

Tribal Consultation with Indian Tribal Governments

Fresno Council of Governments

January 2019

Introduction

Fresno Council of Governments (Fresno COG) is the federally designated Metropolitan Planning Organization (MPO) and the state-designated Regional Transportation Planning Agency (RTPA) serving Fresno County. Fresno COG is responsible for developing all state and federal transportation plans and programming documents that are necessary to secure and program transportation funds within the region. Fresno COG routinely consults with Native American tribal governments on activities that may impact their communities.

Policy for Consultation with Federally Recognized Indian Tribal Governments

The U.S. DOT defines consultation as “when one or more parties confer with other identified parties in accordance with an established process and, prior to taking action(s), considers the views of the other parties and periodically informs them about action(s) taken.” Some areas of consultation could include: transportation, land use, employment, economic development, housing, community development and environmental issues.

For this document, consultation is the meaningful and timely process of seeking, discussing and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values, and where feasible, seeking agreement.

Requirement to Consult

Consultation with Resource Agencies

Title 23 CFR part 450 requires that MPOs shall consult, as appropriate, with state and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.

Native American Tribal Government Consultation and Coordination

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (November 6, 2000), establishes regular and meaningful consultation and collaboration with tribal officials in developing federal policies with tribal implications to strengthen government-to-government relationships with Indian tribes and to reduce unfunded mandates upon local tribes.

State and federal regulations require Fresno COG to conduct government-to-government consultation regarding its planning and programming activities with tribal governments of federally-recognized Native American tribes. Additionally, Assembly Bill 52 (Gatto, Statutes of 2014) requires that state and local agencies are to analyze the impacts to Native American cultural resources under the California Environmental Quality Act (CEQA). Lead agencies under CEQA must work with tribal governments to avoid or mitigate the impacts to cultural resources.

Federally Recognized Tribes

Federal recognition is a legal distinction that applies to a tribe's right to a government-to-government relationship with the federal government and eligibility for federal programs. All California Native American tribes are distinct and independent governmental entities with specific cultural beliefs and traditions and unique connections to areas of California that are their ancestral homelands.

A contact list of both federally and non-federally recognized California Native American tribes is maintained by the Native American Heritage Commission. The three federally recognized tribes in Fresno County are Big Sandy Rancheria of California, Cold Springs Rancheria of Mono Indians of California, and Table Mountain Rancheria of California. Although consultation is not mandated for non-federally recognized tribes, this does not preclude the Fresno Council of Governments from consulting with local non-federally recognized tribes when plans or activities might impact cultural values or the community.

Agency Organizational Structure

Fresno COG is a consensus builder, developing acceptable programs and solutions to issues that do not respect political boundaries. In 1967, incorporated city and Fresno County elected officials established the agency, formalizing Fresno COG through a joint powers agreement, Fresno COG is a voluntary association of local governments. Fresno COG undertakes comprehensive regional planning with an emphasis on transportation, provides citizens an opportunity to be involved in the planning process and supplies technical service to its members.

Fresno COG's member agencies are represented on its Policy Board by the mayor of each incorporated city, and the chairman of the County Board of Supervisors, or designated representatives. The Policy Board is a governing body that establishes policy and guides work activities. It is assisted in making decisions by the Policy Advisory Committee (PAC), comprising the Chief Administrative Officer of each member agency, or their designated representatives. Staff from member agencies, tribal governments, interest groups and industry stakeholders comprises the Transportation Technical Committee (TTC) which also assists in the decision-making process.

Native American Indians of California and other tribal governments are also invited to participate in the monthly Transportation Technical Committee (TTC) and the Environmental Justice Subcommittee meetings. The TTC reviews staff work conducted pursuant to the Overall Work Program, advises the Policy Board and PAC on transportation issues and makes recommendations to the Policy Board on planning and programming actions. The TTC review is generally focused on the technical merits of various transportation issues coming before the Policy Board. The Environmental Justice Subcommittee under the TTC meets when necessary to review items involving Environmental Justice populations and provide recommendations to the TTC. Additionally, the subcommittee is instrumental in assisting Fresno COG staff in setting

definition and thresholds for Environmental Justice Populations for the Environmental Justice Report within Regional Transportation Plan (RTP).

Consultation

Federal and state law require local agencies to consult with federally recognized tribal governments prior to making transportation decisions, taking actions, or implementing programs that may impact their communities. This activity is separate from, and precedes the public participation process. Protocol should be flexible and dynamic with respect to communication and discussion formats. More than one tribe may have an affiliation with the area of consideration. Individual consultation may be necessary if a combined consultation format is not preferred by the tribal government. Determining the degree and adequacy of consultation will vary depending on a number of factors, including the scope of proposed activities, whether the activity is short-term or long-term, the cultural or political sensitivity of the issue at hand, and the number of potential stakeholders. Fresno COG intends to consult with Native American tribal governments on activities that may impact their communities.

The Executive Director or his/her designee is the designated Fresno COG official with principal responsibility for the agency's implementation of consultation requirements. At the appropriate time in the planning phase, Fresno COG shall contact the Federal Land Management Agencies and tribal chairs to inquire about established protocols, such as cultural resource contacts, procedures, time limits and restrictions affecting communication. Mutually agreed-upon protocols may result in more effective consultation efforts with federal land management agencies and individual tribes.

Consultation is a process, not a single event, and communication should continue until the project or plan is complete. Consultation requests should include a clear purpose, explaining the request and declaring the importance of participation in the planning process. The request should specify the location of the area of potential effect addressed in the proposal. All aspects of the consultation process should be documented, including how the lead agency reaches a final decision.

Agency Activities

The agency consults with tribal governments on an ongoing basis, not only on individual projects. Fresno COG strives to keep open communication with tribes to facilitate better relationships and better reflect tribes' viewpoints and needs in regional planning documents and projects.

The Native American tribes in Fresno County receive the following information by telephone, mail, email, or in-person visits: the Fresno County Transportation Guide, the Regional Directory, newsletters, workshop invitations, grant notices, requests to participate in program guidelines development, working groups and scoring committees.

A memorandum of understanding between Fresno COG and the Big Sandy Rancheria that provides for a mutually beneficial protocol for the tribe and Fresno COG to jointly identify,

communicate, and coordinate actions of common concern relating to transportation plans and programs serves as one particular success story.

Fresno COG will continue the outreach activities that have been established for the Native American tribes as well as seek new ways to enhance the government-to-government relationship between Fresno COG and the Native American tribal governments. In particular, Fresno COG will make every effort to consult and involve the Native American tribes in developing future plans and programs, including, but not limited to the short and long-range transit plans and the Federal Transportation Improvement Program.

Fresno COG will consult with federal land management agencies and federally recognized Native American tribal governments when preparing planning studies and programs affecting the agency and tribe by:

- Initiating consultation from the Executive Director or his/her designee to the agency and tribal chairperson.
- Offering to meet to discuss federal agency and tribal needs and concerns regarding impacts within their jurisdictions prior to beginning the planning process. If the agency, tribal chairperson and/or their representatives elect not to meet, Fresno COG will send a copy of the draft report for their review.
- Consulting with agency and tribal governments while developing the RTP, addressing agency and tribal concerns regarding impacts within their jurisdiction and again prior to adoption of the RTP.
- Inviting agency and tribal representatives to public meetings.

Planning Documents requiring consultation

- Federal Transportation Improvement Program (FTIP)
The FTIP is a financially constrained multimodal transportation planning program developed by the MPO through its member agencies and in cooperation with state and federal agencies.
- Federal Statewide Transportation Improvement Program (FSTIP)
The FSTIP is a statewide multimodal program of transportation projects proposed for federal funding. This includes all projects that are deemed regionally significant and contains MPOs' FTIP documents and a list of rural non-MPO projects.
- Regional Transportation Improvement Program (RTIP)
The Regional Transportation Improvement Program (RTIP) is a document that details the transportation projects including highways, local roads, transit and active transportation that the region will fund with state and federal revenues.

- **Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS)**
The RTP is a long-range transportation plan that is developed and updated by Fresno COG every four years. The RTP provides a vision for transportation investments throughout the region; the SCS is a required element that integrates land use and transportation strategies to achieve emissions reduction targets.
- **Overall Work Program (OWP)**
The OWP identifies transportation-related planning projects and studies (called work elements) undertaken by Fresno COG and describes programs, budgetary and staffing requirements for Fresno COG. The OWP is a requirement for metropolitan transportation planning activities performed with federal funds provided under 23 USC and 49 USC 53.

Unmet Transit Needs Assessment requiring consultation by Transit Operators

- Transit operators initiate consultation and invitation to the unmet transit needs hearing from the transit operator or his/her designee to tribal chairperson with copies to the CEO, Administrator and cultural department representatives.
- Offer to meet to discuss the tribe’s transit needs and concerns.

Grant Programs and Funding

Coordinate with the tribal governments to provide information and technical assistance on grant programs administered by the MPO, or other agencies.

- Initiate consultation from the Executive Director or his/her designee to the tribal chairperson with copies to the Tribal Administrator, and Cultural Department representatives.
- Provide notice of each grant and its application deadlines.
- Invite representatives of the tribe to training or public meetings regarding the grants.
- Coordinate between the tribe and Fresno COG member agencies.
- Consult with and consider the interests of the tribal government.

Tribal Transportation Program (TTP) – Highway Trust Fund Planning and Programming

Coordinate among planners and engineers in local agencies and tribes.

- Offer to meet to discuss the tribe’s needs and concerns when contacted by tribal representatives.

- Provide assistance in TTP planning.
- Coordinate with federal entities, as requested by the tribe.
- Collaborate on funds awarded to the tribe through the Active Transportation Program.

Native American Tribal Contact Information

Federally Recognized Tribes

Big Sandy Rancheria Tribe
 Tom Zizzo, Tribal Administrator
 P.O. Box 337
 37387 Auberry Mission Rd
 Auberry, CA 93602
 (559) 374-0066 ext. 237 (559) 855-4129
TZizzo@bsrnation.com

Cold Springs Rancheria
 Carol Bill, Chairperson
 P.O. Box 209
 Tollhouse, CA 93667
 (559) 855-5043

Table Mountain Rancheria
 Samuel Elizondo, Tribal Administrator
 P.O. Box 410
 Friant, CA 93626
 (559) 325-0384
selizondo@tmr.org

Non-Federally Recognized Tribes

There are several non-federally recognized tribes in California that are active in transportation issues. Federal law does not require government-to-government consultation on projects with non-federally recognized tribes; however, California law AB 52 requires consultation on tribal cultural resources under CEQA. In addition, non-federally recognized tribes are generally considered a minority group, and federal executive orders require consultation with minority or disadvantaged groups. In particular, Presidential Executive Order 12898 about Environmental Justice places special emphasis on coordination with these groups.

The full list with contact information can be found at www.fresnocog.org.