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UNITED STATES DEPARTMENTS
OF THE INTERIOR, JUSTICE AND ARMY

IN RE: FEDERAL CONSULTATION WITH TRIBES REGARDING
INFRASTRUCTURE DECISION-MAKING

HELD ON NOVEMBER 10, 2016

AT

SOCKALEXIS ARENA
16 WABANAKI WAY
OLD TOWN, MAINE

REPORTER:

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APPEARANCES

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

1 Thursday, November 10, 2016 - 8:45 a.m.

2 P R O C E E D I N G S

3 (Prayer offered)

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

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

20 Today this morning I have with me
21 representatives from across the federal government, which
22 is appropriate given that throughout these consultations
23 what we are really able to do is bring together federal
24 agencies that all have a responsibility and authority to
25 make decisions on infrastructure projects. So I'm going

1 to turn it over quickly to have all of the folks up here
2 at the table briefly introduce themselves and let us know
3 their names and where they are from.

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

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

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

24 MS. HAUSER: Good morning. I'm Valerie Hauser. I'm
25 the Director of the Office of Native American Affairs at

1 the Advisory Council on Historic Preservation. As some
2 of you may know, we're the Section 106 agency. I want to
3 thank you all for coming to talk with us this morning,
4 and I look forward to hearing from you and how you think
5 that we can do a better job.

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

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

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

18 MODERATOR KLEIN: Also in the audience we have
19 Richard Kidd and James Haggerty who are with the Federal
20 Permitting Improvement Steering Council. That council
21 was recently created by a piece of legislation called
22 FAST 41. FAST 41 in part is meant to help bring agencies
23 together that are working on infrastructure projects
24 around the country to try and better collaborate and
25 communicate with each other and coordinate all the

1 various approvals that need to happen, and we're hopeful
2 that as part of that we can make sure that, as we're
3 doing throughout these tribal consultation sessions,
4 improve how we do tribal consultation on infrastructure
5 projects.

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

19 I think in particular we're looking for
20 positive examples of things that have worked in the past.
21 We certainly are keenly aware of ways that these
22 processes have not worked and how they have failed in the
23 past, so obviously we want to hear that, too, but we
24 really are looking for ways to improve and so are hopeful
25 that we will hear some thoughts that you all have on that

1 in today's session and in the remainder of the sessions
2 that we have on this subject.

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

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

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

22 We'll probably take a break around 10:00, 10:15
23 or so just so folks can stretch their legs and give our
24 court reporter a chance to stretch her fingers, and so
25 with that I'm going to go ahead and turn it over to you

1 all.

2 First on the list I have Ramona Peters. Would
3 you like to step up to the microphone, please?

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

21 We noticed in the -- we've had the experience
22 with projects where sort of investigative surveyors begin
23 with the archaeology group, with walkovers, and at that
24 point the tribes are not involved, and the 106 process is
25 not triggered until a permit is issued. By that time a

1 lot of our properties have already been impacted on an
2 archaeology level. Access roads have been created to
3 accommodate the infrastructure project. So as to the
4 timing, I think we would like to see that the 106 is
5 triggered earlier. We know that there's been substantial
6 investment in the project, again, after it's triggered.
7 In some cases pipes have already been lain or towers are
8 built, and the permit is given afterwards, so that needs
9 to change.

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

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

25 MS. PETERS: So we receive different types of

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

23 There is also maintenance projects, so once an
24 infrastructure project happens, we know that through the
25 years things have to be repaired, and there's a schedule

1 made I think for propane gas. It's something like 40
2 years to change out the pipes. I think that we're
3 looking at projects that are being maintained that
4 started well before the 106 process actually existed, but
5 now that it does that in the consultation and when we
6 begin to work with the agency, that the maintenance
7 schedule is also put forward with some ideas so that the
8 tribe knows that someone is going to come back out and
9 perhaps dig again, maybe widen the pipes or require new
10 access roads. We see this along the power lines, as
11 well, maintenance projects that involve extensive digging
12 by machinery; and when we notice it and inquire about it,
13 they say, oh, we're just doing maintenance, but these --
14 these forms of maintenance actually have high impacts in
15 our homelands, and we're not notified or consulted.

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

24 It's never talked about where -- I'm sure that
25 there is something in place for the companies that need

1 to repair these things, but the tribes are -- when we
2 make an agreement and sign off on a project, we're also
3 saying to the tribe that a lot of things that aren't
4 actually documented, like we can promise them -- or we
5 are promised that it will happen immediately rather than
6 put off. And I've seen, actually physically seen uranium
7 tailing piles left on the surface next to a village, and
8 the tribe was not informed that these are radioactive
9 material. I mean, this is -- has happened, and
10 groundwater is contaminated, and people are not informed
11 of the hazards that may come as a result of these
12 projects. So I guess what I'm asking for is something
13 like those -- those medical warnings for pharmaceuticals
14 and those types of things that can go wrong so we are
15 clearly informed, and we may consent.

16 There are a lot of tribes in the country that
17 do not have more staff to actually review thoroughly
18 these things. I'm happy that my tribe has invested in
19 that so we can review. We have a number of resources,
20 but I know that a lot of other tribes do not. We just
21 recommend that the language be stronger in terms of
22 funding for the -- for our review, that tribes be able to
23 not take the resources away from their people to review
24 projects that are coming in from elsewhere. In many
25 cases these projects, they're not directly helping the

1 tribe in any way. So the language is suggesting that
2 federal agencies may assist, financially assist, but I
3 think at this point in history that we can't accept that.
4 If you're asking people to do something, you really have
5 to supply the means for us to -- so I'm suggesting some
6 sort of fee schedule.

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

18 There's inconsistencies between federal
19 agencies and how they consult with us. One of the parts
20 we'd like to see consistent is many -- we have a 30-day
21 window to review the project; however, construction plans
22 or engineers' plans, soil samples, things that we require
23 to actually review the project, when we need to have
24 additional information provided, we would like the
25 language to make the federal agencies aware that until we

1 receive those additional information, the 30-day clock
2 doesn't start.

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

8 We have successfully worked with a number of
9 federal agencies and proponents who are willing to inform
10 us when there are materials, cultural materials that are
11 going to be harvested in order to complete their
12 projects. There are a lot of rare minerals, medicinal
13 plants, et cetera, that are going to be destroyed by
14 infrastructure projects, and we have a list that we
15 supply to -- during consultation and notify if these are
16 something that we could harvest ahead of the project in a
17 timely manner that doesn't interfere with the project
18 itself. I don't think that's something that's in a
19 regulation, but maybe that's something that can be
20 offered as part of the consultation, to see if there's
21 minerals like soapstone or things like that that are rare
22 and hard to find. The tribes do use them. When we find
23 something like that is destroyed by these projects, it
24 seems really upsetting. There's cultural properties.
25 There's a classification that actually captures that.

1 I want to reiterate that in the permitting
2 process to be sure that archaeology-disturbing activity,
3 rather than just be a part of a survey, if that is going
4 to occur in our homelands, we need to be informed. We
5 ask at least two weeks to schedule our people so that we
6 can go out to monitor.

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

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

19 Next on our list we have Brenda Commander.

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

24 I am Chief of the Houlton Band of Maliseet
25 Indians. I want to thank the Departments of Interior,

1 Justice and Army for providing this opportunity to help
2 you develop consultation processes that ensure federal
3 decision-making is consistent with federal obligations to
4 tribal nations. I was pleased to see that your
5 invitation letter referenced treaty rights in regard to
6 those obligations. I wish it had also mentioned the
7 federally -- the federal fiduciary trust responsibility
8 and the inherent rights of Native American tribes
9 described in the United Nations Declaration on the Rights
10 of Indigenous Peoples. These are key concepts to instill
11 in federal agencies if they are to be truly successful in
12 meetings these obligations. The federal government must
13 engage us -- with us as rights holders not stakeholders.

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

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

1 sacred to us.

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

9 It was clear to us that while the Corps felt it
10 necessary to consult with us regarding their
11 responsibilities and under the National Historic
12 Preservation Act, they did not believe the President's
13 Executive Order 13175, Consultation and Coordination with
14 Indian Tribal Governments, had any effect in this case.

15 We heard that our concerns regarding the
16 potential negative effects of their federal permitting
17 process on our river did not warrant specific
18 notification, let alone consultation.

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

21 In contrast to our experience with the Army
22 Corps of Engineers, the Environmental Protection Agency,
23 EPA, has provided us with an exemplary consultation
24 process, informed by extensive consultation with
25 federally-recognized tribes in the Northeast region and

1 across the country. While implementation of the process
2 is still a work in progress, they have invested time,
3 resources and a commitment to EPA's 1984 Indian Policy,
4 their fiduciary trust obligations, and most recently
5 honoring tribal treaty rights. Curt Spaulding, Regional
6 Administrator of EPA of New England under the Obama
7 Administration, meets with tribal leaders at biannual
8 tribal leaders summits to proactively discuss our
9 concerns and issues. He has visited every tribal
10 community in the region, sometimes more than once, to see
11 firsthand what those issues are. This consultation has
12 netted tribes in the region concrete actions that support
13 the protection of tribal trust resources. This proactive
14 approach allows agencies to anticipate concerns we may
15 have around proposed infrastructure projects.

16 You have asked for examples of collaboration
17 with federal agencies we have found useful. We are
18 currently engaged in two collaborative efforts that
19 both -- both involve very positive engagement by the
20 Corps. One project, which started several years ago,
21 crosses the United States-Canadian international boundary
22 to develop a fish habitat assessment and management plan
23 for our international Meduxnekeag River. More recently,
24 we have begun working with the Corps and other federal
25 agencies on a second even more ambitious effort to create

1 international collaboration around management of the
2 entire St. John River watershed, which includes two
3 countries, two provinces, a state, two
4 federally-recognized tribes and six Maliseet First
5 Nations. These collaborations have been extremely
6 meaningful because the federal agencies involved have
7 asked us what do we need and responded in very concrete
8 ways to address those needs.

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

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

24 We have made one small but significant
25 modification of those recommendations by striking out the

1 language "in a manner similar to state government." This
2 language and other federal laws, rules and regulations
3 has created as many problems as it has solved in our
4 experience. Tribes are not similar to states of the
5 United States in many ways. Attempting to fit us into
6 systems and processes designed for the federal-state
7 relationship often doesn't work well.

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

17 *Woliwon.*

18 MODERATOR KLEIN: Thank you very much for those
19 comments.

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

22 MR. WEEDEN: Hello, I'd like to thank the Penobscot
23 Nation for hosting this discussion and listening session.
24 It's a beautiful area here. I'd like to thank them for
25 having us.

1 First I'd like to start off with, you know, the
2 process we -- a lot of the tribes have only a few staff
3 members, and to keep up with the amount of reviews that
4 we have to take is very difficult. I conduct reviews of
5 projects for our tribe, and with the volume it's very
6 difficult to maintain a 30-day turnaround on a lot of
7 project reviews. That I think needs to be addressed, and
8 one way in which that could be done is the tribe
9 shouldn't have to bear -- the monies that the Park
10 Service distribute for historic preservation is horribly
11 inadequate. The projects that need to be reviewed, there
12 should be a fee schedule developed so that the proponents
13 of these projects bear the brunt of the cost, not the
14 tribes, in order to conduct reviews, and they have the
15 staff capabilities to do those reviews in a timely manner
16 to meet the 30-day turnaround. If a fee schedule is
17 developed, each proponent would be responsible -- I'm not
18 asking for the federal government to come up with more
19 money to hire more THP -- THPO -- THPO staff. The
20 projects should be the -- the project proponents should
21 be the ones to do that.

22 That can be proven through the FCC's model of
23 Section 106 consultation through their tracking. They
24 are a model agency as far as how they monitor Section
25 106, how it's conducted and reviewed, the tracking

1 through their TCNS system, and they have one of the
2 best -- best models for doing that.

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

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

20 Another issue I have is the EPA. They delegate
21 a lot of their authority to the state levels, and there's
22 often projects that happen that they kinda take a back
23 seat to, and, as Ramona said, the states are not allowed
24 to delegate their authority. And if they're willing to
25 delegate their authority as far as the environmental

1 impact review process, that's one thing, but as far as
2 the consultation and the trust responsibility for the
3 government to consult with the tribes, I don't see where
4 that's done in some cases, and that needs improvement.
5 It needs to be looked at, and there needs to be
6 definitive language with that directive.

7 There was one -- another project -- I also sit
8 on the Cape Cod Commission Regional Planning Board, and a
9 frustrating project that came up down there is the gas
10 line [sic] was putting in new gas service down on the
11 Cape. It's a very sensitive environment, and real estate
12 is prime down there. The gas line [sic] wanted to --
13 they want to put in a gas line and -- a new gas line that
14 maximizes the capacity of the line to develop further
15 networks of gas service to residential areas along the
16 Cape, and rather than taking out the old line, they're
17 doing the project, and they want to do it as a
18 maintenance project is what they're calling it. They're
19 going to abandon the line, the old line, and install a
20 new line. Co-locating is what they're calling it and
21 terming it, being co-located, but it's still two to three
22 feet away from the existing line. The existing line is
23 going to remain in service while this work is done, and I
24 don't think that's a good practice personally. I don't
25 know -- I'm not fully aware of how that is done, but, you

1 know, you're basically leaving -- the metal is going to
2 break down at some point. Any residual fuel or gas
3 that's in that line is going to find its way to our water
4 systems, and I don't think that's the best practice. The
5 gas companies should be responsible for taking out the
6 old lines before putting in new lines, and I don't see
7 that as a maintenance project. I see that as a new
8 construction of a new line.

9 Another instance is power lines. Down on the
10 Cape we work with the different agencies and power
11 companies to conduct 106 all over Massachusetts, the
12 state of Massachusetts, but in our own backyard, the town
13 of Mashpee and also the neighboring town that sits
14 adjacent to Mashpee, Falmouth, a lot of those power lines
15 were put in before the Historic Preservation Action and
16 Section 106 was enacted. Because they were done at that
17 time, those lines have never had any archaeological work,
18 surveys or testing done on those lines, and it's because
19 of a town bylaw that says as long as it's a maintenance
20 project, that they don't have to do the -- comply with
21 Section 106 or do any sort of historical reviews of the
22 areas. We know where there's villages -- in some of the
23 areas they're going right by villages, and there could be
24 burials or anything else out there, and they're just
25 blasting through the areas because of town -- you know,

1 municipal bylaws that allow them to navigate around the
2 Section 106 process. That's often frustrating. We
3 sometimes reach out to them when we find out they're
4 doing work in the areas and ask them, you know, to have a
5 conscience and go out and do testing. The answer they
6 give us is that they're not -- they don't have to, and
7 minimally they might test, you know, a certain area here
8 and there, but oftentimes we don't have luck with pushing
9 the issue. That's frustrating when, you know, around
10 other parts of the state they have to comply with Section
11 106, it's mandated, and they do so because the law states
12 that they have to. It's only when the law states that
13 they have to that they will do the work. They don't have
14 a conscience, and they're not going to do it just out of
15 the kindness of their hearts.

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

21 Also a frustrating part of when I do the
22 reviews is sometimes when we do the reviews, some of
23 these proponents will hire a cultural resource consultant
24 to do their archaeological testing. I have noticed that
25 sometimes projects, they'll limit the area of interest to

1 a small area, and they'll restrict the areas that they
2 look at during their review, sometimes as small as a
3 quarter mile. If you expand that, you'll find a lot of
4 different listed inventories of known archaeological
5 sites in a broader area so there should be a minimum
6 standard as to the area that you look at to understand
7 the full context of that area's cultural sensitivity, and
8 they shouldn't be able to manipulate that to restrict
9 their area that they look at to such a narrow window
10 where they finally find nothing.

11 One area in particular, I believe it was in the
12 Mattapoiset area, they restricted it to a quarter mile.
13 When I do my reviews, I look at a two-mile area around
14 the project, depending on the size of the project and
15 what the scope of work is. Sometimes I'll restrict that
16 if it's, you know, minimum work, but if it's any sort of
17 large-scale ground disturbance that's proposed, then you
18 have to look at the broader area, and two miles is
19 appropriate normally for my understanding in order to
20 understand the area's cultural context. The reasoning
21 behind that is that here in the Northeast is traditional
22 cultural knowledge tells us that our encampments and
23 habitation and occupation often rotated within a two-mile
24 radius. We didn't stay in the same place year after year
25 after year, although a lot of the same places we used

1 over -- transitioning over multiple time periods, but
2 they didn't always stay in the same exact locations. A
3 lot of that's because you don't want to deplete the
4 resources within that area. The other thing is you don't
5 want to leave a footprint or impact in that area so you
6 have to allow the ground to heal. There are farm crops
7 that lose nutrients if you overwork an area, so you
8 rotate the area so that the ground has time to replenish
9 its nutrients, which then will give better nutrients to
10 the food that you grow in that area. If you don't do
11 that, then you're depriving yourselves of the nutrients
12 the food brings to -- to your people, so we rotate those
13 areas out, and when doing so sometimes those areas cover
14 a two-mile area.

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

24 As far as wetland replication, I don't feel as
25 though swamps and natural resource areas should ever be

1 mitigated. Swamps are the best form of filtration that
2 is known to man, and you can't engineer that. A lot of
3 people like to try to engineer and recreate what the
4 Creator has already done for us. You can't engineer a
5 swamp system. A swamp system is a unique natural
6 environment that filters a lot of the impurities, and a
7 lot of times they're that top layer of the -- to the
8 filter of water going into your aquifers, and you should
9 never try to tamper with those and mitigate something
10 because of a project. Also, the swamps also have a lot
11 of resources that are useful to us as indigenous people,
12 medicinal plants and such, so those areas should never be
13 mitigated through wetland replication.

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

1 what we're trying to do here. Otherwise, it's
2 meaningless.

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

21 Echoing what Ramona -- what Ramona touched on
22 earlier was, you know, FERC. One issue is they consider
23 themselves a commission, and they don't have to abide by
24 all of Section 106 because they're not a regulatory --
25 they're not an agency. That is -- that's been told to

1 us, but all commissions need to follow the same standards
2 and enforce Section 106 because it is the right thing to
3 do.

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

22 We are Sovereign Nations so we do agree that
23 Section 106 is supposed to be conducted as a
24 government-to-government relationship so that it's --
25 they're held accountable and concerns are met, but if we

1 didn't stumble across the project, we would have missed
2 out on the whole opportunity that the pipeline's
3 traveling -- and I forget how many miles, multiple
4 states. So that's -- that's a problem, you know, those
5 laws have to be corrected and amended so that they're not
6 able to do those -- do their archaeological testing and
7 ground-disturbing activities associated with
8 archaeological studies prior to even pre-filing which
9 initiates Section 106.

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

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

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

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

25 MR. WEEDEN: Ramona just made a good point that when

1 developing fines, they have to be higher fines that's
2 going to hurt them where -- you know, hurt them where it
3 hurts, in their pocket. You can't have minimal fines
4 that only -- you know, it's just a drop in the bucket.
5 They'd rather pay the fine and keep -- just to keep the
6 project moving. That -- that does absolutely nothing.
7 If there's no penalties in the laws, then the law has no
8 teeth, and it's just words on paper.

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

1 talk amongst themselves when these projects impact
2 multiple tribes as a sovereign nation. Thank you for
3 listening.

4 MODERATOR KLEIN: Thank you for those comments.

5 Next on the list we have Lillie Williamson.

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

16 I'd like to read what they had. It was October
17 the 6th, 2005. The FCC clarifies provisions of
18 Nationwide Programmatic Agreement that apply to Indian
19 tribes. Today FCC released a declaratory ruling
20 clarifying portions of the Nationwide Programmatic
21 Agreement that apply to the participation by
22 federally-recognized Indian tribes and Native Hawaiian
23 organizations in review of proposed communication towers
24 or antennas on properties to which they attach religious
25 or cultural significance --

1 THE REPORTER: Could you slow down so that I can
2 understand you a little better, please?

3 MS. WILLIAMSON: Okay, sorry.

4 The NPA was adopted by the FCC in September of
5 2004 to streamline and tailor the review process for
6 communications towers and other FCC-licensed facilities
7 under the National Historic Preservation Act. Today's
8 action specifically addresses situations where Indian
9 Tribes or Native Hawaiian Organizations do not respond to
10 efforts by members of the industry or the FCC to
11 determine whether the Indian Tribe or Native Hawaiian
12 Organization has an interest in participating in the
13 review of the proposed construction of communications
14 tower or antenna.

15 In today's ruling the FCC clarified that once a
16 wireless provider or other tower applicant has made two
17 good faith efforts over 40 days to obtain response from
18 an Indian Tribe about a proposed communications tower or
19 antenna, the FCC will, upon notice from an applicant,
20 send a letter and/or email to the Indian Tribe's or
21 Native Hawaiian Organization's designated cultural
22 resources representative seeking an indication of whether
23 the Indian Tribe has an interest in participating in the
24 review of the proposed facility. If the Indian Tribe
25 does not respond within 20 days of the FCC's letter

1 and/or email, which will be followed up by an attempted
2 FCC telephone contact during the same 20-day period, it
3 will be deemed to have no interest in the review of the
4 proposed facility. At that point the applicant will have
5 fulfilled its obligations under the NPA to notify an
6 Indian Tribe of its intentions to construct a
7 communications tower or antenna. This process is
8 effective immediately.

9 In addition to clarifying this process, the FCC
10 also declared that applicants' obligations under the NPA
11 have been fulfilled in tower notifications referred to
12 the FCC by applicants before September 10, 2005 for lack
13 of response from an Indian Tribe. In virtually all of
14 those cases, the FCC has already sent a communication to
15 the Indian Tribe's designated representative.
16 Furthermore, in many instances the FCC has made multiple
17 attempts over the past several weeks to contact the
18 Indian tribes via telephone, email and/or letter.

19 And then, like I said, I've worked with the
20 department doing these FCC tower construction
21 notifications. Every Wednesday when they have new
22 projects come out, they will send it to me -- for email
23 to the representative, and I'm representative of our
24 tribe, and this is an example. If you're not familiar,
25 I'll read it to you. It says thank you for using the FCC

1 Tower Construction Notification System. The purpose of
2 this electronic email is to inform you that the following
3 authorized persons were sent the information you provided
4 which relates to your proposed antenna structure. The
5 information was forwarded by the FCC to authorized TCNS
6 users by electronic email and/or regular mail.

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

1 construction falls within an exclusion designated by the
2 Tribal Nations.

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

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

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

1 call to make sure the tribe is aware of the notification.

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

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

18 And one more point I wanted to make on what are
19 examples of consultations on infrastructure projects that
20 you consider to be meaningful. I'm sure there are other
21 tribes, but I'm speaking for myself and my tribe. We're
22 talking about the land. The land is very sacred to the
23 tribes, and so I don't care if there's not anybody in
24 that particular area, the land is the land, and any
25 consultation needs to be forwarded to the tribes. Thank

1 you.

2 MODERATOR KLEIN: Thank you very much for those
3 comments. It's 10:00 now. I think what I propose is we
4 take a short break. I'm going to leave the sign-up sheet
5 right here while we take a break, and if there are folks
6 who would like to provide comments when we come back, it
7 would be helpful if you go ahead and put your name on the
8 sheet so we can do that in an orderly fashion, but we
9 will reconvene in about 15 minutes.

10 (Recess taken)

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

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

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

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

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

24 I lack some of the expertise that our previous
25 speakers have had in the consultation process; however, I

1 do have personal experience with some of the processes as
2 we've experienced some environmental issues within my
3 community. We're located along the St. Lawrence River
4 Valley, so one of the first infrastructure projects that
5 we've experienced was the actual St. Lawrence Seaway
6 being put through our territory with consultation to us.
7 It affected us a great deal and effectively transformed
8 our territory, our way of life, our culture. It's had an
9 enduring impact to our people. The other issue with
10 regard to hydropower that was generated from that
11 project, we've had three corporations come to our
12 territory and open up shop, and as a result of that we
13 have two Superfund sites that we're dealing with now.
14 That's our experience with the consultation process.

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

23 We -- our objections in that area with -- fell
24 on deaf ears. The corporate interests that were present
25 that made profit off our lands were allowed to scamper

1 off, declare bankruptcy, and to not clean up the mess
2 that they made. There were accommodations that were
3 made -- our perception is that accommodations were made
4 on behalf of the corporation by the federal government,
5 and our interests were not covered. We are dealing with
6 this today through our water contamination, through
7 studies that have come to the fore regarding -- with
8 regard to the PCBs. These sites were all located upriver
9 from our drinking supply and upwind from us, as well. So
10 we deal with these things on a daily basis, it's affected
11 our health in no small measure. We have very high cancer
12 rates, diabetes. So this is an ongoing concern for us,
13 and whenever we get a chance to opine, we do. We
14 advocate for removal of the remedial measure that was
15 instituted and implemented by the EPA through a faulty
16 conservation process, and we will continue to do so.

17 We are currently in the midst of another
18 consultation process for another Superfund site in a
19 tributary upriver from us wherein, once again, over our
20 objections the remedial measures the EPA has opted for
21 favored the corporation and the head of industry.
22 Disregarding our knowledge of the river itself, we have
23 no weight being given to our connection to the river and
24 our observations of provisional -- the remediation
25 methodology that has been chosen in this instance is an

1 armored cap that's been put on the river bottom. So it's
2 been our experience that yearly we have an ice gouge, ice
3 scouring that occurs. It's not a matter of if, it's a
4 matter of when. Hydraulic action of the ice will tear
5 apart those armored caps, and there will be nobody there
6 to adequately address that in a timely fashion.

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

24 The consultation process really needs to be
25 mandatory, consistent and uniform. I feel that there's a

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

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

18 We have had a positive consultation with
19 regards to a project that we've undertaken during my
20 tenure on council, and that was with the removal of the
21 hydroelectric dam in our territory, and this has been a
22 positive experience there with the process because in
23 large part we've been allowed to conduct that process on
24 our own. But we've headed the project, we've headed the
25 relicensing initiative, we are actually manning the

1 dismantling of the dam itself, and we've experienced the
2 support of federal agencies in this endeavor. So
3 that's -- that's a positive, and I think that it's
4 positive in large part because we were allowed to handle
5 the project ourselves. I think that there are lessons to
6 be learned there.

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

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

19 THE REPORTER: Could you repeat that, please?

20 MR. THOMPSON: We would like to see developers
21 mandated by law to set aside funds prior to
22 implementation of the project for mitigation costs for
23 the loss of any unintended destruction or impairment of
24 the land in question that have a direct significance and
25 impact on tribal lands or tribal members.

1 Finally, finally, tribal governments must have
2 a seat at the decision-making table. Tribal governments
3 as governing nations should be engaged in all stages of
4 the decision-making process or the developing process
5 that have a direct impact on the communities. Engagement
6 of the tribal government should occur during the initial
7 stage and remain through construction and ongoing
8 monitoring of the environmental aspects of the project
9 which may affect our people.

10 Thank you very much.

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

13 MS. COOK: Good morning, my name is Beverly Cook.
14 I'm one of the chiefs of the St. Regis Mohawk Tribe in
15 New York State. Our territory is bisected on the
16 U.S./Canadian border, and it offers us some unique
17 obstacles and barriers to deal with many of the issues
18 that we face, jurisdictional issues being just one of
19 them. And I bring that up because I'm also a family
20 nurse practitioner, and so my view of the topics that
21 we're talking about today is just a little bit different,
22 and I just want to add an illustration of what we're
23 talking about as tribal leaders when we stand before you,
24 and I look at each and every one of you and realize that
25 you have your own particular area that you're responsible

1 for, that you deal with on a daily basis, and maybe some
2 of the other areas that we speak of don't apply, but they
3 should.

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

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

1 ourselves heard over any given topic.

2 I just wanted to reiterate the last thing that
3 Mr. Thompson said about if private entities or government
4 contractors are harming tribal resources as reported by
5 tribal nations or others, the federal government must
6 investigate and take appropriate action. This includes
7 work stoppages, withdrawals of permits and legal action,
8 and I can't tell you how frustrating it has been for us
9 dealing with the cleanup of the Superfund site and
10 dealing with EPA, and we have probably talked to every
11 individual at the EPA save the janitor, from top to
12 bottom, and when we see something alarming going on, when
13 we have questions about how the cleanup is affecting our
14 people at the time, we're getting study results saying
15 that the inhalation of the PCBs could be far more
16 dangerous than we thought it was when we were eating the
17 contaminated fish, and we asked them to stop, stop doing
18 what you're doing right now so that we can evaluate it,
19 so that we can look at it before you proceed, and we are
20 ignored. And they cry to us that the reason they can't
21 stop or will not stop is because it's going to cost too
22 much money, and they're running out of money. The reason
23 they're running out of money is because they had to dig
24 40 feet into the ground to chase the rivulets of PCBs
25 that had threaded their way through the sandy earth in

1 between the -- what do they call it, the granite silt 40
2 feet into the ground, and the only reason they stopped
3 chasing the PCBs into the ground, which is directly
4 adjacent and abuts our territory, was because they were
5 afraid they were going to fracture the bank of the
6 St. Lawrence River.

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

16 So I think that when you sit and listen in a
17 consultation like this, it's not just what permits were
18 gotten or what permits weren't gotten or what emails were
19 answered and what emails weren't answered, but it's
20 really coming down to the territory itself and looking at
21 what we're talking about and looking at what impacts
22 those industries have on our economy. We're -- we were a
23 fishing community, a river community. Since the early
24 1980s we haven't been able to eat the fish, and so that's
25 had an impact on our nutrition, our nutritional status,

1 and we don't even know yet what impact that's had on the
2 development of our fetuses inside their mothers' womb.

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

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

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

25 MODERATOR KLEIN: Thank you. Next on the list we

1 have Doug Harris.

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

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

12 I'd like to make seven points:

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

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

25 There are for the Narragansett Tribes two

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

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

23 The Bureau of Ocean Energy Management over the
24 last five years have been out on the Continental Shelf
25 attempting to develop protocols for projects that will

1 become undertakings out on the Continental Shelf, in the
2 soils beneath the ocean waters we once lived. Our elder
3 medicine woman, Ella Sekatau, informed us more than 20
4 years ago that more than 15,000 years ago the ancient
5 villages of the Narragansett were out where the ocean is
6 now, and the waters began to rise overnight, and they had
7 to abandon their farms 15,000 years ago. The geologists
8 informed us the geological record says that more than
9 24,000 years ago the Outer Continental Shelf was, in
10 fact, an open and vegetative plain.

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

18 It has already been stated that pre-filing
19 brings with it impacts to our cultural resources before
20 the process is federalized so federally-recognized tribes
21 do not have an opportunity to participate in pre-filing
22 activities unless they are invited by a private entity.
23 There is no federal hook prior to an actual permit that
24 allows us to protect, to intercede, to consult on the
25 impacts to our cultural resources that the archaeologists

1 engage in on behalf of the SHPOs or the archaeologists
2 engage in on behalf of the project proponents. So we
3 would like to have an early intervention process
4 federalized so that the federally-recognized tribes will
5 have an opportunity to be there when archaeologists are
6 making their impacts on our cultural resources.

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

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

20 The Army Corps has been very helpful with
21 ceremonial stone landscapes and has allowed us to
22 participate and have project proponents allow examination
23 of right-of-ways prior to impacts so that we could
24 identify ceremonial landscapes, and they could be
25 avoided.

1 Tribal skills in mapping. Mapping is a
2 science. GIS is a science that we seriously need to
3 have -- thank you -- that we seriously need to have in
4 the toolkit of tribal historic preservation officers. We
5 need to be able to use that science, those techniques,
6 those methodologies and translate them through the tribal
7 culture to be applied to our cultural sites both on land
8 and on the sea. So we'd like to be able to get training
9 in GIS specific to issues dealing with tribal historic
10 preservation. Sometimes we will have people who are on
11 our staff who are non-Native, and they translate through
12 their cultural lens. We need people who are translating
13 through our cultural lens.

14 The policy of unanticipated finds. The
15 Narragansett Tribe this year was in court dealing with an
16 issue at Block Island where we attempted to stop the
17 archaeology because it had unanticipatedly found
18 something that needed to be addressed and not destroyed.
19 The presumption is that an unanticipated find is
20 something that can be destroyed and that somehow or
21 another it's okay, because it was unanticipated, to
22 examine it, to dig it up, to create the data and to have
23 the data. Well, for us the data is insufficient. The
24 spirituality of the -- that the ancestors placed
25 something in the ground is what is important to us. That

1 is culturally significant to us, and what needs to happen
2 with regard to an unanticipated find is that it should
3 not just trigger a license to impact archaeologically,
4 but it should trigger an opportunity to reassess where we
5 are in the project and how to avoid impacts, culturally
6 what is significant; because once that is impacted, once
7 it can no longer be avoided, it has been destroyed, and a
8 piece of who we are has been destroyed. Putting it on a
9 shelf and making data does not protect a tribal person
10 and a tribal process.

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

16 My last point has to deal with the presumption
17 of the primacy of archaeology over tribal knowledge. The
18 operative presumption is that what the archaeologist
19 says, what the anthropology says weighs more than the
20 knowledge that comes from the tribe through the
21 consultation. The National Historic Preservation Act is
22 emphatic. The experts on what is of tribal religious and
23 cultural significance are the tribes themselves, not an
24 archaeologist, not a degreed anthropologist, but the
25 tribes themselves. That needs to be re-instilled in the

1 practice, because it exists already in the law, it exists
2 in policy, but it does not exist in practice.

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

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

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

21 We're on Indian Island now. Indian Island is
22 one of over 200 islands that make up the Penobscot Indian
23 Reservation. We're on the southern-most island, so if
24 you went upriver from here, there would be over 200
25 islands as part of our reservation. We've always

1 inhabited this Penobscot River watershed. The
2 archaeologists tell us that we've been here for 10 to
3 12,000 years, and over that long period of time our
4 tribal members have used the river for -- to maintain all
5 of the necessities of life for a very long time, allowing
6 the river to provide sustenance, for our food and
7 shelter, to provide habitat for medicinal plants and for
8 transportation purposes.

9 So over history our reservation has been
10 dammed, polluted, and the ecological integrity has been
11 pretty much trashed with virtually zero consultation with
12 the Penobscot Nation, and so it's had a profound impact,
13 as you can imagine, on our tribe here. There was a study
14 done, oh, I'm going to say 12, 15 years ago now. It was
15 conducted by the Indian Health Service, the CDC out of
16 Atlanta, State of Maine, Penobscot Nation Health
17 Department -- I think those were the agencies that
18 participated, and they took a thorough review of the
19 cancer statistics, and what came out of that study was
20 the realization that right here in this community today
21 we have a cancer rate that's over twice what it is in the
22 rest of the state of Maine, and we've had too many
23 funerals to count just within the past month or so. So,
24 as I said, pollution and -- has had a tremendous impact
25 on our tribe.

1 And today the State of Maine and the corporate
2 interests are continuing to marginalize us, they continue
3 to treat us as if we don't even exist. I like to quote
4 one of our elder tribal council members that used to say
5 a saying, and I loved it. He'd say, "They moved in all
6 around us and then wondered where we came from." In
7 fact, in 2012 the Attorney General for the State of Maine
8 issued an opinion that said that they believed that this
9 reservation doesn't even include any of the water of the
10 Penobscot River, and we've always reserved the river to
11 ourselves in all of the treaties. We have recognized
12 subsistence fishing rights in this river, our tribal
13 members continue to carry out their cultural and
14 traditional practices as we have for thousands of years.

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

22 The only recommendation that I have in terms of
23 improving the permitting process, we would ask that you
24 incorporate the principles of UNDRIP into your permitting
25 processes. I think in particular Articles 26 and 27 of

1 UNDRIP, as well as the -- the provisions that provide for
2 pre -- pre-consent, prior to consent of our tribes. I
3 think if all of those principles were incorporated into
4 the permitting processes, that that would go a long way
5 to avoiding some of the situations such as what's going
6 on in Standing Rock Sioux now.

7 So thank you for the opportunity to speak.
8 Chief Francis has asked me to say these words today, and
9 again welcome to the Penobscot Nation, and I hope you
10 have safe travels on your way back, thank you.

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

13 MR. BOLAND: Good morning, thank you for being here
14 and the Penobscot Nation for hosting this event. My name
15 is Mike Boland, and I am the Director of Natural
16 Resources Protection and Regulatory Affairs for the
17 Mashantucket Pequot. I've been employed by the tribe for
18 24 years now, and I was asked by tribal council to come
19 today because their THPO could not come.

20 They wanted me largely to just attend this
21 event to add emphasis to the letter that Chairman Butler
22 sent on October 10th addressing his concerns and their
23 recommendations on this issue; but as I was sitting
24 here -- and being management support for the THPO, I
25 understand some of the logistical issues. One of the

1 things I heard was early involvement. Now, if it's
2 actually a federal initiative, you people can do a lot
3 about that by involving the THPO early on in this
4 process, but I also understand that when it's a
5 permitting issue, all too often your involvement starts
6 with the permit application, and I've heard that
7 involving the THPO at that point in time is too late.
8 There's been cultural assessments done by archaeologists;
9 sometimes archaeologists actually cause damage in their
10 assessments. So I gave it some thought, and my
11 background years and years ago started with investigating
12 contamination sites; and when we did environmental
13 assessments, there were standards that we followed. It's
14 actually ASTM standards for environmental assessments.
15 If I presented an environmental assessment to a client or
16 to a permitting agency without going through the process
17 of looking at town files, state files and actually
18 interviewing the people that have that factory or
19 operated that factory before I did sampling, I'd get
20 laughed -- laughed out of the room.

21 So I kinda take that analogy to cultural
22 resources and suggest that you do have the power. You
23 have the power to develop standards of what you're going
24 to accept in your permit applications for cultural
25 resource assessments. It would seem to me that if you

1 had in those standards that you needed to -- that those
2 cultural resource assessments need to be guided by tribal
3 input, then it would -- or at least help to alleviate a
4 lot of the concerns.

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

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

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

13 I'm Kitcki Carroll, Executive Director of the
14 United South and Eastern Tribes Sovereignty Protection
15 Fund. A few thoughts that I want to offer on behalf of
16 our organization, the 26 federally-recognized tribes that
17 are members of our organization. First, consistent with
18 Mr. Harris' comments, we are in support of our sisters
19 and brothers of the Great Plains, the Standing Rock
20 Sioux, and have supported them in their endeavors to
21 protect their interests, but I'm here to tell you that
22 one of the reasons that we have a need for this
23 consultation is that issues like this have been going on
24 for some time. The situation that's going on in DAPL is
25 not new. So the lack of proper consultation, the tribal

1 meaningful consultation or consent has been absent in our
2 region for a long time, so that's why this issue has
3 regional interest to us just as it does now in the Great
4 Plains.

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

23 When we talk about the trust responsibility --
24 and one of the things that was mentioned earlier in terms
25 of the responsibilities, Chief Cook, before she departed,

1 one of her remarks was talking about appropriate federal
2 oversight on site construction, new construction
3 projects, and taking very specific and hard-line actions,
4 including work stoppages, withdrawals of permits, legal
5 action, et cetera. That's an obligation as our trustee,
6 and one of the conversations that we've been having is
7 that it's about time that our federal partner move away
8 from this trustee activity that's really focused on
9 widgets and really focus on protection of our sovereign
10 authorities and interests. That's what this relationship
11 is supposed to be all about.

12 And the fact that that is absent at times
13 causes these very types of situations, and the initial
14 problem with that is embedded with that role are
15 oftentimes conflicts of interest. If you just look at
16 the Department of Interior slice of the equation, there
17 are many conflicts of interest that just are on that side
18 of the equation, so you have to find a way to get to the
19 point where you, as our federal trustee, understand that
20 your role with us is to protect our interests even in
21 areas that conflict with your own interests. That's what
22 you signed up for. We didn't come knocking on the
23 federal door asking for this relationship. It was
24 brought to us. So you signed up for that relationship,
25 and you have that obligation to fulfill.

1 One thing I want to make clear about the
2 conversations that we've had amongst our membership is
3 our interest in this issue isn't the expression of
4 wholesale opposition to infrastructure projects. That's
5 not what this conversation is about. This conversation
6 is about adequate, meaningful, respectful, robust
7 consideration of our concerns and interests that move all
8 the way to achieve our consent. As just was mentioned
9 earlier, I know that the federal government doesn't
10 necessarily view the principles of UNDRIP the same way
11 that we do. We give them a whole lot of credence and
12 value and meaning, they are reflective of what our
13 position is, and that needs to be included in this
14 conversation and the mindset that Doug was speaking about
15 earlier.

16 One thing I want to talk about specifically
17 though is Executive Order 13604, and in fact I want to
18 just talk about OMB for a minute. I find it interesting
19 that the steering council is a function of the OMB
20 Office, and the reason why that's of particular interest
21 to us is OMB is on record as having expressed that
22 despite the President's Executive Order on consultation,
23 that because OMB is not technically a department or an
24 agency, that they don't owe any consultation requirement.
25 That causes lots of problems between us and OMB. OMB is

1 a behind-the-scenes entity that pulls the strings and
2 makes decisions and defines the rules of the game in many
3 ways, and the fact that now on the management side of the
4 OMB part of the occasion that this steering council is
5 part of that entity who has expressed a position of not
6 having to consult, that's very problematic for us. And
7 the whole reason for the creation of this entity was to
8 move the permitting process along as part of the American
9 Recovery, we get that, we understand that, but Indian
10 Country interests have been blatantly disregarded and
11 ignored as part of that creation, and that needs to be
12 specifically addressed.

13 So a couple things consistent with our concerns
14 around the fast-track permitting piece. There absolutely
15 needs to be -- if the OMB is going to continue to take
16 the position that it has no consultation requirements to
17 any country, then it absolutely has to make part of -- as
18 part of its structure a tribal component, a tribal
19 component that is there to look after and advocate for
20 the interests of Indian Country, not as one of our people
21 placed there necessarily -- that would be preferable --
22 but somebody who understands what that relationship is
23 all about and puts Indian Country's interests first
24 before all else. That's the only way we're going to have
25 that voice within the multitude of permitting approvals

1 that are going on. There's been a plethora of them ever
2 since the passage of -- since the American Recovery Act.

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

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

20 Absolutely there is no room in any circumstance
21 that I can think of for allowing for a third-party
22 consultation option. It's a federal to -- federal to
23 tribal nation, government to government, nation to nation
24 diplomatic relationship that needs to be respected.
25 Pushing that consultation requirement off to some third

1 party, a party that's probably not even interested to the
2 extent that we are mutually, is not acceptable.

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

21 So just again I want to wrap up. Consultation
22 is most beneficial and fruitful when we both come to the
23 table with an understanding of each other's perspectives,
24 and I just feel in this specific area, specifically
25 what's going on specific to the issue of sacred sites

1 protection and what not, because there is a glaring
2 absence of adequate negotiation by our federal partners
3 about what we mean when we say what we say. It's not
4 just talking points. It's just not rhetoric. It is a
5 deep-seated fundamental understanding of our place in
6 this world and our connection to this land. Thank you.

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

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

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

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

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

25 One, this tribe is looking for support for

1 emerging technologies. Doug Harris talked about
2 archaeological sites underwater. My homeland is on
3 Martha's --

4 THE REPORTER: It's where?

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

19 It's also been brought forward for more support
20 for the tribes financially, especially through the
21 grants. I guess I can -- I can say money is tight
22 everywhere, but in order for us to do this work -- in my
23 case I leave my office, I take a boat. Fortunately I
24 actually live outside Boston so I didn't have to make
25 that stop or cost, but then we come here, and any time we

1 have a consultation -- because most people don't -- most
2 federal agencies do not come to the island. We tend to
3 go to them. It's an extra cost. So for a small tribe
4 like mine in order to do this job, it's costly, and what
5 we get is a lot of push-back because for some reason
6 everybody thinks the Indians work for free. They pay the
7 environmentalists, they pay the archaeologists, they pay
8 the policemen who are working on the highway, but they
9 expect us to come in and not get paid. This is -- this
10 is a problem, and it needs to be dealt with.

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

19 I would like to see either annual or biannual
20 meetings between federal agencies and heads of tribal
21 leadership. As I said in the beginning, it's building
22 that trust relationship. Knowing from a federal agency
23 that this project is coming down the road, not specifics
24 but if you know there are projects, or how can a federal
25 agency help the tribe. People have mentioned

1 infrastructure. On the -- on my level this consultation
2 level I think is very important. We should -- I should
3 be meeting with federal agencies at least quarterly to
4 give a head's up. I just dropped off 75 projects to my
5 senior tribal council resource monitor before I came up
6 here. That's two weeks' worth. We have three people in
7 our office to go and research these, and then I have
8 another three people that will actually be doing some of
9 the work because they -- they are already on other
10 projects. It is a work -- it is a workload that is -- is
11 very heavy.

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

24 Which brings me to the next apparent problem,
25 and I understand that this is -- these sessions are to

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

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

20 By the time the tribes are involved, and if
21 it's late, we're often perceived as an impediment, or
22 we're just being troublesome. Now, if we have an initial
23 meeting with the federal agency about conservation, and
24 if we move to the part where now we are actually working
25 with the proponent, I would like to see the federal

1 agencies coming back and checking in every once in a
2 while how are things going, not always having the tribe
3 reach out, because what happens is then the proponent
4 sees the tribe as reaching out to the federal agency,
5 whereas the federal agency has the trust responsibility
6 to the tribe, and they should be checking back in.

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

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

23 Okay. One of the issues I have run into lately
24 is a cultural resource coordinator for a proponent is an
25 employee of the archaeological firm doing the work for

1 the project. This is concerning to me. I should not
2 walk into a meeting, and I know the individual works for
3 the archaeological firm, but they're wearing the
4 proponent's shirt. I consider this a conflict of
5 interest which makes me uneasy when I review that
6 archaeological report. If there were guidelines given
7 for consultation with the federal agencies, this is one
8 of the things that I would urge proponents not to do. I
9 do not think it is conducive to good consultation.

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

21 And this one I will read, all government
22 entities are required to consult. We right now are
23 working on pipelines that are challenging because they go
24 outside of that 106 that are covered by regulations. In
25 addition, as Mr. Weeden said, you can miss out and not

1 even be involved or have a say about a project if you
2 don't get there early, and the problem with that is the
3 next project that comes down the line, they'll expect you
4 to do that again, and that's -- and that's a problem
5 because we are trying to say you must consult, and if we
6 bend that rule, then we're not holding to our word, which
7 we have been told by our governments we must do.

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

20 Another challenge is working -- this came up on
21 a power line, and the permit -- what's that, pole 132,
22 and that is the only place that it was to be permitted,
23 and I'm like what about -- no, that's not -- that's not
24 our area. So I asked the question if there's a problem
25 here, and it cannot be permitted, does the whole project

1 fall? Yes, it does. And I said then it's the whole
2 project. The way we look at it, it's not just confined
3 to this area. This is a problem. I run into it again
4 and again, and I think it's something that we need to
5 look at, that other agencies need to look at, that you
6 cannot -- it's not -- it's not like you can't because
7 you're already doing it, but this compartmentalization of
8 a project.

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

20 Oh, I'm not sure how the results of these
21 meetings are going to be looked at by the federal
22 agencies, so if you've had five meetings and notification
23 came up ten times, but waterways came up twice, how are
24 you going to weigh these comments? But I would like to
25 say if one tribe mentions something to them, then it

1 weighs as much as if ten tribes mentions something else,
2 because that's consultation. Every tribe is different to
3 what is important to them. Some of them are going to be
4 universal. We all want to be notified. We all want to
5 be notified early, to have it go to the right people, but
6 also every tribe may have something that is unique to
7 them. That's what makes us tribes.

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

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

23 What I find when we consult on these projects
24 is money is the problem. Very often anything, even
25 mitigation, is most likely to be offered in financial

1 terms rather than a resource term. Someone had
2 mentioned -- I don't know if it was David -- marshlands
3 and swamplands. If you want to see my head spin, say
4 remediation for one of those. It takes millions of years
5 for those to be created. I live in Waltham, which is an
6 industrial city, and it floods in the spring. Everybody
7 complains, and I tell them, well, you need to go up the
8 road and talk to Harplo [phonetic] because they permitted
9 filling in of the swamplands.

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

20 MODERATOR KLEIN: Thank you.

21 Chief Francis, did you want to speak?

22 MR. FRANCIS: Good morning. Just briefly, as
23 everybody knows I think, my name is Kirk Francis. I'm
24 the Chief here for Penobscot Nation, and I want to thank
25 first of all everybody for being here. It's an honor to

1 have you in our territory. I know Chief Cook and Chief
2 Thompson have already spoken, so I just will say that my
3 role as the newly-elected president of the South and
4 Eastern Tribes, I'm very proud of that role, as well.
5 You know, the issues around what we're discussing today,
6 without being totally redundant, are --

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

9 (Off-the-record discussion)

10 MR. FRANCIS: Okay. So I think that what we're
11 really talking about here today is good, meaningful
12 consultation that is result orientated, that focuses on
13 common ground products, and in partnership we can develop
14 and pass forward on these very important matters. What's
15 going on out at Standing Rock is really bringing national
16 attention to this issue, but I think, you know, for our
17 USET tribes these issues are all too familiar and have
18 been for a very long time. So when you talk about
19 natural gas pipeline expansion, for example, in southern
20 New England, we see some of the things you've heard today
21 here for concerns in delegation of consultation to the
22 companies, to archaeologists that are not from tribal
23 communities, and certainly no involvement with tribal
24 historic preservation officers, et cetera. So what you
25 see from that is ceremonial sites that the tribe holds

1 very sacred not being considered as such, and you also
2 insert -- in that kind of a situation you also insert an
3 entity or entities of relationship that is much more
4 sacred, that they should have standing when we talk about
5 this federal trust responsibility and the shared
6 relationship we have the federal government. So I think
7 that's one focus that really needs to be stressed, that
8 these consultations are direct, and they're direct
9 between the tribes and federal agencies. And so what
10 we're seeing now is through those delegations, again,
11 identification of sacred sites and ceremonial areas being
12 ignored.

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

25 And I think, you know, I would like to hear

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

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

25 So I won't go into -- I know you said written

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

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

19 And I know you heard from John earlier from our
20 staff, but when we've been under a fish advisory,
21 consumption advisory for three decades, maybe longer, you
22 know, what does that right mean to the tribe if it's not
23 exercised in its traditional practices? So these things
24 get to the very core of culture identity of the people,
25 and so these processes and opportunities for dialogue,

1 the ability for tribes to not only be in the conversation
2 but making sure that that dialogue is considered part of
3 the final product is extremely important.

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

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

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

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

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

25 Tribal capacity issues, so the support for

1 development of expertise and GIS mapping, both the skills
2 and also the people to handle the influx of requests. I
3 think we've heard this across the country, that the
4 volume of requests that tribes get is really too much,
5 and we need to -- we need to set up better systems to
6 deal with that.

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

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

20 We've heard a lot about scope issues and how do
21 we ensure that all aspects of particular projects are
22 taken into account when we're conducting consultation
23 from, you know, the time that surveys begin to the very
24 first turning of dirt, whether that's on land or in the
25 ocean through remediation, too, so we've heard a lot

1 about that today. And we heard a lot of comments about
2 what consultation ultimately means and what the end
3 result of that is, and whether or not there should be pre
4 informed and prior consent before projects move forward,
5 which is an issue and a challenge.

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

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

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

21 To the question of what happens after November
22 30th, we are going to obviously spend some time going
23 through the comments that we've received both orally and
24 in written form. We are providing a summary report of
25 those comments and are committed to do that before the

1 end of the administration. I think we want to certainly
2 keep the dialogue open about what improvements can be
3 made now. I can only speak for myself and Jody that at
4 least some of us at this table will only be in this role
5 for another 70 days, but it certainly speaks to the
6 importance of relationship building, and relationship
7 building out here in the real world and outside of
8 Washington, D.C., among and between agencies and tribes.
9 So we certainly hope that you hold all federal agencies
10 to that, and, again, I just want to thank you very much
11 for being here today and for providing your input and
12 your counsel and wisdom, and we really look forward to
13 continuing the dialogue. Thank you.

14 (Proceedings concluded at 11:52 a.m.)
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C E R T I F I C A T E

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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