

Background:

Coordination with Indian tribes should be initiated early in project planning, so that a broad range of alternatives may be considered during the planning process for the undertaking consideration. The opportunity for Indian tribes to contribute information is greatly diminished if tribal input only informs project planning after the federal agency formally initiates the process with a scoping letter, and after the Area of Potential Effect (APE) has already been determined by the unit.

This early coordination would include pre-decisional scoping discussions with Tribes. This may be done to help inform a preferred project location, ensure tribal input, and help mitigate any concerns that the Tribe may bring to the agency. Early and proactive coordination with Indian tribes can increase collaboration for both the agency and Indian tribes, leading to better outcomes and possible increased savings of time and funding.

Early coordination between the agency and Indian tribes can be beneficial for both the initiation and the efficient conclusion of the National Forest Management Act (NFMA) or National Environmental Policy Act (NEPA) process. Early Tribal engagement does not substitute for required consultation.

Purpose statement: The terms “federally recognized Indian tribe,” “Indian tribe,” and “Tribe” are used in this guide to refer to any Indian tribe, band, nation, town, or other community of federally recognizes Tribes. This guidance consists of three parts including a narrative, a checklist, and a letter template. This guidance has been provided by the Southern Region Tribal Relations program to help forests navigate the forest planning processes and early Tribal engagement. This guidance is meant to be fluid and will be updated as best practices are learned and implemented.

For more information on Tribal coordination and consultation see Departmental Regulation 1350-002, Tribal Consultation, Coordination, and Collaboration; FSH 1509.13 and FSM 1500.

How to engage Tribes

Engaging Tribes early in the NFMA/NEPA could take on many forms. One way is to meet on an annual (or other interval) basis to discuss outyear project planning, and other issues that may arise as part of the NFMA/NEPA process, outside of consultation. This could also include conducting these meetings via virtual platforms. If working in a virtual platform, it is always important to also have a phone call in number, to accommodate those who may not have access to the virtual platform but can still call in to participate. Letters of invitation for early engagement to Tribal leaders and cc to other Tribal organization points of contact are another way to begin the process but should not be the sole method.

Relationships: The foundation for early collaboration. Solutions tend to have a much better chance of success when they are developed in a meaningful way leading to cooperation and coordination with affected parties. Meaningful relationships can also lead to more effective collaboration and offer a forum in which potential conflicts can be addressed. Tribes feel equally as responsible as we do to appropriately manage the cultural and natural resources in their ancestral homelands. The National Historic

Preservation Act (NHPA), NEPA, and Tribal Consultation requirements recognize this shared responsibility.

Correspondence/Logistics

Current Contact List: Make sure you are using the most up to date Tribal contact list to help identify and contact interested Indian tribes that may have an interest in the proposed project planning. Also, it helps to confirm that your NFMA/NEPA documents are getting to the correct points of contact within the Tribal organization (Tribal leaders and department heads) to receive the most meaningful comments and engagement. Engage your forest Tribal Liaison into this communication and early Tribal engagement process. (Current Regional Tribal point of contact list should be included with this guidance and will be sent out periodically from the Regional Office.)

Correspondence: The USDA Forest Service (USFS) Southern Region values the unique relationship and trust responsibilities between the Tribes and the US Federal Government. We value the important roles Tribes perform in informing our decision-making and increasing our knowledge of sacred landscapes, cultural practices, and traditional ecological knowledge. Because of this, Tribes are treated separately from the public in the NFMA/NEPA process.

When corresponding with a Tribal Nation by letter or electronic means, the letter should be personalized to each Tribal leader or Tribal organization point of contact. There should not be a “dear friend of the forest” greeting. A generic greeting such as this doesn’t rise to consultation with tribes and many Tribes will not recognize such a letter as a request for consultation on a project, but instead will recognize it as a mass mailing to a wider group of people. Personalizing letters lets the Tribe know we are specifically requesting their input and are opening doors for project specific consultation.

When requesting Tribal engagement, it is important to request Tribes be as specific as possible in what they would like to see proposed in these areas that would be of interest to their Tribe. If comments are received, they should be responded back to in a government to government fashion in a separate response to the public in a timely manner.

File Codes: When corresponding with Tribal organizations, you should classify all record material, including correspondence, using multiple file codes, as appropriate. For example, on a NEPA scoping letter to Tribal Governments, it should have both the NEPA code 1950 and 1560 (Tribal Relations code.) The same can be said for heritage letters sent to Tribal contacts; they should have both 2360 file code as well as 1560.

For more information on records management, please refer to FSM 6200, Chapter 6230 (office management, records management program manual.)

USDA Tribal Consultation Database: Additionally, all Government to Government consultation actions should be recorded in the USDA Tribal Consultation Database. Specifics from our directives are cited below.

It is the responsibility of Forest, Grassland, and Prairies Tribal Liaisons to “Maintain the Unit’s input to the USDA Tribal Consultation Database” (FSM 1563.04l(3)). At FSM 1563.11, Forest Service officials

shall “Report on each consultation to consulting partners and the USDA Tribal Consultation Database”, and at FSM 1563.14, “All consultation events must be entered into the USDA Tribal Consultation Database.”

To complete this will mean constant and proactive coordination with the Forest, Grassland and Prairies Tribal Liaisons.

For more information on the USDA Tribal Consultation Database, please refer to USDA D.R. 1350-002, and Forest Service policy can be found in our directives at FSM 1500, Chapter 1560 (1563.03(4)) and at FSH 1509.13, Chapter 10 (11.42).

When to engage Tribes

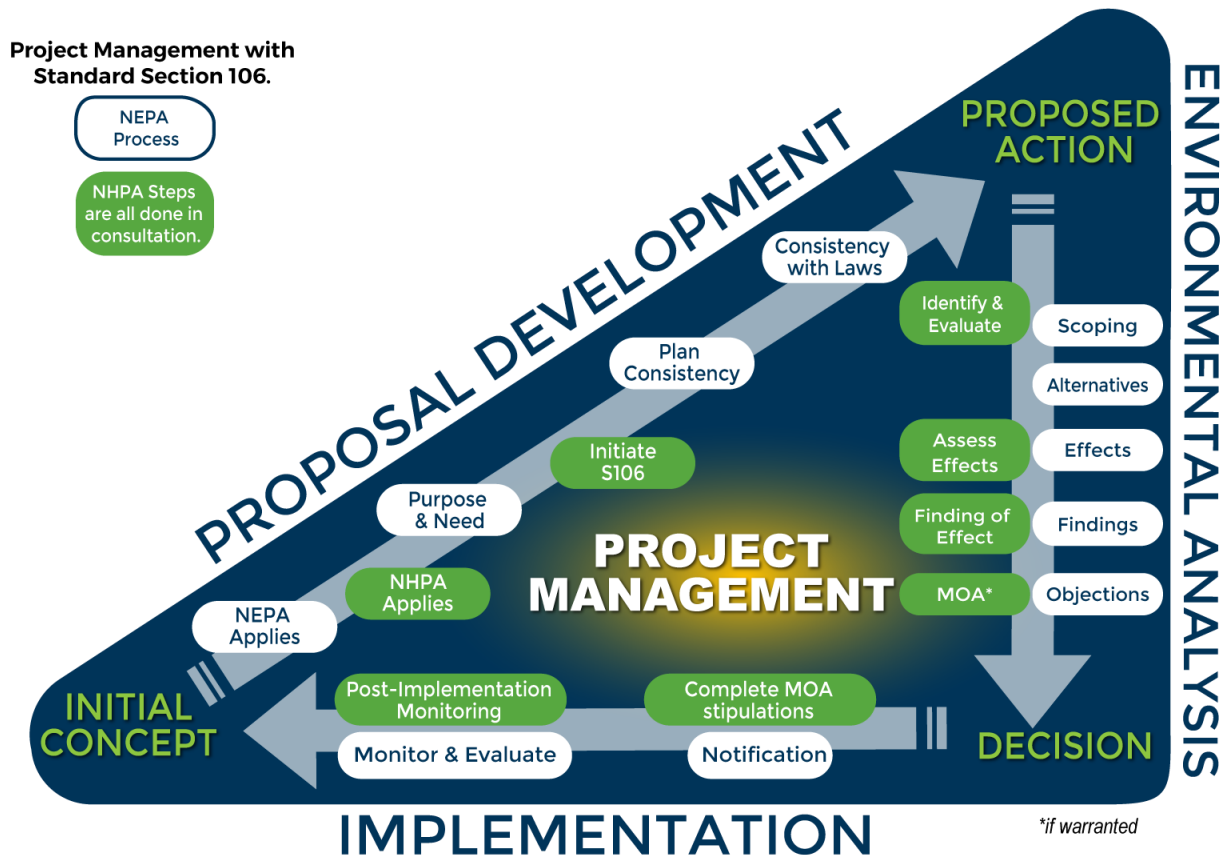
It is recommended to engage Tribes early when the likely project has ground disturbance or will potentially impact historic properties. This is especially important when there are known sites in the area. Especially sacred sites, or when a Tribe has expressed an interest in a landscape, area, resource or floral/fauna or wildlife species.

It is recommended to look at out-year planning and upcoming Forest Plan revisions with interested Tribes to identify opportunities early on that Tribes may have an interest in (ie. 638 projects, TFPA projects, etc.)

Perhaps pointing out known resources involved in this project that the tribes might be interested in, such as the water and associated stands of river cane. Or, when there are talks of implementing TEK (traditional ecological knowledge) into a proposed action.

For example, perhaps a Tribe wants to utilize some TEK on the landscape to help manage a stand of rivercane for traditional/cultural gathering. That type of consultation and interaction would need to happen early in the process, so that it could become part of the proposed action for the project.

Scoping: The federal agency should make it clear to Indian tribes that it is asking for input on a wide “study area” and possible alternatives from which a more focused array of alternatives will later be screened. Tribes should be engaged during the scoping stage and even during the project development stage, while alternatives and project areas are being determined. Transparency in the decision-making process is necessary for all parties to have opportunity to be effective, and federal agencies should not assume that Indian tribes have a working knowledge of the alternatives available. As the project management process begins to be implemented within the region, it will become increasingly necessary to coordinate early engagement with Tribes in these processes.



Things to consider

NFMA/NEPA and S106: It is suggested to tailor the outreach to each Indian tribe and their interests. Correspondence to Tribes should not be an exact copy of a public letter. Correspondence to Tribes should be clear about it being early interaction of the NFMA/NEPA process and not Section 106, and that any archaeological surveys done as part of the project would be sent when prepared. Specific questions can be posed to help initiate the broader NEPA/NHPA spectrum of collaboration such as, “Would you be interested in working to incorporate traditional plants species/knowledge into our management plans?” or “Do you know of specific areas of the forest within this project area that you would like to see managed in a specific way?”

Sacred Sites: If your proposed project lies within a Trail of Tears/Unicoi Turnpike Corridor or management area, or includes other sacred sites, consider that it will take extra time for the project to go through the sacred sites screening process and incorporate that time into the planning process.

Tribal Capacity: Indian tribes often face limitations of time and funding. The agency should be aware that their project is one of many governmental concerns being balanced by their tribal counterparts. Tribal governments also have their own decision-making processes and schedules which may not align with project schedules and deadlines. Many Tribes require a **30-day notice**

time for meetings, whether virtual or in person. Therefore, in project planning, consider tribal processes and other means to facilitate their participation. While it was always a good idea to try to engage, a non-response does not mean that a particular Tribe is uninterested in your project. If a Tribe does elect to participate, they would be there as a subject matter expert for their interests and to contribute information and perspectives that we may not have thought of previously. When the 30-day notice is not possible (for example, special use permits), it is advised to check with the consulting Tribes to gain a better understanding of how these types of engagements can be handled.

Confidentiality: When engaging Tribes early in project planning, there may be concerns regarding the protection of sensitive information. The Cultural and Heritage Cooperation Authority (CHCA) as well as Section 304 of the NHPA affords some protection from public disclosure for certain information gathered or obtained by federal agencies in the Section 106 process. It may not be possible for tribal representatives to share some or any information about certain places because of cultural prohibitions. Or, there may be issues of trust that prevent the sharing of information. The agency and Indian tribes are encouraged to explore ways to protect sensitive information at the beginning of coordination.

For more information, please refer to CHCA, 25 U.S. Code Chapter 32A or Section 304 of the National Historic Preservation Act.

NFMA/NEPA Tribal Engagement Checklist

<input type="checkbox"/>	Proposal where the APE and a broad range of alternatives have not yet been determined.
<input type="checkbox"/>	Coordination with Forest Tribal Liaison.
<input type="checkbox"/>	Current Tribal contact list and Tribal points of contact for the most meaningful comments.
<input type="checkbox"/>	Tribes who are interested in the area where the proposal is located.
<input type="checkbox"/>	Planned Tribal engagement to meet Tribal staff timelines and preferred platform (in person, virtual, etc.)
<input type="checkbox"/>	Correspondence has a personalized greeting, correct file code(s), and looped in the Tribal Liaison for entry into the USDA Tribal Consultation Database. If comments are received, they are responded back to in a government to government fashion.
<input type="checkbox"/>	Communications have been made clear about it being early interaction of the NEPA/NFMA process and not Section 106, and that any archaeological surveys done as part of the project would be sent when prepared. If the project is within the Trail of Tears Corridor or management area, the time it will take for the Trail of Tears screening process has been implemented into the planning process.
<input type="checkbox"/>	A minimum of 30-day notice for engagements with Tribes have been made, or there have been prior arrangements made with Tribes.
<input type="checkbox"/>	Protection of sensitive information has been explored and coordinated.

Tribal engagement invite to meeting/virtual platform/letter template:

File Code: 1950, 1560

Date:

Personalized Address Block

Personalized Dear Chief/Governor/President Greeting

I would like to invite you to participate in planning our next project. The exact project area and proposed activities have not yet been determined. We are asking for your input on a wide study area from which a more focused array of alternatives will later be screened (please see enclosed map of potential project areas.) This request for engagement is for early interaction of the National Environmental Policy Act (NEPA) or National Forest Management Act (NFMA) process and not Section 106 of the National Historic Preservation Act. Any archaeological surveys and reports done as part of the project would be sent when prepared for review and comment.

Your Tribe may have an interest in this (landscape, area, resource or floral/fauna or wildlife species) that lies within this project area. Our efforts to identify and protect historic, natural and cultural properties within these areas that may be of interest to your Tribe. Such as, (point out specific examples of interest to the Tribe.)

We value the important roles Tribes fulfill in informing our decision-making process and increasing our knowledge of sacred landscapes, cultural practices, and traditional ecological knowledge on the landscapes you have an interest in. We would like to engage your Tribe in helping to plan the proposed actions in these areas. Please let us know, as specific as possible, anything that you would like to see proposed in these areas that would be of interest to your Tribe.

The USDA Forest Service (USFS) (Forest) values the unique relationship between the Tribes and the US Federal Government. Please let _____, Project Leader, or _____ know if you wish to participate as a representative of your Tribe in helping to plan our next project. We can schedule future meetings and arrangements can be made for field trips to the project area. _____ can be reached at ???-???-???? (ext. ???) or via e-mail at _____.

Sincerely,

District Ranger/Consultation Official