



U.S. Department of Transportation
Federal Highway Administration

FHWA Roles & Responsibilities Related to Tribal Consultation in California

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DOT Order 5301.1

POLICY: In conducting and administering activities and programs, and fostering relationships with American Indians, Alaska Natives, and tribes, all components within DOT must, to the extent practicable and permitted by law...consult with Indian tribes before taking any actions that may significantly or uniquely affect them.

Department of Transportation Programs, Policies and Procedures Affecting American Indians, Alaska Natives and Tribes (1999)

Federal-Tribal Relations

What is the relationship between the Tribes and the United States?

The relationship between federally recognized tribes and the United States is one between sovereigns, i.e., between a government and a government.

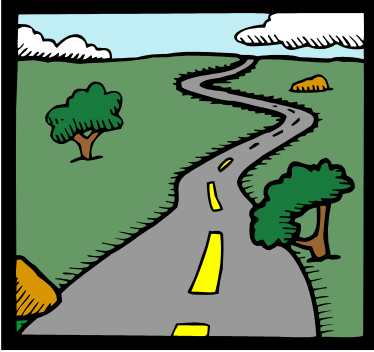
This “government-to-government” principle--grounded in the United States Constitution--has helped to shape the long history of relations between the federal government and these tribal nations.

State-Tribal Relations

What is the relationship between the tribes and the individual states?

The Constitution vested the Legislative Branch with plenary power over Indian Affairs, thus states have no authority over tribal governments unless expressly authorized by Congress.

While federally recognized tribes generally are not subordinate to states, they can have a government-to-government relationship with these other sovereigns, as well.



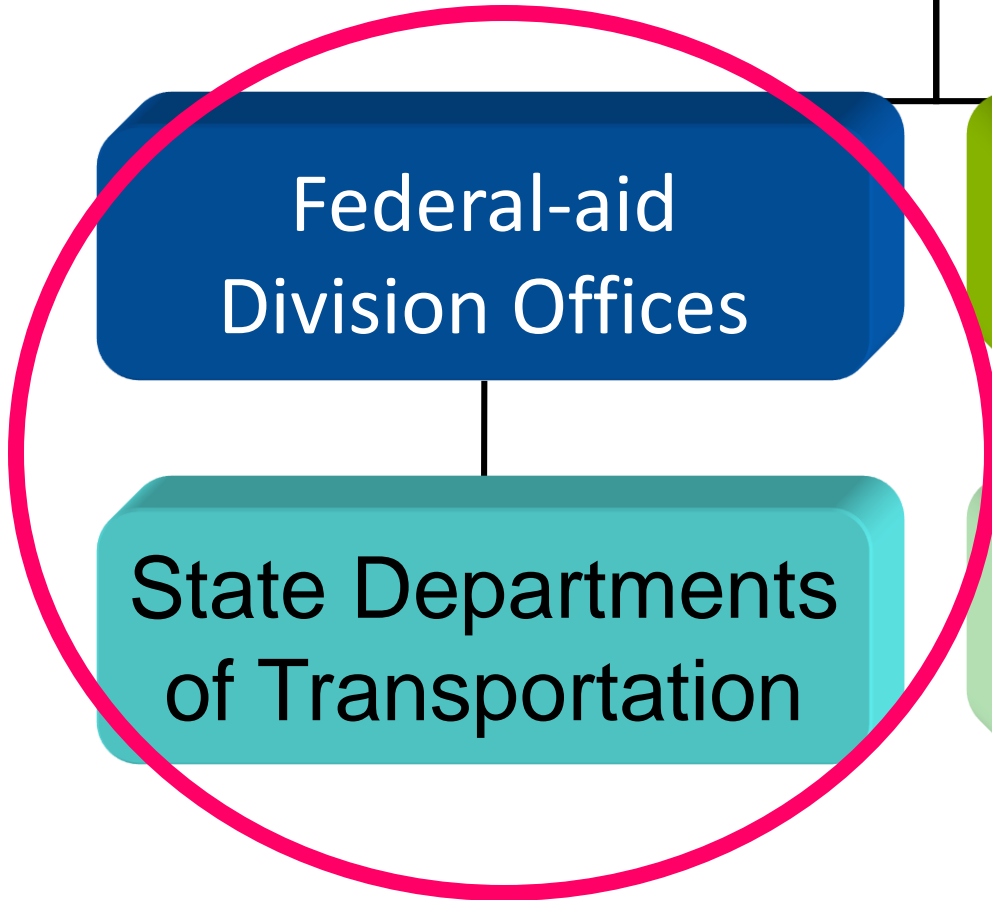
Federal Highway
Administration

Federal-aid
Division Offices

State Departments
of Transportation

Federal Lands
Highway

Office of Tribal
Transportation (OTT)



Before 2005...

Federal-Aid Division
Office

**Legally Responsible For
Government-to-Government Tribal
Consultation**

✓ Legally responsible for all findings and determinations

State DOT

- ✓ Project Development
- ✓ Environmental Review
- ✓ Archeological Survey
- ✓ **Project-Specific Tribal Consultation****

****Only if authorized by FHWA and only if the respective Tribe agrees—authorization usually memorialized in Section 106 agreement documents and/or consultation protocols**

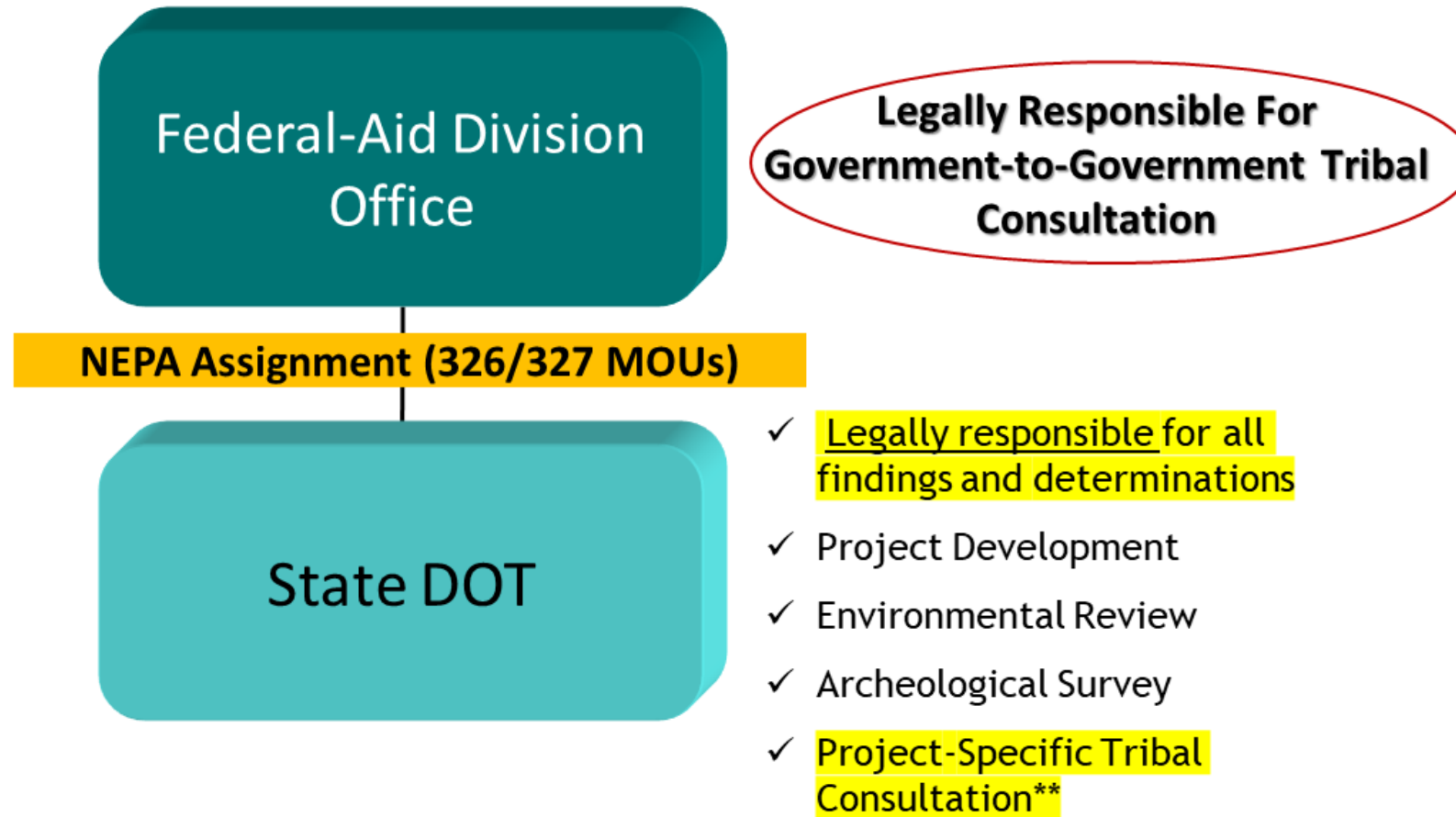


NEPA Assignment

Since SAFETEA-LU was passed in 2005, States can assume FHWA's environmental review responsibility under the National Environmental Policy Act (NEPA) under two programs:

- 23 U.S. Code § 326 - State assumption for categorical exclusions (CEs) – “CE Assignment”
- 23 U.S. Code § 327 - Surface transportation project delivery program – “NEPA Assignment”

After 2005



See: 2014 Section 106 Programmatic Agreement/326 & 327 MOUs

