

## A Guidebook for Successful Communication, Cooperation, and Coordination Strategies Between Transportation Agencies and Tribal Communities

### DETAILS

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### AUTHORS

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Geri Knoebel; Dexter Albert; Giovanni C Migliaccio; Rebecca Martinez; Jason Hurd; Transportation Research Board

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**NCHRP REPORT 690**

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**A Guidebook for Successful  
Communication, Cooperation,  
and Coordination Strategies  
Between Transportation Agencies  
and Tribal Communities**

**ATR Institute**

THE UNIVERSITY OF NEW MEXICO  
Albuquerque, NM

**Giovanni C. Migliaccio**

UNIVERSITY OF WASHINGTON  
Seattle, WA

**Geri Knoebel**

**Rebecca Martinez**

THE UNIVERSITY OF NEW MEXICO  
Albuquerque, NM

**Dexter Albert**

**Jason Hurd**

INTRINSIC CONSULTING LLC  
Flagstaff, AZ

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WASHINGTON, D.C.

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# COOPERATIVE RESEARCH PROGRAMS

## **CRP STAFF FOR NCHRP REPORT 690**

**Christopher W. Jenks**, *Director, Cooperative Research Programs*  
**Crawford F. Jencks**, *Deputy Director, Cooperative Research Programs*  
**Christopher Hedges**, *Senior Program Officer*  
**Danna Powell**, *Senior Program Assistant*  
**Eileen P. Delaney**, *Director of Publications*  
**Margaret B. Hagood**, *Editor*

## **NCHRP PROJECT 08-65 PANEL** **Field of Transportation Planning—Area of Forecasting**

**Ronald Hall**, *Colorado State University, Fort Collins, CO (Chair)*  
**Dianne Kresich**, *Arizona DOT, Phoenix, AZ*  
**Megan “Beeby” Cotton**, *Washington State DOT, Olympia, WA*  
**Jo Anne DiStefano**, *New York State DOT, Albany, NY*  
**LeRoy Gishi**, *Bureau of Indian Affairs, Germantown, MD*  
**Jacque Hostler**, *Trinidad Rancheria, Trinidad, CA*  
**Chris W. Huffman**, *Kansas and Missouri Certified General Property Appraiser, Lawrence, KS*  
**Sherry E. Munford**, *Virginia DOT, Richmond, VA*  
**Robert L. Reeder**, *Missouri DOT, Jefferson City, MO*  
**Gary Stevig**, *Nay'dini'aa Na'Traditional Village, Sutton, AK*  
**Kenneth Petty**, *FHWA Liaison*  
**Martine A. Micozzi**, *TRB Liaison*

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Giovanni C. Migliaccio, Ph.D., of the Department of Construction Management at the University of Washington served as project director and principal investigator (Note: Dr. Migliaccio was affiliated with the Department of Civil Engineering at the University of New Mexico throughout most of this project, but he completed the final reports while at the University of Washington). Dexter Albert and Jason Hurd of Intrinsic Consulting LLC, Geri Knoebel of the ATR Institute at UNM, and Rebecca Martinez, a graduate research assistant with the UNM Department of Civil Engineering also performed major roles in this project. Terry Holley and Michael Quintana with PAIKI were also involved with early research activities.

Ms. Knoebel has to be credited for the extensive review of legislation and policy initiatives that is included in Chapter 2 and for reviewing content of the final reports. Ms. Martinez has to be credited for her work on the effect of intergovernmental networks that is included in Chapter 3. Similarly, Mrs. Albert and Hurd have to be credited for developing several of the case studies included in Appendix C and for reviewing the final reports.

The research team wishes to thank the participants to this study. While their contribution was precious for identifying best practices for collaboration, their participation to the study has to stay anonymous for compliance to the research protocols. The researchers also thank staff at the seven Tribal Technical Assistance Program (TTAP) centers and the research panel for assisting with the data collection.

# FOREWORD

By Christopher Hedges

Staff Officer

Transportation Research Board

This report provides guidelines to help departments of transportation and tribal communities work together to achieve successful transportation projects on tribal lands. It addresses a wide range of issues and topics that must be considered and presents a flexible approach that can be adapted to most situations. After conducting extensive interviews, workshops, and a Delphi survey, the research team identified successful practices and developed structured case studies to illustrate the most successful practices. This Guidebook will provide considerable value to all agency staff and tribal communities involved in the planning, design, construction, and maintenance of transportation projects on tribal lands.

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Throughout the United States, thousands of miles of roads operated by transportation agencies traverse lands of interest to or under the jurisdiction of Native American tribes. As the need arises for transportation improvements, so does the need to conduct extensive and meaningful outreach to the members and governing bodies of these tribes. Historically, the relationship between government agencies and tribes has often been complex. Despite widespread agreement by parties on all sides that coordination on transportation projects has not always achieved mutually beneficial results, research that identifies the underlying causes and develops practical solutions for achieving such results is scarce.

Transportation projects increasingly impact—and are impacted by—tribes. With 562 federally recognized tribes as well as many state-recognized and non-recognized tribes located in all regions across the country, there is a significant need for results-oriented strategies for public involvement and for consultation between government agencies and tribes.

Under NCHRP Project 08-65, a research team led by the University of New Mexico used workshops and interviews to identify successful practices for collaboration between transportation agencies and tribal communities when dealing with projects on tribal lands. A Delphi analysis was used to build consensus on the most effective practices that yielded positive results and have potential for wide application. The results were used to develop step-by-step guidelines to analyze a proposed transportation project, identify particular issues or concerns, and select and implement strategies and practices that are best-suited for the particular situation. The practices are illustrated using 46 structured case studies. The Guidebook includes a methodology to implement the recommended practices to achieve the best possible outcomes.

The Guidelines are supplemented by a final research report, which is available as *NCHRP Web-Only Document 171* on the TRB website at <http://www.trb.org/Publications/Pubs/NCHRPWebOnlyDocuments.aspx>

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Note: Many of the photographs, figures, and tables in this report have been converted from color to grayscale for printing. The electronic version of the report (posted on the Web at [www.trb.org](http://www.trb.org)) retains the color versions.



## CHAPTER 1

# Introduction

The Alliance for Transportation Research Institute (ATRI) of the University of New Mexico led a research team that included Intrinsic Consulting of Arizona and PAIKI of Kentucky to develop this Guidebook. The purpose of this Guidebook is to convey the knowledge gained from this study into a format that can be used by staff affiliated with agencies and tribes. The Guidebook includes five chapters and five appendices.

### 1.1 Background

By definition, transportation systems are usually represented as networks designed to permit a flow of vehicles and commodities. This characteristic of transportation systems entails a need for overcoming geographic and institutional boundaries. While the transportation engineering profession has successfully confronted geographical barriers, transportation networks crossing Native American lands that are governed under different institutional frameworks provide non-technical challenges to those involved in the implementation of transportation improvements.

Usually, the introduction of multiple stakeholders into the project environment makes success a complicated goal as the increased number of stakeholders leads to an increase in project complexity. On projects in the United States that affect or are of concern to tribal communities, project complexity is magnified by the introduction of additional aspects into the working environment. Tribal involvement in surface transportation projects creates an intergovernmental project environment, and tribal-specific areas of concern are added to the planning conversation. The sovereignty and cultural differences of each tribe must be recognized in establishing a framework for collaboration that relies on communicating, cooperating, and coordinating each entity's needs and efforts. Government-to-government interaction is crucial for the success of transportation improvements whether it be a state or a tribal project.

This research identified best collaboration practices for facilitating communication, cooperation and coordination (C3) between transportation agencies and tribes. In addition, it developed a set of tools that are expected to facilitate collaboration between transportation agencies and tribal communities. This Guidebook includes these tools together with several processes designed to implement them.

### 1.2 Research Objectives

#### Objective 1: Develop Transportation Agencies/Tribes C3 Guidebook

- Provide guidance to all parties working to develop successful transportation projects of interest to and affecting tribes by evaluating and selecting the most appropriate practices necessary to implement a comprehensive collaboration strategy between transportation agencies and tribal communities in order to facilitate successful transportation projects. These strategies will be arranged in the form of a guidebook, the Guidebook for Tribes/Agencies Collaboration (G4TAC).

#### Objective 2: Develop Detailed Implementation Plan

- Develop a detailed implementation plan including a plan for action and an implementation assessment strategy to evaluate the effectiveness and comprehensiveness of the Guidebook. The implementation plan will provide suggestions on how the user may determine whether strategies included in the Guidebook: (1) facilitate communication between agencies and tribes; and (2) simplify the process of coordinating actions between agencies and tribes.

### 1.3 Research Approach

The Research Team adopted a three-phase plan with the objectives to develop a detailed research plan during Phase 1;

collect and analyze data from a sample of Tribes and transportation agencies across the country in Phase 2; and, finally, deliver the Guidebook and develop a detailed implementation plan in Phase 3.

During Phase 1, the Research Team conducted a literature review of pertinent domestic and international research and developed a detailed research plan. The outcome of this initial phase was a technical memorandum including detailed information on the approach for collecting and analyzing data and/or information.

During Phase 2, the Research Team identified practical practices for communication, cooperation, and coordination between transportation agencies and Tribal communities in order to facilitate successful transportation projects. The Research Team used both qualitative and quantitative data analysis techniques to analyze the results. Qualitative analysis, including the identification of similarities among responses, was used to analyze the interview data. Quantitative analysis, including frequencies, correlations and relationships among variables, were used to analyze the questionnaire data and analyze portions of the interview data. The outcome of this phase was the Interim Report which included detailed information on research findings, Research Team recommendations for the implementation of the identified practices, and a detailed outline of the Guidebook.

Phase 3 included three tasks and produced a preliminary draft of the final report and of the Guidebook. These documents were submitted to NCHRP for review by the project panel and staff. The principal investigator (PI) then finalized the report and Guidebook to incorporate the reviewers' comments.

## **1.4 Guidebook Limitations**

This Guidebook has been developed to facilitate collaborative efforts between federal, state or local agencies and tribes. However, this research did not intend to address major sovereignty issues (i.e., the tribe has not been recognized either at the federal or at the state level). When these situations are present, the results of this research can be used only to provide general guidance.

In addition, given the large variety of issues among regions, tribes, agencies, and specific transportation projects, a “one size fits all” approach is improbable. As a result, tools listed in this guidebook may not work well in some situations. To mitigate this aspect, the research methodology was designed to identify an approach that will most probably facilitate collaboration. Continuous utilization of the guidebook will provide feedback on limitations of individual practices. The implementation process includes steps to learn from mistakes and adjust the process to the specific context.

## **1.5 Overview of Guidebook Content**

This Guidebook is organized into five chapters and includes a set of appendices containing supporting information. Chapter 2 provides an assessment of legal and policy requirements. Chapter 3 outlines the concept of intergovernmental networks. Chapter 4 outlines key concepts necessary for a successful implementation of the Guidebook. Chapter 5 describes the tools and processes of the Tribe/Agency Collaboration Toolbox (TACT).

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## CHAPTER 2

# Assessment of Legal and Policy Requirements

This chapter provides an assessment of legal and policy requirements that support or detract from successful collaboration between tribes and governmental agencies on transportation initiatives.

### 2.1 Overview

Many intergovernmental programs have been implemented to facilitate practical collaboration strategies for communication, cooperation, and coordination. By their nature, transportation projects are complex as stakeholders often include multiple government entities from federal, tribal, state, and/or local governments. Tribal transportation projects require working within an intergovernmental framework between sovereign nations. To have a context for current issues in U.S. tribal policymaking, understanding these issues in a historical perspective of past U.S. tribal policymaking is necessary.

Collaboration on transportation initiatives is impacted by complex issues which arise from tribal-state sovereignty, intergovernmental agreements, jurisdictional matters, regional planning efforts, land ownership, and/or funding issues. Even when there are common interests, the planning, design, and implementation of transportation projects requires coordination and cooperation among tribal governments and federal and state transportation agencies.

The concept of tribal sovereignty has been established by the U.S. Constitution, treaties, trust relationships, and plenary power doctrines (1). Six periods of U.S. tribal policymaking have been identified. Each policymaking period took prominence at different times, resulting in shifting U.S. tribal policies (2). Sovereignty and the principle of tribal consent are basic principles, which guide relations between the federal government and Native American tribes. Treaties, trust relationships, and plenary powers of Congress are the framework for sov-

eignty and intergovernmental relations (3). Each is defined as follows:

- Sovereignty is the legal power of a Native American nation to manage its own internal affairs as a domestic dependent nation within the United States. Court decisions and legislation have changed the boundaries of what constitute sovereignty. Sovereignty includes tribal rights to self-govern, self-determination, and economic self-sufficiency (2).
- Trust relationship is the special historic relationship between the federal government and Native American tribes, with the assumption that the federal government will protect tribes and act in the tribe's best interests (1).
- Plenary powers means that tribal sovereignty may be altered by Congress, which has the power to legislate laws governing Native American tribes and limit tribal sovereignty (1).

The federal government's relationship is based upon unique trust obligations as domestic dependent nations that are subject to federal—but not state—law. From a broad perspective, tribal sovereignty has been upheld by the U.S. Constitution, tribal laws, tribal institutions, federal courts, federal acts and legal decisions (3). Tribes have retained inherent sovereignty over their lands except to the extent that they have been withdrawn by treaty or federal statute (4). Issues of sovereignty affect all aspects of tribal transportation programs.

Current issues impacting tribal transportation projects include cultural competency, protection and preservation of tribal-sensitive resources, confidentiality of tribal sensitive matters, sovereignty, land ownership, and monetary issues. These issues are complex and steeped in history. Since the early 1820s, the federal judiciary has significantly reduced tribal sovereignty. In contrast, since the 1960s Congress and the Executive Branch have broadened and strengthened tribal self-determination, which guides contemporary strategies to address tribal-specific issues on transportation initiatives.

## 2.2 U.S. Policies Affecting Native American Tribes

Intergovernmental collaboration on transportation projects is impacted by tribal sovereignty, tribal–state relations, intergovernmental agreements, and jurisdictional issues. Native American tribes recognized by the federal government have a unique legal and political relationship with the federal government which continues to be defined by history, treaties, statutes, court decisions, and the U.S. Constitution. Historically, three areas of Congressional action have affected Native Americans, their rights, and property: establishing the laws under which tribes relate to the federal government; appropriating and overseeing the expenditure of funds; and dealing with the rights and property of states and citizens that have some relationship to the rights and property of tribes (7).

On the other hand, the judiciary through the Supreme Court has addressed tribal sovereignty matters including civil, criminal, and other jurisdictional issues. Jurisdictional issues are important in the planning, design, construction, operation, and maintenance of tribal transportation projects (4).

Six major issues impact communication, cooperation, and coordination between tribes and other government entities on tribal transportation projects. Project coordination and collaboration are impacted by cultural competency; protection and preservation of tribal sensitive resources; confidentiality of tribal sensitive matters; sovereignty; land ownership; and monetary issues. Insights gained from history and changing tribal legal policies are important for understanding these complex intergovernmental relationships and their impact on transportation projects.

U.S. tribal policymaking initiatives have been categorized into six historical periods, which will be examined in subsequent sections. These periods are:

- Agreements between Equals (1787 to 1828)
- Relocation of the Indians (1828 to 1887)
- Allotment and Assimilation (1887 to 1934)
- Indian Reorganization (1934 to 1945)
- Termination (1945 to 1968)
- Tribal Self-Determination (1968 to Present) (1).

Exhibit A.1 in Appendix A includes a summary of legislative actions, Supreme Court decisions, and executive initiatives as they relate to current tribal transportation issues.

### 2.2.1 Agreements Between Equals (1787-1828)

The “Agreements between Equals” period primarily focused on sovereignty and land ownership issues. Early recognition of Native American tribes as separate and sovereign governments

exists in the U.S. Constitution, Article 1. The clause in the Constitution identifying tribes as sovereign governments gives Congress the authority to regulate commerce with States, foreign nations, and Native American tribes. The U.S. Constitution formed the initial framework for these government-to-government relations (3).

When the U.S. Constitution was signed in 1787, Native American tribes were considered to be foreign governments. As a result, agreements between the federal government and tribal nations were considered to be nation-to-nation and required the consent of part of the tribes. Federal policy, not state policy, governed the relationships with tribes. The United States had nearly 400 treaties with tribes from 1785 to 1871 (3).

### 2.2.2 Relocation of Native Americans (1828-1887)

The relocation period was a time when the federal government adopted policies including the Indian Removal Act (1830), which forced tribes in the east to surrender their land by treaty in exchange for reserved land in the west. Congress recognized the treaty “reserved” lands as permanent areas under tribal jurisdiction known as reservations (4). In 1881, Congress passed 21 U.S. 543 that prohibited any additional treaties with tribes. As a result, tribes were no longer considered to be independent nations, and Congress could limit tribal powers including the ability to take tribal lands (1).

Currently, there are about 300 tribal reservations in the United States and 562 federally recognized tribes meaning that many tribes have no land. Reservations are lands owned by the federal government that are held in “trust” for use by tribes. The federal government has the responsibility to protect the reservations, but the federal government can, and has, terminated and removed tribes from reservations (5).

The judiciary branch became involved in tribal matters in three U.S. Supreme Court cases known as the Marshall Trilogy. These cases provided the framework for the status of tribes by defining their relationship with the federal government and the concept of tribal sovereignty, and established the doctrine of federal trust responsibility. The Marshall Trilogy set precedence for many Supreme Court cases since that time (5).

- In *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543 (1823), the Supreme Court held that Native Americans had only a right of possession of tribal lands, and only the federal government had the power to transfer land ownership (3).
- In *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831), the Supreme Court clarified that tribes are neither states nor foreign nations, but “domestic dependent nations.” This case established the trust relationship in which the federal government has the duty to protect Native American tribes and their lands (3).

- In *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832), the Supreme Court decided that states do not have authority on tribal lands and tribes did not lose their sovereign powers by becoming subject to the federal government. Only Congress has plenary (or overriding) power over tribal affairs. The Supreme Court has consistently upheld that Congress may exercise plenary power over Native American tribes (3).

### 2.2.3 Allotment and Assimilation (1887-1934)

In this period, tribal sovereignty was limited and land ownership altered by promoting assimilation of tribes into American society through the federal government's policy of subdividing and selling tribal lands. The General Allotment Act of 1887 (also known as the Dawes Act) limited tribal sovereignty and broke up communal tribal lands into smaller pieces that were given to individual landowners, including non-Native Americans. The resulting checkerboard pattern of land ownership, occupancy of reservation lands by non-Native Americans, and non-tribal authority over those lands led to overlapping and conflicting policies. These checkerboard tribal lands still have lingering negative impacts on the development and implementation of current transportation projects (3).

Two noteworthy Supreme Court cases occurred during this time. In *Talton v. Mayes*, 163 U.S. 376 (1896), the Supreme Court upheld that tribal sovereignty was not limited by the constraints imposed in the U.S. Constitution. Tribes have internal sovereignty and are free to govern their internal relations (4).

In *Buster v. Wright*, 135 F. 947 (CA8 1905), the Supreme Court upheld Tribes' permit tax on nonmembers for the privilege of conducting business within Tribes' borders. The Court characterized as 'inherent' the Tribe's "authority . . . to prescribe the terms upon which noncitizens may transact business within its borders" (21).

### 2.2.4 Reorganization Period (1934-1945)

The Reorganization Period reversed the federal allotment and assimilation policies. This was initiated by the findings of the Merriam Report (1928) which documented the failure of the allotment policies. The resulting Indian Reorganization Act (IRA) was passed in 1934. It prohibited future allotments of tribal lands and enabled tribes to assert powers of self-government. For the first time, the IRA recognized tribal governments as viable political entities. It also established mechanisms for tribal business enterprises and provided for the adoption of tribal constitutions. These tribal constitutions had to be ratified by the Secretary of the Interior. The IRA also provided that tribal, rather than federal, authority gave tribal courts legitimacy (4, 5). However, under the IRA, the Bureau of Indian Affairs, rather than tribes, had final decision-making

power over the use of tribal funds or tribal lands (3). This Act not only stopped further reduction of the tribal land base but also permitted federal funds to be spent for the first time for on-reservation tribal projects, including irrigation works, roads, homes, and community schools (4).

Also during this period, the federal government's trust responsibility was clarified in the *Seminole Nation v. U.S.*, 316 U.S. 286, 62 S. Ct. 1049 (1942) Supreme Court case. Treaty provisions from the 1840s stated that interests from a trust fund would be paid directly to individuals. The federal government paid the tribal treasurer instead. The Court found that the federal government's trust relationship with tribes had a fiduciary responsibility as well (4). This fiduciary responsibility was reaffirmed in the *U.S. v. Mitchell*, 445 U.S. 535, Supreme Court (1980 and 1984) case when the Court determined that the federal government had the responsibility to manage tribal resources and land for the benefit of tribes (4).

### 2.2.5 Termination Period (1945-1968)

In 1953, Congress adopted House Concurrent Resolution No. 108 which reversed federal tribal self-determination policies and, as a result, ended the trust relationship between federal and tribal governments (4). More than 109 tribal governments were terminated resulting in the federal government no longer recognizing them as sovereign nations (5). Upon termination, tribes lost their powers of self-government, were ineligible for government services, and were subject to taxation on their land. Unilaterally, tribal members became subject to state criminal and civil laws (4).

This termination policy also resulted in the passage of Public Law 83-280 (1953) by Congress, which generally extended state jurisdiction on tribal reservations by mandating the delegation of substantial civil and criminal jurisdiction over reservations in certain states (4). Public Law 280 gave six states mandatory and substantial criminal and civil jurisdiction over tribes: Alaska (except for Metlakatla Reservation), California, Minnesota (except for Red Lake Reservation), Nebraska, and Oregon (except for Warm Springs Reservation). Ten other states also opted to accept some degree of Public Law 280 jurisdiction: Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, South Dakota, Utah, and Washington.

Where Public Law 83-280 applies, tribes and states both share jurisdiction over criminal and civil matters (5). This left tribes with a greatly diminished role and was contrary to the *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832), Supreme Court case, which stated that "laws of the state can have no force of law on tribal land" (4).

A significant factor in the return to self-determination and respect of sovereignty was the *Williams v. Lee*, 358 U.S. 217 (1959) Supreme Court case (4). The Court decided that tribal courts rather than state courts had jurisdiction in a lawsuit aris-

ing out of on-reservation sales transactions between a non-member plaintiff and tribal defendants. This case affirmed tribal internal sovereignty (8).

## 2.2.6 Self-Determination Era (1968 to present)

Over the last 40 years, a great deal has changed since the federal government has embraced tribal self-determination policies and no longer pursues assimilation policies. The severe problems resulting from the Termination Period led to reforms that expanded the recognition of the powers of tribal self-government. This policy shift strengthened the tribal sense of autonomy, permitted tribes to manage their own affairs, and produced a significant number of legislative actions that validated and advanced the self-determination principle (4). As a result, tribal-state-federal relationships regarding transportation planning, program management, and operations issues are relatively recent phenomena.

### 2.2.6.1 Legislative Actions

President Richard Nixon is credited with changing the direction of the federal government and its treatment of tribes by calling for a policy of “self-determination” (4). In 1968, President Lyndon Johnson described Native Americans as the ‘forgotten’ Americans and affirmed the rights of Native Americans to remain Native Americans while exercising their rights as Americans. This led to the passage of the Indian Civil Rights Act (1968), which entitled Native Americans to provisions of the Bill of Rights and mandated that tribal consent be required for states to assume civil and criminal jurisdiction over tribal lands (4).

Many of the pieces of legislation enacted during the Self-Determination Era impacted cultural competency, protection/preservation of tribal resources, and confidentiality of tribal sensitive matters. Tribal lands have unique historical, cultural and religious meaning to a tribe and must be respected. Tribal self-determination policies are reflected in legislation, including the National Historic Preservation Act (NHPA) (1966), National Environmental Protection Act (NEPA) (1969), American Indian Religious Freedom Act (AIRFA) (1978), Archaeological Resources Protection Act (ARPA) (1979), Native American Graves Protection and Repatriation Act (NAGPRA) (1990), and the National Historic Preservation Act amended (1992).

The NHPA (1966) required federal agencies to consult with any Native American tribe that attaches historical, religious, or cultural significance to historic properties that may be affected by a project (3). Through establishing programmatic agreements and state or tribal historic preservation officer positions, states and tribes have increased their capacity to address envi-

ronmental evaluations and historic preservation issues in tribal transportation projects. Some states have formalized consultation processes through memorandums of understanding (MOUs) (4). In 1992, the NHPA was amended to enhance the tribal role in historic preservation and created the Tribal Historic Preservation Officer program (6).

The NEPA (1969) established a national policy for the protection and enhancement of the “human environment to preserve important historic, cultural, and natural aspects of our national heritage” (4). It requires that an agency prepare an Environmental Impact Statement for all “proposals for legislation and other major federal actions significantly affecting the quality of the human environment” (4).

The AIRFA (1978) was passed by Congress to “protect and preserve for tribes the right to believe, express, and exercise their traditional religions, including access to religious sites, use and possession of sacred objects, and freedom to worship through ceremonies and traditional rites” (4).

The ARPA (1979) provided for the protection and management of archaeological resources and sites that are on public or tribal lands, and requires tribal notification if archaeological investigations would result in harm to any location considered by the tribe to have religious or cultural importance. Permits are required for excavation or removal of any archaeological resource located on tribal lands and requires consent of the tribe owning or having jurisdiction over the land (4).

The NAGPRA (1990) safeguards the rights of Native Americans by protecting tribal burial sites and rights to items of cultural significance to tribes. Protected cultural items include Native American human remains, funerary objects, sacred objects, and objects of cultural heritage (4).

Another significant piece of legislation during this period was the passage in 1975 of the Indian Self-Determination and Education Assistance Act (ISDEAA), which gave tribal governments the authority to assume federal actions and make those actions tribal functions. Previously, these functions were largely a federal responsibility handled through the Bureau of Indian Affairs (BIA). It also gave tribes the authority to perform transportation planning, which had previously been done by the federal government. However, because many tribes at the time did not have the resources to do such planning, the BIA did the planning on their behalf (4).<sup>1</sup>

Legislation concerning business transactions that relate to tribal lands was first enacted in 1872, and is now codified in 25 U.S.C. § 81 (2005), which is entitled: “Contracts with Indian Tribes or Indians.” It specified that no agreement or contract with a tribe lasting more than seven years is valid unless it has the approval of the Secretary of the Interior (4). The Secretary

<sup>1</sup>The lack of resources is still a current issue that endangers many tribes’ ability to develop and/or maintain a transportation planning program.

will not sign a contract or agreement if “the agreement or contract violates federal law, does not include remedies for a breach of agreements or contracts, or includes an express waiver of immunity as a defense in an action; or includes an express waiver of the right of the tribe to assert sovereign immunity as a defense in an action brought against the tribe.” In addition, the Secretarial approval is required for any contract that limits tribal control of Native American land or transfers possession or control to a non-tribal party (4).

### 2.2.6.2 Supreme Court Cases

During the Self-Determination Era there was much litigation that reached the Supreme Court concerning tribal jurisdiction over non-Native Americans on tribal lands. From the 1960s to the 1980s, the Supreme Court recognized tribal sovereignty, the trust relationship, and tribal jurisdiction over nonmembers. However, that changed in the 1990s as the Supreme Court significantly impacted tribal sovereignty by limiting the ability of Native Americans to regulate the civil or criminal conduct of non-Native Americans (5). “In the 1990s, tribes lost 23 of 28 cases in which they appeared before the Supreme Court” (5).

In *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), the Supreme Court determined that tribes have “impliedly lost certain sovereign powers due to the incorporation of tribal nations into the United States.” As a result, tribal courts do not have criminal jurisdiction over non-tribal members (4).

In *Washington v. Confederated Tribes of the Colville Reservation*, 447 U.S. 134, 100 S. Ct. 2069, 65 L.Ed.2d 10 (1980), the Supreme Court determined that states cannot interfere with tribal nations’ sovereignty and that tribal sovereignty is dependent on, and subordinate to, only the federal government, not states (4).

*Montana v. United States*, 450 U.S. 544 (1981) is considered a decisive case in which the Supreme Court denied tribal jurisdiction over non-Native Americans engaged in conduct on their own land within the reservation. “Montana exceptions” would be allowed if the tribe has a contractual relationship with the non-tribal member or if the non-member’s activities have a substantial impact on significant tribal interest (1).

In *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 103 (1983), the Supreme Court recognized that Native American tribes have the inherent right to tax activities occurring on tribal lands, including activities by non-tribal members (1).

In *Duro v. Reina*, 495 U.S. 676 (1990), the Supreme Court held that a tribal court does not have criminal jurisdiction over non-member Native Americans. In response to this decision, Congress, using its plenary power, passed the ‘Duro fix,’ which recognized the sovereign power of tribes to exercise criminal jurisdiction within their reservation over all Native Americans, including non-members. This decision was upheld by the Supreme Court in 2004 (3).

### 2.2.6.3 Executive Initiatives on Government-to-Government Relations

Executive initiatives during this period established requirements for government-to-government relationships that recognized and respected tribal sovereignty and consultation with tribes prior to taking actions impacting them. Other actions that furthered tribal self-determination included legislation designed to protect natural, religious, and cultural assets important to Native Americans and Native American tribes.

Presidential Indian Policy Statement of January 24, 1983, pledged a government-to-government relationship between the U.S. Government and Indian tribes (4).

Presidential Memo, Government-to-Government Relations with Native American Tribal Governments (May 4, 1994), directed all executive departments and agencies to implement activities affecting tribal rights or trust resources “in a knowledgeable, sensitive manner respectful of tribal sovereignty” (4). Presidential guiding principles included: operating within a government-to-government relationship with federally recognized tribal governments; consulting with tribal governments before taking actions that affect federally recognized tribes; assessing the impact of activities on tribal trust resources and assuring that tribal interests are considered before activities are undertaken; and removing procedural impediments to working directly with tribal governments (4).

Presidential Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, directed each federal agency to make environmental justice part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations including Native Americans (9).

Presidential Executive Order No. 13007, Indian Sacred Sites (May 24, 1996), directed federal agencies to accommodate access to tribal ceremonial use of sacred sites by tribal religious practitioners and protect the physical integrity of such sacred sites. This Executive Order addressed a problem in the AIRFA by requiring federal agencies to avoid harming the physical integrity of such sacred sites (4).

The FHWA Indian Task Force Report (February 4, 1998) was issued to provide guidance to FHWA regarding its relationship with federally recognized tribal governments with the Federal Lands Highway and Federal-Aid Highway Programs. Environmental issues and processes had already been a part of project development through the FHWA’s NEPA process. However, tribal environmental issues were to be incorporated to a greater degree into the tribal transportation planning process as well as during the project development and implementation processes in federally funded state transportation projects that impact tribal trust resources or tribal communities (4).

The first tribal consultation and coordination Executive Order, Presidential Executive Order 13084 of May 14, 1998—Consultation and Coordination with Indian Tribal Governments—recognized that the federal government works with tribes on a government-to-government basis to address issues concerning tribal self-government, trust resources, and Native American tribal treaties. Regular and meaningful consultation and collaboration with tribal governments is to be maintained in the development of federal regulatory practices that affect tribal communities (4).

Presidential Executive Order No. 13175, Consultation and Coordination with Indian Tribal Governments (November 6, 2000) revoked and replaced Executive Order 13084. Executive Order 13175 recognized Native American tribes' sovereignty. With sovereign powers, tribes are to be consulted with on a government-to-government basis. This consultation also requires working with tribes within the Statewide/Metropolitan Transportation Planning processes. Tribal officials are to be involved in regular and meaningful consultation and collaboration in the development of federal policies that have tribal implications. Because many transportation projects on tribal lands are federally funded, state governments and other local entities had to implement these strategies for consultation in tribal transportation matters (4, 37).

Dated September 23, 2004, Presidential Executive Order 13336 and Memorandum to Heads of Executive Departments and Agencies—Government-to-Government Relationships with Tribal Governments—adopted a national policy of self-determination for Native American tribes and committed the federal government to work with federally recognized tribal governments on a government-to-government basis (10).

Presidential Memorandum for Heads of Executive Departments and Agencies on Tribal Consultations, November 5, 2009, reaffirmed the federal government's commitment to regular and meaningful consultation and collaboration with tribal officials in policy decisions and accountability for the implementation of Executive Order 13175. Each agency head was directed to submit plans for implementing the policies and directives of Executive Order 13175 to the Director of the Office of Management and Budget (OMB) within 90 days. Tribes are to be consulted in the development of the implementation plans. Within 270 days, each agency is to submit a progress/status report on the status of each planned action to the OMB and annually thereafter (11).

As required by President Obama's Memorandum, the U.S.DOT issued its Tribal Consultation Plan, "to develop, improve, and maintain partnerships with Indian tribes by using agreed-upon processes when the Department develops, changes, or implements policies, programs, or services with tribal implications" (12). The U.S.DOT Plan reaffirmed its commitment to the principles of tribal self-government, self-determination, and tribal sovereignty. The Plan includes spe-

cific goals, actions, and accountability measures. These goals include: fostering meaningful government-to-government relations, improving existing tribal programs, ensuring meaningful tribal input into future tribal transportation programs, ensuring the uniform and effective delivery of tribal programs as well as assisting in implementing tribal infrastructure projects, building tribal transportation capacities, and coordinating national tribal infrastructure policy and programs within the federal government (12).

## 2.2.7 Summary

The importance of the history of tribal-federal government-to-government relations lies in understanding how the past has impacted (in many negative ways) these relationships by the lack of consistency in U.S. policymaking. Tribes were given authority over their own matters only in the early 1960s during the Self-Determination Era. The advent of this new policy period together with the enactment of several legislative and executive actions codified the consultation process and affirmed the government-to-government relationship between tribes and the federal government.

## 2.3 Transportation-Specific Policies Impacting Native American Tribes

The creation of the Indian Reservation Roads (IRR) program in 1928 marked the beginning of the federal government role in tribal transportation programs. Since then, transportation-specific tribal policies have been enacted by Congress that have authorized the formation of tribal transportation programs and funding for federally recognized tribal governments. A listing of FHWA's federal resources for tribal transportation funding and planning can be found in Exhibits A.2 to A.5. The following sections discuss federal and state level funding programs that have evolved to address current tribal transportation issues.

### 2.3.1 Federal Level

Through the Act of February 5, 1948 (i.e., Public Law 407), the Secretary of the Interior was given the authority to grant permission to state or local authorities to establish public highways through any tribal reservation. However, tribal trust land cannot be condemned without a specific act of Congress (4).

#### 2.3.1.1 Federal Lands Highway Program

The Federal Lands Highway Program (FLHP) provides funding and services in cooperation with federal land management agencies, such as the Bureau of Land Management,



U.S. Department of Agriculture Forest Service, and the BIA. The FLHP program specifically includes the IRR program, which is jointly managed by FHWA and BIA (3). IRR projects are selected by tribal governments and approved by FHWA. Each project is to be listed in the IRR Transportation Improvement Program (IRR TIP) (13).

### **2.3.1.2 Federal-Aid Highway Program**

States use Federal-Aid Highway funds for state- and county-owned roads running near, through, or entirely on tribal lands. Tribal governments can be direct recipients of federal-aid funds from FHWA. Previously, these funds were apportioned to states, with the states having responsibility to consult with tribal governments and the Secretary of the Interior in the transportation planning process, including the preparation of the State Transportation Improvement Program (STIP) (3).

FHWA division offices are responsible for establishing and maintaining working relationships with tribes and ensuring that tribal governments are part of the state DOTs' Federal-Aid Highway Program for planning, environment, and technology transfer. If a state wants to construct a project within a reservation without the requisite 100% funding, a tribe can use its own IRR funds for cost sharing requirements. States constructing roads totally within tribal lands are not constrained by federal-aid matching requirements and 100% federal funding is permitted [23 U.S.C. 120(f)] (4).

### **2.3.1.3 Indian Reservation Roads Program (IRR)**

IRR permitted cooperation between state DOTs and the Interior Department to survey, construct, reconstruct, and maintain Native American reservation roads (13). In 1982, under the Surface Transportation Assistance Act (STAA), the IRR became a program in the FLHP. STAA expanded the IRR system to include BIA roads, tribally owned public roads as well as state and county roads (13).

Indian reservation roads are public roads to and within reservations, trust lands, restricted lands, and Alaska Native Villages, and IRR is the primary mechanism for federal assistance in tribal transportation projects for federally recognized tribes. IRR also contributes to tribal economic development, self-determination, and employment (13). IRR provides funds for the planning, design, construction, and maintenance activities to address tribal transportation needs including bridges of over 562 federally recognized Native American tribes and Alaska Native Villages. The program is jointly administered by the FHWA's Federal Lands Highway Office and the BIA in accordance with an interagency agreement (14).

The IRR system includes approximately 27,800 miles of public roads on tribal reservations owned by the BIA, and

31,000 miles of State and local public roads that provide access to and within tribal reservations. There are approximately 1,700 miles of tribal owned roads (13). Any one road project could involve multiple jurisdictions resulting in conflicting laws regarding contract negotiations and employee rights. Because FHWA is providing funding, both BIA and FHWA regulations, such as environmental reviews and rights-of-way, apply to the IRR program (15). Funding for IRR projects must be included in the appropriate STIP (15).

### **2.3.1.4 Surface Transportation Assistance**

With the passage of the STAA in 1982, the IRR was incorporated into the FLHP under FHWA, which also has jurisdiction over roads on national parks and other federal lands. The BIA implemented the IRR program through a 1983 memorandum of understanding with FHWA. The STAA expanded the IRR system to include BIA roads, tribally owned public roads, and state and county roads (13). The BIA was also required to work with each tribe to develop an annual priority program of construction projects and submit the program to FHWA for review, agreement, and allocation of funds (3).

### **2.3.1.5 Intermodal Surface Transportation Efficiency Act**

The passage of the Intermodal Surface Transportation Efficiency Act (ISTEA) in 1991 mandated that statewide planning requirements include consultation, cooperation, and coordination with tribal governments on a government-to-government basis. Tribes and tribal concerns are to be included in the regional and statewide transportation planning processes. Through ISTEA, tribes realized a significant increase in IRR funding including a 2% set aside for tribal transportation planning. This enabled tribes to begin to oversee their own transportation programs. ISTEA also assigned oversight of the IRR program to FHWA. In addition, ISTEA authorized tribal preference in construction projects on and/or near reservations. Lastly, ISTEA authorized the establishment of the Tribal Transportation Assistance Program (TTAP) for tribal governments which evolved from the Local Technical Assistance Program (4).

### **2.3.1.6 Transportation Equity Act-21**

The Transportation Equity Act-21 (TEA-21), passed by Congress in 1998, mandated that the IRR program include tribal government consultation in state, regional, and metropolitan planning. The Federal Lands Highway Program management systems was required to include tribal pavement, congestion, bridge, and safety management programs similar to those required for state programs. A new allocation formula

was developed using the Federal Negotiated Rulemaking process (4).

TEA-21 also authorized a new funding formula that reflected the relative needs of Native American tribes and reservations or tribal communities for transportation assistance. “Consideration was given to the challenges faced by tribes, including the cost of road construction and geographic isolation; and the difficulty in maintaining all-weather access to employment, commerce, health, safety, and educational resources.” This Tribal Transportation Allocation Methodology determines IRR allocations to federally recognized tribes (4).

The inclusion of tribal transportation in the ISTEA and TEA-21 legislation required that tribes be included in the transportation planning, design, construction, and delivery processes. With the more funding available to tribes through ISTEA and TEA-21 came increased tribal capacity and participation in transportation planning and programs (4).

### **2.3.1.7 U.S.DOT Order 5301.1**

On November 16, 1999, U.S.DOT issued Order 5301.1: Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes. The purpose of Order 5301.1 was to affirm the department’s unique legal relationship with tribes and established its consultation and coordination process with Native American tribes. The Order’s requirements were designed to, “recognize Indian statutory preferences in employment, Federal financial assistance arrangements, and contracting; respond to the transportation concerns of Indian tribes related to environmental justice, children’s safety and environmental health risks, occupational health and safety, and environmental matters; foster opportunities for hiring tribal members and increasing participation in Federal training activities; include tribal colleges and universities in Departmental educational, research, and program activities; and treat correspondence from leaders of Indian tribes in the same manner as Congressional correspondence” (12).

### **2.3.1.8 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)**

SAFETEA-LU, passed by Congress in 2005, strengthened the direct relationship between FHWA and tribes. This included the authority to enter into direct funding agreements with tribes and the requirement for FHWA to develop a National Indian Reservation Road Inventory to assess the true need and cost for tribal transportation (17). SAFETEA-LU reemphasized the importance of requiring consultation with tribal governments for not only statewide planning but also long-range transportation planning. Tribes meeting certain

eligibility requirements may have direct agreements with FHWA rather than through BIA for IRR funding (15). Tribes may also assume maintenance responsibilities on state IRR roads through a road maintenance agreement in which 25% of IRR funds may be used by a tribe for maintenance. A bridge funding category was also established within IRR monies (16).

Under SAFETEA-LU, eligible tribes can enter into Referenced Funding Agreements directly with FHWA for their share of IRR Program funding (17). While the BIA retains its program management and oversight role on a national and regional level, these agreements have strengthened the FHWA-Tribal government relationship on both a program and project level (17). A tribe is eligible to participate in direct funding agreements if it can provide evidence of financial stability and management capability (17). As of September 2009, 42 tribes have entered into those Agreements (15).

### **2.3.1.9 Tribal Technical Assistance Program**

The ISDEAA (1975) gave tribes authority to assume some functions previously done by the federal government, including transportation planning. At that time, most tribes lacked the resources to develop transportation plans and the BIA did this planning on their behalf. To address this need, ISTEA authorized the formation of the TTAP, which is a network of regional centers funded through IRR. TTAPs training programs includes multi-jurisdictional collaboration, developing tools to make grassroots-level management easier, and teaching tribes how to write and manage MOUs, contracts, and agreements. TTAP also serves as an information clearinghouse, provides technology updates and technical assistance, and publishes newsletters (15, 18).

There are seven TTAP centers based in Alaska, California, Colorado, Michigan, North Dakota, Oklahoma, and Washington State. The Michigan Tech TTAP is hosted at Michigan Tech University in Houghton, MI, and serves tribes in states from the Mississippi River to the Atlantic Coast and the Gulf of Mexico. The Colorado TTAP is hosted at Colorado State University in Fort Collins, CO, and serves tribes in Arizona, Colorado, New Mexico, and Utah. The Oklahoma TTAP is hosted at Oklahoma State University in Stillwater, OK, and serves tribes in Kansas, Southern Nebraska, Oklahoma, and Texas. The California TTAP is hosted at the National Indian Justice Center in Santa Rosa, CA, and serves tribes in California and Nevada. The Northern Plains TTAP is hosted at the United Tribes Technical College in Bismark, ND, and serves tribes in Eastern Montana, Northern Nebraska, North Dakota, South Dakota, and Wyoming. The Northwest TTAP is hosted at Eastern Washington University in Cheney, WA, and serves tribes in Idaho, Oregon, Washington, and Western Montana. The Alaska TTAP is hosted at the University of Alaska in Fairbanks, AK, and serves tribes in Alaska.

### 2.3.1.10 Tribal Employment Rights Ordinances Laws

Tribal Employment Rights Ordinances (TERO) are Native American programs to provide preference for hiring either tribes or individual tribal members. This includes hiring for transportation projects. TERO laws govern the contracting provisions between a tribe and any contractors. Because of internal sovereignty rights, requirements for employers conducting business on reservations lands were established (3).

TERO was upheld by the US Supreme Court in *Morton v. Mancari*, 417 U.S.535 (1974), as the term “Indian” was recognized as a political classification and not a racial classification. Tribal internal sovereignty includes the right to make their own laws and be governed by those laws (19).

### 2.3.1.11 Supreme Court Cases

Many court cases in the Self-Determination Era involved tribe-state jurisdictional issues. Some cases could have a direct impact on state DOTs.

In *Strate v. A-1 Contractors*, 520 U.S. 438 (1997), the Supreme Court found that the state’s federally granted right-of-way over tribal trust land was the “equivalent, for nonmember governance purposes, to alienated, non-Indian land,” rejecting tribal court jurisdiction over tort litigation involving nonmembers. This Supreme Court decision resulted from a collision between two non-Indians on a North Dakota state highway running through a tribal reservation (4).

In this ruling, the Court considered following factors concerning right-of-way: the legislation that created the right-of-way; the right-of-way was acquired by the state with the consent of the tribe; the tribe had reserved the right to exercise dominion and control over the right-of-way; the land was open to the public; and the right-of-way was under state control.

The Court held that the tribe’s loss of the right of “absolute and exclusive use and occupation” implied the loss of regulatory jurisdiction over the use of the land by others (4).

Another Supreme Court case relevant to state DOTs is the decision in *Montana Department of Transportation v. King*, 191 F.3d 1108 (1999), which held that the State and its officials were outside the regulatory reach of the TERO in tribal land for work performed on the right-of-way owned by the State (4). The recent Supreme Court decision in *Nevada v. Hicks*, 533 U.S. 353 (2001), is the culmination of a series of cases that has limited tribal sovereign power by deciding that tribes do not have jurisdiction over the conduct of non-Indians within tribal land. The Supreme Court decision holds that tribal courts may not exercise jurisdiction over state law enforcement officials who allegedly violated the civil rights of a tribal member within the reservation (4).

### 2.3.2 State Level Initiatives

Transportation improvements affecting tribes and tribal lands require collaboration among state, federal, and tribal governments. Following a succession of Presidential Executive Orders from 1994 to 2009, states developed formal agreements, created organizations to conform to the new requirements, and strengthened relationships with tribal governments. Increasingly, MOUs have been developed, which detail the tribal consultation process with federal and state agencies on transportation planning, development, and maintenance of projects. These agreements provide practical frameworks and codify these government-to-government relations to define mutual areas of responsibility, communication, and cooperation.

In collaborating on tribal transportation projects, it is often necessary for states and local governments to consult with tribes. From a tribal perspective, any relationship should be government-to-government which can be difficult when a state (rather than the federal government) wants to enter an intergovernmental agreement. Jurisdictional issues in tribal-state relations are the most significant challenge in law today (4). The majority of the 28 Supreme Court tribal law decisions between 1991 and 2002 focused on tribal-state relations. “With the growing costs of litigation and the politically sensitive nature of many conflicts, both tribes and states are recognizing that negotiation is the only viable alternative putting aside jurisdictional debates in favor of cooperative government-to-government relations” (4).

In order to enable a direct, government-to-government relationship between affected parties, many states have taken the initiative in establishing and recognizing a government-to-government relationship between the state and tribes. Many states have enacted legislation authorizing state-tribal cooperative agreements. These agreements provide a policy framework for direct consultation between the tribe and state or local governments. These agreements do not mean that the tribe or state is foregoing jurisdiction, sovereignty, or the ability to litigate over these issues.

Tribal involvement in transportation project planning has increased as efforts for establishing intergovernmental relationships have increased. Transportation planning efforts through Metropolitan Planning Organizations (MPOs) and Regional Planning Organizations (RPOs) formalize working relationships between tribes and local governments in regional and long-range transportation planning. These formal relationships and agreements significantly improve communication and cooperation on transportation planning and construction projects located on tribal lands.

Tribal involvement in the decision-making process and in regional programming for transportation infrastructure is evolving. Government-to-government agreements establish frameworks for mutually beneficial working relationships

and formalize the tribal involvement process. These efforts toward collaboration improve the prospects for success by identifying and addressing issues through practical strategies prior to the execution of a transportation project.

### 2.3.2.1 *Contiguous 48*

Through a patchwork of laws, tribal-state relations vary from jurisdiction to jurisdiction. Laws relative to a state or local transportation agency's ability to conduct business with a tribe do not exist in all states. An overlay of federal law, sometimes conflicting, affects the rights and tribal reservations. There are many issues, however, that require the states, local governments, and tribes to work together. In addition to MOUs and other formal agreement, states have initiated a number of strategies to better coordinate transportation planning and construction with tribes (3):

- Tribal liaisons in state DOTs provide a central point of contact, establish a long term relationship and serve as the cultural competent link between tribal representatives and multiple departments within a state DOT (Arizona, California, Minnesota, Montana, and Washington State).
- Tribal summits provide a means for state and tribal governmental stakeholders to communicate best practices, issues, and needs concerning tribal transportation projects (Idaho, Iowa, Minnesota, New Mexico, Pennsylvania, Washington State, and Wisconsin).
- Transportation resource guides, either printed or online, help Native Americans and agencies understand a tribe's role in transportation issues (California, Minnesota, and Washington State).
- Advisory committees meet regularly to address tribal transportation issues between states and tribes (Arizona and California) (3).

### 2.3.2.2 *Alaska*

In Alaska, the majority of Native American tribes existing as governments have no land base, unlike the reservation system in the contiguous 48 states.<sup>2</sup> In this state, there are 227 federally recognized tribes and two land-based regional tribes, which have sovereignty rights and government-to-government relations with the state.<sup>3</sup> However, with the lack of political boundaries, tribal sovereignty can be a difficult issue. In this context, sovereignty primarily involves internal tribal matters such as civil and criminal jurisdictional authority and tribal subsistence issues.

<sup>2</sup>Alaska's only exception is the Metlakatla/Annette Island Indian Reservation in Southeast Alaska.

<sup>3</sup>Alaska Department of Transportation. ADOT & PF Tribal Consultation Training.

**Alaska Native Claims Settlement Act.** The history of tribal policymaking in Alaska differs considerably from that of the contiguous 48 states. In Alaska, there was not a clear recognition of aboriginal Natives<sup>4</sup> during the territorial period or after 1959 when Alaska became a state. No treaties had been signed by the federal government with Alaska Natives, and land ownership was not clear. With the discovery of oil in 1968, there was significant pressure to resolve Alaska Natives' land claims (22). The passage of the Alaska Native Claims Settlement Act (ANCSA) in 1971 resulted in lands transferred to, and controlled by, Alaska Native Corporations with Native American stockholders. These ANCSA corporations were not linked to tribal governments.

ANCSA reserved 44 million acres for Alaska's Natives and offered \$962 million in payments for lands that were conveyed indirectly to Alaska Natives through ownership of Alaska State Corporations. These Corporations are not sovereign tribal governments but rather are for-profit corporations. The 44 million acres were transferred to thirteen regional and 255 village corporations (22). These corporations were required to be chartered in Alaska. The ANCSA generated an economic base and managed the surface and subsurface land. This law also extinguished 300 million acres of land and tribal village royalty claims of the state's Natives (22).

Issues concerning sovereignty are complex and not addressed in the ANCSA. Some feel that "the legislation has attempted to replace tribal governments, Indian reservations, and the trust relationship in the lower 48 (states) with native corporations, taxable and alienable ANCSA and individual free-market competition in Alaska" (22).

**Millennium Agreement.** The Millennium Agreement between Federally Recognized Sovereign Tribes of Alaska and the State of Alaska was signed in 2001 (24). This Agreement affirmed tribal sovereignty and recognized tribal self-governance and self-determination rights. However, this Agreement is an Administrative Order and does not have the force of law. In addition, not all tribes signed the document, which indicates that not all tribes support the Agreement.

The following excerpt from the State of Alaska website summarizes the singularity of tribal land ownership issues in Alaska.

#### WHAT IS THE DIFFERENCE BETWEEN ALASKA TRIBES AND TRIBES IN OTHER STATES?

In most other states, there are reservations created by treaty, federal statute, or executive order over which Congress has plenary (overriding) power. State governance is generally not permitted on federal reservations. In other states the lands encompassed by the reservation are designated Indian country and delineated by

<sup>4</sup>The term "Alaska Native" is a legal definition that is intended to include all indigenous people from Alaska.

boundaries that are under the sovereign jurisdiction of the tribe. Before Alaska Native Claims Settlement Act (ANCSA), Public Law (PL) 83-280, enacted in 1953 and amended in 1958 to add Alaska, extended state police jurisdiction over certain crimes into Alaska tribal territory.

#### WHAT IS INDIAN COUNTRY IN ALASKA?

ANCSA extinguished reservations in Alaska, except the Annette Island Reservation (Metlakatla Indian Community), and instead instituted corporations established under state law. ANCSA did not extinguish tribal status. ANCSA took the land that would in other cases constitute the nexus of the tribe and put it into private corporation ownership. As a result of ANCSA, most of the land previously recognized as tribal is not considered Indian country. This was confirmed by the U.S. Supreme Court in *Alaska v Native Village of Venetie* (1998), which found that in order to satisfy the test for designation as Indian country, certain criteria must be met. These are: 1) the land must have been set aside by the federal government for the use of Indians as Indian land; and 2) the land must be under federal superintendence. Since ANCSA land is owned by corporations formed under state law, the land is not set aside exclusively for the use of the tribes, nor is it under federal superintendence. It does not, therefore, meet these criteria for Indian country designation.

There are still some categories of tribal land in Alaska that are considered Indian country. Indian Land is generally considered to be land held in trust by the United States for the benefit of a tribe or Native individual. The basic types of Indian Land in Alaska are: the Metlakatla Indian Community Federal Reservation on Annette Island; individual Native Allotments obtained under the Alaska Allotment Act; and Townsite Lots conveyed to tribal governments under the Native Townsite Act. Land conveyed to an ANCSA corporation under ANCSA, then conveyed to a tribal government, does not become Indian Land because of tribal government ownership.<sup>5</sup>

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<sup>5</sup><http://commerce.state.ak.us/dca/LOGON/muni/muni-govtoverview.htm>  
<accessed on April 12, 2010>

### 2.3.3 Summary

Federal funding for tribal transportation projects was not made available until 1928 through the IRR. Congress passed comprehensive transportation initiatives – ISTEA (1991), TEA-21 (1998), and SAFETEA (2005) – which, over time, increased IRR funding, mandated tribal consultation in state and regional transportation planning, established the TTAP program, provided assistance in developing tribal transportation planning capacity, and strengthened the direct relationship between tribes and the FHWA.

Acquisitioning right-of-way and obtaining project clearances to construct highway improvements on tribal lands is an on-going issue for state DOTs. The BIA has specific requirements and interpretations of environmental and historic preservation regulations and laws that can be different from FHWA rules that DOTs must comply with. Also environmental law compliance can at time conflict with tribal sovereign immunity.

Tribal sovereignty and government-to-government relations impact all aspects of tribal transportation initiatives and government-to-government relations. There are many types of federal, state, and tribal jurisdictional issues, and recent judicial decisions have limited tribal sovereignty. Jurisdiction and legal issues vary from state to state, and mutually agreeable procedures for addressing issues need to be established.

Increasingly, tribal consultation processes with federal and state agencies on transportation planning, development, and maintenance of projects have been formalized in MOUs. These agreements provide practical frameworks and codify these government-to-government relations to define mutual areas of responsibility, communication, and cooperation.

## CHAPTER 3

# Networks as the Foundation for Collaboration

This chapter discusses the role of intergovernmental networks in establishing a collaborative environment.

### 3.1 Overview

A collaborative environment is one in which project stakeholders work successfully together. The relationship between federal and tribal governments has been widely codified by the U.S. Constitution, legislation, executive orders, and Supreme Court cases. However, on projects in which government stakeholders (e.g., state, local, and tribal governments) do not have a formal relationship, collaboration can be difficult because of a vague environment. The creation of formal working relationships between parties can assist the establishment of an environment conducive to success.

In order to create formal, working relationships, many states across the nation have undertaken initiatives that formalize the government-to-government relationships between the state and the tribes affected by projects within the states. Some states have gone further to establish intergovernmental networks, which in turn, enable collaboration by establishing an ongoing infrastructure for communication, coordination, and cooperation among the parties involved.

The 3C practices presented in this guidebook assist in achieving project success. When used in the presence of an intergovernmental network, these practices serve as the “vehicles” for achieving true collaboration and success. Likewise, the underlying intergovernmental network acts as the infrastructure for these collaboration practices to operate at their best.

### 3.2 Collaboration for Effective Consultation

In the context of transportation projects affecting or of concern to tribal communities, government-to-government consultation should not be confused with collaboration. Consultation with tribal governments on projects of concern to

tribal communities is a federal requirement. If a collaborative environment is present, the stakeholders can successfully communicate, coordinate and cooperate. This would result in effective consultation, but also will produce results beyond the general consultation requirements. Consultation alone does not guarantee that parties will work in a collaborative manner, and further, does not ensure that a project will result in success. Collaboration between stakeholders can create an environment conducive to success allowing parties to work together to achieve mutual goals.

### 3.3 Establishing Collaboration Through Networks

“Networks have been used to bridge information gaps between governments (24) and to identify and share common resources.” In a setting in which all affected stakeholders are partners in networks, alternative solutions to transportation needs and issues can be analyzed to identify the solution of most benefit and least impact to all parties. This is most important with respect to tribes as tribal history predates European colonization of the United States, and results in an abundance of tribal historical or cultural sites and resources. Intergovernmental networks facilitate collaboration and discussion between parties and assist in minimizing impacts on properties and resources of all project stakeholders. In a general sense, networks can be considered a collaboration mechanism between different governing bodies.

A first step in the establishment of the intergovernmental network is the enactment of policy that lays the foundation for intergovernmental work. This creates an environment conducive to collaboration and the foundation for successful communication, coordination and cooperation. Increasingly, federal and state policy, MOUs, and Memoranda of Agreement (MOAs) have been utilized to establish formal working relationships between transportation project stakeholders. These initiatives have laid the foundation for intergovernmental

tal work and initiatives between tribes, state, federal, and local governments on transportation projects affecting tribal communities. One such initiative has been the establishment of intergovernmental networks among project stakeholders within states like Minnesota, North Dakota, and Washington. These networks allow for direct relationships among members and the increased success of transportation planning and execution. In addition, other states, like Arizona, Oregon, and New Mexico, have initiated similar efforts that may result in the establishment of formal intergovernmental networks among federal, state, local, and tribal governments. In the following sections, some of these initiatives are described.

### 3.4 Network Initiatives by State

Many states have taken the initiative in establishing and recognizing a government-to-government relationship between the state and tribes that have an interest in the state. In several cases, the need for direct consultation has taken the form of formal agreements, which have been drafted and signed between the state and tribal governments residing in or with interest in the state. While this creates a direct relationship between the tribes and the state, the governing relationship remains between the tribes and the federal government.

With the foundation laid for intergovernmental work on surface transportation projects, states have taken initiatives to formalize collaboration with tribes. Initiatives for the highest level of cooperation include those in which state, tribal, local, and federal governments establish partnerships to explore methods for collaboration on transportation projects. Such intergovernmental networks have been employed in some states for addressing transportation needs and issues on tribal lands. They serve to establish collaborative relationships among project stakeholders and network members. While the government-to-government relationship remains between tribes and the federal government, and in some cases between states and tribes, informal, direct working relationships are established among all parties.

Several states have established and recognized government-to-government relationships with tribes residing in or with an interest in the state. In addition, some of these relationships have taken the form of advanced collaboration efforts through the creation of networks among stakeholders. Examples of these collaborative efforts can be found in the states of Minnesota, North Dakota, and Washington. While network-based, collaborative efforts are not limited to these states, they serve as an example of states that have enacted policy to establish a government-to-government relationship between tribes and states and have further worked to formalize relationships between all tribal transportation project stakeholders.

It should also be recognized that these state initiatives are not standard across the United States, as some states do not

have resident tribes that are recognized as sovereign by the federal government, and others with federally recognized tribes have not yet recognized the government-to-government relationship between the state and resident tribes. In the state of Alaska, the federal government has recognized the sovereignty of 225 tribes, but as a result of the ANCSA, state-chartered regional corporations manage surface and subsurface tribal lands. Without a land base, sovereignty is limited to internal matters such as civil and criminal jurisdictional issues as well as tribal subsistence matters. As a result, intergovernmental work and collaboration can be difficult to achieve.

The following sections will provide information on states that have taken initiative to recognize and codify government-to-government relationships between the state and consulting tribes. These states have also established intergovernmental networks that facilitate collaboration on transportation projects. State legislation and the creation of intergovernmental networks in Minnesota, North Dakota, and Washington will be discussed as examples of collaboration and intergovernmental networks. Finally, efforts initiated in Arizona that may result in the establishment of a formal intergovernmental network are discussed.

#### 3.4.1 Minnesota

On April 1, 2002, at a tribal/state transportation summit, the state of Minnesota, the 11 tribes within the state, and the FHWA signed the Government-to-Government Transportation Accord for improved cooperation as partners in transportation planning and programs (27). Each party agreed to show mutual respect to the government structure and culture of each of the respective partners signing the Accord. This Accord relies on the assumption that improving cooperation, coordination, and understanding among parties would in turn improve transportation systems, which could lead to an increase in jobs and project success.

On April 9, 2003, Executive Order 03-05 was issued by the governor of Minnesota, affirming the government-to-government relationship between the state and tribes in the state (26). In the Executive Order, the 11 tribal nations within the state are recognized as sovereign governments retaining the rights to self-governance and self-determination. In addition, all state employees are called to recognize the government-to-government relationship with tribal governments. Finally, all state employees are directed to achieve the goals of the Executive Order by working cooperatively with tribal governments and performing duties in accordance with the Order.

The Advocacy Council on Tribal Transportation is an intergovernmental network that was established three years ago in the state of Minnesota for facilitating discussions on roadway issues in the state and working to alleviate issues on roadways that are of concern to tribal communities (43).

Members of the Advocacy Council take action to address policy and program issues, as well as share resources including time, expertise, and funding for the solution to transportation issues. The Advocacy Council is composed of members representing the 11 tribes of Minnesota, the Minnesota Department of Transportation (MnDOT), the FHWA, the Minnesota Indian Affairs Council, the BIA, the Michigan Tribal Technical Assistance Program, and Minnesota Counties and Cities. The goals of the Advocacy Council include providing information on policy and program issues, and taking initiatives for solving issues identified while sharing resources for the benefit of the council.

### 3.4.2 North Dakota

In North Dakota, the establishment of both tribal consultation and an intergovernmental network were enacted through the Programmatic Agreement that was signed on November 28, 2006, by the North Dakota Department of Transportation (NDDOT), the FHWA and the consulting tribes of North Dakota – including tribes in South Dakota, Minnesota and Montana that retain historical and cultural ties to the state (28). Following the establishment of formal working relationships with the tribes, the NDDOT identified the need for a formal process for tribal consultation. The NDDOT first pursued signing formal agreements individually with each of the tribes. After conversations with each of the tribes, it was identified that a programmatic agreement with multiple tribes would be a better approach for formalizing the consultation process. NDDOT and the tribes began work on a Programmatic Agreement. The Agreement recognizes tribal sovereignty and emphasizes the need for mutual respect between signing parties. In addition, it develops a tribal consultation protocol and provides a framework for joint work and identifies common goals among signing parties.

The 2006 Programmatic Agreement established the Tribal Consultation Committee (TCC) (28). The TCC serves as a tribal consortium that allows the NDDOT to consult with the tribes with interest in the state as a group rather than on an individual basis. By consulting as a group, tribes can see a reduction in the time spent on the consultation process. While the TCC is comprised of representatives from the NDDOT, the FHWA, and the signing tribes, the Programmatic Agreement provides the framework for participation in the consultation process by individuals outside of the network that are recommended by the TCC. This flexibility allows for the TCC to seek knowledge and experience from individuals outside of its membership.

### 3.4.3 Washington

On August 4, 1989, the State of Washington and the 26 federally recognized tribes of the state executed the Centennial

Accord recognizing the unique, government-to-government relationship between the state and the tribes (29). While the Accord is executed through the Office of the Governor, it encourages high-level representatives from all state agencies to participate in the established government-to-government relationship. An implementation process and signatory responsibilities are outlined to guide the agencies of each government to participate in the Accord. In 1999, the Tribal and State Leader's Summit was held in Leavenworth, Washington, where tribal and state leaders reaffirmed the relationship between the state and the federally recognized tribes in the state in the New Millennium Agreement (29). The overall charges of the Agreement were for continued collaboration and coordination through the commitment of each party to the maintenance of intergovernmental relationships and the participation of state agencies in the Agreement. In 2003, the Washington State Department of Transportation (WSDOT), as a state agency, committed the agency to intergovernmental work as outlined in the New Millennium Agreement. Douglas MacDonald, Secretary of Transportation, issued Executive Order E 1025.00, committing the WSDOT employees to consultation with tribes on transportation projects (30). The Executive Order addresses the sovereignty of tribal governments and the unique relationship between the state and the tribes. It also provides employees and WSDOT offices with responsibilities for continued consultation and respect of government-to-government relationships. The commitments made and relationships established in both the Centennial Accord and the New Millennium agreement were reaffirmed and recommitted to on April 28, 2005, in a proclamation by the Washington State Governor, who renewed the desire and commitment to move forward in intergovernmental work (31).

The Tribal State Planning Organization (TTPO) was formally established in 1993 at the 2003 Tribal/State Transportation meeting in Washington (32). The TTPO is comprised of partners from Washington tribes, the WSDOT and the BIA. The network serves as a forum for discussing transportation needs and issues. It facilitates tribal participation in the statewide transportation planning process. It also fosters a spirit for intergovernmental cooperation and coordination on transportation projects. The bylaws of the TTPO commit the organization to education and effective planning.

### 3.4.4 Arizona

While states like Minnesota, North Dakota, and Washington have established formal intergovernmental networks in which tribes and transportation agencies are members, other states, like Arizona, have taken similar, but less formal approaches to establishing networks. The state of Arizona has initiated a strategic partnering team that aims to promote collaborative relationships, educate parties, and develop part-



nerships. The partnering team has developed partnerships with three tribes and respective stakeholders in the state. While this is a step toward creating a network, partnerships are sought individually with tribes, rather than one programmatic agreement establishing working relationships among all tribes and transportation agencies in the state. The following paragraphs describe Arizona's efforts toward establishing networks similar to those presented in previous sections.

In the state of Arizona, Governor Napolitano hosted quarterly summits with tribal leaders in the state between the years of 2003 and 2007 (33). These summits resulted in tribal leaders in Arizona expressing the need for a guide to be used by all state agencies when consulting with tribal governments in order to facilitate the government-to-government relationships between the state and the tribes. Napolitano issued Executive Order 2006-16 entitled, "Consultation and Cooperation with Arizona Tribes," which provides guidelines to all state agencies when consulting with tribes (34). The Arizona Department of Transportation (ADOT) adopted a departmentwide policy for consulting with tribal governments on September 1, 2006 (34). The policy commits ADOT to consult with tribes on transportation projects affecting tribal communities and assist in the capacity-building of each tribe.

The Arizona Tribal Strategic Partnering Team (ATSPT) was established in June 1999 to advance intergovernmental relationships among the state of Arizona, tribes in the state and

federal and local agencies (34). The ATSPT's focus is on policy development, education, and capacity-building of member agencies. The goals of the ATSPT include the education of partners, the advancement of relationships and the development of strategic processes and partnering (34). Participants of the ATSPT include tribes within the state of Arizona, federal agencies including the FHWA, the state of Arizona, local governments, and various other non-governmental institutions.

The ATSPT meets on a quarterly basis. In addition to meetings, the ATSPT organized three State-Tribal Regional Transportation Forums between 2002 and 2003. The continued meetings of the ATSPT provide a collaborative environment among project stakeholders in the state of Arizona.

### **3.5 Summary**

The establishment of intergovernmental networks among states, tribes and other stakeholders facilitates collaboration and is expected to promote success on transportation projects. Facilitating and maintaining intergovernmental relationships is challenging in cases where large cultural and institutional differences are present. However, the establishment of intergovernmental networks can assist in the facilitation and maintenance of relationships. These relationships help establish a collaborative environment among stakeholders and lead to initiatives that may otherwise not happen.

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## CHAPTER 4

# Issues and Communication, Coordination, and Cooperation Practices

### 4.1 Overview

The 3Cs between transportation agencies and tribal communities are needed in order to facilitate successful transportation projects. To achieve mutually beneficial results, incorporating the 3Cs into practices is important for establishing a collaborative environment that facilitates relationships among stakeholders and project delivery. Practices may differ when a transportation project involves tribes because they are more complex due to the government-to-government relations and tribal cultural protocols.

In recent years, the transportation sector has been receptive to the need of facilitating collaboration among all stakeholders with the implementation of context sensitive solutions (CSS) planning and design processes. CSS can be defined as

... a collaborative, interdisciplinary approach that involves all stakeholders to develop a facility that fits its physical setting and preserves scenic, aesthetic, historic, and environmental resources. (35; pp. 10-11).

While CSS practices seem successful in establishing a collaborative environment (36), they are too general to apply to projects when tribal nations are among the stakeholders. The uniqueness of the relationship between tribes and federal government requires a specific approach toward the implementation of 3C concepts.

Executive Order 13175 issued by President Bill Clinton describes and recognizes the unique relationships that are present between the federal government and tribal governments. This executive order requires that the federal government consult with tribes on “the development of Federal policies that have tribal implications” (37). It also recognizes the relationship between the federal government and sovereign tribal governments as a government-to-government relationship. In addition, the National Historic Preservation Act requires the investigation of historical sites and cultural properties of concern to tribes (38).

As a result, when tribes are among the stakeholders, transportation projects endure a multifaceted project environment as additional institutional processes and governmental protocols are introduced. Government-to-government relationships between tribal and federal, state or local governments require special considerations. Many of these issues, like tribal sovereignty, can be unique to the tribal transportation context. However, other issues, such as land ownership or project funding, can be encountered on non-tribal projects, but in a tribal transportation project these issues are much more complex due to sovereignty and other tribal-specific issues.

Additional issues contribute to the complexity of tribal transportation initiatives as each tribe has its own culture. This cultural diversity challenges the communication processes. To overcome this challenge, members of the project team must be culturally competent (39). The concept of cultural competency explains why many collaboration practices developed for traditional contractually regulated relationships are not adaptable to this context. Communication with tribal representatives must follow specific protocols which are specific to the tribe(s) involved.

### 4.2 A Ladder to Collaboration: Identification of Issues and 3Cs Practices

To build a foundation for success for tribal transportation initiatives, 3Cs practices must be implemented to allow project stakeholders, including tribal communities and different governmental agencies, to collaborate on transportation initiatives. With the assumption that practices can be utilized in conjunction with one another, project stakeholders can build a ladder that leads to a collaborative environment and project success. As described in the previous chapter, the existence of intergovernmental networks facilitates the implementation of collaborative practices between tribes and transportation agencies because these networks act as enablers for collaboration.

**Table 1. 3Cs definitions.**

3Cs	Definition
Communication between Tribes and transportation agencies	Process by which information, data or knowledge regarding issues and projects is exchanged through methods such as speech, writing, or graphics by the transmitting party, so that it is satisfactorily received or understood by the receiving parties.
Coordination between Tribes and transportation agencies	Process by which representatives of these entities communicate information on how and when each party must act in order to harmoniously work interdependently for the purpose of achieving effective common results.
Cooperation between Tribes and transportation agencies	Process by which representatives of these entities work together to achieve a common goal or objective in carrying out transportation planning, programming and delivery processes (i.e. state transportation agencies and tribes).

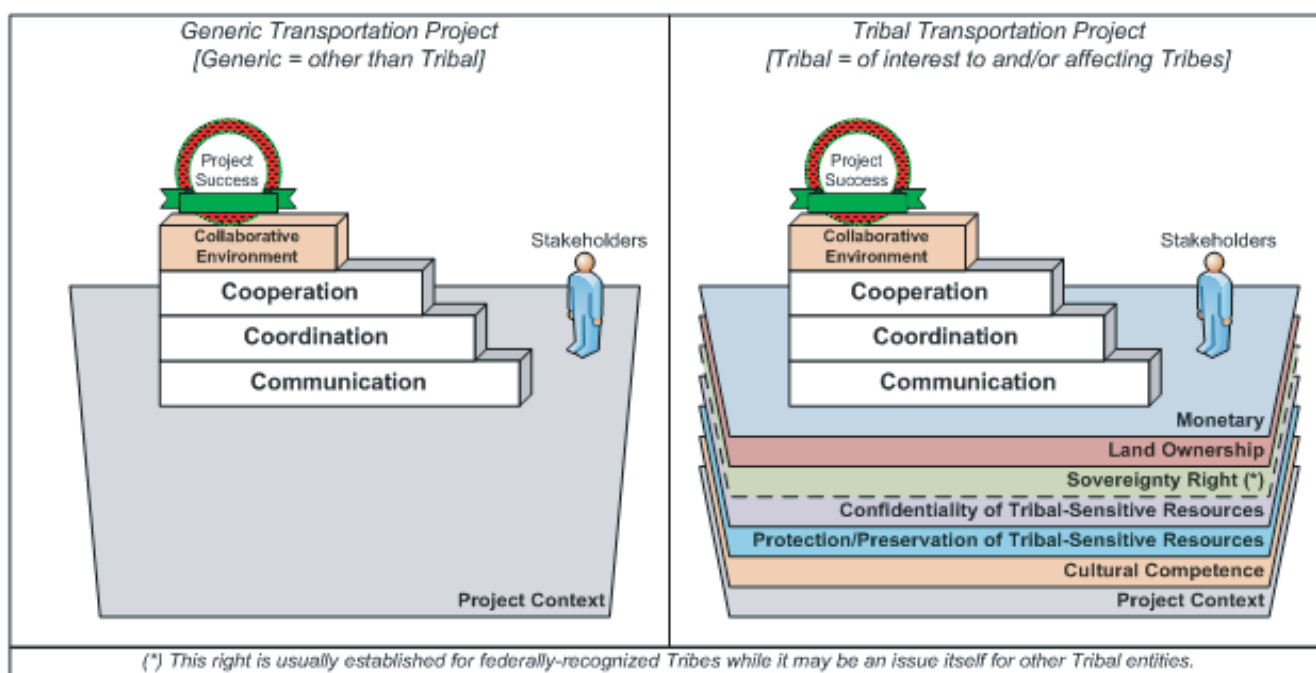
To differentiate 3Cs collaborative practices, a definition was identified for each of the 3Cs. Collaboration is dependent upon building relationships from the less formal communication to the more interdependent, intergovernmental relationships that often result from cooperation. The 3Cs are defined in Table 1.

These operational definitions were contextualized in the tribe-transportation agency context, but they can be generalized into any entity-to-entity situation.

The ladder approach assists stakeholders in depicting the complex process of establishing a collaborative environment when multiple governmental entities are project stakeholders, often with differing interests. These differing interests can add to the challenges of collaboration and requires extensive negotiations among stakeholders (40). However, culturally

sensitive negotiations can be difficult when differences among stakeholders extend beyond their governmental structure to encompass fundamental culture and operations. In the first step of the ladder, “communication” requires that project stakeholders share a base knowledge in order to share entity-specific knowledge across agencies (41).

Overall, the 3Cs are often cited as the “soft side of project management” and constitute a recurrent theme within project management. This framework of definitions was developed for projects affecting or of interest to tribes. The Ladder of Collaboration depicts relationship building as an escalating approach that requires additional effort and reward when the entities are increasing interaction from communication to coordination and from coordination to cooperation as shown in Figure 1. To succeed, most transportation projects



**Figure 1. Ladder of collaboration.**

require the implementation of more than one 3Cs concept. To climb each step of the ladder, project stakeholders will design and implement initiative-specific collaboration strategies that include a set of 3Cs practices selected to address the underlying issues.

In this Ladder of Collaboration, relationship building becomes more formal and institutionalized as the steps progress from communication to coordination, and from coordination to cooperation. In a generic transportation project, it is possible to envision that project stakeholders need to step up to the implementation of these three concepts primarily relying on the underlying project context. When the project is of interest to and affecting tribes, the project context layer also acquires additional layers of complexity because of tribal-specific issues. For instance, cultural competency and sovereignty become integral to the conduct of the stakeholder relationship in a tribal transportation initiative. These issues present different challenges for the planning and delivery of the transportation project.

No one 3C practice is more important than another. The focus or goal of the intergovernmental relations will determine the nature of practices to be used and the form of any interdependent relationship(s) among tribes and federal, state, and/or local governments.

Communication is the first step in creating a collaborative environment among project stakeholders through the sharing and receiving of information between parties. Cultural competency is essential to interact effectively with people of different cultures. In addition, the relationship between transportation agencies and tribes must rely on government-to-government protocols for mutually respectful interaction. This type of interaction may be well-established between recognized tribes and transportation agencies, but it may become an issue itself when the tribe involved in a public outreach process is a non-recognized tribe or a state does not recognize sovereignty.

The second step for creating a collaborative project environment is coordination. While the communication step focuses on the exchange of information, coordination encompasses the development and adjustment of plans, programs, and schedules among parties to achieve a common purpose. Effective coordination requires communication and information on how and when each party must act together with a commitment for following through.

The third step on the Ladder of Collaboration is cooperation that goes beyond coordination as parties work together to achieve a common goal or objective in carrying out transportation planning, programming and delivery processes. As a result, parties would work in conjunction with one another and eventually share resources to achieve success.

## 4.3 Issues Impacting Tribal Transportation Initiatives

Issues impacting tribal transportation initiatives are unique as they evolve from the nature of government-to-government relationships and tribally sensitive resources and practices. Six major issues were categorized independently from the entities and the geographic area involved. However, issues may slightly change according to the specific context (i.e., tribe, state, geographic area). These issues can be addressed by implementing appropriate 3Cs practices in a collaborative environment. Major issue categories and their descriptions in the tribal context are provided in Table 2.

### 4.3.1 Major Issue No. 1: Cultural Competency

The cultural competency in tribal transportation projects underlies all the other contextual issues. This issue is present independently and may magnify effects from the other issues. Tribes and federal, state, and local governmental agencies may not fully understand each other's cultural practices as they pertain to interaction in transportation initiatives. Developing cultural competency results in an ability to understand, communicate with, and effectively interact with people across cultures (either tribal or organizational). Specific issues within cultural competency are: (1) lack of cultural knowledge within the transportation sector; (2) the need for skill development in communicating cultural significance to transportation agencies; and (3) the need for understanding of project cultural context. Effective interaction and communication requires that the communicating party be competent on the communication means to be used with the receiving party. Some additional examples of cultural competency issues are provided here. Throughout this guidebook, the important role of cultural competence in the collaboration-building and collaboration-maintaining process has been pervasively stressed. The bibliography lists two documents that provide a comprehensive explanation of this concept (39), and a practitioner insight on some practical aspects (42).

#### *Cultural Context on Projects*

- Potential for cultural conflict exists between the community and outside officials on a transportation project.
- One major challenge in consultation efforts is meeting the individual cultural needs of each community involved in the planning process.

#### *Cultural Knowledge*

- Tribal and local governments do not fully understand each other's cultural comprehension on issues.

**Table 2. Typical issues on projects affecting or concern to tribal communities.**

<i>Major Category Issue</i>	<i>Issue in the Tribal Context</i>
Cultural Competency	Cultural differences between tribes and transportation agencies can make collaborative efforts like communication difficult as agency and individual interaction protocols can differ between parties.
Protection/Preservation of Tribal-Sensitive Resources	For cultural, environmental, and historical reasons, tribes often consider resources, otherwise not considered sensitive, as needing to be preserved regardless of the need for transportation facilities.
Confidentiality of Tribal-Sensitive Matters	Cultural practices and historical considerations often limit tribes on the extent of information that they can share with other project stakeholders. It may be that a tribe has knowledge of a historic or cultural property that needs to be protected, but the location of the site is confidential.
Sovereignty	The federal government recognizes tribes across the nation as separate, sovereign nations, whose jurisdictions and institutional relationships and protocols must be recognized. State/tribal issues such as jurisdictional issues in civil and criminal matters complicate intergovernmental issues.
Land Ownership	Common land ownership issues like right-of-way can lead to difficulties to project completion. In addition to common issues, consideration must be given to unique land ownership situations in the tribal context, like the management of trust lands by tribes.
Funding	While project funding issues are also common to all transportation projects, the tribal transportation context leads to different types of funding issues involving multiple sources. Project funding can be provided by the tribe, state or BIA affairs to complete tribal-needs projects.

- Tribal and local governments do not fully understand each other’s cultural practices as they pertain to interaction in the transportation process.

*Skill Development*

- A major challenge of tribal involvement is communicating cultural significance to transportation agencies.

**4.3.2 Major Issue No. 2: Protection and Preservation of Tribal-Sensitive Resources**

In addition to cultural competency, the initial transportation initiative context layer also acquires different meanings and presents different challenges in regards to the protection and preservation of tribal-sensitive resources. Tribes may consider certain resources to be sensitive and of concern when affected by a transportation project, while local, state, and federal governments may not recognize the same resources as having the same degree of cultural significance. Resources that may be defined “sensitive” by tribes include: (1) natural and biological resources (mountains, rivers, creeks, wildlife, etc.); (2) cultural resources (cultural sites); and (3) historical resources (histori-

cally recognized sites). For example, while a site may not be federally recognized as a historical site, it may be considered historical by a tribe. Some additional examples of this type of issue are provided here.

*Natural and biological resources (e.g., mountains, rivers, creeks, wildlife, etc.)<sup>6</sup>*

- Tribes consider maintaining their quality of life and the state of the environment as high priorities.
- Transportation agency decision makers need to hear directly from tribes on important natural resource issues.
- Transportation projects may have an impact on biological resources that are considered to be tribally sensitive species, which may differ from federally threatened and endangered species.

<sup>6</sup>Under NEPA, transportation projects must undergo an environmental assessment and one of the key aspects is the biological evaluation for flora and fauna in the project area. Tribal concurrence on these reports is required and special consideration must be given to “tribally sensitive species” that may be different from federal threatened and endangered species.

### *Cultural Resources (e.g., cultural sites)*

- Land proposed for a transportation project can have cultural significance to tribes, whether it is located on tribal land or not.
- Tribal lands contain sacred grounds and sites that must not be disturbed.
- Transportation project may be of concern to tribal communities that do not have jurisdiction in the proposed area of the project because of cultural significance of resources.

### *Historical Resources (e.g., historically recognized sites)*

- Tribal lands contain important archaeological and historic sites.
- Potential project sites must be evaluated for archaeological significance, and tribes must provide concurrence with the contents of any archaeological investigation through tribal authority.

#### **4.3.3 Major Issue No. 3: Confidentiality of Tribal-Sensitive Matters**

Confidentiality of tribal-sensitive matters affects areas of concern that cannot be divulged. In considering sites for projects, areas of concern include: (1) natural and biological resources; (2) location of cultural sites or location for traditional practices; and (3) traditional symbols. Details about each of these tribal-sensitive matters are confidential and cannot be shared with non-tribal transportation agency staff. Some additional examples of this type of issue are:

#### *Natural and Biological Resources*

- Some tribal-sensitive resources affected by proposed transportation projects may be confidential to the tribe.
- Details regarding tribal-sensitive resources often cannot be disclosed to transportation personnel.

#### *Location of Cultural Resources*

- Some cultural resources or sites affected by proposed transportation projects must be protected, but the location of such sites may be confidential to the tribe and often cannot be disclosed to transportation personnel.

#### *Traditional Practices (e.g., grazing rights)*

- Planning for tribal involvement needs to be in a manner appropriate to tribal customs and practices.

### *Traditional Symbols*

- Transportation projects contain artistic aspects (i.e., decorative overpasses, retaining walls, landscape, etc.), and there may be a desire to use tribal symbols for this decoration.
- Tribal symbols are often used by tribes in order to identify landmarks.
- Desired use of tribal symbols in transportation projects may require coordination between tribal communities and transportation agencies to ensure appropriateness of such use.

#### **4.3.4 Major Issue No. 4: Sovereignty**

A fourth major issue for tribes is sovereignty that requires the establishment of government-to-government relations as many projects involve federal, state, or local governments. Jurisdictional issues can be problematic. The federal government recognizes 562 tribes as sovereign nations, introducing a new level of governmental entity participating in the transportation initiative process and a unique dynamic in project execution. Issues regarding (i) jurisdiction, (ii) government-to-government relations, and (iii) institutional relationships and protocols are introduced to the project environment. As a result, the relationship between transportation agencies and tribes must adhere to established government-to-government protocols of mutually respectful interaction. Some additional examples of this type of issue are provided below.

#### *Jurisdiction*

- Tribal jurisdiction has been long-debated, misunderstood, and even overlooked.
- Recognition of tribal jurisdiction is key in establishing and maintaining working relationships.

#### *Government-to-Government Relationships*

- Government-to-government relationships are complicated because of past disagreements regarding tribal sovereignty issues.
- Cooperative agencies (e.g., Regional Transit District) can increase the difficulty that tribes encounter in protecting their sovereignty, as cooperative decision making may not reflect individual tribe's needs.
- Transportation project completion may require coordination of efforts between tribes and Local, County and Regional Councils of Governments or Metropolitan Planning Organizations in addition to Federal Government.

#### *Institutional Relationships and Protocols*

- Managing intertribal and intra-tribal relationships can be a challenge in tribal involvement.

- Involvement of local governments, tribes and the general public can be difficult throughout an area that is affected by a proposed transportation project.
- Tribes may have less of a say in cooperative decisions, depending on their weighted influence in the decision-making process.
- The multitude of tribal governments, with some having limited staff, creates challenges for integrating tribal needs into statewide and regional planning efforts.
- Contractor licensing may be required by the state but not necessarily by a tribe.
- Likewise, other protocols (such as local-preference hiring practices or tribal-specific licensing) may be required on tribal lands.

#### 4.3.5 Major Issue No. 5: Land Ownership

Issues regarding land ownership often add to the difficulty of project execution in tribal transportation projects. The acquisition of right-of-way on tribal lands is a complex and time consuming process and must be done in accordance with BIA and FHWA regulations. The type of land ownership (individually owned, tribally owned, or fee-land purchased) determines the application of laws and regulations. Some additional examples of this type of issue are provided below.

##### *Full ownership (including trust lands)*

- A transportation project may propose the widening of a roadway, which requires additional right-of-way from tribes.
- Tribes may not be willing to provide right-of-way without compensation and may not be willing to even with compensation, due to cultural significance.
- Tribes feel that any grant of right-of-way threatens their sovereignty and land base and often limit the timeframe of the easements granted.

##### *Surface Ownership*

- Conflict may arise in cases where surface ownership is obtained by state DOTs and it is unclear what rights the state possesses with respect to these lands.

##### *Mineral Exploration Rights*

- Conflict may arise when states obtain lands from tribes for a transportation system, and tribes have mineral exploration rights on the already developed land.
- In Alaska, there is a conflict of authority when it comes to mineral exploration rights. In fact, regional corporations retain subsurface right on land that is under the authority of village corporations (which retain surface rights).

#### 4.3.6 Major Issue No. 6: Monetary Matters

Last, monetary matters are common to virtually all transportation projects with unique aspects on transportation projects of concern to tribal communities, including: (1) project funding is an issue in all transportation projects because of funding deficiencies and (2) project taxation and other fees can also lead to difficulties in project execution when tax and fee agreements between parties are not executed prior to project commencement. Some additional examples of this type of issue are provided below.

##### *Project Funding*

- Proposed and needed transportation projects lack sufficient funding throughout the transportation sector.
- Tribes lack money for funding tribe-specific transportation needs, and project funding from the Bureau of Indian Affairs can be deficient.
- Tribes lack funding or co-funding for transportation projects.
- Tribes lack financial capacity and resources to participate in the planning and execution of transportation projects.
- Poverty, high unemployment and dispersed populations in tribes increase the challenge of providing affordable, reliable transportation.
- Project budget in many cases is not adequate for public involvement meetings to take place in all concerned communities.

##### *Project Taxation and Other Fees*

- Protocols and processes for taxes differ significantly between tribal, local, state and federal governments.
- Tribal employment rights and associated fees from the TERO are an additional consideration.
- Agreements for tax waivers from tribes for state DOTs may not be reached prior to beginning a project, leading to potential conflicts.
- Pre-arranged agreements for tax waivers from tribes for state DOTs may be reached but are not formally regulated, which may lead to conflicts.

#### 4.4 Communication, Coordination, and Cooperation Practices

Developing definitions for 3Cs provided the overarching framework for identifying 3Cs practices commonly adopted to mitigate and overcome issues in tribal transportation initiatives. A comprehensive list of these practices has been identified, which may assist in establishing a collaborative environment. Which practice(s) need to be used will depend

**Table 3. 3Cs practices.**

<i>Communication = information exchange</i>	<i>Coordination= information exchange + altering activities to achieve a common purpose</i>	<i>Cooperation= information exchange + altering activities to achieve a common purpose + sharing resources</i>
Presentations	Meetings, Seminars, Summits and Workshops	Planning Organizations
Data Collection, Analysis, and Distributions	Tribal Liaison or Coordinator	Resource Sharing
Newsletters, Flyers, and Bulletins	Public/Tribal Involvement	Regional Transportation/Transit District or Coalition
Mailings with Response Forms	Formal Agreements	Investigation of Alternatives
Tribal Mediator	Grants for Funding	Planning for Disaster Preparedness and Concurrent Response to Disasters
Standards and Handbooks	Regional or State-Level Conferences	
Training	Tribal Consortium	

upon the issue(s) to be addressed, what actions are required by tribal transportation initiatives, and the needs and constraints of the stakeholders. The 19 practices are classified as communication, coordination or cooperation and are listed in Table 3.

It is unlikely that any one practice can address all of the dynamics of any one issue involved in tribal transportation projects. Correlating tribal transportation issues and practices can assist in outlining a complex collaboration strategy that includes several practices and corresponding plans of actions and goals. Specifics on the use of these practices are contextualized in the 46 case studies that are included in Appendix C of this Guidebook. These case studies can provide guidance in the application of the 3C practices and related issues.

#### **4.4.1 Communication Practices**

These practices revolve around different methods of exchanging information and tend to be the less formal of the 3Cs. Cultural competency is essential to any communication. Information sharing must be done in such a way that it is sensitive to all tribal issues, including cultural competency, protection and preservation of tribal-sensitive issues, confidentiality of tribal sensitive matters, sovereignty, land ownership, and monetary issues. While it is important for stakeholders to understand tribal sovereignty, the intergovernmental relation is often codified in MOUs and other programmatic agreements.

##### *Presentations*

Presentations are a communication tool used to convey information from one entity to another. Information shared can cover areas, issues and concerns on upcoming projects, program or policy changes, or training material.

##### *Data Collection*

Inventories on existing data related to a transportation project (e.g., information on existing transportation systems, land of cultural significance that can be disclosed, etc.) can be created and made accessible to transportation agencies and tribal communities.

##### *Standards and Handbooks*

Standards are prescribed by national standard setting organizations such as AASHTO and ASTM. Handbooks are concise reference books providing specific information about transportation topics. Topics may include information on project planning, permitting, funding programs, and success stories.

##### *Newsletters/Fliers/Bulletins*

Regular newsletters and bulletins are used to keep tribes informed of transportation projects and activities at the state and federal levels.

##### *Mailings/Response Forms*

Mailings with response forms (tear off or attachments) are used to keep tribes informed of current projects and solicit responses on concerns with current and future projects.

##### *Tribal Moderator*

In order to ensure the successful exchange of information between entities, a neutral, third party moderator who is knowledgeable in each entities' operations and cultures is designated



to attend meetings/conversations/etc., between entities to reiterate information to the understanding of all parties involved.

### *Training*

Training for individuals can be provided in the form of technical training and cultural training. Transportation agencies offer technical training to employees and tribal members in order to help individuals develop a skill set for working on technical projects. Transportation agencies in partnership with tribes offer training on tribal culture and operations to their employees to develop tribal knowledge within the transportation agency.

#### **4.4.2 Coordination Practices**

Coordination is the second step in the ladder of collaboration. While communication focuses on the exchange of information, coordination adds the dynamic of interacting between organizations, can facilitate the formation of networks, and achieves effective common results. These interactions can lead to altering activities for mutual benefit of the stakeholders involved. Coordination efforts must recognize the need for cultural competency in communication and must protect and preserve tribal resources and land ownership while maintaining confidentiality. Sovereignty governs the nature of the interactions and the actions that can be taken.

### *Meetings/Summits/Workshops*

Meetings between local, state, federal, and tribal entities are used to coordinate activities when working on a project of concern to tribal communities.

Summits and workshops allow for tribal, local, state and federal agencies to join together to discuss issues in transportation and steps to be taken to improve operations on transportation projects of concern to tribal communities. Areas of improvement are identified for future work and collaboration between transportation agencies and tribal communities. Summits and workshops also present an opportunity for agencies and tribes to share guidance for current practices learned in day-to-day operations.

### *Public/Tribal Involvement*

Public involvement activities are used to solicit input from affected parties through presentations, charrettes, public hearings, and/or other coordinated activities with tribal communities. Public involvement activities allow entities, like tribal communities, to participate in project planning and provide input on proposed and current projects.

### *Tribal Consortiums*

A tribal consortium representing tribes from a specific region advances coordination between DOTs and tribes as coordination occurs between the consortium and other entities to address global concerns and needs of the tribes.

### *Loans and/or Grants for Funding*

In the case that a transportation project of concern to tribal governments lacks sufficient funding, the party in need of funding, whether tribal or state, can obtain a loan from another party for project completion, or the party in need can obtain a grant from another party or agency.

### *Tribal Liaisons and Coordinators*

Tribal liaisons and coordinators serve as experts on transportation projects of concern to tribal communities and assist in the coordination of activities between transportation agencies and tribal communities.

### *Formal Agreements*

Formal agreements are implemented at both the program and project level between transportation agencies and tribal communities to define responsibilities of each entity when working on a transportation project.

### *Regional or State Level Conferences*

Regional and state level conferences provide a forum for the exchange of views, presentations regarding issues of common concern, and networking thereby serving as an opportunity for increased coordination between tribes and transportation agencies.

#### **4.4.3 Cooperation Practices**

The third step in the ladder is cooperation. With communication and coordination practices in place, cooperation adds the dynamic of actually working together to achieve a common goal. In order to be able to work together, stakeholders must have cultural competency in their interactions and recognize the sovereignty in intergovernmental relations.

### *Planning Organizations*

Planning organizations, including local, state, federal, and tribal governments result in improved visibility of tribal needs,

improved regional coordination of projects, more complete data and an awareness of common transportation needs.

### *Regional Transit Districts and Coalitions*

An established Regional Transit District or Coalition that includes membership of local and tribal governments can seek alternatives to choose the best solution to a transportation issue which has the least impact on tribal communities.

### *Resource Sharing*

The pooling of funds and sharing of available resources for a transportation project between tribes, local, state, and federal governments benefits all parties involved and resolves the issue of funding deficiency.

### *Investigation of Alternatives*

In the case that a transportation project adversely affects a tribe, an investigation of alternatives of least impact on tribal communities is researched by tribal, local, state, and federal governments, with the alternative of least impact being chosen for the project. The investigation of alternatives can also be applied in identifying funding for a project.

### *Planning for Disaster Preparedness and Concurrent Response to Disasters*

Tribes, DOTs, and local agencies (police, etc.) develop a plan to follow in the event of a disaster, and implement those plans in concurrent response when disaster strikes on tribal or adjacent lands.

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## CHAPTER 5

# Tribe/Agency Collaboration Toolbox (TACT)

### 5.1 Overview of Toolbox

This chapter will describe the Tribe/Agency Collaboration Toolbox (TACT), and the process of using the toolbox to select practices of communication, coordination and cooperation for implementing projects. The toolbox process consists of six steps and is depicted in Figure 2.

First, a transportation initiative (i.e., project or program) is proposed. This proposed project involves stakeholders from transportation agencies and tribal communities. Because each project is unique, different parties would be involved in different projects. Therefore, it is not always apparent what issues might be encountered on any given project.

In order to proactively address issues and enable success, each party involved can utilize the self-assessment checklists as step two in the process. These checklists will allow each party to identify potential issues that will be encountered on the project.

After potential issues have been identified, parties should evaluate and select the appropriate level in the Ladder of Collaboration. Using the steps of the ladder, parties can select practices of 3Cs that are suited to enable success when such issues are present. To illustrate how the selected practices have previously been implemented, Step 4 provides a compilation of case studies that can be referred to in regard to each practice. Each case study provides a real-life example of a combination of practices being utilized to treat different issues.

Finally, after 3C practices have been selected for use on the project, an implementation plan, lessons learned and recommendations are provided for each practice. The implementation plan provides guidance on how to implement each practice within the framework of a transportation project or program. Lessons learned and recommendations are provided to supplement the implementation plan. In order to illustrate this process, an example is provided in Section 5.8. In summary, the toolbox consists of the following six steps:

1. Identify the transportation project or program.
2. Utilize the checklist to identify any potential issues on the project.
3. Refer to the Ladder of Collaboration to select the appropriate level of collaboration.
4. Refer to the strategy selection matrixes to select 3C practices appropriate for addressing the project's issues.
5. Identify and review case studies as examples of strategy implementation.
6. Utilize the implementation plan, lessons learned, and recommendations to implement the selected strategies.

### 5.2 Step 1: Identification of Transportation Initiative

First, a transportation initiative (i.e., project or program) needs to be selected as requiring TACT. A prerequisite is that this initiative involves stakeholders from transportation agencies and tribal communities. It can be either a newly proposed initiative or an existing one. As a matter of fact, a new initiative will undergo the TACT process several times throughout its life cycle. It is suggested to conduct a TACT cycle for each project phase (e.g., planning, design, construction, etc.). Furthermore, it is expected that project stakeholders change significantly when a project moves forward in its lifecycle. Therefore, conducting a new cycle of TACT will help project stakeholders' awareness of issues and commitment to a collaborative environment. Similarly, an existing transportation initiative may either undergo the TACT process for the first time or reassess issues and practices in advanced project phases.

### 5.3 Step 2: Identification of Underlying Issues

The issues self-assessment checklists are a tool provided to assist transportation and tribal officials in identifying potential issues prior to project commencement. The issues of (1)

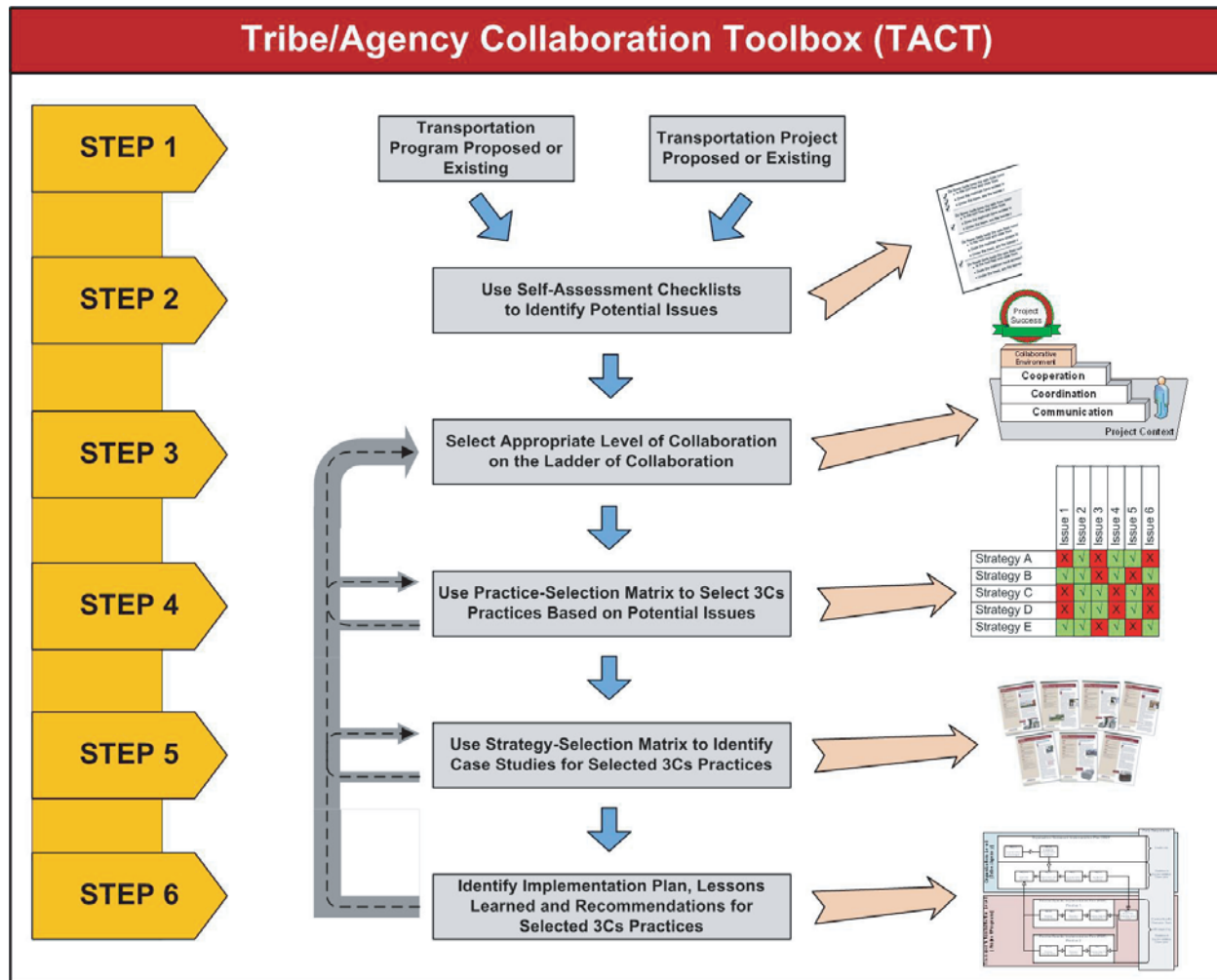


Figure 2. TACT process.

cultural competency; (2) protection/preservation of tribal-sensitive resource; (3) confidentiality of tribal-sensitive matters; (4) sovereignty; (5) land ownership; and (6) monetary matters have been identified in previous chapters as commonly encountered on transportation projects of concern to tribal communities. These issues, if not mitigated, could lead to delays or, ultimately, unsuccessful projects. For this reason, two checklists have been provided in Appendix B to assist project stakeholders in identifying potential issues prior to project commencement, so that practices for successful implementation can be selected.

The two checklists provided are to be used (a) by tribes and (b) by federal, state, or local agencies. Each checklist is written from the vantage point of its user. For example, in the agency checklist, under the issue, “protection/preservation of tribal-sensitive resources,” the agency – local, federal, or state – is asked if any sites or resources that are affected by the project may be of concern to a tribe. The agency might be unsure as to what tribal sites are located in the vicinity of the project, but

may know of historical tribal occupation of the area. For this reason, the agency may answer “yes” to the question, indicating that the issue has the potential of being encountered.

Each entity involved in the project should complete the appropriate checklist to identify which issues may be encountered on the project. In addition, parties can conduct a joint self-assessment by using the checklists (one for each party involved) to identify issues, comparing the results to assess differences, and combining each party’s results to develop a joint comprehensive collaboration strategy.

#### 5.4 Step 3: Selection of Desired Level of Collaboration

After the potential issues have been identified by each of the parties involved, parties should evaluate and select the appropriate level on the Ladder of Collaboration. If a joint-assessment has been performed, this step can be conducted as part of the joint-assessment exercise. Selecting the level of col-



		Issues					
		Cultural Competency	Protection & Preservation of Tribal-Sensitive Resources	Confidentiality of Tribal Sensitive Matters	Sovereignty	Land Ownership	Monetary
Communication Practices	Presentations	23, 30, 40, 45, 46	26, 29, 30, 33, 36, 37,	33	24, 26, 30, 33, 45, 46	23, 24, 33, 45, 46	23, 24, 26
	Data Collection and Analysis	22, 34	9, 18, 22, 29, 34	9, 18, 22	27, 34	34	27, 34
	Standards and Handbooks	22, 23, 32, 34, 35, 39, 40	9, 22, 32, 34, 35, 37, 38, 39	9, 22	6, 31, 32, 34, 35, 39, 40	23, 34	6, 23, 34
	Newsletters/Bulletins						
	Mailings with Response Forms	44			44	44	
	Tribal Moderator				24	24	24
	Training	40	25, 33, 36, 37, 38	33	25, 27, 33, 40	25, 33	25, 27

Figure 4. Case studies on communication.

		Issues					
		Cultural Competency	Protection & Preservation of Tribal-Sensitive Resources	Confidentiality of Tribal Sensitive Matters	Sovereignty	Land Ownership	Monetary
Coordination Practices	Meetings, Seminars	22, 23, 30, 35, 39, 40, 41, 43, 44, 45, 46	9, 12, 15, 16, 17, 18, 22, 25, 26, 30, 33, 35, 39, 41	5, 9, 12, 16, 18, 22, 33	3, 6, 7, 8, 10, 11, 13, 14, 21, 24, 25, 26, 27, 30, 33, 35, 39, 40, 41, 43, 45, 46	1, 7, 8, 10, 15, 19, 20, 21, 23, 24, 25, 33, 41, 43, 44, 45, 46	6, 7, 10, 13, 15, 20, 23, 24, 25, 26, 27
	Public Involvement	32, 35, 40, 42, 43, 44, 45, 46	26, 29, 32, 35		24, 26, 31, 32, 35, 40, 42, 43, 44, 45, 46	2, 42, 43, 44, 45, 46	24, 26
	Tribal Consortium		7		7	7	7
	Grants for Funding		26		26, 27		26, 27
	State Tribal Liaison	23, 40	12, 25	12	3, 8, 25, 40	8, 20, 23, 25	20, 23, 25
	Formal Agreements	22, 30, 45	9, 12, 15, 22, 30, 33	5, 9, 12, 22, 33	6, 7, 13, 30, 33, 45	4, 7, 15, 20, 33, 45	2, 4, 6, 7, 13, 15, 20
	Regional/State Conferences	23	29, 36, 37		3	4, 23	4, 23

Figure 5. Case studies on coordination.

		Issues					
		Cultural Competency	Protection & Preservation of Tribal-Sensitive Resources	Confidentiality of Tribal Sensitive Matters	Sovereignty	Land Ownership	Monetary
Cooperation Practices	Planning Organizations		25	5	6, 7, 10, 11, 24, 25	7, 10, 22, 24, 25	6, 7, 10, 24, 25
	Regional Transportation and/or Transit Districts				24	24	24
	Resource Sharing	44	25, 26		7, 10, 11, 13, 21, 25, 26, 44	4, 7, 10, 20, 21, 25, 26, 44	2, 4, 7, 10, 13, 20, 25, 26
	Investigation of Alternatives	22, 32, 45	12, 15, 16, 22, 28, 29, 32	12, 16, 22	11, 24, 32, 45	1, 4, 15, 19, 20, 24, 28, 45	2, 4, 15, 20, 24
	Planning for Disaster Preparedness		18	18	8, 21	8, 21	

Figure 6. Case studies on cooperation.

example, if an agency has identified cultural competency as a potential issue on a project, the entity can choose to utilize a presentation as a communication practice on the project. By cross-referencing this issue with this practice, case studies, like Case Study 23 for this example, can be easily identified. The identified cases can then be found in Appendix C.

### 5.7 Step 6: Review of Implementation Plan, Lessons Learned and Recommendations

A detailed Guidebook Implementation Plan (GIP) is included in the Guidebook in Appendix D and Practice-Specific Implementation Plans (PSIPs) are included in Appendix E. Once 3C practices have been tentatively selected for a given project, tribes and agencies can refer to GIP and PSIPs to assess what is required to implement the selected practices. If concerns arise on the implementation at this time, there is the opportunity to return to Step 3 and select alternative practices.

To be noticed are the lessons learned and recommendations to implement each of the practices, which were provided by tribal and agency practitioners and are expected to facilitate the design and implementation of collaboration strategies.

### 5.8 Using TACT: An Example

A single project example will be used to follow the guidebook process, including: (1) project identification; (2) identification of issues; (3) selection of collaboration level; (4) selection of strategies; (5) identification and review of relevant case studies; and (6) referral to an implementation plan for one practice.

#### 5.8.1 Step 1: Identification of Transportation Initiative

A state DOT is designing a new interstate interchange. The project area is next to tribal land and provides connectivity between reservation parcels. The DOT has worked successfully with the affected tribe in previous projects. Although the project is not on tribal land, the area is heavily used by tribal members to access services and schools. The tribe has confidential reasons to oppose part of the proposed alignment. They are aware of a burial located in the project area, but do not want to disclose this or its exact location. For this project, the tribe requested new sidewalks and streetlights to be installed through the adjacent business area. The DOT wants the tribe to help pay for the streetlight utilities. In addition, the DOT wants the tribe to maintain the new sidewalks, but the tribe is reluctant to commit to cleaning up areas outside of the reservation boundaries.

#### 5.8.2 Step 2: Identification of Underlying Issues

The second step in the process is to identify the issues that could be present by utilizing the assessment checklists. These should be completed by the transportation agency (or agencies) and the tribe (or tribes) involved. The checklists can be completed by each entity on their own or working together. If any entity identifies an issue, that issue is included in the overall issue list for the project. If a specific issue wasn't identified by either entity, it is assumed not to be present on the project. For this project it was determined that the following issues could have a potential effect on the

project (these were identified by compiling each entity's checklist into a joint list of issues):

- Protection/preservation of tribal-sensitive resources – the tribe wants the burial site protected
- Confidentiality of tribal-sensitive matters – the tribe cannot divulge the location or specifics about the site
- Monetary issues – the state wants the tribe to help pay for streetlight utilities

### **5.8.3 Step 3: Selection of Desired Level of Collaboration**

The third step is to select the appropriate level on the Ladder of Collaboration. As noted in previous sections of this Guidebook, the levels progress from communication to coordination to cooperation, and often the levels are revisited throughout a given project. Furthermore, at the higher levels, strategies will often overlap or coincide with each other during the implementation process. For example, emergency preparedness planning (cooperation) might include a meeting or a workshop (coordination) where a presentation or training takes place (communication).

For this project, it was determined to begin at the communication level to clarify issues and to share what information can be shared, but a goal was set to eventually reach the cooperation level, specifically regarding the monetary issues.

### **5.8.4 Step 4: Selection of 3C Practices**

The fourth step is to use the Strategy Matrix to identify potential 3C practices to address the identified issues. Communication practices will be examined first. The last two communication practices as listed on the Strategy Matrix, tribal moderator and training, are “green” or effective when each of the issues identified are present. With these two practices as options, it may be decided that training be used to communicate to all parties regarding the issues. In addition, a tribal moderator may be employed to carry communication forward throughout the project, while ensuring that all parties are heard and understood.

Next, the coordination practices can be reviewed. The practices of meetings, a tribal liaison, and formal agreements can

all be effective for addressing the issues identified. It may be decided that a meeting be held to work on developing a formal agreement with regards to the monetary issue, or the meeting could be used to identify a mutually agreed-upon tribal liaison.

Finally, the cooperation strategies should be cross referenced with the issues. In the cooperation practices, many opportunities exist for selecting effective strategies as most of the cooperation strategies are appropriate for most of the issues. In the case of this project, resource sharing may be helpful in addressing the monetary issues. Investigating alternatives might be helpful in addressing all three issues. This practice, when used in conjunction with those identified in communication and coordination, can aid in project success. All practices identified as effective when identified issues are present can be mixed and matched to best create an implementation strategy that will enable success.

### **5.8.5 Step 5: Identification and Review of Related Case Studies**

Before moving toward the implementation of the strategy designed in the previous step, the case studies should be referred to in order to understand how others have dealt with similar cases. Using the case study matrix (presented above) case studies can be selected for review. For example, there are a number of case studies for the 3C practices that were identified for this project. After reviewing several case studies, initial thoughts on the 3C practices selected and overall strategy may change. This could assist in refining the strategy to be used for the project.

### **5.8.6 Step 6: Review of Implementation Plan, Lessons Learned, and Recommendations**

For the sake of the example project, it will be assumed that the use of a presentation constitutes a communication practice that will be used for the project. The implementation plan for presentations can then be referred to. The implementation plan provides guidance to using the 3C practice. In addition, lessons learned and recommendations will be provided for the practices. The implementation plan also reviews the success of the strategy for future reference.



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# APPENDIX A

## Policy Resources

**Exhibit A.1: U.S. Policymaking and Current Issues Impacting Tribal Transportation**

Description	Year	Current Issues Impacting Tribal Transportation					
		Cultural Competency	Protect/ Preservation	Confidentiality	Sovereignty	Land Ownership	Monetary
<i>Formative Years (1789-1873)</i>							
<u>U. S. Constitution</u> – Native American tribes are sovereign nations and the federal government established the principle of consent in negotiations between the federal and Native American governments.	1787				X	X	
<i>Supreme Court Cases</i>							
<u>Marshall Trilogy</u> – Supreme Court cases framed the federal government relations with tribes for interpreting federal Indian law and defining tribal sovereignty. Tribes retained inherent powers of self-determination.	1823-1832						
<u>Johnson v. McIntosh</u> – The Supreme Court held that the tribes only had a right of possession and only the federal government can transfer ownership.	1823				X	X	
<u>Cherokee Nation v. Georgia</u> – The Supreme Court determined that tribes were 'domestic dependent nations' and established the federal trust relationship with Native American tribes.	1831				X		
<u>Worcester v. Georgia</u> - The Supreme Court decided that states have no power on tribal lands; Congress has plenary over tribal affairs.	1832				X	X	

Description	Year	Current Issues Impacting Tribal Transportation					
		Cultural Competency	Protect/ Preservation	Confidentiality	Sovereignty	Land Ownership	Monetary
<b><i>Era of Allotment and Assimilation (1887 to 1934)</i></b>							
<i>Legislative Initiatives</i>							
<u>General Allotment Act</u> – (also known as the Dawes Act) This Act broke up communal tribal lands and resulted in checkerboard patterns of land ownership, including by non-Indians, and the imposition of non-tribal government authority over those lands, which then led to overlapping policies.	1887				X	X	
<i>Supreme Court Cases</i>							
<u>Talton v. Mayes</u> – The Supreme Court reaffirmed the principle of inherent tribal sovereignty, and tribes can govern their internal relations as they saw appropriate.	1896				X		
<u>Buster v. Wright</u> – The Supreme Court upheld tribes' authority to tax nonmembers for the privilege of conducting business within Tribes' borders. Court characterized this as 'inherent' to the Tribes' "authority...to prescribe the terms upon which noncitizens may transact business within its borders."	1905				X		X
<b><i>Reorganization Period (1928 to 1953)</i></b>							
<i>Legislative Initiatives</i>							
<u>Indian Reorganization Act</u> – Congress reversed the federal government's allotment policies and established procedures for internal tribal business, including the adoption of tribal constitutions.	1934				X	X	X
<i>Supreme Court Cases</i>							
<u>Seminole Nation v. United States</u> – The Supreme Court determined that the federal government has a plenary power to regulate tribal affairs and a trust responsibility, which is accompanied by a fiduciary obligation.	1942				X		X
<b><i>Termination Policy (1953 to 1961)</i></b>							
<i>Legislative Initiatives</i>							
<u>House Concurrent Resolution No. 108</u> – Reversed federal tribal self-determination policies and terminated the trust relationship between the federal and tribal governments.	1953				X		
<u>Public Law 83-280</u> – Transferred jurisdiction from the federal to state governments, which significantly changed the division of legal authority among tribal, federal, and state governments. Congress gave six states (five states initially - California, Minnesota, Nebraska, Oregon, and Wisconsin; and then Alaska upon statehood) extensive criminal and civil jurisdiction over tribal lands.	1953				X		
<i>Supreme Court Cases</i>							
<u>Williams v. Lee</u> – The Supreme Court decided that tribal jurisdiction was exclusive in a lawsuit resulting from an on-reservation sales transaction between a non-member and tribal member.	1959				X		

Description	Year	Current Issues Impacting Tribal Transportation					
		Cultural Competency	Protect/ Preservation	Confidentiality	Sovereignty	Land Ownership	Monetary
<i>Self-Determination Policy (1961 to present)</i>							
<i>Legislative Initiatives</i>							
<u>National Historic Preservation Act</u> – Requires federal agencies to consult with any Native American tribe that attaches historical, religious, or cultural significance to historic properties that may be affected by a project. This process is known as a Section 106 Review.	1966	X	X	X			
<u>Indian Civil Rights Act</u> – Entitled Native Americans to provisions of the Bill of Rights and mandated that tribal consent be required for states to assume civil and criminal jurisdiction over tribal lands.	1968				X		
<u>National Environmental Protection Act (NEPA)</u> – Established a national policy for the protection and enhancement of the human environment including preserving important historic, cultural, and natural aspects of our national heritage and requires an Environmental Impact Statements for projects with significant negative impacts.	1969	X	X	X			
<u>Indian Self-Determination and Education Assistance Act</u> – Gave tribal governments the authority to assume federal actions and make those actions tribal functions. Previously these functions were largely a federal operation handled through the BIA.	1975				X		X
<u>American Indian Religious Freedom Act</u> – Protects and preserves Native Americans’ right of freedom to believe, express, and exercise their traditional religions.	1978	X	X	X			
<u>Archaeological Resources Protection Act</u> – Protects and manages archaeological resources and sites that are on public lands or tribal lands.	1979	X	X	X			
<u>Native American Graves Protection and Repatriation Act (NAGPRA)</u> – Provides a series of rights by which Native Americans can influence the deposition and treatment of human remains and associated artifacts.	1990	X	X	X			
<u>National Historical Preservation Act (NHPA)</u> – Enhanced the tribal role in historic preservation and created the Tribal Historic Preservation Officer (THPO) position.	1992	X	X	X			
<u>Religious Freedom Restoration Act</u> – Applies to all religions, but is most applicable to Native American religions that are impacted by increasing expansion of federal government projects onto sacred land.	1993		X	X			
<i>Supreme Court Cases</i>							
<u>Oliphant v. Suquamish Indian Tribe</u> – The Supreme Court determined that tribal courts do not have criminal jurisdiction over non-tribal members.	1978				X		
<u>United States v. Mitchell</u> – The Supreme Court established the federal government’s fiduciary relationship with tribes. This case was based on a claim for money damages by members of the Quinault Tribe for federal mismanagement of the timber on their allotments.	1980/ 1984		X		X	X	

Description	Year	Current Issues Impacting Tribal Transportation					
		Cultural Competency	Protect/Preservation	Confidentiality	Sovereignty	Land Ownership	Monetary
<u>Washington v. Confederated Tribes of the Colville Reservation</u> – The Supreme Court upheld tribal authority to tax on-reservation cigarette sales to nonmembers and affirmed that states are precluded from interfering with tribal nations' sovereignty.	1980				X		X
<u>Montana v. United States</u> – Considered a decisive Supreme Court case on tribal jurisdiction in which the Court denied tribal jurisdiction over non-Native Americans engaged in conduct on their own land within the reservation. “Montana exceptions” would be allowed if the tribe has a contractual relationship with the non-tribal member or if the non-member activities have a substantial impact on significant tribal interest.	1981				X	X	
<u>Merrion v. Jicarilla Apache Tribe</u> – This Supreme Court decision affirmed tribal sovereignty and recognized that Indian tribes have the inherent right to tax activities occurring on Native American land, including activities conducted by non-members.	1983				X		X
<u>Duro v. Reina</u> – This Supreme Court decision recognized the power of tribes to exercise criminal jurisdiction within their reservations over all Native Americans, including non-members. This case is also known as the “Duro fix.”	1990				X		
<i>Presidential Memorandums and Executive Orders</i>							
<u>Presidential Indian Policy Statement of January 24, 1983</u> – Pledged a government-to-government relationship between the U.S. Government and Indian tribes.	1983				X		
<u>Presidential Memorandum (President William Clinton April 29, 1994) on Government-to-Government Relations with Native American Tribal Governments</u> – This memorandum highlights the unique government-to-government relationship between the federal government and Native American tribal governments and outlines the principles that executive departments are to follow in their interactions with federally recognized Native American tribal governments.	1994				X		
<u>Presidential Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994)</u> – This Executive Order is designed to focus federal attention on the environmental and human health conditions in minority and/or low-income communities with the goal of achieving environmental justice. It requires fair treatment meaning that no one group of people shall “bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs.”	1994	X	X				

Description	Year	Current Issues Impacting Tribal Transportation					
		Cultural Competency	Protect/ Preservation	Confidentiality	Sovereignty	Land Ownership	Monetary
<u>Presidential Executive Order No. 13007, Sacred Sites</u> (May 24, 1996) – Directed federal agencies to accommodate Native American access to sacred sites in the management of federal lands and ceremonial use of Native American sacred sites by Native American religious practitioners, avoid adversely affecting the physical integrity of such sacred sites, and maintain the confidentiality of sacred sites.	1996	X	X	X			
<u>Presidential Executive Order No. 13084, Consultation and Coordination with Indian Tribal Governments</u> (May 14, 1998) – Describes the unique government-to-government relationship between the federal government and tribal governments and is the first tribal consultation and coordination Executive Order.	1998	X	X	X	X		X
<u>Presidential Executive Order No. 13175, Consultation and Coordination with Indian Tribal Governments</u> (November 6, 2000) – This Executive Order recognized the Native American tribes' sovereignty and right to self-determination. With sovereign powers, tribes are to be consulted with on a government-to-government basis. Details the regulatory requirements for working with tribes within the Statewide/ Metropolitan Transportation Planning processes. Established regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications.	2000				X		X
<u>Presidential Executive Order No. 13336, Government-to-Government Relations with Native American Tribal Governments</u> (September 23, 2004) – This Executive Order adopted a policy of self-determination for Native American tribes and committed the federal government to work with federally recognized tribal governments on a government-to-government basis.	2004				X		
<u>Presidential Memorandum for Heads of Executive Departments and Agencies on Tribal Consultations, November 5, 2009</u> – Reaffirmed the federal government's commitment to regular and meaningful consultation and collaboration with tribal officials in policy decisions and accountability for the implementation of Executive Order 13175.	2009				X		X

## Exhibit A.2: Transportation-Specific Policies Impacting Native American Tribes

Description	Year	Current Issues Impacting Tribal Transportation					
		Cultural Competency	Protect/Preservation	Confidentiality	Sovereignty	Land Ownership	Monetary
<b>Termination Policy (1953 to 1961)</b>							
<i>Legislative Initiatives</i>							
<u>Indian Reservation Roads (IRR)</u> program created	1928						X
<u>Act of February 5, 1948</u> – The Secretary of the Interior has the authority to grant permission to state or local authorities to build public highways through any tribal reservation. Tribal trust land cannot be condemned without a specific act of Congress.	1948				X	X	
<u>Surface Transportation Assistance Act</u> – Incorporated the IRR into the Federal Lands Highway Program under FHWA.	1982						X
<u>Intermodal Surface Transportation Efficiency Act (ISTEA)</u> – Mandated that statewide planning requirements include consultation, cooperation and coordination with tribal governments on a government-to-government basis. Established the Tribal Technical Assistance Program (TTAP).	1991	X	X	X	X	X	X
<u>Transportation Equity Act for the 21st Century (TEA-21)</u> – Mandated that the IRR program include tribal government consultation in state, regional, and metropolitan planning. The Tribal Transportation Allocation Methodology was established to determine IRR allocations to federally recognized tribes.	1998	X	X	X	X		X
<u>FHWA Indian Task Force Report (February 4, 1998)</u> – Issued to provide guidance to FHWA regarding its relationship with federally recognized tribal governments with the Federal Lands Highway and Federal-Aid Highway Programs.	1998	X		X			X
<u>Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)</u> – Strengthened the direct relationship between FHWA and tribes including the authority to enter into direct funding agreements with tribes and the requirement for FHWA to conduct a National Indian Reservation Road Inventory. It requires that state departments of transportation and MPO's consult with tribal governments during transportation planning activities and decision-making processes. Authorized use of 25% of construction funds for road maintenance.	2005	X	X	X	X	X	X
<u>Contracts With Indian Tribes or Indians (25 U.S.C. § 81)</u> – Specifies the content and approval process for contracts with tribes.	2005						X
<i>Supreme Court Cases</i>							
<u>Strate v. A-1 Contractors</u> – Involved state highway agencies maintaining right-of-way over Native American reservations. When an accident occurs on a public highway maintained by the State with a federally granted right-of-way over Indian reservation land, a civil action against allegedly negligent non-members falls within state or federal jurisdiction and not the tribe's.	1997				X	X	



Description	Year	Current Issues Impacting Tribal Transportation				
		Cultural Competency	Protect/ Preservation	Confidentiality	Sovereignty	Land Ownership
<u>Montana Department of Transportation v. King</u> – Held that the state and its officials were outside the regulatory reach of the TERO for work performed on the right-of-way owned by the state.	1999				X	
<u>Nevada v. Hicks</u> – The Supreme Court decision holds that tribal courts may not exercise jurisdiction over state law enforcement officials who allegedly violated the civil rights of a tribal member within the reservation.	2001				X	

### Exhibit A.3: Federal Tribal Transportation Funding Programs

Funding Program		Funding Purpose	Administering Agency	Federal Share
<b>B - Federal Lands Highway*</b>				
B.1	Emergency Relief - Federal Roads	Assistance for roads to and within federal and Indian lands damaged by natural disaster or catastrophic failure.	US DOT - FHWA	100%
B.2	Indian Reservation Roads	Indian reservation road and bridge infrastructure planning, maintenance, repair and construction.	US DOT - FHWA	100%
B.3 (a) (b)	IRR and BIA Road Maintenance	Reservation road system maintenance on both the BIA and larger IRR systems.	US DOT - BIA	100%
B.4	IRR Bridges	Indian reservation bridge planning, design, engineering, preconstruction, construction, inspection and repair.	US DOT - FHWA	100%
B.5	Park Roads & Parkways	National park road planning, engineering and construction.	US DOT - BIA	100%
B.6	Public Lands Highways	Indian reservation, national park and public lands roadway, parkway and transit planning, research, engineering and construction.	US DOT - FHWA	100%
B.7	Refuge Roads	Maintenance and improvements to National Wildlife Refuge System roads.	US DOT - BIA	100%
*Section A not included as not related to funding sources.				
<b>C - Federal-Aid Highway</b>				
<b>C.1 Highway</b>				
C.1.a	Congestion Mitigation - Air Quality Improvement	Assistance to reduce transportation related emissions in air quality non-attainment and maintenance areas.	US DOT - FHWA	80% - 100%
C.1.b	Equity Bonus	Percentage of funding based on State contribution to Highway Trust Fund (Highway Account).	US DOT - FHWA	80% - 100%
C.1.c	Ferry Boat Discretionary	Ferry boat and terminal facilities construction.	US DOT - FHWA	80%
C.1.d	Highway Bridge	Deficient bridge replacement, rehabilitation or retrofit.	US DOT - FHWA	80% - 90%
C.1.e	Highway for LIFE Pilot	Promotion of higher-level highway construction technologies, performance standards and business practices.	US DOT - FHWA	80% - 100%
C.1.f	High Priority Projects	Priority projects identified in SAFETEA-LU.	US DOT	80%

<i>Funding Program</i>		<i>Funding Purpose</i>	<i>Administering Agency</i>	<i>Federal Share</i>
C.1.g	National Corridor Infrastructure Improvement	Highway construction in national corridors for economic growth, international and inter-regional trade.	US DOT	80% - 100%
C.1.h	National Highway System	Urban and rural road and transit improvements on the National Highway System.	US DOT	80% - 100%
C.1.i	National Scenic Byways	Scenic roadway planning, design and development.	US DOT	80%
C.1.j	Projects of National and Regional Significance	Highway construction in corridors of national significance for economic growth, international trade or inter-regional trade.	US DOT	80%
C.1.k	Transportation, Community and System Preservation	Transportation, community and system preservation planning.	US DOT	80%
C.1.l	Truck Parking Facilities	Parking facilities for commercial vehicles on the National Highway System.	US DOT	80% - 100%
C.1.m	High Priority Projects	Priority projects identified in SAFETEA-LU.	US DOT	80%
<b><i>C.2 Flexible</i></b>				
C.2.a	Surface Transportation Program	Highway, bridge and transit planning and safety.	US DOT	80% - 100%
C.2.b	STP - Transportation Enhancements	Multi-modal transportation system enhancements.	US DOT	80%
<b><i>C.3 Non-Motorized</i></b>				
C.3.a	Recreational Trails	Trail construction, restoration, rehabilitation and maintenance.	US DOT - FHWA	95%
<b><i>C.4 Safety</i></b>				
C.4.a	Alcohol-Impaired Driving Countermeasures Incentive	Traffic safety programs to address driving-under-the-influence (DUI) issues.	US DOT	25% - 75%
C.4.b	Child Safety-Child Booster Seat Incentive	Training and enforcement related to child restraint laws.	US DOT	50% - 75%
C.4.c	Highway Safety Improvement	Traffic fatality and injury reduction on public roads.	US DOT	90% - 100%
C.4.d	Motorcyclist Safety	Motorcyclist safety training, public awareness and outreach.	US DOT	100%
C.4.e	Occupant Protection Incentive	Implementation and enforcement of occupant protection programs.	US DOT	25% - 75%
C.4.f	Safe-Route-to-School	School walk and bicycle route planning and development.	US DOT	100%
C.4.g	Safety Belt Performance	Support for enactment and enforcement of vehicle safety belt laws.	US DOT	100%
C.4.h	State-Community Highway Safety	Reduce roadway fatalities and injury accidents.	US DOT	80%
<b><i>D - Public Transportation</i></b>				
D.1	Elderly and Persons with Disabilities	Transportation service for urban and rural elderly and disabled.	US DOT	80%
D.2	Rural and Small Urban Areas	Capital and operating assistance for rural public transportation services.	US DOT	50% - 90%
D.3	Job Access and Reverse Commute	Transportation service for welfare recipients and low-income to suburban employment.	US DOT	50% - 80%
D.4	New Freedom	Public transportation service alternatives, beyond those required by the ADA.	US DOT	50% - 100%

<i>Funding Program</i>		<i>Funding Purpose</i>	<i>Administering Agency</i>	<i>Federal Share</i>
<b><i>E - Other Funding Programs</i></b>				
E.1	Outdoor Recreation, Acquisition, Development and Planning	Acquisition and development of outdoor recreation areas and facilities for the general public.	US DOI	50%
E.2	Rivers, Trails and Conservation Assistance	Technical assistance for resource conservation and outdoor recreation.	US DOT	N.A.
<i>Source: U.S. Department of Transportation, Tribal Transportation Federal Funding Resources. <a href="http://www.fhwa.dot.gov/hep/tribaltrans/tfundresource_appa.htm">http://www.fhwa.dot.gov/hep/tribaltrans/tfundresource_appa.htm</a></i>				

## Exhibit A.4: Federal Tribal Transportation Funding Resources

Source: U.S. Department of Transportation<sup>7</sup>

<b><i>Title</i></b>
A Guide To Federal-Aid Programs And Projects
<b><i>Resource Type</i></b>
Legislation, Regulations, and Guidance
<b><i>Description</i></b>
This guide provides basic information about the Federal-Aid programs, projects, and other program characteristics. Much of the information provided in this guide was included in the FHWA's 1999 edition of the same publication. This publication updates information from the past document and includes information resulting from the latest multi-year Federal-Aid authorizing legislative act, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Public Law 109-59).
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b><i>Title</i></b>
Disadvantaged Business Enterprises (DBE), (NTI)
<b><i>Resource Type</i></b>
Training Courses
<b><i>Description</i></b>
This three-day course is designed to assist DBE transit agency staff and FTA regional staff with developing and implementing policies and procedures consistent with the U.S. Department of Transportation's (US DOT) revised DBE regulations and DOT guidelines. This course will provide a basic understanding and working knowledge of the US DOT DBE regulations and DOT guidance. Attendees will be provided with tools necessary to design and implement a DBE program for their organizations.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b><i>Title</i></b>
Federal Highway Administration (FHWA)
<b><i>Resource Type</i></b>
Training Organizations
<b><i>Description</i></b>
The FHWA website offers links to a variety of training opportunities and institutions.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<sup>7</sup>[http://www.planning.dot.gov/resources.asp?RecordStart=&bySort=&order=&prev=&PageFormat=html\\_print&ResourceType=&Organization=4&Category=42&Keywords=](http://www.planning.dot.gov/resources.asp?RecordStart=&bySort=&order=&prev=&PageFormat=html_print&ResourceType=&Organization=4&Category=42&Keywords=)

<b><i>Title</i></b>
Federal Title 25- Indians, Chapter I-BIA, Department of the Interior, Subchapter H-Land and Water, Part 170 IRR Program
<b><i>Resource Type</i></b>
Legislation, Regulations, and Guidance
<b><i>Description</i></b>
This part provides rules and a funding formula for the Department of the Interior (DOI) in implementing the Indian Reservation Roads (IRR) Program.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b><i>Title</i></b>
FHWA Discretionary Programs
<b><i>Resource Type</i></b>
Related Sites
<b><i>Description</i></b>
FHWA has many major assistance programs for eligible activities. Funds are provided through legislative formulas or discretionary authority. Funding from these programs is provided on an 80/20 Federal/local funding match basis, unless otherwise specified.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b><i>Title</i></b>
Final Rule on Indian Reservation Roads Program
<b><i>Resource Type</i></b>
Legislation, Regulations, and Guidance
<b><i>Description</i></b>
This final rule establishes policies and procedures governing the Indian Reservation Roads (IRR) Program. The IRR Program is a part of the Federal Lands Highway Program established to address transportation needs of tribes.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b><i>Title</i></b>
Financial Analysis Systems- Highways (FASH) Workshop
<b><i>Resource Type</i></b>
Training Courses
<b><i>Description</i></b>
This tool is tailored to Federal, State and local finance data providers and users to demonstrate data entry and the submittal process. The tool is used by data providers for data quality initiatives for use by FHWA, Congress and the public. FASH is a database management system that captures the overall financial status of a state's highway program.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b><i>Title</i></b>
Key Considerations in Metropolitan and Statewide Tribal Consultation
<b><i>Resource Type</i></b>
Peer Reports
<b><i>Description</i></b>
Held in coordination with the Inter-Tribal Transportation Association's mid-year conference, this 1.5 day session gathers leading practitioners in metropolitan and state tribal-consultation to share their experiences and lessons learned.
<b><i>Planning Level</i></b>
Metropolitan, Statewide, Tribal

<b><i>Title</i></b>
National Highway Institute (NHI)
<b><i>Resource Type</i></b>
Training Organizations
<b><i>Description</i></b>
The NHI website functions as a clearinghouse for transportation training. The site includes instructor-led, web-based, and web-conference trainings as well as the opportunity for users to host or develop a course. Formal training courses provide a rigorous background in the substance and methods of the planning process.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b><i>Title</i></b>
Performance Measures and Targets for Transportation Asset Management
<b><i>Resource Type</i></b>
Publications
<b><i>Description</i></b>
TRB's <i>NCHRP Report 551: Performance Measures and Targets for Transportation Asset Management</i> describes the research effort associated with production of the report and provides the current state of practice on the use of performance measures, principally in the context of transportation asset management. In addition, the report introduces a framework for identifying performance measures and setting target values. The report appendices contain examples of performance measures and targets. The report is designed to help transportation agencies apply the concepts of performance management to their asset management efforts.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b><i>Title</i></b>
The Transportation Planning Process: Key Issues A Briefing Notebook for Transportation Decision makers, Officials, and Staff
<b><i>Resource Type</i></b>
Publications
<b><i>Description</i></b>
The Briefing Notebook is a primer for transportation decision makers and stakeholders. It provides government officials, planning board members, transportation service providers, and the public at large with an overview of transportation planning in metropolitan settings. Along with a basic understanding of the key concepts, the notebook provides references for additional information. Part I discusses transportation planning and its relationship to decision making. Part II presents short discussions of the policy and planning topics including air quality, asset management, financial planning, freight movement, land use and transportation, models, performance measures, project development and the NEPA process, public involvement, safety, systems management, environmental justice, and transportation demand management.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b><i>Title</i></b>
Travel Model Improvement Program (TMIP)
<b><i>Resource Type</i></b>
Training Organizations
<b><i>Description</i></b>
TMIP supports transportation planning agencies and develops and delivers seminars on data collection and analysis methods, land use forecasting, travel demand forecasting, and mobile source emissions estimation. TMIP also sponsors online webinars on travel modeling issues. Formal training courses provide a rigorous background in the substance and methods of the planning process.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

## Exhibit A.5: Federal Tribal Transportation Planning Resources

Source: U.S. Department of Transportation<sup>8</sup>

<b>Title</b>
Consultation and Public Involvement Statutory/Regulatory Requirements
<b>Description</b>
Consultation and Public Involvement Statutory/Regulatory Requirements: Working with Tribes within the Statewide/Metropolitan Transportation Planning Processes (August 2007).
<b>Planning Level</b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b>Title</b>
FHWA's State Practices Used to Report Local Area Travel
<b>Description</b>
A FHWA report that provides survey information on promising and innovative State practices used to estimate local area travel in rural, small urban, and urbanized areas. The report may be useful to MPO and state planners.
<b>Planning Level</b>
Metropolitan, Rural and Small Community, Statewide

<b>Title</b>
Final Rule on Indian Reservation Roads Program
<b>Description</b>
This final rule establishes policies and procedures governing the Indian Reservation Roads (IRR) Program. The IRR Program is a part of the Federal Lands Highway Program established to address transportation needs of tribes.
<b>Planning Level</b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b>Title</b>
Final Rule on Indian Reservation Roads Program Subject Index
<b>Description</b>
An index to 25 CFR Part 170, Indian Reservation Roads Program; Final Rule.
<b>Planning Level</b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b>Title</b>
Framework for Action Building the Fully Coordinated Transportation System
<b>Description</b>
The Framework for Action is a comprehensive evaluation and planning tool to help state and community leaders and agencies involved in human service transportation and transit services, along with their stakeholders, improve or start coordinated transportation systems. Assessment and planning can be completed in one or two meetings. Implementation time will depend on the action items participants choose to pursue.
<b>Planning Level</b>
Metropolitan, Statewide

<b>Title</b>
Guidelines for Evaluating and Documenting Traditional Cultural Properties
<b>Description</b>
This bulletin is intended to be an aid in determining whether properties thought or alleged to have traditional cultural significance are eligible for inclusion in the National Register. It is meant to assist Federal agencies, State Historic Preservation Officers (SHPOs), Certified Local Governments, Indian Tribes, and other historic preservation practitioners who need to evaluate such properties when nominating them for inclusion in the National Register or when considering their eligibility for the Register as part of the review process prescribed by the Advisory Council on Historic Preservation under Section 106 of the National Historic Preservation Act.
<b>Planning Level</b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<sup>8</sup>U.S. Department of Transportation. Federal Highway Administration, Tribal Transportation Planning, Policy Guidance. [http://www.tribalplanning.fhwa.dot.gov/resources\\_policy.aspx](http://www.tribalplanning.fhwa.dot.gov/resources_policy.aspx)

<b><i>Title</i></b>
How to Engage Low-Literacy and Limited-English-Proficiency Populations in Transportation Decision-making
<b><i>Description</i></b>
An FHWA report that documents best practices in identifying and engaging low-literacy and limited-English-proficiency populations in transportation decision making. The booklet also provides outreach techniques for these populations.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b><i>Title</i></b>
National Register Bulletin 29, Guidelines for Restricting Information about Historic and Prehistoric Resources
<b><i>Description</i></b>
Because many Indian tribes and Native Hawaiian organizations believe that divulging locational information and other information about the existence of traditional cultural properties will compromise the properties' existence and sacred value, confidentiality of such information is of great concern. Section 304 of the National Historic Preservation Act permits federal agencies, with the approval of the Secretary of the Interior, to withhold such sensitive information from public disclosure. Confidentiality concerns can also be included in a Section 106 agreement document between tribes and federal agencies (36 C.F.R. part 800.2(c)(2)(ii)(E))[PDF 150kb]. For additional guidance about confidentiality see National Register Bulletin 29, Guidelines for Restricting Information about Historic and Prehistoric Resources. To obtain a copy of this publication, write to the National Register of Historic Places, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, D.C. 20013-7127.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b><i>Title</i></b>
SAFETEA-LU: Interim Guidance for Implementing SAFETEA-LU Provisions Planning, Environment, and Air Quality for FHWA Authorities
<b><i>Description</i></b>
FHWA interim guidance is intended for the use of FHWA and FTA field offices in working with their State/local planning partners and grantees in implementing SAFETEA-LU.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b><i>Title</i></b>
SAFETEA-LU: Transition and Implementation of SAFETEA-LU Planning Provisions
<b><i>Description</i></b>
This link provides additional "clarifying information/guidance" on the transition and implementation of the SAFETEA-LU planning provisions.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b><i>Title</i></b>
Section 106 Tribal Consultation Q & A's
<b><i>Description</i></b>
Questions and Answers regarding Section 106 Tribal Consultation Compliance.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b><i>Title</i></b>
The Environmental Guidebook
<b><i>Description</i></b>
The Environmental Guidebook website is a companion website to the Federal Highway Administration's Environmental Guidebook on Compact Disc, November 1999. It provides NEPA environmental guidance and policy information on The Natural Environment (Volume 1) and The Built and Social Environment (Volume 2).
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b><i>Title</i></b>
The Transportation Planning Process: Key Issues: A Briefing Notebook for Transportation Decision-Makers Officials and Staff
<b><i>Description</i></b>
This book provides government officials, transportation decision makers, planning board members, and transportation service providers with an overview of transportation planning. It contains a basic understanding of key concepts in statewide and metropolitan transportation planning, along with references for additional information.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal

<b><i>Title</i></b>
Transportation Management Area Planning Certification Review Primer
<b><i>Description</i></b>
This primer provides a basic understanding of the key concepts and expectations addressed through a review of, along with references to, pertinent laws, regulations, policies, and other resources.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Tribal

<b><i>Title</i></b>
Transportation Conformity: Reference Guide
<b><i>Description</i></b>
The Transportation Conformity: Reference Guide contains transportation conformity rules and relevant preamble language, questions and answers, lists of resource materials, new information, guidance, case studies, and approaches to meeting requirements.
<b><i>Planning Level</i></b>
Metropolitan, Rural and Small Community, Statewide, Tribal



## APPENDIX B

# Issue Self-Assessment Checklists

### Exhibit B.1: Tribal Self-Assessment Checklist

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**Assessment for Cultural Competency Issues**

---

	YES	NO	N.A.*
A Is there at least one individual in your tribe who is knowledgeable about the organizational culture of the agency(ies) involved in the transportation initiative?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B Can this person provide the cultural knowledge for all the individuals in your team (e.g., by training team and/or facilitating efforts)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

---

*YES to (a) and (b): While Cultural Competency may always hinder a transportation initiative, these issues do not seem serious this time. Therefore, your collaboration strategy does not need to be designed to specifically address these issues. However, you may use any of the practices listed as effective for cultural competence issues to further your overall collaboration strategy.*

*NO to (a) or (b): Cultural Competency issues are present on the proposed transportation initiative, and you will need to include “training” on cultural competency in your overall collaboration strategy.*

---

*(\*) Not Applicable*

---



---

**Assessment for Protection and Preservation of Tribal-Sensitive Resources Issues**

---

	YES	NO	N.A.*
A If the proposed initiative has a direct or indirect impact on cultural resources, are any of these of significance to your tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B If the proposed initiative has a direct or indirect impact on historical resources, are any of these of significance to your tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C Does the proposed initiative have a direct or indirect impact on areas where traditional practices are performed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D Does the proposed initiative include using tribal symbols?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

---

*YES checked once or more: Protection/Preservation issues are present on the proposed transportation initiative.*

---

*(\*) Not Applicable*

---

---

**Assessment for Confidentiality of Tribal-Sensitive Resources Issues**

---

		YES	NO	N.A.*
A	If the proposed initiative has a direct or indirect impact on biological or natural resources of significance to your tribe, is the knowledge of any of these matters confidential to your tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B	If the proposed initiative has a direct or indirect impact on cultural resources of significance to your tribe, is the knowledge of any of these matters confidential to your tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C	If the proposed initiative has a direct or indirect impact on historical resources of significance to your tribe, is the knowledge of any of these matters confidential to your tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D	If the proposed initiative has a direct or indirect impact on areas where traditional practices are performed, is the knowledge of any of these matters confidential to your tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E	If the proposed initiative needs to use tribal symbols, is the knowledge of any of these matters confidential to your tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

---

**YES checked once or more: Confidentiality issues are present on the proposed transportation initiative.**

---

*(\*) Not Applicable*

---



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**Assessment for Sovereignty Issues**

---

		YES	NO	N.A.*
A	Is your tribe recognized by the state or federal government as a sovereign nation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

---

**YES to (a): Sovereignty issues may be present. Please answer the following questions.**

**NO to (a): Sovereignty issues as described in this section do not apply. This checklist has been developed to identify and address minor sovereignty issues. The research did not identify best practices to address major sovereignty issues (i.e., the tribe has not been recognized either at the federal or at the state level).**

---

		YES	NO	N.A.*
B	Could your jurisdictional power be unclear to some of the parties involved in the transportation initiative?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C	Do you consider your government-to-government relationship with the agencies involved unsuccessful?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D	Could any of your tribe’s institutional protocols be unclear to some of the parties involved in the transportation initiative?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

---

**YES to (b), (c) or (d): Sovereignty issues are present, and you will need to include “training” in your overall collaboration strategy.**

**NO to (b), (c) and (d): Sovereignty issues are not present.**

---

*(\*) Not Applicable*

---

---

**Assessment for Land Ownership Issues**

---

		YES	NO	N.A.*
A	Does the proposed transportation initiative require your tribe or some of your tribal members to provide right-of-way (either on tribe-owned or trust land)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B	Does the proposed right-of-way have any issues with mineral exploration rights?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

---

**YES checked once or more: Land Ownership issues are present on the proposed transportation initiative.**

---

(\*) Not Applicable

---



---

**Assessment for Monetary Issues**

---

		YES	NO	N.A.*
A	Does the proposed transportation initiative require your tribe or some of your tribal members to commit funding to participate in the process (either monetary contributions or in-kind commitments)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B	Could any of your tribe’s taxes and fees be unclear to some of the parties involved in the transportation initiative?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C	Could any Indian or Tribal employment preference be unclear to some of the parties involved in the transportation initiative?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

---

**YES checked once or more: Monetary issues are present on the proposed transportation initiative.**

---

(\*) Not Applicable

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**Exhibit B.2: Agency Self-Assessment Checklist**

In multi-agency initiatives, this assessment should be undertaken by each agency.

---

**Assessment for Cultural Competency Issues**

---

		YES	NO	N.A.*
A	Is there any individual in your agency who is knowledgeable on the culture of the tribes involved?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B	Can this person (these people) provide the cultural knowledge for all the individuals in your team? (e.g., by training team and/or facilitating efforts)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

---

**YES to (a) and (b): While Cultural Competency may always hinder a transportation initiative, these issues do not seem serious this time. Therefore, your collaboration strategy does not need to be designed to specifically address these issues. However, you may use any of the practices listed as effective for cultural competency issues to further your overall collaboration strategy.**

**NO to (a) or (b): Cultural Competency issues are present on the proposed transportation initiative, and you will need to include “training” on cultural competency in your overall collaboration strategy.**

---

(\*) Not Applicable

---

---

***Assessment for Protection and Preservation of Tribal-Sensitive Resources Issues***

---

		YES	NO	N.A.*
A	Does the area affected by the proposed initiative have any known significance to tribes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B	If the proposed initiative has a direct or indirect impact on biological or natural resources, could any of these resources be of significance to tribes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C	If the proposed initiative has a direct or indirect impact on cultural resources, could any of these resources be of significance to tribes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D	If the proposed initiative has a direct or indirect impact on historical resources, could any of these resources be of significance to tribes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E	Could the proposed initiative have a direct or indirect impact on areas where traditional practices are performed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F	Could the proposed initiative need to use tribal symbols?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

---

***YES checked once or more: Protection/Preservation issues are present on the proposed transportation initiative.***

*(\*) Not Applicable*

---



---

***Assessment for Confidentiality of Tribal-Sensitive Resources Issues***

---

		YES	NO	N.A.*
A	Does the area affected by the proposed initiative have protection/preservation issues (to be determined by previous checklist)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

---

***YES: Confidentiality issues may be present, and descriptions included in the definition of tribal-sensitive resources may be used to determine which specific issues may arise.***

***NO: Confidentiality issues are not expected.***

*(\*) Not Applicable*

---

---

**Assessment for Sovereignty Issues**

---

	YES	NO	N.A.*
A Do the project stakeholders represent more than one sovereign government?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

---

*NO to (a): Sovereignty issues as described in this section do not apply. This checklist has been developed to identify and address minor sovereignty issues. The research did not identify best practices to address major sovereignty issues (i.e., the tribe has not been recognized either at the federal or at the state level).*

---

	YES	NO	N.A.*
B Is the jurisdiction of each party, and more specifically tribes, clearly defined and understood?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C Have government-to-government relationships been established between the agency and the tribe(s) involved?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D Are the operations and organizational structure of the tribes involved clearly understood?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

---

*YES to (a), (b), (c) and (d): Sovereignty issues are not present.*

*YES to (a) and NO to either (b), (c) or (d): Sovereignty issues are present.*

*(\*) Not Applicable*

---



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**Assessment for Land Ownership Issues**

---

	YES	NO	N.A.*
A Does the project/initiative take place on land of significance to a tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B Is the land in question held in trust for the tribe or owned by the tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C Does one party own the land in question while another retains surface ownership or mineral exploration rights of the land?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

---

*YES checked once or more: Land Ownerships issues are present on the proposed transportation initiative.*

*(\*) Not Applicable*

---



---

**Assessment for Monetary Issues**

---

	YES	NO	N.A.*
A Does the party proposing the transportation initiative lack the funding to complete the initiative?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B Do contracting parties have different protocols for taxations and fees that must be taken into consideration?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C Are Indian or Tribal employment preference laws expected to affect the transportation initiative?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

---

*YES checked once or more: Monetary issues are present on the proposed transportation initiative.*

*(\*) Not Applicable*

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## APPENDIX C

## Case Studies

**1: Tribe Provide Right-of-Way to Streamline Realignment Project**

*SOURCE:* Interview

***SITUATION:***

In the Northwest United States, geometric characteristics of a major route required realignment due to safety issues on the existing alignment. Planning of the realignment for improved safety was identified as having a potential effect on a tribe in the area and individual tribal landowners. In order to create and analyze alternatives for the proposed project, the state worked with the tribe. One of the largest concerns with the realignment was the need for right-of-way from parties affected by the various design alternatives.

***ISSUES:***

Land Ownership

***ISSUES IN CONTEXT:***

In order to identify alternatives for the road realignment, the state met with the land department of the affected tribe and two alternatives were identified. The first alternative affected and required right-of-way from more than 100 individual tribal members that owned the land proposed for the alignment. The second alternative affected the tribe. It also required right-of-way from the tribe.

***PRACTICES:***

Investigation of Alternatives, Meetings

***PRACTICES IMPLEMENTED:***

During the meetings between the state and the land department of the tribe, both parties agreed that the need for improved safety along the alignment surpassed any issues of land acquisition and streamlining the project was of great importance. In order to streamline the project, the tribe agreed to the second alternative in which the new alignment would run through tribal land and the tribe would provide right-of-way to the state, for which they were compensated. Selection of the first alternative would have required right-of-way acquisition from more than 100 landowners and would have created a longer timeline for the project.

***OUTCOME:***

In this project, the desire for a successful and streamlined project outweighed individual parties' concerns with other potential issues related to land acquisition. So, the tribe agreed to an alternative in which right-of-way would have to be provided. Following this alternative selection, project stakeholders remained in contact with less formal communication (meetings between transportation staff, telephone conversations, etc.).

## **2: Tribe, County and State Partner to Fund Reconstruction of Bridge**

*SOURCE:* Interview

***SITUATION:***

In a county in the South Central region of the United States, a multi-truss, single-lane bridge built in the early 1900s was deemed structurally deficient, posing safety issues. Neither the county nor the state had the funding to address the bridge's deficiencies. The bridge was located on county land, but provided access to tribal lands. As a primary route for the tribe, safety was a concern for the tribe, so the tribe requested that the county and state make the needed improvements on the bridge.

***ISSUES:***

Monetary - Funding

***ISSUES IN CONTEXT:***

The county, state, and tribe all recognized the need for improvements to address safety on the bridge, which provided access to tribal land, but both the county and the state lacked the funding needed for improvements or bridge replacement.

***PRACTICES:***

Formal Agreements, Resource Sharing, Investigation of Alternatives

***PRACTICES IMPLEMENTED:***

In order to fund a bridge-replacement project, the tribe partnered with the county and the state. The tribe placed the bridge in its IRR inventory and was able to request funding for reconstruction of the bridge. The tribe, county and state then pooled funds provided by IRR, the county and the state to pay for the project. The parties further pooled resources (time, staff, etc.) to complete the construction project.

***OUTCOME:***

The state performed the design of the new bridge and the tribe managed the project. The bridge was completed successfully, with the tribe providing a name for the new bridge. The tribe and county then entered into a formal agreement regarding ownership and maintenance of the road, with the county assuming responsibility for both.

## **3: Tribal Identification Cards Recognized as Legal, Statewide Identification**

*SOURCE:* Interview

***SITUATION:***

In the Northwest United States, several tribes issue their members a tribal ID as legal identification. With the U.S. Patriot Act, federal statute changed the requirements for identification cards to be considered a legal form of ID. A large number of tribes have gaming facilities and hire employees who require security clearances. For some of the more rural tribes, members of the tribes utilize their tribal IDs for legal identification.

***ISSUES:***

Sovereignty

***ISSUES IN CONTEXT:***

There had been instances where the tribes were not able to get their business needs met because other agencies do not always recognize tribal IDs as being a legal form of identification. At one point, some Department of Motor Vehicle (DMV) offices were not recognizing tribal IDs as legal IDs because of the statute requirements of the U.S. Patriot Act.

***PRACTICES:***

Meetings, Tribal Liaisons and Coordinators, Regional or State-Level Conferences

**PRACTICES IMPLEMENTED:**

The state holds quarterly working meetings with tribes in which representatives from different state agencies, both transportation and non-transportation, discuss issues of mutual concern with the tribes. Areas of mutual concern can include anything from transportation to cultural and historical resources. The issue of tribal identification not being recognized was identified at one of the quarterly meetings. Representatives in attendance, including staff from the DOT and the DOT tribal liaison, took the lead in getting the issue resolved by meeting with the DOT and state representatives.

**OUTCOME:**

State representatives worked the issue through the state legislature after having heard from the tribes. This led to the passage of state statute rule changes in the law so that tribal IDs would be accepted as legal identification in the state.

**4: Road Realignment Through Land Trading**

**SOURCE:** Interview

**SITUATION:**

In the Northwest U.S. a state road paralleled a river and its curvature. The characteristics of the river defined the roadway alignment. Where the river made a sharp-angled turn, the road also made the sharp-angled turn. In the area of the sharp turn, the road was level with the riverbed. In the springtime, snow melts would cause the river to rise and flood the road to the point that only large trucks could travel the road. Due to the inoperability of the road during the spring season and safety concerns with the alignment, a new alignment was needed.

**ISSUES:**

Land Ownership, Funding

**ISSUES IN CONTEXT:**

The realignment of the road required right-of-way acquisition from the tribe as the state only owned the land within the current road alignment.

**PRACTICES:**

Formal Agreements, Resource Sharing, Investigation of Alternatives

**PRACTICES IMPLEMENTED:**

Prior to the proposed project, the tribe acquired property along the riverbed and planned to donate land to a project that would allow for the reconstruction of the section of road containing the sharp turn. The proposed alignment would cut through tribal land in the area of the sharp turn and continue on the existing road, so the state required right-of-way from the tribe. In order to complete the project, the tribe donated the land required for the new alignment, and the state, in turn, gave the tribe the piece of land on which the turn was located. The state also paid the tribe for their efforts in the destruction (asphalt removal, etc.) of the old piece of roadway.

**OUTCOME:**

The new road alignment no longer has a sharp turn as it cuts through tribal land. Consequently, the road can be open year-round with fewer flooding or safety concerns.

**5: Roadside Vegetation Management**

**SOURCE:** Interview

**SITUATION:**

A state in the North Central United States works with tribes partly through a planning council in which representatives of the FHWA, local TTAP, DOT (including the tribal liaison), tribes, BIA, counties, and cities all participate to discuss transportation issues and needs. The planning



council meets on a regular basis to discuss issues on transportation projects of concern to tribal communities. At these meetings, current projects and their status are discussed and members of the council are allowed the opportunity to voice concerns on any projects.

**ISSUES:**

Protection/Preservation of Tribal-Sensitive Resources

**ISSUES IN CONTEXT:**

In this state, vegetation along the roadside can be an issue and there is a need to control and eliminate the vegetation for proper clearing of the roadside. Vegetation management often involves the spraying of herbicides along the roadway. Tribes in the area do not approve of herbicide spraying to manage the roadside vegetation and expressed this concern at a planning council meeting.

**PRACTICES:**

Meetings, Formal Agreements, Planning Organizations

**PRACTICES IMPLEMENTED:**

The issue of vegetation management was discussed through the planning council. In order to resolve the issue, a breakout effort is underway. The state DOT and tribal liaison are working on model agreements with the tribes regarding roadside vegetation management to address the issue of herbicide use.

**OUTCOME:**

It is the goal of the model agreements to meet the needs of all tribes.

## **6: Uniform Signage Brochure Created by Planning Council**

**SOURCE:** Interview

**SITUATION:**

In the North Central United States, there was a need for road signage within the state and on tribal land to be uniformly designed in order to improve driver understanding of signs on tribal lands. One of the reasons this need was identified was because of drivers' misconception and confusion about tribal identification based on local business names. For example, a large misconception existed that tribal casinos were named after tribes, and for this reason the public incorrectly identified many tribe names as being the casino names. A hypothetical example may be that a casino is named the "High Lands Casino" and, because of this name, the misconception would exist that the tribe who owned the casino was the "High Lands Tribe," when in fact this was just a name for the casino and is not the tribe's name.

**ISSUES:**

Sovereignty, Funding

**ISSUES IN CONTEXT:**

Correct signing of tribal land and businesses, like casinos, was identified as being a way to bring better understanding of tribal locations, businesses, etc. Correct signing of tribal reservations and locations recognizes unique tribal identity and sovereignty.

**PRACTICES:**

Meetings, Formal Agreements, Planning Organizations, Standards and Handbooks

**PRACTICES IMPLEMENTED:**

In order to create standards for signs that may appear on tribal lands and increase motorists' ability to identify tribes and roadway signs on tribal lands, the issue was brought to the state planning council. The planning council includes representatives from the FHWA, local TTAP, DOT (including the tribal liaison), tribes, BIA, counties, and cities within the state. This served as a

forum for the tribes and state to work on a standard for road signing on tribal lands. The planning council discussed types of signs that required standardization and created a brochure with sign standards (like shape, size, color, etc.) that could be utilized by the tribes when creating signing on tribal land.

**OUTCOME:**

In addition to the standards developed for these signs, the sign brochure and standards also allows for the use of tribal logos on their respective signs. Tribes within the state can now utilize the signing brochure to achieve uniform and easy to understand signing within reservation boundaries, while maintaining unique identity by incorporating tribal symbols.

## **7: Corridor Study Identifies Tribal Needs**

**SOURCE:** Interview

**SITUATION:**

In the Southwest United States, there existed a state road corridor in need of many transportation improvements that passed through various tribal lands. Improvements along the corridor would require the management of multiple stakeholders' needs and interests.

**ISSUES:**

Sovereignty, Land Ownership, Funding

**ISSUES IN CONTEXT:**

The corridor in need of improvements was located in an area the passed through land belonging to multiple tribes. Any proposed improvements would require consultation with all affected tribes. A comprehensive study of the entire corridor was needed to identify needs and concerns of each of the tribes. The state did not have the funds necessary to complete the much-needed study.

**PRACTICES:**

Meetings, Tribal Consortiums, Formal Agreements, Planning Organizations, Resource Sharing

**PRACTICES IMPLEMENTED:**

In order to fund the project, the state and one of the tribes in the region shared the cost. To conduct the study, the tribal consortium within the state, including representatives from each of the tribes in the state, oversaw the consultants hired to complete the study. Consultants worked to examine and list all needs within the corridor as well as perform traffic studies within the corridor. Estimates were then obtained for each of the "needs" identified by each of the tribes and a business plan was created.

**OUTCOME:**

After the business plan was completed, the list of needs was prioritized based on available funds and the source of the funds. Once a tribe obtained funding, the business plan and list of needs could be referenced to determine what need identified within the corridor should be addressed first.

## **8: Planning for Bike Tour**

**SOURCE:** Interview

**SITUATION:**

In the Southwest United States, a competitive bike race was being held across the southern portion of a state. This competitive and highly publicized race included proposed routes that traversed tribal lands.

**ISSUES:**

Sovereignty, Land Ownership

**ISSUES IN CONTEXT:**

Race organizers proposed the route for the competitive bike race, which included routes that traversed tribal lands. The race organizers did not consult with tribes affected by the race, nor did they prepare disaster plans to be implemented in the case of an emergency on tribal land during the proposed race. Tribes affected by the proposed routes were concerned with the effect that the race might have on emergency response on tribal lands and tribal law enforcement. Because the race required some routes to be closed, tribes wanted to ensure that emergency access to tribal lands was not affected.

**PRACTICES:**

Meetings, Tribal Liaisons and Coordinators, Emergency Preparedness Planning

**PRACTICES IMPLEMENTED:**

In order to inform the tribes of the planned routes, the city employed a tribal liaison and provided the tribes with the planning information. The tribal liaison then held one-on-one meetings with each of the tribes to discuss concerns regarding the bike race and its routes.

During the individual meetings, many of the tribes expressed concerns with the bike routes planned through tribal lands and areas affecting the tribes. The largest concern was with how an emergency on tribal land would be handled. The tribal liaison and staff worked with the bike tour manager to coordinate activities and ensure that law enforcement would be on site for the race and that any potential emergencies on tribal land would be the top priority. Activities were coordinated between bike tour personnel and tribal police during the event.

**OUTCOME:**

Once the tribal concerns and issues were addressed, the bike tour was completed. In this case, the tribal liaison served as the central person for coordinating events and ensuring that all concerns were addressed prior to commencement of the bike race.

## **9: Environmental Consultation Manual**

**SOURCE:** Interview

**SITUATION:**

In a state in the Northwest United States, a model for consulting on environmental issues was created for transportation projects affecting or of concern to tribal communities. The environmental consultation model was created by the state in consultation with the tribes to be used by project staff.

**ISSUES:**

Protection/Preservation of Tribal Sensitive Resources, Confidentiality of Tribal Sensitive Resources

**ISSUES IN CONTEXT:**

On projects affecting or of concern to tribal communities, environmental consultation is crucial for project success. Cultural properties and resources must be considered during the planning process. In order to formalize environmental consultation, a model to be used by all parties was needed.

**PRACTICES:**

Data Collection and Analysis, DOT Standards and Handbooks, Meetings, Formal Agreements

**PRACTICES IMPLEMENTED:**

In creating the model, state DOT staff met with each tribe to discuss environmental consultation needs and requirements. State staff held individual meetings with tribes and the tribal transportation staff to discuss environmental consultation opportunities that the tribes wanted to have available. Once feedback was received from the tribes, the state developed recommenda-

tions for an improved environmental consultation process, which was refined by the tribes. The model was developed from the recommendations to provide guidance by state DOT staff and tribal staff.

***OUTCOME:***

The model designed is user friendly for all persons working on the project. The model provides guidance to DOT staff as to when and how to consult with the tribes and informs the tribes as to what to expect from the DOT, the approaches taken for consultation and the reasoning behind each approach.

## **10: State Road Turnover to County**

***SOURCE:*** Interview

***SITUATION:***

In the North Central United States, a road within the state highway system did not connect to another state road. The road, referred to as a stub-end road, is a low-volume road and serves as the main access to the headquarters of a tribal government in the area. Because the road was a stub-end, the state was no longer interested in owning and maintaining the roadway. It was the state's intention to turn the road over to the county, which was interested in taking ownership of the road. In addition, the tribe was interested in transportation improvements on the roadway because of existing safety issues and concerns.

***ISSUES:***

Sovereignty, Land Ownership, Funding

***ISSUES IN CONTEXT:***

Ownership of the stub-end roadway needed to be turned over from the state to the county. Funding was also needed for the roadway improvements to be made along with the road turnover.

***PRACTICES:***

Meetings, Planning Organizations, Resource Sharing

***PRACTICES IMPLEMENTED:***

The project was worked by the regional planning council in which stakeholders from the state, cities, county and tribe participated. The planning council focused on opportunities to partner and capitalize on similar interests and needs. The stakeholders then pooled resources to be able to complete the project. The tribe assisted in land acquisition and with other environmental issues and surveying, the county performed the design and managed the construction of the project and the state funded construction.

***OUTCOME:***

The road was reconstructed to address safety issues and was turned over to the county by the state. The county then accepted the road as a future maintenance responsibility of their system.

## **11: Public Transit for Tribal Land**

***SOURCE:*** Interview

***SITUATION:***

In the North Central United States, a tribe expressed a need for public transportation on the reservation. The regional area around the tribal land already had an extensive public transportation system, but it did not serve the reservation.

***ISSUES:***

Sovereignty

**ISSUES IN CONTEXT:**

The tribe needed the public transportation system, but did not have the funding to create the system. The tribe also needed the proposed public transportation system to connect to local systems in order to fully serve tribal members.

**PRACTICES:**

Meetings, Planning Organizations, Resource Sharing, Investigation of Alternatives

**PRACTICES IMPLEMENTED:**

In order to create public transportation for the reservation, the tribe secured a federal grant and was able to leverage state dollars for matching funds. The grant had limitations, so the regional planning council assisted the tribe in executing the use of the grant for public transportation.

In order to maximize the transportation system, it was the tribe's desire to tie its transportation system into existing systems to convey tribal riders to businesses and services in the area. In order to do that, the tribe needed a station connection for the reservation. However, all public transportation systems in the area were county-based, and some counties had limited services within their systems. Through the use of the federal grant, the tribe acquired four buses, but the stem lacked a station. In order to address this problem, the tribe worked with the regional planning council to investigate alternatives. The regional planning council consisted of stakeholders from the tribe, county and local townships. Through the council, it was identified that a railroad station that was no longer in use could be used for the station. The station was in the middle of the city and would address the needs of the tribe as well as assist in the development and improvement of the city.

**OUTCOME:**

The tribe was able to utilize this opportunity and brought the railroad station into their transportation network while tying into existing public transportation systems in the area. The system not only connects the reservation to public transportation, but also connects three counties. The new integrated system provides interstate travel, inter-county travel, and connections for the tribe to all of the major shopping districts and businesses.

**12: Ten-mile Road Construction**

**SOURCE:** Interview

**SITUATION:**

In the Northwest United States, a major roadway reconstruction began 10 years ago, and has been progressing through continued collaboration and consultation between state and tribal officials through each phase of the project. It has been a difficult project in both design and scope, as the reconstruction is for a lengthy segment of roadway.

**ISSUES:**

Protection/Preservation of Tribal Sensitive Resources, Confidentiality of Tribal Sensitive Matters

**ISSUES IN CONTEXT:**

During the planning and construction of the project, the tribe involved in the reconstruction identified areas of great concern because of traditional practices. The sites that were identified as sensitive by the tribe because of traditional cultural practices would not have otherwise been identified as a site of concern by the state archaeologist. While the site was culturally and historically important to the tribe, it was not identified as a historical site by the state or federal government. In addition to the site having cultural and historical significance to the tribe, its location and specific use were confidential.

**PRACTICES:**

Meetings, Tribal Liaisons and Coordinators, Formal Agreements, Investigation of Alternatives

**PRACTICES IMPLEMENTED:**

When consultation began, state officials, including the state archaeologist, consulted with tribal elders to talk about concerns, what needed to be done and how the site could be avoided. Additionally, to include high-level state staff consulting with the tribal elders, the environmental coordinator for the project and the resident engineers were included in consultation meetings. This allowed for tribal officials to express their concern directly to the engineers on the project.

In order to alleviate the issue of protecting the site for traditional practices, tribal officials and the engineers on the project visited the field and marked off the area for protective fencing. Because the exact site location could not be disclosed, the fencing protected the area of the site and all plans for the project did not show areas of concern so that sensitive sites were not identified. This aided in keeping the site area and purpose confidential throughout the project, and all project participants who were aware of the confidentiality kept the information confidential.

**OUTCOME:**

The project for the reconstruction of the highway is still ongoing and consultation through meetings with state and tribal officials continues.

**13: Bridge Project Streamlined**

**SOURCE:** Interview

**SITUATION:**

In the Northwest United States, a state and a tribe worked jointly on the reconstruction of a bridge. In order to complete the design and construction of the bridge, the state and the tribe executed a Memorandum of Understanding. The bridge was owned by the state but was located on the reservation. The bridge was a narrow, old truss bridge, and the state began the redesign of the bridge.

During the design phase of the project, there was a fatal accident and a critical structural member on the bridge was fractured. As a result of the crash, the old bridge had to be closed and motorists were detoured via a very long route around the bridge. This detour caused a great inconvenience to motorists and tribal members. The state and the tribe then worked on an accelerated design for a temporary structure to be used until reconstruction of the bridge was completed. In conjunction with the temporary design, the design for the new bridge was also accelerated and all parties involved joined together to make the project progress faster.

**ISSUES:**

Sovereignty, Funding

**ISSUES IN CONTEXT:**

One of the major issues with the erection of the temporary structure was obtaining an agreement from the Army Corps of Engineers. With little success in obtaining this agreement and appropriate permitting, the District Engineer contacted the tribal transportation office to ask for help in obtaining permitting from the Corps.

**PRACTICES:**

Meetings, Formal Agreements, Resource Sharing

**PRACTICES IMPLEMENTED:**

The tribal transportation office went to the tribal council for help. The tribal council contacted the Corps and obtained the permit within two days. The temporary bridge could then be constructed.

In order to complete construction of the new bridge, the state and the tribe shared their resources. The tribal pit source was utilized for rock materials and the tribe assisted in the hauling of materials. The tribe was also able to obtain funding for the bridge through the IRR.

**OUTCOME:**

The state assisted in administering the project to ensure that the project and the new bridge was reconstructed and opened within one year.

**14: Jurisdictional Issues Resolved at Summit**

**SOURCE:** Interview

**SITUATION:**

In a state in the Northwest United States, there exist many issues regarding highway safety, and differences between state and tribal safety regulations were causing a disconnect between laws on and off tribal land.

**ISSUES:**

Sovereignty

**ISSUES IN CONTEXT:**

The tribe's transportation code for the reservation was 50 years old, and penalties associated with tribal transportation regulations were out of date.

**PRACTICES:**

Meetings, Summits and Workshops

**PRACTICES IMPLEMENTED:**

In order to address safety and regulation issues, the state utilized safety funds to organize a summit. The summit was hosted on the reservation, and representatives from the state and tribe attended the summit. Attendees at the summit brainstormed on safety issues and ways to work together to improve safety on the highway system. Some of the issues that were discussed in the safety summit were regarding jurisdiction with law enforcement. Jurisdiction issues often arise with the overlap of law enforcement from the state, city, and tribe. Because of these issues and the inability to completely resolve them during the summit, breakout meetings were organized to address jurisdiction issues.

**OUTCOME:**

The state and the tribe worked with the US Attorney General's office and law enforcement to resolve jurisdiction issues. The parties are currently working on new requirements for reporting traffic violations between law enforcement offices. Both the state and the tribe have considered the safety summit a success and have hosted two thus far.

**15: Road Realigned to Avoid Fishing Resource**

**SOURCE:** Interview

**SITUATION:**

In a state in the North Central United States, reconstruction of a state roadway along a lake was needed because of safety issues with the existing alignment and desired expansion from a two-lane roadway to a four-lane roadway. Expansion of the roadway would affect the lake, which was considered an important resource to the local tribe.

**ISSUES:**

Protection/Preservation of Tribal Sensitive Resources, Land Ownership, Funding

**ISSUES IN CONTEXT:**

The tribe's communities lived in the vicinity of the lake, which would be affected by the proposed expansion. This lake is considered an important fishing resource to the tribe, and the tribe was concerned about the effects that the roadway expansion would have on that resource. In

addition, the lake attracted tourism to the area and was a popular spot for recreation. If the lake were affected by the project, tourism and recreation might also be affected.

**PRACTICES:**

Meetings, Formal Agreements, Investigations of Alternatives

**PRACTICES IMPLEMENTED:**

During the planning phase of the project, the state investigated alternatives for the proposed roadway as part of the state's formal scoping process. The parties involved, which included the tribe, DOT and other stakeholders, did not automatically agree on any of the proposed alternatives. In order for the project to commence, all stakeholders needed to come to a consensus on the preferred alternative. After several years and much discussion, an alternative was selected for the new alignment. The preferred alternative moved the alignment away from the lake to minimize potential effects. Following the alternative selection, work began on the Environmental Impact Statement (EIS). However, during the completion of the EIS, funding for the project was insufficient and the parties involved were unable to secure enough funding for the project.

**OUTCOME:**

While stakeholders involved in this project were able to come to a consensus on a preferred alternative, lack of funding put a stop to the project. Without the realignment, the old alignment will continue to be used and safety issues remain along that alignment. Because of these issues, the tribe and DOT are working on safety solution projects at different locations along the existing alignment.

## **16: Roadway Realigned to Avoid Cultural Resources**

**SOURCE:** Interview

**SITUATION:**

In the North Central United States, a city bypass project was proposed with the proposed alignment routed around the city. The alignment for the bypass passed through areas known to have potential significance to tribes. In order to identify any potential sensitive sites, the city and state entered into discussions with the local tribes as to the location of the alignment and any potential conflicts that it might have with tribal sites.

**ISSUES:**

Protection/Preservation of Tribal Sensitive Resources, Confidentiality Matters

**ISSUES IN CONTEXT:**

During consultations with the city and state, the tribes identified several sensitive sites that would be affected by the proposed alignment. The sites identified were culturally significant to the tribes because they contained many cultural resources. In particular, the tribes identified burial grounds that were located along the proposed alignment. In addition, a culturally significant creek was identified along the new alignment.

**PRACTICES:**

Meetings, Investigation of Alternatives

**PRACTICES IMPLEMENTED:**

The tribe expressed a desire to meet with the stakeholders in the project and discuss the issues at hand. This led to the formation of a committee that included stakeholders in the region of the project to discuss project alternatives so that the sites could be avoided. The tribe then worked with project designers to adjust the new alignment to minimize impacts on sensitive sites. The bypass alignment was then redesigned to avoid all identified sites along the project.



**OUTCOME:**

Although these steps mitigated the issues that came with the project, members of the stakeholders' committee recognized that construction of the new alignment might result in development of land in the vicinity. This possibility posed a threat to the cultural sites avoided by the new alignment. The state then worked with landowners and purchased protective covenants on the sensitive sites and burial grounds that were located in the area. As part of the committee consultation, stakeholders were able to look ahead and proactively protect the tribe's cultural sites.

**17: A Hundred-Mile Road Reconstruction**

**SOURCE:** Interview

**SITUATION:**

In the North Central United States, reconstruction of a 100-mile stretch of highway was listed in the state's STIP. At the annual discussion of the STIP, a tribe in the state that was affected by the highway expressed an interest in being involved in the project. After this first level of notification of concern to the state, other tribes also expressed an interest in the project. Meetings were then held between the state and the tribes to discuss the project amongst all stakeholders. In these project meetings, the tribes consulted with the state as a consortium, with the tribes consulting with each other and then consulting with the state as a group.

**ISSUES:**

Protection/Preservation of Tribal Sensitive Resources

**ISSUES IN CONTEXT:**

During regular meetings between project stakeholders, including a consortium of tribes, it was identified that the reconstruction of the 100-mile highway passed through some river valleys where sites of concern to the tribes were located. These sites had cultural and historical significance to them and many were used as cultural practice sites.

**PRACTICES:**

Meetings, Tribal Consortia

**PRACTICES IMPLEMENTED:**

The state began work with the tribes to identify the sites and avoid impact. The initial alignment of the proposed reconstruction impacted more than 20 sites. Designers worked with the tribes to modify the alignment in a manner that avoided all 20 of the sites in question. During the decision-making process, the tribes involved in the project worked as a group and came to a consensus for each decision to choose the one that best suited all parties rather than consulting on a one-on-one basis with the state.

**OUTCOME:**

The alignment only had to be redesigned slightly and avoidance of cultural sites brought all parties involved to agreement on the project.

**18: Historical Records Room Created by Tribe**

**SOURCE:** Interview

**SITUATION:**

A Northwestern tribe took initiative to track historical records and sites of the tribe. A staff member for the tribe proposed that a room be created for historical records. Because the tribe does not have a reservation, but rather has trust property, tracking of historical records assists in identifying sites that may be of concern to the tribe even in the case that the site is not on tribal trust land. In order to fund the project, staff members obtained grants from both the National Park Service and the state DOT. Using the grants, the tribe and its staff compiled information

from historical records by performing a literature review, investigating court documents and performing oral interviews. The information gained on historical and cultural sites has been mapped using Geographical Information System software to be stored in the historical records room. The project is ongoing, but already has significant information on historical and cultural records that can be utilized on new projects.

**ISSUES:**

Protection/Preservation of Tribal Sensitive Resources, Confidentiality of Tribal Sensitive Matters, Land Ownership

**ISSUES IN CONTEXT:**

After the tribe had the historical mapping project, the state DOT was operating a project for a new traffic signal near the tribe's trust land. An environmental review was performed for the project, and it was believed that site was free from any historical or cultural significance. When excavation for the signal project began, construction crew members discovered evidence of a burial site in the location of the proposed signal.

**PRACTICES:**

Data Collection and Analysis, Meetings, Emergency Preparedness Planning

**PRACTICES IMPLEMENTED:**

The DOT quickly contacted the tribe to determine whether the burial site was in the tribe's historical records. Tribal staff then consulted with historic records and identified that the site was indeed a tribal site. The record for this site had been obtained during initial document review when the historical records room was established. The tribe and DOT were able to meet and discuss the historical/cultural sites in the area and the best locations for the DOT to utilize for the proposed signal project.

**OUTCOME:**

The use of the tribe's historical records room saved time and cost for the DOT by allowing for an investigation of sites based on historical records rather than by archaeological work. It allowed the DOT and tribe to work together to mitigate the issue and determine future processes for identification of tribal sites and disaster planning when such sites are encountered on a project.

## **19: FHWA Involvement to Select Preferred Alternative**

**SOURCE:** Interview

**SITUATION:**

In the North Central United States, a county was working on the reconstruction of a roadway in a location where a local tribe had purchased a significant amount of property. Per the state's scoping process, the county performed an alternative analysis for potential alignments for the project. The county selected a preferred alternative, but the tribe affected by the project did not agree with the alternative selected. Despite the fact that the tribe did not agree with the alternative and there was not consensus on how the project should be completed, the county proceeded with the selected alternative. Although the tribe was consulted with, the county did not take into account the concerns of the tribe and began work on the Environmental Impact Statement.

**ISSUES:**

Land Ownership Issues

**ISSUES IN CONTEXT:**

During review of the EIS, the local office of the FHWA stopped the project because of the lack of consensus on the proposed alternative. Although the county had already begun work on the project and its desired alternative, the FHWA identified the need to have all stakeholders in agreement as to the selected alternative, including the tribe affected by the project.

**PRACTICES:**

Meetings, Investigation of Alternatives

**PRACTICES IMPLEMENTED:**

The FHWA became involved in the project to obtain the tribe's opinion on the project and proposed alignment. The tribe expressed opposition to the proposed alignment and identified one of the county's previously identified alternatives as more desirable. In order to resolve the disagreement as to the alignment that should be used, the FHWA met with the county, the DOT and the tribe. All parties discussed the alternatives and issues present. In this meeting, the tribe identified the alternative that was preferred and all other parties agreed on a new alternative.

**OUTCOME:**

The project is now underway and all stakeholders are in agreement on the proposed alignment.

**20: Resource Sharing for Traffic Signal**

**SOURCE:** Interview

**SITUATION:**

In a Southwestern state, a need was identified for a signalized intersection of a state route and a tribal route. The department's policy on signalized intersections is that the state will share the cost of the project with the local entities. The tribe involved in the project was not comfortable with its portion of the project cost, but recognized the need for the project. The parties involved then signed formal agreements to determine each party's responsibilities on operation and maintenance of the signal.

**ISSUES:**

Land Ownership, Funding

**ISSUES IN CONTEXT:**

Midway through the design of the intersection, it was determined that additional right-of-way beyond the original scope of work was required from the tribe. A larger turning radius than was originally planned was required.

**PRACTICES:**

Meetings, Tribal Liaisons and Coordinators, Formal Agreements, Resource Sharing, Investigation of Alternatives

**PRACTICES IMPLEMENTED:**

In order to discuss right-of-way issues, the state worked with the tribe through the tribe's technical transportation staff. State personnel, including the project manager for the intersection project, conducted in-person meetings with the tribe and technical staff regarding these issues. During right-of-way meetings and discussions, all parties established a common understanding that, regardless of the interests involved, the project in question was needed for safety. The tribe recognized the state's need to install the traffic signal. Tribal technical staff then became involved in the review process for the project. Throughout the duration of right-of-way negotiations, the state project manager researched funding alternatives to alleviate some of the financial burden on the tribes. In researching alternatives, the project manager studied crash data for the existing intersection in question and was able to identify alternative funding allotted for safety improvement projects. This additional money made the project possible and was a large incentive for the tribe to allow the additional right-of-way needed by the state.

**OUTCOME:**

The state constructed the project successfully and on time. In order to define each party's responsibilities for the operation and maintenance of the road, all parties entered into a formal agreement that the state and local government would maintain and operate the signal. Success

was attributed in this case to state personnel and tribal technical staff working closely together throughout the project as well as the state's ability to identify alternative funding for the project.

## **21: Coordination between a Tribe and a Metropolitan Planning Organization**

**SOURCE:** Adapted from U.S. Department of Transportation, Federal Highway Administration: <http://www.fhwa.dot.gov/hep/tribaltrans/ttpcs/maine.htm>.

### **SITUATION:**

Penobscot Nation (population 2,129) largely resides on Indian Island on the Penobscot River in Eastern Maine. Their homeland covers approximately one-third of the area that is now the State of Maine. Today, the Penobscot Nation's landholdings consist of approximately 150,000 acres in numerous parcels throughout the state.

The Bangor Area Comprehensive Transportation System (BACTS) is the metropolitan planning organization (MPO) for the Bangor metropolitan area. Housed within the Eastern Maine Development Corporation (EMDC), BACTS is governed by a policy committee and a technical committee. The primary goal of the BACTS policy and technical committees is to provide for the safe, economical, efficient, effective and convenient movement of people and goods over a multimodal transportation system compatible with the socioeconomic and environmental characteristics of the region.

BACTS primarily assists the Penobscot Nation by providing technical assistance through activities such as traffic counting. BACTS also operates a bus system that runs in the proximity of Indian Island. In 1999, EMDC worked with the Penobscot Nation to examine the tribe's road and transportation systems. At that time, EMDC inventoried the roads and condition of roads, and made suggestions for the development of bicycle and pedestrian facilities. However, since no roads on Penobscot Nation land are classified above a local road, few opportunities have arisen for BACTS to become directly engaged in projects on tribal lands.

### **ISSUES:**

Land Ownership, Sovereignty

### **ISSUES IN CONTEXT:**

The Penobscot Nation's current landholdings have been significantly diminished from the area of their homeland. Tribes are often hesitant to participate in an MPO due to concerns about tribal sovereignty. However, the Penobscot Nation lacks a transportation planner, leading to a need for technical assistance on some projects.

### **PRACTICES:**

Meetings, Workshops, Resource Sharing, Emergency Preparedness Planning

### **PRACTICES IMPLEMENTED:**

- The policy and technical committees organized by BACTS meet separately every other month, in addition to more issue-specific meetings held at other times. Since 2000, the Penobscot Nation has regularly participated in these meetings.
- The policy and technical committees develop the draft Transportation Improvement Plan (TIP). The Penobscot Nation participates as a full voting member representing the Penobscot Nation.
- Through the Penobscot Nation's relationship with BACTS staff, the tribe's prior experience with EMDC, and with FHWA's encouragement, members of the Penobscot Nation became involved with BACTS on policy and planning issues and joined its policy and technical committees.
- The tribe corresponds regularly with FHWA and BACTS regarding ongoing training and workshop opportunities, and has found it helpful to know who to contact when issues arise.

Maine DOT's Local Technical Assistance Program assists the tribe by providing information on issues such as snow and ice training for roads. This training has improved the tribe's capacity to control snow and ice on roads and prepare for winter storms.

**OUTCOME:**

The coordination efforts have helped increase MPO staff understanding of tribal transportation needs and improved the relationship between BACTS and the Penobscot Nation. In addition, members of the Penobscot Nation have found it valuable to be involved with the BACTS policy and technical committees and to have a vote on issues that affect the entire region. While the projects discussed at the BACTS meetings generally are not located directly on the Penobscot reservation, the tribe has a vote on projects involving the surrounding community, which also affect the tribe. In addition, members of the tribe can easily obtain information and share concerns by participating in these meetings and using the resources provided at the meetings. Increased coordination also allows the Penobscot Nation to take advantage of negotiated bulk purchasing for road maintenance. Knowledge sharing and capacity building occurs formally through the policy and technical committee meetings and informally through project tours and discussions.

## **22: Programmatic Agreement for Tribal Consultation (PA) in North Dakota**

**SOURCE:** Adapted from “In Their Own Light; A Case Study In Effective Tribal Consultation” by Stephanie Stoermer of the Environment Technical Services Team, FHWA Resource Center

**SITUATION:**

The North Dakota DOT (NDDOT) and the FHWA North Dakota Division in consultation with numerous tribes developed and implemented a collaborative programmatic approach to tribal consultation. While considering NDDOT transportation project delivery needs, this approach fully addresses tribal concerns about cultural resources that could be affected by NDDOT projects.

Section 106 of the National Historic Preservation Act (NHPA) of 1966 set forth a review process that seeks to balance historic preservation concerns with the needs of federal undertakings by requiring consultation among the agency officials and other parties with an interest in the effects of the respective undertaking on historic properties. Amendments to the NHPA in the late 1980s and early 1990s recognized and expanded the role of Indian Tribes, Alaska Natives and Native Hawaiian Organizations (NHOs) in the Section 106 review process.

When the regulations implementing Section 106 (36 CFR 800, Protection of Historic Properties) were revised to clarify the role of Indian Tribes, Alaska Natives, and NHOs, a provision was included that encourages federal agencies to enter into agreements with Indian Tribes and NHOs that would specify how they would implement responsibilities under the revised regulations. These agreements can address all aspects of a tribe's or NHO's participation and can provide for additional rights or concurrence in agency decisions in the Section 106 review process.

Nearly a decade passed between the 1992 NHPA amendments and the promulgation of the final version of the implementing regulations. Understanding the who, when, where, and precisely how to conduct meaningful consultation was problematic at best during this period.

**ISSUES:**

Cultural Competency, Protection of Tribal Sensitive Resources, Confidentiality of Tribal Sensitive Matters, Funding Issues

**ISSUES IN CONTEXT:**

Despite the long-standing federal mandate requiring government-to-government consultation with tribes and evolving federal policies, many federal agencies had little or no experience with tribal consultation nor did they have formal tribal consultation procedures in place. Even when federal agencies were successful in their attempts to identify and consult with the appropriate tribe or tribes, many tribal governments' limited resources were often overextended—not

only by requests for consultation but by increasing demands from individual or even multiple agencies for information regarding traditional religious and cultural properties. Differing communication styles and cultural perceptions, as well as tribal concerns about the release of confidential information to the public regarding these sensitive properties, made building mutual trust and establishing long-term relationships difficult.

**PRACTICES:**

Formal Agreements, Meetings, Data Collection, Analysis & Distribution, Resource Sharing, DOT Handbook

**PRACTICES IMPLEMENTED:**

Using a proactive approach to developing, executing and implementing an agreement document with multiple tribes, NDDOT and the FHWA North Dakota Division, in active collaboration with tribes in North Dakota, South Dakota, Montana and Minnesota, tailored the consultation process to meet the needs of all the consulting parties. The resulting Section 106 Programmatic Agreement for Tribal Consultation in North Dakota (PA) takes the intent of the law to heart and gives tribal people a seat at the table in consideration of cultural resources that may be affected by transportation projects.

- Following the 1992 NHPA amendments, NNDOT's cultural resource personnel traveled to the reservations within North Dakota to meet with tribal leaders, building trust and forging personal and professional relationships that would lay the foundation for future consultation efforts.
- Individual consultation took place with 11 tribes from eight reservations on a project-by-project basis. NDDOT representatives visited each reservation, provided documentation, discussed the issues and then summarized the discussions on a consultation form that all signed. NDDOT would then follow-up according to the terms of the respective signed agreement.
- Once relationships with tribal representatives were firmly established, NDDOT recognized the need to formalize the process according to the needs of the respective tribes.
- The idea to work together as a group came from the consulting tribes, who felt that with their varying expertise they were stronger and more effective when functioning together. Taking a collaborative approach to consultation would also reduce the demands on their time. NDDOT and FHWA encouraged this approach since it supports mutually beneficial goals and could lead to more predictable outcomes.
- A prototype agreement document was developed only after NDDOT had consulted with the appropriate tribal representatives on each of the eight reservations as to what each envisioned in terms of effective consultation.

Under the terms of the final Programmatic Agreement:

- A Tribal Consultation Committee (TCC) was established, composed of representatives from each consulting tribe, NDDOT and FHWA. The TCC agreed to meet at least twice a year to discuss projects and policy with regard to NHPA compliance.
- To facilitate the TCC discussions, NDDOT provides a packet of information summarizing upcoming projects prior to a scheduled meeting.
- Provisions for onsite consultation provide flexible guidelines for TCC participation and encourage tribal elders, or other individuals identified by the TCC who have specific knowledge of the area, project or resource, to attend additional onsite meetings.
- NDDOT continues to meet with the consulting tribes individually at each committee members' individual offices at least once per year and will continue to consult with the tribes or committee members who are identified at the meetings as contacts for further consultation in regard to a specific project, resource or issue. NDDOT continues individual consultation with any tribe that does not become a party to the PA.
- Access to the current Statewide Transportation Improvement Program (STIP) is provided to the TCC so that the tribes' cultural resource personnel receive advance notification of

the nature, scope and location of future projects. This gives the TCC the opportunity to review projects well in advance of project development.

- The PA incorporates measures to ensure that spiritual and cultural information that is identified as sensitive remains confidential and protected from public disclosure upon request.
- FHWA, NDDOT and the consulting tribes agreed to commit time, provide opportunities and personnel, and seek funding for cross-training related to tribal and transportation cultural resource issues. The goals of such cross-training include improving relationships, broadening understanding of cultures and perspectives and building trust.
- NDDOT also developed a Cultural Heritage Manual, which addresses cultural differences that can be a deterrent to coming to an agreement or achieving consensus. The manual is designed to incorporate modifications as needed to expedite the consultation process.
- NDDOT hosts the TCC meetings and covers the travel expenses for up to two representatives from each participating reservation. This long-term commitment fosters continued involvement of tribal representatives who might not otherwise be able to participate.

The agreement places emphasis on jointly developed avoidance measures for important cultural resources as the primary option. However, if avoidance is impossible or impractical—given other concerns of equal importance—NDDOT and FHWA are committed to working with the tribes for an appropriate and respectful resolution of any unavoidable effects.

#### **OUTCOME:**

The PA is sensitive to tribal concerns and recognizes the inherent rights of the consulting tribes to retain and preserve those places that they value. It also affirms the joint commitment of NDDOT, FHWA and the consulting tribes to establish and sustain a relationship of mutual trust and respect through open communication and collaborative problem solving. The PA encourages early involvement of the consulting tribes in project planning by providing them with the opportunity to review projects well in advance of project development.

The PA looks beyond project-specific consultation and provides a solid framework for establishing and achieving common goals. Foremost among these goals is building and maintaining relationships through open communication in a culturally sensitive setting. The steps involved in developing and implementing a programmatic agreement of this nature should be viewed as part of a continuum that begins by building relationships, sharing knowledge and then progresses to ongoing collaboration in an atmosphere of mutual respect and trust.

## **23: Building Technical Capacity for Tribal Consultation and Communication**

**SOURCE:** Adapted from U.S. Department of Transportation, Federal Highway Administration: <http://www.fhwa.dot.gov/hep/tribaltrans/ttpcs/arizona.htm>.

#### **SITUATION:**

Arizona has the third largest Native American population in the United States, following California and Oklahoma. There are 22 federally recognized tribes in the state, which comprise approximately five percent of the total state population. Tribal lands are located throughout the state, and Native Americans can be found in all fifteen Arizona counties.

Founded in 1952, and established as a private, non-profit corporation in 1975, the Inter Tribal Council of Arizona, Inc. (ITCA) provides independent analysis, information, and advocacy vital to Native American community self-development. The goal of ITCA and its commitment to its 19<sup>9</sup> member tribes is to ensure the self-determination of tribal governments through participa-

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<sup>9</sup>Though there are 22 federally recognized tribes in Arizona, two tribes, the San Juan Southern Paiute and the Pueblo of Zuni, are not involved in transportation planning in Arizona. The San Juan Southern Paiute Tribe does not currently have a reservation land base, and the Pueblo of Zuni Tribe is headquartered in New Mexico. The Navajo Nation, through its Division of Transportation, works directly with ADOT and FHWA, separate from ITCA.

tion in the development of the policies and programs that affect their lives. Membership consists of elected officials from each tribe.

**ISSUES:**

Cultural Competency, Land Ownership, Funding

**ISSUES IN CONTEXT:**

The numerous tribes involved are characterized by extreme differences in both tribal land holdings and population. By building the technical capacity of state transportation planners and tribal members, Arizona Department of Transportation (ADOT) and ITCA have been able to undertake effective consultations within the transportation planning process.

**PRACTICES:**

Regional Conferences, Meetings, Presentations, Tribal Liaisons & Coordinator, Standards and Handbooks, Newsletters

**PRACTICES IMPLEMENTED:**

Arizona's consultation efforts have been shaped by ongoing technical "capacity building" activities being undertaken both by ADOT and by tribal communities through ITCA. Both organizations are undertaking efforts to build planners' awareness of state and tribal opportunities for coordination and the processes for effective partnerships. Key mechanisms have been the development of dedicated staff positions within ADOT to focus on tribal transportation issues and the development of an ITCA Transportation Working Group to share information among staff.

- Since 1999, ADOT has established highly visible tribal liaison positions in several sections of the department that interact frequently with tribal governments. The ADOT tribal liaisons created the Arizona Tribal Strategic Partnering Team (ATSPT) as a body committed to improving the efficiency and outcomes of tribal consultation in the state through internal changes at the department headquarters.
- In 2002 and 2003, the ATPST held a series of three State-Tribal Transportation Forums in the north, south and western regions of the state in order to stimulate dialogue between people working on various transportation processes in Arizona. Proceedings from each forum were prepared and distributed to all the participants.
- The ATPST is working on developing a partnership training guide, a statewide tribal consultation policy and a transportation resource guidebook to assist tribal planners and leadership in identifying additional opportunities for involvement with the state.
- ITCA recognized the key role that transportation plays in connecting tribal members and non-members alike. Consequently, ITCA created an intertribal Transportation Working Group in 1998, and hired a dedicated transportation coordinator to oversee the group.
- The ITCA Transportation Working Group holds meetings in Phoenix on a quarterly basis to maximize participation by tribes and federal and state agency guests.
- The group also holds special meetings at reservations when requested by a particular tribe. Each of the 19 ITCA member tribes has a designated liaison to attend the working group meetings and report information to its tribal council and planning staff. In addition, the working group coordinator prepares meeting summaries and newsletters that are sent to each tribal government and its liaison. This has been a very effective way to provide information to transportation planners at small tribes where travel costs and resources are often issues.
- The working group coordinator organizes each working group meeting and acts as a facilitator, in addition to delivering presentations on current issues and inviting guest speakers to present. Regular guest attendees from ADOT, FHWA and BIA usually provide status updates on agency issues or respond to questions raised at earlier meetings.

**OUTCOME:**

Tribal consultation in Arizona has been streamlined due to the efforts of the ITCA Transportation Working Group and the ADOT Tribal Strategic Partnering Team. The working relationships



developed through these technical capacity building efforts have yielded tangible results. Statewide planning processes now emphasize early and ongoing tribal involvement, as demonstrated by the active involvement of tribal members and planners in the most recent update to the statewide Long Range Transportation Plan. In addition, tribes have learned about opportunities for technical assistance and funding from the state.

## **24: Development of a Regional Transit District**

**SOURCE:** Adapted from U.S. Department of Transportation, Federal Highway Administration: <http://www.fhwa.dot.gov/hep/tribaltrans/ttpcs/newmexico.htm>

### **SITUATION:**

The North Central region of New Mexico is one of the most diverse in the state, characterized by stark economic and demographic contrasts. Within the Native American community, the pueblos are located in close proximity to two relatively major urban areas, Santa Fe and Espanola. Traffic congestion stemming from dispersed commercial, research and residential areas has created a demand for transportation services far exceeding that of other comparably rural areas of New Mexico.

In 1996 the New Mexico Department of Transportation (NMDOT) assessed an improvement project to the US 84/US 285 corridor to relieve traffic congestion in the area between Santa Fe and Espanola. The three tribes in the region found road widening to be an unacceptable element in each of the proposed alternatives because it would require additional right-of-way from the pueblos.

Tribal leaders lobbied NMDOT to study alternative transportation demand management (TDM) measures. The FHWA conducted a major investment study of the corridor. The Alternatives Analysis Report concluded that widening could be deferred through establishment of a park and ride system and other TDM measures. This collaborative process not only saved the NMDOT more than \$1-million in construction costs compared to the widening alternatives, but provided the tribes with more mobility options and access to additional economic development opportunities in the region.

Momentum gained through the highway improvement project and park and ride system proved to be important factors in the successful development of the North Central Regional Transit District (NCRTD). In March 2003, a Regional Transportation District (RTD) Act was signed into law, allowing for the creation of RTDs across the state. The NMDOT Research Bureau provided funding to the Alliance for Transportation Research Institute (ATRI) at the University of New Mexico to develop a NCRTD case study and model for district development that could be used by other RTDs developing across the state.

### **ISSUES:**

Land Ownership, Sovereignty, Funding Issues

### **ISSUES IN CONTEXT:**

The NCRTD is a regional transit planning organization that was planned and structured with involvement of representatives of all five of the Indian pueblos in the region and includes representatives from each of the Board of Directors.

### **PRACTICES:**

Investigation of Alternatives, Public Involvement, Regional Transit Districts, Tribal Moderators, Presentations, Meetings, Planning Organizations

### **PRACTICES IMPLEMENTED:**

- An NCRTD Organizing Committee was convened to proceed with the membership process and bylaws first. Public meetings were held within each members' jurisdiction to explain the benefits of an RTD and obtain written commitments signed by member governments.

Attention did not turn to the service plan until the organization had been defined to the satisfaction of all members and the district had been certified by the state.

- A “Voting Strength Analysis for NCRTD Members” was conducted using various methodologies and published on the RTD website for distribution among stakeholders. The analysis resulted in a weighted voting formula that lowers the relative voting strength of the larger members while providing the pueblos an equitable share.
- The Board of Directors also plans to amend the NCRTD bylaws to formalize the requirement that either the Chairman or Vice Chair of the Board come from a pueblo, with the other position to be filled by a non-pueblo member.
- Throughout the organizing process, ATRI and the Regional Development Corporation acted as facilitators by coordinating representatives’ input and presentations at committee meetings, investigating funding sources and conducting a voting analysis. Their unbiased involvement helped develop trust among members and avoid historical differences.
- Each NCRTD member signed a binding Member Contract tailored to its circumstances and financial commitments. Flexibility is provided in the resolution process to allow member pueblos time to analyze decisions and additional time to pass tribal resolutions on matters before voting.
- NCRTD holds regular monthly meetings to develop its service plan and explore funding options and other activities. Meetings rotate among member locations. The Eight Northern Pueblos Regional Planning Organization (RPO) sends a representative who has served as a technical resource for the RTD. NMDOT and FHWA also attend and have been helpful in suggesting potential funding sources and making NCRTD transit proposals a priority.

**OUTCOME:**

Structuring tribal involvement into the RTD organization enables tribes and other governmental entities to collaborate on transportation planning in an ongoing way. The NCRTD continues to benefit from taking a regional approach to transit, offering the most efficient service possible to the region’s residents. Tribal leaders recognize the NCRTD’s potential to deliver economic and community benefits.

## **25: Tribal Consortium Enhances Tribal/State Coordination Efforts**

**SOURCE:** Adapted from U.S. Department of Transportation, Federal Highway Administration: <http://www.fhwa.dot.gov/hep/tribaltrans/ttpcs/california.htm>

**SITUATION:**

There are 108 federally recognized Native American tribes located in California and 17 Native American reservations in San Diego County alone – more than any other county in the United States. Many of these reservations, however, are very small and have limited staff and resources for transportation planning. Although tribal territories require relatively little transportation planning on the reservations, tribal economic development efforts have intensified tribes’ use of the regional transportation infrastructure.

**ISSUES:**

Protection/Preservation of Tribal Sensitive Resources, Sovereignty, Land Ownership, Funding Issues

**ISSUES IN CONTEXT:**

In Southern California, Native American tribes, the California Department of Transportation (Caltrans) and the San Diego Association of Governments (SANDAG) are taking an active approach to building relationships and improving coordination in transportation planning.

**PRACTICES:**

Tribal Liaisons, Training, Resource Sharing, Planning Organization, Meetings, Workshops/Summits

**PRACTICES IMPLEMENTED:**

- Caltrans has developed a statewide framework for consulting with tribes and involving them in transportation planning at the state- and metropolitan-area level. This framework includes the formation of a Caltrans Native American Advisory Committee (NAAC), and the creation of guidelines for consultation with tribes in all transportation planning processes in the state.
- Caltrans has established a tribal liaison office that provides tribal consultation training to Caltrans staff and training to tribes on BIA and state requirements.
- Tribes in southern California have worked together to develop the Reservation Transportation Authority (RTA) to more effectively represent the interests of tribes in this region in working with the state. As of 2001, the RTA had 24 member tribes and has been very useful in bringing together the interests of diverse tribes and enabling them to pool resources to address common transportation goals. The organization also serves as a focal point for sharing information and a mechanism for improved communication between the tribes and Caltrans.
- Although Caltrans and other planning agencies are still required to hold consultations with each tribe, tribes that joined the RTA included in their bylaws that RTA would be given certain powers of authority to negotiate on behalf of tribes that belong to the consortium. The RTA has also become a venue for Caltrans staff to provide resources to help address tribal transportation planning issues.
- The Caltrans District 11 office and SANDAG regularly communicate with tribes through informal and formal meetings and conversations. Caltrans and SANDAG also have created an interagency ad-hoc planning group, which is attended by representatives from RTA and Native American liaisons for Caltrans, SANDAG and San Diego County. Additionally, the elected officials of SANDAG have been pursuing government-to-government relations with tribal nations in the region through its Borders Committee. The Borders Committee discusses policy issues related to trans-boundary planning issues from interregional, binational and tribal perspectives.
- Caltrans has worked with SANDAG to survey all of the tribes in San Diego County on their transportation needs and issues. The survey was completed in person and the results will be used as the basis for government-to-government dialogue and the inclusion of tribal concerns in various transportation planning documents, including the Regional Transportation Plan (RTP). Caltrans will bring the results of the survey back to the tribes and convene a technical workshop among tribal representatives and transportation managers from local and regional transportation staff to discuss potential issues and action items. Together, tribal and agency transportation staff will analyze the results and develop possible policy recommendations that will form the basis of discussions between elected tribal leaders and the SANDAG Board of Directors at a summit.

**OUTCOME:**

Increased and earlier involvement in the transportation planning process helps tribes play a more meaningful role in shaping project decisions and in developing projects that are more sensitive to the context of their lands and tribal transportation needs. Consortia such as RTA bring together the interests of diverse tribes and help pool resources to improve tribal transportation planning activities and coordination with other agencies. The benefits of this approach were exemplified by the coordination of a corridor study that was conducted cooperatively by the RTA and Caltrans District 11 in San Diego County to examine growth patterns of the tribes, provide an in-depth look at development along the route and aid in long-term planning for the area.

## **26: State/Tribal Planning Coordination Meetings Achieve Results**

**SOURCE:** Adapted from U.S. Department of Transportation, Federal Highway Administration: <http://www.fhwa.dot.gov/hep/tribaltrans/ttpcs/southdakota.htm>

### **SITUATION:**

Native Americans comprise approximately 9 percent of the total population of South Dakota, and enrolled members are located throughout the state. There are nine federally recognized Native American tribes located in mostly rural regions; none fall within the boundaries of designated South Dakota Metropolitan Planning Organizations (MPOs). Though tribal members are involved in MPO planning processes, coordination on improvements to state highways located on tribal lands is captured through the statewide planning process.

Transportation needs on reservations are addressed through the Indian Reservation Roads Transportation Improvement Program (IRR TIP) planning process. At the same time, the state's transportation agency conducts a similar planning process to develop the State Transportation Improvement Program (STIP).

### **ISSUES:**

Protection/Preservation of Tribal Sensitive Resources, Sovereignty, Funding Issues

### **ISSUES IN CONTEXT:**

Funding, design, construction and planning for projects within IRR TIP and STIP were traditionally done separately. The South Dakota Department of Transportation (SDDOT) held the first tribal coordination meeting in 1991, and the meetings have since evolved into a vital link between tribal and state transportation planners.

### **PRACTICES:**

Meetings, Public Involvement, Presentations, Sharing Resources, Grants for Funding

### **PRACTICES IMPLEMENTED:**

- Tribal leaders and transportation planners are alerted to the dates and locations for five public input meetings throughout the state.
- The STIP annual planning meeting is held each year in Pierre, SD, and includes representatives from each of the tribes, BIA, FHWA and SDDOT. SDDOT presents information on projects that are included in the current year's STIP. Then, the BIA representative and tribes present information on IRR projects they expect to be completed during the year. Lastly, participants identify projects where schedule coordination could support the use of shared resources or minimize road disruption.
- Through relationships fostered at the annual meeting, transportation planning has resulted in better outcomes for the state and tribes.
- The Lower Brule Sioux Tribe and SDDOT coordinated to improve SD 1806, which traverses tribal lands. The transportation planner from the Lower Brule Sioux Tribe was involved in the state project from the onset, through meeting mailings and phone contact, and receives frequent project status updates. The tribe was concerned about the level of funding proposed for the project and provided state officials with a proposal to use a "Forward Funding" system for the project, which would allow the tribe to pay for additional enhancements in coordination with the state's construction project.
- The SD 63 highway serves as a major connector through the Standing Rock Sioux reservation, and the tribe determined safety enhancements were necessary. The tribe approached SDDOT and FHWA officials at an annual STIP meeting with their concerns and asked that the state study the feasibility of improvements. SDDOT added the highway to the STIP as a priority project and then worked with the tribe to conduct the desired improvements utilizing funding that would otherwise have been unavailable. Effigies were discovered during the environmental review prior to construction. Through a cooperative agreement

between the BIA and SDDOT, the tribe conducted the cultural resource survey for the project. The right-of-way was cleared of artifacts, while respecting the dignity and land ownership of the Standing Rock Sioux Tribe.

- The Lower Brule Sioux Tribe approached SDDOT about developing a Native American Scenic Byway to follow the Missouri River. The proposed route needed improvements, and SDDOT received \$8.5-million of Public Lands Highways (PLH) discretionary grant funds, which were combined with state funds and IRR funds to grade and asphalt surface both roads. The route was officially designated the first section of Native American Scenic Byway in 1996 and a National Scenic Byway in 1998. A byway steering committee, composed of multi-agency partners and individual tribal participants, works to present visitors with culturally sensitive facilities and attractions showcasing tribal culture and history.

**OUTCOME:**

At least 12 projects in the past 10 years have been accomplished through coordination among local governments, SDDOT and tribal leadership. This project coordination saves both the state and the tribes up to \$500,000 per project. The annual meetings build on past coordination successes at the project level to provide a forum to address emerging issues and to identify new means for collaboration at the long-range planning level.

## **27: Partnership between Tribes and an MPO**

**SOURCE:** Adapted from U.S. Department of Transportation, Federal Highway Administration: <http://www.fhwa.dot.gov/hep/tribaltrans/ttpcs/washington.htm>

**SITUATION:**

Located in western Washington State, Thurston County has a population of more than 224,000 people and includes two tribes, the Nisqually Indian Tribe and the Confederated Tribes of the Chehalis Reservation. The Thurston Regional Planning Council (TRPC) is an intergovernmental board comprised of representatives from local government jurisdictions within Thurston County and these two tribes. TRPC serves as both the federally designated MPO and the state-designated regional transportation planning organization (RTPO).

In 2000, the county's transit agency, Intercity Transit, experienced a major reduction in revenue, which prompted them to significantly reduce transportation service and the service boundary. Through collaboration between the tribes and TRPC, transportation service was successfully funded through roughly equal parts of state rural mobility and Federal Job Access and Reverse Commute sources. The experience of restoring transportation service in the rural county laid an important foundation for both tribes to become more actively involved with TRPC.

**ISSUES:**

Funding Issues, Sovereignty

**ISSUES IN CONTEXT:**

The cooperative efforts made between TRPC and the two tribes have resulted in improved visibility of tribal needs in the county, improved regional coordination of projects, more complete data and an awareness of other common regional transportation needs.

**PRACTICES:**

Data Collection and Analysis, Meetings, Trainings, Grants for Funding

**PRACTICES IMPLEMENTED:**

- As members of TRPC, both tribes attend the council's monthly meetings, and each has a full vote on the council.
- The Chehalis Tribe was very involved in the development of the most recent Regional Transportation Plan (RTP). The Chehalis Tribe also was involved in the "Vision Reality Disconnect" project that looked at whether growth management policies were working as envisioned.

- TRPC now requires key staff members to attend the government-to-government training program offered by Washington State’s Governor’s Office of Indian Affairs, which covers cultural awareness and history.
- The Nisqually Indian Tribe transportation planner currently attends up to eight meetings a month at TRPC, representing the tribe on a range of issues.
- TRPC is also working toward formalizing a government-to-government policy with each tribe.
- Tribes contract with TRPC directly and indirectly through grants received from the state and other sources to conduct specific projects. The Confederated Tribes of the Chehalis Reservation contracted with TRPC to prepare the update of the Chehalis Reservation Transportation Plan. The Nisqually Tribe recently hired a planner to begin developing its first-ever comprehensive community plan and is working with TRPC to write their first long-range transportation plan, which will also incorporate a trails plan.
- The tribes and TRPC have worked to ensure that the reservations are consistently shown on all mapping products produced by TRPC. As a result of increased participation, the level of data available about the tribes in the TRPC’s annual statistical report, The Profile, has increased substantially.
- TRPC also produces a Population and Employment Forecast, which is used extensively for planning purposes in the region. Due to tribal participation in TRPC’s Forecast Stakeholders group, data from the two reservations will be included in the forecast for the first time and will be used to update the region’s land use analysis through the Buildable Lands Program.
- TRPC has set aside an allocation of their Federal Surface Transportation Program (STP) funds, called the Rural Community Support Program (RCSP), for the tribes and smaller rural communities who will have the opportunity to apply for those funds without competing against the larger jurisdictions that have more grant-writing staff resources.
- TRPC assisted the Nisqually Tribe with the examination of their non-motorized transportation needs and helped to ensure previously allocated grant funding was not rescinded by the Washington State Department of Transportation (WSDOT). Subsequently, in 2005, the Nisqually Pathway was dedicated as part of the trails system.
- One-on-one interviews, in some cases, provided more complete information than other transportation survey methods. Face-to-face meetings generally are more successful in establishing the tribes’ trust.

**OUTCOME:**

Tribal involvement in a metropolitan planning organization can yield tangible results and benefits to the tribe in terms of influence on planning studies and projects that directly address tribal transportation needs. Additionally, support from the political strata, such as is represented by TRPC members, can ensure that tribal needs and concerns are heard.

## **28: Public Involvement Prompts Creative Solutions**

**SOURCE:** “The Road to Better Transportation Projects: Public Involvement and the Nepa Process”

**SITUATION:**

US-93, north of Missoula in western Montana, faces increased congestion from traffic heading toward Glacier National Park. The Montana Department of Transportation (MTDOT) proposed to take a 56-mile, two-lane segment of Route 93 and change it into a five-lane, undivided highway. This segment runs through the unique cultural landscape of the Flathead Indian Reservation, including territory in the heart of the Rocky Mountain ecosystem and the Ninepipe Wetlands Area, an ecosystem with thousands of kettle ponds supporting unique and fragile species of wildlife.

Under NEPA’s rules, the Confederated Salish and Kootenai tribal government and grassroots citizen groups such as Flathead Resource Organization (FRO) were able to challenge MTDOT — first, on the validity of the initial Environmental Assessment (which evaluated only a seven-mile stretch of the 56-mile project) and later on the Environmental Impact Statement (EIS). Federal agencies are

required to make and evaluate EIS reports in order to determine the consequences of a proposed action, analyze action alternatives, and share the results with other agencies and the public.

**ISSUES:**

Protection/Preservation of Tribal Sensitive Resources, Land Ownership Issues

**ISSUES IN CONTEXT:**

By forcing the DOT to do an EIS, tribal members and citizens made the DOT develop creative solutions and consider alternatives for the highway, which could affect safety, environmental issues and lack of protection for tribal culture and family farms.

**PRACTICES:**

Investigation of Alternatives

**PRACTICES IMPLEMENTED:**

- A Federal Highway Administration decision stipulating that the tribes and the Montana Department of Transportation must agree on the project design prompted them to hire landscape architect Jim Sipes of Jones & Jones (a firm based out of Seattle, Washington).
- Sipes helped create a final design agreed to by all government entities involved. Sipes' design addressed safety, environmental and cultural concerns about sprawl.
- Slow curves in the roadway are planned along the most scenic areas of the route to discourage speeding and follow the contour of the land.
- One mile of the highway will be relocated around the Ninepipe Wetlands area.
- Additionally, an unprecedented 42 wildlife crossings and wildlife fencing will be added at the request of the tribes to reduce harm to area wildlife.
- Amanda Hardy, a research ecologist at the Western Transportation Institute at Montana State University, was involved with the design and evaluation of the wildlife crossings. She said NEPA allowed "the public and agencies an opportunity to comment" so alternatives like these could be pursued.

**OUTCOME:**

"US-93 became a project dramatically different than what the DOT had ever done," said Sipes. "NEPA gave us more weight so our voices could be heard — without it, US 93 would have been a standard four-lane highway with destructive impacts to the community," he added.

## **29: Operations for the Minnesota Office of the State Archaeologist**

**SOURCE:** "Annual Report, Fiscal Year 1999," Dudzik, M., State Archaeologist, Office of the State Archaeologist, Minnesota, <http://www.leg.state.mn.us/docs/2009/mandated/090548.pdf>

**SITUATION:**

The story of Minnesota's past spans thousands of years, from a time when the area's first peoples hunted elephants along the margins of continental glaciers, through the historic period of logging, farming and milling. This fascinating story continues to this day.

The State of Minnesota has supported efforts to identify, protect and interpret its archaeological resources for more than 100 years. Beginning with surveys to identify American Indian earthworks and campsites in the late 1800s, this involvement continues today as an element of both private and public construction processes.

**ISSUES:**

Protection/Preservation of Tribal Sensitive Resources

**ISSUES IN CONTEXT:**

The mission of the Office of the State Archaeologist (OSA) is to foster, among its diverse public, an appreciation of the state's archaeological resources through research, stewardship and

education; to provide quality technical information, support and service to individuals and agencies; and to promote, among archaeologists, the very highest standards of professional conduct.

**PRACTICES:**

Presentations, Public Involvement, Regional or State Level Conferences, Investigation of Alternatives, and Data Collection, Analysis and Distribution

**PRACTICES IMPLEMENTED:**

- In January 1998, the OSA presented an innovative proposal to the Native American Graves Protection Act (NAGPRA) Review Committee, National Park Service, in Washington, DC (Dudzik 1998). This proposal described a model for repatriating Minnesota's "culturally unidentifiable" Native American remains and associated grave goods to the tribal communities presently residing in the geographic areas from which the remains and materials originated (cf. National Park Service 1998). In November 1998, the Review Committee advised the OSA that it had endorsed the proposed model, which established a national precedent for repatriation efforts (McManamon 1998).
- The OSA provides interested groups and individuals with information about the State's archaeological past and the process of archaeological research. Presentations to professional, interagency and public audiences included:
  - Prehistoric Mortuary Practices in Minnesota: A Comprehensive Review of Excavated Sites
  - Visions in Stone: An Overview of Minnesota's Rock Art
  - Case Study 21-HE-0064: the Role of the Office of the State Archaeologist
  - Cultural Resources in Minnesota and State Laws - "Protecting America's Past – Archaeological Resources Crime"
  - An Overview of Minnesota's Archaeology and Minnesota Statute 307.08 - The Private Cemeteries Act
  - Culture through Artifacts
  - Burial Sites Preservation Program
  - A state-wide pre- and protohistoric mortuary practices and patterns study is also ongoing (per interagency agreement with the Minnesota Department of Transportation).
  - The development of an interactive website, which provides local governments/land managers direct access to burial site location information was anticipated for implementation in 2000 (per interagency agreement with the Land Management Information Center, Minnesota Planning).
  - OSA, as Conference Chair, hosted the joint Plains and Midwest Archaeological Conference in November 2000 (per interagency agreement with the Office of Special Events Planning, DOER).
- Planned activities also include:
  - Continuing research on the mortuary practices and patterns of prehistoric and protohistoric Indian peoples.
  - Publication of the article, Burial Practices and Patterns in Prehistoric Minnesota: A Comprehensive Review of Excavated Mound Sites, in a volume commemorating the 50th anniversary of Effigy Mounds National Monument.

**OUTCOME:**

This on-going research has already proven useful for anticipating, identifying and avoiding potential burial areas in advance of construction/development projects. Providing access to this information via the interactive website provides enhanced protection of these sensitive areas.

**30: Tribal Consultation**

**SOURCE:** "Federally Recognized Ohio Tribes And FHWA-Ohio Division: Tribal Consultation April 12, 2005"



**SITUATION:**

The FHWA Ohio Division, with assistance from the Ohio Department of Transportation (OHDOT) sponsored a workshop for Federally Recognized American Tribal Governments located in the State of Oklahoma and surrounding states that are recognized as having ancestral ties to Ohio. The workshop was intended to strengthen government-to-government relationships and streamline the coordination of Ohio transportation programs and projects with the tribal governments in both Ohio and Oklahoma. The workshop was held in Tulsa, Oklahoma, on April 12, 2005.

**ISSUES:**

Cultural Competency, Protection/Preservation of Tribal Sensitive Resources, Sovereignty

**ISSUES IN CONTEXT:**

The workshop focused on streamlining the coordination process by establishing a mutually acceptable consultation process and exploring the development of written MOUs with the tribes.

**PRACTICES:**

Presentations, Summits/Workshops, DOT Standards and Handbooks, Formal Agreements

**PRACTICES IMPLEMENTED:**

- Each workshop attendee was presented with a workshop notebook of information compiled by OHDOT and FHWA, consisting of pertinent federal and state regulations, contacts at agencies and tribes, maps, etc.
- The workshop opened and closed with a prayer from a tribal representative, and included the following topics:
  - Introductions, Purpose, and Expectations
  - Overview of Section 106 Process
  - Overview of OHDOT's Project Development Process (PDP) and organizational structure
  - Consultation Discussion
- A goal of the workshop was to find out what information each tribe wants to receive, when they want to receive it, and how they want to receive it. A questionnaire was designed to determine each tribe's level of interest regarding certain project types, resource interests, etc, and was given to each tribe. The tribes were invited to provide any additional information on or attached to the questionnaire, and were informed that FHWA and OHDOT did not expect to receive the questionnaires back at the meeting; rather it was expected that each tribe would provide information later.
- Another goal was to determine acceptability with the tribes of OHDOT continuing to manage the administrative, project specific tasks on behalf of FHWA, given that OHDOT has the staff to do so. This in no way removes FHWA from its responsibility for government-to-government relations with the tribes, but OHDOT will provide project information directly to the tribes and FHWA staff contact.
- The tribes requested that OHDOT staff build personal relationships with them by calling on the telephone or using email, which will help keep the contact lists updated.
- The tribes in general preferred to maintain an informal agreement; therefore FHWA and OHDOT agreed not to pursue the development of a MOU at this time.
- FHWA and OHDOT continue to consult with the tribes on all EA (Environmental Assessment) and EIS (Environmental Impact Statement) level major projects. FHWA and OHDOT also continue to consult with the tribes on minor projects where the roadway is on new location and when archaeology sites have been identified and found eligible for the National Register through consultation with the State Historic Preservation Office. Tribes requested that FHWA and OHDOT streamline paperwork and give them the bottom line.
- Tribes requested that when finding human remains during construction, the first choice is to leave the remains in place; if they have to be moved, they should be buried as close as possible to where they were found, and findings should be documented and kept as confidential as possible.

**OUTCOME:**

This workshop was a new beginning to building relationships with Indian Nations. The consultation process helped streamline the environmental process in Ohio and support FHWA's "environmental streamlining initiatives." Continuing to build relationships with each of the tribes will allow for more efficient, and, ultimately, more effective consultation.

**31: Public Involvement Handbook**

**SOURCE:** Adapted from the Florida Department Of Transportation (FDOT) (<http://www.dot.state.fl.us/planning/training/pitraining.shtm>) and the Federal Highway Administration (<http://www.fhwa.dot.gov/safetealu/summary.htm>)

**SITUATION:**

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Previously, the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 required states and Metropolitan Planning Organizations (MPOs) to involve the public to a much greater extent in transportation decision-making than under previous law.

When ISTEA expired in 1998, it was replaced by the Transportation Equity Act for the 21st Century (TEA-21), which continued to place strong emphasis on public involvement, including tribes. SAFETEA-LU retained all of the public involvement language from the previous acts and added new requirements, including the development of an MPO Public Participation Plan in consultation with interested parties, and the use of electronic methods and visualization techniques to provide information to the public.

Recognizing the important role of public involvement in developing an efficient transportation system where projects move forward smoothly, the Florida Department of Transportation (FDOT) developed the Public Involvement Handbook. This handbook provides specific techniques, ideas and examples to help FDOT project managers and engineers, consultants, MPOs, and other transportation partners fulfill both the letter and the spirit of FDOT's public involvement policy.

**ISSUES:**

Sovereignty

**ISSUES IN CONTEXT:**

The FDOT Public Involvement Handbook provides techniques and methods for public involvement practitioners to encourage meaningful public participation in the development of a transportation system that meets the needs of Florida residents, visitors, and tribes.

**PRACTICES:**

DOT Standards and Handbooks, Public Involvement

**PRACTICES IMPLEMENTED:**

The Public Involvement Handbook includes the following content areas:

- FDOT's approach to public involvement and the legal foundation for this approach.
- Introduction to the public involvement process to use in conjunction with sociocultural effects evaluations in the Efficient Transportation Decision Making (ETDM) process.
- Assistance in coordinating a full public involvement program: creating public involvement goals and objectives, identifying the audiences, developing a set of general strategies, fleshing out the approach with specific techniques, documenting the results, and evaluating the entire outreach effort.
- Steps taken to evaluate public involvement techniques, measures to quantify success rates, and strategies to improve the public involvement process.

- The three appendices contain:
  - Tools and Techniques - gathered from Public Involvement Techniques for Transportation Decision Making, a collection of techniques developed by the Federal Highway Administration.
  - Glossary - A list of acronyms and glossary to assist the practitioner in defining and explaining complex transportation jargon in easily understandable language.
  - Resources - A listing of public involvement resources to highlight research efforts and offer ideas for complex projects requiring additional public involvement support.

The handbook addresses public involvement from planning through Record of Decision. Later revisions will include Design, Right-of-Way, Construction and Maintenance.

**OUTCOME:**

Active public involvement leads to transportation improvements that meet community needs and desires, provide greater acceptance of projects, engender a sense of community and enhance agency credibility. Public involvement builds a credible and trusting relationship between the transportation agency and the community it serves through partnering, outreach, active listening and two-way communication. Understanding the relationship between transportation decisions and the community will minimize conflict and help resolve potential problems.

## **32: Sociocultural Effects Evaluation Handbook**

**SOURCE:** Adapted from the Florida Department of Transportation (FDOT) (<http://www.dot.state.fl.us/emo/pubs/sce/sce1.shtm>)

**SITUATION:**

Beginning in the Mid 1990s, federal and state transportation agencies have refocused their efforts to involve communities when evaluating the sociocultural effects (SCE) of proposed transportation actions. These efforts include more extensive public involvement, better training and stricter adherence to regulations, instructional manuals, and other guidance for transportation professionals.

SCE Evaluation is a proactive process to ensure that community values and concerns, including those of tribes, receive adequate attention during transportation development. The evaluation process is an integral part of project planning and development. The process focuses on a transportation project's potential effects on social, economic, land use, mobility, aesthetic, and relocation issues. In addition, it provides that human values and concerns receive due attention.

**ISSUES:**

Cultural Competency, Protection/Preservation of Tribal Sensitive Resources, Sovereignty

**ISSUES IN CONTEXT:**

The SCE Evaluation process involves affected communities and citizens, as well as transportation planners and decision-makers, to evaluate the potential effects of a transportation action on a community and the quality of life of the citizenry.

**PRACTICES:**

DOT Standards and Handbooks, Public Involvement, Investigation of Alternatives

**PRACTICES IMPLEMENTED:**

The SCE Evaluation Handbook provides guidance and assistance to the Florida Department of Transportation (FDOT) and all others involved in conducting SCE Evaluations. The handbook describes the process of analyzing the potential sociocultural effects of a transportation action on a community, assessing the degree of effect this action may have, and determining if mitigation and/or avoidance measures are warranted.

The Handbook is structured to identify the legal mandates supporting SCE Evaluation, enumerate the six sociocultural effects issues, and define the process of SCE Evaluation. The Handbook

explains the SCE Evaluation process and describes the process for study area identification within which to apply the SCE evaluations. Guidance is included to enable the collection, organization and assessment of data relative to the SCE Evaluation process, and to prepare a Community Characteristics Inventory. Methods are described to analyze the SCE issues and assess the degree of effect of a proposed transportation action on the community. Finally, techniques are suggested to resolve consequences of the transportation action in cooperation with the affected community.

The six appendices contain:

- Glossary - a list of words, phrases, and acronyms to assist in defining and explaining complex transportation jargon.
- Legal Authority - federal statutes, regulations, policies, technical advisories, and executive orders relevant to transportation planning and project development.
- Title VI/Civil Rights - guidance while performing the SCE evaluation in order to understand the implications of Title VI/Civil Rights issues.
- SCE Considerations - a list of 54 considerations developed to provide a basis for addressing social, economic, land use, mobility, aesthetic, and relocation issues.
- Resources - applicable resources providing additional information for conducting thorough SCE evaluations. This section also includes guidance for suggested scope elements necessary to evaluate sociocultural effects in the planning and project development phases.
- District Presentations - case study presentations that exemplify the role of public involvement and SCE Evaluation in the transportation process.

**OUTCOME:**

As FDOT continues to adapt and implement the SCE Evaluation process, project delivery and the quality of life of affected communities will be enhanced.

### **33: Intertribal Summit**

**SOURCE:** Adapted from “Proceedings of the FHWA Pennsylvania Division Intertribal Summit, September 10–12, 2003” and “Pennsylvania Transportation and Tribal Consultation Newsletter,” Issue 3: Winter/Spring 2005

**SITUATION:**

Formal consultations with federally recognized Native American tribes under Section 106 of the National Historic Preservation Act (NHPA) are a significant undertaking and an important responsibility. The success or failure of those consultations can have dramatic effects on the efforts of a Federal Highway Administration State Division and its state-agency partners to successfully deliver transportation projects.

The Pennsylvania Division of the Federal Highway Administration (PA-FHWA), in cooperation with the Pennsylvania Department of Transportation (PENNDOT), hosted its first-ever Intertribal Summit meeting on Section 106 issues September 10-12, 2003, in Harrisburg, PA. Previous tribal summits were conducted by Minnesota (2002, 2003), Idaho (2002), Iowa (2001), New Mexico (1999), and Washington (annually since 1994), and provided a basis for planning the Pennsylvania Summit.

**ISSUES:**

Protection/Preservation of Tribal Sensitive Resources, Confidentiality of Tribal Sensitive Matters, Sovereignty, Land Ownership Issues

**ISSUES IN CONTEXT:**

A tribal summit can help prepare the path federal agencies and federally recognized tribes must travel together, leading to effective and streamlined consultation, sound decision making, efficient project delivery, and solid stewardship of the past.

**PRACTICES:**

Presentations, Trainings, Regional/State Level Conferences, Meetings, Formal Agreements

**PRACTICES IMPLEMENTED:**

Important goals identified for the intertribal summit were as follows:

- Provide an opportunity to define and shape mutual concerns and interests, and identify opportunities to streamline and strengthen the consultative process early in its development.
- Afford an important opportunity to cultivate the person-to-person relationships and trust between FHWA, transportation department management and staff, and tribal leaders and members that will facilitate effective and efficient consultation.
- Afford the tribes an opportunity to familiarize themselves with the role of FHWA and with FHWA and transportation department procedures, and to help them identify and prioritize the projects and processes that concern or interest them. Concurrently, the summit also allows FHWA and state DOT staff to familiarize themselves with individual tribal histories, organizations, concerns, staffing, procedures and priorities.
- Provide a forum for an exchange of views and information about homelands, and help define a “road map” for curation and treatment of artifacts.

Additional lessons learned from the summit included:

- Funding - Familiarize yourself with applicable purchasing regulations and guidelines, and talk with your purchasing and fiscal staff to be certain that the specific goods and services needed can be procured with federal funds.
- Planning - Establish goals and expectations for the summit that will help frame the program, e.g. establishing a Memorandum of Understanding (MOU), providing information, or facilitating introductions. Involve the tribes early in the planning process and maintain regular contact with them.
- Developing the program – Events might include meetings, discussions, and field trips to nearby sites of significance to all of the invited tribes.
- Venue – Select a venue consistent with the goals of the summit and conducive to a relaxed and productive exchange of information, views and suggestions.
- Meals - Useful and important interaction can and does take place over meals. Shared meals also help to make visitors feel welcome and relaxed.
- Caucuses and discussions – Use of a professional facilitator experienced with tribal summits and both the Native American and transportation communities was effective. Allow opportunities for individual representatives to be heard, and clearly explain and define transportation terminology, acronyms, procedures and regulations.

In response to requests received during the Summit, the PA-FHWA and PENNDOT met with eight of the federally-recognized tribes involved in Pennsylvania Section 106 consultation in their own states. The purpose of these meetings was to continue learning about each other and to strengthen the relationships between them. Discussions focused on how to better streamline the current Section 106 tribal consultation process to work more effectively.

**OUTCOME:**

Since the Intertribal Summit, PA-FHWA and PENNDOT have continued to build on their consultative relationship with the fifteen federally-recognized tribes that have expressed interest in this state. PENNDOT District archaeologists requested tribal consultation on approximately 80 projects in 2004.

**34: Tribal Transportation Planning Guide**

**SOURCE:** Adapted from “Tribal Transportation Planning Guide For Washington State,” the Washington State Department of Transportation (<http://www.wsdot.wa.gov/tribal/>) and Northwest Tribal Technical Assistance Program News Bulletin, “Washington State Publishes Guide For Tribal Participation With Ewu Support” ([http://www.ewu.edu/groups/cbpanwattap/announcements/ws\\_tribalguideannouncement.pdf](http://www.ewu.edu/groups/cbpanwattap/announcements/ws_tribalguideannouncement.pdf))

**SITUATION:**

The Washington State Department of Transportation (WSDOT) maintains government-to-government relations with 35 federally-recognized tribal governments. Twenty-nine tribes are located in Washington State; the additional six tribes have reservations outside the state, but have traditional homelands, treaty rights or other interests within the state.

The first state/tribal conference in the country was held in December, 1993, between the Washington State Department of Transportation (WSDOT) and leaders of 26 of the 29 recognized tribes located in the state. The tribes at that meeting asked for a guidebook to assist them with understanding and participating in WSDOT planning and programs and in working together to meet transportation needs. That guide was completed in 1995 and became a national model for state/tribal planning.

Updated in 2004, the guide continues to chronicle the transportation programs, accomplishments, and collaboration of tribes and the state.

**ISSUES:**

Cultural Competency, Protection/Preservation of Tribal Sensitive Resources, Sovereignty, Land Ownership, Funding Issues

**ISSUES IN CONTEXT:**

The Washington State-Tribal Transportation Planning Guide provides a resource to Tribes, to the WSDOT, and to the general public to support and encourage participation, collaboration and consultation of the Washington tribes with WSDOT in tribal transportation planning, program development and implementation.

**PRACTICES:**

Data Collection, Analysis & Distribution, DOT Standards & Handbooks

**PRACTICES IMPLEMENTED:**

The planning guide provides an overview of tribal transportation issues, unique relations and recognition between Washington state and the tribes within the state, and the programs and mechanisms to identify and apply for state funding for which tribes are eligible<sup>10</sup>.

The guidebook has six sections covering the following content areas:

- Overview of Tribal Transportation – including federal and state policies to recognize and address tribal sovereignty
- Planning Resources – the need for transportation planning and planning resources available to tribes
- Tribal Transit – tribal program planning and funding
- Financial Resources
- Policy Development Resources
- Case Studies & Best Practices – documenting successful tribal/state programs, which are updated on a regular basis

Two supplements were also published, the “Tribal Transportation Planning Organization Project & Planning Resources Matrix” and “The Planning and Project Topic Index” to expand the value and use of the Guide.

The Guidebook is available in two formats – a hard copy bound book created as a desk reference and a web-based document. Live links in the web version connect to websites and resource documents that others maintain. This approach seeks to ensure that the most current background information is linked to the document.

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<sup>10</sup>Northwest Tribal Technical Assistance Program News Bulletin, “Washington State publishes Guide for Tribal Participation with EWU Support”, page 1.

**OUTCOME:**

Since 1993, the WSDOT has met with tribes annually to address mutually identified transportation issues. The guidebook continues to serve as a resource for tribes, WSDOT, and all parties to advance transportation programs and services and meet critical transportation needs.

### **35: Stakeholder Involvement Guidance and Public Involvement for National Environmental Policy Act (NEPA) Projects**

**SOURCE:** Adapted from “Stakeholder Involvement Guidance And Public Involvement Plan” by Colorado Department of Transportation

**SITUATION:**

Public involvement, including involvement with tribal stakeholders, is a key component of the environmental review and project development process. Federal laws and regulations establish some basic requirements for public involvement. Developing a public involvement process that is appropriate for the project and will lead to sustainable decisions requires careful planning and consideration and often requires elements that go beyond the basic federal requirements.

The Colorado Department of Transportation (CDOT) invested considerable resources, time, and talent in compiling detailed information about environmental issues, conducting environmental analysis, and preparing documents to comply with the National Environmental Policy Act of 1969 (NEPA). The NEPA Manual is a resource for CDOT staff, local agency representatives and consultants engaged in these efforts.

**ISSUES:**

Cultural Competency, Protection/Preservation of Tribal-Sensitive Resources, Sovereignty

**ISSUES IN CONTEXT:**

It is intended that CDOT staff, local agency representatives and consultants use the NEPA Manual to implement NEPA in an effective manner, producing more consistent, improved environmental documents that decision-makers may use to make well-informed transportation decisions.

**PRACTICES:**

DOT Standards & Handbooks, Public Involvement, Meetings

**PRACTICES IMPLEMENTED:**

Chapter 7 of CDOT’s NEPA Manual is dedicated to “Stakeholder Involvement Guidance and Public Involvement Plan.” It is intended to fulfill Federal Highway Administration (FHWA) requirements to submit a description of the public involvement component of plans, programs, and projects considered and undertaken by CDOT.

The chapter is organized into four main content areas:

- Public Involvement Overview – including the definition of stakeholders and purpose of public involvement, as well as information on tribal sovereignty and government-to-government consultations.
- Public Involvement Plan – steps for development of the plan and descriptions of key elements.
- Required Elements for NEPA Compliance – information on Environmental Impact Statements (EIS), Categorical Exclusions (CatEx), Environmental Assessments (EA), and public involvement when reevaluations and supplemental actions are necessary.
- Public Involvement Documentation – how to provide reasonable accommodations in fulfillment of the Americans with Disabilities Act of 1990 (ADA), requirements for public hearings, and the use of comment forms.

The Manual provides users with additional information and tools to assist with developing and implementing a public involvement plan:

- A list of federal regulations related to public involvement for transportation planning and project development.
- The history of public involvement.
- A list of additional resources and websites.
- Steps for developing a project public involvement plan.
- Public involvement plan development worksheets.
- Additional public involvement techniques and best practice examples.
- Sample comment form and newspaper notice.
- Guidelines for conducting open forum meetings and hearings.

The manual uses and references other than DOT, Federal Highway Administration, and Council on Environmental Quality (CEQ) NEPA guidance where possible for consistency and efficiency.

**OUTCOME:**

Effective public involvement supports the development of sustainable decisions – which results in the development of projects that do not require significant redesign, are less likely to end up being litigated, are able to obtain all necessary permits, and are financially responsible.

### **36: Environmental Training for Maintenance Staff**

**SOURCE:** Adapted from NCHRP Project 25-25 (04) “Environmental Stewardship Practices, Procedures, and Policies for Highway Construction and Maintenance” by the National Cooperative Highway Research Program ([http://environment.transportation.org/environmental\\_issues/construct\\_maint\\_prac/compendium/manual/2\\_1.aspx](http://environment.transportation.org/environmental_issues/construct_maint_prac/compendium/manual/2_1.aspx))

**SITUATION:**

State transportation agencies are increasingly adopting a wide array of stewardship and environmental protection and enhancement practices, many on a voluntary basis. Regulatory agencies, insurers, and interest groups also favor adoption of construction and maintenance practices that protect or enhance the environment.

In a 2002 survey by the National Cooperative Highway Research Program (NCHRP), almost half of the 50 state transportation agencies indicated they have begun to train maintenance staff on environmental regulations, issues, and Best Management Practices (BMPs). Environmental regulations provide protection to environmental resources, including tribal resources.

**ISSUES:**

Protection/Preservation of Tribal Sensitive Resources

**ISSUES IN CONTEXT:**

Many transportation agencies have developed stewardship programs to help maintenance staff protect the environment, which includes the protection of tribal resources, and to increase the efficiency of transportation projects.

**PRACTICES:**

Training, Presentations, Summits/Workshops, Regional or State Level Conferences

**PRACTICES IMPLEMENTED:**

Following are examples of specific programs developed for training of maintenance staff on environmental issues and stewardship:

*Oregon DOT (ORDOT) Environmental Outreach and Training for Maintenance Staff*

Elements of this training program include environmental orientation for new employees, monthly/quarterly manager team meetings, winter pass foremen annual meetings, annual field



visits, hazardous materials training, erosion and sediment control training, fish passage training, and training on ORDOT's Resource and Restricted Activities Zone maps for district roads. The department also relies on participation in professional symposiums/conferences and videos it has developed, including "Road to Recovery: Transportation Related Activities and Impacts on Salmon," and a new video being made on calcium magnesium acetate (CMA): "CMA: A valuable tool for winter operations and total storm management." ORDOT also trains staff through continuing education classes and systematic trials of new products.

*Mississippi DOT (MSDOT) Maintenance Training for Facility Environmental Compliance and Illicit Discharge Detection and Elimination*

MSDOT is developing training for all maintenance employees as part of a proactive facility environmental auditing program, to ensure that environmental standards are maintained. Topics will include shop "housekeeping" practices, grounds, stockpiles, hazardous material disposal and storage, recycling, and other maintenance practices. MSDOT has also developed training courses for maintenance pertaining to erosion control and illicit discharge detection and elimination. MSDOT is scheduled to start an inspection plan for locating and eliminating illicit discharge coming onto MSDOT right-of-way in nine counties in the state.

*WSDOT Environmental Training for Construction Inspection and Maintenance*

WSDOT has an environmental training program that encompasses all WSDOT staff. The Endangered Species Act (ESA) Maintenance Training Program gives maintenance staff the skills to stay in compliance while performing maintenance activities on the roadway. The WSDOT Environmental Policy Statement and the WSDOT Environmental Management System guide the environmental training program. The Policy, among other things, commits WSDOT to comply with all applicable environmental laws and regulations as well as to provide staff with appropriate training targeted to the Department's environmental responsibilities.

**OUTCOME:**

In addition to protecting the environment, DOTs have efficiency reasons for pursuing stewardship practices. Raw material usage, energy consumption, waste generation, storage of materials, environmental mitigation, maintenance of construction sites and the final facilities and roadsides all require a significant investment of financial resources. Efficient, effective, and environmentally conscious use of these resources can yield both financial and ecological benefits.

### **37: Environmental Training for Construction Staff**

**SOURCE:** Adapted from NCHRP Project 25-25 (04) "Environmental Stewardship Practices, Procedures, and Policies for Highway Construction and Maintenance" by the National Cooperative Highway Research Program ([http://environment.transportation.org/environmental\\_issues/construct\\_maint\\_prac/compendium/manual/2\\_1.aspx](http://environment.transportation.org/environmental_issues/construct_maint_prac/compendium/manual/2_1.aspx))

**SITUATION:**

In 2002, 24 state Departments of Transportation (DOTs) reported performing general natural resources sensitivity and/or regulatory training for engineers and/or construction. Approximately 60 percent offered engineers and construction staff general training in the National Environmental Policy Act (NEPA) – which calls for the consideration of tribal resources, – public involvement, the DOT's environmental process, and Best Management Practice (BMP) maintenance and water quality considerations.

**ISSUES:**

Protection/Preservation of Tribal Sensitive Resources

**ISSUES IN CONTEXT:**

Many transportation agencies have developed stewardship programs to help construction staff protect the environment and increase the efficiency of transportation projects.

**PRACTICES:**

Training, Presentations, DOT Standards & Handbooks, Summits/Workshops, Regional or State Level Conferences

**PRACTICES IMPLEMENTED:**

Following are examples of specific programs developed for training of construction staff on environmental issues and stewardship:

*New Jersey DOT (NJDOT) and NJ Associated General Contractors (AGC) Stewardship Practices*  
NJDOT is currently developing contractor training and meetings with its contractors to discuss good stewardship practices. The New Jersey AGC has become an active participant in the Federal Highway Administration's National Quality Initiative program, signing quality initiative partnering agreements with the NJDOT and the New Jersey Department of Environmental Protection (NJDEP) with the goal of keeping transportation projects environmentally friendly and obtaining timely environmental permits. The AGC founded the Construction Industry Advancement Program to educate contractors about business issues, including designing environmentally friendly projects.

*Mass Highway Standards and Expectations for Contractors*

The Massachusetts Department of Environmental Protection (DEP) and Mass Highway are providing a workshop on the National Pollutant Discharge Elimination System Construction General Permit, regulatory requirements and DOT expectations for contractors. The workshop was presented to Construction Industries of Massachusetts (CIM), an advocacy organization of construction contractors in Massachusetts. Workshop presentations were also conducted at meetings of the Massachusetts Association of Conservation Commissions (local wetlands regulators), identifying construction issues, methods, requirements, and successful erosion control BMPs in order to familiarize local regulators with Mass Highway work, so that permit conditions can meet both construction and environmental needs.

*Associated General Contractors of Illinois (AGCI) and Illinois DOT (IDOT) Contractor Outreach on Erosion & Sediment Control*

The AGCI and IDOT worked together in developing a seminar series on erosion and sediment control. The seminar was aimed at helping highway contractors and government employees understand the effects of the Environmental Protection Agency's Phase II Stormwater Regulations. A total of 10 one-day seminars were held, with more than 1,400 people attending. The seminar series was especially effective because it tailored information to Illinois geography and IDOT best practices. Co-training highway construction contractors and state government employees in the same forum ensured that everyone heard the same message. Workbooks were developed for all participants with information from the presentations. This seminar series is one of several joint public/private training efforts undertaken by AGCI and IDOT.

**OUTCOME:**

In addition to protecting the environment, DOTs have efficiency reasons for pursuing stewardship practices. Raw material usage, energy consumption, waste generation, storage of materials, environmental mitigation, maintenance of construction sites and the final facilities and roadsides all require a significant investment of financial resources. Efficient, effective, and environmentally conscious use of these resources can yield both financial and ecological benefits.

### **38: Joint Training for Contractors, Construction Environmental Supervisors and Maintenance Staff**

**ENVIRONMENTAL SUPERVISORS AND MAINTENANCE STAFF**

**SOURCE:** Adapted from NCHRP Project 25-25 (04) "Environmental Stewardship Practices, Procedures, and Policies for Highway Construction and Maintenance" by the National Cooperative

Highway Research Program ([http://environment.transportation.org/environmental\\_issues/construct\\_maint\\_prac/compendium/manual/2\\_8.aspx](http://environment.transportation.org/environmental_issues/construct_maint_prac/compendium/manual/2_8.aspx))

**SITUATION:**

In the mid 1990s the Utah Department of Transportation (UDOT) decided the agency needed to try to enhance contractors' understanding of environmental issues in construction.

**ISSUES:**

Protection/Preservation of Tribal Sensitive Resources

**ISSUES IN CONTEXT:**

UDOT developed a class on temporary erosion and sedimentation control and other environmental issues that may arise in construction. Contractors and UDOT construction crew inspectors are invited to attend the course, as are UDOT designers and maintenance staff. While the current case study does not specifically involve tribes in the planning or delivery of the training opportunity, it provides an example of joint training on related issues, such as cultural resources.

**PRACTICES:**

Training, Presentations, DOT Standards & Handbooks

**PRACTICES IMPLEMENTED:**

UDOT's one-day class includes an overview of UDOT's environmental process and Clean Water Act and water quality regulations in particular. UDOT introduces contractors to erosion and sediment control basics and the standard drawings and Best Management Practices (BMPs) that UDOT has available, as well as the agency's erosion and sediment control manual. Contractors practice developing their own Stormwater Management Program Plan and review inspection points.

While the class spends the most time on water quality, it also addresses the National Environmental Policy Act (NEPA), threatened and endangered species issues, and what to do if the contractor encounters a cultural resource. Archaeological and prehistoric sites, cultural and paleontological clearances are covered. Contractors and staff are familiarized with the 18 species on Utah's noxious weed list and expectations to minimize disturbance, reseed all disturbed areas promptly, regrading and weed spraying.

UDOT also reviews hazardous materials practices, fuel storage, waste oil handling and environmental clearances required for off-site work proposed by the contractor but not included in the contract. The latter section addresses environmental permitting concerns for off-site contractor needs such as for material sites, staging areas, office sites, water lines, holding ponds, stockpile locations, slope flattening, etc. Floodplain, farmland and air quality clearances are among those reviewed.

The contractor designates one person to be called an Environmental Control Supervisor (ECS) and the UDOT crew designates one as well. Jointly, these supervisors discuss environmental issues on-site, and decide inspection schedules, changes, and needed clearances on additional sites. UDOT's ECS is responsible for:

- Inspecting the project site for compliance with environmental permits.
- Ensuring that environmental protection measures in the plans are implemented on the project.
- Maintaining temporary erosion and sediment control measures.
- Modifying the Stormwater Pollution Prevention Plan as required.
- Obtaining additional environmental clearances for off-site work.
- Coordinating with the UDOT construction crew's ECS.
- Ensuring that all environmental mitigation commitments are followed on the project.

**OUTCOME:**

In addition to protecting the environment, DOTs have efficiency reasons for pursuing stewardship practices. Raw material usage, energy consumption, waste generation, storage of materials,

environmental mitigation, maintenance of construction sites and the final facilities and roadsides all require a significant investment of financial resources. Efficient, effective, and environmentally conscious use of these resources can yield both financial and ecological benefits.

### **39: Tribal Relations Symposium for Executive Leaders**

**SOURCE:** Experience

**SITUATION:**

Several project stakeholders sponsored a Tribal Relations Symposium for Executive Leaders. The Bureau of Land Management sponsored facilitation services for the Symposium. Symposium topics included historical background, trust responsibilities, Native American laws and policies, cultural sensitivity and effective communications. The last day of the symposium included a facilitated tribal listening session. The listening session provided tribal leaders the “opportunity to be heard” on issues that affected them and to “influence national and regional natural policies on tribal lands.” Subcontractors co-facilitated the listening session.

Meeting organizers facilitated an exchange of ideas and an increase in knowledge and awareness of one another’s cultural understandings and issues. More specifically, the listening session would allow key federal decision makers to hear directly from Indian tribes on important natural resource issues.

**ISSUES:**

Cultural Competency, Protection/Preservation of Tribal-Sensitive Resources, Sovereignty

**ISSUES IN CONTEXT:**

The session was designed to support the mission of the stakeholders’ Tribal Relations Team to “facilitate the development of mutual trust, effective communication and cooperation to improve government-to-government relations with tribes to address common natural and cultural resource issues in the Southwest.”

**PRACTICES:**

Meetings, Summits/Workshops, DOT Standards & Handbooks

**PRACTICES IMPLEMENTED:**

- Leadership from several federal agencies from the Southwest United States were invited to participate in the listening session, but because of the nature of the event there was no guarantee of who could remain and whether upper-management executives could participate.
- The two-hour listening session was planned during one of the last slots of a 2 ½-day seminar, and organizers feared participation may suffer.
- The facilitators assisted the team in developing a flier to serve as a “teaser” to increase awareness and interest in the listening session as well as a one-page comment form to supplement oral comments and to provide an alternative means for providing feedback.
- Lively discussions covered such topics as the need for trust, respect and cultural sensitivity; honoring time and the necessity to allow processes to work themselves through; the traditions of involving tribal members in decisions on a grassroots level; and the lack of collaboration between agencies, within agencies and among tribes.

**OUTCOME:**

A group of more than 60 federal and tribal representatives participated in the listening session. Next steps were identified at the conclusion of the listening session that challenged participants to continue working together and aim toward the development of a guidance manual that describes what works and doesn’t work for agency-tribal consultations and the inclusion of more tribes and federal agencies.

## **40: Forest Plan Revision**

**SOURCE:** Experience

### **SITUATION:**

In 2006, two National Forests, which included lands adjacent to tribal jurisdictions and lands of cultural interest to multiple tribes, began revision of their 1987 Land and Resource Management Plans under the new federal 2005 Planning Rule. The new rule required plans to be reviewed and updated at least every five years and to emphasize greater public collaboration, among other requirements. The three-year forest plan revision (FPR) process was divided into three phases. The National Forests contracted with a third-party facilitation team to assist in planning, to build capacity for, and to help facilitate collaborative work in the first half of Phase One.

Additionally, the design of Phase One needed to be a collaborative process, conducted with an eye toward the next two phases being conducted without the facilitation team's involvement. Training and guidance was needed for Forest Service personnel to enable them to take over the process after the facilitation team's involvement in Phase One.

### **ISSUES:**

Cultural Competency, Sovereignty, Land Ownership

### **ISSUES IN CONTEXT:**

A third party facilitation team developed a cohesive process to accommodate the needs of two separate National Forests with many diverse stakeholders, some of whom had interests in both forests.

### **PRACTICES:**

Meetings, Workshops, Tribal Liaisons, Presentations, Training, Public Involvement, Standards and Handbooks

### **PRACTICES IMPLEMENTED:**

- The facilitation team served as lead facilitators at two rounds of workshops in various locations around the Southwest United States. This helped to involve local governments, neighboring land managers, tribes and the general public from throughout the immense area of the two forests.
- The facilitation team worked with the Forest Service planning team to develop the agenda and facilitate the first two sets of public meetings, and to facilitate and document joint-forest planning team meetings.
- With Forest Service staff and the tribal liaison, and based on input from tribal members, the facilitation team developed a comprehensive Tribal Involvement Plan. This helped to facilitate planning for tribal involvement in a manner appropriate to tribal customs and wishes.
- To build agency capacity, the facilitation team led three day-long workshops to train agency personnel on small group facilitation and public comment recording; plus, the team held pre-meeting refreshers and orientation sessions.
- A presentation and discussion on tribal cultural sensitivity was conducted for the Forest Service leadership and planning teams regarding best practices for collaborative work with tribal communities.

### **OUTCOME:**

Sixteen public workshops were held in numerous locations in the Southwest United States to accommodate each of the constituent communities of the National Forests. A total of 346 people attended the meetings. Following the integration of input from public workshops, written comments, tribal input, and focus groups, a comprehensive forest plan revision will be developed that is more strategic and less programmatic than previous versions.

As part of the process, the facilitation team prepared a detailed collaboration report for the two forests which included feedback based on surveys, evaluations and input from all participants

on the initial phase of FPR collaboration, along with lessons learned and strategies to consider as the Forest Service moved forward into the final phases of the project.

## **41: Underground Storage Tank Strategy–Tribal Facilitation**

**SOURCE:** Experience

**SITUATION:**

In August 2005, President Bush asked the U.S. Environmental Protection Agency (NEPA) to develop and implement a strategy, in coordination with Native American tribes, to give priority to Underground Storage Tanks that present the greatest threat to human health or the environment and take necessary corrective action. The EPA Office of Underground Storage Tanks developed a workgroup consisting of both EPA staff and Native American representatives. A nationwide strategy for underground storage tanks on tribal lands had to be developed based on the views of both EPA and tribal workgroup members. The workgroup had less than one year to complete the nationwide strategy and present its findings to the U.S. Congress in August 2006.

**ISSUES:**

Cultural Competency, Protection/Preservation of Tribal Sensitive Resources, Sovereignty, Land Ownership

**ISSUES IN CONTEXT:**

Contractors facilitated a series of meetings between EPA officials and tribal representatives to develop and implement the national Underground Storage Tank compliance strategy.

**PRACTICES:**

Meetings, Workshops

**PRACTICES IMPLEMENTED:**

- A contractor was retained by the EPA to help facilitate a series of meetings between tribal representatives from at least 50 tribes (out of more than 500 tribes nationwide) and EPA headquarters and regional staff (from 12 different regions).
- Because the EPA was developing a national strategy, the facilitator had to ensure that one particular region or tribe did not dominate the discussion.
- As co-facilitators, the contractors assisted participants in articulating their interests, identifying areas of agreement, and recommending solutions.
- They also kept the parties talking, listening, and moving toward the goal of the process.

**OUTCOME:**

The national workgroup, comprised of tribal leaders and EPA headquarters and regional staff, worked on a draft of the strategy, as a response to the Energy Policy Act of 2005, and the final strategy was submitted to Congress on time.

## **42: Street Lights Improvements**

**SOURCE:** Experience

**SITUATION:**

The project involved the installation of street lights needed to improve visibility along a two-mile section of a US highway in the Southwest United States. The client wanted to promote and publicize the benefits of the project, keep the local community apprised of the progression of the project and involve the community in the project.

**ISSUES:**

Cultural Competency, Sovereignty, Land Ownership

**ISSUES IN CONTEXT:**

The community in which the project took place is located entirely within a reservation and is a primary tourism gateway to a busy, world-renowned tribal park. The project could cause traffic delays and make the town appear less attractive. Potential cultural conflict existed between the community and outside officials.

**PRACTICES:**

Public Involvement

**PRACTICES IMPLEMENTED:**

A public involvement firm was retained to work closely with the community and the construction contractor regarding community concerns. Ongoing public involvement was utilized to minimize the impact of street lights improvements in the tribal community.

- News releases kept the community informed of project details and developments.
- A light-switching ceremony was held to commemorate project completion, and it celebrated an informal partnership developed between the state agency and local tribal governing body as a result of the project.
- Tribal and State dignitaries participated in the ceremony.
- Photographs and a feature article on the project and the ceremony were published in the local paper.

**OUTCOME:**

Traffic interruptions and delays were kept to a minimum, and community leaders were regularly apprised of project progress. Potential cultural conflicts were avoided by working with community leaders as partners in the project. The light-switching ceremony drew a large audience and fostered widespread community participation. Positive publicity appeared in all local media creating a positive image of the project.

**43: US Roadway Improvements Pre-design Study**

**SOURCE:** Experience

**SITUATION:**

A state in the Southwest United States hired an engineering firm to conduct a pre-design study for roadway improvements on a U.S. Highway. The project's primary focus was on improving an intersection located at a major crossroads on tribal land and immediately adjacent to a high school. A number of public meetings occurred without guidance from a public participation practitioner. A consulting firm was asked to help after the project stalled for several months.

**ISSUES:**

Cultural Competency, Sovereignty, Land Ownership

**ISSUES IN CONTEXT:**

The community favored an alternative that offsets the junction by 500 feet at two T-intersections; the tribe endorsed its favored alternative via a tribal resolution in summer 2004. The state and the design team preferred the modern roundabout alternative, but most of the community did not favor roundabouts because they contended that these intersections are too confusing for elder tribal drivers, some of whom cannot comprehend complex road signs.

Furthermore, cultural differences encountered in Native America and rural communities – prior distrust for government officials and outsiders; view of telephone and email contact as impersonal; preference for face-to-face communication; different level of technology – made it difficult to establish the mutually trusting relationship necessary to achieving the project's goals.

**PRACTICES:**

Meetings, Public Involvement

**PRACTICES IMPLEMENTED:**

Tribal entities, area businesses and residents, and the state worked together to reconcile their different perspectives and came to a community-driven decision on roadway improvements.

- Small group meetings were held with the leadership of the tribe near the project area to explain the technical and safety reasons the state preferred the roundabout, to summarize public involvement efforts undertaken by the state, and to address questions from community leaders before taking the information to the public.
- Individual meetings were also held with numerous governmental and business stakeholders, including the local School District.
- Finally, the state presented information about two final alternatives at a large public meeting held at the high school adjacent to the intersection where the public had a chance to offer comments and have their questions answered.
- The final decision was left up to the community; the state decided to accept resolutions from the local government agencies to govern which final alternative would be selected.

**OUTCOME:**

The numerous stakeholder groups worked together to reconcile their different perspectives and came to a community-driven decision to endorse the roundabout as the final alternative. Two area tribal communities passed resolutions supporting the roundabout design, other stakeholders passed supporting resolutions, and the local School District offered their appreciation for the open communication process and for involving the public in the decision.

**44: Rural Transit Needs Survey**

**SOURCE:** Experience

**SITUATION:**

A Southwest state's Public Transportation Division began a study in 2006 to assess rural transit needs in all areas of the state, including areas within the jurisdiction of existing metropolitan planning organizations (MPOs). Using the respective MPOs and Councils of Government (COGs), nine rural transit study regional areas were identified. As part of the statewide public involvement effort, a public involvement consulting firm was retained to help coordinate efforts in two of the study areas and to facilitate statewide tribal involvement.

The state was looking for input primarily from transit providers and representatives of groups who use transit services frequently, not the general public. However, the state also wanted input from as many of the state's 22 tribes as possible. Only three workshops were planned to cover nearly half the state, and little funding was available for identifying stakeholders or developing workshop logistics, including advertising.

**ISSUES:**

Cultural Competency, Sovereignty, Land Ownership

**ISSUES IN CONTEXT:**

A Southwest state's Public Transportation Division utilized public involvement to successfully conduct a regional study of rural transit needs.

**PRACTICES:**

Meetings, Workshops, Public Involvement, Mailings/Response Forms, Resource Sharing

**PRACTICES IMPLEMENTED:**

- Two COGs, representing the two study areas, were asked to develop stakeholder lists and to send a personal letter inviting those contacts to the regional workshops. The COGs also took a central role in arranging the workshop logistics.
- The letter included a questionnaire for those who might not be able to attend a workshop.



- Each of the 22 tribes in the state was contacted by phone before the workshops to personally encourage their participation.
- Following the workshops, each of the tribes was contacted again for follow-up telephone interviews.

**OUTCOME:**

Workshops were held in each of the nine study areas throughout the state and were well attended. Forty-four representatives of transit operators and users participated in the three workshops that the consulting firm coordinated. Sixteen state tribes participated in the workshops and in telephone interviews. Through these efforts, the state learned from transit operators and users from throughout the state about current and future transit needs. The results of the study are now being integrated with a Transportation Framework study following an executive order from the Governor regarding the state's transportation options. The final report was released in May 2008 and can be found on the Arizona Department of Transportation website.

## **45: Roadway Improvements Design – Traffic Interchange**

**SOURCE:** Experience

**SITUATION:**

A state in the Southwest United States had been stalled midway through a design project for roadway improvements to a U.S. highway/Interstate traffic interchange. The project traverses county lands and parcels that belong to the local tribe, which is under the jurisdiction of one of the tribe's political subdivisions. Delays caused the state to request that funding set aside from the State Transportation Board be delayed for up to two years. One of the most significant stalls occurred when the state adopted a directive that intersection improvements that look at street-light improvements must also evaluate roundabouts as an alternative. Ultimately, after engineering evaluations, the state recommended three roundabouts to be installed at the off- and on-ramps, as well as another nearby intersection that served interstate frontage roads and local access for residents.

The state wanted community buy-in for the roundabout alternative, as well as coordination with the tribe and the community for the cleanup and maintenance of new sidewalks and the payment of electrical utilities for the new street lights. Meanwhile, one of the bridges that the project was supposed to replace was deteriorating and had recently required emergency repair work.

**ISSUES:**

Cultural Competency, Sovereignty, Land Ownership

**ISSUES IN CONTEXT:**

The project area is in an unincorporated community of mostly non-tribal residents that is surrounded by a mosaic of tribal lands. Many people in the community are unfamiliar with roundabouts, and some contended that these intersections are too confusing for elder tribal drivers, who may not be able to comprehend complex road signs. Another issue that needed to be resolved was the question of who was going to pay for electricity costs associated with the new streetlights, especially because the area did not have a local, municipal government. Finally, the state DOT wanted a local governmental agency to regularly cleanup the new sidewalks that would be installed. However, the area was unincorporated and the tribe was reluctant to commit to cleaning up areas outside its jurisdiction.

**PRACTICES:**

Presentations, Meetings, Public Involvement, Formal Agreements, Investigation of Alternatives

**PRACTICES IMPLEMENTED:**

- Small group meetings were held with the leadership of the tribe near the project area to explain the technical and safety reasons the state preferred the roundabout.

- Individual meetings were also held with numerous governmental agencies.
- Finally, the state presented information about two final alternatives at a large public meeting where the public had a chance to offer comments and have their questions answered.
- Several intergovernmental meetings were held to reach an agreement on the new sidewalks and streetlights, including one meeting with local businesses in attendance.

***OUTCOME:***

Tribal entities, area businesses, local residents and the state worked collaboratively to reconcile their different perspectives and came to a community-driven decision to endorse the roundabout as the final alternative. Two area tribal communities and other stakeholders and political entities passed resolutions supporting the roundabout design.

Additionally, an intergovernmental agreement was reached on the streetlight and sidewalk issues, with each of the agencies taking on a portion of the responsibilities. In fact, the county and the central government of the tribe agreed to split the cost of the electricity. Plus, one of the tribe's political subdivisions agreed to oversee the cleanup and maintenance of the sidewalks, and business owners committed to maintaining their sections of the street front, which were largely on non-tribal lands.

## **46: US Highway Feasibility Study**

***SOURCE:*** Experience

***SITUATION:***

A US highway in the Southwest United States serves numerous and growing tribal communities, and the population and traffic is expected to increase in the area. The state wanted to meet future traffic needs and provide operational improvements via a comprehensive long-range plan by identifying and evaluating alternatives for the ultimate facility, accounting for changes 20-30 years into the future. However, the budget could not afford public meetings in each of a dozen or more communities.

***ISSUES:***

Cultural Competency, Sovereignty, Land Ownership

***ISSUES IN CONTEXT:***

The state desired to work with locals, including tribes, to identify needs and desires that roadway improvements can address, and to achieve a design that meets standards and also is context sensitive and acceptable to the local population. The corridor is 160 miles long and traverses diverse communities, including two distinct tribal reservation areas. The project team understood that numerous stakeholders might adopt opposing stances on a number of issues. A public involvement consultant was retained by the state to assist with the project.

***PRACTICES:***

Presentations, Meetings, Public Involvement

***PRACTICES IMPLEMENTED:***

- A Public Involvement Plan was developed for the project that included reconnaissance research and travel through the project area to identify key stakeholders as well as personal interaction with stakeholders through flier hand-delivery trips and taking time to chat informally with community members.
- Public meetings were consolidated into three, which were held at major community hubs in the east, west and central locations of the corridor, and public participation was not affected.
- Facilitated agency meetings were held during the daytime before evening public meetings.
- Quarterly meetings were held with key stakeholders such as transportation officials, community house leaders, officials and administrators.

- Radio advertising in both English and the native language was used heavily.
- A toll-free telephone hotline was maintained throughout the project.
- Informational kiosks were set up at key community locations throughout the project area.
- Oral translations were provided at public meetings.

***OUTCOME:***

A year-long, three-step approach allowed the project team and community stakeholders, including tribes, to (a) brainstorm issues, concerns and opportunities, (b) review the range of alternatives and provide comments and note preferences for design elements and solutions and (c) select and refine the final alternative solution. Coordination efforts with agency and community influencers were key to the success of the project, and, despite the diversity of communities along the corridor, stakeholders and the public were able to reach common agreements about most aspects of roadway design alternatives.

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## APPENDIX D

# Guidebook Implementation Process (GIP)

## D.1: Implementation Overview

The overall implementation plan describes the methodology to implement the Guidebook and its practices for their best outcome. A 10 step process, represented in Figure 7, is used to explain the implementation at both the organization level and the project level. In fact, this Guidebook Implementation Process (GIP) is divided into two blocks, an organization guidebook implementation plan (OGIP) (Stages 1 to 5 and 10), and a project/program specific application of TACT with several practice-specific implementation plans (PSIPs) (Stages 6 to 9). The following sections describe the Overall Guidebook Implementation Plan, including procedures on how to implement the guidebook by explaining the steps to be followed for its successful execution. PSIPs are included in Appendix C.

As shown in Figure 2, the tribe or agency leadership will need to make a commitment toward using the Guidebook (Step 1) and appoint a champion for its implementation (Step 2). This individual, the guidebook implementation champion (GIC) will act as the caretaker for the GIP. Initially, this individual will: (i) perform an assessment on the organization capabilities (Step 3); (ii) develop a conceptual implementation plan (Step 4); and undergo appropriate training on the Guidebook content and 3Cs practices (Step 5). Once a transportation initiative is initiated or is ready to go toward a new phase of its lifecycle, the GIC will use TACT to design a collaboration strategy (Step 6). As a result, a set of 3Cs practices will be selected. For each of these practices, a practice-specific implementation plan will be carried out (Step 7 to 9). Lastly, lessons learned and success stories from each implementation will be compiled and shared within and outside the organization (Step 10). This experiential knowledge will be used to close the loop. Therefore, the process will continue by providing a revised assessment of the organization capabilities (Step 3).

## Exhibit D.2: Organization Guidebook Implementation Plan (OGIP)

### Stage 1: Guidebook Implementation Commitment

For the effective implementation of the Guidebook, the organizational leadership<sup>11</sup> should be strongly committed to using the Guidebook as a tool for facilitating collaboration with other stakeholders on transportation initiatives (either projects or programs). Leadership should be expressly committed to support the activities and the resources needed for success. To reinforce the commitment the following scenario must be executed:

- Develop a formal commitment statement for using the Guidebook at overall level with specific lower-level commitment statements for each 3Cs practice. If leaders intend to exclude some practice, they should express this intent in the statement. Given that certain practices are the only ones that are successful in certain situations, the exclusion of certain practices should be finalized only after analyzing the practice selection matrix that is included in Step 4 of TACT.
- Use implementation process as a guide.
- Review organization level and project/program level implementation plans.

<sup>11</sup>Here, leadership is intended as the individuals who have the authority to make decisions (or manage the decision-making process in case of collaborative decision-making) on transportation projects and/or programs within the agency (agencies) and the tribe(s).

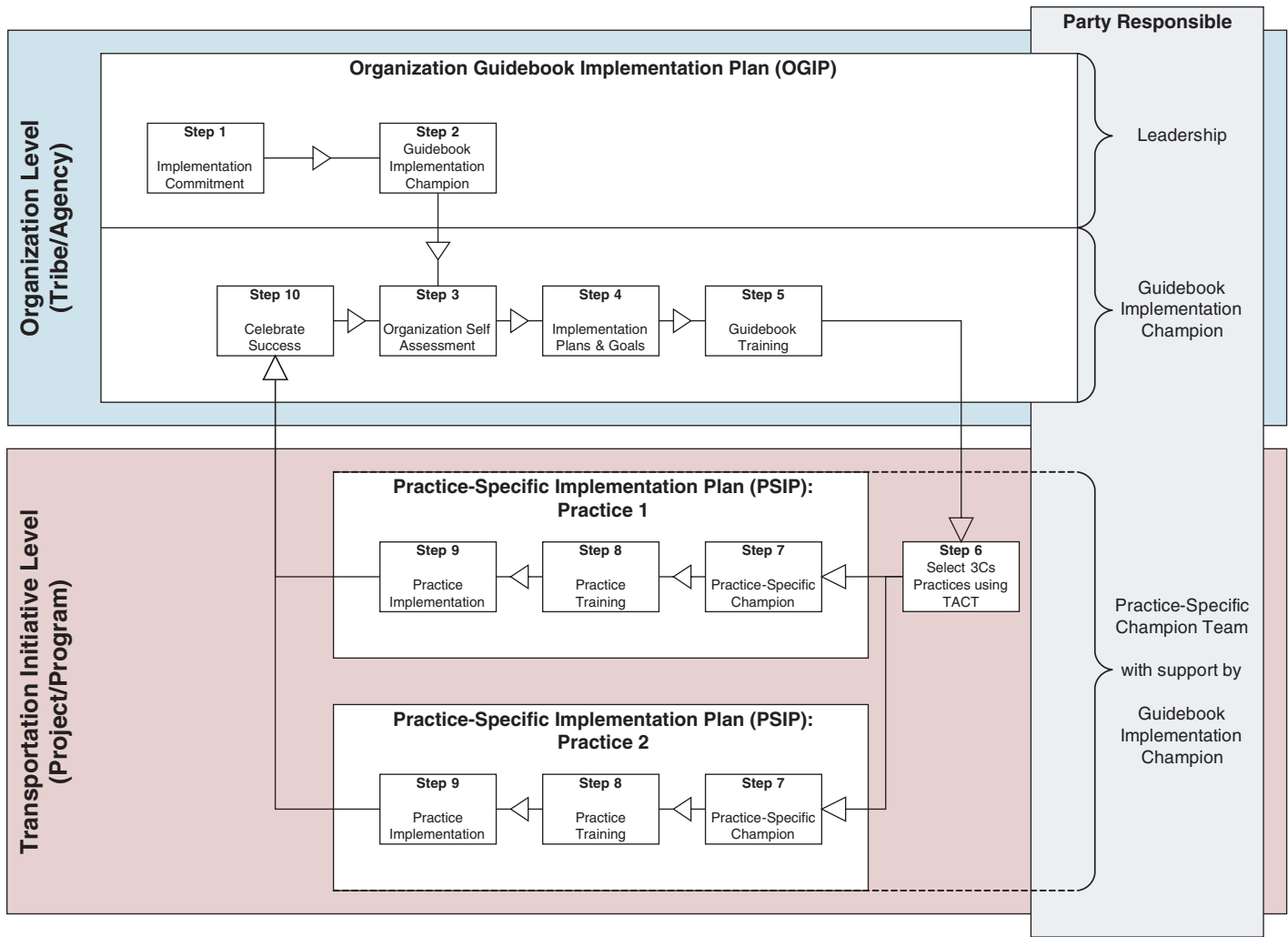


Figure 7. GIP.

## Stage 2: Guidebook Implementation Champion (GIC)

The second implementation step involves the appointment of a Guidebook Implementation Champion (GIC) by the organization leadership. This individual will use the GIP to successfully implement the Guidebook. The GIC will report periodically to the organization leadership on the success and lessons learned from the implementation.

When a specific transportation initiative is proposed or an existing one undergoes a new phase in the lifecycle (e.g., from planning to design), the GIC will facilitate collaboration with other entities that are either involved or affected by the initiative. Since this position is expected to require a certain amount of time, the organization leadership should evaluate the expected time to serve as GIC before assigning this responsibility. A GIC optimal candidate is a skillful individual that has a broad understanding of the transportation process.

Being a GIC is expected to be more a fractional assignment than a full-time position. The ideal GIC is an individual who would benefit from the acquisition of the Guidebook skills by applying them in his assignments. It should also verify the compatibility of this assignment with the proposed individual's other assignments. The GIC champion should help to

- Provide leadership to identify the organization needs.
- Direct resources to achieve maximum benefits.
- Facilitate the communication of the implementation benefits, successes, and opportunities.
- Disseminate knowledge in the organization on the Guidebook tools and implementation.

The GIC will use the TACT to facilitate the design of the most appropriate collaboration strategy for this initiative. Once a collaboration strategy has been identified, the GIC will appoint a champion for each of the 3Cs practices selected

to carry on the collaboration strategy. These practice-specific implementation champions (PSIC) working together as a team will implement the collaboration strategy with the support of the GIC (Stages 6B to 10).

### **Step 3: Organization Self-assessment**

This step is a self-assessment process that should be performed periodically during the implementation process to determine what practices have been successfully implemented against what have not. This helps to identify opportunities for improving the process. The GIC will conduct the self-assessment periodically during the implementation process of the guidebook. Self-assessment tools, such as random checks, should be used to make the process efficient and consistent.

### **Stage 4: Implementation Plans and Goals**

An organization-specific implementation plan should be developed, and the targeted goals should be selected to measure the success of the Implementation process. The goals setup for the successful implementation processes should be a part of the organization commitment. Therefore, the GIC should report this information to the organization leadership for approval.

### **Stage 5: Guidebook Training**

For the Implementation Process to be a success, proper training should be given to the GIC about the different stages of the process. It is expected that webinars and workshop on the Guidebook implementation will be delivered by NCHRP with the support of the TTAP centers.

### **Stage 10: Celebrate Success**

Celebration of success and sharing of lessons learned should be pursued throughout the implementation. This step of the GIP aims at reinforcing the usefulness of the process and the participants' commitment. Successes and lessons learned should be celebrated by sharing them in newsletters, intranet websites, team meetings, handouts, and organizational events and conferences to publicize successful implementation and share organization lessons learned. Several events are available at the state and regional level that may provide the right audience for such activities. If these events are co-attended by both tribal and agency staff, it is possible to envision a complex approach (see 3Cs practices that are related to conferences, presentations, training).

## **D.3: Practice-Specific Implementation Plans (PSIPS)**

### **Stage 6: Select 3Cs Practices using TACT**

This stage has been described in the Guidebook. It is intended that the GIC will facilitate this process and seek input by other involved parties.

### **Stage 7: Practice Champion**

Once a set of 3C practices has been selected, the GIC will need to identify team members who will carry on the implementation of these practices. These individuals, the Practice Champions, will serve as the overall managers of the implementation process for the selected practices. Practice champions should be selected early in the process to facilitate the understanding of the practices and its issues. The practice champion is responsible for the execution of the process and for reporting successes and lessons learned to the GIC. The duties of the practice champion are the same as the GIC but at the practice level. In addition, the Practice Champions will constitute the project-level implementation team that will work with the support of the GIC.

### **Stage 8: Practice Training**

To effectively implement any practice, training should be developed and provided to the practice-specific champion who will implement it. The training should be given to the practice champion by the GIC or any other sources for better implementation. Training is the most important process because it will result in the Practice Implementation process. The training should:

- a. Provide knowledge necessary for successful implementation.
- b. Include all key stakeholders of the project team impacted by the practices being implemented.
- c. Have adequate resources available to support training.

### **Stage 9: Practice Implementation**

This is the most important of all the steps to be performed. The Practice Implementation should be performed with good mechanisms that give the good results. The Practice Champions should review information laid out in the practice-specific implementation plan. The GIC should check every step of the implementation process to achieve the required goals of the process. The implementation team should also identify possible barriers and plan enablers to counter barriers.

## APPENDIX E

# Strategy-Specific Implementation Plans

### 1.1: Communication – Presentations

#### Supporting Material:

- a. Definition of Communication
- b. Definition and examples of Presentations
- c. Case studies on Presentations
- d. Lessons learned on Presentations
- e. Recommendations on Presentations

#### Lessons Learned:

- Presentations can be an effective strategy regarding cultural competency, land ownership and monetary issues. However, there was no moderate agreement or consensus on the success of this strategy when dealing with the protection/preservation of resources, confidentiality, or sovereignty issues.
- Presentations do not replace discussions and are only a starting point for discussions.
- Presentations are effective when information presented is factual, like specific regulations and laws.
- Presentations can be helpful for local agencies to provide basic understandings of tribal rights, consultation requirements, and roles and responsibilities.
- Issues presented must be on the general level and not tribe specific.
- Traditional Cultural Properties (TCP) cannot be discussed outside of the tribe, clan, medicine society, or other group that attaches significance to the resource.
- Presentations allow groups with differing opinions access to the same data, and often result in a better understanding of issues and solutions as a result of discussion following presentation.
- Presentations are appropriate for discussions when tribes are remotely located and can be conducted without face-to-face interaction, i.e., conference call, webinar, Web sites.

- Successful presentations have been made on cultural sensitivity and government-to-government relations training especially when jointly presented by tribal and environmental staff to project development teams and agency management.
- Each individual tribe is the one that understands its culture, tribal-resources, sensitive matters, sovereignty issues, land ownership and monetary issues.
- Land-based and non-land based tribes will have different issues depending on their specific cultures.
- In some states, federally-recognized tribes do not reside in the state, which makes communication difficult. WEB-N would be helpful to augment emails and phone calls.
- Face-to-face discussion is more effective, especially with regard to sensitive issues. Need to also understand that some tribally sensitive issues are just not open to discussion at all.
- Presentations can be used for staff education or public outreach or any number of other valuable reasons.
- Presentations do not require high level decision makers, even when discussing sovereignty. The appropriate level of representation should be left to the discretion of the individual tribe(s), and the particular level of consultation for a given discussion or meeting should be made crystal clear.

#### Recommendations:

- Presenters must have a strong level of cultural competency.
- Pre-approval should be obtained from the tribes, or materials should be developed jointly, prior to presenting on any sensitive issues or disseminating information publicly.
- Presentations for the agency/public may be effective when attempting to identify the presence of Traditional Culture Properties concerns. These should be conducted in the early planning stages.
- Tribal issues require that the agency involved treat tribal concerns with respect. Using formats of communication and/or presentations that are common within the tribal

culture is more important than using “standard” presentation formats. The level of sophistication of the presentation should be geared to the audience attending.

- Areas that have a cultural context are a series of complex relationships that cannot be fully explained in a presentation situation.
- Presentations can be used to describe to DOT staff why certain issues/practices/etc. are sensitive and cannot be discussed.
- When used, presentations should be short, interactive and allow for discussion.
- Presentations’ primary function should be for providing visual aids.
- Generally, tribal officials would rather meet in the field as opposed to sitting down at the table to discuss abstract ideas.

## **1.2: Communication – Data Collection and Analysis**

### **Supporting Material:**

- a. Definition of Communication,
- b. Definition and examples of Data Collection/Analysis
- c. Case studies on Data Collection/Analysis
- d. Lessons learned on Data Collection/Analysis
- e. Recommendations on Data Collection/Analysis

### **Lessons Learned:**

- While data collection and analysis is viewed as an effective strategy for monetary issues, there was neither moderate agreement nor consensus about the success of this strategy in regards to cultural competency, protection/preservation of tribal sensitive resources, confidentiality or sovereignty issues. There was moderate agreement but no consensus about the use of data collection and analysis on land ownership issues.
- Data collection is a fundamental, but often very sensitive element of transportation planning, particularly as it applies to cultural resources and traditional practices.
- Data collection and analysis can be a strategy appropriate for all parties but only if that collection, analysis and distribution of data is pre-approved by appropriate tribal leaders and elders and handled exactly the way the tribe desires.
- Data sharing systems are only appropriate in terms of disseminating project planning information, such as project location, descriptions, and schedules.
- Each individual tribe is the one that understands their culture, tribally-sensitive resources, sovereignty issues, land ownership and monetary issues. Although governments should understand these issues, many remain unidentified.
- Land-based and non-land-based tribes will have different issues depending on their specific cultures.

- Effective communication is based on reliable, accurate data.
- Disclosure of ownership and management issues should be on par with obligations of transparency for other governmental entities, unless it involves sensitive traditional resources or customs.
- If there is a dispute among tribal and non-tribal parties on ownership, the collection and analysis of data may vary. A smaller tribe may not have the financial or qualified personnel resources to undertake the work; they may choose to hire a consultant or choose to allow another party to undertake the work on their behalf.
- Cannot presume that all tribes have systematically collected ethnographic information. Tribes should be consulted as to their knowledge of data collected by non-tribal sources and whether or not they have any concerns or issues with it. Neither data from state nor tribal sources should not be automatically rejected or discounted.

### **Recommendations:**

- While collecting information, understanding cultural differences and having agreements in regard to confidentiality are critical in getting necessary information.
- Data collection on tribal issues needs to be performed by either tribal personnel or a professional retained by the tribe.
- Tribes must be clear about the use of the data, terms of access, distribution and who maintains/controls the data.
- Data collection and dissemination works best for those items not subject to interpretation (e.g., what was found during a right-of-way survey).

## **1.3: Communication – Standards and Handbooks**

### **Supporting Material:**

- a. Definition of Communication
- b. Definition and examples of Standards and Handbooks
- c. Case studies on Standards and Handbooks
- d. Lessons learned on Standards and Handbooks
- e. Recommendations on Standards and Handbooks

### **Lessons Learned:**

- As a communication strategy, standards and handbooks can be a useful strategy for land ownership issues. There was moderate agreement but no consensus on the use of this strategy on sovereignty issues. There was no agreement and no consensus on utilizing this strategy for cultural competency, protection/preservation of tribal sensitive resources, confidentiality, or monetary issues.
- Standards and Handbooks’ ‘one size fits all’ approach is ineffective because it does not recognize tribal cultural sen-



sitivity, the differences between individual tribes and the geographic differences.

- Information contained in standards and handbooks can only be used as a starting point to communication when explaining parts of the subject that can be captured in factual terms.
- Publication of standards and handbooks should not replace consultation protocols that are established collaboratively between the parties. However, such standards may be helpful in sharing information on what issues are of particular importance to the parties such as limitations on funding.
- They are relatively good as a product internal to a state DOT since they are generally developed and used by DOT staff to assist in gaining knowledge on tribal consultation and issues related with the consultation process.
- Tribes prefer direct interaction processes as opposed to written procedures and standards.
- Standards for construction of transportation facilities already exist.
- Tribes that operate as THPO's may have their own standards and handbooks. When the usual guidance is not enough to complete a project, develop an MOA or PA.
- Face-to-face consultation is more effective than a simple handbook.

### **Recommendations:**

- Tribes and other stakeholders need to be involved when standards and handbooks are being developed, so that tribes can provide guidance on what can appropriately or sensitively be presented. This involvement can also assist in identifying contacts for additional guidance when certain resources or concerns are encountered.
- Standards and handbooks could prove to be an effective communication tool to educate transportation agencies about the complexity of sovereignty, land ownership and funding issues. These would not work as well when communicating transportation needs to tribal governments and people.
- Standards and handbooks need to be presented in a culturally competent manner acceptable to all involved parties. Each tribe is different, requiring different procedures, protocols, approaches, and issues.
- These documents should be developed primarily by the DOT when the subject matters focus on transportation engineering issues such as policies, practices and procedures.
- Development of handbooks and standards works when everyone has the same frame of reference. In the case of states the standards are different than tribes' standards. BIA and the tribes use different rating systems, funding systems, and operational systems than most of the states.
- Standards and handbooks should never define consultation; they should provide ideas and guidance and perhaps

serve as a conduit through which individual programs and professional relationships are formed.

## **1.4: Communication – Distribution of Newsletters/Bulletins**

### **Supporting Material:**

- a. Definition of Communication
- b. Definition and examples of Newsletters/Bulletins
- c. Case studies on Newsletters/Bulletins
- d. Lessons learned on Newsletters/Bulletins
- e. Recommendations on Newsletters/Bulletins

### **Lessons Learned:**

- Newsletters and bulletins are not an effective communication strategy for cultural competency, protection/preservation of tribal-sensitive resources, sovereignty, or land ownership. This strategy can be successful with monetary issues.
- There is general agreement that reliance on such mass distribution methods cannot be the primary mode of communication, nor can they replace more personal, one-on-one and small group face-to-face conversations.
- As with other communication strategies, information on sensitive issues must be handled in a culturally appropriate manner and must be approved by the tribes.
- Newsletters tend to be limited because they are not cost effective. Publication and distribution costs are expensive and can often be labor intensive.
- Newsletters are viewed by some to be only appropriate for information on new initiatives and policies, not on specific projects when timely information distribution is needed.
- Newsletters and bulletins may be viewed as propaganda from the state or as anti-collaborative or too impersonal.
- Effectiveness is difficult to gauge due to lack of information on utilization rates of recipients.
- Newsletters and bulletins cannot be relied on as the sole source of information sharing because there may be literacy and comprehension issues.
- Newsletters and bulletins can be used internally by tribes to communicate with tribal members.
- Newsletters and bulletins may be a tool for keeping DOTs and tribes in contact with each other.

### **Recommendations:**

- When utilizing this strategy, it is necessary to find out who the audience is within the tribe (executive government, cultural resources, planning) and what form of newsletter/bulletin should be used (electronic or paper).
- Information must be written in a culturally competent manner.

- Information about culturally sensitive issues and practices must not be distributed.
- If tribal information is being distributed, it must be published by the non-tribal agencies as written.
- Separate newsletters on transportation topics are not necessarily needed. Give consideration to including articles in established tribal newsletter.
- Articles should be short and to the point.

## **1.5: Communication – Mailings with Response Forms**

### **Supporting Material:**

- a. Definition of Communication
- b. Definition and examples of Mailings/Response Forms
- c. Case studies on Mailings/Response Forms
- d. Lessons learned on Mailings/Response Forms
- e. Recommendations on Mailings/Response Forms

### **Lessons Learned:**

- Mailings are not considered as an effective communication strategy for any tribal-related issue. Mailings could be a convenient way to obtain feedback from tribes but should not be considered the only form of feedback nor should it be in lieu of face-to-face communications.
- This can be a good strategy when used electronically, but monitoring success has shown that this strategy is not fully utilized by the tribes.
- This strategy is viewed by some as too impersonal and could be limited by literacy and cultural comprehension concerns. Consequently, this could introduce selection bias into the response demographics, and, subsequently, the evaluation of returned comments.
- Mailings do not contribute to collaborations.
- This strategy is only appropriate to determine if a tribe wants to be involved in a particular DOT project and/or participate in a consultation process.
- Feedback shows that some entities believe that mailings should be simplified (yes/no questions) while others suggest that mailings are oversimplified and do not treat transportation and culturally sensitive issues appropriately.
- Some entities limit the use of mailings to EIS/EA comment dissemination only.

### **Recommendations:**

- A cover letter should be included in the mailing which summarizes the project (area, phase, etc.) as well as deadlines for responses.

- Mailings with response forms are not appropriate for issues related to sovereignty and culturally sensitive issues.
- Mailings should be sent as a first step and follow up should be performed.
- If such an approach was sanctioned by a tribe and directed to an audience that the tribe wanted to be polled in that way, it could be an effective strategy.
- Mailings are a good step for making the consultation process easier if wanted by the tribe.

## **1.6: Communication – Tribal Moderator/Mediator**

### **Supporting Material:**

- a. Definition of Communication
- b. Definition and examples of Tribal Moderator/Mediator
- c. Case studies on Tribal Moderator/Mediator
- d. Lessons learned on Tribal Moderator/Mediator
- e. Recommendations on Tribal Moderator/Mediator

### **Lessons Learned:**

- A tribal moderator is an effective communication strategy for dealing with cultural competency, protection/preservation of tribal-sensitive resources, confidentiality, and sovereignty issues. There was moderate agreement but no consensus on the success of this strategy for land ownership or monetary issues.
- Tribal moderators are good for establishing relationships, building trust, and diffusing tension.
- This strategy can be successful in alleviating communication problems and encouraging one-on-one communication.
- Tribal moderators are effective when reviewing working decisions and explaining technical issues to tribal members.
- Moderators are sometimes viewed as biased toward the agency that they are employed by.
- The position is often more successful when held by a tribal member.
- This technique can be effective for large complex (multi-state) projects affecting multiple tribal governments particularly when the moderator is a respected tribal leader from a tribe not affected by the proposed project.

### **Recommendations:**

- All transportation project stakeholders should be involved in the selection of a tribal moderator.
- Moderator selection is important to success and should be agreed upon by all involved parties in order to be trusted and supported in that position.

- Moderators should be neutral and unbiased.
- The role of a tribal moderator should be used to lay the foundation for working relationships with the ultimate goal to not need a tribal moderator.
- The moderator needs to be a facilitator more than a moderator to ensure successful communication between the entities.
- Knowledgeable involvement is necessary. Qualified individuals are a must.

## **1.7: Communication – Training**

### **Supporting Material:**

- a. Definition of Communication
- b. Definition and examples of Training
- c. Case studies on Training
- d. Lessons learned on Training
- e. Recommendations on Training

### **Lessons Learned:**

- None from Delphi panelists.

### **Recommendations:**

- People trained with regards to dealing with Tribal-Sensitive Issues should be tribal members with limited involvement of non-tribal agencies to be effective.

## **2.1: Coordination – Meetings, Seminars, Summits and Workshops**

### **Supporting Material:**

- a. Definition of Coordination
- b. Definition and examples of Meetings/Seminars
- c. Case Studies on Meetings
- d. Lessons Learned on Meetings
- e. Recommendations on Meetings

### **Lessons Learned:**

- There is consensus that meetings, seminars, and workshops can be effective coordination strategies for addressing cultural competency, protection/preservation of tribal resources, confidentiality, sovereignty, land ownership and monetary issues.
- These strategies can be good venues for establishing relationships, building trust, and ‘getting both sides on the same page.’

- These strategies can encourage one-on-one communication but little can be resolved in multi-group settings.
- At the conference and summit levels, the strategy can be too time-constrained to be effective.
- Strategy could be used as an initial step in the consultation process.
- The audience and groups to be included in the venue should be carefully considered when planning the agenda.
- Meetings are more private and personal and can be successful in addressing specific and/or sensitive issues with individual tribes as well as assist in coordination efforts.
- Workshops are appropriate for general education.
- Summits are generally not results-oriented.
- Larger meetings can be successful when issues are discussed in generalities.

### **Recommendations:**

- Matters concerning cultural competency, protection/preservation of resources should be handled on a case-by-case, project-by-project basis in smaller settings with more personal interaction.
- Tribes should be included in developing the agenda for these functions.
- For project-specific issues, meetings should be used and should only include stakeholders to minimize issues with confidentiality.
- Meetings should be utilized for agency and Tribe-specific project work.
- Seminars should be used for agency-wide training on tribal issues (in cooperation with the tribe).
- Summits should be utilized on statewide issues and for high-level government-to-government collaboration.
- Workshops are effective on broad statewide issues if issues are discussed in individual workshops.
- Field visits can be a good form of meeting with tribal members.
- For the most part, these venues apply to concerns that are generic to all tribes and would not be project-specific for any one tribe.
- Remoteness can be an issue so these events should be held regionally.
- The parties involved in these venues should have the authority to make decisions.

## **2.2: Coordination – Public Involvement**

### **Supporting Material:**

- a. Definition of Coordination
- b. Definition and examples of Public Involvement

- c. Case studies on Public Involvement
- d. Lessons learned on Public Involvement
- e. Recommendations on Public Involvement

### **Lessons Learned:**

- Public involvement can be an effective coordination strategy when engaged in cultural competency and protection/preservation of tribal sensitive resources. On the other hand, this is not a successful strategy for confidentiality, sovereignty, land ownership, or monetary issues.
- Using public involvement to group tribes with the non-Native American public is not successful.
- Public involvement is appropriate for sharing information about project planning and project development but not for communication about issues.
- Public involvement is important for successful transportation projects on tribal lands because it involves tribal community participation which is a traditional form of consensus building in Native American societies.
- Public involvement can be useful in educating the public in general terms. If tribal issues are discussed, they also need to be in generalities.
- Discussing funding issues with the public is generally not effective.
- Monetary issues are better solved with a few high ranking officials present that can make decisions.
- Funding, when it involves matching, should be addressed during the public meeting at various levels, most appropriately at the level of the funding agency/municipality.

### **Recommendations:**

- Public Involvement meetings are not appropriate to discuss tribally-sensitive issues such as the protection and confidentiality of culturally important/significant sites, government-to-government relations, and treaties.
- Public involvement meetings should be held early in the project lifecycle.
- Public involvement meetings are important if they are held on tribal lands.
- Presentations at any public involvement occasions must be mindful of confidentiality concerns. This type of activity is useful for involving individual citizens in the transportation project, but it is not a substitute for more formalized government-to-government relationships.
- Pre-approval must be obtained from tribes in order to discuss culturally-sensitive issues in a public forum.
- Public involvement strategies can be useful for identifying stakeholders in a project, but it is not a strategy for facilitating coordination with tribes in project planning.

- Tribal members are usually open with their thoughts or ideas, but in accordance with traditional customs, food or other giveaway perks help to get them to the event.
- Tribes should be offered or provided a reasonable opportunity to participate in planning the agenda.

## **2.3: Coordination – Tribal Consortium**

### **Supporting Material:**

- a. Definition of Coordination
- b. Definition and examples of Tribal Consortium
- c. Case studies on Tribal Consortium
- d. Lessons learned on Tribal Consortium
- e. Recommendations on Tribal Consortium

### **Lessons Learned:**

- Tribal consortiums can be an effective coordination strategy for cultural competency issues. There was moderate agreement but no consensus on the usage of this strategy for sovereignty issues. There is no moderate agreement or consensus on the use of this strategy for protection/preservation of tribal sensitive resources, confidentiality, land ownership, or monetary issues.
- At a statewide level, tribal consortiums can be an effective strategy by fostering relationship building.
- Concept can be difficult because of complex relationships between tribes in a state.
- Consortiums have been successful for producing key legislative initiatives when focused on shared resources, resource protection and economic development.
- Can be difficult to constitute a tribal consortium when tribal recognition status differs among tribes within the state (e.g., federally-recognized vs. state recognized vs. non-recognized).
- Consortiums are not effective when tribes have different cultural outlooks and they do not necessarily recognize government-to-government relations.
- Issues must be discussed in generalities.
- Particularly in large land-based tribes, consortiums can be appropriate for discussing specifics such as funding and lobbying.
- Strategy can be good when a project concerns several tribes.
- In some regions, tribes do not want to be grouped together with other stakeholders.
- The ability to discuss issues is important to the tribes in a consortium. The group is a powerful entity, and individuals can make concessions to ensure the success of the group. At times, a consortium can work through issues with a single tribe representing the will of the group, and reporting back

to the group, thus effectively streamlining the coordination process.

- This strategy can streamline the transportation project planning and development processes.
- This venue can be good for education but not as good for individual attention.

### **Recommendations:**

- Tribes have different beliefs (ceremonies, burials, site protections and others), which results in different treatment protocols. These differences may impact the effectiveness of consortiums.
- The consortium should not be considered a decision-making body.
- Consortium may only work if the tribes suggested it and it is perceived as a tool to be used at their discretion.

## **2.4: Coordination – Grants/Loans for Funding**

### **Supporting Material:**

- a. Definition of Coordination
- b. Definition and examples of Grants for Funding
- c. Case Studies on Grants for Funding
- d. Lessons Learned on Grants for Funding
- e. Recommendations on Grants for Funding

### **Lessons Learned:**

- Loans for funding are not an effective coordination strategy for working on issues with tribes. Loans do not build relationships or trust particularly for those tribes who have not had positive government-to-government relations in the past.
- Loan money is often tied to specific agendas depending on the source of the loan.
- Loans hardly ever work to the benefit of both parties.
- The effectiveness of loans and grants to be used to coordinate efforts is limited since many entities are not set up to apply for and use these types of funds.

### **Recommendations:**

- Loans need to be provided with “no strings attached.”
- There should be grants instead of loans.
- Readily available tribal programs from agencies like the BIA and the National Park Service should be investigated and expanded as an alternative to loans.
- Sharing should be done through a cooperative agreement.

## **2.5: Coordination – State Tribal Liaisons/Coordinators**

### **Supporting Material:**

- a. Definition of Coordination
- b. Definition and examples of Tribal Liaisons and Coordinators
- c. Case studies on Tribal Liaisons and Coordinators
- d. Lessons learned on Tribal Liaisons and Coordinators
- e. Recommendations on Tribal Liaisons and Coordinators

### **Lessons Learned:**

- Tribal liaisons/coordinators are a very effective strategy for addressing all tribal transportation-related issues. There are many models for the tribal liaison position, its responsibilities, and its relationship between the agency and tribes.
- As a single point of contact for the tribes, the tribal liaison is a reliable source of information and helps tribes that have new Tribal Historic Preservation Officers (THPOs) get the lay of the land. This liaison is also a good resource for new Department hires that need to know how to coordinate with tribes on individual projects.
- The tribal liaison serves as a “go between” and helps establish relationships. Since the consultation process is more relationship building, the tribal liaison must have an understanding of the interests and cultural context of the tribes.
- The tribal liaison serves to connect people in an agency to the appropriate tribal representative, and provide coaching and facilitates as needed.
- Success depends on the person chosen for the position.
- The liaison needs to build a relationship with the tribes and demonstrate that they genuinely understand the interests and cultural contexts of the tribe.

### **Recommendations:**

- The position should be associated with the director of the agency for which he/she works so that working with the liaison is viewed as a “superior to superior” relationship; the higher level the liaison is in the hierarchy, the better success the liaison is perceived to be.
- A tribal liaison is more credible if the person is of Native American descent. If not, they still must be an advocate for tribal initiatives to optimize cooperation from the tribes.
- Tribal liaisons can be helpful in improving cultural sensitivity at the agency level. However, they should have some authority to act on behalf of the tribes and/or the agency in order to be effective.
- All agency staff need to consider themselves as “tribal liaisons.”

## 2.6: Coordination – Formal Agreements

### Supporting Material:

- a. Definition of Coordination
- b. Definition and examples of Formal Agreements
- c. Case studies on Formal Agreements
- d. Lessons learned on Formal Agreements
- e. Recommendations on Formal Agreements

### Lessons Learned:

- Formal agreements are an effective coordination strategy for protection/preservation of tribal sensitive resources, confidentiality, sovereignty, land ownership and monetary issues. There is moderate agreement but no consensus that formal agreements are a good strategy for cultural competency issues. If a tribe has not had positive government-to-government background in the past, then formal agreements are viewed with lack of trust. For this reason, cultural competency did not have consensus on the formal agreement strategy.
- Generally, formal agreements are with individual tribes, which can facilitate government-to-government relationships.
- All signing parties must understand and agree to the process and issues addressed in the agreement as well as establish expectations, joint responsibilities, timeframes and appropriate contacts.
- Agreements can streamline the consultation process.
- Agreements are a necessary result of negotiation.
- Tribes can be skeptical of trusting written agreements because issues in the past (failure to fulfill treaty obligations) cloud efforts made today.
- Some states have seen no difference in working with tribes that have signed agreements with the state and those that have not.
- Agreements have been successful for treating funding issues.
- Actions and keeping one's word are more important.
- Formal agreements on cultural competence are beneficial to the western culture. It is important to western culture that protocols are written out, but from a tribal perspective it is just common courtesy and respect that govern one's conduct.

### Recommendations:

- Agreements can only work if there has been on-going communication and trust building prior to signing the agreement.
- There is a culturally significant difference between tribes and agencies that needs to be honored. Sufficient time must be

allowed in the decision making process to gain respect among the stakeholders and facilitate coordination.

- A formal agreement will have little effect on cultural competency unless there are other commitments to address this at the transportation agency level.
- Formal agreements can be difficult to negotiate because there is the inherent conflict between state sovereignty and tribal sovereignty.

## 2.7: Coordination – Regional or State-Level Conferences

### Supporting Material:

- a. Definition of Coordination
- b. Definition and examples of Regional/State level Conferences
- c. Case studies on Tribal Regional/State level Conferences
- d. Lessons learned on Regional/State level Conferences
- e. Recommendations on Regional/State level Conferences

### Lessons Learned:

- Regional and state conferences can be a successful coordination strategy when dealing with cultural competency, protection/preservation of tribal sensitive resources, and sovereignty issues. However, there was no moderate agreement or consensus that this strategy would be effective for confidentiality, land ownership, or monetary issues.
- Conferences should be used for general discussion, with follow up meetings scheduled for individual discussions with each tribe.
- This strategy is best used as a first step for building relationships and getting to know stakeholders rather than achieving specific tasks.
- These venues are useful for networking, developing face-to-face relationships, identifying issues, and sharing information on agency programs and projects.
- This strategy works well if specifics of culturally sensitive issues are not discussed and are only dealt with in generalities.
- Conferences can be difficult when tribal recognition is "mixed" within the state (federally recognized, state recognized, non-recognized).
- Conferences tend to be attended by a majority of non-tribal representatives and this discourages tribal input.
- Large conferences are not results oriented.
- Conferences are not good for coordinating anything. They are for delivering information.
- To address issues that are sensitive to the tribes, they prefer small groups and only those they have dealt with closely and in whom they have a high level of trust.

- General discussion is important if the strategy is aimed at training state agencies that the law allows for confidentiality protection. However, if it's at a project level, generalities will need to be limited and more specifics provided.

### **Recommendations:**

- Conferences are the appropriate venue only if the tribes and the transportation entities are in agreement with the participants and the topics prior to the event.
- While most transportation issues exist at the local level, conferences could be helpful with regional or statewide issues.
- Conferences are best if hosted at tribal locations.
- A third party is needed to administer a post evaluation of the event to measure empirical results.
- Tribal issues are unique to each tribe so even regional level conferences may not be personalized enough to be effective.
- Tribes should have the final authority to make sensitive information available, or to withhold information and address it in private with the FHWA decision maker, as the tribes see fit.

## **3.1: Cooperation – Planning Organizations**

### **Supporting Material:**

- a. Definition of Cooperation
- b. Definition and examples of Planning Organizations
- c. Case Studies on Planning Organizations
- d. Lessons Learned on Planning Organizations
- e. Recommendations on Planning Organizations

### **Lessons Learned:**

- Planning organizations are viewed as a successful cooperation strategy for issues such as cultural competency, protection/preservation of tribal sensitive resources, sovereignty, land ownership, and monetary issues. The one exception is confidentiality issues. Confidentiality will always be present and hard to deal with when increasing the number of participants in the planning process.
- Planning works well when tribes are treated as truly equal partners whose needs are considered by other partners.
- Good for planning but not for engineering and construction.
- Partnerships between local/state and federal and tribal governments can improve the statement of tribal needs and methodologies for achieving common transportation needs.
- Good for improving statements of needs and the methodologies for achieving those needs.
- Good for open issues but not for specific, culturally sensitive issues.

- The focus should be on the development of processes and protocols for avoiding negative impacts on tribes.
- This venue can be good for developing cultural competence and awareness of sensitive issues.
- General discussion is important if the strategy is aimed at training state agencies that the law allows for confidentiality protection. However, if it's at a project level, then generalities will need to be limited and more specifics provided.
- Tribes are reluctant to discuss concerns at the general level; this can lead to late escalations.
- Though confidentiality issues are still better discussed on a government-to-government basis, it is still helpful for planning organizations to be aware of the issues.

### **Recommendations:**

- Tribes have to be equal partners in planning organizations.
- Tribes and Agencies need to seek individuals that are best suited for the organization and need to give decision-making power to those individuals on behalf of the groups they represent.
- Planning organizations would be an inappropriate entity to facilitate cooperation regarding tribal sensitive matters or sovereignty issues since these are inherently governmental responsibilities.

## **3.2: Cooperation – Regional Transportation/Transit Districts or Coalitions**

### **Supporting Material:**

- a. Definition of Cooperation
- b. Definition and examples of Regional Transit Districts and Coalitions
- c. Case studies on Regional Transit Districts and Coalitions
- d. Lessons earned on Regional Transit Districts and Coalitions
- e. Recommendations on Regional Transit Districts and Coalitions

### **Lessons Learned:**

- Regional transportation/transit districts and coalitions can be an effective strategy for addressing cultural competency, sovereignty, land ownership and monetary issues. Protection/preservation of tribal sensitive resources and confidentiality issues do not lend themselves to this strategy.
- Regional coalitions can address project prioritization and funding issues, as well as the larger institutional cultural context of agencies.

- Coalitions can be a good strategy for identifying stakeholders and developing a resource pool.
- Tribes can assert leadership in this type of coalition.
- This strategy seems more appropriate for issues that revolve around transit, not other transportation issues.
- The perception of regional districts or coalitions is that the entities that have the most money will get the most projects.

### **Recommendations:**

- None from Delphi panelists.

## **3.3: Cooperation – Resource Sharing**

### **Supporting Material:**

- a. Definition of Cooperation
- b. Definition and examples of Resource Sharing
- c. Case studies on Resource Sharing
- d. Lessons learned on Resource Sharing
- e. Recommendations on Resource Sharing

### **Lessons Learned:**

- Resource sharing was viewed as an effective strategy for sovereignty, land ownership, and monetary issues. There was moderate agreement but no consensus on the use of this strategy for cultural competency or protection/preservation of tribal sensitive resource. Confidentiality issues were viewed as inappropriate for the utilization of this strategy.
- Tribes often do not have resources (money, time) to share since they have insufficient funding for programs and projects.
- The perception is that whoever has more money gets the projects they want.
- Resource sharing allows stakeholders to accomplish more together than separately.
- Resource sharing can be successful on cultural resource investigations.
- The process is complicated when more than one tribe is involved in a project.
- Utilize qualified tribal staff, and manage by competent professionals.
- Effectiveness is limited due to an inequality in available resources.
- There are risks of using non-tribal funds for studying sensitive resources because the outside entities may feel entitled to all the information that is obtained.
- If resources are to be shared, then the entities sharing the resources should share the burden of investigating and analyzing the information collected.

### **Recommendations:**

- All parties should be willing to share resources, both monetary and others (materials, staff, etc.).
- There needs to be resource sharing when it comes to reimbursing tribal members for their time and costs associated with consultation and not just on the project-specific level. Lack of travel funds is a significant barrier to participation.
- Within agency protocols, barriers need to be removed to allow for reimbursement to different parties to ease the process.

## **3.4: Cooperation – Investigation of Alternatives**

### **Supporting Material:**

- a. Definition of Cooperation
- b. Definition and examples of Investigating Alternatives
- c. Case studies on Investigating Alternatives
- d. Lessons learned on Investigating Alternatives
- e. Recommendations on Investigating Alternatives

### **Lessons Learned:**

- The investigation of alternatives is a successful strategy for cultural competency, protection/preservation of tribal sensitive resources, confidentiality, sovereignty, and monetary issues. There was moderate agreement but no consensus on the use of this strategy for land ownership issues.
- Looking at alternatives is one of the most productive methods to avoid, minimize, or mitigate adverse affects on tribes or tribal lands.
- This strategy allows for discussion and the development of a better understanding of issues and how they affect or appear to affect interested parties.
- Alternatives are important so tribes do not feel that they are being “railroaded” into just one option already chosen by the transportation agency.
- The investigation of alternatives is already part of the environmental assessment process and should be part of the design concept process.
- There are other issues that benefit from and require alternatives analysis.

### **Recommendations:**

- Alternative review works best when both agencies are in equal positions in terms of resources and expertise. Current processes do not lend themselves to this method of facilitating communication between the entities.



- This strategy can be effective on a project-specific and site-specific basis.
- This is the heart of consultation under Section 106 of the National Historic Preservation Act. The consultation process goes much smoother and has better outcomes when tribes are involved in identifying alternatives that will have the least impact on the resources of concern.
- Anytime a transportation agency is willing to work with the tribes or other parties to find another alternative, the tribe will generally be more willing to participate. The agency should not come in with a done deal or a preferred alternative. They need to approach the tribe with the project purpose and need, have valid discussions about the purpose and need, and, once that purpose/need has been agreed upon, move forward as a team towards the development of viable alternatives.
- Elements of a tribal MOU for disaster mitigation can include cost sharing and involvement of a local emergency planning group where the county and local fire departments are involved that meet quarterly. The plan includes emergency plans with up to date contact numbers and training for those who would be tribal emergency contacts. The tribal emergency contact has emergency powers to implement the plan with a call to the tribal president or council chairperson.
- Two levels are needed in disaster planning: first the tribal level to coordinate with outside agencies and their resources for on-reservation events; and secondly the tribe as part of the larger community and the potential use of tribal resources in an off-reservation emergency.
- Having a catastrophe will make jurisdictions invisible and will develop, at least temporarily, better communication between the transportation entities and tribes.
- General discussion is important if the strategy is aimed at training state agencies that the law allows for confidentiality protection. However, if it's at a project level, then generalities will need to be limited and more specifics provided.

### **3.5: Cooperation – Emergency Preparedness Planning**

#### **Supporting Material:**

- a. Definition of Cooperation
- b. Definition and examples of Emergency Preparedness Planning
- c. Case studies on Emergency Preparedness Planning
- d. Lessons learned on Emergency Preparedness Planning
- e. Recommendations on Emergency Preparedness Planning

#### **Lessons Learned:**

- Emergency preparedness planning was viewed as a successful strategy when dealing with cultural competency, protection/preservation of tribal sensitive resources, sovereignty, and monetary issues. There was moderate agreement but no consensus that these initiatives would be effective with land ownership issues. Lastly, there was no agreement and no consensus on the utilization of this strategy for confidentiality issues.

#### **Recommendations:**

- An agreement should be established to cover urgent/immediate correction for Federal Emergency Management Agency (FEMA) projects that facilitate emergency vehicles and other service vehicles. Permanent repairs should then go through the appropriate consultation process, just on an accelerated schedule.
  - In disaster planning, the tribal law enforcement entities are more involved and often lack the resources for the follow-up efforts required for good planning.
  - Oftentimes, tribal institutional cultures are not set up in the same manner as states, which inhibits the planning effort.
  - Emphasize the role of tribes in devising appropriate disaster plans to protect the confidentiality of resources.
  - Disaster planning should address how to protect public safety during catastrophic events, and any confidentiality issues need to be mitigated so that responders can act without having to concern themselves with confidentiality issues.
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*Abbreviations and acronyms used without definitions in TRB publications:*

AAAE	American Association of Airport Executives
AASHO	American Association of State Highway Officials
AASHTO	American Association of State Highway and Transportation Officials
ACI-NA	Airports Council International-North America
ACRP	Airport Cooperative Research Program
ADA	Americans with Disabilities Act
APTA	American Public Transportation Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
ATA	Air Transport Association
ATA	American Trucking Associations
CTAA	Community Transportation Association of America
CTBSSP	Commercial Truck and Bus Safety Synthesis Program
DHS	Department of Homeland Security
DOE	Department of Energy
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
HMCRP	Hazardous Materials Cooperative Research Program
IEEE	Institute of Electrical and Electronics Engineers
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
ITE	Institute of Transportation Engineers
NASA	National Aeronautics and Space Administration
NASAO	National Association of State Aviation Officials
NCFRP	National Cooperative Freight Research Program
NCHRP	National Cooperative Highway Research Program
NHTSA	National Highway Traffic Safety Administration
NTSB	National Transportation Safety Board
PHMSA	Pipeline and Hazardous Materials Safety Administration
RITA	Research and Innovative Technology Administration
SAE	Society of Automotive Engineers
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (2005)
TCRP	Transit Cooperative Research Program
TEA-21	Transportation Equity Act for the 21st Century (1998)
TRB	Transportation Research Board
TSA	Transportation Security Administration
U.S.DOT	United States Department of Transportation