

ELI Tribal Consultation Policy Hub

Overview

The Tribal Consultation Policy Hub is designed to build the capacity of Tribal, state, and local policymakers in implementing best practices in government-to-government consultation by serving as a dynamic repository of Tribal consultation policies.

The Hub contains Tribal consultation policies of Tribes; state laws, regulations, and executive orders pertaining to consultation; state agency consultation policies; and federal consultation directives, including executive orders, laws, regulations, and policies. It includes such documents that guide consultation as it pertains to natural resources, ancestors and funerary objects, Tribal cultural resources, and Tribal implications, among other subjects that relate to culture, land use, and natural resources.

The Hub is free and publicly available.

Methods

The resources available through the Tribal Consultation Policy Hub were compiled by the project team, who conducted extensive research to identify a total of 209 policies at the Tribal, federal, and state levels of government. Initial research has also been conducted at the local level, but it remains in the early stages.

Tribes' Tribal Consultation Policies

Tribes' consultation policies were found by searching Tribal webpages, issuing a "call for policies" published in the Native American Rights Fund and NATHPO newsletters, and utilizing Google searches. Using the NATHPO directory as a starting point, the research team accessed the websites of the 222 member-Tribes to begin searching for consultation policies, including documents regarding Section 106 guidance. On each site, the team first searched for consultation guidance on the Tribe's THPO and environmental webpages. Then, we looked at the Tribe's code for any general or permanent law, policy, or ordinance that may apply to consultation. As a final measure, we would perform a Google search of "Tribe's name + consultation policy."

Once a policy was identified, we contacted each Tribe's THPO or Cultural Preservation specialist to request permission to include the publicly available policy on the Hub. We provided each Tribe a minimum of one month to deny inclusion of the policy and followed up at least twice. In the few instances of Tribes requesting additional information and/or expressing that they would like to check with Tribal leadership, we refrained from including the policy if they did not follow up with explicit permission.

State and Federal Consultation Resources

State resources included in the Hub are state laws, regulations, and state agency policies. Such resources were collected by conducting a state-by-state search for relevant documents. This included a review of state legislative websites, state code compilations, and state agency websites. State agency policy searches were limited to state agencies that routinely take actions with impacts on Tribal cultural and natural resources, such as environmental, transportation, health, and energy agencies.

There is a wide array of Federal resource types, ranging from laws, executive orders, and policies to memoranda of understanding. Key among such resources is Executive Order 13175, which calls for each federal agency to “have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have Tribal implications.” This Executive Order formalized consultation at the federal level and has served as a template for similar consultation initiatives at the state level.

Current Status

The Tribal Consultation Policy Hub is currently undergoing beta testing by the research team, the project’s steering committee, and Tribes who have partnered with the project. Once this review is complete, and the appropriate edits are made, the website will be published. The Environmental Law Institute will publish a press release to announce when the site is live.

Potential future work may include (a) updating the resources included, as new laws are passed and as agencies publish new and updated regulations and policies, (b) expanding the inclusion of Section 106 guidance policies as we secure permission from several additional Tribes, (c) conducting further research to develop the Hub’s collection of local government consultation policies, and (d) developing a set of Tribal consultation resources apart from the policies themselves.