



U.S. Department  
of Transportation

**Federal Highway  
Administration**

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Subject **ACTION:** Interim Guidance: Consultation with  
: Tribal Governments on Federal-aid Projects  
*Original signed by:*

Date: November 9, 2000

From: Cynthia J. Burbank, Program Manager  
Planning and Environment

Reply to  
Attn of: HEPH

To: Division Administrators

**Purpose:** This memorandum responds to recent questions from Division staff by providing interim guidance on FHWA's responsibility to conduct consultation with Indian Tribes for Federal-aid projects. This guidance is interim in order to allow time for your feedback, and to afford us an opportunity to develop a model consultation process that Divisions can use, as needed, to facilitate tribal consultations. We envision that this would be a flexible model adaptable to various circumstances.

**Background:** The basis for our guidance is Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (November 6, 2000), as well as the President's Executive Memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments," the DOT Order 5301.1, "Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes," the Advisory Council for Historic Preservation regulations, and the FHWA February 24, 1998 policy memorandum and guidance document. These documents affirm our commitment to tribal sovereignty and self-government and establish the policy of government-to-government relations between the Federal government and Indian Tribal Governments.

**Interim Guidance:** In keeping with the President's Executive Order and the aforementioned regulations and guidance documents, it is the policy of the FHWA to operate within a government-to-government relationship with federally recognized tribal governments, and FHWA's responsibility to initiate and carry out consultation with federally recognized Indian Tribes to the greatest extent permitted by law. This responsibility may not be officially delegated to the State DOTs. ~~However, with the agreement of the affected Indian Tribes and State DOTs,~~ FHWA Divisions may rely on the State DOTs to carry out day-to-day and project specific consultation. The FHWA still retains responsibility for the overall consultation, including conflict resolution, and adherence to all Federal requirements and related laws.

We fully recognize the substantial burden this places on FHWA, specifically the Divisions. To assist with this burden, we support Division efforts to establish initial dialogues with Indian Tribes to develop programmatic approaches that allow for projects to be batched, with day-to-day, project-specific consultation carried out by State DOTs. We emphasize, however, that this is possible only with the agreement of the affected Indian Tribes.

**Further Information and Comment:** If you need further information, please contact Gloria Shepherd at (202) 366-0106. We welcome comments from the Divisions, including examples of good practices and successful approaches which can be shared with other Divisions. We hope to have a full-time Native American Coordinator in place shortly to provide further advice and assistance. After experience with this Interim Guidance, we will develop Final Guidance.

cc: RC Directors of Field Services