



Opportunities for Tribal Engagement in National Environmental Policy Act (NEPA) Reviews

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The National Environmental Policy Act (NEPA; 42 U.S.C. §§4321 et. seq.) sets forth a national policy with respect to environmental quality and a procedural framework for integrating environmental considerations into federal decisionmaking (i.e., through *environmental review*). The range of federal agencies and actions subject to NEPA is broad and includes activities such as resource management decisions, issuing permits, and funding infrastructure projects. Under NEPA, federal agencies must evaluate reasonably foreseeable adverse environmental effects, consider a reasonable range of alternatives, and prepare required documentation (i.e., *environmental documents*) for “major [f]ederal actions significantly affecting the quality of the human environment.” Federal agencies may also engage other governmental entities, project applicants (i.e., *project sponsors*), and members of the public to identify issues, obtain relevant information, and inform environmental analyses.

Federally recognized Tribes (*Tribes*) may participate in environmental reviews for various reasons. In some circumstances, federal action may arise because a Tribe proposes an activity that requires federal agency approval or involves an associated federal authorization. In other circumstances, federal action may occur on or affect tribal lands, treaty-protected rights, or resources in which the United States has responsibilities under applicable federal law. This In Focus provides an overview of the various ways in which Tribes may engage in the environmental review process under NEPA.

Tribal Roles and Participation in NEPA Reviews

A Tribe’s role in an environmental review varies depending on whether it proposes an activity requiring federal action or participates in the review of an action proposed by another entity. Potential tribal roles are outlined in this section.

Project Sponsor

A Tribe may serve as a project sponsor when it proposes an activity that requires a federal agency decision. In these circumstances, the Tribe may provide project information and other materials needed for the environmental review, while the federal agency remains responsible for the contents of the environmental document and making the federal decision. For some actions (e.g., leases or rights-of-way) on tribal lands, the Bureau of Indian Affairs (BIA) is primarily responsible for authorization.

Joint Lead Agency

NEPA assigns responsibilities for environmental review to the federal agency proposing a federal action or responsible for authorizing certain actions. The federal agency conducting the

environmental review is typically the *lead agency*, but Tribes may participate in other formal roles. For many federal actions involving Tribes, the BIA is the lead agency, and in some circumstances, Tribes may participate as joint lead agencies. As a joint lead agency, a Tribe would share responsibilities related to a proposed action, including supervising the environmental review process, coordinating with other agencies, and overseeing and developing a schedule for completing the environmental review and any associated federal permits or related authorizations. Although joint lead agency arrangements involving Tribes are less common than cooperating agency participation—discussed in the next section—they may be used for proposed actions involving BIA authorizations, proposed actions affecting tribal lands, and other shared federal and tribal decisionmaking responsibilities.

Cooperating Agency

Under NEPA, the lead agency may invite any federal, state, tribal, or local agency with “jurisdiction by law or special expertise” relevant to any environmental impact to participate as a cooperating agency. A Tribe may also request cooperating agency status where appropriate. Cooperating agencies may, among other things, assist in identifying issues for analysis, developing alternatives, providing technical information, and preparing environmental documents. Acting as a cooperating agency may require a commitment of resources and time to meet the lead agency’s schedule. Although the lead agency remains responsible for the analysis, the environmental review, and any resulting decisions, cooperating agency status may provide Tribes with opportunities to engage earlier and more directly in the development of a proposed action and the environmental analysis than would otherwise occur through public participation.

Public Participation in the Environmental Review Process

Tribes may also provide input on environmental reviews through public participation opportunities. Until recently, NEPA implementation was guided by government-wide regulations, promulgated by the Council on Environmental Quality (CEQ). These regulations required federal agencies to request comments from the public, as well as any state, local, or tribal government that may be affected by the proposed action during the preparation of certain environmental documents. Effective April 2025, CEQ rescinded those regulations and directed federal agencies to replace these regulations with federal-agency-specific procedures that may or may not include similar requests for public comment opportunities. Depending on agency procedures (e.g., DOI Handbook of NEPA Procedures) and level of review, these opportunities may include participation during scoping, review of draft environmental documents, submission of written comments, or public meeting input.

Federal Delegation of Authorizations and Environmental Reviews to Tribes

At times, Congress has enacted statutes that allow Tribes to authorize certain activities on tribal lands without case-by-case approval by the Secretary of the Interior (*Secretary*, as delegated to the BIA), provided the Tribe has an environmental review process meeting specified statutory requirements. For example, the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act, [25 U.S.C. §415\(h\)](#)) authorizes Tribes to approve tribal leases on tribal lands executed under tribal regulations approved by the Secretary. In addition, the Indian Tribal Energy Development and Self Determination Act of 2005 ([25 U.S.C. §3504\(e\)](#)) allows qualifying Tribes to propose tribal energy resource agreements (TERAs) with the Secretary. If the Secretary approves a TERA, that Tribe can enter into leases, business agreements, or rights-of-way to develop energy resources on tribal lands without secretarial approval. [Under both statutes, Tribes must conduct environmental reviews that meet specified criteria.](#)

Other Opportunities for Tribal Participation

In addition to participating in these NEPA roles, Tribes may engage with federal agencies pursuant to other statutory authorities. These other authorities differ in their legal basis, purpose, and procedural requirements, but federal agencies often coordinate compliance within the NEPA process to reduce duplication and facilitate informed decisionmaking. For example, federal agencies [integrate](#) their environmental reviews with reviews under Section 106 of the National Historic Preservation Act. Information gathered during one engagement (e.g., information regarding cultural or environmental resources) may also inform the NEPA analyses. Thus, tribal participation during an environmental review often reflects compliance with several overlapping authorities rather than NEPA alone.

Beyond engaging with federal agencies pursuant to these statutory authorities, [Tribes may request government-to-government consultations](#) pursuant to the federal trust responsibility, treaty obligations, [executive orders](#), or agency consultation policies. The *federal trust responsibility* is a legal obligation under which the United States—through treaties, acts of Congress, and court decisions—“[has charged itself with moral obligations of the highest responsibility and trust](#)” toward Tribes and tribal members. [Government-to-government consultation may include correspondence, meetings, site visits, workshops, or other discussions regarding the proposed action.](#) Tribal engagement through government-to-government consultation is different than public review of environmental documents because it typically involves meetings and communication between tribal and federal leaders, whereas during public review, Tribes engage through the same procedural opportunities available to all members of the public and other entities.

Selected Issues for Congress

Members of Congress have considered legislation addressing tribal engagement in NEPA reviews and implementation.

Consistency of NEPA requirements. Following the [rescission of the CEQ NEPA regulations](#), opportunities for Tribes to participate in environmental reviews and comment on draft environmental documents may vary among federal agencies and project types. While some tribal groups asserted support for the Trump Administration for “reducing unnecessary federal regulations and streamlining overly complex permitting processes that disproportionately burden” Tribes, [they](#) also urged Congress to give CEQ regulatory control over NEPA again, and to add tribal consultation requirements to NEPA.

Application of NEPA to tribal lands and resources. NEPA is silent regarding how an agency should analyze or determine the impact of proposed actions affecting tribal lands and resources. The [Standardizing Permitting and Expediting Economic Development Act \(H.R. 4776\)](#) and Bipartisan American Affordability and Jobs Act ([S. 5653](#)) would amend NEPA to direct federal agencies to presume that declining to proceed (taking no action) on a tribal proposal would negatively affect the Tribe. [The House Committee on Natural Resources \(majority\) asserted](#) that this directive would promote tribal sovereignty. In addition, some Tribes have advocated for more power to decide whether an environmental review is necessary and how it might be conducted for projects on tribal lands. For example, the [Southern Ute Indian Tribe](#) has stated that it increased efficiencies after developing its own environmental review process under the HEARTH Act. Yet this approach may create inconsistencies in environmental review practices among Tribes and between Tribes and federal agencies.

Consideration of tribal input in federal decisions. Congress may choose to constrict, maintain, or expand statutes governing consideration of tribal input in federal decisionmaking. As discussed above, Congress has issued some direction to federal agencies on when and how to consider tribal input. While Tribes have often sought increased influence in NEPA reviews, federal agencies may find it challenging to weigh tribal input against other statutory mandates and priorities.

Federal and Tribal Capacity. Some [federal agencies and Tribes](#) have identified limitations in agency and tribal capacity as hindering meaningful engagement, including for environmental reviews. In a [GAO report](#) on government-to-government consultation, many federal agencies cited “constraints on agency staff, financial resources, or both to support consultation.” Tribal participation in environmental reviews may also require the expenditure of tribal resources. At times, Congress has appropriated funding that has been used to help Tribes engage in environmental reviews. For example, [P.L. 117-169](#) appropriated \$350 million to the Permitting Council’s Environmental Review Improvement Fund. [The Permitting Council set aside \\$5 million from the fund in 2023, and an additional \\$10 million in 2024](#), to support tribal engagement in the environmental review and authorization process for [FAST-41-covered infrastructure projects](#).

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