



**Federal Permitting Improvement Steering Council**  
1800 M Street, NW, Suite 6006 | Washington, D.C. 20036

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**Consultation Summary Report**  
**Federal Permitting Improvement Steering Council**  
**Office of the Executive Director**  
**Tribal Consultations on Funding Transfers to Tribes for FAST-41 Projects**

## Introduction

The Federal Permitting Improvement Steering Council (Permitting Council) Executive Director is committing to make \$5 million available to Federally recognized Tribes to enhance Tribal engagement in the environmental review and authorization process for FAST-41 covered projects to make project review more timely and efficient. The \$5 million is an initial investment from funds appropriated in the Inflation Reduction Act (IRA) to the FAST-41 Environmental Review Improvement Fund (ERIF). The Permitting Council Executive Director may consider the need for additional funding at a later date.

The Permitting Council Executive Director held three Tribal consultations on February 15, 16, and 23, 2023 via Zoom to receive feedback from Federally recognized Tribes on the range of needs they have in order to engage meaningfully throughout the environmental review and authorization process for infrastructure projects that are or may become FAST-41 infrastructure projects. The inputs from Tribes will inform the Executive Director's framework for funding transfers, including the funding eligibility, criteria, and mechanisms.

The purpose of this report is to summarize written and verbal feedback provided as part of the consultations. The report is organized thematically, and recordings, raw notes, and attendance lists from the consultations are available for each consultation if needed.

## Summary of Consultation Feedback

### Equipment and Capital Resources

Several Tribal representatives noted that equipment is needed to process paperwork and collect and analyze data to better engage in environmental reviews, specifically citing needs for printers, vehicles for site visits, and computers. Tribes noted that more computers are needed for additional staff, and that updated operating systems (i.e., newer computers) are needed in order to access and use complex GIS files and other file types that can't be opened on existing systems.

### GIS and Other Digital Tools

Tribal representatives noted various needs related to using GIS for environmental reviews. In addition to the general need for GIS access (including access to multiple licenses for multiple staff members), Tribal representatives stated the following needs:



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- Equipment for running GIS programs, including computers powerful enough to easily run GIS (e.g., resources are needed in order to use GIS dynamically (for example, conducting Q&A sessions with the ability to turn on/off GIS layers)), and tablets, phones, and other devices that can be used to run GIS
- Training and technical assistance to ensure that staff know how to use GIS
- Resources to hire GIS technicians
- Funding/capacity for adequate digital storage

One Tribal representative made an important point that Tribes are reluctant to upload information to the cloud for GIS analysis where the Tribe will no longer control that data. This representative noted that data sovereignty is critical, and data needs to remain confidential and strictly within the Tribe's control.

### Capacity Building Resources

A number of Tribal representatives stated the need for staff training, both to expand the staff's technical capacity and skills and to train new staff as they are hired. Specifically, one Tribal representative noted that there should be greater focus on capacity building for Tribes to build offshore wind themselves, hiring appropriate staff, and incorporating the Tribe's own assessment of the value and opportunities of the project. Another representative proposed that Tribes should be provided with scholarships to go into these fields (technical expertise for environmental review fields), as there is minimal Native representation in these Federal positions. It was also suggested that the Permitting Council should direct its member agencies to identify additional resources to provide technical assistance and staffing support to Tribal Nations for reviews of FAST-41 project proposals and permit applications, especially those contending with offshore wind development.

### Additional Staffing and Funding Staff Time

One of the most prominent inputs from Tribal representatives was that Tribes need resources to be able to hire more staff to handle the volume of environmental review requests. Tribal representatives shared the following specific challenges and related needs:

- Staff should be paid for their time spent reviewing environmental reviews and permitting requests from Federal agencies. A Tribal representative shared that Federal agencies can be reluctant to see the true costs associated with a project and Tribes' engagement, noting that the small amount of funding provided does not adequately compensate for the work that is being done
- Funding for expenses related to lawyers' review of documents
- Resources are needed to pay salaries for support staff positions like paralegals and research assistants
- Only some Tribes have THPOs and ability to undertake archaeological surveys and fieldwork; these Tribes need resources to be able to carry out these activities.
- Offshore wind projects are so massive in scale that the Tribe has had to focus solely on these projects. The Tribe needs support to be able to focus on all projects, not just offshore wind projects.



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- Funding to hire staff with expertise in broadband and alternative energy (namely solar) so the Tribe does not need to rely on consultants.
- Funding for Tribes to hire people who can specifically handle contracts and grants, especially because some of them are huge and require updates each quarter. One of the main challenges is that Tribes don't have enough financial/contracting/grants staffing capacity to stay on top of applying for all of the opportunities.

Relatedly, one Tribe submitted a comment that funding for Tribal Historic Preservation Officers (THPOs) has long remained stagnant and insufficient to support the costly and time-consuming review of proposed infrastructure projects. In the instances that Tribal Nations have a THPO and/or cultural or natural resources department dedicated to conducting environmental, cultural, and historic preservation reviews, oftentimes these individuals and departments are inundated with multiple projects and permit applications that exceed their available capacity and resources. Review of these projects can also be lengthy because they are often broken into multiple, segmented reviews of a single project and span across multiple agency jurisdictions and oversight. Furthermore, these individuals and departmental staff may fulfill multiple roles within Tribal government due to historic and persistent funding shortfalls for these positions. It is not uncommon for a THPO/cultural resource manager to also fulfill the role of a natural resource manager or serve in an emergency management role.

### Hiring Contractors and Consultants

Several Tribal representatives noted that it would be helpful for funds to be available for Tribes to hire contractors or consultants with specific areas of expertise. The review of offshore wind projects was specifically referenced as requiring many different areas of technical expertise (e.g., mapping, biology, oceanography), as was the need for administrative expertise (e.g., funding and financing-related work, including tracking and writing grant applications).

Relatedly, representatives noted that it would be helpful to have a list of contractors who know about aspects specific project types (e.g., offshore wind) that Tribes can use to find experts. One representative proposed having a self-registration site for interested contractors to enter their own qualifications and experience.

### Travel Expenses

One Tribal representative noted that Tribes in Alaska often need to travel by plane or boat to gather, and requested funds for travel-related expenses, including actual travel costs, time spent on travel, and the use of phones and internet during travel.

### Broadband Access

One Tribal representative noted that many Tribes' ability to participate in meetings via Zoom is limited and Tribes may not have large enough servers to handle all communication via email – these factors are significant limitations on a Tribe's ability to participate in review.



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### Timing of Funding Availability

Several Tribal representatives stated the importance of funding being available early in the environmental review and authorization process (e.g., before NOI for NEPA) so Tribes can staff up and be briefed on the project(s). Specifically:

- One Tribal representative shared that their Tribe is impacted by the northeast offshore wind projects and noted that they have been overwhelmed by the amount of paperwork related to Section 106 reviews, particularly because they are given little to no heads up regarding the scope and speed at which the project would be happening. More information provided early in the process would be helpful, as Tribes need time to determine whether they need to hire contractors, get contractors up to speed, and determine what other resources they need. Additionally, the Tribe needs resources and information early to determine at what level the Tribe would like to participate in review. Funding for contractors and technical experts that can help provide meaningful comments on NEPA and Section 106 documents is needed.
- Undertakings begin before Notice of Intent – Tribes need resources then and throughout the review process, ideally associated with each stage of the environmental review process. It can cost \$600,000 annually to meet the NEPA and Section 106 demands; this doesn't include separate Government-to-Government consultation undertaken by the Tribal Council for things like socioeconomic and environmental justice studies.
- Another Tribal representative noted that they need resources, staff, and information early in the process. Additionally, Tribes aren't always made aware that a given project is a FAST-41 project. Tribes face limitations on participation due to short timelines and to gather the resources to put together comments or even determine the level of engagement they would like. This Tribal representative requested a phased funding approach – often, Tribes' needs increase as the process ramps up.

A Tribal representative requested that the Executive Director set aside money for different pieces of a given project and prioritize funding on the front end of the review process, so Tribes can access funding quickly. For example, frequently, by the time Tribal staff complete their assessment of a particular project, the time allotted to provide public comment is closed. Tribes also need to know when and where they can participate and need technical expertise to assess the environmental impact of projects. A rapid funding deployment mechanism is preferred such that funds can be received within 45–60-days of the request.

### Scope of Funding Availability

Tribal representatives sought more information about the scope of the availability of the funds, including:

- Could funds be used to engage in traditional homelands, even if a Tribe is recognized elsewhere?
- Would Tribes be able to apply for funding to participate in review of projects currently covered by FAST-41?
- Could funds be used where components of projects are off Tribal lands and/or where projects affect Tribal lands that are not recognized in statute?



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One Tribal representative noted that sometimes the funding amounts available are so small that it's not worth applying for funding, and that should be a consideration.

### Environmental Review Challenges

A Tribal representative cited the following specific funding challenge related to Federal agency approaches to funding Tribes' participation in the review process: Federal agencies are exempt from cost recovery fees per 36 CFR 251.58(g) only if applying for or conducting a use/activity not authorized by Federal Land Policy and Management Act (FLPMA) or Mineral Leasing Act (MLA). Energy and transportation funding opportunities require Tribes to have permitting required for the project prior to/with submission of application, and the costs for developing the application are not reimbursable. Federal agency NEPA fees are significant, and agencies are telling Tribes they can't waive fees because uses are authorized by FLPMA or MLA. This is a significant burden and cost for Tribes.

This representative noted that the Infrastructure Investment and Jobs Act has a project bundling provision under single application, particularly for co-location, which eliminates the need for multiple expenditures on NEPA/permitting for different projects in the same area.

### Funding Mechanisms

Several Tribal representatives cited the 638 contract as the preferred mechanism. Related comments included:

- Funding for Tribal participation in socioeconomic and environmental justice studies should be provided through 638 contracts afforded to all Tribes, not through competitive grants, in the spirit of upholding trust responsibilities.
- Funds for staffing needs should be done through a 638 contract. Funding should be allocated (not competitive) for Tribes' participation in socioeconomic, environmental justice, and energy impacts and need assessments. The representative recommended developing a program similar to the USDA farm programs, where there's minimal reporting and discretion for independent farmers to use funding as needed. While it is important to have mechanisms for financial accountability, there is too much administrative burden and reporting requirements. This funding could be done through 638 contracts and cooperative agreements.
- One Tribe submitted a written comment with full support for the ability of Tribal Nations to request and receive funds from FPISC through 638 self-governance contracts and compacts. Additional written comments stated:
  - Since passage of the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638), Tribal Nations have become experienced in managing complex federal programs under these types of agreements. These agreements empower us to administer federal funds in a manner that we deem appropriate and necessary to achieve our goals and priorities to better serve our citizens and communities.
  - The 638 contracting and compacting method empowers our Tribal Nations to more fully exercise our sovereignty and self-determination. Other methods of federal funding, especially grant and competitive grantmaking models, treat Tribal Nations as



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- not-for-profit entities, instead of sovereign governments, and create unnecessary barriers to services provided in fulfillment of perpetual trust and treaty obligations.
- o Under a 638 mechanism, Tribal Nations can determine how to utilize funds received from the \$5 million allocation to appropriately conduct and participate in the environmental review processes of FAST-41 projects. Furthermore, this would enable Tribal Nations to direct funds for specific purposes, whether it be towards engagement, planning, the purchase of software, and/or hiring of technical experts.

Others mentioned that the 477 model could be a good model because it allows Tribes to figure out how to deploy once funds received, and that many Tribes are familiar with using grants.gov. USDA's grant system was cited as complicated and not user friendly.

### Funding Amount

One Tribal representative submitted a comment that the \$5 million in funding is insufficient to address these review processes and urged further allocations, as well as the Council's support and advocacy for additional funding for Tribal Nations to be active participants in the environmental review processes for FAST-41 projects. Further, the Tribe submitted this comment: "we urge the Council to direct its member agencies to identify additional resources to assist Tribal Nations in these review processes due to the federal government's failure to uphold its trust and treaty obligations. Appropriations to support environmental, historic, and cultural review processes under the National Environmental Policy Act and Sec. 106 of the National Historic Preservation Act have never been funded at appropriate levels to fully staff and provide resources to Tribal Nations to meaningfully participate in these processes. As a federal entity, FPISC has trust and treaty obligations to assist and support Tribal Nations with these reviews so that we can protect our cultural heritage, sacred sites, and the health and well-being of our communities. Tribal Nations have consistently been overburdened with current review expectations and the anticipated large influx of projects as a result funding from the recently enacted infrastructure and COVID-19 relief laws will only exacerbate this issue."