UNITED STATES DEPARTMENTS
OF THE INTERIOR, JUSTICE AND ARMY

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IN RE: FEDERAL CONSULTATION WITH TRIBES REGARDING
INFRASTRUCTURE DECISION-MAKING
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HELD ON NOVEMBER 10, 2016

AT

SOCKALEXIS ARENA
16 WABANAKI WAY
OLD TOWN, MAINE

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PANEL MEMBERS:

Moderator Elizabeth Klein, Associate Deputy Secretary and Principal DAS for PMB

Kenneth Martin, Deputy Assistant Secretary for Tribal Government Affairs at the US DOT.

Charles "Chip" Smith, Assistant for the Environment, Tribal and Regulatory Affairs with Army Civil Works

Colonel Christopher Barron, Commander of the NE District Army Corps of Engineers

Valerie Hauser, Director, Office of Native American Affairs, ACHP

Dawn Baum, State Conservationist, NRCS, USDA

Michael Rodrigue, COO Department of Energy, Office of Indian Energy

Jody Cummings, Deputy Solicitor, Indian Affairs, Office of the Solicitor

MEMBERS IN AUDIENCE:

Richard Kidd, Executive Director, Federal Permitting Improvement Council

James Haggerty, Federal Permitting Improvement Council
Thursday, November 10, 2016 - 8:45 a.m.

PROCEEDINGS

(Prayer offered)

MODERATOR KLEIN: Okay. Well, thank you everyone for joining us here today on this beautiful day outside. Hopefully folks will get a chance to get some sun today because I understand up here it's going to get cold real soon. The radio might have even said something about flurries tonight.

So thank you, my name is Elizabeth Klein. I'm with the Department of Interior. I have possibly the longest and most ridiculous title in all of government so I'm not going to go into all of my responsibilities with the Department of Interior, but I am in the Deputy Secretary's Office, Deputy Secretary Mike Connor, and currently I am also the Acting Assistant Secretary at the Policy, Management and Budget Office of the Department of Interior. That's the office that oversees a lot of the budget for the Interior Department.

Today this morning I have with me representatives from across the federal government, which is appropriate given that throughout these consultations what we are really able to do is bring together federal agencies that all have a responsibility and authority to make decisions on infrastructure projects. So I'm going
to turn it over quickly to have all of the folks up here
at the table briefly introduce themselves and let us know
their names and where they are from.

MR. MARTIN: Good morning, everyone. My name is
Kenneth Martin. I'm the Deputy Assistant Secretary for
Tribal Government Affairs at the United States Department
of Transportation.

MR. SMITH: Good morning. My name is Chip Smith.
I'm the Assistant for the Environment, Tribal and
Regulatory Affairs with Army Civil Works in the Pentagon.
Glad to be here. We're here because we take this
seriously. We build infrastructure, and we authorize
infrastructure on our regulatory program. Anything we
can hear from you all about how we can improve our
coordination and consultation will be much appreciated.
I'm going to all these consultation meetings on behalf of
the Army and am always joined by the Commander in the
area in which we meet. Thank you.

COLONEL BARRON: Good morning. Colonel Christopher
Barron, I'm the New England District Commander of the
Army Corps of Engineers, and I want to thank you for
allowing me to be part of this conversation this morning.
Thank you.

MS. HAUSER: Good morning. I'm Valerie Hauser. I'm
the Director of the Office of Native American Affairs at
the Advisory Council on Historic Preservation. As some of you may know, we're the Section 106 agency. I want to thank you all for coming to talk with us this morning, and I look forward to hearing from you and how you think that we can do a better job.

MS. BALM: Good morning. I'm Dawn Sturdevant Baum. I'm an attorney at the U.S. Department of Justice and the Office of Tribal Justice. I am Menominee, from Wisconsin originally, and I'm very happy to be here and looking forward to hearing from you.

MR. RODRIGUE: Good morning, my name is Michael Rodrigue. I'm with the Office of Indian Energy Policy and Programs at the Department of Energy. Thank you for inviting me.

MR. CUMMINGS: Good morning, my name is Jody Cummings. I'm the Deputy Solicitor for Indian Affairs at the Department of Interior. Glad to be with you today.

MODERATOR KLEIN: Also in the audience we have Richard Kidd and James Haggerty who are with the Federal Permitting Improvement Steering Council. That council was recently created by a piece of legislation called FAST 41. FAST 41 in part is meant to help bring agencies together that are working on infrastructure projects around the country to try and better collaborate and communicate with each other and coordinate all the
various approvals that need to happen, and we're hopeful
that as part of that we can make sure that, as we're
doing throughout these tribal consultation sessions,
improve how we do tribal consultation on infrastructure
projects.

So I know that on the minds of lots of folks is
the project "Dakota Access Pipeline," that's been on the
minds of lots of folks, has gotten a lot of attention and
has really brought to light the need for better
tribal-federal coordination on infrastructure projects.
I will say at the outset that that project, although
there's decision-making ongoing, there's litigation, so
we're not focused on that project in these consultations
but rather want to look forward and want to take lessons
learned from past consultation projects -- or past
infrastructure projects and how we've done consultation
on those, find the best practices, identify ways to do
this better.

I think in particular we're looking for
positive examples of things that have worked in the past.
We certainly are keenly aware of ways that these
processes have not worked and how they have failed in the
past, so obviously we want to hear that, too, but we
really are looking for ways to improve and so are hopeful
that we will hear some thoughts that you all have on that
in today's session and in the remainder of the sessions that we have on this subject.

So we're all pleased to be able to be with you in person today, but I also want to point out now, and I'll remind folks at the end, that we're also accepting written comments, and those comments are being accepted through November 30th, 2016, and they can be emailed to consultation@bia.gov.

And so I think we have some folks signed up here to provide comments, and it's possible that some of you may have missed this instruction or didn't get a chance to sign in when you came in since I only have four people on my sheet here to provide comments, and so we'll run through that list, and if others are interested in providing comments today, we'll then have folks lined up behind the microphone to provide comments.

We have a court reporter here who is transcribing this session so we ask that you make sure that you speak into the microphone and, importantly, please state your name and your tribe when you do that so that she can get a proper record of your comments today.

We'll probably take a break around 10:00, 10:15 or so just so folks can stretch their legs and give our court reporter a chance to stretch her fingers, and so with that I'm going to go ahead and turn it over to you
First on the list I have Ramona Peters. Would you like to step up to the microphone, please?

MS. PETERS: Good morning. My name is Ramona Peters, Mashpee Wampanoag THPO. Actually we have quite a few comments, and they are not arranged in any fashion that might -- there's certain questions like timing in the process, and I think one of those that we should start off with is timing on infrastructure projects because there are multiple years to actually accomplish a project, and we need to perform accommodation for turnover both on the tribal end as well as on the federal agencies that are overseeing the project. We find that a breakdown in the communication often happens in that regard -- and maybe some of these comments might work in a different session, but in looking over the whole experience that we've had, we come on the tail end of a project or halfway, three-quarters of the way into it, and at that point tribal input is not really well received.

We noticed in the -- we've had the experience with projects where sort of investigative surveyors begin with the archaeology group, with walkovers, and at that point the tribes are not involved, and the 106 process is not triggered until a permit is issued. By that time a
lot of our properties have already been impacted on an archaeology level. Access roads have been created to accommodate the infrastructure project. So as to the timing, I think we would like to see that the 106 is triggered earlier. We know that there's been substantial investment in the project, again, after it's triggered. In some cases pipes have already been lain or towers are built, and the permit is given afterwards, so that needs to change.

There is a number of different types of infrastructure projects that we work with so I am going to ask my deputy to work with me on this one because we have coastal people in dredging projects, and I don't know how specific you want to get into different types of projects, but what we see is -- I'm looking for some kind of guidance here. Do you want me to just rattle off the whole list at random?

MODERATOR KLEIN: The difference is in consultation and different ways we approach consultation from project to project, type of project. The type of project, that's important to us, so if that's part of what you're getting at, you know, the difference between dredging projects or on-the-shore projects or -- if that's what you're getting at, we certainly welcome those comments.

MS. PETERS: So we receive different types of
packages in notification for review. We've -- so at a point where the project is sent to us without a construction plan, of course we -- we call or send a request for that, the project plans. Some of the things we're talking about, dredging projects, dredging projects tell us where they want to dredge, but they do not tell us where they want to put the spoils, and that can affect our water supply. We were able to step in and stop one such project that was going to dump their spoils in the bays, and these bays are contaminated, so there needs to be something in the regulation requiring dredging projects to notify us and include where they're dumping. As well as there are around -- we're from Cape Cod. There are beach management projects. Basically these are dredging offshore -- not far offshore, they're dredging and bringing up sand to put on the beach. We lose beach every year, and these projects are -- usually they get a five-year permit, and we are never told, given a map or indication of where in the shelf they're digging. Of course we're concerned about impacts of sunken sites, village sites that we have around Cape Cod and Nantucket all along our shoreline.

There is also maintenance projects, so once an infrastructure project happens, we know that through the years things have to be repaired, and there's a schedule
made I think for propane gas. It's something like 40 years to change out the pipes. I think that we're looking at projects that are being maintained that started well before the 106 process actually existed, but now that it does that in the consultation and when we begin to work with the agency, that the maintenance schedule is also put forward with some ideas so that the tribe knows that someone is going to come back out and perhaps dig again, maybe widen the pipes or require new access roads. We see this along the power lines, as well, maintenance projects that involve extensive digging by machinery; and when we notice it and inquire about it, they say, oh, we're just doing maintenance, but these -- these forms of maintenance actually have high impacts in our homelands, and we're not notified or consulted.

We'd like to see assurances that after a project has been agreed upon and passes all of its environmental impact, the tribe should be informed or have assurances that if something does happen where there's a leakage or -- I'll just use that example, something that's leaking, that it will be -- we need to know that it will be repaired at the cost of the proponent in a correct and efficient manner.

It's never talked about where -- I'm sure that there is something in place for the companies that need
to repair these things, but the tribes are -- when we
make an agreement and sign off on a project, we're also
saying to the tribe that a lot of things that aren't
actually documented, like we can promise them -- or we
are promised that it will happen immediately rather than
put off. And I've seen, actually physically seen uranium
tailing piles left on the surface next to a village, and
the tribe was not informed that these are radioactive
material. I mean, this is -- has happened, and
groundwater is contaminated, and people are not informed
of the hazards that may come as a result of these
projects. So I guess what I'm asking for is something
like those -- those medical warnings for pharmaceuticals
and those types of things that can go wrong so we are
clearly informed, and we may consent.

There are a lot of tribes in the country that
do not have more staff to actually review thoroughly
these things. I'm happy that my tribe has invested in
that so we can review. We have a number of resources,
but I know that a lot of other tribes do not. We just
recommend that the language be stronger in terms of
funding for the -- for our review, that tribes be able to
not take the resources away from their people to review
projects that are coming in from elsewhere. In many
cases these projects, they're not directly helping the
tribe in any way. So the language is suggesting that federal agencies may assist, financially assist, but I think at this point in history that we can't accept that. If you're asking people to do something, you really have to supply the means for us to -- so I'm suggesting some sort of fee schedule.

We've consulted on a number of different projects, and with the railroad or cell towers or propane gas, when you have projects like these where there are specialized training required for us to be on-site, we have been charged those fees to train our CRMs to get a sticker -- it is basically a sticker that goes on your hardhat to give you access to the site. So we do an eight-hour -- or some of these take more than an eight-hour training, forty hours in cases. These are expensive trainings that tribes are also having to put out money in order for us to monitor in sensitive areas.

There's inconsistencies between federal agencies and how they consult with us. One of the parts we'd like to see consistent is many -- we have a 30-day window to review the project; however, construction plans or engineers' plans, soil samples, things that we require to actually review the project, when we need to have additional information provided, we would like the language to make the federal agencies aware that until we
receive those additional information, the 30-day clock
doesn't start.

If there is language that says that federal
agencies may not pass along their duties to tribes to
some -- to a proponent or some other entity, we would
like to see -- make sure that that is enforced. We do
see violations there.

We have successfully worked with a number of
federal agencies and proponents who are willing to inform
us when there are materials, cultural materials that are
going to be harvested in order to complete their
projects. There are a lot of rare minerals, medicinal
plants, et cetera, that are going to be destroyed by
infrastructure projects, and we have a list that we
supply to -- during consultation and notify if these are
something that we could harvest ahead of the project in a
timely manner that doesn't interfere with the project
itself. I don't think that's something that's in a
regulation, but maybe that's something that can be
offered as part of the consultation, to see if there's
minerals like soapstone or things like that that are rare
and hard to find. The tribes do use them. When we find
something like that is destroyed by these projects, it
seems really upsetting. There's cultural properties.
There's a classification that actually captures that.
I want to reiterate that in the permitting process to be sure that archaeology-disturbing activity, rather than just be a part of a survey, if that is going to occur in our homelands, we need to be informed. We ask at least two weeks to schedule our people so that we can go out to monitor.

This is David. We're going to review our notes, and if there is anything that we haven't mentioned, his name is on the list, we'll come back.

Thank you.

MODERATOR KLEIN: Thank you very much for those comments. I also just realized with some amount of horror that I neglected to thank Chief Francis from the Penobscot Nation who tendered his hospitality in hosting us here today, so if you haven't met him, you'll have an opportunity to do that, but thank you very much for having us here. This facility is really a wonderful place to do this.

Next on our list we have Brenda Commander.

MS. COMMANDER: Good morning. My name is Brenda Commander, and also it's an honor to be in the Penobscot Territory, and I also thank Chief Francis for welcoming us, and I'm pleased to be here today.

I am Chief of the Houlton Band of Maliseet Indians. I want to thank the Departments of Interior,
Justice and Army for providing this opportunity to help you develop consultation processes that ensure federal decision-making is consistent with federal obligations to tribal nations. I was pleased to see that your invitation letter referenced treaty rights in regard to those obligations. I wish it had also mentioned the federally -- the federal fiduciary trust responsibility and the inherent rights of Native American tribes described in the United Nations Declaration on the Rights of Indigenous Peoples. These are key concepts to instill in federal agencies if they are to be truly successful in meetings these obligations. The federal government must engage us -- with us as rights holders not stakeholders.

As an elder and an elected leader of my tribe, I am charged with the responsibility of protecting the health and welfare of our members and sustaining and renewing our traditional ways and ancient cultural ties to the environment. I believe you, as our trustees, have a legal obligation consistent with your authorities to support our efforts to fulfill this charge.

We Maliseets traditionally fish, trap, hunt and gather in and around the land and waters of the Wolastoq or, as you may know it, the St. John River, as we have done for many generations. We have trust land along the Meduxnekeag, a tributary of the St. John. This water is
sacred to us.

I would begin my comments today by sharing an unsatisfactory consultation experience we had with the regulatory arm of the Army Corps of Engineers that took place in 2013 regarding a general permit proposed for New England for infrastructure development. While our input was solicited, the Corps' approach was deficient in several important ways:

It was clear to us that while the Corps felt it necessary to consult with us regarding their responsibilities and under the National Historic Preservation Act, they did not believe the President's Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, had any effect in this case. We heard that our concerns regarding the potential negative effects of their federal permitting process on our river did not warrant specific notification, let alone consultation.

The Corps also did not acknowledge any federal fiduciary trust obligation to us during this process.

In contrast to our experience with the Army Corps of Engineers, the Environmental Protection Agency, EPA, has provided us with an exemplary consultation process, informed by extensive consultation with federally-recognized tribes in the Northeast region and
across the country. While implementation of the process is still a work in progress, they have invested time, resources and a commitment to EPA's 1984 Indian Policy, their fiduciary trust obligations, and most recently honoring tribal treaty rights. Curt Spaulding, Regional Administrator of EPA of New England under the Obama Administration, meets with tribal leaders at biannual tribal leaders summits to proactively discuss our concerns and issues. He has visited every tribal community in the region, sometimes more than once, to see firsthand what those issues are. This consultation has netted tribes in the region concrete actions that support the protection of tribal trust resources. This proactive approach allows agencies to anticipate concerns we may have around proposed infrastructure projects.

You have asked for examples of collaboration with federal agencies we have found useful. We are currently engaged in two collaborative efforts that both -- both involve very positive engagement by the Corps. One project, which started several years ago, crosses the United States-Canadian international boundary to develop a fish habitat assessment and management plan for our international Meduxnekeag River. More recently, we have begun working with the Corps and other federal agencies on a second even more ambitious effort to create
international collaboration around management of the entire St. John River watershed, which includes two countries, two provinces, a state, two federally-recognized tribes and six Maliseet First Nations. These collaborations have been extremely meaningful because the federal agencies involved have asked us what do we need and responded in very concrete ways to address those needs.

Streamlining the consultation process across federal agencies would be a very helpful way to support our ability to provide input into infrastructural decisions. We are a small tribe with limited capacity, and we are flooded with consultation requests from our very large federal government. Collaborative consultation, where possible, when multiple federal agencies are involved in common decision-making would allow us to more effectively engage in these consultations.

I have attached a specific list of recommendations developed by the United South and Eastern Tribes to answer most of your consultation questions. We are a member of that organization and generally support their recommendations.

We have made one small but significant modification of those recommendations by striking out the
language "in a manner similar to state government." This language and other federal laws, rules and regulations has created as many problems as it has solved in our experience. Tribes are not similar to states of the United States in many ways. Attempting to fit us into systems and processes designed for the federal-state relationship often doesn't work well.

In conclusion, I want to share the sentiments of a federal employee who has supported our efforts at protecting our river for almost 20 years. When asked why, he tells people first of all because it's the right thing to do and something he wants to do, and then he tells them that if that were not true, he would still do it because federal law requires him to. If every federal agency and employee took this to heart, we would go a long way to improve federal-tribal relationships.

Woliwon.

MODERATOR KLEIN: Thank you very much for those comments.

The next person we have on the list is David Weeden.

MR. WEEDEDEN: Hello, I'd like to thank the Penobscot Nation for hosting this discussion and listening session. It's a beautiful area here. I'd like to thank them for having us.
First I'd like to start off with, you know, the process we -- a lot of the tribes have only a few staff members, and to keep up with the amount of reviews that we have to take is very difficult. I conduct reviews of projects for our tribe, and with the volume it's very difficult to maintain a 30-day turnaround on a lot of project reviews. That I think needs to be addressed, and one way in which that could be done is the tribe shouldn't have to bear -- the monies that the Park Service distribute for historic preservation is horribly inadequate. The projects that need to be reviewed, there should be a fee schedule developed so that the proponents of these projects bear the brunt of the cost, not the tribes, in order to conduct reviews, and they have the staff capabilities to do those reviews in a timely manner to meet the 30-day turnaround. If a fee schedule is developed, each proponent would be responsible -- I'm not asking for the federal government to come up with more money to hire more THP -- THPO -- THPO staff. The projects should be the -- the project proponents should be the ones to do that.

That can be proven through the FCC's model of Section 106 consultation through their tracking. They are a model agency as far as how they monitor Section 106, how it's conducted and reviewed, the tracking
through their TCNS system, and they have one of the
best -- best models for doing that.

Most of the other agencies, they don't really
track or follow the process, and if some of these
projects take a long time, sometimes with different
administration the THPO offices' staff sometimes changes.
To have a smooth transition -- well, a smooth transition
doesn't always happen in those instances when these
projects are spanning over multiple years, so a good way
again would be the FCC's model of tracking the projects
through a computerized tracking system.

Also, they have clear and decisive language
that allows the tribes to charge the proponents for
reviews. That's only fair. Tribes have limited
resources. As I said, they're understaffed, and we
shouldn't bear the brunt of the cost for reviewing all
these projects. It's tough, a lot of us review over
large areas, and it's almost impossible for one to two
people to do that in a timely manner.

Another issue I have is the EPA. They delegate
a lot of their authority to the state levels, and there's
often projects that happen that they kinda take a back
seat to, and, as Ramona said, the states are not allowed
to delegate their authority. And if they're willing to
delegate their authority as far as the environmental
impact review process, that's one thing, but as far as
the consultation and the trust responsibility for the
government to consult with the tribes, I don't see where
that's done in some cases, and that needs improvement.
It needs to be looked at, and there needs to be
definitive language with that directive.

There was one -- another project -- I also sit
on the Cape Cod Commission Regional Planning Board, and a
frustrating project that came up down there is the gas
line [sic] was putting in new gas service down on the
Cape. It's a very sensitive environment, and real estate
is prime down there. The gas line [sic] wanted to --
they want to put in a gas line and -- a new gas line that
maximizes the capacity of the line to develop further
networks of gas service to residential areas along the
Cape, and rather than taking out the old line, they're
doing the project, and they want to do it as a
maintenance project is what they're calling it. They're
going to abandon the line, the old line, and install a
new line. Co-locating is what they're calling it and
terming it, being co-located, but it's still two to three
feet away from the existing line. The existing line is
going to remain in service while this work is done, and I
don't think that's a good practice personally. I don't
know -- I'm not fully aware of how that is done, but, you
know, you're basically leaving -- the metal is going to break down at some point. Any residual fuel or gas that's in that line is going to find its way to our water systems, and I don't think that's the best practice. The gas companies should be responsible for taking out the old lines before putting in new lines, and I don't see that as a maintenance project. I see that as a new construction of a new line.

Another instance is power lines. Down on the Cape we work with the different agencies and power companies to conduct 106 all over Massachusetts, the state of Massachusetts, but in our own backyard, the town of Mashpee and also the neighboring town that sits adjacent to Mashpee, Falmouth, a lot of those power lines were put in before the Historic Preservation Action and Section 106 was enacted. Because they were done at that time, those lines have never had any archaeological work, surveys or testing done on those lines, and it's because of a town bylaw that says as long as it's a maintenance project, that they don't have to do the -- comply with Section 106 or do any sort of historical reviews of the areas. We know where there's villages -- in some of the areas they're going right by villages, and there could be burials or anything else out there, and they're just blasting through the areas because of town -- you know,
municipal bylaws that allow them to navigate around the
Section 106 process. That's often frustrating. We
sometimes reach out to them when we find out they're
doing work in the areas and ask them, you know, to have a
conscience and go out and do testing. The answer they
give us is that they're not -- they don't have to, and
minimally they might test, you know, a certain area here
and there, but oftentimes we don't have luck with pushing
the issue. That's frustrating when, you know, around
other parts of the state they have to comply with Section
106, it's mandated, and they do so because the law states
that they have to. It's only when the law states that
they have to that they will do the work. They don't have
a conscience, and they're not going to do it just out of
the kindness of their hearts.

So any of these laws, they need to have teeth,
you need to give clear directives, and they need to also
allow for the tribes to conduct the reviews and be
compensated for their time and efforts to do those
reviews.

Also a frustrating part of when I do the
reviews is sometimes when we do the reviews, some of
these proponents will hire a cultural resource consultant
to do their archaeological testing. I have noticed that
sometimes projects, they'll limit the area of interest to
a small area, and they'll restrict the areas that they
look at during their review, sometimes as small as a
quarter mile. If you expand that, you'll find a lot of
different listed inventories of known archaeological
sites in a broader area so there should be a minimum
standard as to the area that you look at to understand
the full context of that area's cultural sensitivity, and
they shouldn't be able to manipulate that to restrict
their area that they look at to such a narrow window
where they finally find nothing.

One area in particular, I believe it was in the
Mattapoiset area, they restricted it to a quarter mile.
When I do my reviews, I look at a two-mile area around
the project, depending on the size of the project and
what the scope of work is. Sometimes I'll restrict that
if it's, you know, minimum work, but if it's any sort of
large-scale ground disturbance that's proposed, then you
have to look at the broader area, and two miles is
appropriate normally for my understanding in order to
understand the area's cultural context. The reasoning
behind that is that here in the Northeast is traditional
cultural knowledge tells us that our encampments and
habitation and occupation often rotated within a two-mile
radius. We didn't stay in the same place year after year
after year, although a lot of the same places we used
over -- transitioning over multiple time periods, but they didn't always stay in the same exact locations. A lot of that's because you don't want to deplete the resources within that area. The other thing is you don't want to leave a footprint or impact in that area so you have to allow the ground to heal. There are farm crops that lose nutrients if you overwork an area, so you rotate the area so that the ground has time to replenish its nutrients, which then will give better nutrients to the food that you grow in that area. If you don't do that, then you're depriving yourselves of the nutrients the food brings to -- to your people, so we rotate those areas out, and when doing so sometimes those areas cover a two-mile area.

The other reason why I look at two miles is because our burials a lot of times were anywhere from one to two miles away from your camps. Sometimes they are close, but a lot of times, you know, our people buried -- because they moved around, they were within a two-mile area of habitation sites and occupation areas, so you have to look at the broad context to understand the logistics of how they were -- people were moving around in that area.

As far as wetland replication, I don't feel as though swamps and natural resource areas should ever be
mitigated. Swamps are the best form of filtration that
is known to man, and you can't engineer that. A lot of
people like to try to engineer and recreate what the
Creator has already done for us. You can't engineer a
swamp system. A swamp system is a unique natural
environment that filters a lot of the impurities, and a
lot of times they're that top layer of the -- to the
filter of water going into your aquifers, and you should
never try to tamper with those and mitigate something
because of a project. Also, the swamps also have a lot
of resources that are useful to us as indigenous people,
medicinal plants and such, so those areas should never be
mitigated through wetland replication.

When some of these things are done, steeper
fines should be imposed and compensatory damages should
be pursued. There has to be -- we often look to the
federal agencies to champion our -- our concerns, and
that's not always -- always the case. It's been my
experience that some of the -- some of the federal
agencies, they only use language to navigate the -- the
ACHP, their language is wishy-washy. They don't give
clear directive. You know, you couldn't do this, but you
can -- you know, you don't have to, the law doesn't
state -- we're not telling you you have to, and there
needs to be clear language to give directives to enforce
what we're trying to do here. Otherwise, it's meaningless.

Also, there should be -- the BIA should establish training for a lot of these THPOs. You know, oftentimes in order to understand an area fully, you have to look at soil components, stratifications, hydrology. Not everyone is familiar with that stuff. I know I -- I wasn't familiar with that when I first came to the tribe and started working within the department, and I had to go out and seek the knowledge for myself; and sometimes it's easy to find, sometimes it's difficult to find. But, you know, the BIA should equip the THPOs and the THPO offices with the tools necessary to do proper review, and that should be done through training; and they could do it, you know, invite all tribes to specific regional areas to conduct those trainings; but, you know, further training would be helpful to ensure that they're doing things in the best way possible with the most understanding of the different sciences and the things that you have to look at.

Echoing what Ramona -- what Ramona touched on earlier was, you know, FERC. One issue is they consider themselves a commission, and they don't have to abide by all of Section 106 because they're not a regulatory -- they're not an agency. That is -- that's been told to
us, but all commissions need to follow the same standards and enforce Section 106 because it is the right thing to do.

We stumbled across a project where the gas line -- they hadn't filed for the pre-filing with FERC, so Section 106 wasn't implicated -- initiated at that time. They were trying to get all their ducks in a row and complete their whole EIS statement before they even pre-filed. That means Section 106 isn't even started. So by the time they do their pre-filing, they've already gone through and done all their testing, there's no reason for consultation after that point, and that -- that's a problem, and that should not be allowed. They need to reach out to the tribes. You know, some tribes don't want to work with the subcontractors, the people lower down on the ladder, but it's -- for us sometimes that's the only way to have your voice heard and be a part of the process, so we have worked with some of the cultural management, resource management firms who are subs of the proponents, but, you know, that's not proper Section 106.

We are Sovereign Nations so we do agree that Section 106 is supposed to be conducted as a government-to-government relationship so that it's -- they're held accountable and concerns are met, but if we
didn't stumble across the project, we would have missed out on the whole opportunity that the pipeline's traveling — and I forget how many miles, multiple states. So that's — that's a problem, you know, those laws have to be corrected and amended so that they're not able to do those — do their archaeological testing and ground-disturbing activities associated with archaeological studies prior to even pre-filing which initiates Section 106.

I think I've touched base on most of what I wanted to talk about. If I come up with anything else —

(Sotto voce between Ms. Peters and Mr. Weeden)

MR. WEEDEN: Oh, one of the — Ramona just mentioned was in here, the sheet that came out, Federal Consultation With Tribes Regarding Infrastructure Decision-Making Framing Paper, over on the text box, examples of infrastructure, it says oil and gas pipelines, but it doesn't mention anything about fracking. You know, tribes should definitely be involved, fracking should be included in that list, and it definitely needs to be addressed. I can’t speak for all tribes, but fracking is -- I don't see it as an environmentally responsible way to retrieve energy.

(Sotto voce between Ms. Peters and Mr. Weeden)

MR. WEEDEN: Ramona just made a good point that when
developing fines, they have to be higher fines that's
going to hurt them where -- you know, hurt them where it
hurts, in their pocket. You can't have minimal fines
that only -- you know, it's just a drop in the bucket.
They'd rather pay the fine and keep -- just to keep the
project moving. That -- that does absolutely nothing.
If there's no penalties in the laws, then the law has no
teeth, and it's just words on paper.

Also, on larger scale projects, when the
projects go across multiple states and go through
multiple tribes' areas of interest, those proponents need
to set up -- accommodate the tribes getting together and
speaking amongst themselves to come up with --
coordinating an effort to address their individual tribal
concerns. That's not always done. I think it would be a
good practice so that the tribes come together and speak
as a unified voice and address each of their concerns at
once. I think that would be better to expedite the
process. Each tribe is sovereign, and no one tribe
speaks for the other, but it would be helpful for us to
come together and share the information that we have.
Our tribe, we do not provide maps of our areas of
significance. That's proprietary knowledge, and it's not
for outsiders. That's for us to hang onto so -- but it
would be beneficial for the tribes to come together and
talk amongst themselves when these projects impact multiple tribes as a sovereign nation. Thank you for listening.

MODERATOR KLEIN: Thank you for those comments.

Next on the list we have Lillie Williamson.

MS. WILLIAMSON: Hello, my name is Lillie William. I'm with the Jena Band of Choctaw Indians from Louisiana. I'm a tribal council member. I also work as environmental director under the direction of the Environmental Protection Agency, I work with Indian Health Service under the Sanitation Program, and I also work with the FCC in relation to cellphone tower monitoring. And like this gentleman here before, the FCC really has their processes in order so that's an example if you would like to look at. They work really good.

I'd like to read what they had. It was October the 6th, 2005. The FCC clarifies provisions of Nationwide Programmatic Agreement that apply to Indian tribes. Today FCC released a declaratory ruling clarifying portions of the Nationwide Programmatic Agreement that apply to the participation by federally-recognized Indian tribes and Native Hawaiian organizations in review of proposed communication towers or antennas on properties to which they attach religious or cultural significance --
THE REPORTER: Could you slow down so that I can understand you a little better, please?

MS. WILLIAMSON: Okay, sorry.

The NPA was adopted by the FCC in September of 2004 to streamline and tailor the review process for communications towers and other FCC-licensed facilities under the National Historic Preservation Act. Today's action specifically addresses situations where Indian Tribes or Native Hawaiian Organizations do not respond to efforts by members of the industry or the FCC to determine whether the Indian Tribe or Native Hawaiian Organization has an interest in participating in the review of the proposed construction of communications tower or antenna.

In today's ruling the FCC clarified that once a wireless provider or other tower applicant has made two good faith efforts over 40 days to obtain response from an Indian Tribe about a proposed communications tower or antenna, the FCC will, upon notice from an applicant, send a letter and/or email to the Indian Tribe's or Native Hawaiian Organization's designated cultural resources representative seeking an indication of whether the Indian Tribe has an interest in participating in the review of the proposed facility. If the Indian Tribe does not respond within 20 days of the FCC's letter
and/or email, which will be followed up by an attempted FCC telephone contact during the same 20-day period, it will be deemed to have no interest in the review of the proposed facility. At that point the applicant will have fulfilled its obligations under the NPA to notify an Indian Tribe of its intentions to construct a communications tower or antenna. This process is effective immediately.

In addition to clarifying this process, the FCC also declared that applicants' obligations under the NPA have been fulfilled in tower notifications referred to the FCC by applicants before September 10, 2005 for lack of response from an Indian Tribe. In virtually all of those cases, the FCC has already sent a communication to the Indian Tribe's designated representative.

Furthermore, in many instances the FCC has made multiple attempts over the past several weeks to contact the Indian tribes via telephone, email and/or letter.

And then, like I said, I've worked with the department doing these FCC tower construction notifications. Every Wednesday when they have new projects come out, they will send it to me -- for email to the representative, and I'm representative of our tribe, and this is an example. If you're not familiar, I'll read it to you. It says thank you for using the FCC
Tower Construction Notification System. The purpose of this electronic email is to inform you that the following authorized persons were sent the information you provided which relates to your proposed antenna structure. The information was forwarded by the FCC to authorized TCNS users by electronic email and/or regular mail.

Persons who have received the information that you provided include leaders or their designees of federally-recognized American Indian Tribes, including Alaska Native Villages, Native Hawaiian Organizations and State Historic Preservation Officers. For your convenience in identifying the referenced Tribal Nations and in making further contracts, the City and State of the Seat of Government for each Tribal Nation, as well as the designated contact person, is included in the listing below. We note that Tribal Nations may have Section 106 cultural interests in ancestral homelands or other locations that are far removed from their current Seat of Government. Pursuant to the Commission's rules as set forth in the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the FCC, all Tribal Nations listed below must be afforded a reasonable opportunity to respond to this notification, consistent with the procedures set forth below, unless the proposed
construction falls within an exclusion designated by the Tribal Nations.

The information you provided was forwarded to the following -- if a Tribal Nation does not respond within a reasonable time, you should make an effort at follow-up contact unless the Tribal Nation has agreed to different procedures. In the event a Tribal Nation does not respond to a follow-up inquiry, or if a substantive or procedural disagreement arises between you and a Tribal Nation, you must seek guidance from the Commission.

Now, I have had instances where I did get a cellphone tower, they give us 30 days, but sometimes you have to wait on them. They do not have all their cultural reports finished. And so 30 days to us doesn't apply until after we have received that cultural report and then we have our time to review. But the FCC is good, if you don't reply within that amount of time, they send you an email, they call you. They try to get the procedure taken care of.

Each tribe is different on their procedures. For example, this tribe here has informed the FCC staff that if an applicant doesn't receive response from the tribe within 30 days of the notification, then the applicant should make a good faith effort with a phone
call to make sure the tribe is aware of the notification.

Like I said, I've worked with EPA, I have worked for HUD and Deering [phonetic] Housing, and any time we had a project, we had to follow the same rules as any agency where we had to contact this person, that person, that agency, give them so many days, get their approval; and if we didn't get their approval, then we had to work through their process.

So like my counterparts before I agree with all of you in this process, and our THPO, Alina Shively, couldn't be here today, but she did want me to mention about the Army Corps of Engineers must repeal Appendix C from its existing tribal consultation policy which specifically says it is optional for their agency. All federal agencies should be required to remove this type of language. Everybody should contact -- consult with the tribes.

And one more point I wanted to make on what are examples of consultations on infrastructure projects that you consider to be meaningful. I'm sure there are other tribes, but I'm speaking for myself and my tribe. We're talking about the land. The land is very sacred to the tribes, and so I don't care if there's not anybody in that particular area, the land is the land, and any consultation needs to be forwarded to the tribes. Thank
MODERATOR KLEIN: Thank you very much for those comments. It's 10:00 now. I think what I propose is we take a short break. I'm going to leave the sign-up sheet right here while we take a break, and if there are folks who would like to provide comments when we come back, it would be helpful if you go ahead and put your name on the sheet so we can do that in an orderly fashion, but we will reconvene in about 15 minutes.

(Recess taken)

MODERATOR KLEIN: Okay. Next on the list we have Eric Thompson.

MR. THOMPSON: [Speaking in a Native American language].

THE REPORTER: Wait a minute, start again, please. I couldn't understand you.

MR. THOMPSON: I don't think you'll be able to translate this. [Speaking in Native American language].

So I thank you for having this meeting. My name is Eric Thompson. I'm chief of St. Regis Mohawk Tribe, one of three. It's a very important meeting that we're having today about consultation.

I lack some of the expertise that our previous speakers have had in the consultation process; however, I
do have personal experience with some of the processes as we've experienced some environmental issues within my community. We're located along the St. Lawrence River Valley, so one of the first infrastructure projects that we've experienced was the actual St. Lawrence Seaway being put through our territory with consultation to us. It affected us a great deal and effectively transformed our territory, our way of life, our culture. It's had an enduring impact to our people. The other issue with regard to hydropower that was generated from that project, we've had three corporations come to our territory and open up shop, and as a result of that we have two Superfund sites that we're dealing with now. That's our experience with the consultation process.

We strenuously objected to methodologies that were employed and were put on the table by the EPA with regards to remediation of the GM site. There was a provisional cap that was put on an open pit that contained PCBs and other heavy metals. The provisional remedy has since become the permanent remedy and has been an area and bone of contention for our people since the advent of it.

We -- our objections in that area with -- fell on deaf ears. The corporate interests that were present that made profit off our lands were allowed to scamper
off, declare bankruptcy, and to not clean up the mess that they made. There were accommodations that were made -- our perception is that accommodations were made on behalf of the corporation by the federal government, and our interests were not covered. We are dealing with this today through our water contamination, through studies that have come to the fore regarding -- with regard to the PCBs. These sites were all located upriver from our drinking supply and upwind from us, as well. So we deal with these things on a daily basis, it's affected our health in no small measure. We have very high cancer rates, diabetes. So this is an ongoing concern for us, and whenever we get a chance to opine, we do. We advocate for removal of the remedial measure that was instituted and implemented by the EPA through a faulty conservation process, and we will continue to do so.

We are currently in the midst of another consultation process for another Superfund site in a tributary upriver from us wherein, once again, over our objections the remedial measures the EPA has opted for favored the corporation and the head of industry. Disregarding our knowledge of the river itself, we have no weight being given to our connection to the river and our observations of provisional -- the remediation methodology that has been chosen is this instance is an
armored cap that's been put on the river bottom. So it's been our experience that yearly we have an ice gouge, ice scouring that occurs. It's not a matter of if, it's a matter of when. Hydraulic action of the ice will tear apart those armored caps, and there will be nobody there to adequately address that in a timely fashion.

So we're frustrated with that process. We feel that we should have reasonable consultation where all opinions are given their due weight, where participating in the consultation process does not mean acquiescence to the actual project in and of itself. In my opinion I think that's why the Standing Rock Sioux did not participate in that process. I think that just participating in that process is taken as an acquiescence to that process and checking off that box. This is incorrect. I think that there needs to be methodology where our objections, if reported, are given due weight or given a review process by some oversight body, whether it be federal or otherwise, but I don't believe that projects should be able to proceed without the consent, explicit consent of Tribal Nations that are to be affected by the projects that are going to occur in and around their territory.

The consultation process really needs to be mandatory, consistent and uniform. I feel that there's a
lot of fluidity with regards to how different agencies go about doing this, whether it's sending out letters, telephone, email. We've experienced so many instances where a letter was sent to the wrong place, and we have no issue -- no idea that this was even going on, that the project was going on. Since we had not replied to correspondence, the box was checked. So I think that there needs to be consistency for all agencies that are engaged in this process across the board.

And mechanisms of review, mechanisms need to be put in place for review when the consent is not -- if objections are made. I think that we're not stakeholders. We are nations with inherent rights, treaty rights, and we ought to be treated that way, not diminished within the process, especially where there are corporate interests or otherwise that will adversely affect our all interests.

We have had a positive consultation with regards to a project that we've undertaken during my tenure on council, and that was with the removal of the hydroelectric dam in our territory, and this has been a positive experience there with the process because in large part we've been allowed to conduct that process on our own. But we've headed the project, we've headed the relicensing initiative, we are actually manning the
dismantling of the dam itself, and we've experienced the support of federal agencies in this endeavor. So that's -- that's a positive, and I think that it's positive in large part because we were allowed to handle the project ourselves. I think that there are lessons to be learned there.

I think when our interests are not in alignment with the process, it really needs to be looked at it. It needs to be -- it needs to be firmed up. So it's very easy when our interests are aligned -- aligned politically versus an environmental cleanup that might be costly, that might have a political toll on those who are enforcing the cleanup. I think those are the areas in which that process needs to be firmed up.

I think -- I would echo the remarks of others on the record regarding areas where there are large infrastructure projects that are occurring, we would like to see developers mandated by law --

THE REPORTER: Could you repeat that, please?

MR. THOMPSON: We would like to see developers mandated by law to set aside funds prior to implementation of the project for mitigation costs for the loss of any unintended destruction or impairment of the land in question that have a direct significance and impact on tribal lands or tribal members.
Finally, finally, tribal governments must have a seat at the decision-making table. Tribal governments as governing nations should be engaged in all stages of the decision-making process or the developing process that have a direct impact on the communities. Engagement of the tribal government should occur during the initial stage and remain through construction and ongoing monitoring of the environmental aspects of the project which may affect our people.

Thank you very much.

MODERATOR KLEIN: Thank you. Next on the list we have Beverly Cook.

MS. COOK: Good morning, my name is Beverly Cook. I'm one of the chiefs of the St. Regis Mohawk Tribe in New York State. Our territory is bisected on the U.S./Canadian border, and it offers us some unique obstacles and barriers to deal with many of the issues that we face, jurisdictional issues being just one of them. And I bring that up because I'm also a family nurse practitioner, and so my view of the topics that we're talking about today is just a little bit different, and I just want to add an illustration of what we're talking about as tribal leaders when we stand before you, and I look at each and every one of you and realize that you have your own particular area that you're responsible
for, that you deal with on a daily basis, and maybe some
of the other areas that we speak of don't apply, but they
should.

Infrastructure is just one piece. You have
everything that leads up to developing and implementing
the infrastructure, and they would have all the
consequences of it after. We have all of that plus every
individual that we represent and how they're impacted by
any action that is in our territory is our
responsibility, like you can't disconnect the head from
the body. It's all one unit, and so our community, our
economy, our health, our environment is all connected,
and you can't talk about the environment without talking
about health. It's the same thing. You mess up one, and
you forever impact the other.

So that's how we're looking at this, and when
we're sitting in consultation with individual agencies,
they're only looking at their mandate, their area of
responsibility, and then we have to move on to the next
agency to deal with the several consequences of what's
been taking place already. So we find that very
frustrating, and we wish that everybody was at the table
at once so that we can only -- we have to say it once
instead of having to travel from agency to agency, to
political office to political office to try to get
ourselves heard over any given topic.

I just wanted to reiterate the last thing that Mr. Thompson said about if private entities or government contractors are harming tribal resources as reported by tribal nations or others, the federal government must investigate and take appropriate action. This includes work stoppages, withdrawals of permits and legal action, and I can't tell you how frustrating it has been for us dealing with the cleanup of the Superfund site and dealing with EPA, and we have probably talked to every individual at the EPA save the janitor, from top to bottom, and when we see something alarming going on, when we have questions about how the cleanup is affecting our people at the time, we're getting study results saying that the inhalation of the PCBs could be far more dangerous than we thought it was when we were eating the contaminated fish, and we asked them to stop, stop doing what you're doing right now so that we can evaluate it, so that we can look at it before you proceed, and we are ignored. And they cry to us that the reason they can't stop or will not stop is because it's going to cost too much money, and they're running out of money. The reason they're running out of money is because they had to dig 40 feet into the ground to chase the rivulets of PCBs that had threaded their way through the sandy earth in
between the -- what do they call it, the granite silt 40 feet into the ground, and the only reason they stopped chasing the PCBs into the ground, which is directly adjacent and abuts our territory, was because they were afraid they were going to fracture the bank of the St. Lawrence River.

In the meantime we find out that breathing PCBs is having an effect on our women's reproductive systems, their cycles, and that inhaling PCBs has a direct link to the development of diabetes. We have the highest rates of diabetes in our community in New York state. And when we tell people to stop work so that we can evaluate what's going on here, and we're being pushed back, it's very alarming, disheartening and frightening to the people of our community.

So I think that when you sit and listen in a consultation like this, it's not just what permits were gotten or what permits weren't gotten or what emails were answered and what emails weren't answered, but it's really coming down to the territory itself and looking at what we're talking about and looking at what impacts those industries have on our economy. We're -- we were a fishing community, a river community. Since the early 1980s we haven't been able to eat the fish, and so that's had an impact on our nutrition, our nutritional status,
and we don't even know yet what impact that's had on the development of our fetuses inside their mothers' womb.

So I know all of that, it might not be interesting to you, but it's the direct impacts of what you do and what you don't do, and we're the ones that are stuck dealing with it generations down the road, still trying to get somebody to listen and somebody to take a minute, give us a second to figure it out before we move on from there because nobody wants to remove the dump.

And what he's talking about in -- we just got an email --

we just got an email from our environmental director who was informed by Alcoa that they're reopening their dump, and the dredging that they're going to do on the Grasse River, which is the most severely contaminated site, they're going to take all of that dredging material and just open the dump back up in Alcoa and put the dredging material inside of the dump. We didn't know that. That decision has already been made. Nobody asked us, and I know that nobody asked the people that live in that community, and they're not Native. So those are the kinds of things that we're talking about, real impacts to real people.

So I just wanted to put my exclamation points on what Chief Thompson already said, thank you.

MODERATOR KLEIN: Thank you. Next on the list we
have Doug Harris.

MR. HARRIS: It is an honor to be here in Penobscot country. Thank you so much for hosting this event and giving us all the opportunity to have a voice.

I'm a tribal historic preservation deputy officer, and I'm authorized by the Tribal Historic Preservation Officer Medicine Man John Brown to be here to speak today, and he and our Tribal Historic Preservation Office are authorized by the Tribal Body, Tribal Chief, Tribal Council by tribal resolution to address issues of tribal historic preservation.

I'd like to make seven points:

Number one: [Speaking in a Native American language]. We are giving thanks for all things, and that is a thanks to Creator and Earth Mother for all the things that we have asked for and received, and those things that we might have tried to avoid but, in fact, were to our benefit. So I thank Mr. Trump, Mrs. Clinton for their service thus far, and we pray that what goes forward will benefit all of us.

We're here partially to support our indigenous cousins at Standing Rock and the historic preservation issues that they are faced with that have now become all of our problem and have highlighted all of our problems.

There are for the Narragansett Tribes two
important new initiatives over the last ten years, ceremonial stone landscape identifications and submerged paleocultural landscape identifications. The first is on land and represents what many people would refer to as cairns. They're ceremonial stone groupings that we have taken to the National Register along with our fellow tribes -- some of our fellow tribes in the New England region, and we have taken to the United South and Eastern tribes and represented those issues in USET resolutions.

Ceremonial stone landscapes are on every project on a land basin that a federal agency or a commission permits, and we have begun the process of consulting with most of those federal agencies, and they have thus far been the FAA, the FCC, Army Corps, FERC, and EPA, and we have been well received -- sometimes slowly, sometimes more rapidly -- by all of those agencies. We'd like to bring ceremonial stone landscapes to your attention because the initiatives have only begun to protect those. Our cousins, the Wampanoag Tribe, Aquinnah, the Pequot and Mohegan, have stood strong. We together have stood strong to protect these ceremonial landscapes.

The Bureau of Ocean Energy Management over the last five years have been out on the Continental Shelf attempting to develop protocols for projects that will
become undertakings out on the Continental Shelf, in the soils beneath the ocean waters we once lived. Our elder medicine woman, Ella Sekatau, informed us more than 20 years ago that more than 15,000 years ago the ancient villages of the Narragansett were out where the ocean is now, and the waters began to rise overnight, and they had to abandon their farms 15,000 years ago. The geologists informed us the geological record says that more than 24,000 years ago the Outer Continental Shelf was, in fact, an open and vegetative plain.

So we have cultural resources out there that are likely to be impacted by any federal undertaking that puts impact into the soils of the Outer Continental Shelf. We would like protocols to be put in place, we would like procedures to be put in place so that the various federal agencies and commissions will address that when we raise that question for consultation.

It has already been stated that pre-filing brings with it impacts to our cultural resources before the process is federalized so federally-recognized tribes do not have an opportunity to participate in pre-filing activities unless they are invited by a private entity. There is no federal hook prior to an actual permit that allows us to protect, to intercede, to consult on the impacts to our cultural resources that the archaeologists
engage in on behalf of the SHPOs or the archaeologists engage in on behalf of the project proponents. So we would like to have an early intervention process federalized so that the federally-recognized tribes will have an opportunity to be there when archaeologists are making their impacts on our cultural resources.

How you will do that I'm not sure. We went to Army Corps, and what our recommendation was when the SHPO gets the opportunity to inform you, you should inform us. We should become a part of that federal process at that stage. So far that has not been able to happen. They've done some good things, Army Corps, to facilitate. They wound the clock back and allowed us to go out and examine those sites. That's not enough. We need to be there. We need to be onboard when the shovel, any shovel, anybody's shovel goes into the ground.

Army Corps, I want to thank you for the way you listened when you came, and we consulted with you on that matter.

The Army Corps has been very helpful with ceremonial stone landscapes and has allowed us to participate and have project proponents allow examination of right-of-ways prior to impacts so that we could identify ceremonial landscapes, and they could be avoided.
Tribal skills in mapping. Mapping is a science. GIS is a science that we seriously need to have -- thank you -- that we seriously need to have in the toolkit of tribal historic preservation officers. We need to be able to use that science, those techniques, those methodologies and translate them through the tribal culture to be applied to our cultural sites both on land and on the sea. So we'd like to be able to get training in GIS specific to issues dealing with tribal historic preservation. Sometimes we will have people who are on our staff who are non-Native, and they translate through their cultural lens. We need people who are translating through our cultural lens.

The policy of unanticipated finds. The Narragansett Tribe this year was in court dealing with an issue at Block Island where we attempted to stop the archaeology because it had unanticipatedly found something that needed to be addressed and not destroyed. The presumption is that an unanticipated find is something that can be destroyed and that somehow or another it's okay, because it was unanticipated, to examine it, to dig it up, to create the data and to have the data. Well, for us the data is insufficient. The spirituality of the -- that the ancestors placed something in the ground is what is important to us. That
is culturally significant to us, and what needs to happen
with regard to an unanticipated find is that it should
not just trigger a license to impact archaeologically,
but it should trigger an opportunity to reassess where we
are in the project and how to avoid impacts, culturally
what is significant; because once that is impacted, once
it can no longer be avoided, it has been destroyed, and a
piece of who we are has been destroyed. Putting it on a
shelf and making data does not protect a tribal person
and a tribal process.

That issue came about with regard to Block
Island and wind turbines and the power company that came
behind the wind turbine process, and there needs to be a
clarification of the policy for an unanticipated find so
there is not an automatic destruction of what is there.

My last point has to deal with the presumption
of the primacy of archaeology over tribal knowledge. The
operative presumption is that what the archaeologist
says, what the anthropology says weighs more than the
knowledge that comes from the tribe through the
consultation. The National Historic Preservation Act is
emphatic. The experts on what is of tribal religious and
cultural significance are the tribes themselves, not an
archaeologist, not a degreed anthropologist, but the
tribes themselves. That needs to be re-instilled in the
practice, because it exists already in the law, it exists in policy, but it does not exist in practice.

I would again like to restate that we support our cousins, Standing Rock Sioux, in their initiative to protect their cultural resources, their ancient sites of significance because if, in fact, you will hear them, then you will be able to hear the rest of us. I thank you very much.

MODERATOR KLEIN: Thank you. Next on the list we have John Banks.

MR. BANKS: Thank you. Thank you for the opportunity to speak here. I would like to welcome you to Indian Island. I am a Penobscot tribal member, and I am the Director of the Department of Natural Resources for the Penobscot Nation, so I really want to thank you all for having this consultation session. It's really very important. I understand that some of you traveled quite a ways to get here, and I want to thank you for that. I just had to walk across the street, I'm right here, so I thank you again for doing this and being here.

We're on Indian Island now. Indian Island is one of over 200 islands that make up the Penobscot Indian Reservation. We're on the southern-most island, so if you went upriver from here, there would be over 200 islands as part of our reservation. We've always
inhabited this Penobscot River watershed. The archaeologists tell us that we've been here for 10 to 12,000 years, and over that long period of time our tribal members have used the river for -- to maintain all of the necessities of life for a very long time, allowing the river to provide sustenance, for our food and shelter, to provide habitat for medicinal plants and for transportation purposes.

So over history our reservation has been dammed, polluted, and the ecological integrity has been pretty much trashed with virtually zero consultation with the Penobscot Nation, and so it's had a profound impact, as you can imagine, on our tribe here. There was a study done, oh, I'm going to say 12, 15 years ago now. It was conducted by the Indian Health Service, the CDC out of Atlanta, State of Maine, Penobscot Nation Health Department -- I think those were the agencies that participated, and they took a thorough review of the cancer statistics, and what came out of that study was the realization that right here in this community today we have a cancer rate that's over twice what it is in the rest of the state of Maine, and we've had too many funerals to count just within the past month or so. So, as I said, pollution and -- has had a tremendous impact on our tribe.
And today the State of Maine and the corporate interests are continuing to marginalize us, they continue to treat us as if we don't even exist. I like to quote one of our elder tribal council members that used to say a saying, and I loved it. He'd say, "They moved in all around us and then wondered where we came from." In fact, in 2012 the Attorney General for the State of Maine issued an opinion that said that they believed that this reservation doesn't even include any of the water of the Penobscot River, and we've always reserved the river to ourselves in all of the treaties. We have recognized subsistence fishing rights in this river, our tribal members continue to carry out their cultural and traditional practices as we have for thousands of years.

So if you look at just the geographical makeup of our reservation, you know, with 80 to 100 miles of river, it's pretty easy to see that we have the potential to have a real Standing Rock Sioux like situation here. I want to bring that to the attention of all the federal agencies here, and I'm really worried that that could really happen here. I hope it doesn't.

The only recommendation that I have in terms of improving the permitting process, we would ask that you incorporate the principles of UNDRIP into your permitting processes. I think in particular Articles 26 and 27 of
UNDRIP, as well as the -- the provisions that provide for pre -- pre-consent, prior to consent of our tribes. I think if all of those principles were incorporated into the permitting processes, that that would go a long way to avoiding some of the situations such as what's going on in Standing Rock Sioux now.

So thank you for the opportunity to speak.

Chief Francis has asked me to say these words today, and again welcome to the Penobscot Nation, and I hope you have safe travels on your way back, thank you.

MODERATOR KLEIN: Thank you very much. Next on the list we have Mike Boland.

MR. BOLAND: Good morning, thank you for being here and the Penobscot Nation for hosting this event. My name is Mike Boland, and I am the Director of Natural Resources Protection and Regulatory Affairs for the Mashantucket Pequot. I've been employed by the tribe for 24 years now, and I was asked by tribal council to come today because their THPO could not come.

They wanted me largely to just attend this event to add emphasis to the letter that Chairman Butler sent on October 10th addressing his concerns and their recommendations on this issue; but as I was sitting here -- and being management support for the THPO, I understand some of the logistical issues. One of the
things I heard was early involvement. Now, if it's
actually a federal initiative, you people can do a lot
about that by involving the THPO early on in this
process, but I also understand that when it's a
permitting issue, all too often your involvement starts
with the permit application, and I've heard that
involving the THPO at that point in time is too late.
There's been cultural assessments done by archaeologists;
sometimes archaeologists actually cause damage in their
assessments. So I gave it some thought, and my
background years and years ago started with investigating
contamination sites; and when we did environmental
assessments, there were standards that we followed. It's
actually ASTM standards for environmental assessments.
If I presented an environmental assessment to a client or
to a permitting agency without going through the process
of looking at town files, state files and actually
interviewing the people that have that factory or
operated that factory before I did sampling, I'd get
laughed -- laughed out of the room.

So I kinda take that analogy to cultural
resources and suggest that you do have the power. You
have the power to develop standards of what you're going
to accept in your permit applications for cultural
resource assessments. It would seem to me that if you
had in those standards that you needed to -- that those
cultural resource assessments need to be guided by tribal
input, then it would -- or at least help to alleviate a
lot of the concerns.

So I offer that recommendation based on a side
experience in my history. Again, I'm here to support and
show support of the Nation of Mashantucket Pequot. Thank
you.

MODERATOR KLEIN: Thank you. Next on the list we
have Kirk Francis. He's not here. And Kitcki Carroll --
I'm sorry if my --

MR. CARROLL: No, you got it, thank you.

I'm Kitcki Carroll, Executive Director of the
United South and Eastern Tribes Sovereignty Protection
Fund. A few thoughts that I want to offer on behalf of
our organization, the 26 federally-recognized tribes that
are members of our organization. First, consistent with
Mr. Harris' comments, we are in support of our sisters
and brothers of the Great Plains, the Standing Rock
Sioux, and have supported them in their endeavors to
protect their interests, but I'm here to tell you that
one of the reasons that we have a need for this
consultation is that issues like this have been going on
for some time. The situation that's going on in DAPL is
not new. So the lack of proper consultation, the tribal
meaningful consultation or consent has been absent in our region for a long time, so that's why this issue has regional interest to us just as it does now in the Great Plains.

But I think what's important for this conversation today is that any good consultation starts with understanding, and as Chief Thompson and few others stated in their remarks, and I think what's lacking in the consultation process right now that causes a lot of the problems and complications is for those of us who call this place home, our stories of creation are from this place so we are connected to this land in a way that others are not. The way that that lack of awareness or appreciation manifests itself is a blatant disregard and disrespect for that appreciation and awareness. So I would ask federal officials who are not Natives, who hold their place of spirituality and religion somewhere else, they would not stand for a moment and tolerate the level of desecration to something as important to them as they allow to happen here to us. So -- but that's very important to the context of these conversations that we have.

When we talk about the trust responsibility -- and one of the things that was mentioned earlier in terms of the responsibilities, Chief Cook, before she departed,
one of her remarks was talking about appropriate federal oversight on site construction, new construction projects, and taking very specific and hard-line actions, including work stoppages, withdrawals of permits, legal action, et cetera. That's an obligation as our trustee, and one of the conversations that we've been having is that it's about time that our federal partner move away from this trustee activity that's really focused on widgets and really focus on protection of our sovereign authorities and interests. That's what this relationship is supposed to be all about.

And the fact that that is absent at times causes these very types of situations, and the initial problem with that is embedded with that role are oftentimes conflicts of interest. If you just look at the Department of Interior slice of the equation, there are many conflicts of interest that just are on that side of the equation, so you have to find a way to get to the point where you, as our federal trustee, understand that your role with us is to protect our interests even in areas that conflict with your own interests. That's what you signed up for. We didn't come knocking on the federal door asking for this relationship. It was brought to us. So you signed up for that relationship, and you have that obligation to fulfill.
One thing I want to make clear about the conversations that we've had amongst our membership is our interest in this issue isn't the expression of wholesale opposition to infrastructure projects. That's not what this conversation is about. This conversation is about adequate, meaningful, respectful, robust consideration of our concerns and interests that move all the way to achieve our consent. As just was mentioned earlier, I know that the federal government doesn't necessarily view the principles of UNDRIP the same way that we do. We give them a whole lot of credence and value and meaning, they are reflective of what our position is, and that needs to be included in this conversation and the mindset that Doug was speaking about earlier.

One thing I want to talk about specifically though is Executive Order 13604, and in fact I want to just talk about OMB for a minute. I find it interesting that the steering council is a function of the OMB Office, and the reason why that's of particular interest to us is OMB is on record as having expressed that despite the President's Executive Order on consultation, that because OMB is not technically a department or an agency, that they don't owe any consultation requirement. That causes lots of problems between us and OMB. OMB is
a behind-the-scenes entity that pulls the strings and
makes decisions and defines the rules of the game in many
ways, and the fact that now on the management side of the
OMB part of the occasion that this steering council is
part of that entity who has expressed a position of not
having to consult, that's very problematic for us. And
the whole reason for the creation of this entity was to
move the permitting process along as part of the American
Recovery, we get that, we understand that, but Indian
Country interests have been blatantly disregarded and
ignored as part of that creation, and that needs to be
specifically addressed.

So a couple things consistent with our concerns
around the fast-track permitting piece. There absolutely
needs to be -- if the OMB is going to continue to take
the position that it has no consultation requirements to
any country, then it absolutely has to make part of -- as
part of its structure a tribal component, a tribal
component that is there to look after and advocate for
the interests of Indian Country, not as one of our people
placed there necessarily -- that would be preferable --
but somebody who understands what that relationship is
all about and puts Indian Country's interests first
before all else. That's the only way we're going to have
that voice within the multitude of permitting approvals
that are going on. There's been a plethora of them ever since the passage of -- since the American Recovery Act.

Another point that we feel is unacceptable is consultation is not an option. I know we've had some conversation today about the Army Corps of Engineers and their role in all of this, so specifically a repeal of Appendix C which gives them that room within their language to make consultation optional, so in the same way that our position is OMB should not be taking that position, Army Corps of Engineers should not be taking a position where consultation is optional, as well.

Because our position is that every federal entity, the department level, the agency level, the commission level, the congressional side, legislative side, you all hold that trust responsibility. Oftentimes the focus gets deferred off to Interior or to HHS, IHS specifically, but you all bear it, and we have to arrive to a point where everybody behaves in the same way that we expect IHS and BIA to act as trustee in this relationship.

Absolutely there is no room in any circumstance that I can think of for allowing for a third-party consultation option. It's a federal to -- federal to tribal nation, government to government, nation to nation diplomatic relationship that needs to be respected.

Pushing that consultation requirement off to some third
party, a party that's probably not even interested to the extent that we are mutually, is not acceptable.

And then finally, my last remark is we oftentimes have conversation around the consultation and moving towards more meaningful consultation. I think that's a bare minimum expectation. If we're not having meaningful consultation, I don't know why we're talking about consultation, so that's kind of an oxymoron to me; but what we need to be moving toward and was referred to this morning is consent, consent as expressed by Mr. Harris in his comments just now around -- whoever made that comment, pre, prior informed consent. If we're going to say that the United States understands this relationship to be of equals, of equal sovereigns, then there's an obligation there, there's a sacred reason for that obligation and that responsibility, then we are -- should be in that position of consent for any action taken by the United States that directly impacts our land and our people. That's clear as day to us. There should be no room for exception to that.

So just again I want to wrap up. Consultation is most beneficial and fruitful when we both come to the table with an understanding of each other's perspectives, and I just feel in this specific area, specifically what's going on specific to the issue of sacred sites
protection and what not, because there is a glaring absence of adequate negotiation by our federal partners about what we mean when we say what we say. It's not just talking points. It's just not rhetoric. It is a deep-seated fundamental understanding of our place in this world and our connection to this land. Thank you.

MODERATOR KLEIN: Thank you. Next on the list we have Bettina Washington.

MS. WASHINGTON: Good morning, my name is Bettina Washington. I'm a tribal historic preservation officer for the Wampanoag Tribe of --

THE REPORTER: Excuse me, I'm going to have move closer. I can't hear.

MS. WASHINGTON: First I'd like to thank the Penobscot Nation for hosting, and I would like to thank all of you for attending, and I would like to thank all my tribal brothers and sisters for everything you have said this morning. I'm going to try and not repeat what they have said, but I do support everything they have said.

First of all, consultation is a relationship, a government-to-government relationship that has to be built, and it is built on trust. I am just going to put -- read off my notes as they came to me.

One, this tribe is looking for support for
emerging technologies. Doug Harris talked about archaeological sites underwater. My homeland is on Martha's --

THE REPORTER: It's where?

MS. WASHINGTON: Martha's Vineyard, it's an island off of Cape Cod, and for the past ten years we have had wind turbine projects that would have surrounded the island. Actually, right now we have three proposed. These are brand new technologies for energies, but they also bring challenges under the water that we have not had a chance to understand, work with these new technologies. And at times we have questions about them, and sometimes we have done the research where we're like what about this technology, and we will bring it forward, and it really won't be endorsed. And we really like to have the support of the federal agencies to say the tribe has looked at this, they are bringing this forward, and it deserves to be looked at.

It's also been brought forward for more support for the tribes financially, especially through the grants. I guess I can -- I can say money is tight everywhere, but in order for us to do this work -- in my case I leave my office, I take a boat. Fortunately I actually live outside Boston so I didn't have to make that stop or cost, but then we come here, and any time we
have a consultation -- because most people don't -- most federal agencies do not come to the island. We tend to go to them. It's an extra cost. So for a small tribe like mine in order to do this job, it's costly, and what we get is a lot of push-back because for some reason everybody thinks the Indians work for free. They pay the environmentalists, they pay the archaeologists, they pay the policemen who are working on the highway, but they expect us to come in and not get paid. This is -- this is a problem, and it needs to be dealt with.

Somebody had mentioned for mitigation that money should be set aside up front. I think it's a very important part of the development of plans that they understand there should be a line item in your budget for a project for tribal consultation and expertise. I really do not care for that word because as far as I'm concerned the only expert is the Creator, and what we provide is information that is needed for consultation.

I would like to see either annual or biannual meetings between federal agencies and heads of tribal leadership. As I said in the beginning, it's building that trust relationship. Knowing from a federal agency that this project is coming down the road, not specifics but if you know there are projects, or how can a federal agency help the tribe. People have mentioned
infrastructure. On the -- on my level this consultation level I think is very important. We should -- I should be meeting with federal agencies at least quarterly to give a head's up. I just dropped off 75 projects to my senior tribal council resource monitor before I came up here. That's two weeks' worth. We have three people in our office to go and research these, and then I have another three people that will actually be doing some of the work because they -- they are already on other projects. It is a work -- it is a workload that is -- is very heavy.

And training not only for the tribal people, as was already mentioned, but especially for the federal side. What I find a lot of times is we're not speaking the same language. We're saying the same words, but there's two different definitions. We need to -- to be able to understand exactly what we mean. In our original language, it is very specific. The word "may" should not be in any document. From working in this position for the last, I guess, eight years, ten years, there should not be any wiggle room. You're either going to do it, or you're not going to do it, but if it says this has to be done, it should be done.

Which brings me to the next apparent problem, and I understand that this is -- these sessions are to
help solve this problem, but if there are rules and regulations, why are they not being followed? Because we have our feet held to the fire, 30 days, we don't -- if you don't get your answer in by 30 days, you know, chances are you've lost the chance to say anything. I find it to be unfair. I don't mind having a foot on my neck as long as the same thing happens to my counterpart; and if it's government to government, then that's the respect, that's the trust relationship. You will do your part, I will do my part, and very obviously we're finding out that is not what's happening.

Ours is a whole history, and I've had -- I had to learn from my predecessor you have to put it in writing, you have to put it in writing, which was very difficult for me because I was brought up your word is good. So in a way I have gone outside my tradition in order to fulfill my obligations to the consultation policy, and when it's not adhered to on the other side, it creates distrust.

By the time the tribes are involved, and if it's late, we're often perceived as an impediment, or we're just being troublesome. Now, if we have an initial meeting with the federal agency about conservation, and if we move to the part where now we are actually working with the proponent, I would like to see the federal
agencies coming back and checking in every once in a while how are things going, not always having the tribe reach out, because what happens is then the proponent sees the tribe as reaching out to the federal agency, whereas the federal agency has the trust responsibility to the tribe, and they should be checking back in.

Our Executive Orders need to be protected. I'm not sure where I got this one, it's attachment A, Legal Framework for Tribal Input, but I notice it has Executive Orders on it, but it doesn't have one for sacred sites, and it doesn't have the American Indian Religious Freedom Act. This is all training -- this is all training that I think whoever is responsible for consultation in your agency needs to know about because I should not be training agency personnel.

I actually attended a consultation years ago, and the agency sat across from me, and I said I have a copy of the CFR, and I said how many of you have ever read this, and there were six people, and the lawyer held up their hand, and I said then I understand why the consultation is not going well. That should never happen.

Okay. One of the issues I have run into lately is a cultural resource coordinator for a proponent is an employee of the archaeological firm doing the work for
the project. This is concerning to me. I should not
walk into a meeting, and I know the individual works for
the archaeological firm, but they're wearing the
proponent's shirt. I consider this a conflict of
interest which makes me uneasy when I review that
archaeological report. If there were guidelines given
for consultation with the federal agencies, this is one
of the things that I would urge proponents not to do. I
do not think it is conducive to good consultation.

One of the -- another issue that we have is
tribal historic preservation officers are not given the
same level of respect as state historic preservation
officers. Tribal historic preservation officers, because
of our cultural resource concerns, go outside the
boundaries of our reservations. State historic
preservation officers do not come onto tribal property,
but for some reason very often I will be reading
material, and it will say SHPO, SHPO, SHPO. The THPO is
not included there, and if it was a true consultation,
whenever it said SHPO, it will also say THPO.

And this one I will read, all government
entities are required to consult. We right now are
working on pipelines that are challenging because they go
outside of that 106 that are covered by regulations. In
addition, as Mr. Weeden said, you can miss out and not
even be involved or have a say about a project if you
don't get there early, and the problem with that is the
next project that comes down the line, they'll expect you
to do that again, and that's -- and that's a problem
because we are trying to say you must consult, and if we
bend that rule, then we're not holding to our word, which
we have been told by our governments we must do.

During consultation cultural resources are
really an administrator because if I do not have the
answer, I go to my elders or I go to my scholars, and I
say I need you to come with me and answer these questions
and give your knowledge, share your knowledge. No one
else has that right. It has to come through my office.
I'm not concerned with what the archaeologist says or
what the anthropologist says. I'm not concerned with
what the person down the street says. This is our
relationship right here, government to government.
Nobody comes in that circle. I need to make that very
clear because sometimes it is challenging.

Another challenge is working -- this came up on
a power line, and the permit -- what's that, pole 132,
and that is the only place that it was to be permitted,
and I'm like what about -- no, that's not -- that's not
our area. So I asked the question if there's a problem
here, and it cannot be permitted, does the whole project
fall? Yes, it does. And I said then it's the whole project. The way we look at it, it's not just confined to this area. This is a problem. I run into it again and again, and I think it's something that we need to look at, that other agencies need to look at, that you cannot -- it's not -- it's not like you can't because you're already doing it, but this compartmentalization of a project.

On the other hand, we're working on another project by the Sandwich L&G station that has not been permitted, but we're working on the pipeline. So if you're working on a pipeline, and you don't have -- where is this pipeline going? If the L&G station is not approved, we've wasted time and money -- not just our time and money, everybody's time and money -- and people lose property. I really think that procedure needs to be looked at. It needs to be looked at because if we come in again, we are looking at it as an impediment, and that's troublesome.

Oh, I'm not sure how the results of these meetings are going to be looked at by the federal agencies, so if you've had five meetings and notification came up ten times, but waterways came up twice, how are you going to weigh these comments? But I would like to say if one tribe mentions something to them, then it
weighs as much as if ten tribes mentions something else, because that's consultation. Every tribe is different to what is important to them. Some of them are going to be universal. We all want to be notified. We all want to be notified early, to have it go to the right people, but also every tribe may have something that is unique to them. That's what makes us tribes.

And also I would like to know that each federal agency has a tribal liaison or a tribal federal entity. We had an instance where the federal entity did not know who that person was so I don't know how they had been consulting because the tribal official had a job to do in that consultation.

And the last thing I want to make very clear for our tribe, consultation means we come to protect so we can preserve but also progress so we can prosper. To protect and preserve, I think everybody understands this. When we get to progress, how can you progress? Well, one of those ways is saving resources for our people, having clean air, having clean water. And how do you prosper? You prosper by sharing knowledge. You prosper by making a healthy place for our following generations to come.

What I find when we consult on these projects is money is the problem. Very often anything, even mitigation, is most likely to be offered in financial
terms rather than a resource term. Someone had mentioned -- I don't know if it was David -- marshlands and swamplands. If you want to see my head spin, say remediation for one of those. It takes millions of years for those to be created. I live in Waltham, which is an industrial city, and it floods in the spring. Everybody complains, and I tell them, well, you need to go up the road and talk to Harplo [phonetic] because they permitted filling in of the swamplands.

Our lives are so short in comparison to everything that has happened. We have the responsibility to ensure not only our people but all people have a place to live, and that it's healthy, that our waters are healthy. That's what the consultation is. That's what the relationship is. That's what I look to do for these projects because hardly ever does something come out of a consultation that only benefits the tribal people. When we win, when we protect, when we preserve, it's for everybody. Thank you very much.

MODERATOR KLEIN: Thank you.

Chief Francis, did you want to speak?

MR. FRANCIS: Good morning. Just briefly, as everybody knows I think, my name is Kirk Francis. I'm the Chief here for Penobscot Nation, and I want to thank first of all everybody for being here. It's an honor to
have you in our territory. I know Chief Cook and Chief
Thompson have already spoken, so I just will say that my
role as the newly-elected president of the South and
Eastern Tribes, I'm very proud of that role, as well.
You know, the issues around what we're discussing today,
without being totally redundant, are --

THE REPORTER: Can you speak up? I think the
batteries might be running low.

(Off-the-record discussion)

MR. FRANCIS: Okay. So I think that what we're
really talking about here today is good, meaningful
consultation that is result orientated, that focuses on
common ground products, and in partnership we can develop
and pass forward on these very important matters. What's
going on out at Standing Rock is really bringing national
attention to this issue, but I think, you know, for our
USET tribes these issues are all too familiar and have
been for a very long time. So when you talk about
natural gas pipeline expansion, for example, in southern
New England, we see some of the things you've heard today
here for concerns in delegation of consultation to the
companies, to archaeologists that are not from tribal
communities, and certainly no involvement with tribal
historic preservation officers, et cetera. So what you
see from that is ceremonial sites that the tribe holds
very sacred not being considered as such, and you also
insert -- in that kind of a situation you also insert an
entity or entities of relationship that is much more
sacred, that they should have standing when we talk about
this federal trust responsibility and the shared
relationship we have the federal government. So I think
that's one focus that really needs to be stressed, that
these consultations are direct, and they're direct
between the tribes and federal agencies. And so what
we're seeing now is through those delegations, again,
identification of sacred sites and ceremonial areas being
ignored.

So -- and right down to Florida there are a
number of tribes where we have highway projects being
proposed through the Everglades, to a whole host of
issues on the East Coast, so these issues aren't specific
to simply the Great Plains. They're -- they're very much
with the South and Eastern Tribe territories, as well.
And I think that it makes us much more appreciative today
that you've all heard the call for these consultations,
and it's going to be very important as we move forward to
how we not only take the comments from these
consultations and try to provide for the process, but
also we do that very quickly for obvious reasons.

And I think, you know, I would like to hear
maybe before we close up what we're thinking in terms of any timelines on any federal statements that come out of these consultations, policy decisions that we can start to solidify. You know, it's our firm belief that we really need to move away from the executive order based a lot on these consultations that really create a lack of consistency throughout -- some federal agencies you've heard here today do a very, very good job, and others take meaningful consultation to mean other things. So we don't subscribe to a process that simply deals with a teleconference or a letter that gets written.

I'll tell, you know, in my office, for example, we probably get a dozen letters from federal agencies a day, and I would like to tell you that I read every one of those. I think we have an opportunity to examine them broadly or briefly, but fully understanding what these very complicated projects mean, sometimes it's difficult to sift through all of that, so really it has to be direct dialogue that focuses on dual consent between two sovereigns to get to a place where, again, we're finding products -- projects and final outcomes that are beneficial to all and that all have a say in, and I think that's where we see a lot of frustration is when that doesn't happen.

So I won't go into -- I know you said written
comments, and I won't go into all of the special recommendations we have, but, again, we would reiterate Appendix C in the Army Corps of Engineers consultation policy as an example of inconsistencies throughout the agencies where some take this as mandatory, some do not, and I think we need consistent language all across the system. And also, again, moving from executive order based system to a statutory based system I think will solidify this relationship in a much more meaningful way.

So these issues really get to the very heart of a lot of things in tribal culture, so it's not simply about water or projects or jobs or all of those things. All of those things are critically important, of course, but what tribes are protecting against in many instances in the East and -- certainly in the East and in many other places is trying to retain its cultural identity, whether it's not only having the right to fish but how is that in practicality, you know.

And I know you heard from John earlier from our staff, but when we've been under a fish advisory, consumption advisory for three decades, maybe longer, you know, what does that right mean to the tribe if it's not exercised in its traditional practices? So these things get to the very core of culture identity of the people, and so these processes and opportunities for dialogue,
the ability for tribes to not only be in the conversation but making sure that that dialogue is considered part of the final product is extremely important.

So I'll close there unless I'm missing anything. Kitcki?

I thank you for being here. Hopefully you find the comments that we submitted helpful; and if there's anything that you need, further dialogue, I'm more than happy to provide that.

MODERATOR KLEIN: Thank you, Chief Francis, and thank you again for hosting this consultation. That actually brings us to the end of our list of folks who had expressed an interest in providing comments.

I want to start again by just reminding folks that although we -- we transcribed this session and have been transcribing all of the sessions, you are also welcome to provide written comments, and that those we would like to have in by November 30th, and, again, the email is consultation@bia.gov.

I want to just briefly summarize some of the themes that we've heard today, not in -- not in a sort of any exclusive way, but things that I certainly have heard and have taken to heart and some of the major themes and issues that we need to address:

Tribal capacity issues, so the support for
development of expertise and GIS mapping, both the skills and also the people to handle the influx of requests. I think we've heard this across the country, that the volume of requests that tribes get is really too much, and we need to -- we need to set up better systems to deal with that.

And importantly that the consultation is not -- it's not just about a specific project. The importance from tribes' perspective is this is a relationship. All federal agencies have a trust relationship, but the consultation process is not just about one meeting, it's not just about one session, and the importance of agencies really being proactive in seeking out and building relationships with tribes in their area.

We also heard a lot today about timing issues with consultation processes, when is the important time to start those processes, and often by the time a tribe is contacted it may be considered too late from the tribe's perspective.

We've heard a lot about scope issues and how do we ensure that all aspects of particular projects are taken into account when we're conducting consultation from, you know, the time that surveys begin to the very first turning of dirt, whether that's on land or in the ocean through remediation, too, so we've heard a lot
about that today. And we heard a lot of comments about what consultation ultimately means and what the end result of that is, and whether or not there should be pre-informed and prior consent before projects move forward, which is an issue and a challenge.

We heard a lot about the importance of agencies respecting and understanding and incorporating traditional archaeological knowledge and the tribes' perspectives on natural resources and cultural resources and making sure that that's treated equitably if not more so than other types of scientific knowledge.

And then we heard a lot about the lack of consistency among agencies in how they conduct consultation and the lack of clear and consistent guidance on all aspects of the consultation process.

So those were just some of the themes that really resonated today. I think likely -- I have not been to every consultation session, but I suspect that we've heard a lot of those same themes throughout the sessions that we've done so far.

To the question of what happens after November 30th, we are going to obviously spend some time going through the comments that we've received both orally and in written form. We are providing a summary report of those comments and are committed to do that before the
end of the administration. I think we want to certainly keep the dialogue open about what improvements can be made now. I can only speak for myself and Jody that at least some of us at this table will only be in this role for another 70 days, but it certainly speaks to the importance of relationship building, and relationship building out here in the real world and outside of Washington, D.C., among and between agencies and tribes. So we certainly hope that you hold all federal agencies to that, and, again, I just want to thank you very much for being here today and for providing your input and your counsel and wisdom, and we really look forward to continuing the dialogue. Thank you.

(Proceedings concluded at 11:52 a.m.)
CERTIFICATE

I, Deborah M. Bruns, CSR, Notary Public in and for the State of Maine, hereby certify that on the 10th day of November, 2016, the foregoing hearing was held at the Sockalexis Arena, Old Town, Maine, 76 Northern Avenue, Gardiner, Maine, in re: Federal Consultation with Tribes.

I further testify that this hearing was stenographically reported by me personally and later reduced to computerized transcription to the best of my skill and ability.

I further certify that I am a disinterested person in the event or outcome of the above-named cause of action.

IN WITNESS WHEREOF, I subscribe my hand and affix my seal this 30th day of November, 2016.

Deborah M. Bruns
DEBORAH M. BRUNS, CSR,
NOTARY PUBLIC

My commission expires: January 25, 2020
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