

Interagency Consultation on Tribal Critical Minerals Initiative

White House Council on Native American Affairs

July 2024

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Agenda

- Housekeeping
- Context & Background on Critical Minerals Initiative
- Summary of policy & regulatory recommendations from the September 2023 interagency report “Recommendations to Improve Mining on Public Lands”
- Questions & Tribal Leader feedback

Housekeeping

- **This consultation is being recorded** to assist in establishing a record of feedback shared by Tribes. If you do not wish to have yourself recorded, please turn off your camera or leave the meeting. Please state your name & Tribe before making comments.
- **This consultation is closed to press.** If any members of the press are currently in the zoom or on the phone, please leave now.
- **This consultation is intended for executive leaders of Tribal Nations and Alaska Native entities or their designees only.** While other Tribal stakeholders and organization who work for Tribes are in attendance, comments from Tribal leaders will be prioritized.
- During discussion we will prioritize comments in the room, then go to virtual attendees prioritizing leaders, elected council representatives and designees respectively.
- Updated slides will be made available on the website: [Tribal Critical Minerals Initiative | Indian Affairs \(bia.gov\)](https://www.bia.gov/tribal-critical-minerals-initiative)

Hosted By

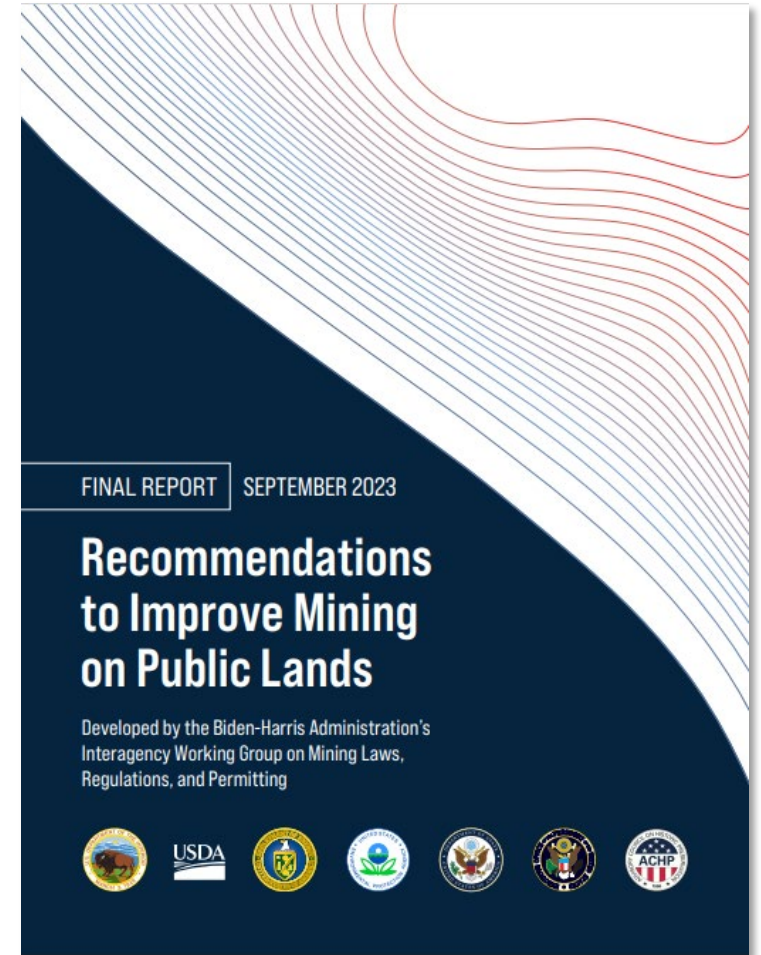


- U.S. Department of the Interior (Co-Chair WHCNAA CM Working Group)
- U.S. Department of Energy (Co-Chair WHCNAA CM Working Group)
- U.S. Environmental Protection Agency
- U.S. Department of Commerce
- U.S. Department of Defense Army Corps of Engineers

Tribal Critical Minerals Initiative

- Biden Administration pursuing a responsible domestic supply chain of critical minerals for national defense and climate goals.
- Many critical minerals may be found near or on Tribal lands.
- Do not want to repeat the harms of past between Tribes, US Government and industry.
- Meaningful Tribal feedback early and often driving this discussion in partnership with the federal government.
- First step in prioritizing & informing implementation of reforms recommended in the 2023 report of improving mining of public lands.
- DOI is in the process of implementing some recommendations.
- Facilitating opportunities for Tribes for economic development in the sector, while maintaining environmental protections.
- Refer to online version of this report, link below:

<https://www.doi.gov/media/document/mriwg-report-final-508-pdf>



Recommendation Summary



FINAL REPORT | SEPTEMBER 2023

Recommendations to Improve Mining on Public Lands

Developed by the Biden-Harris Administration's
Interagency Working Group on Mining Laws,
Regulations, and Permitting

July 30, 2024 Consultation

RECOMMENDATIONS

☐ 65 Total Recommendations

- ❖ 30 Legislative

- ❖ 18 Regulatory

- ❖ 33 Policy/Process

(a number of recommendations overlap)



OVERARCHING FINDINGS

The Mining Law of 1872 Needs to be Modernized

Permitting Process can be Improved Through Proven Methods

Real Weakness is in Community and Tribal Engagement

OVERARCHING FINDINGS

The Mining Law of 1872 Needs to be Modernized

Eliminate patenting

Institute a royalty

Use revenues to alleviate negative impacts

Disincentivize speculative claims

Develop a workable leasing system

OVERARCHING FINDINGS

Permitting Process can be Improved Through Proven Methods

Maximize coordination & cooperation between proponent and Federal, State, & Tribal Agencies

Early engagement with Tribes and potentially affected communities

Improve consistency between BLM & USFS regulations

Clear requirements for baseline data

OVERARCHING FINDINGS

Real Weakness is in Community and Tribal Engagement

Exploration & Mining companies should engage at the earliest possible time

Social impact analysis & management should be stronger and include mitigations

Tribal/Community Benefit Agreements should be negotiated

Monitoring and enforcement data should be public, and grievance mechanisms established

Resources for independent technical analysis/oversight should be provided

Pre-Permitting

(7-10 years)



Concept & Exploration

Acquiring Rights
Initial Fieldwork
Geophysics
Drillholes



Resource Delineation

Additional Drilling
Environmental Studies



Feasibility

Engineering
Economics
Environmental Studies

Permitting

(2-4 years)



Plan Submittal



Impact Statement



Financing



Construction

Financing & Construction



Tribal Notification



Tribal Review

NHPA
45-Day EIS Comment Period
Gov't-to-Gov't Consultation

Lifecycle of a Mineral Discovery: Current Status

Pre-Permitting

(7-10 years)



Concept & Exploration

Acquiring Rights
Initial Fieldwork
Geophysics
Drillholes



Resource Delineation

Additional Drilling
Environmental Studies



Feasibility

Engineering
Economics
Environmental Studies

Permitting

(2-4 years)



Plan Submittal



Impact Statement

Financing & Construction



Financing



Construction



Lifecycle of a Mineral Discovery: Future?



SPECIFIC RECOMMENDATIONS

- Improve Agency Consultation Procedures and Training.
- Issue New Guidance on NHPA Implementation.
- Provide additional regulatory protections for Tribal cultural sites, sacred sites, and resources.
- Develop a system for automatic Tribal notification when notices or plans are proposed in an area of Tribal interest.
- Require exploration plans instead of notices when operations would impact Tribal resources or treaty rights, listed species, etc.



SPECIFIC RECOMMENDATIONS

- Incorporate Indigenous Knowledge during environmental and permitting reviews.
- Invite Tribes to participate as cooperating agencies in the NEPA process.
- Include Tribes in pre-application meetings, and allow Tribes to review baseline information in updating and expanding the BLM Nevada permitting process.
- Include Tribes in the determination of appropriate financial assurance levels and post-mining land use.
- Provide funding to Tribal Governments to allow them to more effectively engage in reviews of mining proposals and shared monitoring of operating mines.
- Encourage additional Federal and private sector support for Tribally-led assistance organizations.

FCC TOWER CONSTRUCTION NOTIFICATION SYSTEM (TCNS)

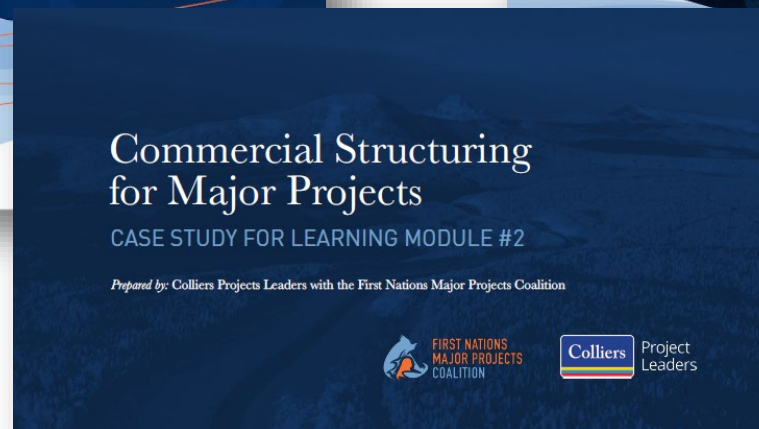
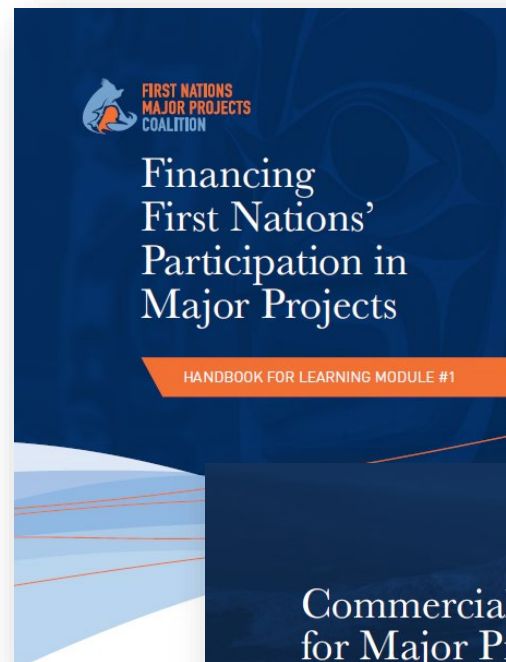


- The FCC asked each Tribe to identify its geographic area of interest.
- At the FCC, only the Federal Preservation Officer and Deputy, along with a few staff members, may view all TCNS records and correspondence.
- TCNS supports two-way communication, but Tribes also have the option of responding outside TCNS, either to the project proponent or to the FCC.
- The FCC does not consider the use of TCNS by project proponents as consultation with the Tribes.
- On a weekly basis, TCNS sends notices to the Tribes (and the relevant State Historic Preservation Officer) listing all new proposed projects within their geographic areas of interest. At the same time, TCNS provides the project proponents with a list of the Tribes notified for each of their project.
- Tribes are encouraged to inform the project proponent whether or not they have concerns about a proposed construction within thirty days of notice.



FIRST NATIONS MAJOR PROJECTS COALITION

FNMPC.CA



Topics for Consultation

1. Of the recommendations in the *Recommendations to Improve Mining on Public Lands* report (the Mining Report) that do not require legislation, which are your highest priorities?
 2. What regulatory, policy changes or other actions would you most like to see BLM, USFS, or other federal agencies make that may not be in the Mining Report's recommendations?
 3. In terms of engagement or government-to-government consultations regarding mining projects, what types of assistance or resources would best support your Tribe—financial aid, technical expertise, or both, or others?
 4. Do you believe that mining companies should provide financial assistance directly to potentially impacted Tribes to assist in engagement, mine plan review, or other areas? If so, how should this assistance be structured to ensure impartiality?
 5. Are you familiar with agreements entered into between Tribes and mining companies such as Tribal Benefit Agreements, Partnership Agreements, Good Neighbor Agreements, or other similar types? What provisions or practices do you believe are the most useful in those agreements (Tribal hiring requirements, profit sharing, grievance mechanisms, transparency of environmental monitoring data, etc.)? What sort of assistance would your Tribe need to enter into negotiations on such types of agreements?
- Biden-Harris Administration's Interagency Working Group on Mining Laws, Regulations, and Permitting (2023), *Final Report: Recommendations to Improve Mining on Public Lands*, found at <https://www.doi.gov/sites/doi.gov/files/mriwg-report-final-508.pdf>.

Topics for Consultation

6. The Mining Report recommended that BLM set up a system similar to the Federal Communications Commission's (FCC's) (<https://www.fcc.gov/wireless/systems-utilities/tower-construction-notifications/tower-construction-notifications-0>) to provide automated notifications to Tribes of exploration proposals. If you are familiar with the FCC system, what features would you wish to retain or modify for a similar system in mining exploration? If you are not familiar with the FCC system, what features would you want an automated system to have?
7. How do you think independent Tribally led organizations could enhance consultation and technical review processes for Tribes confronted with mining proposals?
8. Are there other best practices for Tribal engagement in mining proposals that we should try to encourage or require?

Input Form

Consultation Question #1

Of the recommendations in the Recommendations to Improve Mining on Public Lands report (the Mining Report) that do not require legislation which are your highest priorities?

Tribal Critical Minerals Initiative



<https://forms.office.com/g/g2YhEKu585>



CONSULTATION QUESTIONS – MINING REPORT

1. Of the recommendations in the *Recommendations to Improve Mining on Public Lands* report (the Mining Report) that do not require legislation, **which are your highest priorities?**
2. What **regulatory, policy changes or other actions** would you most like to see BLM, USFS, or other federal agencies make that **may not be in the Mining Report's recommendations?**





CONSULTATION QUESTIONS — ASSISTANCE AND RESOURCES

3. In terms of engagement or government-to-government consultations regarding mining projects, **what types of assistance or resources would best support your Tribe**—financial aid, technical expertise, or both, or others?
4. Do you believe that **mining companies should provide financial assistance** directly to potentially impacted Tribes to assist in engagement, mine plan review, or other areas? If so, **how should this assistance be structured** to ensure impartiality?





CONSULTATION QUESTIONS — BENEFIT AGREEMENTS

5. Are you familiar with agreements entered into between Tribes and mining companies such as **Tribal Benefit Agreements, Partnership Agreements, Good Neighbor Agreements**, or other similar types? What provisions or practices do you believe are the most useful in those agreements? **What sort of assistance would your Tribe need** to enter into negotiations on such types of agreements?





CONSULTATION QUESTIONS – FCC NOTIFICATIONS

6. The Mining Report recommended that BLM set up a system similar to the Federal Communications Commission's (FCC's) to provide **automated notifications to Tribes of exploration proposals**. What features should be in such a system?





CONSULTATION QUESTIONS – INDEPENDENT TRIBAL ORGANIZATIONS

7. How do you think **independent Tribally-led organizations** could enhance consultation and technical review processes for Tribes confronted with mining proposals?





CONSULTATION QUESTIONS — BEST PRACTICES

8. Are there **other best practices** for Tribal engagement in mining proposals that we should try to encourage or require?



Next Steps: Tribal Leader and ANC Leader Input

WHCNAA Critical Minerals working group is seeking Tribal leader and ANC leader input on the proposed recommendations for the Critical Minerals Initiative:

- Sessions held:
 - Lower 48 Tribes - July 30
 - Alaskan Villages – August 20
 - ANCs – August 21
 - All tribes virtual – August 13
 - Deadline for written comments will be August 31, 2024.

Next Steps

- The WHCNAA Critical Minerals Working Group will include Tribal consultation input in making decisions about which recommendations to implement.
- The White House National Economic Council (NEC) & WHCNAA will invite Tribes to a joint workshop with Tribes and the mining industry later this year.

Contact Us

Submit comments or contact us at whcnaa@bia.gov for these consultations.

Closing Remarks

Addendum

Agency Roles

Department of Energy

DOE has funding via grants and loans for research and development of a US critical mineral supply chain:



- Battery Material Processing & Recycling Grants

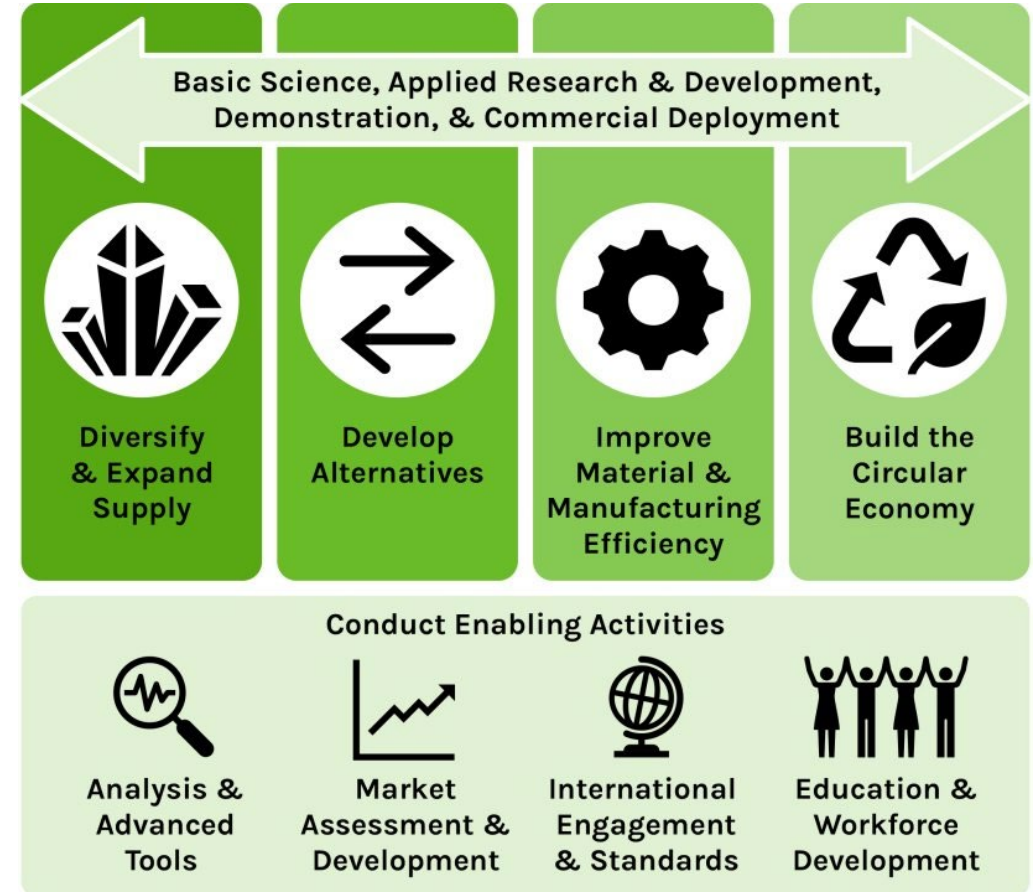


Fossil Energy and Carbon Management

- Research on “Mines of the Future” including enhanced recycling, life cycle, and sourcing of critical minerals from wastes like coal ash.
- Fossil Energy & Carbon Management Tribal Working Group launching 2024



- Title XVII program can provide loan guarantees for all segments of the critical mineral supply chain



Department of the Interior



Bureau of Land Management – review and approval of exploration and mining proposals on public lands.



Bureau of Indian Affairs – approval of leases and permits on Indian trust and restricted lands; technical support and capacity building for Tribes seeking to develop resources on Tribal lands; interagency coordination.



Office of Surface Mining Reclamation and Enforcement – regulation of surface coal mining and reclamation of abandoned coal mines.



U.S. Geological Survey – research, assessment, and data collection regarding mineral resource life cycles and their environmental impacts.

Environmental Protection Agency

EPA Roles on critical minerals mining

- NEPA
 - Reviews Federal agency Environmental Impact Statements
- Clean Water Act, Clean Air Act, Safe Drinking Water Act
 - Reviews Army Corps of Engineers CWA 404 permit notices
 - Permits generally issued by the states, EPA oversight
- Tribal consultation & engagement

Resources for Tribes

- Indian Environmental General Assistance Program (GAP):
<https://www.epa.gov/general-assistance-program-gap>
- Environmental Justice Grants:
<https://www.epa.gov/environmentaljustice/environmental-justice-grants-funding-and-technical-assistance>