

SR 530 Landslide Commission

Thursday, September 18, 2014; 6:30 – 9:00 p.m.
The Darrington Community Center
570 Sauk Ave, Darrington, WA 98241
Phone: (360) 436-1217

Meeting Summary

ATTENDANCE

See Attachment 1

WELCOME, INTRODUCTIONS, MEETING OVERVIEW

Welcome and Introductions

Kathy Lombardo, Executive Director of SR 530 Landslide Commission introduced herself and welcomed Commissioners and attendees to the meeting. Kathy reviewed the purpose of the meeting, explaining how it is to provide community members an opportunity to share with the Commission their stories, lessons learned, and recommendations for future rescue and recovery efforts in Washington State. She emphasized how the Commission was here to listen and briefly reflected on her time recently spent in Darrington meeting with individuals that had experienced the event. Kathy then asked Commissioners to introduce themselves.

Facilitators Mike Gaffney and Amanda Murphy from the William D. Ruckelshaus Center welcomed Commissioners and attendees and introduced themselves. The Ruckelshaus Center is a joint center of the University of Washington and Washington State University, acting as a neutral resource for collaborative problem solving for policy development and multi-party dispute resolution in the State of Washington and Pacific Northwest. The role of the Ruckelshaus Center Facilitation team is to support and facilitate the operations of the Commission, maintaining a neutral stance to assist the Commission in achieving its purpose and goals.

Purpose, Scope, and Deliverables of the Commission

Kathy provided a brief overview of the purpose and scope of the Commission. She explained that the Commission was jointly appointed by Governor Inslee and Snohomish County Executive Lovick to identify lessons learned from the event and to provide recommendations to improve planning and response for similar events that if implemented today, would make Washington State safer tomorrow. Attendees were provided a copy of the Commission's Charter and Kathy briefly reviewed the Commission's key tasks. She explained that the Commission is to perform a review of the incident and develop a timeline of the event, review the rescue and overall emergency response and recovery to identify lessons learned and create a report containing recommendations. She also emphasized that the Commission is not a substitute for the courts in any way and will not address liability, cause or fault.

The Commission's final report of prioritized recommendations is due December 15, 2014. Kathy noted the Charter requires a draft report be shared with the Governor and Snohomish County Executive by November 15th and the Commission is to also consult with local leaders. She informed attendees that as time permits, she and Commissioners will also engage with interested community members to gather input on the draft report in advance of November 15th.

PUBLIC COMMENT

An update was made to the agenda to allow for public comment to be held at the beginning of the meeting. Public Comment Sign-up Sheet is attached.

Summary of first commenter:

Pete Selvig discussed the length of time it took to initiate the Incident Management Teams and how it needed to happen sooner. He explained how the amount of time it took to receive support services, travel access being cut off, and communication challenges were all very frustrating. Phone communication was cut off for three days, a “command trailer” was requested but sent to Oso and Arlington, and never made it to Darrington, light towers and fuel were also needed. Communication on Wheels (COW) was eventually brought in. Pete asked the Commission to review the State Mobilization Plan and legislation (HB 1126 and SB 6003) that has been introduced to expand the definition of fire mobilization to include non-fire events and to initiate “all risk resources”.

Summary of second commenter:

Amy Lucas discussed her experience during the first days after the landslide. She explained how she began taking field notes on the first day and decided parcel maps were needed to show structure locations and the extent of the landslide. Initial media reports were saying that only 5 properties had been affected by the slide, however both her notes and statements from people on the ground indicated the area covered by the slide was much greater. This prompted her to drive out to her office in Everett to gather GIS maps of the location. She explained her initial difficulty in getting people to look at and take seriously her field notes and maps. She then went to the Arlington EOC and they immediately recognized the importance of the GIS information, and made use of it. The GIS information allowed some incident responders to draw better conclusions about the location and number of structures and people potentially at risk from the landslide. Amy suggested using an impromptu team of retired members of the forest service in order to expeditiously meet the needs on the ground. There was no team system in place on the Darrington side for nine days. Amy also recommended there should be an official grid system in place in the state or at least in the county. She explained how if such a system existed, teams could have begun marking points and structure locations immediately.

Summary of third commenter:

Shari Brewer noted that a few weeks before the slide she had been on a walk and noticed large cracks in the earth and the hill looked to have separated on one side. She then discussed her and her family’s experience during the first days after the landslide. She explained how local volunteer contractor assistance responders and volunteers worked for days without sleep while FEMA and other official responders had kept regular work time hours. She discussed how FEMA and responders lacked equipment appropriate for this type of disaster (small chain saws, hand shovels, no heavy equipment) and how local volunteer contractor assistance was ready to provide the equipment but was delayed due to having to fill out contract paperwork four times. Locals were blocked from helping until Task Force 1 – Urban Search and Rescue Teams arrived. Local volunteers eventually had to force their way in past the gatekeeper. She recommended that in the future there be a point person in charge of handling contracts, vehicle passes made available, and the online federal procurement systems, SAM (System for Award Management) be used. She explained how SAM integrates all the current federal procurement systems so that information only needs to be entered once and also eliminates the issue of duplicated or conflicting information. Shari also recommended there be a list of the emergency chain of command and who to contact in an emergency made available to the public. She suggested the FEMA Tribal Consultation Policy recently signed on August 12, 2014 (attached) as a template for local communities.

CONVERSATION WITH COMMUNITY

Small Group Conversations with Community Members

Kathy reminded attendees that the purpose of the meeting was for Commissioners to hear from community members about what worked, what didn't work and recommendations for future rescue and recovery efforts across Washington State. She asked attendees whether they preferred to meet in small groups with Commissioners or to have one conversation as a whole group. Attendees began the conversation as full group and later in the evening broke into small groups with Commissioners.

Commission Dialogue and De-brief of Group Conversations

Following the small group conversations, Kathy reconvened the Commission and asked Commissioners to share what information they gathered from their conversations with community members including information gathered from the full group. Provided below is a categorized list of the lessons learned and recommendations Commissioners reported.

- East versus west along SR 530: Need to address in a larger context what to do when rural communities are separated by a catastrophic, 800 acres of mud and debris event.
- Communication: There were communication challenges on many levels.
 - Communications between Arlington and Oso and Darrington were completely cut off, cable was severed and neither city knew what the other was doing.
 - The AT&T cell tower went down so communication was cut off. If there would have been satellite phones, then Darrington would have had a way to communicate. Recommend satellite phones be available in communities, including in ambulances.
 - Recommend bringing in federal COW, radio kits from Boise, a Ham operator.
- State Mobilization Plan: There are issues surrounding the State Mobilization Plan that should be looked at including updating the plan to include non-fire related events.
- Community and inter-community planning and coordination: More community and inter-community planning for hazard events is needed (this type of planning was referred to as a "pre-cut" or a playbook).
 - Planning should include creating a current inventory of community resources including heavy equipment and medical personnel, and should be updated yearly.
 - Community plans should also include and build evacuation routes and have a plan that addresses what to do when bridges are out due to earthquakes.
- Local/State/Federal Coordination: Better coordination amongst local, state, and federal systems is needed.
 - Coordinated federal/state/county contracting system - Use the online federal procurement systems, SAM (System for Award Management) for contracts.
 - Web EOC statewide—Emergency system. Web based data system to track data during an emergency. Having GIS maps and the necessary data available during an emergency is critical.
 - Have better coordination and cooperation with emergency management at the county and state level.
 - Incident command system uses a rotation system to ensure that staff is always rested. The system is supposed to work in such a way that ensures there is continuity

when shifts are changing, however it did not seem to have happened that way. This left many people feeling very frustrated. Having local people involved and communicating with the incident command teams during these shift changes would have been a better approach.

- Relationships: Having trust and already established good working relationships is essential.
 - Emergency management must have relationships with the local community as well as between and among other emergency response organizations.
 - Having trusted local leadership and relationships with the local community is critical in advance of an emergency situation– having a good Mayor was immensely important in dealing openly with the families, rescuers and community as a whole.
- Preparedness and resiliency of a community and individuals within community is important.
 - Training for community members about hazard events and emergency situations is needed.
- Utilize local expertise and resources: Most rural communities have unique skills and talents that can be leveraged.
 - Rural communities have unique talents and skills, such as farming, logging, mining, etc. and can provide necessary resources during an emergency. For example, loggers and logging equipment available in Darrington. Consider looking at a rural vs urban response plan and what are the similarities and differences.
 - There is a great deal of community knowledge and expertise and there needs to be a way for incident command to tap into these resources during an emergency event.
- Geologic hazards: Better information is needed about land use and geologic hazards.
 - There needs to be a way for people to report when they see geologic changes in their area, and it needs to be known who or where to report such information.
 - GIS maps of hazard areas are needed. While creating these maps for the state will be costly, the work needs to begin and slope areas need to be identified.
 - There needs to be public notification when there are geologic changes.
 - Risk assessments of hazard areas are needed as well as compensation for geologic hazards similar to flood insurance.

MEETING CLOSURE

Community members thanked the Commission for their willingness to listen and take the information gathered from the evening to inform recommendations. Kathy closed the meeting by thanking all participants for their willingness to share their stories, lessons learned, and recommendations.

Upcoming SR 530 Commission Meeting Dates	Location
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<ul style="list-style-type: none"> • September 30, 6-9 p.m. • October 2nd, 5-8 p.m. • October 13th, 5-8 p.m. • October 20th, 5-8 p.m. • November 4th, 5-8 p.m. • December 2nd, 5-8 p.m. 	<ul style="list-style-type: none"> • Everett Community Center
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**Attachment 1
 Meeting Attendees**

Name	Title and Affiliation
Kathy Lombardo	Executive Director
Paul Chiles	Owner/ President, Chiles & Co Real Estate
John Erickson	Former Director of Emergency Preparedness, Department of Health
Wendy Gerstel	Principle, Qwg Applied Geology
Renee Radcliff-Sinclair	Former Representative, Current Strategic Initiatives for Western United States for Apple Inc.
Lee Shipman	Emergency Management Director, Shoalwater Bay Tribe
Steve Strachan	Chief, Bremerton Police Department
Bill Trimm	County Planner/Land Use Expert, Member, Snohomish County Planning Advisory Council representing Mountlake Terrace
Mike Gaffney	Ruckelshaus Center
Amanda Murphy	Ruckelshaus Center
John Snyder	Ruckelshaus Center
Michael Kern	Ruckelshaus Center
Raquel Espinosa	Ruckelshaus Center

**Chief Greg Garcia has resigned from the Commission, due to health related issues.*

SR 530 LANDSLIDE COMMISSION MEETING SIGN-IN SHEET

Meeting Date & Time: September 18, 2014, 6:30pm – 9:00pm

Location: The Darrington Community Center, 570 Sauk Ave, Darrington, WA 98241

Name	Title	Affiliation	Phone	E-Mail
Bobbie C. [unclear]			360-6296971	osobops@aol.com
Arene Kuntz			360-436-1965	rikuntz@verizon.com
Nichole Rivera			360 436 9587	Yesyoucanguilt@gmail.com
Don James			436 0655	
Andrea Hulme			360 572 4126	andrea Hulme@ymail.com
Megan Curtin			436 0559	loyalprincess@gmail.com
Rachel Pales			360 732 9145	
DAWN Brunner			436-0508	yzman81@yahoo.com
Judy Pendergrass			360-631-2938	judy.pendergrass@hotmail.com
Amy Lucas			(360) 436-0425	anmlucas@col.com
Dustin Hoegemeyer		SCLS	(360) 913-0992	
Joe Downes	Outreach Director	Sen. Cantwell	425 315 5807	JoeDownes@cantwell.sen.wa.gov
Dave & Sarah Holmen		DHS + School Dist.	360-631- 9657	azhoops@frontier.com

SR 530 LANDSLIDE COMMISSION MEETING SIGN-IN SHEET

Meeting Date & Time: September 18, 2014, 6:30pm – 9:00pm

Location: The Darrington Community Center, 570 Sauk Ave, Darrington, WA 98241

Name	Title	Affiliation	Phone	E-Mail
Alexa Dugan	Reporter	The Seattle Times		
Carolyn Wyatt			425 210 6219	
Tom Cooper			425-754-0866	
Shari-Lou Brewer	R+S forestry Contractor	Family friend in slide	360 436 1771	shari3@frontier.com
Julie Kuntz	affected family		425 501-6631	Coryjulie@live.com
Jaimie Mason			425-387-1508	jaimie.mason@gmail.com
Stephanie Reiner			425-760-1315	Lia7897@yahoo.com

SR 530 LANDSLIDE COMMISSION MEETING PUBLIC COMMENT SIGN-IN SHEET

Meeting Date & Time: September 18, 2014, 6:30pm – 9:00pm

Location: The Darrington Community Center, 570 Sauk Ave, Darrington, WA 98241

Welcome to the SR 530 Landslide Commission Meeting. Public comment is encouraged and appreciated. If you wish to speak, please sign-in and provide the agenda item topic you wish to speak about to the Commission.

A total of 15 minutes will be provided for public comment, starting at 8:45pm. Please limit comments to 3 minutes per person. No speaker may convey or donate his or her time to another speaker. In an effort to be respectful of everyone's time, Commission members will not be able to engage in a dialogue with individual members of the audience and no immediate action will be taken on any public comment issue.

Name	Address/Phone/Email (Optional)	Representing Self/Business	Agenda Item/Topic	Wish to Provide Written Comment?
Pete Schindig	46430 254th NE	self	All Risk ICS	HB 1126 SB 6003
Amy Lucas	30811 3600th Ave NE	self	EOC locations	
Shane Bonner	P.O.# 701 DARRINGTON	Local Contractors	Chain of Command communications contracting	LATER



I. TITLE: FEMA Tribal Consultation Policy

II. DATE OF ISSUANCE: 08/12/2014

III. PURPOSE

The Federal Emergency Management Agency (FEMA) is committed to enhancing its relationships with Indian tribes, and to supporting Indian tribes in their preparation for, mitigation of, response to, and recovery from all hazards and disasters. The purpose of this policy is to establish a process to guide FEMA employees on how to engage Indian tribes and Tribal Officials in regular and meaningful consultation and collaboration on actions that have tribal implications.

IV. SCOPE AND EXTERNAL AUDIENCE

This policy applies to all FEMA employees responsible for engaging in consultation and coordination with Tribal Officials and Indian tribes under Executive Order (E.O.) 13175 of November 6, 2000, *Consultation and Coordination with Indian Tribal Governments* and Presidential Memorandum of November 5, 2009, *Tribal Consultation*. It sets forth broad guidelines for enhancing FEMA's consultation and collaboration with Tribal Officials and Indian tribes on actions that have tribal implications as defined in this policy. This policy applies to FEMA actions commenced on or after the date of issuance. FEMA intends to review and update this policy regularly, as necessary, to reflect our ongoing engagement and collaboration with our tribal partners.

V. AUTHORITY

Executive Order 13175 of November 6, 2000, *Consultation and Coordination with Indian Tribal Governments* (65 Fed. Reg. 67249, Nov. 9, 2000); and Presidential Memorandum of November 5, 2009, *Tribal Consultation* (74 Fed. Reg. 57881, Nov. 9, 2009).



VI. BACKGROUND

This policy is issued pursuant to E.O. 13175 of November 6, 2000, *Consultation and Coordination with Indian Tribal Governments* and Presidential Memorandum of November 5, 2009, *Tribal Consultation*, which direct agencies to engage in regular and meaningful consultation and collaboration with Tribal Officials in the development of Federal policies that have tribal implications, and to strengthen the government-to-government relationship between the United States and Indian tribes.

This policy is consistent with the process described in the Department of Homeland Security's Tribal Consultation Policy, and tailors that consultation framework to FEMA's mission. In addition, the guiding principles that define FEMA's commitment to build strong and lasting partnerships with Indian tribes, found in the FEMA Tribal Policy¹ continues to guide any FEMA consultation or coordination with Indian tribes and Tribal Officials.

VII. DEFINITIONS

The following definitions apply for purposes of this policy only:

- a. "Consultation" involves the direct, timely, and interactive involvement of Indian Tribes regarding proposed federal actions on matters that have direct tribal implications. At FEMA, this means the process to communicate and collaborate with Tribal Officials and Indian tribes to exchange information and receive input on an action that has tribal implications.
- b. "Indian tribe or Tribe" means an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. §479a.
- c. "Action that has tribal implications" means FEMA regulations, rules, legislative proposals, policies, guidance documents, directives, and other

¹ FEMA Policy 305-111-1 (Dec. 30, 2013).



policy statements that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

- d. "Tribal Officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

VIII. ROLES AND RESPONSIBILITIES

The following FEMA employees have specific roles and responsibilities in carrying out effective and meaningful consultation through the implementation of this policy. The roles and responsibilities of these FEMA employees reflect the fact that, while oversight and coordination of consultation occurs at FEMA headquarters, as a practical matter, much of the actual consultation activity occurs in FEMA's program and regional offices. The responsibility for initially analyzing the need for consultation and then subsequently carrying it out, resides with these offices.

- a. **The FEMA Administrator.** The Administrator is the official designated to certify to the Office of Management and Budget (OMB) that FEMA complied with E.O. 13175 in a meaningful and timely manner in any draft final regulation that has tribal implications. The Administrator is the official designated to certify to OMB that FEMA complied with all relevant requirements of E.O. 13175 in any proposed legislation that has tribal implications.
- b. **National Tribal Affairs Advisor (NTAA).** The NTAA is the agency's subject matter expert on Indian tribal issues and advises Senior Agency Officials and Tribal Consultation Coordinators on issues related to consultation with Tribal Officials and Indian tribes. The NTAA leads efforts to develop specific training on tribal consultation for FEMA employees that regularly engage in actions that have tribal implications. The training should cover topics such as Indian tribal and Alaska Native cultures and governments, inherent tribal sovereignty, the trust responsibility of the United States, and tribal self-government and self-determination.



- c. Office of External Affairs (OEA).** The Office of External Affairs (OEA) mission is to engage, inform, and educate all FEMA partners in support of FEMA programs and initiatives. To this end, OEA coordinates and maintains visibility on public and internal engagement and communications, and advises FEMA program and support offices on decision-making regarding policies, plans, and actions that affect stakeholder, media, and congressional audiences. In addition, OEA organizes outreach efforts focusing on Indian tribal governments, as well as state, local, and territorial governments, national organizations and associations, the private sector, and the public. The NTAA resides within OEA's Intergovernmental Affairs Division (IGA).
- d. Senior Agency Officials.** Senior Agency Officials are the Associate Administrator, Deputy Administrator, Regional Administrator, Director, or any other official reporting directly to the Administrator, or their designated representative, responsible for all phases of consultation within their respective office. Senior Agency Officials are encouraged to develop a Standard Operating Procedure or Implementation Plan for carrying out the duties outlined in this policy, which tailors the broad concepts in this policy to the specific needs of their respective office.
- e. Tribal Consultation Coordinators (TCCs).** Tribal Consultation Coordinators are designated by a Senior Agency Official to carry out consultation on a specific action for their respective offices, in coordination with the NTAA. TCCs assist Senior Agency Officials to implement this policy in their respective offices. TCCs should be, or receive training to be, familiar with the unique circumstances that affect Indian tribes, the cultural sensitivities that could impact tribal consultation, and the nature of the relationship between Indian tribes and the Federal Government.
- f. Regional Tribal Liaison (RTL).** The Regional Tribal Liaisons are based out of the FEMA Regional Offices and develop close working relationships with the Indian tribal governments in their respective region. RTLs are the first FEMA point of contact for Indian tribal governments and provide technical assistance on FEMA programs. RTLs help Senior Agency Officials, TCCs, and the NTAA



to identify appropriate Tribal Officials to contact for consultation, best methods for notification, and preferred methods of consultation.

- g. Office of Chief Counsel (OCC).** The Office of Chief Counsel assists Senior Agency Officials and TCCs to determine whether consultation is appropriate. OCC provides legal support to Senior Agency Officials and TCCs during the consultation process. The program attorney, in coordination with the Senior Agency Official or TCC, consults with OCC-Regulatory Affairs Division (RAD) for consultation on a matter involving regulations, and with OCC-Chief of Staff for Legal Policy (OCSLP) for consultation on a matter involving legislation.

IX. THE CONSULTATION PROCESS

- a. Overview.** In general, at FEMA, consultation is the process for communicating and collaborating with tribes to exchange information and receive input on actions that have tribal implications. FEMA incorporates the input received from tribes into the decision making process for the action. FEMA is committed to an inclusive and collaborative consultation process for actions that have tribal implications. FEMA offices and regions work to build meaningful relationships with Tribal Officials and Indian tribes. This helps FEMA to identify successfully the capabilities, needs, and interests of affected Indian tribes, and facilitate successful consultation efforts in the future. Consultation at FEMA consists of four phases: Identification, Notification, Input, and Follow-up.
- b. Phase 1: Identification.** Identification occurs in two ways: (1) FEMA identifies an action to consider for consultation; or (2) an Indian tribe or Tribal Official requests FEMA to consider consultation on an action by contacting the NTAA.
 - 1. How to determine whether to conduct consultation on an action.** Regardless of whether FEMA or an Indian tribe highlights an action to consider for consultation, Senior Agency Officials, in coordination with their TCCs, the NTAA, and OCC, follow these steps to determine whether to conduct consultation on an action:



- i. **Does the action have tribal implications?** The Senior Agency Official determines whether the agency action has tribal implications.

(1) **What is an agency action?** An “action” can include, but is not limited to the following FEMA actions related to FEMA programs (such as, response, recovery, preparedness, flood insurance, hazard mitigation, and environmental and historic preservation compliance):

- Regulations or rules,
- Legislative proposals,
- Policies, guidance documents, directives, or other policy statements.

(2) **When is there a tribal implication on an agency action?** There is a “tribal implication” when the action has a substantial direct effect on:

- One or more Indian tribes (for example, FEMA is developing a new policy that applies only to certain Indian tribe(s) in a specific Region),
- The relationship between the Federal Government and Indian tribes (for example, FEMA is developing a regulation that proposes a new way that Indian tribes may seek assistance from FEMA, and this regulation will not change this process for states or local governments), or
- The distribution of power and responsibilities between the Federal Government and Indian tribes (for example, FEMA is developing a new policy that gives Indian tribes the option to operate a grant program on behalf of FEMA, changing the Indian tribe’s power and responsibility over the administration of the federal grant).

The term “substantial direct effect” generally refers to an effect on an Indian tribe(s) that is:



- Directly caused by the FEMA action,
- Beneficial or adverse, and
- Significant.

The Senior Agency Official works with their TCC, the NTAA, and OCC to determine whether the action has tribal implications.

If the Senior Agency Official determines that the FEMA action has tribal implications, then FEMA will consult with the affected Indian tribes in the development of the action that has tribal implications. If the Senior Agency Official determines that the FEMA action does not have tribal implications, then FEMA will include Indian tribes in the outreach for that action that is also conducted with other partners, such as state and local governments.

2. **How to determine which method of consultation to use.** There are various ways to conduct consultation with Indian tribes. Consultation may include, but is not limited to: face-to-face meetings with one or more tribes, regional meetings with several tribes, webinars, and in some circumstances, phone calls, emails, or correspondence.

The Senior Agency Official works in coordination with the TCC, OEA, and the NTAA early in the process to determine suitable method(s) of consultation for the action. The Senior Agency Official considers several factors to determine suitable method(s) of consultation, including:

- The complexity of the FEMA action,
- The number of Indian tribes impacted,
- The scope, scale, and degree of the tribal implications,
- FEMA and tribal time and resource constraints,
- The stated preference of the Indian tribe(s) affected,
- The unique cultural sensitivities of Indian tribes, and
- The technological capabilities of tribes.



To determine the type and extent of engagement, the Senior Agency Official considers the scope, scale, and degree of impact of the action. For example, in the case of a large-scale action, such as a national rulemaking that has a substantial direct effect on several Indian tribes, a more coordinated approach with ongoing engagement, such as a series of meetings in geographically diverse areas with Tribal Officials, may be the most effective method of consultation. For more routine operational matters, a less formal process may be sufficient – such as a phone call, written correspondence, or face-to-face interaction with the Tribal Official from the impacted Indian tribe.

To the fullest extent possible, and considering the preferences of tribal stakeholders, the Senior Agency Official uses existing agency processes and mechanisms to carry out consultation. The Senior Agency Official may, for example, engage with tribes at previously scheduled meetings, or coordinate with tribes to arrange conference calls or meetings just for the purpose of exchanging information and input on the action.

If FEMA and the affected tribe(s) have divergent views about the method of consultation, both parties should make every effort to come to an agreement on a suitable method of consultation, taking into consideration factors such as the tribe's stated preference and possible FEMA resource limitations. The Senior Agency Official or TCC notes in the record of consultation any suggestions for consultation that FEMA was unable to accommodate and why.

Given FEMA's mission, in limited circumstances, it may be necessary to forgo, limit, or postpone consultation if the action is essential to saving lives and protecting and preserving property or public health and safety.

- 3. How to determine whom to consult.** FEMA's responsibility is to consult with Tribal Officials on actions that have tribal implications. The Senior Agency Official works with the TCC, the NTAA, and RTLs to identify the Tribal Official or their duly appointed designee. The duly appointed designee may be any of the following, but is not limited to, the tribe's emergency management or disaster recovery point of contact or subject



matter expert, tribal council members, or employees from a tribe's public works, transportation, health, natural resources, cultural, or other offices.

If an action has a substantial direct effect on one or more Indian tribes, FEMA consults with the Tribal Officials of those Indian tribes. If the action has a substantial direct effect on the relationship between the Federal Government and Indian tribes, on the distribution of power and responsibilities between the Federal Government and Indian tribes, or on Indian tribes throughout the country, then FEMA consults with Tribal Officials of Indian tribes across the nation.

4. **Tribal Consultation Planning Checklist.** Upon a finding that consultation will or will not be conducted, the Senior Agency Official or TCC documents the decision using the Tribal Consultation Planning Checklist in Appendix A. The checklist guides the Senior Agency Officials or TCCs through the consultation decision making process in this policy, including how to determine whether to conduct consultation on an action and if consultation will be conducted, how to determine suitable method(s) of consultation. For actions that have tribal implications, the Senior Agency Official or TCC retains one copy of the checklist in the administrative record for the action, and submits a second copy to the NTAA.
- c. **Phase 2: Notification.** If FEMA intends to conduct consultation on an action, the Senior Agency Official notifies the Tribal Official(s) identified in Phase 1 that consultation will occur. The Senior Agency Official then completes the following steps in an effort to give sufficient notification:
1. **How to determine when consultation should occur.** Consultation should occur early in the decision-making process to allow tribes the opportunity to provide meaningful input and to give FEMA the opportunity to consider the input. Each consultation will be unique so the Senior Agency Official or TCC works in coordination with the NTAA, RTLs, and OEA to determine the best time to begin consultation.
 2. **What notification includes.** Notification includes sufficient information for Tribal Officials to make an informed decision about whether to



participate in consultation and how to provide informed input.

Notification also includes an overview of the consultation process, a description of the topic(s) to be discussed, a description of how tribal input will be received and the timeframe for submitting such input, and the contact information for the FEMA employee who can provide any technical assistance, respond to any questions, or provide any clarifications.

3. **How to notify Indian tribes that consultation will occur.** The Senior Agency Official or TCC notifies the affected Tribal Official(s) that FEMA is consulting on an action in the form of a letter, typically from the Administrator. The NTAA maintains contact information of current Tribal Officials of federally recognized Indian tribes and the Senior Agency Official or TCC contacts the NTAA for this information.

The Tribal Official or their designee, such as the tribe's emergency management or disaster recovery point of contact, may have additional preferred methods of notification. Additional methods may include phone calls, emails, publication in relevant media or the *Federal Register*, or notice through other agreed upon means. Senior Agency Officials shall make a reasonable effort to notify the Tribal Official(s) of affected Indian tribe(s) in a manner that will be sensitive to the uniqueness of the affected Indian tribe(s) and to honor any Indian tribal preferences regarding the specific method of contact. The Senior Agency Official or TCC works in coordination with the NTAA and RTLs to determine the best method of notifying the Tribal Official(s) of affected Indian tribe(s). The RTLs assist the Senior Agency Official and TCC to contact Tribal Officials located in each region. The NTAA assists the Senior Agency Official and TCC to contact authorized intertribal organizations, in addition to any affected Indian tribe(s), for issues that have a national impact.

- d. **Phase 3: Input.** In this phase, FEMA receives input from Tribal Officials and Indian tribes on the action. FEMA incorporates the input received into FEMA's decision making process. This phase continues until the Senior Agency Official or TCC finds that there is sufficient input to make an informed decision about the action. Subsequent rounds of input may be necessary if



there are significant changes to the originally proposed action or if new issues arise.

1. **How to arrange the details of the input phase of consultation.** During the input phase of consultation, FEMA receives input from Tribal Officials and Indian tribes by conducting the type of consultation identified in Phase 1. The Senior Agency Official or TCC works in coordination with the NTAA, RTLs, and OEA to determine the logistics for the input phase of consultation by developing a Consultation Plan of Action. This Plan of Action generally includes:

- A budget of consultation expenses (for example, estimated travel expenses for Headquarters (HQ) employees and Regional employees, room and equipment rental, etc.),
- A schedule of planned consultation (for example, the dates, times, and locations of the consultation),
- Details for arranging room rentals, conference calls, or webinars (for example, identify what steps need to be taken to reserve a room or set up a webinar),
- Determine how consultation will be recorded (see section on recordkeeping for more information),
- Explanation of HQ and Regional responsibilities (for example, who is responsible for identifying meeting space, facilitating the consultation, attending the consultation, securing funding, etc.),
- An agenda (for example, call to order, invite prayer or other Native recognition, introduction, roll call, overview, discussion, closing comments, etc.), and
- Other considerations (for example, room set-up for in-person meetings and other issues of protocol when meeting or speaking with Tribal Officials).

During the Identification phase of consultation, the Senior Agency Official or TCC submits the Tribal Consultation Form (Appendix A) to OEA; this form will help OEA arrange the details of the input phase of consultation.



2. The role of FEMA employees during the input phase of consultation.

The purpose of consultation is to receive input from Tribal Officials on FEMA actions that have tribal implications. During this phase, FEMA provides Tribal Officials the opportunity to submit input and discuss their questions and concerns. The consultation is conducted by a Senior Agency Official, the TCC, or another FEMA employee that is familiar with the unique circumstances that affect Indian tribes, the cultural sensitivities that could impact tribal consultation, and the nature of the relationship between Indian tribes and the Federal Government. FEMA employees that participate in consultation should explain the scope of the FEMA action under consideration. FEMA employees should respect that this is time for Tribal Officials to inform FEMA and should actively listen and document their input, but should not comment on, agree with, or disagree with input received from Tribal Officials. The Senior Agency Official, the TCC, or the FEMA employee facilitating the consultation (facilitator) begins the consultation by stating the purpose of the consultation and sets the expectation that in receiving input from Tribal Officials, FEMA is not agreeing to any particular result that may be suggested during the consultation, but rather is there to listen to, receive, and document the input from Tribal Officials, so that FEMA may make informed decisions about the matter.

3. How to address Federal Advisory Committee Act (FACA) requirements.

In accordance with section 204(b) of the *Unfunded Mandates Reform Act of 1995* (2 U.S.C. §1534), the provisions of the *Federal Advisory Committee Act* (5 U.S.C. App.) do not apply to consultations, conducted pursuant to this FEMA Tribal Consultation Policy, with elected officers of tribal governments (or their designated employees with authority to act on their behalf). Participants other than elected officers of tribal governments may be present at the consultation, such as representatives from authorized intertribal organizations. As a result, to ensure compliance with FACA, the facilitator shall make a statement at the beginning of the consultation that FEMA is not soliciting or accepting consensus advice or recommendations on federal laws, regulations, or policies during the meeting. Rather, the purpose of the meeting is to gather individual input from a diverse group of stakeholders. To this end, the facilitator should not steer the



conversation towards consensus, but should ask open-ended questions to solicit individual input and perspectives.

4. **How to document input.** The Senior Agency Official, TCC, or facilitator keeps a record of the input phase of consultation. At the beginning of the consultation, the Senior Agency Official, TCC, or facilitator discusses how the consultation will be documented with the Indian tribe(s) participating. Documentation includes, at a minimum:

- The date and location of the consultation,
- A list of FEMA and Indian tribal participants,
- A summary of the issues discussed, and
- A thorough description of the input and questions received from Tribal Officials and Indian tribes.

Examples of documentation include, but are not limited to, a FEMA note taker, a video or voice recording, a professional transcript, or comments submitted in response to a *Federal Register* Notice.

If FEMA takes notes at the consultation, it may be appropriate to circulate the notes to all tribal participants for review and comment to ensure that the views of tribal participants are accurately captured. If FEMA creates voice or video recordings of the meetings, the facilitator notifies all participants that the meeting will be recorded. The facilitator makes an announcement at the beginning of the meeting that the meeting will be recorded by a specific medium (e.g. voice, video, or other medium) and that continued participation in the recorded meeting will constitute consent to the recording.

- e. **Phase 4: Follow-up.** After FEMA consults with Tribal Officials and Indian Tribes, FEMA considers the input received during the consultation process, and incorporates that input into FEMA's decision making process. FEMA then follows-up with all Tribal Officials and Indian tribes that were engaged in consultation.



1. **When follow-up with Indian tribes occurs.** Once FEMA finalizes the action, the Senior Agency Official or TCC communicates FEMA's decision on the action to Tribal Officials and Indian tribes.
2. **What follow-up with Indian tribes includes.** Follow-up informs Tribal Officials and Indian tribes of the resolution of the FEMA action with tribal implications. Follow-up typically includes: a description of the action that was consulted on, the dates that the consultation occurred, FEMA's decision on the action, and the contact information for a FEMA employee that can provide any technical assistance or respond to any questions. In some instances, follow-up may include a summary of input received or a final product, such as a copy of a final policy.
3. **How to follow-up with Indian tribes.** FEMA typically follows-up with Tribal Officials and Indian tribes in writing to communicate the decision on the action. FEMA may also use a number of other methods for communicating follow-up, including, but not limited to: FEMA's website, background in a policy or the preamble of a rulemaking, letters, email, other forms of correspondence, publication in relevant media or the *Federal Register*, verbal communication, or follow-up through other suitable means.

Senior Agency Officials make a reasonable effort to follow-up with the Tribal Official(s) in a manner that respects any Indian tribal preferences regarding the specific method of contact. The Senior Agency Official or TCC works in coordination with the NTAA and RTLs to determine how to follow-up with the Tribal Official(s).

X. DISCLAIMER

This policy is not intended to and does not create any right to administrative or judicial review or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies, or instrumentalities, its officers or employees, or any other persons.



XI. RESPONSIBLE OFFICE

The Office of External Affairs, in cooperation with the Office of Chief Counsel, is responsible for reviewing and amending this document.

XII. SUPERSESSION

FEMA does not have another FEMA Tribal Consultation Policy. This policy supersedes all agency policies and guidance on this subject.

XIII. REVIEW DATE

This policy will be reviewed three years from the date of issuance in accordance with Directive 112-12.

A handwritten signature in blue ink, appearing to read "W. Craig Fugate", written over a horizontal line.

W. Craig Fugate
Administrator,
Federal Emergency Management Agency



APPENDIX A

TRIBAL CONSULTATION PLANNING CHECKLIST

Instructions: The purpose of this checklist is to help Senior Agency Officials or Tribal Consultation Coordinators (TCCs) to determine whether to conduct consultation on an action and, if consultation will be conducted, to determine how to carry out the consultation. For regulations, policies, or for actions where consultation is required by law, the Senior Agency Official or TCC retains one copy of this checklist in the administrative record for the action, and submits a second copy to the National Tribal Affairs Advisor (NTAA). Before filling out this checklist, please read the FEMA Tribal Consultation Policy.

1. How to Determine Whether to Conduct Consultation on an Action

Program:

- | | | | |
|---------------|--------------------------|-------------------|--------------------------|
| Response | <input type="checkbox"/> | Preparedness | <input type="checkbox"/> |
| Recovery | <input type="checkbox"/> | Flood Insurance | <input type="checkbox"/> |
| Other (_____) | <input type="checkbox"/> | Hazard Mitigation | <input type="checkbox"/> |

Program Point of Contact (i.e., Senior Agency Official or Tribal Consultation Coordinator): _____

Action:

- | | | | |
|-----------------|--------------------------|------------------------|--------------------------|
| Regulation/Rule | <input type="checkbox"/> | Legislative proposal | <input type="checkbox"/> |
| Policy | <input type="checkbox"/> | Guidance | <input type="checkbox"/> |
| Directive | <input type="checkbox"/> | Other policy statement | <input type="checkbox"/> |

Title of Action: _____



2. Proposed Consultation Approach

If you have determined that you will conduct tribal consultation on your action because it has tribal implications, please fill out this section. If you have determined that you will not conduct tribal consultation for your action, you may leave this section blank.

Senior Agency Official or Tribal Consultation Coordinator Coordinating Consultation: _____

What type of consultation do you plan to utilize (check all that apply):

- | | | | | | |
|-----------------------|--------------------------|-------------------|--------------------------|--------------------------------|--------------------------|
| Phone/Conference Call | <input type="checkbox"/> | Email broadcast | <input type="checkbox"/> | National Conference | <input type="checkbox"/> |
| Face-to-face meetings | <input type="checkbox"/> | Webinar | <input type="checkbox"/> | <i>Federal Register</i> Notice | <input type="checkbox"/> |
| Listening session | <input type="checkbox"/> | Workshop/Training | <input type="checkbox"/> | Other (_____) | <input type="checkbox"/> |

Indian tribes and Tribal Officials to be consulted:

Please list the federally recognized Indian tribe(s) impacted by the action, the Tribal Official (elected or duly appointed officials of Indian tribal government(s)) that will be consulted, and the Tribal Official's Title (i.e., Chief Executive, Governor, Emergency Manager, Tribal Council Member, etc.). Attach additional pages if necessary.

- | | | |
|------------------|------------------|--------|
| 1. Indian Tribe: | Tribal Official: | Title: |
| 2. Indian Tribe: | Tribal Official: | Title: |
| 3. Indian Tribe: | Tribal Official: | Title: |
| 4. Indian Tribe: | Tribal Official: | Title: |
| 5. Indian Tribe: | Tribal Official: | Title: |
| 6. Indian Tribe: | Tribal Official: | Title: |

When would you like consultation to occur: _____

In addition to a letter from the Administrator, check any other methods that you plan to use to notify Tribal Officials of the opportunity to consult:

- | | | | | | |
|--------------------------------|--------------------------|--------------|--------------------------|---------------|--------------------------|
| Email | <input type="checkbox"/> | FEMA Website | <input type="checkbox"/> | Other (_____) | <input type="checkbox"/> |
| <i>Federal Register</i> Notice | <input type="checkbox"/> | Newsletter | <input type="checkbox"/> | | |



FEMA

FP 101-002.01

Signed: 08/12/2014

How do you plan to document input received during consultation (check all that apply):

- | | | | |
|-------------------------|--------------------------|---|--------------------------|
| FEMA Note-taker | <input type="checkbox"/> | Recording (video or voice) | <input type="checkbox"/> |
| Professional Transcript | <input type="checkbox"/> | Comments Received by <i>Federal Register</i> Notice | <input type="checkbox"/> |
| Other (_____) | <input type="checkbox"/> | | |