tribal Nations to safeguard Tribal cultural, environmental, and natural resources. Moving forward, we urge the Committee to engage in direct outreach to Tribal Nations to identify meaningful solutions to improve environmental review and permitting processes on Tribal lands and nationwide, including by soliciting Tribal witness testimony at any future hearings on this subject.