



National  
Congress of  
American  
Indians

# Federal Infrastructure Permitting and the Trust Responsibility

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*Indian Country Strategy Session*

October 11, 2016



# FEDERAL CONSULTATION SCHEDULE

Date	Meeting Time (Local Time)	Meeting Type	Location
<b>Tuesday, October 11, 2016</b>	6:00 pm to 8 pm	Listening Session	Phoenix, Arizona (NCAI Annual Conv.)
<b>Tuesday, October 25, 2016</b>	8:30 am to 12:30 pm	Tribal Consultation	Seattle, Washington
<b>Thursday, October 27 2016</b>	8:30 am to 12:30 pm	Tribal Consultation	Albuquerque, New Mexico
<b>Wednesday, November 2, 2016</b>	8:30 am to 12:30 pm	Tribal Consultation	Billings, Montana
<b>Tuesday, November 15, 2016</b>	8:30 am to 12:30 pm	Tribal Consultation	Minneapolis, Minnesota
<b>Thursday, November 17, 2016</b>	8:30 am to 12:30 pm	Tribal Consultation	Rapid City, South Dakota
<b>Monday, November 21, 2016</b>	12:30 pm to 4:30 pm	Tribal Consultation via Teleconference	Teleconference



# FEDERAL CONSULTATION QUESTIONS

- 1) Within the existing statutory framework, what should the federal government do to better ensure meaningful tribal input into infrastructure-related reviews and decisions and the protection of tribal lands, resources, and treaty rights; and
  - 2) Should new legislation be proposed to Congress to alter that statutory framework and promote those goals.
- **Written Comments are due Friday, November 30, 2016, email to: [consultation@bia.gov](mailto:consultation@bia.gov)**
  - **Link to Federal Consultation Website:**  
<http://www.bia.gov/WhoWeAre/AS-IA/ORM/TribalInput/index.htm>



# WORKGROUP FRAMING PAPER PLAN

## I. Historical Perspective

- How we got here? Long history of development projects impacting Indian Country
- Looking at the National Historic Preservation Act, it's 50 year history, tribes only allowed to carry out preservation on tribal lands with THPOS since the 1992 Amendments



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## II. Contemporary Issues and Tribal Stories

- Build a record of all tribes' stories of infrastructure projects harming tribal natural and cultural resources
- Old and current stories
- Short paragraphs outlining the major issues the tribe is facing/faced



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## III. Existing Process

- Permitting Dashboard, inclusion of tribes and work with tribes on development of projects
- Chart showing the current processes under NHPA and environmental laws, and where other governments (state and local) are engaged
- Other processes where tribes don't have access or considerations



# WORKGROUP FRAMING PAPER PLAN

## **IV. Trust Responsibility Connection to Consultation**

- The role the tribal trust responsibility, relationship, and treaty rights in protection of tribal resources and the consultation process
- The role of private entities in the process



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## **V. Consultation to Consent/Government-to-Government Negotiations**

- How to change the language of the consultation process to make it better address tribal sovereignty and the true government-to-government partnership
- Current process for tribal governments
- What's the consultation process between states and the federal government and how does it differ from tribal consultation?
- Make national consultation policies work at the local level





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## VI. Administrative Solutions

- Army Corps Regulatory Fixes & Appendix C
- Memorandums of Agreement/Programmatic Agreements
- Cooperative Management Agreements
- Ensuring Effective Cultural Survey Policies
- Update Executive Order 13007 on Sacred Sites
- Review Executive Order 13212 on Actions to Expedite Energy-Related Projects
- UNDRIP's Role – “free, prior, and informed consent”



# WORKGROUP FRAMING PAPER PLAN

## VII. Congressional Solutions

- NPHA Language Changes in Sections 106, 110, 101(d)(6)
- Addressing tribal concerns in NEPA, CWA, and environmental protection laws
- Congressional Oversight of laws protecting tribal resources
- Strengthening the Advisory Council on Historic Preservation
- Indian Trust Counsel Authority



# WORKGROUP FRAMING PAPER PLAN

## **VIII. Communications Strategy**

- Talking Points and Messaging
- Advancing Indian Country's Advocacy Strategy
- Countering Opposition



# DISCUSSION



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# Thank You!

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