



Federal Permitting Improvement Steering Council

Fiscal Year (FY) 2022 Draft Recommended Best Practices on Enhancing Early Tribal Engagement

The Permitting Council is required to issue annual recommendations on best practices for improving the Federal permitting process for FAST-41 covered projects pursuant to [42 U.S.C. § 4370m-1\(c\)\(2\)\(B\)](#). Each Permitting Council agency must submit to Congress and the Director of the Office of Management and Budget an annual report assessing the agency's performance in implementing the best practices pursuant to [42 U.S.C. § 4370m-7\(a\)\(3\)](#). The Bipartisan Infrastructure Law, enacted on November 15, 2021, modified FAST-41 and established a new best practice category on enhancing early engagement with Tribes. The Office of the Executive Director has drafted recommended best practices within this category in coordination with Permitting Council agencies, considering the input received from Tribes during September 2021 consultations. The Draft Proposed Best Practices on Enhancing Early Tribal Engagement are provided below.

Category (i)(I): enhancing early stakeholder engagement, including— engaging with Native American stakeholders¹ to ensure that project sponsors and agencies identify potential natural, archeological, and cultural resources and locations of historic and religious significance in the area of the covered project.²

- Identify Tribes that may be impacted by the proposed project or may have unique knowledge and expertise related to the project by using multiple tools or sources (e.g., the [Bureau of Indian Affairs' Tribal Leaders Directory](#), the [Tribal Directory Assistance Tool](#), [National Association of Tribal Historic Preservation Officers' Directory](#), etc.) to verify the accuracy of contact information. Include multiple relevant contacts (e.g., Tribal Government leadership, Tribal administrators, cultural resources staff, natural resources staff, Tribal Historic Preservation Officers, etc.) when conducting outreach to increase chances that the appropriate member(s) of a Tribe receives and can respond to the request.
- Invite identified Tribes to participate in Nation-to-Nation consultation as early as practicable in the environmental review and permitting process (e.g., before the project sponsor submits the FAST-41 Initiation Notice, if possible). Clearly discuss timelines with Tribes and incorporate feedback into the permitting timetable for the project's environmental reviews and authorizations in which the Tribe may be engaged and proactively extend timetable dates additional time is needed for meaningful consultation.
- Build relationships with Tribes by engaging with them on an ongoing basis outside of specific projects and as early as possible for covered projects (e.g., before the project sponsor submits the

¹ The Permitting Council acknowledges the unique Nation-to-Nation relationship between the United States and Tribal Nations and understands that Tribal Nations are distinct from any other stakeholder in the Federal environmental review and authorization process for infrastructure projects.

² The recommendations for best practices are intended to encourage improvements in agencies' engagement with Federally recognized Tribes and, to the extent practicable and where appropriate, with non-Federally recognized Tribes. The recommendations for best practices do not impose new or modify existing legal requirements regarding Tribal engagement and, in the case of Federally recognized Tribes, Government-to-Government consultation.

FIN, if practicable). Foster Tribal relationships by informing Tribes of how Tribal input was incorporated into project decision making.

- Be mindful of Tribes' capacity for engagement and, to the extent possible, coordinate with other agencies with Tribal consultation requirements to consolidate requests and avoid overlapping timeframes.
- Identify opportunities to work with Tribes, including working closely with Tribes to understand and incorporate [Indigenous Traditional Ecological Knowledge \(ITEK\)](#) in developing project alternatives and scoping.³ Ensure staff have knowledge of and access to internal and/or external agency resources and training available for Tribal engagement to ensure staff understand unique Nation-to-Nation relationships and requirements, including engagement beyond Section 106 consultation, to facilitate proactive engagement and relationship building. For example, refer to [ACHP's guidance](#) on Tribal coordination and consultation for infrastructure projects.

³ The [White House Memorandum on Indigenous Traditional Ecological Knowledge and Federal Decision Making](#) recognizes that the Federal Government should engage with ITEK only through relationships with Tribal Nations and Native communities and in a manner that respects the rights of knowledge holders to control access to their knowledge, to grant or withhold permission, and to dictate the terms of its application. Additional guidance on ITEK in Federal decision making will be issued in 2022.