



Input provided here is in response to the questions asked in the Fall 2016 Framing Paper and during the session held at the Indian Pueblo Cultural Center on “Federal Consultation with Tribes Regarding Infrastructure Decision-making,” in order to help identify common principles to meaningful consultation, potential changes to existing consultation.

Common Principles to Meaningful Consultation -

1. What are examples of consultation on infrastructure projects that you consider to be meaningful? Why did you consider these consultations to be meaningful?
 - a. Unfortunately, I have not experienced a good example of consultation that I would consider meaningful. Majority of the times, I’ve received information within the deadline timeframe, which makes it difficult to attend consultations or to respond via written comments. I also feel that the word “meaningful” is open to interpretation by each Federal agency and how they chose to define it within the means of their agencies work.
2. What factors do you consider when determining whether a consultation on an infrastructure project is meaningful? What should agencies take into account when determining whether or not a consultation is meaningful? What are examples of collaboration (other than formal consultation) that you have found to be useful? Why did you consider these collaborations to be meaningful?
 - a. How information was disseminated, how current contact lists are for Tribes, who letters of consultation are addressed to, and how interactive with Tribal Officials the Federal agency is, and not just with staff of a Tribe’s department in which consultation is sought.
 - b. Agencies should take the time to meet with Tribal Officials for govt.-to-govt. consultation and not only send letters. Agencies should present all projects that require consultation to Tribal Officials at the leadership level. Often times, Federal agencies meet with staff of the Tribes and they consider that “meaningful consultation.”
 - c. Effective relationship building through trust and transparency. As infrastructure related projects continue to take place within, near, or in relation to Tribal lands, it’s important that Federal agencies be respectful and sensitive of cultural activities taking place in Tribal communities. Practice patience and due-diligence as it relates to self-determination and the sovereignty of Tribal Nations. Federal agencies should be open to attending “cultural sensitivity” trainings as coordinated by respected Tribes they work with to ensure a partnership of mutual respect and trust is built.
3. Are there specific agencies that you find to be particularly good at consultation and what is it about how these agencies go about consultation that makes it stand out?
 - a. At this time, no particular agency stands out at representing “good consultation practices.”
4. What can Federal agencies do to better support Tribes’ ability to provide input into infrastructure decisions? What are examples of good practices that enable Tribes to provide their views and input early in the development process or prior to Federal review of an infrastructure project?
 - a. Ensure that there is a set definition of “meaningful consultation.” I feel that each Federal agency has defined this based on their approach to working with Tribes. As per



- E.O. 13175, Federal agencies were given a time period to develop their plan for consultation. Ideally, each agency should use similar language and definitions that ultimately benefit tribes and not undermine them. I feel the definition is open to interpretation by each Federal agency to fit their needs and not necessarily those of a collaborative process of meaningful consultation.
- b. Timeframes for review and comment period are often set during times of the year when Tribes are busy culturally or are going through the process of change in leadership. During these times, it is more difficult to engage in meaningful consultation, especially when leadership is busy with community matters, cultural activities, or participating in the changing of leadership.
5. What steps can Federal agencies take to ensure that Federal and non-Federal parties engage meaningfully with Tribes without overwhelming Tribes' resources?
- a. Federal agencies and non-federal parties should take the time to know and understand the Tribal community that may be impacted by infrastructure decision making and take the time to talk with leadership/staff and provide ample time for open dialogue of discussion surrounding these projects. It is understandable that Federal agencies and non-federal parties have deadlines to meet, other projects they manage, funding constraints, etc., however, in order to ensure meaningful consultation, it is imperative for our federal partners and non-federal parties to understand that Tribal leadership is just as busy as they are. In order to continue building capacity for effective communication, Federal agencies MUST take the time to conduct coordinated outreach to Tribes, including Tribal Officials, to ensure active participation is happening at all levels of the consultation process.

Changes to existing framework on consultation -

1. What are good examples of existing agency policies and regulations that other Federal agencies should consider replicating?
 - a. Consider including language reference the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
 - i. Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
 - ii. Article 29.
 1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
 2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or



- territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.
2. Does the existing framework afford ample opportunity for Tribal input? If not, what additional opportunities should there be and what would this look like?
 - a. No, ample opportunity for Tribal input is not always provided and this is dependent on the Federal agencies timeframe for project start/finish dates and other deadlines that they must meet in order to ensure completion of projects. Often times, when required input is needed from Tribes, information is sometimes received by the Tribal leadership/staff within the deadline date for review/comment. Perhaps the number of days needs to be extended or there could be a specific deadline for Tribes, due to the time and length, in which it may take to read and review documents from Federal agencies that may or may not impact Tribes and their communities.
 3. When and where do you currently encounter obstacles to meaningful Tribal engagement that could be addressed through changes to regulation, agency policies, or statute? What are these obstacles and what changes would best address them?
 - a. Contact lists for leadership and pertinent staff may be outdated or not a thorough listing of Tribal representatives and contacts. Although it may be cumbersome to keep current with Tribal leadership or a staff contact list, it is important that agencies contact Tribes to ensure their information is updated and correct for all leadership seats and current staff positions.
 - b. Actual face-to-face consultation with each Federal agency visiting the Tribes and making a formal effort to engage in consultation dialogue.
 - c. Listen and hear the requests and concerns from Tribal leadership and staff. Do not use consultation as a means to present the project to push efforts of completion. Often times, it seems as though Tribal voices and concerns are not “considered” into planning/implementation documents because these projects still move forward. This shows a total disregard and lack of respect for the consultation process. Tribal voices and concerns should be taken into deep consideration, especially if a project is going to impact the future generations of a Tribal Nation.

I am sure there is so much that can be addressed on how government-to-government consultation is effective and non-effective within the Tribal settings. Ideally, it is the hope and goal that through this framing paper, that Tribes can have integral input into this process as the dynamics of it may change with the new administration. I would like to see how Tribes can continue to play a vital role in determining how a consultation works, what a policy should enforce and the efforts taken to implement it on a government-to-government level.