ROGUE VALLEY

METROPOLITAN PLANNING ORGANIZATION

TRIBAL CONSULTATION PLAN

Adopted by the RVMPO
Policy Committee
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1. Tribal Consultation

A Tribal consultation is a formal, two-way, government-to-government dialogue between official representatives of Tribes and the RVMPO to discuss proposals before the RVMPO makes decisions on those proposals. RVMPO provides sufficient advance notice to appropriate Tribal leaders of upcoming consultation sessions and, following the consultation sessions, explains to those Tribal leaders how the final RVMPO decision incorporates Tribal input.

2. RVMPO Tribal Liaison

A. The RVMPO shall designate a Tribal Liaison for Tribal consultation matters who is responsible for serving as the primary point of contact for Tribal officials seeking to consult with the RVMPO.

B. The designated RVMPO Tribal Liaison may delegate consultation responsibilities to other decision-making officials as necessary and appropriate to facilitate discussion on specific subject matter areas.

C. The RVMPO shall provide the name and contact information of the designated RVMPO Tribal Liaison for Tribal Consultation on its website.

3. Native American Tribal Governments

The RVMPO Planning Area includes Tribal ancestral lands. Federally recognized Native American Tribal Governments with interests or ancestral lands in the RVMPO Planning Area shall be appropriately involved in the development of the Rogue Valley Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP).

Federally recognized Native American Tribal Governments

Cow Creek Band of Umpqua Tribe of Indians

Confederated Tribes of the Grand Ronde

Confederated Tribe of the Siletz Indians

The Tolowa Dee-ni' Nation of Smith River, California

The Klamath Tribes

Coquille Indian Tribe

Burns Paiute Tribe

Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians

Confederated Tribes of the Warm Springs

Confederated Tribe of the Umatilla Indian Reservation

4. Notice of Consultation

Consultation meetings may be scheduled on a regular basis or on an as-needed basis. The RVMPO may also seek to establish a quarterly or semi-annual conference call with the Tribes to inform them about opportunities to participate in stakeholder meetings and/or public forums. To reduce costs, the Tribes and the RVMPO will make their best efforts to coordinate consultation meetings with other regularly scheduled meetings.

A. When inviting a Tribe or Tribes to consult, the RVMPO should:

(i) Develop a notice of consultation, which includes:

a. sufficient information on the topic to be discussed, in an accessible language and format, and context for the consultation topic, to facilitate meaningful consultation;

b. the date, time, and location of the consultation, as requested by the RVMPO or as developed in consultation with the Tribe or Tribes;

c. if consulting virtually or by telephone, links to join or register in advance;

d. an explanation of any time constraints known to the RVMPO at that time, such as statutory deadlines;

e. deadlines for any written comments on the topic; and

f. names and contact information for the RVMPO staff who can provide more information;

(ii) transmit the notice of consultation, using the RVMPO's standard method of communication, to each affected Tribal government and consider posting it to the RVMPO's website or any centralized site for providing notice of or coordinating Tribal consultations;

(iii) provide notice of at least 30 days to the Tribe or Tribes of any planned consultations, except as provided in subsection (c) of this section;

(iv) provide appropriate, available information on the subject of consultation including, where consistent with applicable law, a proposed agenda, framing paper, and other relevant documents to assist in the consultation process; and

(v) allow for a written comment period following the consultation of at least 30 days, except as provided in subsection (C) of this section.

B. The RVMPO shall ensure that officials responsible for sending invitations to consult to interested or potentially affected Tribal governments use available tools, databases, and the RVMPO documentation, as well as communicate with the RVMPO representatives who may be knowledgeable about those Tribes and the location(s) affected by the policy with Tribal implications, to ensure their invitation efforts are appropriately inclusive. Such efforts should account for the fact that Tribes may have connections or legally protected rights to

locations and resources beyond their current Tribal lands and Tribal government offices such as off-reservation fishing, hunting, gathering, or other rights.

C. If there are time constraints such that 30 days' notice of consultation is not possible, or that the post-consultation written comment period described in subsection (A)(v) of this section must be shorter than 30 days, the notice of consultation should include information as to why the standard notice or written comment period cannot be provided. Upon the request of a Tribe, or where it would serve Tribal interests or fulfill certain trust obligations to Tribal Nations, the RVMPO should consider adjusting deadlines for notice of consultations and for accepting written comments.

5. The Consultation

Throughout a consultation, the RVMPO, or appropriate representatives, shall recognize and respect Tribal self-government and sovereignty; identify and consider Tribal treaty rights, reserved rights, and other rights; and meet the responsibilities that arise from the unique legal relationship between the Federal Government and Tribal Governments. The RVMPO Planning Program Director should ensure that RVMPO representatives with appropriate expertise and, to the extent practicable, decision-making authority regarding the proposed policy are present at the Nation-to-Nation consultation. The RVMPO should consider conducting the consultation in a manner that prioritizes participation of official Tribal government leaders.

6. Record of the Consultation

A. The RVMPO shall maintain a record of the consultation process that includes:

(i) a summary of Tribal input received;

(ii) a general explanation of how Tribal input influenced or was incorporated into RVMPO action; and

(iii) if relevant, the general reasoning for why Tribal suggestions were not incorporated into the RVMPO action or why consensus could not be attained.

B. The RVMPO shall timely disclose to the affected Tribe or Tribes the outcome of the consultation and decisions made as a result of the consultation. To the extent permitted by applicable law, RVMPO shall seek to ensure that information designated as sensitive by a Tribal government is not publicly disclosed. The RVMPO should obtain advance informed consent from Tribal communities for the use of sensitive information provided by the Tribe, and should inform Tribal representatives that certain Federal laws, including the Freedom of Information Act, may require disclosure of such information.

C. For national and regional consultations, or if otherwise appropriate, the RVMPO should also consider publicly posting the record of consultation to foster ease of reference and use by other agencies, employees, and processes, and to minimize burdens on Tribes to provide similar input in multiple consultations. Decisions regarding whether to publicly post a record of consultation should be made with Tribal input.

D. The record of consultation does not waive any privilege or other exception to disclosure pursuant to the Freedom of Information Act or its implementing regulations.

7. Planning Timeline

Timelines for Tribal outreach and engagement will correspond to the development phases of the Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP). The RTP is a multi-modal transportation plan designed to meet the anticipated 25-year transportation needs within the Metropolitan Planning Organization (MPO) planning area boundary and is updated every 4 years.

Regional Transportation Plan Development Phases

(i) Goals & Policies

(ii) Project Lists, Financial Forecasts, maps

(iii) Travel Demand Model

(iv) Air Quality Monitoring

(v) Update Chapters

(vi) Draft RTP and Air Quality Conformity Determination out for review

(vii) Adoption of RTP and Air Quality Conformity Determination

The Transportation Improvement Program identifies and lists transportation projects for implementation within the next 4 federal fiscal years and is updated annually. The TIP must include all federally funded projects to be funded under Title 23, the Federal Transit Act and regionally significant projects requiring an action by FHWA regardless of funding source.

The TIP projects must be consistent with the RTP and financially constrained. In nonattainment and maintenance areas subject to transportation conformity requirements, a conformity determination is made in accordance with the Clean Air Act and EPA's conformity regulations (40 CFR part 93).

Transportation Improvement Program Development Phases

(i) Project Selection, Prioritization and Financial Constraint

(ii) Draft TIP to MPO Policy Board

(iii) TIP Public Comment

(iv) Travel Demand Model/AQ Analysis

(v) Draft TIP Adjustment/AQ Analysis

(vi) Draft TIP to Committees/Public

(vii) Approval of TIP and AQ Analysis

8. Roles and Responsibilities

The Tribes will determine at what level they wish to participate. It would not be uncommon for a proposal or the subject of a consultation to not impact the Tribes in a significant way. In these instances, the Tribes may determine that a meeting with staff or a Tribal Council presentation in lieu of a formal consultation is preferred. If the Tribes decide a formal consultation is not required, the decision is confirmed, and the decision explicitly documented.

A meeting or presentation is not the same as a formal consultation. Tribes are sovereign nations in which consultation is a distinct process conducted at the highest levels in a government-to-government context. Tribes are not a "stakeholder" or the "public". A Tribe is a separate government organization in which they are afforded consultation, early review and extended timelines.

Tribal Council meeting protocols and timelines vary for each Tribe, but meetings are often conducted using Robert's Rules of Order. For a Tribal Council meeting, an RVMPO official should attend in respect of the government-to-government relationship. Notes should be taken during the meeting and afterward compared to meeting minutes.

Regularly scheduled staff meetings are a good way to maintain and strengthen relationships. Staff, in advance of any meeting, should provide the Tribe with a draft agenda and incorporate their input into a final agenda. A prayer, invocation or blessing at the beginning of meetings are common. A face-to-face meeting is best in all cases but in the case of virtual meetings, offer a non-internet phone call as an option. Take strong notes or record the meeting and provide to attendees after the meeting to ensure a mutual understanding of the topics discussed and/or desired outcomes, etc.

Table 1 - Roles and Responsibilities

	RVMPO	RVMPO Tribal Liaison	RVMPO Subject Matter Expert
Consultation Plan	✓		
Tribal Liaison	✓		
Notice of Consultation		✓	✓
Consultation/Meeting		✓	✓
Report/Notes			✓

9. Performance and Accountability

After completing each Tribal engagement, the RVMPO will produce a report detailing the results of their Tribal outreach and provide the report to the effected Tribes. The RVMPO will, with input from Indian Tribes, develop and utilize appropriate evaluation measures to assess their efforts to determine whether their overall consultation process is effective over time.

10. Definitions

The terms "Tribal officials," and "policies that have Tribal implications," are used as defined in Executive Order 13175. The terms "Tribes", "Tribal Nations" "Federally Recognized Tribe", "Tribe",

or “Indian Tribe” refers to any Indian tribe, band, nation, pueblo, village, community, or other organized group or community of Indians that the Secretary of the Interior recognizes as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, (25 U.S.C. § 479a).

11. Scope

Nothing in this Plan shall be construed to impair or otherwise affect the ability of the RVMPO to set more specific or more stringent standards, or to incorporate other best practices, for conducting Tribal consultation.

12. General Provisions

A. Nothing in this Plan shall be construed to impair or otherwise affect the authority granted by law to an executive department agency, the RVMPO or the head thereof.

B. This plan shall be implemented consistent with applicable law and subject to the availability of appropriations.

APPENDIX A

Select listing of laws relevant to Tribal consultation or coordination.

Federal

23 CFR 450.316 Interested parties, participation, and consultation

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Freedom of Information Act (FOIA)

Executive Order 12898, Environmental Justice

National Environmental Policy Act (NEPA)

Endangered Species Act

Clean Water Act

Clean Air Act

Resource Conservation and Recovery Act Oil Pollution Prevention Act

Comprehensive Environmental Response, Compensation, and Liability Act (Superfund)

Federal Land Policy and Management Act Coastal Zone Management Act of 1972

Magnuson-Stevens Fisheries Conservation and Management Act Migratory Bird Treaty

Paleontology Resources Act

Executive Order 11593, Protection and Enhancement of the Cultural Environment

Executive Order 13007, Indian Sacred Sites

Executive Order 13287, Preserving America

The National Historic Preservation Act (NHPA)

Department of Transportation Act (DOT)

Archaeological Resources Protection Act (ARPA)

ARPA is the federal lands archaeological permitting act.

American Indian Religious Freedom Act (AIRFA)

Native American Graves Protection and Repatriation Act (NAGPRA)

Antiquities Act of 1906

Archeological and Historic Preservation Act of 1974

Abandoned Shipwreck Act of 1987

State

ORS 97.740: Indian Graves and Protected Objects.

ORS 358.905-961: Archaeological Sites and Objects.

ORS 182.162-168: Relationship of State Agencies with Indian Tribes.

ORS 192.345(11): Public records conditionally exempt from disclosure.

ORS 390.805-390.925: Designated Scenic Waterways

ORS 196.105-196.125: Removal Fill