

NWX-DEPT OF INTERIOR-NBC

**Moderator: Elizabeth Appel
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10:13 am CT**

Coordinator: Welcome, and thank you for standing by. At this time, all participants will be on the listen-only mode until the question-and-answer session of today's conference.

At that time, if you'd like to ask a question over the phone lines, please press Star-1 and record your name when prompted. This call is being recorded. If you have any objections, please disconnect at this time.

I would now like to turn the call over to your host, (Jody Cummings). Thank you, sir, you may begin.

(Jody Cummings): Good morning, or good afternoon, everyone, depending on where you are. My name is (Jody Cummings). I am the Deputy Solicitor for Indian Affairs at the Department of the Interior. I am joined on the phone today by a number of officials from a group of Agencies across the Administration, here to conduct the eighth and final of our scheduled consultations on infrastructure.

The Operator will be giving instructions on how you can provide comment during this time, but I do want to just open up this session with just a few introductory comments.

As was set out in the framing paper that was circulated when we issued our schedule on these consultations, we have invited folks to provide comments to us so that Federal agencies can learn more about what Tribes think concerning best practices for Tribal consultation — really on two broad categories.

One, in promoting Government-to-Government engagement with the existing consultation framework, looking at the question of how can Federal agencies better ensure meaningful Tribal input into infrastructure-related reviews and decisions to protect Tribal lands, resources and treaty rights within the existing framework.

Also, identifying necessary changes to the existing framework. And there we're asking where and when does the current framework present barriers to meaningful consultation and what changes to the current framework would promote these goals?

So, we look forward to hearing from those of you on the call who'd like to provide comment today. Just as a reminder, the comments you provide will be transcribed so that, you know, we will have an opportunity to review those in written form. So, when you get on the call to make your comments, please make sure you introduce yourselves so that the court reporter is aware of who you are and who you represent.

So, with that, we will get started with our process of receiving comments, and I'll turn it back over to the Operator at this time.

Coordinator: Thank you. For any questions over the phone lines, please press Star-1. Make sure your phone is unmuted, and record your name at the prompt. To withdraw your questions, press Star-2. One moment, please, for incoming questions. Our first question comes from (Shawn Mulford). Your line is open.

(Shawn Mulford): Thank you. ((Foreign Language Spoken: 0:03:21)).

My name is (Shawn Mulford), and I do have some comments to present. You know, first of all, currently, what's happening with consultation – or so-called consultation – is not consultation. It is more of a dictatorship at this point because indigenous people don't have the right to say no when it comes to these different projects.

And so I think, moving forward, the recommendation is for these Federal agencies to really embrace free prior and informed consent as a minimum standard in developing consultation procedures from this point forward.

And I think everyone on the call should really press that message on to these Federal agencies that we need to have that consent component in there. Without that, it's really not consultation, let alone meaningful consultation. And so, that's going to be my first comment. Thank you.

Coordinator: Our next question comes from Chairperson (Aaron Pamon). Your line is open.

(Aaron Pamon): ((Foreign Language Spoken: 0:05:03)), can you hear me? Hello. Can you hear me?

(Jody Cummings): Yes.

(Aaron Pamon): Okay. ((Foreign Language Spoken: 0:05:12))

Good day. I just introduced myself to our traditional Anishinaabeg (DUN-AD-DU-BIN). I also indicated my belief that we are all related, and we are all (of the key) Mother Earth and (NEE-BEE), our waters.

We spend the first months of our lives in waters our mother provides. Then we spend the rest of our lives dependent upon our Mother Earth's waters. It is with this respect and in this tradition of our ancestors and future generations that I deliver my comments to you today. Thank you for listening.

As you know, I have spent the last four years of my Chairpersonship dedicated to our shared vision of the (OGIMAH OGITCHITA) Obama, our Chief Warrior for our country, President Barack Obama. I am proud of this, as he is easily the best President, and this has been the best Presidential Administration Indian Country has ever enjoyed.

My gratitude is to both the political appointees and the careers for their work. This is truly a team effort. Again, let me take a moment to say ((Foreign Language Spoken: 0:06:27:6)).

While I am grateful for the last eight years and the great strides we have made, I fear it will be some time again before we experience such cooperation and true Government-to-Government relations and consultation.

I also fear some of the permanency we planned for a new President may be erased with this stated threat to abolish President Obama's executive orders, including those that created True Consultation and Tribal advisories of the Office of the President and Cabinet-level positions.

I pray that the Annual Tribal Leaders' Conference continue as well as the great groundbreaking precedent set by the White House Council, which created a level of accountability not seen in our Federal nation's history.

Nonetheless, I provide my testimony today with great hope that the Obama administration is able to (expeditiously) settle conflict with respect to the infrastructural projects on, near, adjacent to Indian Country and including ceded territory.

In the waning days of the Administration, I look to each of you to assist President Obama in creating a level of permanency that will make it difficult for any subsequent president to undo.

Having said this, I feel that it is necessary to recognize that with the leadership of President Obama to save our country from the depths of the greatest economic downturn since the Great Depression, some unintended consequences has resulted from infrastructural fast-tracking that accompanied the American Recovery and Reinvestment Act.

While not intended, American Indian Tribes were left out of this process. This is inconsistent with the standard the Obama Administration set for True Consultation with Tribes.

Before the end of this Administration, I implore the President to correct this unintended misstep and embody within the Office of the Management and Budget a regulatory step to require consultation with affected Tribes when infrastructural projects threaten, retain these (fructuary) rights retained in most treaties between sovereigns.

Specifically, such a regulatory review must contain three essential steps. Number 1: a treaty rights review, Number 2: sacred sites review, and Number 3: full environmental review and sustained clearance.

Let me emphasize the origins of Government, Government relations and that the Tribal Nations have come to expect and appreciate with the Presidential Administration that respects these origins.

We're not asking for handouts or special rights, but we as Indigenous Nations embodied in treaties between the American Government and those who had clear and legitimate title to the land.

The treaty entrusts responsibility of the Federal Government holds and entitlements are not welfare or special rights, or even based on the horrible atrocities of the massacres, land-grabbing, forced assimilation, genocide and resulting historical trauma we experience today.

No, the Federal Government could never afford such reparations. Instead, what we seek is what is legally due to us pursuant to our respective treaties, which provide for the health, education and social welfare for as long as the grass grows, the winds blow, and the rivers flow — or as we understand it, into perpetuity.

I say, "As we understand it," as the canons of treaty construction make it clear that no new President or even Congress can excuse away or reinterpret what is due. As long as we have a balance of power with a separate Judicial branch, these rights are to be respected and honored.

We fully understand that our rights hang in the balance with a single adverse appointment to the U.S. Supreme Court. However, we are still here. We

recognize the time will come to the ebbs and flows of Government when all three branches will not be aligned to abrogate the legal obligations retained in treaties. Let's take a step back to provide a brief primer on the basis for these legal rights retained in treaties.

Following the Declaration of Independence, and before the ratification of the U.S. Constitution in 1787, the preliminary Articles of Peace in 1782 failed to mention the relations of the settlers — later the Americans — with the Indigenous People. Other countries colonizing other parts of the world and the Americas noted this inequity. Thus, the Northwest Ordinance provided the precepts for understanding the Commerce clause of the U.S. Constitution.

The Northwest ordinance drafted by George Washington, Thomas Jefferson, our nation's first Secretary of State, and Henry Knox, Secretary of War formulated a policy of honor and goodwill towards the Natives, including:

“The utmost good faith shall always be observed toward the Indians. Their land and property shall never be taken from them without their consent. And in their property rights and liberty, they shall never be invaded or disturbed unless in just and lawful wars authorized by Congress.

But laws founded in peace and humanity shall from time to time be made for preventing wrongs from being done to them and preserving peace and friendship with them.”

Then this formal relationship was embodied in the U.S. Constitution in Article 1, Section 8, subsection 3, granting Congress shall have the power to regulate commerce with the Four Nations and among the several states and with the Indian Tribes.

Of course, the interpretation of this clause is subject to the ebbs and flows over time, judicial precedents, including the Marshall Court, and subsequent Supreme Court rulings and Acts of Congress.

If the United States Government is to honor both the letter of the law as well as the spirit of the law as clarified in the policy statement that predates it, namely, the Northwest Ordinance, then upholding the usufructuary rights retained in these treaties becomes a standard by which countries and the future Americans judged the honor of the United States of America.

With an understanding of our rights retained in Treaties and our American Indian understanding of these rights, I implore President Barack Obama to put in place to Executive Order, again, these steps that I noted.

Number 1: a treaty rights review; Number 2: sacred sites review, and 3: full environmental review and sustainability clearance. No further construction of the Dakota Access Pipeline should be permitted to happen until these steps are exhausted.

I had the honor of meeting Chairman (Assamba) of the Standing Rock Nation. I am confident that when the Lakota and Dakotas signed their respective treaties, they did not intend to relinquish their voice and shared governance over public lands or even private lands their usufructuary rights remain.

In the heart of the Three Fires Confederacy Territory we have a similar struggle with the 63-year-old pipeline that is a decade past its expected safety use.

A younger pipeline by this same company ruptured in the Kalamazoo River six years ago and represents the largest inland oil spill in the United States'

history contaminating our Mother Earth and our waters with nearly a million gallons of oil.

As devastating as this spill was, the conditions of the environment were somewhat contained. The pipeline in the (Mackinaw) Bridge, the longest suspension bridge in the world at five miles, contains over a million gallons of oil in it at any point.

The minimum spill is expected to be larger than the full spill at the Kalamazoo River. Tribes all across the country have called upon local States and the Federal Government to take a stand.

We are standing with Standing Rock with our fellow Tribes in respect to their Indian lands, waters, air and ceded territory, and call for safety measures to be made permanent before another tragedy occurs. A rupture at the Straits of (Mackinaw) is immanent.

In addition to serving as a Chair of my Tribe, I also serve as the President of the United Tribes of Michigan and the Chair of the Chippewa Ottawa Resource Authority which protects our treaty rights pursuant to the 1836 Treaty and 1855 Treaties.

The People of the Three Fires, the (Anishinaabeg), have been instrumental in passing resolutions at 100% of the Tribal level, United Tribes of Michigan and Chippewa Ottawa Resource Authority levels, the Midwest Alliance of Sovereign Tribes level and at the National level, with the National Congress of American Indians, for which I serve as an Officer.

I share this information with you that at all levels of Indian Country, we are standing with Standing Rock, and implore the President to take clear and

decisive action as our Commander-in-Chief to protect our natural resources and hold the Federal Government to uphold the Treaty and Trust responsibilities which we interpret to mean not allowing the approval or continued use of any infrastructure projects not in keeping with this understanding and the steps I proscribed.

Finally, as we transition from one of the greatest Presidential Administrations — if not the greatest — I say ((Foreign Language Spoken:0:14:51)).

Each of you on this call from your respective Federal Departments and Agencies is to be commended for your leadership over the last eight years and for your dedication over the last several months in formulating what is likely to be one of the final action plans to protect our rights — our retained rights that will transcend this Presidency.

I urge you to take a bold step – a courageous step – to solidify President Barack Obama’s legacy for Indian Country, but also your personal commitment to Indian Country.

Again, please embody in any new regulatory process under the OMB a Treaty Rights review, a sacred sites review, and full environmental review and sustainability clearance. Again, ((Foreign Language Spoken: 0:15:32)) and thank you for listening to me.

(Jody Cummings):Thank you, Chairman (Pamon) for your comments.

Coordinator: Once again, for any questions or comments over the phone lines, please press Star-1. Make sure your phone is unmuted, and record your name at the prompt.

(Jody Cummings): Operator, one point of clarification before we move forward with additional comments. I just wanted to make sure everybody is clear, and I think there is probably a good understanding of this, but this is an opportunity for Tribal Leaders to provide comment.

And so, it's unlikely we can respond to questions. But really what we want to do is hear from folks on the questions that we put out in the framing paper and other comments that we're looking to receive on infrastructure consultation generally. I just want to make sure everybody is clear on that point.

Coordinator: All right. And we do have one other – someone else ready for discussion. That person's going to be (Colby Duren). Your line is now open.

(Colby Duren): Hi, good afternoon. My name is (Colby Duren). I'm a staff attorney for the National Congress of American Indians. I just wanted to provide some brief overview of some comments and things that we've been working on, and things that we have heard from our Tribal Membership and Tribal Leadership as this process has gone forward.

One of the things I wanted to kind of read in and put on the record are we've developed, basically, a set of 12 Principles and Best Practices as we've been sort of working through this process.

And all this has come out of sort of the — as a (fast fact) has sort of required this Federal Permitting Improvement Steering Council to make recommendations to its own Executive Director regarding the best practices, and enhancing its stakeholder engagement, and improving coordination between the Federal and non-Federal Government entities.

And so, we want to make sure that Indian Country is included in that process in the best way possible, particularly as it's starting to ramp up.

The Executive Director is also authorized to make recommendations at the Office of Management and Budget that can then also issue a guidance to effectuate these best practices.

So, in accordance with the recommendations of the Executive Director of the (BIP-SEE), OMB is able to direct all Federal Agencies to implement our best practices and these principles. So, first, there is a set of five principles.

The first one is a recognition of Tribal Sovereignty – the Tribal Sovereign Governments that predate the United States and fully retain the right to govern their own Peoples and lands.

And from this stems a Nation-to-Nation, our relationship affirming the Constitution Treaties, statutes, policies, and judicial sessions which Chairman Pamon very clearly went through just in the comments prior to this.

You know, as part of this Tribal Sovereign Governments — and they should not be treated as members of the general public entitled to limited information and a limited ability to comment.

Rather, Agencies are charged with carrying out substantive legal responsibilities to Tribes. And one of the primary tools of this is consultation, which should be used to ensure consideration, accommodation of those substantive rights.

The second principle is compliance with the Federal Trust responsibility, including Tribal informed consent. Rooted in the land sessions made by

Tribes and the United States, and promises to protect the rights of self-government on Reserve lands, the Federal Government Trust responsibility requires that the United States protect and enhance Indian Trust resources and Tribal self-government.

United States is held to the highest standards of good faith consent with the principles of common law of Trust. And these principles prohibit self-dealing and further requiring that Trust assets, including land, not to be managed to the benefit of the Trustee without the informed consent of the beneficiary.

The third principle is respect for Tribal Treaty rights. As Federal law protects Tribal Treaty rights, and that also includes off-reservation Reserve Treaty rights as well.

Tribes often engage in regulatory management, co-management, cooperative manager and conservation law enforcement activities that go well beyond the borders of Indian Country and frequently working in close collaboration with Federal and State Governments. The United States has the responsibility to protect all Treaty rights as well as cultural rights as Trust resources.

Principle 4 is upholding the statutory obligations. United States must work cooperatively with Tribal Governments to fully fulfill statutory obligations in the same manor that it works with State and Local Governments. It's actually providing parity for Tribal Governments.

You know, without limitation — and particularly within this context — a lot of this statutory (unintelligible) obligations fall under the National (Store) Preservation Act, National and Environmental Policy Act, Clean Water Act, Rivers and Harbors Act, Mineral Leasing Act, the Native American Graves

Protection and Repatriation Act, American Indian Religious Freedom Act, Archeological Resources Protection Act and other Federal laws.

The fifth principle is ensuring environmental justice. The United States is obligated to ensure that the benefits of all infrastructure development projects are fully shared by Tribes and that the burdens of those projects do not disproportionately fall on Tribal communities, lands or Tribal resources.

In considering all alternative projects, routes or options unfit when they burden non-Tribal communities should be automatically considered unacceptable, and they should work with Tribes to be able to ensure that they do not unfairly burden Tribal communities and that they work for the needs of the Tribe.

There is also a set of seven best practices, which I'd like to go through briefly.

First, a consultation, early planning and coordination. Meaningful consultation requires that Tribes must be included in setting infrastructure development priorities, that Tribes be consulted from the very earliest stages of projects, and the consultation must be undertaken with the goal of reaching a consensus, and that Tribal consensus must be obtained when projects are likely to significantly impact Tribal resources.

Engaging in meaningful early Tribal consultation facilitates project development by avoiding late and costly Tribal objections that can lead to administrative appeal, litigation or public protest.

Second, regional mapping in Tribal impacted evaluation. Federal Agencies must work together to do appropriate mapping of Tribal lands, both historic and current, in the area the infrastructure development based on the self-

identification by Tribes to facilitate early and effect communication between Agencies, Tribes and other interested parties, as necessary.

The Federal Communications Commission – or FCC – has developed a system like this which is confidential and is used on a nationalized basis, and has really helped to facilitate communications between the FCC, Tribes and also the telecommunication companies that are involved in the infrastructure project.

It's not only worked to expedite infrastructure development projects, but it's also done so to ensure the protection of traditional and cultural areas and other places of significance to Tribes. And we think that's a good model example of that that should be able to be looked at, going forward.

The third best practice is early adequate notice and open information sharing. Tribal Governments should be notified at the earliest possible time in an agreed-upon manner that results in actual notice and that is sufficiently detailed, such that it results in an understanding of potential benefits and risks and distinguishes new projects from routine permit renewals.

This ensures that the Tribes have the ability to be able to respond to larger projects when they can, versus having to have them step into a larger (stack) with some of the more routine renewals so that they can make sure that they have adequate notice and adequate opportunity to be able to respond to them. Also, all of the information must be shared with Tribes in the same manner than it's shared with State and Local Government.

The fourth: funding for Tribal participation in the process. Tribes must have access to funding to participate in the permitting process, including funding for Tribal Historic Preservation Officers and for Tribal environmental review.

Funding is absolutely necessary for Tribes to be able to educate themselves about the rights under various statutes and analyze and respond to many of the notices that they are receiving on Federal Infrastructure projects.

Ensuring that Tribal consultation occurs and that Tribal rights are respected is the Federal Trust's responsibility. And the Federal Government should provide funding for Tribal participation process.

Fifth: Training for Agencies to improve understanding of Tribal stakeholders. Agency staffing requirement for training must be used to increase familiarity for Tribal lands to write their concerns. These trainings should be held regularly in addition to occurring whenever there are Leadership changes.

Training should also include an understanding of Tribal cultures, Tribal Trusts and Treaty rights, and relevant consultation obligations. Tribes should be included in development of training materials as well.

Sixth: Indian Trust Impact Statement and the Trust Responsibility Compliance Officer. Prior to any permitting actions that may significantly impact Tribal rights or resources, Agencies should submit to the Tribe a statement identifying the proposed action and the potentially impacted Tribal life and whether the Tribe has consented.

And, if inspecting Indian land, whether in lieu of — there must be other lands offered in lieu of that to be able to reroute a project. Any determination that extraordinary circumstances or National interests require an action in the absence of Tribal consent should be review by a Trust Compliance Officer.

This Officer should be the Secretary of the Interior for projects permitted by other Agencies and should be the Managing Director of the Council on Environmental Quality for Interior permitted projects.

The seventh and final best practice is Cumulative Impact in a Regional Environmental Impact Statement. Environmental and cultural assets should also take into account cumulative impact, as well as impact to the Regional Environment, including Tribal rights and resources in the region.

Projects should be assessed based on the broad impact, rather than an artificial segmenting or narrowing the scope of review. We believe that in this process that OMB can issue this guidance and these best practices within the time frame of this Administration to be able to establish a set of standards that other Federal Agencies must adhere to when moving through these infrastructure projects.

And so we respectfully submit these comments and asked that they be considered to be released as a Principles and Best Practices Infrastructure Guiding Document for Federal Agencies. Thank you.

(Jody Cummings): Thank you, (Colby) for the comment. Before we take our next commenter, just a little bit more cleanup from the introduction earlier. And I apologize for this.

Because our Federal representatives are scattered across a number of phone lines, I won't ask them to introduce themselves, but I do want all attendees to know that we've got representation on the phone from the Department of Energy, EPA, Department of Transportation, Interior Fish and Wildlife Service, the Forest Service, (FERC), DoJ, the Army Corps of Engineers, Department of Interior Indian Affairs, and the ACHP.

So, Operator, we'll turn it back over to you.

Coordinator: Thank you, sir. And our next commenter is Chairman (Aaron Pamon). Your line is open.

(Aaron Pamon): So, since nobody else is on the line, I just wanted to come back and underscore a point, if that's okay.

So, under the Northwest Ordinance, and I read through this really quickly, but it formulates my understanding of the Treaty and Trust responsibility. And just the one section read, "But laws founded in justice and humanity shall from time to time be made for preventing wrongs being done to them and for preserving peace and friendship with them."

So, this does not mean, interpreting laws that are detriment, but looking for opportunities to aid in the spirit of upholding our Treaty and Trust responsibilities. And we're looking to you, your Joint Federal Task Force Group to provide some guidance on that in the waning days of this Administration.

And so, what we have seen at Standing Rock is horrible, but it's not new. It's something that we've experienced from time to time over the years since Intervention, and, you know, there's times when we think that we have evolved as a Nation past certain experiences. And this whole election cycle has demonstrated that maybe we took for granted that we might have been a little more evolved than we actually are.

But at Standing Rock, we've actually seen the People there from all across the country — Indian People and friends of all races, from all across the world —

and we've seen attack dogs biting human beings under the direction of this oil company, and also under the security forces that are there — water cannons being shot at people at sub-zero temperatures, rubber bullets.

We had an account recently of a face-to-face account of an elderly lady that was beat down by four officers, and then the story of the young lady who swam across the river to install a stanchion to prevent bullets from going in that, and spraying her directly in the face with about three feet distance with pepper spray.

So, when I referenced that “Laws founded in justice and humanity from time to time being made for preventing wrongs being done to Indians, and preserving the peace and the friendships with them,” these atrocities are happening — even though I have the greatest respect for President Obama — under this administration.

It's something I might expect from the next Administration, but there needs to be, in addition to establishing these protocols — and I know that it takes time under consultation with Federal Registrar notice and listening, and getting all the input across the country to formulate a good solid policy. But in the meantime, it would be nice to see some stronger advocacy and protection for the people against these kind of atrocities.

If there was a group of African Americans or Latinos or Asian Pacific Americans that this was happening to in any part of the world, you know, there would be a human outcry and human rights outcries. So, we're also looking for some leadership to immediately put a stop to the kind of physical violence that's happening against our Indian people. So, thank you.

Coordinator: And our next comment comes from (Sara Childers). Your line is open.

(Sara Childers): Good afternoon. Thank you for taking my call. I was briefly with the Upper Sioux community as their (THPO) Officer during the last year of the (DAPPLE) process. And I would like to think that I held the Corps to their Appendix C, and hopefully, that is no longer going to be an issue with the next major infrastructure project.

I do see where the funding for (THPOs) and (SHPOs) – those preservation dollars – I'd like to kind of find out what happened to those monies from the Gulf Oil leases.

When Ken Salazar was leaving his position at Department of Interior, they asked him what advice he would give, and he said to get that money appropriated. Only a third of the money was appropriated into preservation from those oil leases.

So, what happened to that? Where is it? And how is it going to be allocated next year? I'm glad U.S. Fish and Wildlife is on this phone. If they are, I'd like to know what happened, Lyon County, Iowa, with the (DAPPLE RAIL).

They gave a permit for the tree-cutting, and it had an adverse effect. We have not heard from them even since our meeting there. They are not taking responsibility. They said that mitigation had to occur because yes, they were at fault for giving that permit for the tree-cutting. And since then, we have not heard from them. They have allocated to the Iowa Archaeological Office to send out notice. That is not their job.

This is what I see in the 106 process. Federal permitting Agencies say, "Oh, you (THPO) Officer, can you get a hold of the other (THPO) Officers? Thanks. Thanks, that would be great."

Well, that's not their job. That is your 106 Coordinator or your Liaison Office to do that. It is not the other (THPO)s Officer's job to get a hold of other (THPO)s.

That is a major breakdown, and we saw that with DoE on the International Minnesota Power one just in the last couple of weeks. She is not doing her job. She is handing it off to one Tribe to try to get a hold of people. And Minnesota Power is very irate. They're going to lose \$15 million this winter, and it wasn't the Tribe's fault. It was DoE's fault. But it will trickle down as if it is Tribal fault. But it's not.

As far as I hear like a survey going on, and I don't know if it's going to be (ETHNO) studies, but this took place. Congress allocated funds in 1840 for an (ETHNO) study. And so, you have this legal document – this Federal document. And I used it with (DAPPLE) to show you guys that this is who you need to go to.

See this (ETHNO) map? This was your money that paid for it. If you want another (ETHNO) map done, well, then, allocate funds, and we'll do another (ETHNO) map so you guys know who to deal with at all times.

I wish the FCC was also on this line. They are also a Federal communication. They're going to do a 5G roll-out. They're going to — what do they say? The Chairman of the FCC told industry in Vegas last month, “We're going to make sure your 5G gets rolled out. We're going to make smooth the process – the permitting process.”

And so, what did they do? FCC raised their fees across the board the same day they were berating Tribes at a conference about their fees. Why? FCC doesn't

want competition on fees. They're about ready to make a billion dollars on just fees alone with this roll-out.

Who is watching this as ACHP signed an agreement? Signed a PA saying, okay, yes, we'll smooth out that process as well. But no, there's still the 106 process with Tribes. And they're not being listened to. Non-compliant towers all over the country. They're saying there's 3500. Well, it's probably about 35,000, but they're dragging their feet.

Now they're saying that there's no recourse if it had an adverse effect on anything — FCC is saying off-the-cuff remarks: "Well, I don't think there is anything we can do; not sure."

Yes, for sure they know. For sure they know. And now we're going to have roll-out of a 5G networking on non-compliant towers. And it is ACHP's problem. It is FCC's problem. It is industry's problem, and they're putting it onto Tribes to just — oh, can you just smooth it through and let's roll this out.

So, there's so many, you know, there's so many different things we must talk about, and it's not going to happen on just these quick teleconference calls and half-day sessions, so. But thank you for letting me talk, and thank you for listening.

Coordinator: And again, for comments over the phone line...

((Crosstalk))

(Bob): Hello? Hello, this is (Bob) with (C-BILLY) from Florida, and it's the Miccosukee Seminole Nation, the original Nation in Florida. It hasn't been signed a Peace Treaty or given up our rights, our way of life, but early 17- and

1800, we make an agreement between United States. We're supposed to be talking to each other what we going to do about our concern on both side. But that's never been took place. Only talking to so-called recognized Tribe. All (taking) so-called Government-to-Government.

So, that's been hurting us – our way of life. We have been exist at beginning of creation, and we have a right to survive in our land; in our country. And you need to how to respect yourself when you call the law, and that never been respect on your side of it.

So, I think United States America owe us damage on our land, so when disturbing the natural area, and digging up the canals — especially Water Manage and Army Corps of Engineers, and all the other so-called Agencies that supposed to be protecting the People's rights.

They're only protecting like business – money-making business. And they killing the future of life by doing that. So, they need to wake up, protecting the nature; protecting the God's gift to order to survive in the future.

But otherwise, all we going to see is nothing but concrete and highways, drying up — no more water; no more food. Because populations grow, killing our way of life. Not only just us; even the non-Indian people all over the world.

So, I thank whoever's President now. Have to expect him stop so-called natural gas pipeline because we never have to have that in order to survive. But now we're beginning to have it, and this endangering our lives – endangering our way of life.

And right now, we're dealing with them. And sad to see, they're bringing all kinds of machines. They just pushing down all the trees and that's here for thousands of years, disappearing in a couple of months.

It's not right to do that. We need to respect the natural creation. We need to respect God. We need to respect Jesus. And if you are a human being, you need to respect all of that. So, I think United States Government making a great mistake what they're doing, their future generation.

They don't care about their future generation. Only they care about the money. It's not right what they're doing. So I'm telling you, you have to change about how it's based on the money all the time.

You need to base on your man, the future, the Earth, and waters. Right now, Army Corps of Engineers Water Management signed the clear to water because they're so damaged. Everything's dying, but now they're bringing up pipelines to destroying it more.

I don't understand that. So I think it needs to be stopped all over digging up to all of them, gas, because it - but it's (unintelligible). It's going to (unintelligible) explode by gas, burning gas in the air. People getting sick over that, cancer, heart attacks. All those things created by material things, what the people made.

I think you all need to learn how to respect living the right way. You can't - you're not a boss. You're not God. You need to realize that. you need to sit down with the indigenous people what needs to happen in the future generation because it - you all need that to understanding, but that's what needs to happen.

We all need to sit down and talk out and over what we're going - what's going to happen maybe 10, 20 years from now because a lot of things happening in the Earth. It's not - it seems like there's no tomorrow. The darkness, we're chasing it.

So we have to slow down, order the supply and pass it on to give them those, the younger generation, the future generation, unborn life needs to have that. We need to honor that. Not just us. We need to honor the unborn life.

But we need to stop digging oil. We need to stop digging gas. We need to stop destroying the future generation with just Mother Earth. I think simple understanding. I think the non-United States government under - they need to understand that.

It's important for them to understand. I'm sure they have great-grandkids they're going to have. So they need to think about that. Not just the money-making.

I think not too long ago they create the words, "economy." So they're doing that, just the words at that. It's all into more land, more oil digging the Earth.

So that's the language. You need to stop that. And more important is you need to create that protection. Not the natural resource. Those kind of language is destroying the future environment; water, air, the food. But those things have to be stopped.

So I think - I hope you understand what I'm saying. Invited to indigenous people and no so-called recognized (unintelligible) so much all the time because sometimes those people educate by non-Indian people.

So it's not the same level what indigenous people see what's happening in front of them. So honor them. And they signed a Peace Treaty, but I'm still here because it's my land, it's my country, but you all are destroying it.

You need to understand it's not only to so-called recognize (unintelligible) government - the government. You're still hurting me in my way of life. You have to understand to be able to include me to speak to you to make you understand, I am a human. God made me, put me on this Earth protecting the future generation.

So that's what should - the government should do that. Not only just to money, you need to understand what the protection needs to be based on the future generation of the human life.

All this time I'm only here short in time, but I've seen a lot of damage in our way of life digging up our ancestors, selling to make a living out of it. So my people are never going to rest peacefully even they die.

So you need to understand where I'm coming from. I'm coming from the (unintelligible). I not come from somewhere else. You might not be saying I'm not federally recognized, but I am been recognized by the Creator.

And that makes me who I am. I don't - nobody else have to recognize me. I knew who I am. I know my language. I know how to do my ceremonies. I know my song to the beginning of creation.

So that's important to me, who I am, makes me who I am. So I don't have to ask anybody to recognize me. They all have been recognized in the first born and beginning of creation.

So just using those language, so-called recognize (unintelligible) the government, the government is hurting indigenous people. You need to get away with that, include everybody, because you damage the human rights, human needs.

So with that, I hope you hear me, understand what I'm saying. Thank you.

Coordinator: Once again, for any comments over the phone lines, please press Star 1 and record your name. Our next commenter is (Ann McHamon-Soltice). Your line is open.

(Ann McHamon-Soltice): Hi. Good afternoon. Thank you so much for having this call. I am the Director of Intergovernmental Affairs for the Great Lakes Indian Fish and Wildlife Commission. We're located in Northern Wisconsin.

And I just wanted to make a couple of general comments and then talk a little more specifically about the two sort of categories of input you are interested in today.

For those of you who might not be familiar with the Great Lakes Indian Fish and Wildlife Commission, or GLIFWC as we call ourselves, we are a natural resource agency of 11 Anishinabe tribes located in Wisconsin, Minnesota and Michigan.

And we assist those tribes in implementing federal court orders related to their off-reservation hunting, fishing and gathering rights.

And so we do not do work particularly on reservation, but instead work in seeded territories which include the northeastern part of Minnesota and

Northern Wisconsin, the U.P. of Michigan, and the northwest part of the lower peninsula.

And so my comments today will particularly relate to off-reservation treaty rights, and really what our tribes tell us about consultation on these kinds of infrastructure projects is that really it comes down to the protection of water.

And water, as you know, is sacred to the Anishinabe, and so it is often the primary driver of our involvement in environmental issues like the development of pipelines or other infrastructure.

One of the things that our tribes face in an off-reservation context is that many times states, not the federal government, are issuing many of the permits that are necessary for infrastructure development.

And obviously the United States cannot delegate its treaty obligations and its trust responsibility to states, but the tribes are often dealing with the states on a number of these permits.

And so tribes, I think our tribes in general, often turn to the federal agencies to help make sure that the full range of potential impacts on treaty rights is understood and evaluated.

This is particularly an issue in Michigan -- which is one of two states as I'm sure you all know -- that have delegated authority to the state under Section 404 of the Clean Water Act, which is often where we have tribal involvement or federal involvement in many projects.

And that federal involvement sometimes is lacking in Michigan because of the fact that that state has had delegated authority.

Another area that I think our tribes are concerned about in general when it comes to infrastructure is the analysis of cumulative impact because often states will look at the extent of a pipeline through that state, but don't look into another adjacent state where the pipeline also may cross.

And so we'll have pipelines that come from Minnesota into Wisconsin and the agencies aren't looking at those from a sort of seeded territory perspective. They're looking from a state perspective.

And so we find that sometimes cumulative impact aren't sufficiently evaluated in those instances.

So in terms of insuring meaningful tribal input into these reviews, several other speakers have talked about some similar points to the ones I'd like to make.

First of all, really the tribes have to have the capacity to engage with the other governments. You know, that can mean time, that can mean specialized resources, and I know tribes look to the federal government to help them, you know, obtain and sustain those resources throughout sort of environmental review and permitting processes.

Tribal input and having meaningful tribal input also I think means many levels of input from sort of more formal consultation with elected officials to less formal, more technical meetings with tribal staff so that they can help inform their elected leadership about what the potential impacts of a project might be.

And in that regard, I know our tribes in GLIFWC also will often reach out to federal agencies who have that particular expertise to help them understand the technical issues associated with a proposal.

As other folks on the call have talked about meaningful engagement takes time and has to start early, and we found that really the best engagement results when the tribes have relationship with those agencies and some level of trust and understanding about where those agencies are coming from.

And an example of that is an MOU that GLIFWC's member tribes have with the U.S. for a service that talks about how the tribes will exercise their gathering rights on a number of national forests in this region, and that MOU requires that the forest service include in its decision documents an analysis of how tribal information and involvement was taken into account in analyzing the effects of a particular decision.

Really, that MOU calls for where it's possible the tribes and the forest service to reach a consensus on how management decisions may affect tribal resources.

And if consensus can't be reached, there's a dispute resolution process in place. You know, ultimately under the MOU, the forest services, you know, makes the decisions that it has the authority to make, but I think the commitment to strive for consensus and to explicitly explain how treaty rights have been taken into account by these agencies in making their decision and having a dispute resolution process in place helps ensure tribes that their input has been meaningful and has been heard by the federal agencies.

In terms of identifying barriers to a meaningful consultation, one of the major barriers that we see is when there's a perception that federal agencies are

treating consultation as a box to be checked rather than a process that provides meaningful information that needs to seriously be considered.

Tribes are often willing to devote significant time and resources to engaging with those agencies, but if the agencies dismiss their input or don't explain how their input's been taken into account, the process deteriorates pretty rapidly.

And so on policy suggestion would be for each federal agency to treat substantive tribal input on a proposal as they would the input of any other governmental entity that has some kind of a jurisdictional relationship or nexus to the project.

I think (Colby) rated the issue of training, which we also see is a very important part of this whole consultation that, you know, federal employees need to receive training about engagement consultation generally, but also about the particular tribes in that region.

We also feel strongly that the job of tribal liaison is not just sort of an additional duty that's tacked onto some already busy employee's job, but that it involves someone who's empowered to devote time to developing relationships with tribes, answering questions, sort of facilitating agency and tribal interactions and kind of building that level of trust and understanding between the tribes and the agencies.

I think that's all that I have at this time. We certainly will be submitting some written comments in addition to these comments and we really appreciate the administration's efforts to move these issues forward. It's really nice to see, so thank you.

Coordinator: And our next commenter is (Ethel Branch). Your line is open.

(Ethel Branch): Hi. Thanks so much. Hi, (Jody). How are you and everyone else? So I'm providing some comments on behalf of the Navajo Nation to sort of a summary, and then we're also submitting written comments as well.

So we expect consultation to be a number of things. One is to be a leader-to-leader. Also for there to be a certain amount of accountability on behalf of the federal government, we expect to engage with individuals who are culturally competent and who are knowledgeable about federal Indian law and about the specific rights that apply to the Navajo Nations.

We expect specific and tailored engagement. We expect that what we share will remain confidential and we also expect to be engaged as a partner and to have consultation be fully funded.

And so in terms of leader-to-leader engagement, the nation is a sovereign and we expect to be engaged on a sovereign-to-sovereign basis.

So we expect to engage with federal personal who have decision-making authority to immediately address concerns and issues that we raise. We give (few) respect to federal agencies by reaching out to them individually when needed and we expect the agencies to do the same and to avoid impersonal and meaningless contacts such as Dear Tribal Leader letters.

We expect contact to be substantive and consistent in-person meetings as often as possible. We would like each agency or region to point a tribal ambassador liaison for there to be given consideration to instances where, say, in the case of Navajo Nation where we may be bulked in with a number of

other tribes that have very different needs and circumstances that there be consideration to breaking out separate agencies or sub-agencies.

And we do think that, you know, maintaining a trustworthy relationship with our federal partners is critical that there be consistent communication and that we continue to work together to strengthen our government-to-government relationship.

And we would like to engage with the federal agencies to the United States as a partner and be an equal at the table or at least you get any opportunity when there's a project that significantly impacts the nation.

We want there to be early engagement and I think the (unintelligible) model is a really good model for something like that where, you know, the tribes of interest are at the table helping design what that national monument could be and working on the implementation of that, the further design of that at the same table as the federal agencies.

In terms of accountability, this resonates with some of the previous comments that were made. We don't expect the federal government to treat our position whether it's consent or rejection as a matter of opinion, but rather as an affirmation of our sovereignty and self-determination.

And by that, I mean that when we say a project is not acceptable, we expect, you know, no to be an acceptable alternative for various projects that are being considered, particularly when those projects would have an effect that would forever alter our relationship with the land, particularly where certain sacred sites are an issue.

Even when those sites are outside of our territorial boundaries. And, you know, I'm not saying - I think that there is a way to look at sites differently, you know?

We have different types of relationships with different sites, but some of them are, I don't know, fundamental relationships that cannot be altered. And so we would hope that projects would not destroy those sites and that the federal government would respect that.

And we view (NACFRA) as providing an example of a system of extraterritorial control by tribes over cultural patrimony, and we would hope that a similar statutory regime could be devised to protect landscape scale cultural patrimony.

In terms of culturally competent engagement, we expect to engage with individuals who have acknowledge of basic Navajo cultural norms and who have respect for our world's view, as well as, an understanding of our sovereign status on the extent of our treaties and of the federal trust obligations under our treaties and federal law in general.

And as part of that, we would expect that the folks we engage with have a basic understanding of federal Indian law and understand that tribes are governments. We're not, you know, a special group or race or, you know, we have legal relationships with the United States government.

In terms of comprehensive engagement, you know, we're tied to our land and our ancestral territory by bond, standing on natural law, and this transcends the western concepts of property ownership.

And our - and the land that we have, that relationship extends far beyond our reservation boundaries and our former treaty territory.

And so again, we would expect that consultation on federal projects would take into consideration our long-term relationship with this land and also incorporate landscape scale impact analyses rather than, you know, narrow small-scale immediate impact analyses.

And we would like to be given the opportunity upon our request to conduct our own scientific archeological or ethnographic studies.

And then in terms of being specific and tailored, we discussed potential models and we really like a model that Fish and Wildlife have developed.

There's also something that a number of tribes - I think it's called, The Ten Tribes Collaborative. It was done by Bureau of Reclamation having to do with water projects in Arizona.

And that's something that when we were discussing projects or consultation that works, those were a couple of examples that we turned to.

But, you know, each tribe has a unique relationship with our resources. And so, you know, consultation models that take that into consideration I think are critical in order to ensure meaningful consultation between tribes and the federal government, and also in determining how projects can be modified in order to build around and protect tribal interests and relationships with our land and our sacred sites and spaces.

In terms of confidential, this is something that I think counted a number of times tribes need to be able to share information without being concerned that

it's going to be shared broadly or beyond the people that the tribes are sharing the information are aware of.

And I don't know if there's a carveout that can be made under (FOYA) or some other exception for tribes in (unintelligible) to protect our knowledge and our information as it - you know, as it can be of a spiritual nature and isn't something that we want shared with the public.

And then in terms of funding, it's kind of an obvious point, but, you know, tribes are strapped for resources. And so to be able to consult without that being an additional stretching of limited resources would be very helpful.

And that wraps up my comments. Thank you.

(Bob): (Unintelligible).

Coordinator: Once again, as a reminder for comments over the phone lines, please press Star 1 and record your name when prompted.

Our next commenter is (Mike Ripley). Your line is open.

(Mike Ripley): Hi. My name is (Mike Ripley). I'm the environmental coordinator for Intertribal Fisheries and Assessment Program and I'm here for the Chippewa Ottawa Resource Authority today.

CORA is comprised of five Indian tribes in Michigan for the 1836 Treaty area.

I know that the agencies are looking for comments on new infrastructure consultation, but I want to follow-up on what Chairperson (Payment) said

about Enbridge Line 5, which is an existing pipeline in the straits of Mackinac.

It runs underneath Lake Michigan and Lake Huron in the heart of the CORA Treaty waters. There's over half a million miles of pipelines transporting gas and oil and hazardous liquids across the United States.

More than half of these miles of pipe are more than 50 years old and in the case of Enbridge Line 5, 63 years old. That predates environmental and safety laws, and that did not therefore apply to them.

The Pipeline Hazardous Material Safety Administration, or PHMSA, is the agency that oversees those pipelines, but PHMSA is a small agency and is poorly funded to carry out responsibilities for oversight of such a vast network of pipelines.

So inspections are carried out by company operators with only a maximum of 137 pipeline inspectors PHMSA rarely does independent line inspections.

The gas and hazardous liquid pipelines must be brought under regulatory framework of environmental and safety laws no matter when they're installed - they were installed.

Older pipelines pose a grave risk to our environment, our lives, our health and our treaty rights. With the combination of old wells, old technologies, old materials and corrosion with age, they are riskier and riskier as times go by.

There's no reason to give these pipelines a pass for meeting environmental and safety standards that newer pipelines have to go under. Any existing pipelines

that cannot meet current environmental and safety regulations must be decommissioned and we believe that Line 5 must be decommissioned.

They're a threat to our current formed treaty rights for natural resources and your government has no right to threaten our rights in this way. Thank you.

(Bob): Thanks for your comments.

Coordinator: And our next comments come from (Karen Brunso). Your line is open.

(Karen Brunso): Thank you. My name is (Karen Brunso). I'm the tribal historic preservation officer for Chickasaw Nation. And one of the things that we have had problems with is that we are a removed tribe. We are not in our current - in our homeland.

We are - have been removed via the government to our current location. One of the - and from that, we've encountered a lot of interesting situations because of this problem whereas that agencies kind of sometimes almost can be seen like they forget to include us in the review because they don't see any Indian tribes there.

They don't look up the treaties. They don't look up and see that there was people in these areas. The other problem we have is that people often times say, "Well, we just did the (NEPA)."

Well, the (NEPA) works hand-in-hand with Section 106 with (ARPA), with (AIRFA), with (NAGPRA). And people should not be just saying just doing one law and say, "Oh, we've got it covered." It needs to be done with all laws.

And we've been having problems with that, with agencies just saying, "Well, we did the (NEPA)." Well, that's okay, but the law requires that they look - also do Section 106.

It's not exclusive of each other. They are hand-in-hand. As for good practices, it's often times where I find that if you talk to us as early as humanly possible and give us all the information up-front, it will help.

Sometimes it's interesting to see the maps we get come in and us guessing about where these things are located. Also, then they also then sometimes will include coordinates such as don't give us EMT coordinates, but maybe not give us section township and range.

And sometimes some of our information is based off of old 1830 census surveys that allow for us to - that do section township and range, not UTM. They didn't do UTM back in the 1830's.

So translating can be at times a challenge. As for the best practices, I'll give you my best one, is that we deal with the Tennessee Value Authority, which is they are open to being, willing to being talked to as much as all possible. They give us monthly conference calls to update us where they are on projects, on issues that they have found, and if they need to they'll give us - they'll coordinate with us to have another call.

And it allows for us all to get together and talk and work with them to help them do their job and us to do our job. And thank you very much.

(Bob): Thank you, Miss (Brunso).

Coordinator: Once again, for comments over the phone lines, please press Star 1 and record your name.

(Jody Cummings): While we're waiting for other folks to come on the comment line, let me just remind everyone who's listening that folks who were also invited to submit written comments -- and you could that to an email address, Consultation@EIA.gov -- and we'll be receiving comments on this particular consultation until November 30, 2016.

Coordinator: Our next comment comes from (Gary Kilderhundred). Your line is open.

(Gary Kilderhundred): Hello, everyone. As he said, my name is (Gary Kilderhundred) from (Unintelligible), South Dakota. I don't really have a lot to say, but I think this is one important issue.

In our state of South Dakota, we have a unique way of looking at our sovereignty here, I think. We have to go to court and be able to get that sovereignty.

And then when we do get sovereignty, sometimes we only have certain nuances and certain facets of that particular sovereignty. For instance, medical we might have the right to have abortion clinics, but not marijuana and so on with different aspects of our sovereignty.

Well, it seems like that's the way that we're being treated with our government-to-government relationships as well. Not too long ago I saw on social media where the United States has opened up relationships with Cuba and they were very happy and very proud that they had been able to send in an ambassador to Cuba and different dignitaries.

I would wish that we could - ambassadors. I wish that every tribe could have dignitaries to come and help us in certain ways. I guess that's all I really had to say.

I could talk for a long time, but I just wanted to tell all the other people that had been speaking before me thank you so much for all the work that you're doing, Mr. (Durant). Well, I'm not going to name names.

Just I think that you're doing a great job and thank you very much.

(Bob): Thanks for your comments.

Coordinator: Once again as a reminder, for questions over the phone lines please press - I'm sorry. For comments over the phone line, please press Star 1 and record your name.

Our next commenter is (Lee Klaus). Your line is open.

(Lee Klaus): Hello, everyone. Thank you very much for making this opportunity for us to speak. (Lee Klaus). I'm the cultural resources management director for San Manuel Mission Band of Indians here in Southern California.

While there are enumerable things that can be said about the state of consultation across Indian country with respect to infrastructure projects, I'd like to just build upon some of the comments of the earlier presenters and hit a few of the highlights I think related to a number of situations that we encounter here in Southern California with respect to infrastructure development.

As others have mentioned, we uniquely have problems with continuing to be considered a special interest group, ethnic groups, the general public.

And so despite all of the training that has occurred within the federal government for over 20 years ever since the passage of the 1992 Amendments to the NHPA, I don't know if it's a function of consistently getting new staff into these positions or if the training has not been ongoing.

But I know that there continue to be a number of training opportunities available. But for whatever reason, there still seems to be a great lack of cultural sensitivity and cultural awareness with staff that work at the federal and the state level.

And that's particularly problematic considering if these folks are there to help protect, promote, preserve champion cultural resources, which...

(Bob): Did we lose the caller?

Coordinator: I believe so. And apologies once again for the caller that was currently making comments. If you would please press Star 1 once again, we will reopen your line. All right. And (Lee), your line is now open.

(Lee Klaus): I lost you and wasn't aware that I had, but I'll just say that San Manuel Band of Mission Indians absolutely supports the prior comments about - need for training within these agencies, within the staffers -- especially those that are assigned to cultural and biological resources -- to better understand cultural sensitivity, better understand tribal histories, understand treaty and trust responsibilities.

And also just really understand what sovereignty means and how that plays out in terms of consultation under the National Historic Preservation Act, under NAGPRA, underneath all of those things.

With respect specifically to issues that arise under the National Historic Preservation Act, with respect to infrastructure developments, we as others have noted often do see that there is a belated way in which consultation has commenced.

Oftentimes agencies have not only thought of a project, they have spent millions of dollars designing a project. They're incredibly invested in the outcome of the project before information or communication ever comes to the tribes.

And that immediately puts tribes in a situation where we are seen as obstacles to overcome. And we are put on the defensive and therefore, we are not permitted to be in a position we would really like to be, which is a partner.

We'd like to be a partner, a co-creator, a co-developer of these projects instead of always being brought in at the 11th hour as I said seemingly to be an obstacle to whatever it is that the agency or a developer who's seeking a permit through an agency is proposing.

We also have issues with minimum information standards not being developed. As most tribal nations can tell you, the kinds of information that we receive is often incredibly insufficient as (unintelligible) from Chickasaw Nation was just mentioning sometimes we receive maps where you're hard-pressed to know where in the world a project is actually occurring on the globe.

And that creates a lot of additional work for tribes. We already have capacity issues, funding issues, staffing issues. And so to receive information from agencies that is absolutely insufficient and quite frankly unprofessional, it needs to be corrected.

So I think in terms of looking at ways where we can write some new language, I do think the National Historic Preservation Act would benefit from the inclusion of some minimum information dissemination standards.

The kinds of information it needs to be provided to your tribes who are consulting, I think that if that were outlined and if folks knew what they needed to provide, then we would - we could respond in a more timely manner. We could respond in a more thorough manner in a more, I think, efficacious manner if those minim standards were provided.

Also, I think that with respect to cultural resources identification, historic properties identification, we're seeing now a lot of deferral under programmatic agreements.

Programmatic agreements apparently have gotten very, very trendy in the last ten years and increasingly so, but what we typically find in most of these programmatic agreements is that they're taking Section 106 down the road.

And they're saying that they're going to move forward and they do no advanced analysis, they do no advanced identifications. So there's a lot of deferral under these large agency-wide, state-wide PA's, and that is counter to Section 106 of the National Historic Preservation Act when you have that level of deferral.

Also with respect to cultural resources eligibility assessments, we forever have the problem of agencies despite training and numerous national register bulletins to the effect.

We still have agencies who think that cultural resources are just archeological sites and that archeological sites are only eligible under criterion date.

We do a lot of education in my office and unfortunately we have to point staff members, agency staff right back to their own documents, right back to their own handbooks, right back to their own policies, right back to the federal law, right back to national register bulletins.

And frankly due to the capacity issues you've been hearing from everyone else, we really don't have time to educate the thousands upon thousands of agency staff who, again, have been charged with representing cultural resources and have been charged with maybe even representing tribal interest if they're in a tribal liaison position.

It's incredibly unfortunate that folks apparently get no training in the law. They've not read any of these bulletins and so basic information like the fact that there's more than one criterion and that sites can actually have significance under more than one criterion quite frankly boggles my mind that I still have to tell staff members of that, especially staff who have worked within an agency for 15, 20 years.

So that continues to be a problem. Also, with respect to assessment, so again, kind of moving through that 106 process and now thinking about assessment of effects, as you've heard from many other folks -- and I will just throw in my support for this -- there's a complete misunderstanding and therefore under application of cumulative effects analysis.

People do not understand it. They are not trained on it and therefore, it simply doesn't get done. And if there is a paragraph, you know, maybe dedicated in a meet the doc to cumulative effects, it's incredibly general and really doesn't address anything.

So we just don't find that people are really assessing cumulative effects to any significant degree. We are constantly encouraging folks through our own consultations to take a landscape approach.

I know this is something that the Interior has been looking at the last couple of years through park service and we absolutely would encourage folks to take that landscape approach, but it's going to take then finessing these cumulative effect sections if you're going to begin to look at resources from that landscape - well, at that landscape level.

Similarly -- although no one's mentioned it -- we have problems with folks not even addressing indirect effects. They seem to only understand destruction. If something is going to be physically damaged or destroyed, then they will at least recognize it and attempt to mitigate it.

But they really don't even understand how to assess indirect effects. So we still have folks who don't really understand how - and air and view shed and vibration. All of those things need to be taken into account with certain kinds of cultural resources specifically and folks don't seem to have a good understanding of indirect or cumulative effects.

So that's a problem in a Section 106 consultation when you're talking about these things with staffers and they don't even understand how to really capture that because they don't understand effects language and how to do analyses.

So then moving on into mitigation, what we find in my office -- which is incredibly troubling -- because of the great focus on Cultural Resources Equals Archeological sites and because of the - well, frankly the Antiquities Act, and the idea that archeologists are stewards of tribal pasts instead of tribes, there is this undone kneejerk focus on data recovery, archeological data recovery, as the only mitigation option.

And although you will not find the phrase, "data recovery" in the either National Historic Preservation Act or its implementing regulation, that is by and large exactly what is presented to tribal communities such as San Manuel as mitigation for every single effect to every single cultural resource.

Even sacred sites. They absolutely don't even know what to do if they're not doing data recovery. And so that's been a retraining that we've had to do here in Southern California is that mitigation does - is not a synonym with. It does not equal data recovery.

And sometimes depending on the nature of the resource, data recovery is not only culturally insensitive, it's incredibly deleterious. You will destroy the sacredness of a place or some of the characteristics of a place that make it significant by doing the data recovery it and in and of itself is destructive.

And so we are constantly fighting the fight with respect to mitigation. Now, that said again, it's not that this has not been addressed, but folks apparently are not paying attention, they're not being educated, or they're not being encouraged within their agencies to be created.

The Advisory Council in Historic Preservation has written about creative mitigation. A number of agencies have written in their own handbooks about

creative mitigation, but somehow in these project-by-project reviews, it does not get implemented.

It is staying at this kind of a seminal, hypothetical academic kind of place, and it's not actually being applied within the individual real world project reviews.

So we would definitely like to see less focus on data recovery, and people doing some of that creates mitigation that's been written about for years.

We also would like to suggest that perhaps there could be a rewrite to the regulations with respect to agreement documents.

Specifically, the role that tribes have right now. If you're consulting a tribe on a project under NHPA, you can assume concurring party status if you so wish on a document, and you can request invited signatory status.

What we would like to see, however, is that if a tribe has been actively consulting on a project and if they've offered information that has been crucial to the direction of the project, that that tribe be given required signatory status.

And this is important because, of course, any environment - any agreement documents, so whether it's an MOA or a P.A., typically MOA's in this case, but either agreement document can be signed and executed without the consent of any of the consulting tribes even if they have requested and they have been given invited signatory party status that same level of oversight is not provided to them.

So federal agencies can sign with the (SHIPA) or advisory council - hello?

(Bob): Go ahead, (Lee). I think that was just a disruption in the line.

(Lee Klaus): Oh. Okay. So that's something that we would suggest is that maybe take another look at that agreement document creation and execution language and that tribes would - as I've said, if they've been actively consulting on a project that they would be offered that status, that required signatory party status.

Whereby, a tribe could not invest 2, 3, 5 years' worth of their lives consulting on a project only to at the end have an agreement document that is written so egregiously that they can't possibly sign it either as concurring party or invited signatory, and yet everyone else can sign it and it's in effect, and it greatly harms both the community and their resources.

So that's something I think to look at moving forward. Also, I do think information sharing needs to be equitable. We've spoken some with some of the earlier commenters about confidentiality.

What's interesting to me is just in the last year I've had a number of federal agencies talk to me about their confidentiality. Not the confidentiality of tribal information that is given to them to then protect and to manage, but the fact that they're now considering their information, specifically archeological site locations, archeological site records.

They're now considering their information to be federal property and confidential and they don't want to share it with tribes. Now, you can imagine that hamstringing tribes greatly in the Section 106 process if they're not going to be given the same information that the (SHIPA) would be given, that the advisory council would be given, that any partnering federal agency would be given.

And again, this is new and I'm seeing it from a couple of different federal agencies here in Southern California and it's incredibly troubling to me because frankly what they're doing is they're invoking Section 304 on tribes.

And Section 304 was written for the public, not sovereign nations who are consulting under federal law who have a unique role under that law that is prescribed in the regs for that law.

And, of course, it's also incredibly demeaning when you understand that Section 304 was written to help protect sites.

So, in other words, when agencies say to tribes, "Well, we're not so sure we want to provide this information to you and we're going to cite Section 304 of the National Historic Preservation Act," you're in effect saying that you're not releasing information to tribes for fear that that release will then cause imminent harm or potential harm to a resource.

So you're saying that when you provide information to tribes, the very provision of that information will then cause harm to the very resources these tribal governments are trying to protect.

They're their ancestral sites. So it's not only culturally insensitive, beyond disrespectful to a sovereign nation, but it's a misapplication of Section 304.

And frankly, the two entities, the two federal entities who are doing this in Southern California don't have anything written in their handbooks about this. They do not have guidance from D.C. to do this.

We have independent offices, independent field offices, independent districts deciding to do this on their own, but it's affecting multiple tribal communities across Southern California, not just San Manuel.

So that's concerning to me that some folks are now taking a very different take on confidentiality and information sharing.

And I think lastly that we need to make changes to the policies as others have mentioned that really underscores the need for consensus building. Consultation should not be pro forma obligatory data sharing.

And then the agencies simply say, "Well, data sharing achieved. Check my box and I'm done." Again, I am not sure where the disconnect has occurred. The Advisory Council Historic Preservation definition in the regs is about consensus building, but somehow that's not being communicated at a staff level at a project review level.

They are not understanding that. Apparently, what they've been told is it just is about data gathering. It's just about reaching out to a tribe, getting information, and then moving on, and you simply record that you reached out, that you received something back and there's zero focus on the content of those communications, and how those - how that content should actually have an effect on the decision-making process.

And then I think lastly the thing that I think troubles tribes the most especially when I do NHPA training is when they find out that there's no penalty phase in the law.

I think, again, if there's anything to be rewritten, if there's anything to take a second look at within the regs of the National Historic Preservation Act is the fact that there is no penalty phase.

So we have a number of rogue and (unintelligible) agencies that are that way because they full well know that there's no recompense for that behavior unless and until a tribe manages to be financially secure enough to take them to federal court.

And then somehow manage to survive a 2, 3, 5-year long court battle and typically lose.

So I think we need to somehow create some sort of disciplinary language, penalty phase, something in the regs whereby agencies and tribes know that when people choose to be willfully non-compliant there are ramifications for that.

You know, we have that in NAGPRA when we have non-compliance. They're very real; although, still small ramifications for that non-compliance. We desperately need that within the National Historic Preservation Act.

So again, while that's not an exhaustive list, I thank you so very much for your patience and for your listening ear. And on behalf of San Manuel Band of Mission Indians, I thank you very much for arranging this call and allowing us the time to speak.

(Bob): Thank you, (Lee).

Coordinator: And at this time if anybody has any comments, you may press Star 1. At this time, I am showing no comments.

(Jody Cummings): This is (Jody Cumming) again. We are almost halfway through our scheduled time for this consultation session. We'll continue to hold on the line for a while. It looks like somebody just came in the que and we'll let that person comment now.

Coordinator: Thank you. (Raylan Butler), you may go ahead.

(Raylan Butler): Hi. My name is (Raylan Butler). I'm the manager of the Historic and Cultural Preservation Department at the Muskogee Creek Nation. Thank you for allowing me the time to have a few comments.

I'm sorry. I'm recovering from a cold. First, I'd like to talk about protection of sacred sites and burials. We currently have an executive order 13007 and an MOU on sacred sites, but we feel that it's not adequate enough.

Sites such as the (unintelligible) or burials, I need to have better protection from development and discernments in possible damage beyond repair. You know, we have to have better laws and regulations in place to help protect these sites.

Our sacred places seem to be less important than those of non-natives when development is an issue whether on or off federal land. Sacred sites, including burials, should have stronger protection no matter where their location is.

And future development should not be allowed to occur on sacred sites including burials. We have very few left and our ancestors deserve a right to rest in peace where they are.

In terms of programmatic agreements, you know, we tend to find that we have lack of consultation with our tribe with existing federal agencies because they already have programmatic agreements and they no longer do Section 106.

Their requirements are they have PA's with the state (SHIPA) office and other agencies like the ACHP and have left the tribes out. And so they're doing their - what they're supposed to do for the PA's, but they're not consulting with tribes.

And so that's a problem. We need to be invited to participate and if they're not - if they have a P.A. with other people, they still need to follow Section 106 for tribal consultations.

And so another thing about that was mentioned in previous comments is that tribes should always and be able to be full signatories and not just a concurring party or invited signatory as long as the project will impact areas that where we have historic areas of interest and not just on tribal lands.

It's very important for removed tribes that we should have that kind of special consideration. Also, we have had instances where we've requested face-to-face consultation with a federal agency and they refuse to meet that requirement.

We feel that every agency should be obliged and provide this as a part of their government-to-government relationship, especially in long linear projects that take a lot of time to consult and review face-to-face meetings as needed.

Just doing letters and phone calls is not acceptable if tribes are asking to meet in person. One of the main things I'd like to bring up is that there's no federal

oversight for crude oil pipelines, and that's a big problem that I think that we have to address.

Unlike gas lines that are overseen by FERC, and transmission lines that are overseen by the DOE, petroleum lines are not made to provide a full culture resource survey as the other two linear projects because they are permitted by the Corps and the Corps has utilized nationwide permits for these larger projects, and they have used their Appendix C to not fully comply with Section 106 as the other similar projects do.

The Corps pipeline projects under their Appendix C, they only provide review of a small - few small water crossings that are chosen by the applicant to review.

This in many cases causes hundreds of miles of land that were not assessed for impact to thwart properties, cultural resources, or sacred sites. This puts important and non-renewable resources at risk of being destroyed.

Appendix C should be rid of. It should no longer be a part of longer linear project pipelines. These pipeline - petroleum lines should receive the same level of review as gas pipelines and transmission line - we would recommend that FERC oversee these type of projects instead of the Corps because at least with FERC there's the 100% of the line is surveyed.

Thank you for your time.

(Bob): Thank you, Miss (Butler).

Coordinator: At this time, we are showing no further comments. Again, that is Star 1. I am showing no further comments at this time. We do have another comment. (Ethel Branch), you may go ahead.

(Ethel Branch): Hi. Really, this is just a question. Given the amount of time left in this administration, I'm just curious how these comments are going to be incorporated or implemented since there have been discussion about...

(Jody Cummings): This is (Jody Cummings), (Ethel). We are taking the comments and looking at them as an interagency group. I guess it's unclear how they would be used by the next administration, but we are trying to, you know, take tribal input on this and hopefully package it in a way that it's going to be, you know, useful for those who are going to be, you know, heading up the next administration.

But beyond that, I don't really have any specifics that I can offer.

Coordinator: And at this time, I am showing no further comments. Again, that is Star 1 if you do have any comments. I am showing no further comments, sir.

(Jody Cummings): We'll hold just a few more minutes to make sure that anyone who's on the line that may have called in to provide comments that you have full opportunity to do so. While we're waiting, I just want to remind everyone again that we will continue to receive written comments on this topic until November 30, 2016, and you can submit those written comments to Consultation@BIA.gov.

Again, that's Consultation@BIA.gov. If you want to see more information about either the framing paper if you haven't had a chance to see that or any other information that we've put out publically on this consultation process for this particular subject matter on federal infrastructure decisions, you can see that at www.BIA.gov.

Again, we'll hold just a couple of more minutes and make sure that we haven't missed anyone who's called in to comment before wrapping up.

Coordinator: And again, that is Star 1 if you do have any comments. And we do have another comment from (Sean Alford). You may go ahead.

(Sean Alford): Hi there. I had spoken earlier as the first speaker and I have a question that everyone that spoke talked about a consent component that's going to be required during the consultation process.

And so thank you for those that had put that in their comments because it's important that we have that as a minimum standard moving forward that the United States needs our consent as indigenous people.

Without that, you know, there is going to be no change to this consultation process to have over 500 federally recognized tribes and only just have a few represented on this call really tells you the ineffectiveness of the consultation process that's occurring now.

You know, it's hard to just sit and talk into a speaker, into a telephone and not see on the other end of the line who we're talking to. And I'm sure there's a lot of iPhones and phones being texting back and forth on the other end if I know anything about federal agencies and sitting down with them at the table.

So the only way to really truly get them to put the phone down and to put their elbows on the table and lean forward is to make sure that they are trying to attain our consent as indigenous people.

If they're not required to get our consent, then nothing's going to change. And, you know, I do want to also say, you know, some of the other speakers, Navajo Nation, had talked about natural law and I think that's really critical and I want to say thank you to them for bringing that up because when we bring natural law - not the governmental policies and so forth, but natural law into the discussion, now you're talking to indigenous people.

You're not just talking to another organization, company, corporation, or nation, you know? When you bring in natural law, you bring in traditional people, you bring in indigenous people.

And so, you know, that also we heard a little bit of that from (Bobby Fee Billy) from Florida who said he was federally unrecognized, but, you know, I want to make sure that he understands that we recognize him and we recognize his nation, the council of the original Miccosukee Seminole nation, aboriginal people.

And so, you know, it's when these voices are left out of the discussion that consensus cannot be achieved and I heard that consistently through the talk is the need to move forward with consensus.

And I think that's important to note that we have to get consensus before moving forward on a project, also being there after inception of the idea so we can, again, to provide input to the federal agencies.

We do need face-to-face consultation and as the Navajo say, "Leader-to-leader," or decision maker to decision maker, you know? Countless times we sit here and just talk and the people that we're talking to have absolutely no authority to act.

And so really all they're doing is wasting our time and without someone there that has any authority we can't move forward anyway.

So, you know, the other thing when you talk about sacred sites, you know, we've seen it over and over again different sites, Navajos, we've seen the San Francisco peeps desecrated with the reclaimed waste water and the cumulative impacts of that not being considered one being wind and the blowing outside this key area, polluting the wells down below.

All of these things are there. And I heard one speaker say that after all these years of education and cultural education that they still don't understand, but I really do truly think that these - and know that these federal agencies do understand.

They understand exactly what they're doing and I've seen that creativeness come out of them in multiple ways. When they want something, they will turn water into wine. Trust me.

So it's understanding that we need to respect the natural law that holds the indigenous people together. That's where we need to begin, is we need to look at that natural law because the bottom line is right now these federal agencies have no respect for indigenous people.

If they do, then they would give us that right to say now to a project. They'd tell you, "You know what? You respect your - you know, you don't want this to go through? Enough said."

But they don't have that. They just find creative ways to work around us and that's just representative of the Dear Tribal Leader letter that goes out. And whoever answer that call, they'll be, you know - and those that didn't answer

the call, they were informed and obviously they weren't in agreement with the project.

So a lot has to change and until indigenous people really strongly make a strong statement to this federal agency Army Corps of Engineers for service, all the other groups out there and really say we do deserve the right to say no to a project, until we have that nothing's going to change.

So I wanted to say thank you all for all of the representative on the call to continue to stand and to give this message out, and I encourage these agencies to begin to listen and not only that, begin to act on what's being said instead of playing the shell game and cat and mouse and everything else that's been going on for a real long time.

And I think we're at that point we better change because as the one elder said earlier, you now, "We have to change for the future and we have to stand on that natural law and we have to do the things that are right for our people and the future."

Thank you.

Coordinator: We do show one further comment. Would you like to take that?

(Bob): Sure. That would be fine.

Coordinator: (Aaron Pamon), you may go ahead.

(Aaron Pamon): So maybe I will close it out, and I don't know if anybody else is listening other than the federal partners, but I just want to clarify because I was one of the tribal leaders who pushed for consultation on this topic.

And so the previous caller may not know, but there was a one listening session that was very well turned out at NCAI. It was probably four or five hours of listening.

We didn't call it, unfortunately, as a consultation just because we didn't get time to get it in the federal register. But there were four or five consultation sessions. And before we conclude in a negative way that there won't be any outcome, I believe that there will be a positive outcome.

I don't think that President Obama would take everybody's time in the last few days of this administration have you guys traveling all over the country and to patiently be on this call listening for our input.

So I think we have to have the right attitude. We have to think positively that this is all for - it's going to turn into something and I hope it is a regulatory change that the president will issue.

And, of course, the next president can easily undo it, but I don't know that it'll be that easy. He will have to specifically undo it. So I just want to, again, say thanks to all the federal partners for all the listening sessions and hope that you can keep the faith even though you get critiques from Indian country all the time.

You guys have the toughest job to have to advocate our trust responsibility and hear all of our criticisms and yet, try to take that in a positive way and spin it back to the president to do something.

So again, thank you.

(Bob): Thank you, Chairman. It doesn't look like there's anyone in the que, but we'll hold just a minute more. I want to make sure any tribal leaders, those representing federally recognized tribes who wanted to call in and have an opportunity to comment that you do have opportunity to do so before we end the discussion.

Coordinator: Once again, for comments over the phone lines, please press Star 1 and record your name. Again, as a reminder to parties, please press Star 1 and record your name.

Our next question comes from (Bobby Fee Billy). Your line is open.

(Bobby Fee Billy): Hello. My title is a Miccosukee Seminole Nation operational people and I can see and just recognize tribes and we've been asking to sit down with Obama almost, I don't know how many years, maybe eight years or beginning to eight years.

And I think it's important to us to sit down with him because it affect us too. It might not - we might not be recognized tribe or government-to-government. We're still in our land, an indigenus land.

So a lot of those things happened between developers or Army Corps or water management or other agencies what they're doing in our country hurting us, the future need.

So I thank the people has to realize we are the people living in our country at beginning of creation, not only just a recognized tribe living in this country.

So you have to honor yourself to live in an - our land to learn how to respect the people and learn how to acknowledge the people. You're causing their problems. So I think that's what...

(Jody Cummings): Thank you for your comment, Mr. (Billy). This is a consultation that is reserved for federally recognized tribes, leaders of those tribes and representatives of those tribes who have been asked by them to comment.

But we have heard your comment today and we thank you for calling in and participating with us. So thank you very much. And it looks like we've got another caller in the que, so we'll move on to that person at this time.

(Bobby Fee Billy): Yes, but that's not nice the one you call - cut me off like that.

(Jody Cummings): I appreciate your participation. So operator, could you please move on to the next caller?

Coordinator: Sure. Our next comment comes from (Owen Kelly). Your line is open.

(Owen Kelly): Good afternoon, everybody. I just have a few comments to make. I do appreciate, you know, having a meaningful consultation and sometimes you have a consultation get invited to consultations and they really aren't meaningful, but I do appreciate when it is a meaningful consultation.

As the Iowa Tribe, you know, we're concerned we had presence in over 11 states and we have ancestral burial grounds and sacred sites throughout those states and we're very concerned about them.

There's times where we do get some good consultation and then there's times where we get no consultation that things that happened around these states, you know, and how can we approach that? How can we fix that?

That's a very difficult thing to do. It's a very difficult question to answer. But I would like to see that. I was not aware of this consultation until I happened to watch (unintelligible) here and I saw he was on the consultation. So I sat here for a little bit, but I didn't get any notification about this consultation as a tribal leader or I would've been more prepared.

But, you know, I appreciate this and I do agree. I heard the first one of the callers talking about the Section 106 Appendix C. I think that needs to be looked into, but right now, that's all I have to say.

(Bob): Thank you for your comment.

Coordinator: Once again, for comments over the phone lines, please press Star 1 and record your name. Once again as a reminder, for comments over the phone lines, please press Star 1 and record your name.

(Jody Cummings): Unless tribal leader or someone who's authorized to speak on behalf of a federally recognized tribe jumps in the que here quickly, I think we're going to go ahead and end this consultation. Just wait a second more to make sure we've given full opportunity for anyone who hasn't spoken who is representing a federally recognized tribe the opportunity to speak. Okay.

Seeing nobody indicate that they'd like to comment, looks like we will end the consultation at this time given that we do not have any remaining speakers. It is approximately 2:56 p.m. here on the East Coast.

I want to thank everyone for your comments today. Just like all of our other sessions that preceded this one, the comments that have been raised here have been very thoughtful and very helpful and on behalf of the team that has been receiving these comments, you know, we do take them very seriously and we'll be looking at them very closely.

Just again, want to remind everyone that we will be receiving written comments until November 30, 2016, and if you'd like to submit written comments to us, you can do that via email at Consultation@BIA.gov.

If you'd like more information about this consultation process with respect to the comments we're receiving on federal infrastructure decisions, you can go to www.BIA.gov and get more information there including seeing the framing paper that was put out before this round of consultations began.

So again, let me thank everyone for your input today and we look forward to receiving any future written comments that you may have. You can also at BIA.gov see transcripts of the previously held consultation sessions and I believe that any future transcripts that have not yet been published from a handful of consultations that we don't have comments yet up for will be provided at that same website as well, BIA.gov.

So with that, I thank everybody for their time today and we look forward to receiving your written comments. Thank you.

Coordinator: This concludes today's conference. Thank you all for your participation. You may disconnect your lines at this time.

END