

**Post-Hearing Questions for the Record
Submitted to Dr. Anna Maria Ortiz
From Representative Soto**

**“Destroying Sacred Sites and Erasing Tribal Culture:
The Trump Administration’s Construction of the Border Wall”
March 2, 2020**

1. What are the impacts of not properly involving all necessary stakeholders when making infrastructure project decisions?

GAO’s prior work has identified several impacts from not including all the necessary stakeholders in infrastructure project decisions. Specifically, it:

- **Increases the likelihood of irrevocable harm to tribal resources.** Not involving tribal stakeholders may increase the likelihood of irrevocable harm to irreplaceable tribal cultural resources impacted by the project, according to work performed for our March 2019 report on tribal consultation.¹ For example, one tribe told us that Fish and Wildlife Service (FWS) officials did not consult the tribe when approving county roadwork within a National Wildlife refuge. A burial mound was unearthed and desecrated during construction, but FWS would not allow tribal members to access ancestors’ remains for a month because of a criminal investigation—leaving them exposed to damage from the elements. Another tribe told us that a Department of Energy (DOE) laboratory did not consult the tribe for a tree-thinning project near important archaeological sites on the tribe’s ancestral lands. DOE signed an agreement with the state to study the sites and mitigate impacts, but they did not include the tribe. Ultimately, the project partially destroyed five of the archaeological sites.
- **Undermines the unique trust relationship between federal agencies and tribes.** Effective consultation is a key tenet of the government-to-government relationships the United States has with tribes, based on tribal sovereignty. Failure to consult, or to consult effectively, sows mistrust in the United States government’s relationships that Congress recently affirmed have benefited the country for centuries. For example, 73 percent of tribes that provided comments to federal agencies in 2016 on consultation efforts identified concerns about agencies’ level of respect for (1) tribal sovereignty or (2) the government-to-government relationship between the United States and federally recognized tribes.²
- **Can result in project delays or cancellation due to public opposition and litigation.** Public opposition and litigation due to insufficient stakeholder involvement in decision-making can lengthen project time frames and even lead to the cancellation of a project, according to our June 2012 report on state and federal practices for highway projects.³ For example, we reported that a lawsuit against the Federal Highway Administration (FHWA) and the U.S. Forest Service regarding their compliance with federal laws for a highway project in Alaska delayed the project for at least 5 years. We also reported that the Elizabeth Brady Road project in Orange County, North Carolina, was canceled by FHWA due to public and local government opposition to the project.⁴

¹GAO, *Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects*, [GAO-19-22](#) (Washington, D.C.: Mar. 20, 2019).

²GAO, *Native American Issues: Examples of Certain Federal Requirements That Apply to Cultural Resources and Factors that Impact Tribal Consultation*, [GAO-20-466T](#) (Washington, D.C.: Feb. 26, 2020).

³GAO, *Highway Projects: Some Federal and State Practices to Expedite Completion Show Promise*, [GAO-12-593](#) (Washington, D.C.: June 6, 2012).

⁴In April 2014, we reported that although the number of National Environmental Policy Act lawsuits is relatively low, one lawsuit can affect numerous federal decisions or actions in several states, having a far-reaching impact. See GAO, *National Environmental Policy Act: Little Information Exists on NEPA Analyses*, [GAO-14-369](#) and [GAO-14-370](#) (Washington, D.C.: April 15, 2014).

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Conversely, we and others have highlighted the benefits of involving all necessary stakeholders in infrastructure project decisions—whether it is required by law or not.⁵ This includes tribal consultation when tribes’ natural or cultural resources may be negatively impacted. Effective stakeholder involvement can help minimize damage to important tribal resources, limit infrastructure project delays, reduce the risk of litigation, and demonstrate agency respect for tribal sovereignty.

⁵For example, see [GAO-19-22](#) and Federal Permitting Improvement Steering Council, *Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects for Fiscal Year 2018* (Washington, D.C.: December 2017).