



Mary's Igloo Traditional Council

P.O. Box 546 Teller, AK 99778

Ph. (907) 642-3731 Email: cablowaluk@kawcrak.org Fax# (907) 642-2189

Sent via mail and email

September 13, 2023

Halimah Najieb-Locke
Deputy Assistant Secretary of Defense for Industrial Base Resilience
U.S. Department of Defense
3010 Defense Pentagon
Washington, DC 20301-3010
OSD.AS-Webmaster@mail.mil

Re: Tribal Consultation for the Graphite One Technology Investment Agreement Grant

Dear Deputy Assistant Secretary Najieb-Locke:

The Native Village of Mary's Igloo (NVMI) writes to express our concern over the premature funding decision for the Graphite One mining project located 35 miles north of Nome, Alaska and within NVMI traditional territory (Project). The U.S. Department of Defense (Department) awarded a \$37.5 million technology investment agreement grant to Graphite One to accelerate the feasibility study for the mining project without first consulting with our Tribe.¹ The feasibility study will entail significant land-disturbing activities that will directly impact our Tribal interests. Under its own consultation guidance, the Department should have consulted with the NVMI which is a federally recognized tribal government prior to awarding the grant. Our Tribe travel uses the area where the Project is located for subsistence and it is essential that we have an opportunity to be heard about our concerns for any extraction activities that could impact us. We ask the Department to rectify this mistake and engage in consultation with our Tribes on this funding decision and other decisions going forward that will impact our interests.

The proposed Graphite One mine site drains into a vast inland sea known as the Imuruk Basin, located in the center of the Seward Peninsula. Encompassing about one-quarter of the Seward Peninsula, the basin takes in flows from several large rivers, including the Kuzitrin, Agiapuk, Kruzgamepa, and Cobblestone. The unique combination of geology, freshwater, and

¹ Anthony Huston, *Graphite One Awarded \$37.5 Million Department of Defense Grant Under the Defense Production Act*, GRAPHITE ONE (July 17, 2023), <https://www.graphiteoneinc.com/graphite-one-awarded-37-5-million-department-of-defense-grant-under-the-defense-production-act/>.



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saltwater in the center of the Seward Peninsula makes the Imuruk one of the most biologically diverse ecosystems in North America, and the abundant subsistence resources are equal to many locations along the Alaska coastline making it critical to the Tribe for subsistence uses.

Graphite One plans to operate a graphite mine within the Basin along with a secondary processing facility in Washington state, with construction beginning on both “as quickly as possible.”² The mine will be located on the Graphite Creek Property that abuts and drains into the Imuruk Basin, which has over 23,680 acres of State of Alaska mining claims.³ Graphite One has already completed a preliminary feasibility study on the project site and is now poised to conduct its feasibility study.⁴ The feasibility study will include mine and geotechnical engineering, drilling, and soil and gravel testing, all of which have the potential to damage or destroy cultural resources, disturb wildlife, pollute waterways, interfere with subsistence harvesting, or cause other significant impacts.⁵ As a result, it is clear the feasibility study will involve land-disturbing and water impact activities that could impact our Tribe.

In July 2023, Graphite One announced that the Department of Defense awarded the company a \$37.5 million technology investment agreement grant to accelerate Graphite One’s project feasibility study.⁶ Therefore, the Department is directly supporting a land-disturbing project that will inevitably affect tribal interests in the area. Such a decision requires tribal consultation. Despite that, the Department failed to fulfill its obligation to consult with the impacted Tribes prior to issuing the grant to Graphite One.

The Department has a department-wide consultation instruction that lays out when the Department must conduct consultation.⁷ That instruction states that consultation “will be

² JDS ENERGY & MINING INC., PRELIMINARY FEASIBILITY STUDY TECHNICAL REPORT – GRAPHITE ONE PROJECT 1-43–1-44, 27-4 (Oct. 13, 2022) [hereinafter PRELIM. FEASIBILITY STUDY], <https://www.graphiteoneinc.com/wp-content/uploads/2022/10/JDS-Graphite-One-NI-43-101-PFS-20221013-compressed.pdf>.

³ *Id.*

⁴ The Alaska Department of Natural Resources already issued permits for Graphite One to begin its feasibility study. Alaska Dep’t of Nat. Res., APMA F20222299 (issued June 5, 2023), <https://dnr.alaska.gov/projects/las/#filenumber/F20222299/filetype/APMA/landflag/y/searchtype/casefile/reporttype/abstract>.

⁵ PRELIM. FEASIBILITY STUDY at 1-43 to 1-44, 27-4.

⁶ *Id.*

⁷ Executive Order 13175 directs all executive agencies and departments to engage in regular and meaningful tribal consultation in the development of policies that have Tribal implications. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 65 Fed.



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conducted for proposed actions, plans, or ongoing activities that may have the potential to significantly affect” a number of different activities and resources.⁸ These include decisions that could potentially affect land-disturbing activities, over-flights, management of properties of traditional religious and cultural importance, protection of sacred sites from vandalism and other damage, access to sacred sites, land use decisions, and access to subsistence resources.⁹ The instruction directs the Department to involve tribal governments early in the planning process for any action that could potentially impact tribal lands or resources.¹⁰ The instruction provides that a “tribal government must have an opportunity to comment on a proposed action, . . . in time for the tribal government to provide meaningful comments that may affect the decision.”¹¹

The Alaska-specific implementation guidance for the instruction reinforces the importance of the Department’s consultation obligations to Tribes in Alaska. According to the Alaska Implementation Guidance for the Department of Defense, “[b]ecause of extensive renewable resources, cultural, and religious interests in Alaska, which are not limited to Indian land, notification of any [Department of Defense] activity will be provided to tribes in the area potentially affected by the activity.”¹²

Under Section 106 of the National Historic Preservation Act, agencies are also required to consider the impact of their actions or “proposed federally assisted undertakings” on historic properties and provide the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on projects.¹³ The NHPA also requires that federal agencies must consult with any tribe that attaches religious and/or cultural significance to historic properties that may be

Reg. 67249 (Nov. 6, 2000). The Presidential Memorandum on Tribal Consultation requires each executive department and agency to prepare and regularly update a plan to implement the directives of Executive Order 13175. Presidential Memorandum on Tribal Consultation, 74 Fed. Reg. 57881 (Nov. 5, 2009). President Biden recently reaffirmed the policy, directing agencies to further strengthen their tribal consultation practices. Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, 86 Fed. Reg. 7491 (Jan. 29, 2021).

⁸ Dep’t of Defense, Instruction 4710.02: DoD Interactions with Federally Recognized Tribes (Sept. 24, 2018).

⁹ *Id.*

¹⁰ *Id.* at 3.3.a.

¹¹ *Id.*

¹² Alaska Implementation Guidance for DoD Alaska Native Related Policies and Instructions (Apr. 13, 2020).

¹³ 54 U.S.C. § 306108.



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impacted by a federal undertaking.¹⁴ The NHPA defines “undertaking” as, “project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including . . . those carried out with Federal financial assistance.”¹⁵ The ACHP handbook on the Section 106 consultation requirements states that “Tribal consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and plan how to address concerns about confidentiality of information obtained during the consultation process.”¹⁶ The guidance also advises agencies to, “[m]ake sure [they] identify and initiate consultation with Indian tribes at the *start* of the planning process for [the] agency’s undertaking.”¹⁷ Therefore, “if the undertaking is the kind of action that might affect places such as archaeological sites, burial grounds, sacred landscapes or features, ceremonial areas, or plant and animal communities,”¹⁸ the ACHP advises agencies to “consult with Indian tribes that might attach religious and cultural significance to such places.”¹⁹

Despite all of these requirements, neither the NVMI or any other Tribes in the area were notified or given the opportunity to be consulted prior to the Department’s funding decision. Because the Department failed to abide by its own consultation requirements, the NVMI has been deprived of the opportunity to have a voice in government decisions directly impacting our communities and ways of life.

This is also contrary to this administration’s stated commitment to ensuring Tribes are involved in decisions that could impact them. The Biden administration has made known its commitment to strengthen and fulfill the federal government’s responsibility to conduct meaningful tribal consultation. In a memorandum to the heads of executive departments and agencies, President Biden acknowledged, “My Administration is committed to honoring Tribal sovereignty and including Tribal voices in policy deliberation that affects Tribal communities. The Federal Government has much to learn from Tribal Nations and strong communication is

¹⁴ *Id.* at § 302706(b).

¹⁵ *Id.* at § 300320.

¹⁶ Advisory Council on Historic Preservation, Consultation with Indian Tribes in the Section 106 Review Process: The Handbook (2021) [hereinafter ACHP Handbook].

¹⁷ *Id.* (emphasis in original text).

¹⁸ ACHP notes that the list is not exhaustive. ACHP Handbook at 17 (“Please note that this list of examples is not all-inclusive, as the histories, cultures, and traditions of Indian tribes vary widely. It is through consultation with Indian tribes themselves that such properties can be properly identified and evaluated.”).

¹⁹ Consultation with Indian Tribes in the Section 106 Review Process: The Handbook, Advisory Council on Historic Preservation (June 2021).



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fundamental to a constructive relationship.”²⁰ Secretary of the Interior Debra Haaland said, “Tribes deserve a seat at the decision-making table before policies are made that impact their communities.”²¹ Assistant Secretary for Indian Affairs Bryan Newland similarly stated, “We must develop collaborative partnerships with Tribal nations so that we uphold our trust responsibilities and build consensus when developing policies that impact Tribes.”²² By failing to do the necessary consultation prior to making a funding decision that directly impacts tribal interests, the Department of Defense directly defied the explicit policies and commitments made by this presidential administration.

The Department should provide our Tribe with the opportunity to have our voice heard on issues that directly impact our communities and ways of life. It is particularly important that the Department consult with us on the Graphite One project due to the significant potential impacts the feasibility study will have on our community. In addition, the NVMI is concerned that the Alaska Department of Natural Resources has not required Graphite One Inc., the mining claim holders, to apply for proper water right permits, has not prevented toxic effluent from impacting public health and the highly rich fish and wildlife resources in the mine site, and has not complied with the permitting requirements or authorization conditions provided in existing permits. It is important therefore, that under its trust duty, the federal government adhere to its own standards related to any potential impacts to subsistence resources and historic and/or cultural values in the area.

In accordance with the Department of Defense’s consultation instruction and the Biden administration’s commitment to strengthen and fulfill the federal government’s obligation to conduct meaningful consultation, the Department of Defense should have consulted with the Native Village of Mary’s Igloo prior to awarding Graphite One the technology investment agreement grant. We ask that the Department conduct the necessary and overdue consultation regarding the Graphite One project immediately.

²⁰ Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, 86 Fed. Reg. 7491 (Jan. 26, 2021).

²¹ U.S. Dep’t of the Interior, Interior Department Strengthens Tribal Consultation Policies and Procedures (Dec. 1, 2022), <https://www.doi.gov/pressreleases/interior-department-strengthens-tribal-consultation-policies-and-procedures>.

²² *Id.*



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If you have any questions, please do not hesitate to contact me at (907) 642-3731; tc.mi@kawerak.org. Thank you for your prompt attention to our concerns.

Sincerely,

Lucy Oquilluk, President

cc:

Chair Brenda Mallory
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503
brenda_mallory@ceq.eop.gov