



Mashpee Wampanoag Tribe  
Tribal Historic Preservation Office  
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Laurence S. Roberts  
Principal Deputy Assistant Secretary - Indian Affairs  
Office of the Assistant Secretary- Indian Affairs  
Attention: Office of Regulatory Affairs & Collaborative Action  
1849 C Street, NW, MS 3071  
Washington, DC 20240

### **Re: Federal Agencies Improvement on Tribal Section 106 Consultations**

The Mashpee Wampanoag Tribe's Historic Preservation office understands the need for these discussions and encourages the Federal Agencies to improve on the existing Codes of Federal Regulations (CFRs). The present Federal Statutes are critical for Tribes to protect cultural, spiritual and historically significant sites, there is a great need for improvement to adequately for fill their intent. As the National Historic Preservation Act states the United States Federal Government has "unique trust responsibility" to protect Native American sacred and culturally significant sites, through government to government consultation. Tribes as Sovereign Nations look to the Federal Government to address their concerns on all "Federal Undertakings".

The FCC has one of the best means of tracking and initiating Section 106 compliance through their online *Tower Construction Notification System (TCNS)*. We'd like to see their processes used as a model for all federal agencies. As part of their processes, they send out hard copy weekly notices via standard mail to Tribal Historic Preservation Officers (THPOs) announcing upcoming projects as soon as they are in queue. Each project is assigned a TCNS reference number for tracking purposes. The tracking number and project summary promotes meaningful consultation by confirming anticipation of review requests from proponents. The assigned reference TCNS numbers are entered to the online tracking system only accessible to the FCC, Tribes and proponents. After Tribes review the projects they go online and simply check the appropriate box (concerned or no concerns) and enter their comments that are to be addressed. Our office also sends the proponents a hard copy tribal 106 Review Form that includes our concerns with specific evidence to consider. Most Cell Tower consultants have a Tribal Consultation specialist responsible for ensuring compliance. This specialist responds to Tribal correspondence in order to address concerns. Having a specialist develops a positive working relationship with key contacts. The TCNS

sends a confirmation email to all parties confirming receipt of comments. At this point consultation starts and concerns are responded to in various ways one being archaeological testing is obliged and or monitoring of ground disturbance by a Tribal CRM is agreed upon. The monitoring of ground disturbing activities including archaeological testing is done with predetermined compensation Tribal monitoring expenses. Once satisfied a “no further concerns” letter is sent out to proponents with an attached invoice of all incurred expenses, which is to be paid within 30 days. This process has worked well and allows for Tribes to participate without over extending their financial resources. Again the FCC model allows tribal consultation to be meaningful, timely and efficient.

Large scale Federal Energy Regulatory Commission (FERC) projects need to initiate consultation early on at a federal level. Pipeline Projects now can start their environmental process prior to pre-filing with FERC, so by the time Section 106 is initiated consultation with Tribes is consequently futile. Meaningful consultation is supposed to be inclusive, archaeologist need to work with Tribes closely to incorporate Traditional Cultural Knowledge (TCK) to achieve proper understanding of findings which are ultimately presented in final determinations concerning Tribal areas of significance.

If the FCC’s TCNS type protocols were implemented there would be a means to track and resume consultation with Tribes on some of these projects that take years in planning. Tribal administrations change as well as federal agency staffing, transitions happen and there’s no process to track projects information and communication is fragmented which negatively impinges on the Section 106 process.

Consultations with Tribes should include the “maintenance” of infrastructure projects. Some large infrastructure projects use “maintenance” as means to avoid consultation, not being considered an “undertaking” undermines the intent of the laws relating to historic preservation. Maintenance schedules should be discussed early on and parameters established as to what constitutes new construction.

Assurances need to be made prior to permits being issued with clear languages stating proponents are ultimately responsible for all clean-up of environmental damages and or lost resources associated with regulated undertakings that affect Tribes. This language should state that timely restoration is required or quantifiable compensatory damages will be imposed until Tribes are adequately satisfied. Projects such as fracking, electricity and oil transport are long term projects that need consultation and monitoring for the life of the project not just during construction. These types of projects have lasting effects that are accumulative of which adverse effects may not initially be foreseen.

Natural Resources that are also rare or scarce cultural resources are also important due to rampant development. Many Tribal resources are being destroyed and are often irreplaceable. These resources should be included in mitigations once identified. Because

resources are often in remote areas they may not be known to Tribes displaced from their ancestral homelands, which is more reason for infield verification of the APE. Resources may include but are not limited to quarry sites, medicinal plants or other flora and fauna critical for Tribal sustenance, survival, as well as cultural and spiritual wellbeing.

It is consistent across Indian Country that Tribe's Historic Preservation Departments are understaffed and overwhelmed to the point that they prioritize projects that will get reviewed, leaving some projects falling between the cracks. We would encourage the Advisory Council for Historic Preservation to create a budget line item for federal agencies to apply for funds to reimburse THPD incurred costs. Tribes should be afforded the opportunity to establish baseline fee schedules based on typical undertakings, to promote Native American self-determination with the abilities to nurture and augment the departments that are responsible for historic preservation.



Comments made by:

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