



Tribal Consultation Summary Report for Permitting Council Members

Office of the Executive Director

March 7, 2024



The Federal Permitting Improvement Steering Council

The Permitting Council plays a leading role in creating a clean energy future and modernized infrastructure.

We offer a path for transparency and predictability for all FAST-41-covered projects and serve as a center for permitting excellence for infrastructure projects across the nation.

We are uniquely positioned to proactively and efficiently assist with the completion of environmental reviews and permitting processes.

We bring coordination and collaboration to the permitting process across all stakeholders.



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Introduction

The Federal Permitting Improvement Steering Council (Permitting Council) Executive Director held a Tribal consultation on March 7, 2024, 2:30-4:30 pm Eastern /11:30 am-1:30 pm Pacific.

The purpose of this consultation was to provide a high-level overview of the Permitting Council's activities and decisions that may implicate the interests of Tribes; share key provisions of the Permitting Council's draft Tribal Consultation Policy and Plan; and receive feedback from Tribes on the draft Tribal Consultation Policy and Plan to help ensure that Permitting Council's discussions with Tribes are meaningful and responsive to Tribes' needs.

After opening remarks, several Tribes requested that this report indicate that they were not participating in the March 7, 2024, session as an official Tribal Consultation. These Tribal participants clarified their attendance for information purposes only and described their individual Tribe's Government-to-Government Consultation processes. These representatives and Tribes are listed in Appendix A.



Key Themes and Take-Aways

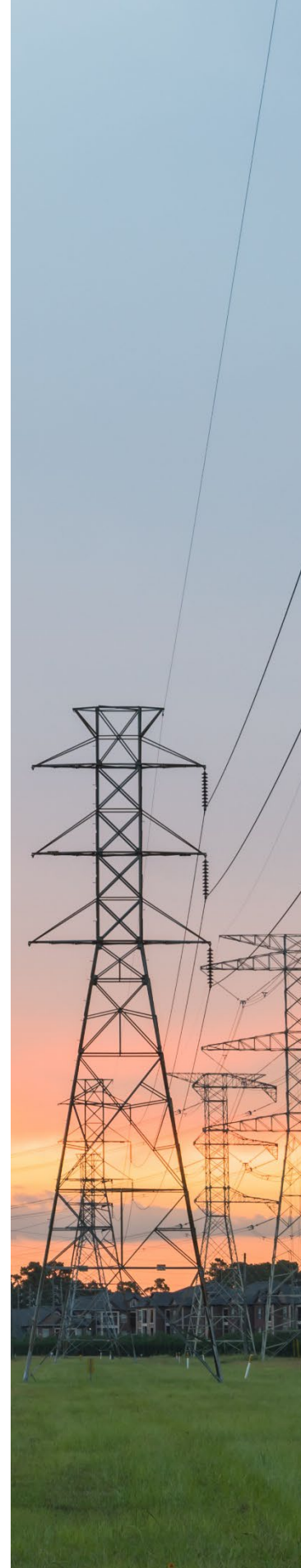
This section summarizes the feedback received during the Tribal Consultation session and comment period.

Increase Information on Permitting Council Activities that May Impact Tribes

There were many questions about the Permitting Council's role in infrastructure project permitting and relationship to Tribes and other federal government entities. The Permitting Council offered to meet with Tribes and Tribal staff members to discuss the Permitting Council, FAST-41, and how Permitting Council activities may impact individual Tribes.

Commenters recommended hosting additional focused outreach or Tribal consultation sessions regionally focused to provide Tribal Nations with more background information and context of the Permitting Council's roles and responsibilities. The Permitting Council's Tribal Liaison officer shared a description of regional outreach events and activities that have occurred or were planned and encouraged Tribal representatives to share additional opportunities to increase understanding of the Permitting Council's roles and responsibilities.

Tribal Consultation participants similarly indicated that the Permitting Council's role and responsibility in infrastructure permitting processes was not clear. Specifically, how the Permitting Council exercises the trust responsibility with respect to infrastructure permitting. Participants requested clarity on what role, if any, the Permitting Council takes in the permitting and environmental review of FAST-41 projects. Participants expressed the need for the Permitting Council to explain its role more clearly in the infrastructure permitting process and provide a more concise description of what the Permitting Council specifically does and does not do. The Permitting Council attempted to explain the role that the Permitting Council may play with respect to Tribal trust and treaty rights, outreach, education, and leveraging the role of the Permitting Council to improve Nation-to-Nation consultation by agencies that are represented by Permitting Council members. Tribal comments recommended that these clarifications could be provided through additional materials to illustrate



the Permitting Council's scope, process, and responsibilities; more regional outreach meetings (as referenced above), development of a Frequently Asked Questions (FAQ) document (with supporting materials); and providing additional details in the Tribal Consultation Policy and Plan.

Participants and written commenters also recommended developing a Tribal-specific landing page on the [Dashboard](#) with resources and information specific to Tribal Nations, including relevant points of contact for the Tribal Liaison Officer and the ERIF Tribal Assistance Program. Commenters also recommended including references to the Tribal Liaison points of contact for agencies that are represented by Permitting Council members.

A Tribal participant asked if FAST-41 can provide any more avenues for consultation when dealing with pipelines (crude oil or natural gas). These participants shared that they do not believe consultation on these projects is currently sufficient. The Permitting Council responded that unless the pipeline is a FAST-41 covered project, the Permitting Council would not have a role in that project. If the pipeline is a FAST-41 covered project, then the Tribe can apply to the Tribal Assistance Program to get funding to support Tribal engagement in the environmental reviews and authorizations for the project. It would be up to the Tribe to consult with the lead agency for any consultation process.

A Tribal participant asked what the benefits are for a Tribe to request consultation from the Permitting Council. The Permitting Council responded that it would be appropriate to request consultation with Permitting Council in response to activities that the Permitting Council undertakes, such as establishing the FAST-41 best practices for agencies to consult with tribes when reviewing and authorizing FAST-41 covered projects or establishing the Permitting Council Tribal Assistance Program. One written commenter suggested providing language on the Permitting Dashboard to emphasize the benefits of becoming a FAST-41 covered project to project sponsors.



Coordinating and Streamlining Agency Engagement: Clarify FAST-41 Covered Project Qualifications

A Tribal participant asked what qualifies as a FAST-41 covered project and if FAST-41 expedites the transportation planning process. The Permitting Council responded that there are several ways for an infrastructure project to become a FAST-41 covered project, but that the most common criteria used is that the project must be subject to the National Environmental Policy Act (NEPA); and require a total investment of more than \$200,000,000. FAST-41 does not necessarily make project review “faster,” but FAST-41 helps streamline the permitting process between multiple agencies. The Permitting Council further clarified that surface transportation projects are excluded from FAST-41 if USDOT is the lead agency for NEPA.

A Tribal participant asked how bridge projects fit in FAST-41. The Permitting Council responded that bridge projects are considered surface transportation projects and, therefore, typically do not fall under FAST-41. The Permitting Council pointed out that all requirements, agencies, and timelines for FAST-41 covered projects are located on the [FAST-41 Dashboard](#). Similarly, Tribal representatives were encouraged to review the [FAST-41 Dashboard](#) for information on which federal agencies are the lead or participating agency for any specific FAST-41 covered project.

Clarifying the Permitting Council Tribal Consultation Policy and Plan

Tribal participants mentioned that the last page of the draft consultation policy explains the ways that the Permitting Council will use available tools to try to identify Tribes that may be impacted or have relevant experience and knowledge in an activity undertaken by the Permitting Council. The policy specifically mentions the BIA Tribal Leaders Directory, TDATA, and the NATHPO directory. The participant asked how the Permitting Council will identify Tribes that may be interested in permitting processes involving areas that are outside of their Tribal base/headquarters or are Ancestral Lands. The Permitting Council clarified that the responsibility of contacting Tribes for specific infrastructure project review efforts will fall on the lead agency for an infrastructure project and will not involve the Permitting Council. The Permitting Council explained that the Permitting Council does not have the role in identifying what Tribes the lead agency reaches out to because it is not involved in the underlying permitting process for a project. If Permitting Council is engaging with Tribes on activities that the Permitting Council undertakes with Tribal implications, such as identifying permitting best practices, the Permitting Council will reach out to the Tribes directly. The resources referenced in the policy were provided as existing potential resources for Permitting Council member agencies to use in their processes. Additionally, the Permitting Council acknowledged that the identified resources may have limitations and the Permitting Council is thus providing additional

resources to agencies to utilize instead of TDAT, and further is working to improve the reliability of TDAT. The Permitting Council will adjust the policy and plan to clarify these points.

A Tribal participant pointed out on page 5 of the Tribal Consultation Policy and Plan that there is a Joint Federal Tribal Team and asked if the Tribe would have to be involved on an active FAST-41 project to be eligible for the team. The Permitting Council responded that Tribal involvement on an active FAST-41 project is not required to be eligible for the Joint Federal Tribal Team because the Permitting Council is not consulting on infrastructure projects but rather on operations and actions of the Council. The purpose of the team is to discuss specific issues that may arise as needed. To be invited to the team, the Permitting Council would reach out to a diverse group of Tribes depending on the topic. There are currently no Joint Federal Tribal Teams being considered at the time of the Consultation. Additional Tribal comments supported the joint team concept but recommended changing the name of the team to Joint Federal-Tribal Workgroup, ensuring that members of this group are regionally and nationally representative of Tribal Nations across Indian Country, and that representatives are duly appointed or elected Tribal leaders or their designees. Further comments recommended including a process to allow a Tribal Nation to submit requests to become or form a working group. Additionally, these commenters recommended including more specificity of when and who would be eligible to serve on Joint Federal-Tribal Team referenced in "Section 4: Responsibilities." The Permitting Council will review the Tribal Consultation Policy and Plan and make necessary updates and clarifications with these comments in mind.

Tribal participants also recommended including a 30-day response to Tribal government requests to Tribal consultation under Tribal Consultation Policy and Plan Section 6: "Determining Whether Consultation is appropriate."

Written comments recommended including references to multiple additional Executive Orders and governing directives relating to Tribal Consultation in "Section 2: Authority."



Training on Government-to-Government Consultation

Referencing the Tribal Consultation Policy and Plan provisions on training, a Tribal participant encouraged training for federal permitting agency staff on Government-to-Government Consultation. The Tribal participant reminded everyone that all Tribes and their governance systems are unique, and it is difficult to have an overarching Tribal Consultation training. The Permitting Council responded that the National Center developed a 2-day Federal Tribal Training in collaboration with various Tribal representatives and the Permitting Council. While this training is an overview of Government-to-Government Consultation, Tribal Sovereign, U.S.-Tribal Nation relations, and the history of the Federal Trust Responsibility, the training emphasizes that the training is not a “one size fits all” and recommends that federal permitting agency staff explore additional training and engagement at a regional and Tribe-by-Tribe basis.

Further commenters recommended including the following language to the Tribal Consultation Policy and Plan under Section 4: responsibilities, “Training” to include the specific provisions of “Tribal sovereignty and U.S.-Tribal Nation relations to employees of the Permitting Council and its member agencies.” According to the commenters, this will ensure that any training the Permitting Council offers will include federal agencies. Likewise, commenters recommended that the “Training” section should be revised to state that “the Permitting Council, by way of the Tribal Liaison Officer or otherwise, will actively engage in training efforts and opportunities for staff of the Council’s member agencies.” Tribal written comments further stressed a “lack of education and understanding regarding the Federal Government’s trust and treaty obligations has and continues to contribute, at least in part, to federal failures to properly consult with Tribal Nations.” Commenters recommended that the Permitting Council actively work with and offer training for employees of its member agencies to become knowledgeable of the Federal Government’s obligations to promote Tribal sovereignty and self-determination, regardless of the level their position has in direct interaction with Tribal Nations in the infrastructure project review process.

Commenters also recommended regularly revising the Permitting Council training materials based on Lessons Learned and in consultation with Tribal Nations. Commenters further recommended that the Permitting Council and its member agencies ensure that third-party contractors brought in to assist in developing and conducting environmental and cultural reviews of FAST-41 projects be knowledgeable of the Federal Government’s trust and treaty obligations to Tribal Nations.

Capacity Considerations for Tribes to Engage in Infrastructure Permitting Consultation Requests

A Tribal participant asked how quickly they would receive Tribal Assistance Program funds for a FAST-41 project. The Permitting Council responded that the timing estimate is not available, given that this is a new program and, at the time of the consultation, the agency had only received one application.

A Tribal participant asked if there are funds to help Tribes in reviewing their FAST-41 projects, specifically around Tribal Cultural Landscapes. The Permitting Council responded that a Tribe may apply to the Tribal Assistance Program to receive funds for FAST-41 covered project reviews in which the Tribe is involved. The eligibility for the Tribes to receive assistance is very broad and must only make environmental review and authorization of a FAST-41 covered project more timely and efficient. To receive more information, please email the Tribal Liaison Officer.

Written comments also emphasized the workload burden placed on Tribal Historic Preservation Officers (THPOs) and funding deficits to Tribal THPO programs because of increased federal support and permitting for infrastructure projects.





Appendix A

Tribal Participants

First Name	Last Name	Tribe
Kaila	Akina	Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians
Larry	Benallie	Gila River Indian Community Tribal Historic Preservation Office
Billie	Burtrum	Quapaw Nation
J. Michael	Chavarria	Santa Clara Pueblo, New Mexico
Alan	Faulkner	Dot Lake Village
Jenny	Gaenzle	Mi'kmaq Nation
Mariah	Mayberry	Shingle Springs Band of Miwok Indians
Danny	Naranjo	Santa Clara Pueblo
Kanani	Nunies	Oneida Nation Indians of Wisconsin
Larry	Samuel	Pueblo of Tesuque
Suzette	Shije	Santa Clara Pueblo
Matthew	Sisneros	Santa Clara Pueblo
Elizabeth	Toombs	Cherokee Nation

Other Participants

First Name	Last Name	Organization
Eric	Beightel	Federal Permitting Council
John	Cossa	Federal Permitting Council
Valerie	Grussing	NATHPO
Mark	Harding	Sovereign Resiliency Partners
Brian	Howard	USET Sovereignty Protection Fund
Stephanie	Lucero	Udall Foundation
Courtney	Owen	Udall Foundation
PoQueen	Rivera	Federal Permitting Council
Sandra	Talley	Udall Foundation

Information Purposes Only Tribal Participants

The following participants clarified that they were attending the March 7 session for information purposes only and did not consider their participation as a Nation-to-Nation Tribal Consultation.

Name	Tribe	Comments
Ramon Billy	Hopland Band of Pomo Indians	"Hopland Band of Pomo Indians as our Tribal Council needs to be the deciding factor in any consultations such as these and I will reach out to them when you follow up via letter and or email. Thank you."
Lindsey Bilyeu	Choctaw Nation of Oklahoma	"While Choctaw Nation is participating in today's consultation, we still request one-on-one consultation between the agency and our Historic Preservation Department."
Jon Eagle, Sr.	Standing Rock Sioux Tribe	"My name is Jon Eagle Sr., Tribal Historic Preservation Officer for the Standing Rock Sioux Tribe. I also do not consider this appropriate Nation-to-Nation consultation."
Vernelda Grant	San Carlos Apache Tribe	"This is being treated as a consultation by the Agency. For our Tribe, the Agency needs to meet with our Tribal Council for it to be an official consultation for us."
Garrie Kills A Hundred	Flandreau Santee Sioux Tribe	"The Flandreau Santee THPO is taking notes to report to our Tribal Council, who is our Government."

Consultation Written Comments

The following participants sent written comments.

Tribe/Organization	Form of Comments	Date Submitted
United South and Eastern Tribes Sovereignty Protection Fund (USET SPF)	Transmitted electronically to fast.fortyone@fpsic.gov	April 8, 2024
National Association of Tribal Historic Preservation Officers (NATHPO)	Transmitted electronically to fast.fortyone@fpsic.gov	April 8, 2024