RFI for Transmission Siting and Economic Development Grants
Responses of Public Interest Organizations

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United States Department of Energy
Grid Deployment Office
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Earthjustice, National Wildlife Federation, Natural Resources Defense Council, Sierra Club, the Sustainable FERC Project, and WE ACT For Environmental Justice (collectively "Public Interest Organizations") appreciate the opportunity to respond to the Department of Energy's ("DOE") Request for Information ("RFI") regarding Grants to Facilitate the Siting of Interstate Electricity Transmission Lines. We respectfully encourage DOE to use grants for transmission projects to advance two critically important federal objectives: (1) attaining a 100 percent carbon emission-free energy grid by 2030; and (2) ensuring that 40 percent of the benefits of federal investments flow to disadvantaged communities.

The grants contemplated in this RFI represent a substantial federal investment that can meaningfully progress these two important goals. To those ends, we respectfully recommend that DOE ensure that grants for transmission projects achieve the following priorities, which we also emphasize throughout our responses below:

- **Early, frequent, and meaningful community consultation:** To ensure that transmission projects garner community support and mitigate the risk that community opposition to transmission projects will lead to litigation, DOE should require grant applicants to develop, fund, and follow plans for robust engagement with affected communities. This consultation should occur as early as possible in the project planning process, feature regular opportunities for communities to provide input, and require documentation of how a project integrates community input.

- **Community-supported benefits:** DOE grants should promote projects that deliver benefits for which communities express significant support. Early consultation with affected communities should solicit input about what benefits would be of greatest local value. Such benefits may include improving reliability, reducing energy burdens, or improving local environmental conditions. DOE should ensure that grant-funded projects address the needs that affected communities identify. Providing benefits that communities most want will increase the odds of community support for transmission projects and reduce the odds of litigation and project delay.

- **Smart siting that maximizes renewable energy and minimizes adverse impacts:** DOE grants should support projects that connect areas that have potential to generate abundant renewable energy with those that have significant energy demand or high energy burdens. In doing so, DOE should promote siting processes that minimize adverse impacts to environmental, economic, cultural, and historic resources. Inclusive siting processes that provide meaningful opportunities for community input will help identify routes that minimize adverse impacts and maximize community benefits.

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RESPONSES

1. What studies and analyses may be helpful in identifying impacts from a covered transmission project?

Relevant studies and analyses of the impacts of a covered transmission project include any that are necessary to comply with federal or state laws. Federal laws applicable to transmission projects include (but are not limited to) the National Environmental Policy Act, the National Historic Preservation Act, the Federal Land Policy and Management Act, the National Forest Management Act, the Clean Water Act, the Endangered Species Act, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and the Marine Mammals Protection Act. Under these laws, projects may require permits from various agencies. Studies and analyses that identify a project's impacts and measures to minimize or mitigate such impacts would be helpful for facilitating timely permitting and construction of transmission projects.

Studies that examine cultural and historical impacts may be especially valuable because transmission projects often require significant excavation and soil disturbance, especially if lines are installed underground. Studying cultural and historical impacts early in a project's design process can help minimize adverse impacts through siting decisions, provide time for consultation with affected communities regarding the importance of historical and cultural resources, and enable stakeholders to collaborate on the design of mitigation measures that have genuine support from the community. These steps can help mitigate litigation risk.

Promptly commencing and completing studies of transmission projects' impacts will also promote timely permitting decisions and timely project completion. The Federal Energy Regulatory Commission ("FERC") is proposing to authorize pre-filing proceedings for certain transmission projects concurrently with state siting proceedings.[1] Moreover, DOE has delegated to FERC responsibility for preparing "a single environmental review document, which shall be used as the basis for all decisions on the proposed project under Federal law."[2] While these approaches aim to promote efficiency, they may create burdens for state siting authorities, which must not only comply with their states' laws and regulations, but also participate in simultaneous FERC proceedings, and potentially participate in simultaneous proceedings in other states.

Where concurrent permitting processes are underway at the federal level and in multiple states, siting authorities may benefit from grants that will enable them to better understand a project's impacts, particularly at an early stage in the project. Such grants may help a siting authority fulfill its own responsibilities and better participate in concurrent federal or state processes by hiring more staff or dedicating more existing staff time.

Similarly, siting authorities may need help quantifying a project's benefits. Transmission projects may be subject to cost-allocation principles under FERC Order 1000, which requires

[1] *Applications for Permits to Site Interstate Electric Transmission Facilities*, 88 Fed. Reg. 2770, 2,770-01 (Jan. 17, 2023).
[2] 16 U.S.C. § 824*p*(h)(5); *see also* DOE Delegation Order No. 00-004.00A (May 16, 2006) (delegating this responsibility to FERC).

costs to be allocated roughly commensurate with benefits.[3] Benefits from transmission projects will likely transcend state lines, and siting authorities may need help studying benefits that occur outside one state's boundaries. Likewise, if a transmission project passes through a jurisdiction without providing energy to that jurisdiction, siting authorities may need help understanding the project's economic benefits. Additionally, because many jurisdictions take an overly narrow view of the benefits of transmission projects, DOE grants could require siting authorities to consider a broader set of project benefits.[4]

Finally, DOE should fund studies to evaluate the benefits of placing transmission lines underground. While costly, undergrounding transmission lines can provide significant benefits, including preventing weather-related outages and reducing aesthetic impacts. Yet, the benefits of undergrounding are seldom studied rigorously. DOE funding could help address this gap.

6. What impact would examining alternative siting corridors have on the time required for processing siting requests?

An early, inclusive, and robust examination of alternative siting corridors can promote timely permitting and construction of transmission projects. Rigorously examining alternative siting corridors requires additional upfront labor, such as additional research, analysis, and stakeholder engagement to identify and evaluate new options. However, this effort can also reduce controversy over siting decisions, increase community support, and mitigate litigation risk. DOE can promote efficient consideration of alternative sites by providing funding for siting authorities to retain additional staff, hire experts, or devote additional staff time to this analysis.

To effectively promote community support for transmission projects and reduce litigation risk, DOE should use its grant-funding authority to encourage siting authorities to take an inclusive approach to the analysis of alternative siting corridors and to do so as early in the project design process as possible. Engaging potentially affected communities early in the project design and siting process will allow for the early identification of potential land-use conflicts or adverse impacts that the affected communities may believe are unacceptable. Likewise, affected communities may also be able to identify alternative siting corridors that reduce the project's adverse impacts or confer local benefits. Furthermore, communities included in the siting process may be less likely to challenge a project in court.[5] In short, examining alternative siting corridors could also streamline the siting process by identifying more suitable locations that can be agreed upon more quickly by all parties.

DOE should also use its grant-funding authority to ensure that the analysis of alternative siting corridors is robust and consistent with congressional intent in the Inflation Reduction Act ("IRA"). The IRA specifically authorizes grants for examination of "alternate siting corridors

[3] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 76 Fed. Reg. 49,842 (Aug. 11, 2011).
[4] *See* Comments of Public Interest Organizations, at 119–24 (Oct. 12, 2021), Docket No. RM21-17-000, Accession No. 20211012-5519.
[5] *See* Lawrence Susskind et al., *Sources of opposition to renewable energy projects in the United States*, 165 Energy Policy 112,922, at 13 (June 2022) (noting that "incorporating all stakeholder perspectives from the outset of a siting process will probably save time and money" and that it is "[b]etter to deal with perceptions of possible risks and potential benefits before opponents have made up their minds, and banded together, to block the project").

within which the covered transmission project *feasibly* could be sited."[6] As such, DOE must ensure that the siting process yields alternative corridors that are genuinely viable and that the alternatives presented do not simply serve to make a preferred route appear better by comparison.

Overall, the impact of examining alternative siting corridors on the time required for processing siting requests will depend on the specific circumstances of the project, including the level of stakeholder engagement, the complexity of the alternatives analysis, and the feasibility of implementing the preferred alternative. DOE grant funding can help ensure that this process is as efficient as possible and mitigates the risk of delays from community opposition or litigation.

9. What activities would a siting authority need to undertake to participate in regulatory proceedings at FERC or a State regulatory commission to determine applicable rates and cost allocation for a covered transmission project?

To determine applicable rates and cost allocation, siting authorities need to rigorously assess the benefits of covered transmission projects. Under FERC Order 1000, a project's costs must be allocated roughly commensurate with its benefits.[7] In some areas, Regional Transmission Organizations or Independent System Operators ("RTO/ISOs") may analyze project benefits and make cost-allocation proposals to FERC; in these areas, siting authorities may need to participate in the RTO/ISO's stakeholder proceedings. In regions not served by RTO/ISOs, siting authorities in multiple states may need to cooperatively assess transmission projects' benefits. Financial or technical assistance from DOE may facilitate siting authorities' collaboration or participation in RTO/ISO proceedings for determining project benefits and appropriately allocating costs.

Similarly, DOE assistance may help siting authorities take an appropriately broad view of the benefits of transmission projects. In many planning regions, existing methods for calculating the benefits of transmission projects are too narrow, focusing only on a particular type of economic benefit. For example, many RTOs/ISOs rely primarily on the Adjusted Production Cost method, which compares the cost of operating a generation fleet with and without a proposed transmission line and yields an estimate of monetary savings. However, this narrow approach ignores broader, quantifiable benefits from transmission projects, including enabling a diversified and geographically diverse resource mix that can better withstand extreme weather; allowing grid operators to better respond to transmission outages; and reducing greenhouse gas emissions associated with increased renewable energy. Proper allocation of costs requires a clear understanding of all these quantifiable benefits. Financial and technical assistance from DOE can help siting authorities assess transmission projects' benefits broadly.[8]

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[6] Inflation Reduction Act of 2022, Pub. L. No. 117-169, H.R. 5376, 117th Cong., § 50152(b)(1)(B) (2022) ("IRA") (codified at 42 U.S.C. § 18715a) (emphasis added).
[7] *See Ill. Commerce Comm'n v. FERC*, 721 F.3d 764, 775 (7th Cir. 2013) (noting that FERC may approve cost allocation if it "has an articulable and plausible reason to believe that the benefits are at least roughly commensurate with [] utilities' share of total electricity sales in [the] region").
[8] *See* Comments of Public Interest Organizations, *supra* n.4, at 119–24.

10. What unique measures and actions would allow communities to support the timely review process by siting authorities of a covered transmission project?

DOE can take several measures and actions to allow communities to support the timely review process by siting authorities of a covered transmission project. Each of these measures will improve the chances of, or shorten the time required for, siting authority approval of a transmission project because siting authorities can more easily approve projects that garner significant community support.

First, DOE can use its grant-funding authority to facilitate stakeholder engagement by requiring grant recipients to provide early and meaningful opportunities for community members to participate in the decision-making process.[9] For example, DOE can set minimum standards for public engagement that grant recipients must satisfy, which could include public hearings, open houses, or other forms of public input. By requiring siting authorities to actively seek community input, DOE can promote a process that is more transparent, inclusive, and likely to obtain community support.

Second, DOE can fund outreach and educational programs to help communities understand and maximize transmission projects' benefits. Education could include providing information about the project's environmental impact, economic benefits, and how it fits into the broader energy infrastructure. Public outreach could invite communities to identify the benefits they would most like to see from transmission projects and require siting authorities to document how such suggestions from the public are incorporated into the project's design.

Third, DOE can provide incentives for communities to participate in the review process, such as intervenor funding or pass-through grants, which will likely build community support for the process. DOE can also help communities identify and address concerns by providing information and technical expertise to facilitate participation in the siting process, as well as identification of suitable ways to minimize or mitigate adverse impacts on the environment, property values, or cultural resources. Similarly, DOE can provide funding to siting authorities, or to communities through intervenor funding or pass-through grants, to facilitate collaboration with local community leaders, such as local and regional elected officials, to build support for participation in the siting process. These leaders may serve as liaisons that can help identify community concerns, solicit community views on the best ways to minimize adverse impacts and maximize local benefits, and communicate the benefits of the project(s) to local residents.

[9] *See* Exec. Order No. 14091, § 5(c), 88 Fed. Reg. 10,825, 10,830 (Feb. 16, 2023) (requiring agencies to "create more flexibilities, incentives, and guidelines for recipients of Federal funding and permits to proactively engage with underserved communities as projects are *designed* and implemented" (emphasis added)).

11. How could grants to siting authorities be used to support the ability of individual communities and community members to participate in transmission siting processes? . . . Are there access or education needs for communities and community members that are not being met that could be supported by grants to siting authorities?

Grants to siting authorities can support participation of individual communities and community members in transmission siting processes by funding the following: (1) outreach and education efforts to ensure that community members have the information necessary to participate; (2) technical assistance to provide community members with the resources and expertise needed to engage in the siting process, such as hiring experts, creating presentations, and conducting surveys; (3) community involvement activities to facilitate opportunities for community members to participate in the process, such as public meetings, focus groups, and town halls; and (4) legal representation to provide community members with access to legal resources to defend their interests in the siting process. By funding these initiatives, grants to siting authorities can empower individual communities and community members to effectively participate in transmission siting processes and have their voices heard.

DOE funding can also enable communities or individuals to participate in the siting process by meeting access and education needs. Communities often lack information about transmission projects, including basic information about the project's purpose, impacts, and alternatives. Communities may also lack information about the siting process itself and the criteria that a siting authority will use to approve or disapprove a project. Often, communities do not have opportunities to participate in the decision-making process or provide input on the siting of transmission lines. Even when they can participate, communities seldom receive adequate compensation for projects' adverse impacts, such as loss of property value or disruption to their quality of life. Finally, communities may have concerns about the impacts of transmission lines on public health or the environment, including wildlife habitat and water resources.

Grants to siting authorities can help meet these community needs if they are used to fund community outreach and engagement efforts, provide compensation to affected communities, and support research and studies on transmission projects impacts, as well as community-supported ways to minimize and mitigate adverse impacts. As discussed above, it is critical that these efforts begin as early as possible in the project development process. DOE could support early engagement by requiring siting authorities and developers to have a robust community and stakeholder engagement plan in order to be eligible for a grant.[10] By addressing these needs, siting authorities can help ensure that transmission projects are developed in a way that addresses affected communities' interests and concerns, which will mitigate litigation risk.[11]

Using grants to pay for intervenor funding can effectively support impacted communities and ensure that siting authorities consider communities' views. It can also help to ensure that the siting process is transparent and that all stakeholders have an opportunity to participate. However, grants for intervenor funding must be transparently and fairly awarded, and must use a transparent, objective process to determine which entities receive funding. DOE should establish

[10] *See infra* at response to question 13.
[11] *See* Susskind et al., *supra* n.5.

minimum criteria for transparency and objectivity that grant recipients must satisfy to receive funding for an award that provides intervenor funding or pass-through grant-making authority.

13. What factors, if any, should be applied to prioritize grants to siting authorities for eligible activities with respect to a covered transmission project? For example, should certain transmission project characteristics (e.g., technology types employed, etc.), functions (e.g., provides reliability or resilience, supports deployment of low-cost or low-carbon generation resources, etc.), or planned dates to commence construction or enter service (e.g., planned to commence construction before December 31, 2027) be prioritized for grant support? What types of constraints, bottlenecks, and challenges are authorities encountering that grant funding would enable authorities to resolve?

DOE should prioritize grants for transmission projects that promote core federal policies of achieving 100 percent carbon pollution-free electricity by 2030,[12] and of ensuring that 40 percent of the benefits of federal investments flow to disadvantaged communities.[13] To those ends, DOE should prioritize grants for transmission projects that connect areas that have significant potential to generate renewable energy to areas with significant energy demand or energy burdens. At the same time, DOE should prioritize grants for transmission projects that deliver substantial benefits to disadvantaged communities, such as providing electrification to communities that lack electricity at all, improving reliability of electrical service in communities that suffer frequent outages, reducing energy burdens, and reducing environmental burdens in communities located near dirty power plants.

DOE should make these priorities clear prior to announcing funding opportunities so that developers can design projects that meet these two important federal goals. DOE should make clear that while transmission projects may receive some prioritization if they promote achievement of either (1) federal clean energy targets, or (2) the goals of the Justice40 Initiative, projects will receive the greatest prioritization if they achieve both federal goals simultaneously.

DOE should prioritize grants for transmission projects that meet robust criteria for community and stakeholder engagement. To encourage developers, siting authorities, and governments to engage with stakeholders as early and as meaningfully as possible, DOE should establish minimum requirements that projects can satisfy to receive prioritization. These minimum standards should require early consultation with all potentially affected communities, including an invitation for stakeholders to provide input on the project's impacts and appropriate mitigation measures, and a record of all stakeholder engagement.

Finally, to minimize adverse impacts from transmission development, DOE should prioritize grants for projects that employ a "smart from the start" approach. This approach emphasizes early stakeholder involvement, avoidance of areas where foreseeable conflicts would

[12] *See* Exec. Order No. 14057, § 102(i), 86 Fed. Reg. 70,935 (Dec. 23, 2021).
[13] The White House, *Justice40: A Whole-of-Government Initiative,* https://www.whitehouse.gov/environmentaljustice/justice40/ (last accessed Feb. 27, 2023).

arise regarding impacts to environmental or cultural resources, and maximizing the use of existing rights-of-way without increasing burdens on environmental justice communities.[14]

14. What types of economic development activities for communities that may be affected by the construction and operation of a covered transmission project could be supported by a grant?

Section 50152 of the IRA does not constrain the types of economic development activities that DOE could support through a grant. The "conditions" subsection of section 50152 constrains only the timing of grants, allowing grants to siting authorities upon approval of a project or grants to a state, local, or tribal government entity upon commencement of project construction.[15] Because Congress elected neither to narrow the meaning of "economic development activities" through a specific statutory definition nor to impose specific conditions regarding the types of activities that can be funded through a grant, Congress provided DOE broad discretion to identify and fund economic development activities.

Nonetheless, the IRA's plain language provides guidance for how DOE must exercise this discretion. Eligible activities must promote "economic development," which must be "for communities that may be affected by the construction and operation of a covered transmission project."[16] The U.S. Economic Development Administration ("EDA") defines "economic development" as "[c]reating the conditions for economic growth and improved quality of life by expanding the capacity of individuals, businesses, and communities to maximize the use of their talents and skills to support innovation, job creation, and private investment."[17] Consistent with this definition, DOE should ensure that grant-funded activities promote improved quality of life and economic growth in affected communities. DOE should also follow EDA's Investment Priorities, which include equity, recovery and resilience, and workforce development.[18]

The IRA also requires that grant-funded economic development activities must be "for communities that may be affected by the construction and operation of a covered transmission project."[19] At a minimum, to be "for communities" affected by transmission projects, DOE must ensure that benefits from grant-funded economic development activities flow directly to affected communities. Further, the statute's focus on communities "affected by" transmission projects indicates that DOE must focus on economic development at a local scale. This is also consistent with EDA's "basic principle that sustainable economic development should be locally-driven."[20]

In sum, while the IRA's plain language provides DOE with significant discretion to identify economic development activities, the statute also directs DOE to fund activities that

[14] *See*, *e.g.*, Carl Zichella & Jonathan Hladik, *Siting: Finding a Home for Renewable Energy and Transmission*, at 10 (Oct. 2013), https://www.energy.gov/sites/prod/files/2015/03/f20/APP-SITING.pdf.
[15] IRA § 50152(c)(3) (codified at 42 U.S.C. § 18715a).
[16] IRA § 50152(b)(2) (codified at 42 U.S.C. § 18715a).
[17] U.S. Econ. Dev. Admin., *Economic Development Glossary*, https://www.eda.gov/about/economic-development-glossary (last accessed Feb. 27, 2023).
[18] U.S. Econ. Dev. Administration, *Investment Priorities*, https://www.eda.gov/funding/investment-priorities (last accessed Feb. 27, 2023).
[19] IRA § 50152(b)(2) (codified at 42 U.S.C. § 18715a).
[20] U.S. Econ. Dev. Admin., *About Overview*, https://www.eda.gov/about (last accessed Feb. 27, 2023).

promote quality of life and economic growth at a local scale for the communities that are impacted by the development of transmission projects.

15. What best practices exist for supporting economic development in communities affected by the construction and operation of electric transmission or other energy infrastructure? Additionally, what best practices exist specific to supporting economic development in disadvantaged, underserved, and frontline communities, or "energy communities" that have been or may be impacted by the construction and operation of a covered transmission project? Should DOE prioritize grant awards to proposals that would utilize these best practices? How should these grants be evaluated or scored, including relative to siting grants?

Affected communities must play an active role from the outset in designing and selecting economic development proposals. DOE has highlighted the need for early and frequent discussions in several relevant contexts. For instance, DOE's Community Benefits Agreement ("CBA") Resource Guide emphasizes that the CBA process "should begin while energy development is still being formulated by the project proponent" and "before land-use negotiations take place."[21] Further, stakeholders "should represent a diverse group of community-based organizations and individuals," and be "part of the project development team *early in the process*."[22] DOE's guidance for implementing the Justice40 Initiative reinforces the need to develop detailed plans for community engagement that "offer multiple opportunities for community input" and avoid "a timeline that will 'rush' the community through the process."[23] Crucially, community members should be part of any project selection process.

Grant-funded activities should enhance affected communities' capacities for long-term economic growth, consistent with President Biden's recent directive that agencies advance "community wealth" building projects in rural and urban communities.[24] Such projects "strengthen[] the capacities of underserved communities by ensuring institutions and local economies have ownership models *with greater community participation and control*."[25] In other words, economic development activities should boost the skills, knowledge, and resources of local businesses and individuals, and give affected communities the ability to control and implement those programs, with appropriate technical assistance as necessary. To the extent that grant-funded activities involve training and employing local workers, DOE has outlined best practices to increase opportunities for participation by disadvantaged communities.[26]

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[21] DOE, *Guide to Advancing Opportunities for Community Benefits through Energy Project Development*, at 4 (Aug. 1, 2017), https://www.energy.gov/diversity/articles/community-benefit-agreement-cba-resource-guide ("CBA Resource Guide").
[22] *Id.* at 8.
[23] DOE, *General Guidance for Justice40 Implementation*, at 26 (July 25, 2022), https://www.energy.gov/sites/default/files/2022-07/Final%20DOE%20Justice40%20General%20Guidance%20072522.pdf.
[24] Exec. Order No. 14091, § 6(a), (b), 88 Fed. Reg. at 10,830.
[25] *Id.* § 10(d), 88 Fed. Reg. at 10,832 (emphasis added).
[26] DOE, *Community Benefits Plan Frequently Asked Questions (FAQS)*, https://www.energy.gov/clean-energy-infrastructure/community-benefits-plan-frequently-asked-questions-faqs (e.g., "What are specific DEIA actions that I should consider?"; "What are the strategies to expand opportunities on my construction project for women, economically disadvantaged, [and] local workers?") (last accessed Feb. 27, 2023).

Moreover, as DOE's CBA Resource Guide recognizes, economic development proposals should "establish clear and measurable commitments, not just aspirational standards."[27] Proposals should provide transparency regarding progress toward those commitments—such as reporting requirements and making reports publicly available—and specify how to address noncompliance.[28] Where appropriate, grants could fund local committees to monitor and facilitate implementation.[29]

16. What approaches (e.g., partnerships and business models) to providing economic development services should be prioritized for grants to siting authorities, or other State, local, or Tribal government entities for economic development activities for communities that may be affected by the construction and operation of a covered transmission project? . . . Is there precedent or community interest in using the funding to support a community investing in an equity stake in the transmission project to provide long-term, sustainable financial benefit from project construction?

In general, DOE should prioritize approaches to economic development for which affected communities express the greatest interest and support. DOE should ensure early consultation with affected communities to ascertain which approaches garner the greatest community support. To that end, DOE should employ a phased approach to grant-making. In the first phase, DOE could provide funding for siting authorities to consult affected communities regarding the most important and urgent local economic development needs, as well as what types of partnerships or business models local communities believe would best meet those needs. Where transmission projects are under consideration by multiple siting authorities, DOE could provide grants for the various siting authorities to consult affected communities within their jurisdictions in a coordinated manner to identify whether similar economic needs exist in multiple communities along a transmission project's route, and whether the various affected communities have similar interests in economic development methods, such as partnerships or CBAs. Based on results from these consultations, the second phase of a grant could provide funds to a siting authority or government entity to provide logistical support, legal services, or other facilitation for a multi-party partnership or CBA that supports many affected communities along a transmission project's route.

Additionally, DOE should prioritize approaches to economic development for affected communities that have the greatest need. For example, communities may lack electricity, suffer frequent disruptions in electric service, face severe energy burdens, or endure environmental conditions that impede economic development.[30] Likewise, DOE should prioritize projects that enable communities to develop and interconnect commercial renewable energy projects.[31]

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[27] CBA Resource Guide, *supra* n.21, at 7.
[28] *Id.*
[29] *Id.* at 8.
[30] *See* FERC, OPP Listening Sessions: Tribal Governments, Session 2 Transcript at 8–10, Docket No. AD21-9-000 (Mar. 24, 2021), https://www.ferc.gov/news-events/events/opp-listening-sessions-tribal-governments-03242021 (comments from Hopi Tribe Chairman Timothy Nuvangyaoma discussing disruptions to electricity service and energy burden).
[31] *Id.*

There is precedent for community investment in an equity stake in a transmission project. The Morongo Band of Mission Indians, through Morongo Transmission, LLC, owns an interest in SoCal Edison's West of Devers transmission line, which crosses the tribe's reservation as it runs between Palm Springs and San Bernardino, California.[32] The partnership between the Morongo Band of Mission Indians and SoCal Edison allows the tribe to earn a rate of return on its investment in a transmission line that improves reliability in southern California and enables greater delivery of renewable energy. This arrangement demonstrates that a community equity stake in a transmission project can be viable. We encourage DOE to solicit input from the Morongo Band of Mission Indians to seek its views on how forming such partnerships can best be facilitated.

17. In what ways, if any, could efforts to mitigate ecosystem, natural resource, or environmental damage be considered eligible economic development activities under the program?

As discussed above, the IRA gives DOE broad discretion to fund economic development activities that promote quality of life and economic growth at a local scale for communities that are impacted by the development of transmission projects. Efforts to mitigate ecosystem, natural resource, or environmental damage could qualify as eligible activities in at least three ways.

First, mitigation efforts could remedy environmental burdens that impede a community's economic growth. Environmental damage imposes not only tremendous health and social costs, but also inflicts significant economic losses, including through healthcare costs, depressed land values, and workers' decreased availability and productivity.[33] Mitigation efforts could relieve environmental and economic burdens—particularly for communities that have long borne the brunt of both—consistent with the President's priorities to "secure environmental justice and spur economic opportunity for disadvantaged communities."[34] In short, restoring a livable and healthy environment provides a foundation for sustainable, long-term economic development.

Second, mitigation could support a community's economic development by improving local environmental resources that, in turn, attract tourism and support local businesses.

Third, mitigation efforts could provide economic opportunities and expand a community's technical capacity by employing local labor and creating relevant job training programs, consistent with DOE's core objectives in implementing this program.[35]

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[32] *See* Order Accepting and Suspending Proposed Transmission Owner Tariff and Formula Rate, and Establishing Hearing and Settlement Judge Procedures, 174 FERC ¶ 61,171 at P 1–2 (Mar. 3, 2021) (discussing the background of Morongo Transmission and the transmission line).

[33] EPA, *E.O. 13985 Equity Action Plan*, at 5 (Apr. 2022) ("Numerous studies have shown a greater burden of environmental exposures, environmentally linked disease, and adverse impacts on health and well-being experienced by people of color and underserved communities." (footnote omitted)); *see also id.* at 3 n.3 (citing examples of studies).

[34] Exec. Order No. 14008, § 219, 86 Fed. Reg. 7,619, 7,629 (Jan. 27, 2021).

[35] RFI at 4 (identifying "support meaningful community and labor engagement" and "invest in America's workforce" as objectives); *see also* Exec. Order No. 14008, § 217, 86 Fed. Reg. at 7,628 ("Plugging leaks in oil and gas wells and reclaiming abandoned mine land can create well-paying union jobs in coal, oil, and gas communities while restoring natural assets, revitalizing recreation economies, and curbing methane emissions.").

In determining whether mitigation efforts are eligible economic development activities, DOE should ensure that the activities actually "expand[] the capacity of individuals, businesses, and communities."[36] Efforts that merely return local environmental conditions to the pre-project status quo are unlikely to qualify as economic *development*, unless they expand a community's capacity in another manner, such as training and employing local workers. DOE should also consider whether existing legal authorities (e.g., statute, regulation, permit condition) already require the proposed mitigation measures. Grant-funded economic development activities should do more than carry out pre-existing legal obligations to a community and the environment. In such cases, it is important that the grant provide some additional boost to the community's economic capacity through employment opportunities or other means.

While environmental mitigation can qualify as economic development, in selecting activities for grant funding, DOE should ensure early and frequent community consultation to ensure that grant-funded activities address issues of greatest local concern.

18. In what ways, if any, could efforts by transmission project developers to reroute, underground, or increase line capacity to avoid repeat or future disruptions from project development, or otherwise implement project designs to limit impacts on communities and landowners be considered eligible economic development activities under the program?

As discussed above, the IRA gives DOE broad discretion to fund economic development activities that promote quality of life and economic growth at a local scale for communities impacted by transmission development. Projects that avoid disruptions and adverse impacts to communities will likely provide economic benefits, such as improved quality of life, compared to projects that do not undertake those efforts. However, to qualify as economic development activities, grant-funded activities should go beyond minimizing project impacts (particularly when mitigation is already legally required) and facilitate economic opportunities within a community that would not be available in the project's absence.

Project design efforts (including rerouting, undergrounding, or increasing line capacity) could provide such opportunities by employing local workers and providing job training programs that cultivate local capacity to perform similar work in the future. DOE should require grant applicants to identify specific, measurable, and enforceable commitments from the developer regarding employment and job training. Applicants should also demonstrate how employment and job training initiatives will comply with best practices for increasing participation of workers facing barriers to employment and quality job-training programs, including those already identified by DOE.[37]

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[36] U.S. Econ. Dev. Admin., *Economic Development Glossary*, https://www.eda.gov/about/economic-development-glossary (last accessed Feb. 27, 2023).

[37] *See, e.g.*, Dep't of Energy, *Community Benefits Plan Frequently Asked Questions (FAQs)*, https://www.energy.gov/clean-energy-infrastructure/community-benefits-plan-frequently-asked-questions-faqs ("What are the strategies to expand opportunities on my construction project for women, economically disadvantaged, [and] local workers"? and "What are Quality Pre-Apprenticeship Programs or Apprenticeship Readiness Programs?") (last accessed Feb. 27, 2023).

19. What equity, energy, and environmental justice concerns or priorities are most relevant to the siting of interstate or offshore electricity transmission lines? How have/can these concerns or priorities been/be addressed?

Communities already overburdened with pollution may be on the front lines of the clean energy acceleration, and in particular, the buildout of transmission infrastructure. DOE must first acknowledge the legacy of environmental degradation and ongoing inequities that exist in these communities. Indeed, communities of color, low-income communities, and tribal communities are more likely to be overburdened with polluting infrastructure, including an abundance of fossil fuel and petrochemical facilities.[38] The public health impacts associated with this infrastructure include but are not limited to respiratory and cardiovascular risks as well as premature morbidity.[39] Communities of color, and particularly Black and African American communities, bear a disproportionately high burden of fossil fuel pollution in the United States.[40] Many of these communities are also on the frontline of the climate crisis and face immediate impacts including extreme heat and flooding.[41] And these communities are often the least able to "prepare for, cope with, and recover from these impacts."[42]

While these throughlines are true for frontline communities across the country, DOE must invest in equitable approaches tailored to the specific needs and interests of the community where a project is sited. Issue areas uplifted by impacted communities may include, but are certainly not limited to: adopting a "first and early" model, whereby impacted communities are the first to be engaged in the earliest stage of a project proposal; the avoidance of "fast-tracking" practices that historically stifle community engagement, bypass meaningful oversight, and decrease transparency; creating clear, consistent, and ongoing lines of communication; prioritizing public comment periods in an equitable manner; timely and consistent compliance with environmental reviews and assessments; tribal consultations; adequate consideration of related factors such as economic development, impacts on property values, and quality of life concerns; and ongoing engagement before, during, and after project completion. Acknowledging these issue areas is yet another integral step in building relationships and establishing trust with frontline communities. DOE must also demonstrate a willingness to partner through funding opportunities that address, mitigate, and where applicable, resolve, these concerns.

During the scoping stage, DOE should prioritize projects that have a demonstrated commitment to community engagement and environmental justice. A demonstrated commitment may look like prioritizing public participation and a stated interest in cumulative impact assessments and mitigation measures. DOE may also review a developer's behavioral history with other projects, such as reviewing past compliance with environmental assessments, past

[38] Jill Johnston & Lara Cushing, *Chemical Exposures, Health and Environmental Justice in Communities Living on the Fenceline of Industry*, 7 Current Env't Health Reports 48–57 (Jan. 22, 2020).
[39] Greenpeace, *Toxic Air: The Price of Fossil Fuels* at 7 (Feb. 2020), https://www.greenpeace.org/usa/wp-content/uploads/2020/02/The-Price-of-Fossil-Fuels-full-report.pdf.
[40] Greenpeace, *Fossil Fuel Racism: How Phasing Out Oil, Gas, and Coal Can Protect Communities* at 7–9 (Apr. 13, 2021), https://www.greenpeace.org/usa/wp-content/uploads/2021/04/Fossil-Fuel-Racism.pdf.
[41] *Id*. at 3.
[42] EPA, *Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts* at 9 (Sept. 2021), https://www.epa.gov/system/files/documents/2021-09/climate-vulnerability_september-2021_508.pdf.

engagement with communities, landowners, and locally impacted businesses, partnership with local and state officials, and responsiveness during public comment periods.

20. What strategies, policies, and practices can siting authorities deploy to ensure that the goals of Justice40 are achieved? How should these be measured and evaluated?

Justice40 is a whole-of-government initiative designed to ensure that people living with legacy harms of environmental pollution are prioritized in the national transition to clean and green energy sources, clean air, clean water, and the overarching promise of health and harmony with one's environment.[43] Justice40 increases funding for federal investments in communities that have been historically overlooked, underserved, and overburdened. It is also intended to foster transparency and collaboration between elected officials, municipalities, and community members. To be consistent with the Justice40 Initiative, DOE must ensure that grant recipients follow the spirit and purpose of the initiative. DOE should establish minimum criteria that grant applicants must satisfy to be eligible for a grant, including a robust stakeholder engagement process and documentation of how a project will benefit affected communities.

DOE's "General Guidance for Justice40 Implementation" document outlines practices the agency should require when projects are sited in overburdened communities, such as robust stakeholder engagement processes, ensuring that benefits provided under the Justice40 framework flow directly to affected communities, and using those benefits to reduce or remove environmental harms.[44] DOE should establish criteria that go beyond these minimum standards and follow Justice40 guidance, which would identify standards that siting authorities must meet in order to receive prioritization of a grant application. Depending on the specific demographic and needs within a community, such standards must include community-led provisions, such as CBAs, neighborhood agreements or similar documents that memorialize commitments from siting authorities to impacted communities. Further, DOE's Justice40 General Guidance states that it "may also be important to identify anticipated negative impacts" on disadvantaged communities and "examine [] historical cumulative burdens on communities before moving a project or program forward."[45] In alignment with the intent of Justice40, DOE *must* establish criteria that center cumulative impacts, "first and early" community engagement, adequate consideration of already-existing polluting infrastructure, and impact mitigation requirements, to reflect the Justice40 framework.

[43] The White House, *Justice40: A Whole-of-Government Initiative,* https://www.whitehouse.gov/environmentaljustice/justice40/ (last accessed Feb. 27, 2023).
[44] *See generally* Dep't Of Energy, *General Guidance for Justice40 Implementation* (July 25, 2022), https://www.energy.gov/sites/default/files/2022-07/Final%20DOE%20Justice40%20General%20Guidance%20072522.pdf.
[45] *Id.* at 12.

21. What approaches (e.g., partnerships, business models, or ownership models) would secure economic development opportunities in disadvantaged, underserved, and frontline communities, or "energy communities"? Of these approaches, should any be prioritized in providing grants to siting authorities, or other State, local, or Tribal government entities, for economic development activities for communities that may be affected by the construction and operation of a covered transmission project? . . .

As discussed in response to question 16, DOE should prioritize approaches for which affected communities express the greatest interest and support. While DOE should consult communities to assess their interests as described above, potentially useful approaches may include partnerships, business models, and ownership models.

Partnerships between government entities, community organizations, and project developers can help ensure that economic development opportunities are shared and leveraged for the benefit of affected communities. For example, partnerships between developers and local organizations can provide opportunities for local businesses to participate in regional and national supply chains, creating jobs and economic growth.

Developers can also use new business models that allow them to directly invest in and support local economic development. For example, developers could directly invest in local businesses or provide financing to support the creation of new businesses in the community.

Another approach is to encourage ownership models that give community members a stake in transmission projects. This could include community-owned projects, where local residents invest in the project and benefit from its profits. The Morongo Band of Mission Indians' stake in a transmission line, discussed in response to question 16, provides one example.

DOE should prioritize partnerships and business models that directly involve and benefit affected communities, as these approaches can help to create a sense of ownership and accountability among those most impacted by the project. Providing grants to siting authorities or other government entities could also be useful, particularly if these grants are used to support programs and initiatives that directly benefit the local community. However, grants must also promote transparency and accountability so that benefits are widely shared and distributed.

22. What approaches (e.g., partnerships and business models) would you recommend for providing services and technical assistance in need[ed] areas of expertise to disadvantaged, underserved, and frontline communities, or "energy communities"? What successful approaches have you observed and/or undertaken in providing such services and technical assist[ance] to these communities?

As emphasized in a recent executive order—and throughout these responses—DOE should facilitate "ownership models with greater community participation and control."[46] To do so, DOE should prioritize approaches to providing services and technical assistance that grow the capacity of disadvantaged, underserved, and frontline communities, or "energy communities," to provide such services in the future. For example, grants to siting authorities could fund job

[46] Exec. Order No. 14091, § 10(d), 88 Fed. Reg. at 10,832.

training or capacity-building programs for community members to participate in, and contribute to, technical analyses regarding a project's impacts and provide input on other factors, such as economic development, public health impacts, and quality of life concerns. Developing that capacity within disadvantaged, underserved, frontline communities, or "energy communities," provides those communities with additional tools to advocate for their interests over the long term—both in the approval process for the covered project and in approval processes for other projects that could contribute to cumulative burdens on those communities. DOE should thus encourage proposals that enable community members to have a primary role in providing the necessary services or technical assistance, such as funding existing local businesses with relevant expertise or providing training to develop that expertise. DOE should also prioritize measures that grow communities' capacity to seek additional sources of grant funding.

In addition to ownership models, DOE must continuously prioritize partnership with impacted communities. General principles of partnership include first, early, and ongoing communication, transparency, and implementation of equitable decision-making models that center community engagement and involvement.

23. How can applicants ensure community-based stakeholders/organizations (especially in underserved communities) are engaged and included in the planning, decision-making, and implementation processes (e.g., including community-based organizations on the project team)?

As DOE notes, unprecedented and historic funding available from the IRA, the Infrastructure Investment and Jobs Act ("IIJA"), the CHIPS and Science Act, and other appropriations will accelerate the clean energy transition. As DOE leads the buildout and deployment of clean energy infrastructure throughout the country, it must prioritize partnership and engagement with frontline communities. In the context of transmission line proposals, DOE plays an instrumental role in removing barriers to engagement and *actively* facilitating meaningful participation before, during, and after project completion. Further, the pursuit of partnership and engagement with frontline and impacted communities must be a multi-pronged approach, in which DOE and project teams are engaged.

One prong of this approach includes investments that increase capacity for environmental and climate justice engagement. Centering climate and environmental justice at the earliest stage of a project may result in a more timely, efficient, and equitable buildout. To this end, DOE should invest in "Environmental Justice Liaisons" and/or "Frontline Community Corps," depending on the scope of the project and the size and needs of an impacted community. "Environmental Justice Liaisons" have been recommended in similar contexts to facilitate direct community engagement and involvement.[47] Liaisons would "support ongoing consultation and advanced planning in environmental justice communities and tribal nations."[48] For example, liaisons may be responsible for creating a community partnership or community communications program that centers a cross-section of community voices including tribal, state, and local

[47] Earthjustice, Nat. Res. Def. Council, WE ACT for Env't Justice, *et al.*, *Principles for Accelerating Clean Energy Deployment Through Transmission Buildout in an Equitable Clean Energy Future* at 3–4 of 5 (Dec. 15, 2022) https://earthjustice.org/wp-content/uploads/transmission_principles_12.15.22.pdf.
[48] *Id.* at 3 of 5.

governments, faith-based organizations, schools, media, businesses, social services, ethnic organizations, and others.[49] A "Frontline Community Corps" may consist of residents that live in environmental justice or overburdened communities. Members of the Frontline Community Corps would regularly engage with project teams, advocate on behalf of the broader community, and serve as thought-partners and community-educators. The Frontline Community Corps would ideally be a fully compensated, long-term position that spans throughout a project's life cycle.

24. Which regional and location-specific metrics should DOE track to estimate the environmental, social, and economic impact related to the siting of interstate and offshore electricity transmission lines?

When considering regional and location-specific metrics to track environmental, social, and economic impacts, DOE should reference the following guiding principles.

First, DOE must emphasize consultation with frontline communities. Communities often have expertise on demographics and environmental stressors in the region. Adopting the "first and early" model allows DOE to meaningfully begin this dialogue.[50] Communities with a legacy of environmental injustice are often able to pinpoint generational health impacts and disparities caused by longstanding facilities, as well as patterns in the racial, social, and economic makeup of a particular area. For example, the Clean Path NY project is an infrastructure project to annually generate "more than 7.5 million megawatt-hours of emissions-free energy" for New York City.[51] While the end-result was promising, new transmission lines will be built in the South Bronx, a predominantly low-income neighborhood of color.[52] Areas within South Bronx and Northern Manhattan have historic concerns about additional environmental infrastructure in their neighborhoods and cumulative impacts from peaker plants and highways. These communities also have one of the highest rates of death and disease from asthma in the United States.[53] In such instances, the community may request metrics with a *heightened* focus on public health impacts and an evaluation of current and future pollution burdens.

Second, DOE should prioritize local or statewide metrics. Federal screening and mapping tools used to capture environmental and socio-economic indicators, such as EPA's EJScreen, are helpful in developing a picture of an impacted region. However, DOE should use these broader, federal tools as a starting point, as they capture some but not all environmental justice issues and have a degree of uncertainty within the data sets. Indeed, EPA notes that many environmental concerns are not yet included in the comprehensive, nationwide databases, such as indoor air quality or drinking water quality.[54] EPA encourages a multifaceted approach stating that initial results from EJScreen must be "supplemented with additional information and local knowledge

[49] *Id.* at 3–4 of 5.
[50] *See supra* at response to question 19.
[51] Clean Path New York, https://www.cleanpathny.com/ (last accessed Feb. 27, 2023).
[52] U.S. Census Bureau, *Quick Facts: Bronx County, New York, People: Race and Hispanic Origin* (July 1, 2021), https://www.census.gov/quickfacts/fact/table/bronxcountynewyork/PST045221.
[53] *Asthma*, Columbia Ctr. for Children's Env't Health (last updated Feb. 14, 2022), https://www.publichealth.columbia.edu/research/columbia-center-childrens-environmental-health/asthma.
[54] EPA, *Limitations and Caveats in Using EJ Screen* (Jan. 30, 2023), https://www.epa.gov/ejscreen/limitations-and-caveats-using-ejscreen.

whenever appropriate, for a more complete picture of a location."[55] Tools developed by state and local agencies that track metrics within counties, cities, or towns should be prioritized. Locally sourced or statewide data often creates a more nuanced, granular community profile. Where state and local data is scarce or unavailable, relying on federal databases is reasonable.

Third, all metrics must be reviewed and updated in a timely, consistent manner. As conditions change within a community, DOE must regularly review and update its metrics. Transmission infrastructure projects span many years, and conditions within a community may change in that time. Selecting metrics that can be periodically reviewed and updated increases awareness about unique characteristics of impacted communities, develops a record of changes over time, and offers community members, project teams, and federal, state and local officials an up-to-date community profile, which may be included in environmental assessments and reviews. These metrics should also be publicly accessible to promote transparency and accountability.

25. How can transmission planning best support communities with goals to increase the resilience of power delivery to those communities and/or transition from fossil fuels?

To best support communities with goals to increase power supply resilience and clean energy usage, transmission planning should focus on principles of equity, environmental justice, and energy justice. In general, scenario-based transmission planning can identify important benefits from transmission development, such as unlocking ideal areas for renewable energy development, ensuring that the transmission system can deliver energy during times of system stress, or facilitating the integration of energy storage. However, unless equity, energy justice, and environmental justice are priorities in the transmission planning process, these benefits will not necessarily flow to communities that have the greatest need, such as those that lack access to reliable energy, suffer severe energy burdens, or endure environmental and public health burdens from nearby dirty power plants. Through grants that enable and encourage communities to participate in transmission planning, DOE can promote more equitable and just outcomes.

For example, DOE can provide grant funds directly to siting authorities or state, local, and tribal governments for training and capacity building that will enable the allocation of staff time toward addressing equity and environmental justice issues in transmission planning. Grants may also feature pass-through provisions that enable funding, training, and capacity building for public interest organizations in affected communities to engage in transmission planning.

DOE can also help communities use transmission planning to improve resilient power delivery and clean energy usage by identifying the most efficient ways to deliver energy from transmission projects to affected communities and by unlocking funding for necessary equipment. Transmission lines will not necessarily deliver electricity to communities they pass through, due to the high cost of equipment needed to step power down to safe and usable levels. However, DOE can provide grants to identify the most efficient location(s) along a transmission line's route that will enable electricity to be delivered to multiple affected communities. Likewise, DOE can provide economic development grants to foster these communities' capacity

[55] *Id*.

to seek additional sources of federal funding, such as additional grants under the IRA, for the development of the necessary power-delivery equipment.

26. What consultations, studies, and analyses could siting authorities conduct that would help them better understand the impacts of a covered transmission project to Indian Tribes, as defined in the Infrastructure Investment and Jobs Act (42 U.S.C. § 18701)?

Engagement through consultations, consensus-seeking, studies, and analyses of transmission projects' impacts must follow federal law and policy, as well as international and tribal law, to ensure that they are as effective and valuable as possible. Tribes are sovereign governments recognized as self-governing under federal law, and the U.S. government has a "trust responsibility" to those tribes. As a federal agency, DOE has a fiduciary obligation to protect tribal resources and observe and uphold the rights of tribal nations to govern themselves on tribal lands.[56] DOE must ensure that grants to state siting authorities or governments are consistent with this fiduciary duty.[57] In doing so, DOE is "bound by every moral and equitable consideration to discharge [the federal government's] trust with good faith and fairness."[58]

Siting authorities acting in accord with these trust responsibilities must engage tribal nations as early as possible. This engagement must follow the principles of nation-to-nation, free, prior, and informed consent ("FPIC")[59] and consultations[60] that recognize the internationally and federally recognized right to self-determination.[61]

DOE must also ensure that consultation and studies regarding projects' impacts on tribal nations provide early and continuing opportunities for tribal nations to provide meaningful input.

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[56] *See Seminole Nation v. United States*, 316 U.S. 286, 296–97 (1942).
[57] *Eric v. Sec'y of U.S. Dep't of Hous. & Urban Dev.*, 464 F. Supp. 44 (D. Alaska 1978).
[58] *United States v. Payne*, 264 U.S. 446, 448 (1924); Note that the trust doctrine includes duties to manage natural resources for the benefit of tribes and individual landowners, and the federal government has been held liable for mismanagement. (*See United States v. Mitchell*, 463 U.S. 206 (1983) (holding that the Department of the Interior was liable for monetary damages for mismanaging timber resources of the Quinault tribe in violation of the agency's fiduciary duty.)
[59] United Nations, General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)*, at 11–12, 16, 20–23 (Sept. 13, 2007), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf. This right allows such peoples to give or withhold consent to a project that *may* affect them or their territories. Notably, once Indigenous peoples give their consent, they can withdraw it at *any* stage. Moreover, FPIC enables such peoples to negotiate the conditions under which the project will be designed, implemented, monitored, and evaluated.
[60] Memorandum on Uniform Standards for Tribal Consultation, 2022, 47 Daily Comp. Pres. Doc. (Nov. 30, 2022) https://www.govinfo.gov/content/pkg/DCPD-202201083/pdf/DCPD-202201083.pdf; Exec. Order No. 13175, Consultation and Coordination with Indian Tribal Governments, 65 Fed. Reg. 67,249 (Nov. 6, 2000).
[61] Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301 (1975); United Nations, General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples supra* n.59, at 5–8; *Right to Self-Determination of Indigenous and Tribal Peoples*, Inter-American Comm'n on Human Rights 2 2007) https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf ; *Right to Self-Determination of Indigenous and Tribal Peoples,* Inter-American Comm'n on Human Rights,Inter-American Comm'n on Human Rights, at 6 (Dec. 2021) https://www.oas.org/en/iachr/reports/pdfs/self-determination-EN.pdf.

DOE must therefore provide as much information to potentially affected tribal nations as is available (or as becomes available on an ongoing basis) and ask for consultation on impacts and what mitigation measures the tribe(s) may believe are valuable. DOE must require siting authorities to consult tribes specifically regarding any mitigation efforts, including changes to the project (e.g., rerouting or undergrounding), remediation of the construction site, or opportunities for economic development (see question 28). Importantly, Indigenous Knowledge[62] can assist siting authorities in reviewing proposed projects. DOE must require siting authorities to consider tribal input, including Indigenous Knowledge, and to fully analyze all related activity and development, to ensure adequate consideration of the direct, indirect, and cumulative impacts to tribal nations' communities and their cultural and environmental resources.

When siting authorities lack familiarity with FPIC, federal law, and federal guidance on consent and consultation principles, siting authorities should review other agency's policies, including recent guidance from the Department of Interior.[63] DOE must also provide funds for siting authorities to train employees regarding FPIC and consultation for ongoing engagement. Among other requirements, DOE must ensure that siting authorities provide tribes with ample notice and opportunity to comment, maintain records of the tribal input and how the project incorporated the tribal input, and communicate with the tribe about how the tribal input influenced the siting authority's decision-making.

Additionally, DOE must take this unique opportunity to create opportunities for tribal nations to exercise their right to self-determination. To that end, DOE should create simplified grant processes for tribal governments, or use pass-through grants requiring oversight and approval of tribal nations. Either system could provide funding for tribal nations to devote their staff time and resources to siting transmission lines and developing and implementing economic development measures. If DOE awards pass-through grants to state or local siting authorities, or to other branches of state or local governments, DOE and the affected tribe(s) must retain the ability to carefully vet the state or local government entity. This would aid in effectuating the self-determination of tribal nations and improve the quality of engagement, studies, and analyses.

To ensure that DOE and siting authorities learn from these projects and create long-standing relationships with tribal nations, DOE must also require siting authorities to report to DOE on the consultation process. This report must contain a complete record of the consultation between the siting authority and any affected tribe.[64] DOE must also use pass-through grant

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[62] Memorandum on Guidance for Federal Departments and Agencies on Indigenous Knowledge, 2022, 47 Weekly Comp. Pres. Doc. (Nov. 30, 2022), https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IK-Guidance.pdf; Memorandum on Indigenous Traditional Ecological Knowledge and Federal Decision Making, 2022, 45 Weekly Comp. Pres. Doc. (Nov. 15, 2022), https://www.whitehouse.gov/wp-content/uploads/2021/11/111521-OSTP-CEQ-ITEK-Memo.pdf.

[63] U.S Dep't of the Interior and U.S. Dep't of Agric., Order No. 3403, Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters (Nov. 15, 2021), https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3403-joint-secretarial-order-on-fulfilling-the-trust-responsibility-to-indian-tribes-in-the-stewardship-of-federal-lands-and-waters.pdf; *see also* U.S. Dep't of Interior, *Department of Interior Instruction Memorandum No. 2002-11 on Co-Stewardship with Federally Recognized Indian and Alaska Native Tribes* (Sept. 13, 2022), https://www.blm.gov/policy/pim-2022-011.

[64] *See* Memorandum on Uniform Standards for Tribal Consultation, § 7 (requiring a "Record of the Consultation").

provisions to fund and enable the consulted tribal nations to provide their own section of such a report, if they choose to contribute.

27. What consultations, studies, and analyses could siting authorities conduct that would help them better understand the impacts of a covered transmission project on historic properties, as defined in the National Historic Preservation Act (54 U.S.C. § 300308)?

Consultations, studies, and analyses regarding transmission projects' impacts on historic properties will be the most effective if they are undertaken in partnership with communities that value the potentially impacted historic resources, subject to the National Historic Preservation Act ("NHPA"). Communities that value historic resources may include tribal nations, in which case DOE should ensure siting authorities adhere to the obligations and recommendations on FPIC and consultation for ongoing engagement, as discussed in response to question 26, and review such resources in accordance with Section 106 of the NHPA and the Native American Graves Protection and Repatriation Act.[65] Other communities that value historic properties may include communities located along the project's route or may include organizations devoted to the study and preservation of particular resources. DOE should use pass-through grants to enable siting authorities to fund participation from communities that know about the relevant historic properties and care about their preservation.

DOE must also use grant conditions to ensure that consultations, studies, and analyses of transmission projects' impacts on historic properties recognize the distinct values that historic properties may provide and the various ways that transmission projects may impact those values. For historic properties significant to tribal nations, DOE must incorporate any Indigenous Knowledge shared when analyzing the potential impacts.[66] Some values of historic properties, or impacts to these properties, may be difficult to quantify, such as the "integrity," "feeling," or "association" of a historic resource.[67] Distinct studies may be necessary to identify the attributes of a historic property that are not readily quantifiable and to assess the severity of a project's impacts.[68] Because the communities that enjoy the affected historic resources will be best poised to explain the nature of the resources' values and the impacts to these resources, DOE should use pass-through grants to allow siting authorities to obtain input from the communities that will suffer from adverse impacts to historic properties.

Finally, DOE must ensure that grant-funded consultations, studies, and analyses of transmission projects' impacts on historic properties provide a foundation for full compliance

[65] Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001–3013. Siting entities receiving funding have an obligation to repatriate Native American human remains and cultural items to lineal descendants, Indian Tribes, and Native Hawaiian Organizations. Consent, consultation, and continued conversations are key in these instances. The Native American Graves Protection and Repatriation Act *expressly* specifies forms of Indigenous Knowledge are necessary information to determine the affiliation and repatriation of Tribal human remains and cultural items.
[66] Memorandum on Guidance for Federal Departments and Agencies on Indigenous Knowledge, *supra* n.62; Memorandum on Indigenous Traditional Ecological Knowledge and Federal Decision Making, *supra* n.62.
[67] *See* 36 C.F.R. § 800.5(a)(1) (noting that an adverse effect may include any that "would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association" of a historic property).
[68] *See*, *e.g.*, *Nat'l Parks Conservation Ass'n v. Semonite*, 916 F.3d 1075, 1083 (D.C. Cir. 2019) (noting controversy over whether an agency inappropriately "conflat[ed] a cultural resource analysis with the very different visual resource analysis").

with the NHPA. In recent years, developers of transmission lines and federal agencies have run afoul of the NHPA by failing to minimize harm to historic resources due to an erroneously narrow reading of the statute,[69] failing to commence analysis of impacts to historic resources sufficiently early in the process, failing to consider rejecting a project to preserve historic resources, and failing to consider the impacts on historic resources from reasonably foreseeable development.[70] DOE must ensure that grant-funded activities do not echo the violations of the NHPA identified in these recent cases.

28. What measures, including economic development activities, could be taken to mitigate the impact of the construction and operation of a covered transmission project to Indian tribes, as defined in the Infrastructure Investment and Jobs Act (42 U.S.C. § 18701)?

As described in response to question 16, DOE must prioritize approaches to economic development for which tribal nations express the greatest interest and support. Because different communities may have different needs and interests, DOE must promote early and frequent consultation to determine what economic development opportunities are of greatest interest. As described in response to question 26, DOE must also apply the obligations and recommendations on consent and consultation. Using phased grants or pass-through grants, DOE must provide funding opportunities to ensure that tribal governments can devote staff time and capacity to identifying the economic development activities of greatest benefit and interest.

Tribes have already demonstrated a significant range of needs and interests related to transmission projects, which further illustrates the need for robust consultation. For example, the Hopi Tribe recently explained to FERC that its reliance on a single transmission line serving its community renders it vulnerable to power outages and limits its ability to develop and interconnect marketable renewable energy assets.[71] Tribal nations have also expressed distinct views about particular transmission projects. For example, the Viejas Band of Kumeyaay Indians opposed San Diego Gas & Electric's Sunrise Powerlink Project transmission line based on its harms to the Band's cultural resources.[72] In contrast, the Morongo Band of Mission Indians partnered with SoCal Edison and acquired an equity stake in the West of Devers transmission line.[73] Tribes may also want to develop their own utilities, as the Yakama Nation did.[74] The need

[69] *Id.* at 1088–89 (rejecting the U.S. Army Corps of Engineers' reading of the NHPA and holding that section 110(f) of the NHPA requires minimization of impacts from any project that "directly" affects historic landmarks regardless of whether the project causes a physical intrusion on the landmark).
[70] *See Oregon-California Trails Ass'n v. Walsh*, 467 F. Supp. 3d 1007, 1072–73 (D. Colo. 2020) (holding that the U.S. Fish & Wildlife Service violated the NHPA).
[71] *See* FERC, OPP Listening Sessions: Tribal Governments, Session 2 Transcript at 8–10, Docket No. AD21-9-000 (Mar. 24, 2021), https://www.ferc.gov/news-events/events/opp-listening-sessions-tribal-governments-03242021 (comments from Hopi Tribe Chairman Timothy Nuvangyaoma).
[72] *See*, *e.g.*, Letter from Viejas Tribal Government to the California Public Utility Commission and the Bureau of Land Management (Apr. 11, 2008), https://ia.cpuc.ca.gov/environment/info/aspen/sunrise/archive/deir_cmts/A0034%20Viejas%20Tribal%20Government%20-%20Cuero%20Raymond.pdf.
[73] *See* 174 FERC ¶ 61,171 at P 1–2 (2021).
[74] Debra Utacia Krol, *Yakama Power: How One Tribe Secured its own Energy Future*, Native Business (Apr. 3, 2020), https://www.nativebusinessmag.com/yakama-power-how-one-tribe-secured-its-own-energy-future/.

for robust and regular consultation with tribes is apparent given these examples of differing needs and interests.

Finally, DOE must use direct grants to tribal governments, or pass-through grants to siting authorities, to enable tribes to devote staff time and other resources to seeking out additional federal funding opportunities. The $760 million in grant funding under section 50152 of the IRA, while valuable, is only a small subset of federal funding potentially available. For example, section 50145 of the IRA also significantly expanded DOE's Tribal Energy Loan Guarantee Program, section 80001 provided over $200 million for a Tribal Climate Resilience and Adaptation Program, and section 80003 provided over $140 million for a Tribal Electrification Program.[75] DOE must treat grants to promote self-determination by expanding tribal government capacity to seek further federal funding as an eligible economic development activity under section 50152.

29. What measures could be taken to mitigate the impact of the construction and operation of a covered transmission project on cultural resources, in particular those determined to be historic properties as defined in the National Historic Preservation Act (54 U.S.C. § 300308)? Mitigation measures could include economic development activities that have a nexus to the potential impacts to historic properties.

As discussed in response to question 27, robust consultation with communities that value cultural and historic resources is indispensable in determining appropriate mitigation for adverse impacts to such resources. Grant-funded mitigation measures identified by grant-funded consultation may provide an especially valuable role in expanding mitigation beyond the level already required under other environmental laws, rules, or standards, especially with the incorporation of Indigenous Knowledge, where shared. As emphasized above, impacts to the integrity, feeling, or association of a cultural or historic resource may be difficult to quantify and may not be sufficiently addressed by mitigation required under other laws. These insufficiently mitigated impacts may have a major impact on a resource's or a place's feel, association, or ongoing use. Economic development activities, while valuable in other ways, may not compensate for the impairment or loss of cultural or historic resources.

DOE must ensure that projects include mitigation measures for impacts to cultural and historic resources that are supported by affected communities. To that end, DOE must provide funding directly to tribal nations, or through pass-through grants to siting authorities, to fulfill their trust responsibility and ensure that tribal nations have capacity and a meaningful opportunity to apply their right to self-determination and provide input, including Indigenous Knowledge, into the appropriate mitigation measures for cultural and historic resources.

[75] IRA §§ 50145, 80001, 80003.