

Office of Regulatory Affairs and Collaborative Action  
Office of the Assistant Secretary – Indian Affairs

# Improving Collaboration With Tribes



Environmental Attorneys Training Workshop  
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## Topics to be Covered

- I. Defining "Consultation"
- II. Legal Requirements
- III. Types of Collaboration
- IV. Best Practices

# What is Tribal Consultation?

- No single, widely accepted definition
- Generally means:
  - Process of seeking, discussing, and considering the views of potentially impacted federally recognized tribal governments early in the decision-making process.
  - Meaningful and effective two-way communication that works toward a consensus reflecting the concerns of the affected federally recognized tribes.
- Federal agency has the burden to show that it has made a good faith effort to elicit feedback.

# Why is Tribal Consultation Important?

- Unique relationship with tribes
  - Established by the Constitution, treaties, statutes and other laws
  - Nation-to-nation relationship
  - Tribes are independent sovereigns
  - Right to self-determination and self-governance
  - Trust responsibility

# Legal Requirements for Tribal Consultation

- Executive Order 13175
  - Main Purpose:
    - Establish regular and meaningful consultation and collaboration with tribal officials
  - Requires each agency to have:
    - “An accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications”

# Legal Requirements for Tribal Consultation (continued)

- Executive Order 13175 (continued)
  - “Policies that have tribal implications” include any action that has substantial direct effects on:
    - One or more Indian tribes,
    - The relationship between the Federal Government and Indian tribes, or
    - The distribution of power and responsibilities between the Federal Government and Indian tribes

# Legal Requirements for Tribal Consultation (continued)

- Executive Order 13175 (continued)
  - Accountable process to ensure meaningful and timely input:
    - Adequate notice directed to tribal leaders
    - Early in the decision-making process
    - Opportunity to meet and discuss
    - In easily accessible locations
    - Explain action and potential impact
    - Listen to tribal leaders' concerns
    - Come to consensus on how concerns will be addressed

# Types of Collaboration

- Range of options, depending on universe of tribes potentially affected, degree to which they will be affected, and level of interest
  - Formal consultation
  - Facilitated working groups
  - Written (electronic or mailed) updates
  - Other collaboration

# Best Practices: Formal Consultation

- At least 30 days in advance of meetings
  - Tribal leader letter announcing upcoming meetings and providing background information
  - Publication of upcoming meeting details in Federal Register
- Meetings
  - In convenient locations
  - Circle formation, if possible
  - Court reporter
  - Subject matter experts
  - Multiple avenues to provide comments

## Best Practices: Formal Consultation (continued)

- Document all comments received (both oral and written)
  - Show that comments were considered/addressed
    - Matrix showing responses
    - Incorporate into Federal Register preamble
- Follow up on individual requests for information
- Schedule more meetings, if appropriate

# Best Practices: Facilitated Working Groups

- Identify key subject matter experts in Department with experience/knowledge of tribal concerns
- Schedule working group sessions with trained facilitator
  - Off site
  - One to three days
  - Clearly defined goal for end of session
- Develop draft document/proposal for action
- Proceed to formal consultation

# Best Practices: Written Updates

- Provide updates to tribal leaders via email, website, or tribal leader letters
- Carbon copy any counsel, other tribal representatives requesting information
- Always include option for providing input
  - Personal contact information
  - Website comment entry

# Best Practices: Other Collaboration

- Identify and notify key interested representatives early in the process
- Discuss potential collaboration approaches
  - Informal conversations
  - One or more small, regional meetings
  - One large meeting
  - Ad hoc committee meeting
  - Federal Advisory Committee
- Document and consider input (or, in the case of a FAC, try to reach consensus)

## Contact Information

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