*Narragansett Indian Tribe v. Pollack*, 2023 WL 4824733 (D.D.C., July 27, 2023).

- **Holding**: Tribe had standing to challenge programmatic agreement ("PA") adopted pursuant to § 106 of the National Historic Preservation Act ("NHPA") that was alleged to have been adopted without required consultation with the Tribe.
- **Summary**: The Narragansett Indian Tribe, the Federal Highway Administration ("FHWA"), and the State of Rhode Island entered into a programmatic agreement ("PA") pursuant to § 106 of the National Historic Preservation Act ("NHPA"), to resolve or mitigate adverse effects on an archaeological district resulting from a bridge replacement project. The PA required the FHWA and the Rhode Island Department of Transportation ("RIDOT") to acquire three parcels of land and transfer them to the Tribe. RIDOT refused to complete the transfers unless the Tribe first waived its sovereign immunity with respect to the properties. The Tribe refused, and FHWA and RIDOT entered into a new PA that allegedly excluded the Tribe and provided for educational programming in lieu of the proposed transfer of the three properties. The Tribe brought an action against the FHWA and the State defendants for violations of the NHPA.

  The court dismissed the claims against the State defendants, finding that it did not have personal jurisdiction over them because they did not reside in the District, and their contacts with the District all fell within the government contacts exception to the District of Columbia's long-arm statute, which provided that a nonresident's entry into the District of Columbia for 'the purpose of contacting federal government agencies cannot serve as a basis for personal jurisdiction.

  The court granted the FHWA's motion to dismiss the Tribe's claim against the FHWA arising from termination of the first PA, since the termination was solely the result of Rhode Island's refusal to transfer the parcels without a waiver of tribal sovereign immunity.

  The court denied the FHWA's motion to dismiss the Tribe's claims arising from execution of the second PA, holding that the Tribe had adequately alleged a procedural injury in the form of the Agency's failure to engage in the required consultation with the Tribe under 36 C.F.R. § 800.14(f) in developing the second PA, and had adequately alleged that the alleged failure to consult with the Tribe *could* change the substance of the second PA's mitigation measures.
- **Relevant (2023) Deskbook Section**: 3:18