



Transportation Decisionmaking: Information Tools for Tribal Governments

Statewide, MPO, and FHWA Role in Tribal Consultation



U.S. Department
of Transportation

Federal Highway
Administration

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Presentation Overview

- Who is audience for this training?
- What is tribal consultation?
- Principles for successful consultation
- FHWA, State DOT, and MPO practices
- Summary
- Current Examples
 - Regional Consultation: SCTCA and SANDAG
 - State Consultation: MnDOT
- Resources

The Module Training Series

- Designed to assist tribal professionals with transportation planning for capital, operating, and maintenance needs on tribal lands.
- Six modules developed from 2004 to 2008. Five additional modules developed in 2012.
- Available from:
http://www.fhwa.dot.gov/planning/processes/tribal/planning_modules/index.cfm

Training Modules for Tribal Transportation Decisionmaking





I. INTRODUCTION



Who is the Intended Audience for this Training?

- Any official involved in tribal transportation planning.

What is Tribal Consultation?

- Tribal consultation is the federally mandated process for timely and meaningful notification, consideration and discussion with tribes on actions proposed by Federal, State and local governments that may impact tribal interests.



Why is Tribal Consultation Important?

- Actions taken by Federal, State, and local governments may negatively impact tribal interests.
- Consultation is the orderly process for early notification by these governments to tribal governments.
- It enables discussion, consideration and input from the tribal government before the action is taken.



II. TRIBAL SOVEREIGNTY



Tribal Sovereignty

- Indian tribes have the right to self-governance, self-determination, and economic self-sufficiency.
- Communications between Indian tribes and Federal and State governments are on a “government-to-government” basis.
- Outside governments must respect tribal sovereignty and consult government-to-government when undertaking actions that may impact tribal interests.

Recent Federal Actions

- 1994: Presidential Memorandum: Government-to-Government Relations with Native American Tribal Governments.
- 1996: Presidential Executive Order No. 13007: Indian Sacred Sites.
- 2000: Presidential Executive Order No. 13175: Consultation and Coordination with Indian Tribal Governments
- 2009: Presidential Memorandum on Tribal Consultation



III. PRINCIPLES FOR SUCCESSFUL CONSULTATION

Communication

- Process for exchanging information, data, or knowledge through speech, writing, and visual tools.
- Such as:
 - ❖ Presentations
 - ❖ Data Collection
 - ❖ Standards & Handbooks
 - ❖ Newsletters & Bulletins
 - ❖ Mailings & Response Forms
 - ❖ Tribal Monitor
 - ❖ Training



Coordination

- Process for defining and organizing activities, events, and tasks to achieve a mutual goal.
- Such as:
 - ❖ Meetings, Summits, & Workshops
 - ❖ Tribal Consortium
 - ❖ Tribal Liaisons & Coordinators
 - ❖ Formal Agreements
 - ❖ Regional & State Conferences

Cooperation

- Process in which the tribal and outside governments work together in planning, programming, and project delivery.
- In venues such as:
 - ❖ Planning Organizations
 - ❖ Regional Transit Districts and Coalitions
 - ❖ Resource Sharing Forums





IV. FHWA, STATE DOT, AND MPO PRACTICES

Federal Practice

- SAFETEA-LU requires consultation with federally recognized tribes in transportation planning.
- FHWA is the lead agency for ensuring tribes are consulted on Federal-aid projects.
- Federal consultation process takes precedence over state and regional processes.

Federal Tribal Consultation - FAQ

General Information

Which tribes are consulted?	Any and all who may be impacted by Federally funded projects.
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Initiating Consultation

Who initiates contact?	FHWA is responsible for initiating contact with the highest ranking tribal officer(s).
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How does consultation start?	FHWA will send a letter to the tribal official that describes the proposed action.
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Roles and Responsibilities

What is the state DOT's role?	FHWA cannot delegate Federal consultation responsibility to the state, though the state DOT is allowed to assist.
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What is tribe's responsibility?	Tribe may elect to participate or not participate.
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Federal Tribal Consultation – FAQ *(continued)*

Roles and Responsibilities (cont'd)

Can special rights be assigned to certain tribes?	FHWA may not exclude tribes from the consultation process or afford any one tribe special rights.
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Agreements

What is a Memorandum of Agreement (MOA)?	A formal agreement on the actions FHWA will take to mitigate the impact of a Federal-aid project on tribal interests.
What is a Memorandum of Understanding (MOU)?	A signed agreement between the parties on the process/framework to be used to achieve a goal or complete a project.
What is a Programmatic Agreement (PA)?	A signed and binding agreement between the parties on the procedures, processes, and steps for consultation or to address a specific issue.

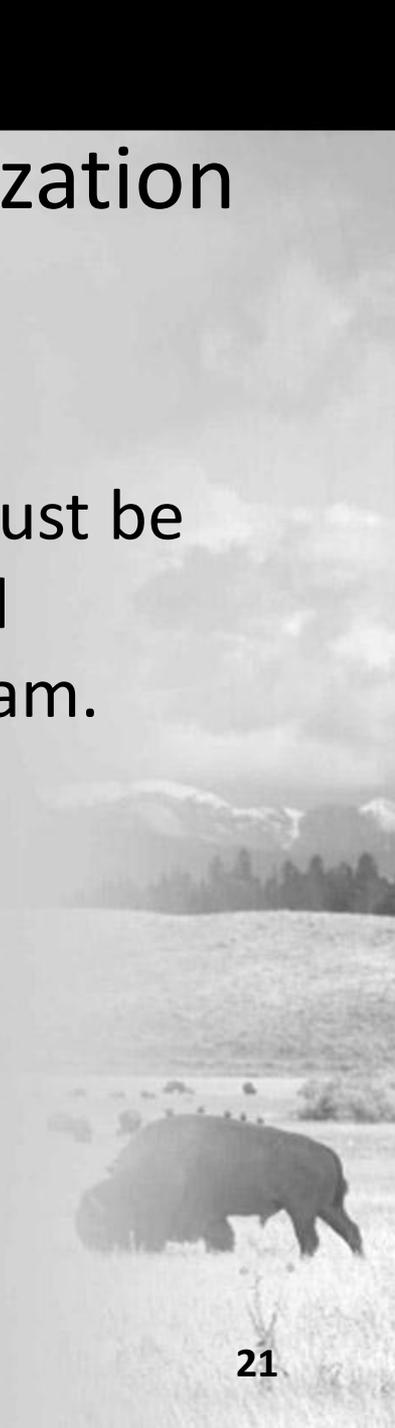
State Practice

- States are required to communicate, coordinate, and cooperate with tribes in developing their State Transportation Improvement Programs (STIPs).
- States are required to consult with tribes when tribal interests may be impacted by State actions.



Regional and Metropolitan Organization Practice

- Federally recognized tribal governments must be consulted in the development of a regional transportation improvement plan or program.





V. SUMMARY



Tribal Consultation Key Points

- Tribal Sovereignty is the basis and reason for tribal consultation.
- Federal recognition of sovereignty and the obligation to work with tribes on a government-to-government basis is reserved only for federally recognized tribes.
- FHWA is the lead Federal agency responsible for tribal consultation in transportation.
- Federal, State, and regional governments must notify and consult with tribal governments if their projects impact tribal interests.
- The Federal consultation process takes precedence over State and regional processes.

Tribal Consultation Checklist

✓	Task
	<p>Make a copy of the Federal guiding principles from the <i>1994: Presidential Memorandum: Government-to-Government Relations with Native American Tribal Governments</i>. The principles will help guide consultation work.</p>
	<p>Contact FHWA Division Office in State where the tribe's resources are located.</p> <ul style="list-style-type: none">• Request information on how FHWA conducts tribal consultation and keep for future reference.
	<p>Contact State DOT in State where the tribe's resources are located.</p> <ul style="list-style-type: none">• How does it conduct State-tribal consultations? What is the tribe's role in the process?
	<p>Contact the local MPO. How does it conduct regional-tribal consultation?</p> <ul style="list-style-type: none">• Request copy of process and inquire on the role of the tribe.
	<p>When looking to build a relationship with another government, talk to people at the top of the organization. Collaboration at higher levels in the organization makes the relationship more solid.</p>



VI. CURRENT EXAMPLES



Southern California Tribal Chairmen's Association (SCTCA) and San Diego Association of Governments (SANDAG)

Chairman Mark Romero Chairman, Mesa Grande SCTCA Borders Committee

- Regional context – 17 Tribes
- Regional Tribal Summit at key milestones or decision points
- Representation on the SANDAG Board and Policy Committee
- Tribal Advisory Group
- Staff counterpart to assist with communications



Current Examples

Southern California Tribal Chairmen's Association (SCTCA) and San Diego Association of Governments (SANDAG)

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Minnesota Department of Transportation

Linda Aitken

MNDOT Tribal Liaison

- Statewide Consultation – 11 Tribes
- Government -to-Government Accord
- Executive Order 03-05 – affirms the State relationship with Tribes
- State DOT Tribal Liaison
- Advocacy Council for Tribal Transportation



Minnesota Department of Transportation

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VII. RESOURCES



For Further Reading

- Working in Indian Country, Building Successful Business Relationships with American Indian Tribes, (Larry D. Keown, 2010).
- A Guidebook for Successful Communication, Cooperation, and Coordination Strategies Between Transportation Agencies and Tribal Communities, (Transportation Research Board, National Cooperative Highway Research Program, Report 690, 2011).
http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_690.pdf
- Identification of Results-Oriented Public Involvement Strategies Between Transportation Agencies and Native American Tribal Communities. (Transportation Research Board, National Cooperative Highway Research Program, Web-Only Document 171, 2010).
http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_w171.pdf
- In Their Own Light: A Case Study in Effective Tribal Consultation, North Dakota Federal Highway Administration,
http://www.fhwa.dot.gov/resourcecenter/teams/environment/tribal_consult.pdf

For Further Reading

- Section 106 Tribal Consultation Q & A's, Federal Highway Administration, <http://www.fhwa.dot.gov/hep/tribaltrans/tcqa.htm>
- The ACHP Native American Program: Guidance for Federal Agencies, (The Advisory Council on Historic Preservation).
<http://www.achp.gov/nap.html>
- Best Practices in Historic Preservation: Tribal Consultation, (National Association of Tribal Historic Preservation Officers, 2005).
<http://www.nathpo.org/publications.html>
- Consultation with Indian Tribes in the Section 106 Review Process - A Handbook, (Advisory Council on Historic Preservation, November 2008).
<http://www.achp.gov/regs-tribes2008.pdf>
- Transportation Decisionmaking Series
<http://www.fhwa.dot.gov/hep/tribaltrans/>