

Government To Government Consultation Consultation Process and Methods

Executive Orders & FAA Order Requirements

FAA Order 1210.20 “American Indian and Alaska Native Tribal Consultation Policy and Procedures”

- Consult with tribes before taking any action that may significantly or uniquely affect them
- Provide tribal representatives information to enable them to understand and provide input
- Conduct consultation with tribes to identify interests, seek input, concerns and examine suggestions on how to address concerns
- Distinct from public participation process
- Provide tribal representatives with suitable feedback to show interests, concerns and suggestions have been fully considered
- Advise tribal representatives of FAA decision and basis for decision

Who initiates Tribal Consultation?

- FAA initiates the consultation by sending out standard Tribal consultation initiation letter
- Letters go to Federally recognized Tribes in the project area or who have occupied the project area in the past
- Tribal consultation letter will be on FAA letterhead and signed by FAA Airports Deputy Division Manager, or the Environmental Program Manager in the Deputy’s absence

How do I know which Tribes to Consult with?

- Government to Government consultation is with the federally recognized Tribes in the project area and with Tribes who have occupied the project area in the past
- Current BIA list is usually a good source for contact information on Tribes in project area
- Remember, there may be more than one Tribe involved in a consultation
- Government to Government consultation is with the federally recognized Tribe not the local or regional Tribal corporations
- Note, G2G consultation differs from consultation conducted with Tribes and Tribal Corporations under section 106 of the National Historic Preservation Act

Who does the Tribal Consultation?

- Federal agencies have the responsibility for Government to Government Consultation
- The Tribe can consult with the Sponsor of the Airport if they elect to (an option on the Consultation Option form attached to Consultation initiation letter)
- If the Tribe initially chooses to consult / coordinate with the Sponsor, the Tribe may later decide they want to consult directly with the FAA

When is Tribal Consultation initiated?

- Early in the planning process and/or environmental process
- For on-going and new MP’s initiate consultation during the planning process before the EA scoping
- If consultation has not begun during the planning process, send the standard Tribal Consultation initiation letter out at the same time as the agency scoping letters
- If G2G is initiated during the NEPA process, the information in the G2G letter should be consistent with the information in the agency scoping letters

- Refer to handout for types of projects which require Tribal Consultation (HANDOUT)

Where does Tribal Consultation take place?

- To extent possible, meeting(s) should be held in Tribal community – at this point, there are funding limitations
- Try to plan ahead to have one or two meetings within the Tribal community if there are substantive concerns
- When funding does not permit on-site meetings with the Tribal government, Teleconferences, Email, and Letters are permissible.

General Process / Considerations

- Send out standard Tribal consultation initiation letter initiating Tribal Consultation on FAA letterhead signed by FAA Airports Deputy Division Manager (Standard consultation initiation letter Template is available on FAA Alaskan Region's website)
- During an Airport Master Plan the Airports Division point of contact is the FAA Planner
- Airport Planners should coordinate with environmental specialists to ensure appropriate communications and process during the Airport Master Plan
- During the NEPA process the Airports Division point of contact is the environmental protection specialist
- Define the parameters of the consultation
 - Identify and document Tribal Representative and FAA Decision Maker & FAA Representative
 - Plan for tribal consultation points during the key milestones during the planning process, project development and / or EA
 - Identify what forms of communication you & the Tribe will use during consultation and who they will be sent to
 - Consultation needs to be documented via record of phone conversations, emails, letters and minutes to record & demonstrate how were the concerns, comments and requests from the Tribe have been addressed
 - Workload --- consultation can be an additional workload for both FAA and the Tribe (and potentially the sponsor and consultant)
 - Time it will take to do consultation (project schedule / budget) – consultation may take awhile
- If get no response, follow up via phone and document attempts to seek input --- Tribes are commonly not well staffed and receive requests from a number of agencies; so don't be surprised if you don't receive a response and have to be persistent following up
- ***No one size fits all - Tribes differ from government agencies and from each other***
- ***Remember Tribes may have their own separate legal requirements based on their laws and regulations***
- ***Be careful to understand that the tribes role and the Federal Government's relationship with Tribes is different from the Public and from Resource agencies***
- ***Remember what you are consulting on with tribe: Federal Agencies must give due consideration to matters of cultural, religious and traditional importance which significantly or uniquely affects Tribal governments. Consultation is not however limited to addressing comments and concerns of cultural, religious and traditional important to a Tribe.***
- ***Deference is granted to tribe on matters of cultural, religious and traditional importance to the tribe (this is their area expertise). We may be asked to provide funding for their expertise***
- ***Consider tribes concerns and comments on other resources as well***

- ***Be sensitive towards and respectful of tribal communication styles and values regarding time and deadlines.***
- The Tribe may have some confidentiality concerns – these need to be identified and protocols developed
- Get admin support from consultant to help move consultation forward – can get bogged down with the documentation
- Prepare decision letter describing basis for FAA decision. Submit decision letter to Tribal Representative with final FAA decision

MOA vs. No MOA

- Tribal representative may request an MOA
- FAA can determine that an MOA is not needed for the G2G consultation
- Tribal representative may feel an MOA would give the Tribal Council and Corporation greater weight and influence over alternatives analysis and selection
- An MOA does not create additional authorities or rights
- Degree of potential impacts to Tribal resources would be primary reason for an MOA
- Consult with FAA's environmental program manager to determine need for an MOA

Confidentiality

- Extends to consultants – tribe may request confidentiality agreement with consultant as well, if they are assisting in the process (cannot delegate authority of consultation to consultants)
- Consultants may be concerned about assumption of liability when they are assisting with consultation process (please NOTE consultants may NOT conduct consultation on FAA's behalf although they can assist by providing information, confirming whether the Tribe has an interest in participating and in documenting consultation efforts and process).
- Have procedure in place for Tribe to identify any confidential information and materials
- Confidential items can be protected from release under FOIA --- consult with FAA legal for clarification as needed

Compensation for G2G and Special Expertise

- Compensation can occur but Compensation is not required for participation in consultation.
- FAA has not funded a Tribal government's participation in the consultation process. E.g. we have not funded administrative time Tribal government spends in consultation meetings with FAA
- Compensation can be provided for Tribe's special expertise --- i.e. Tribal Staff time documenting project affects on resources of religious, cultural or traditional importance to the Tribe
- Consult with FAA's Environmental Program Manager for to assist with specific determinations
- Funding decision will be made on a project by project basis by the Deputy Division Manager

Recommendations and Tips

- Process, documentation and respect are Critical
- FAA and Sponsors should plan accordingly for additional project development time and funding

- Takes awhile to build relationship, understand their internal process and consultation protocols and build trust
- Don't be afraid to seek clarification or to say no after considering a request, and when it's clear FAA would not be able to accommodate a request
- ***No one size fits all - Tribes differ from government agencies and from each other***
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