



Sent VIA Email: Consultation@bia.gov

November 30, 2016

US Department of Interior
Office of the Assistant Secretary – Indian Affairs
c/o Elizabeth K. Appel
Office of Regulatory Affairs and Collaborative Action
1849 C Street, NW
MS 3642
Washington, DC 20240

RE: Comments on Tribal Trust Compliance and Federal Infrastructure Decision-making

Dear Elizabeth K. Appel,

I write on behalf of the Jamestown S'Klallam Tribe to provide comments on the Tribal Trust Compliance and Federal Infrastructure Decision-making. The Governing Body of the Jamestown S'Klallam Tribe has aligned itself with the Standing Rock Sioux Tribe and hundreds of other Tribes across the United States by passing Resolution #35-16. This Resolution endorses the sovereign rights of Tribes to protect their waters, lands, natural resources and sites that have sacred and cultural significance from actions, such as, the construction of the Dakota Access Pipeline. The pipeline will pose significant risk of contamination and/or destruction of Tribal resources and will jeopardize the health and welfare of Tribal citizens. We urge the Administration to deny the Corporation an easement to cross Lake Oahe and conduct a full environmental impact statement under the National Environmental Policy Act.

In an effort to stimulate the economy and create jobs, the Obama Administration implemented a strategy to expedite the review process for infrastructure projects by:

1. Developing a Federal Infrastructure Projects Permitting Dashboard;
2. Issuing Executive Order 13604, Improving Performance of Federal Permitting and Review of Infrastructure Projects;
3. Establishing a Steering Committee chaired by the Office of Management and Budget in consultation with the Council on Environmental Quality; and,
4. The Creation of an Implementation Plan for Modernizing Infrastructure Permitting.

In addition, the Fixing Americas Surface Transportation Act provides additional authority to further streamline the permitting process. However, the biggest flaw with

the Implementation Plan and streamlined processes is that they fail to include Tribal Governments and address the Federal Trust Responsibility to Tribal lands, resources and places of cultural and spiritual significance.

Federal Agencies have consistently failed to assess the impacts of infrastructure development projects on Tribal Nations or to initiate government to government consultation with Tribes to fully engage them in the decision-making process prior to authorizing actions that pose significant risk to Tribes. For any project affecting Tribal Treaty rights, homelands, water, natural resources, or places of sacred and/or cultural significance, the United States has a fiduciary responsibility to consider the following five principles: 1. Recognition of Tribal Sovereignty; 2. Respect for Treaty Rights; 3. Compliance with the Federal Trust Responsibility, including seeking Tribal informed consent; 4. Upholding all statutory obligations; and, 5. Ensuring environmental justice.

We are supportive of the recommendation being advanced by the National Congress of American Indians (NCAI) that the Federal government implement the following seven best practices: 1. Regional Mapping and Tribal Impact Evaluation; 2. Consultation in early planning and coordination; 3. Early, adequate notice and open information sharing; 4. Funding for Tribal participation in processes; 5. Trainings for Agencies to improve understandings of Tribal Nations; 6. Creation of Tribal Impact Statements and a Trust Responsibility Compliance Officer; and 7. Evaluation of cumulative impacts and regional environmental impacts.

We urge the Administration to act swiftly to implement these recommendations to improve the assessment of Tribal impacts and to ensure the protection of Tribal rights. Thank you for the opportunity to provide these comments.