



Early Coordination with Tribes

USDA RUS ReConnect Program



United States
Department of
Agriculture

Rural Development

Agenda

- Introduction to RD: Structure and Roles
- Introduction to Indian Country and Tribal Lands
- ReConnect Program Tribal Considerations
- Additional Regulatory Requirements
- 7 Guiding Principles
- Recommendations
- Additional Resources

Introduction to RD: Structure and Roles

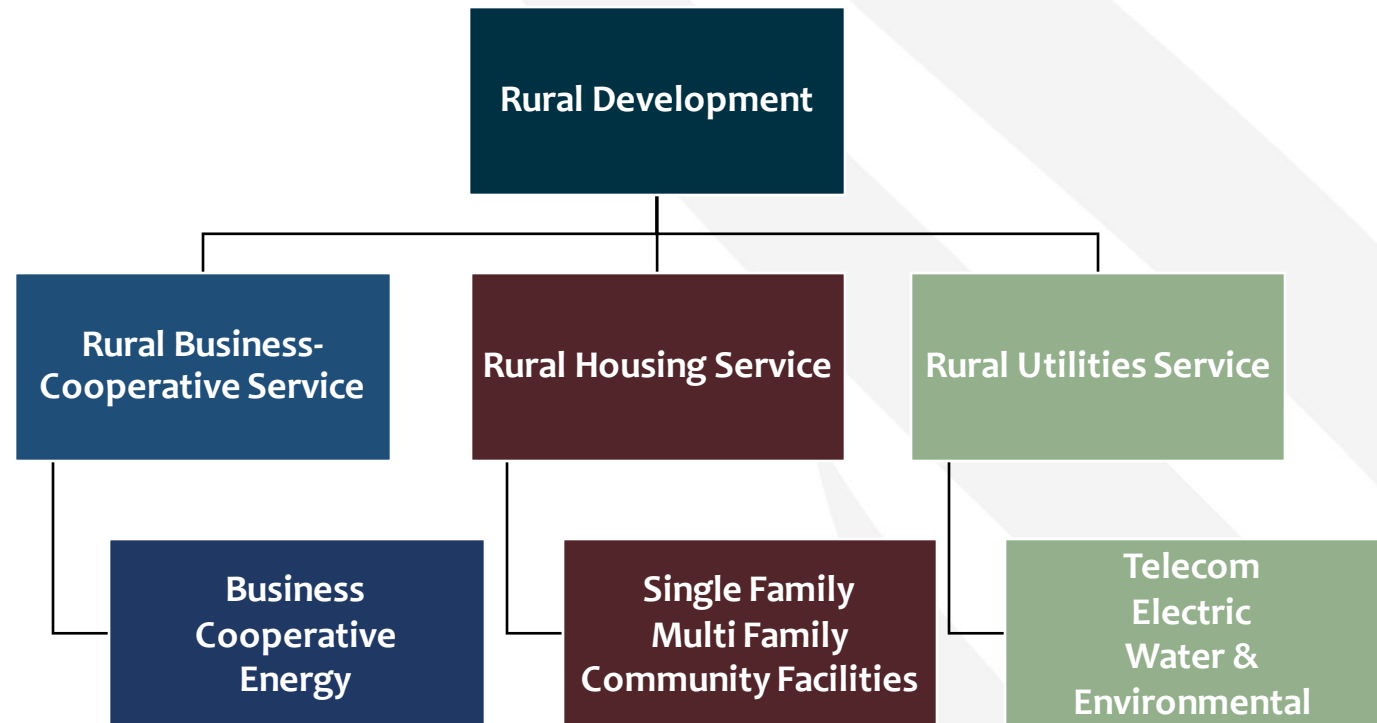
Leadership

- Under Secretary
- Deputy Under Secretary
- Administrators
- State Directors

Offices

- 47 State Offices
- 400 Area Offices
- National Office in DC

OneRD – Three Agencies

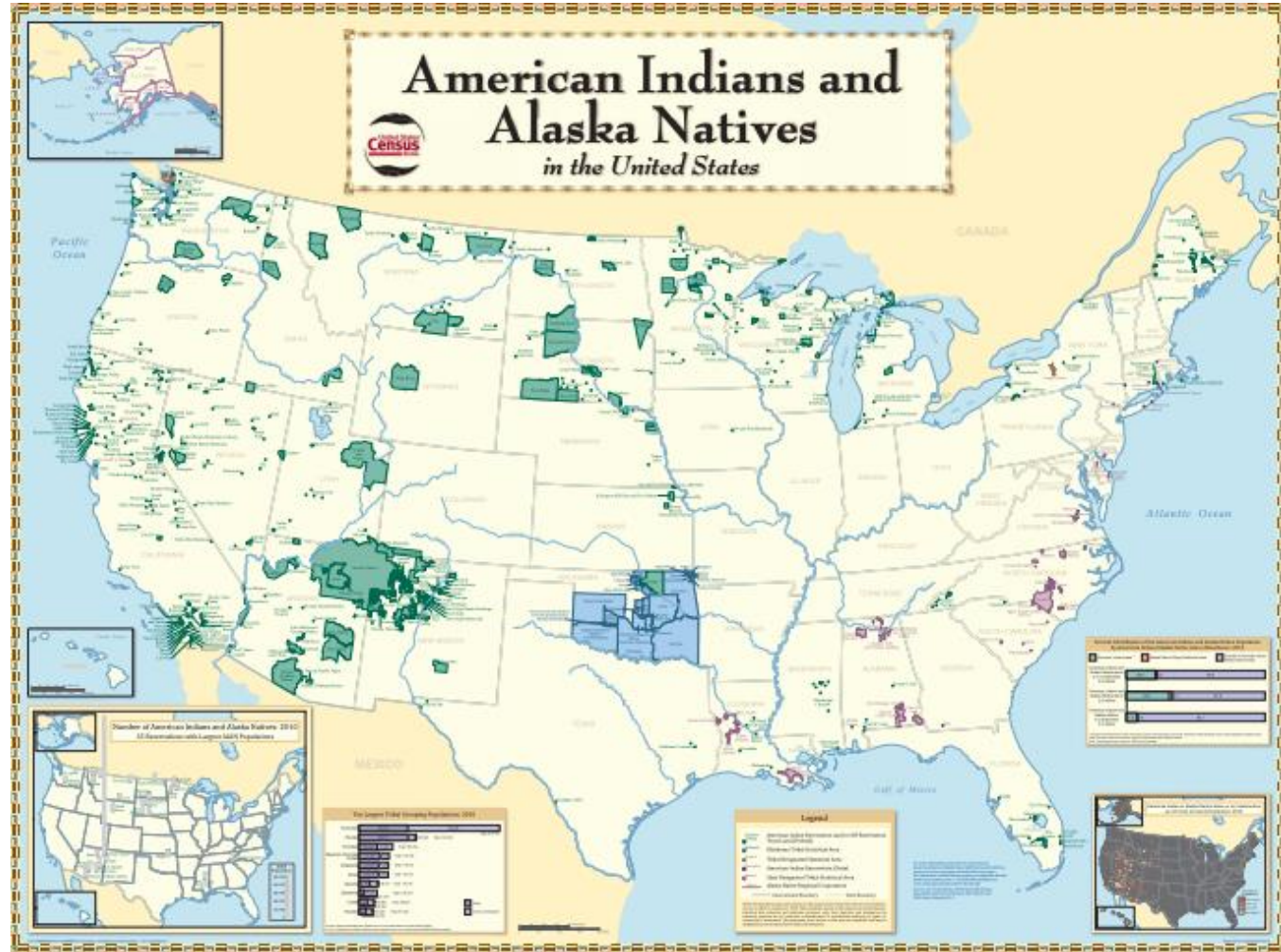


Introduction to Indian Country and Tribal Lands

Tribal Nations - Precontact

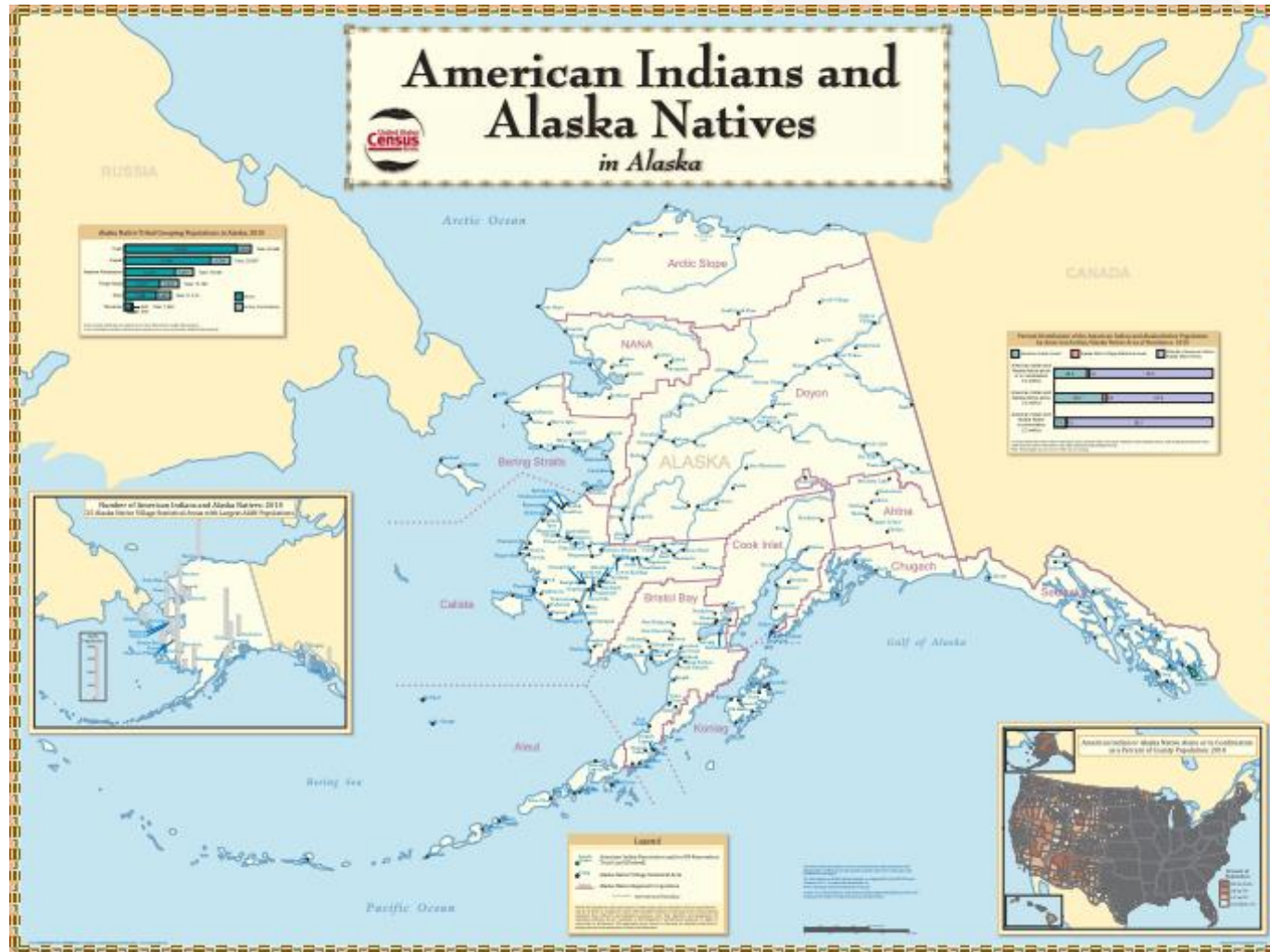


AI/AN in the U.S. Wall Map



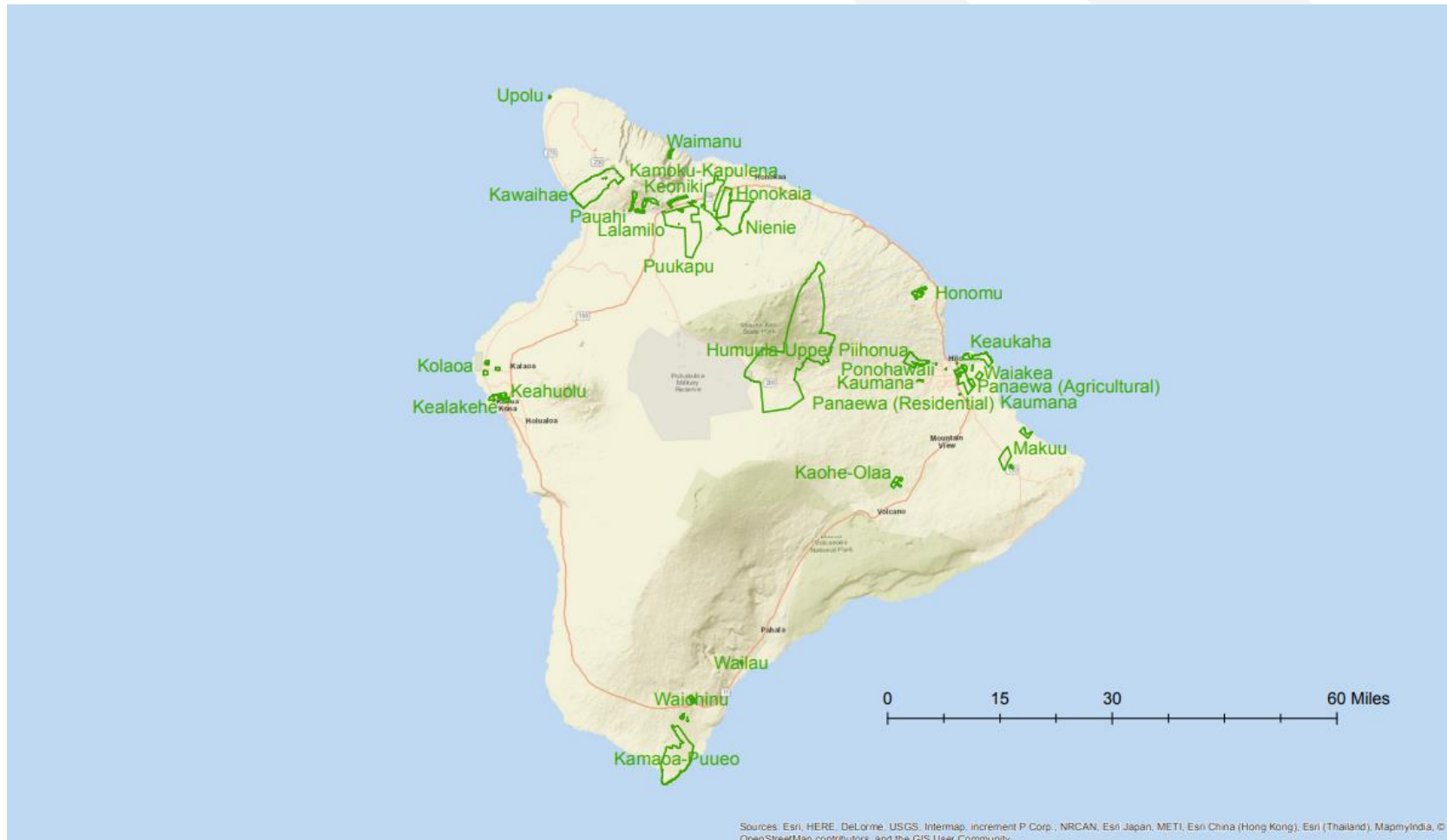
Introduction to Indian Country and Tribal Lands

AI/AN in Alaska Wall Map



Introduction to Indian Country and Tribal Lands

Hawaiian Homelands – Hawai'i Island



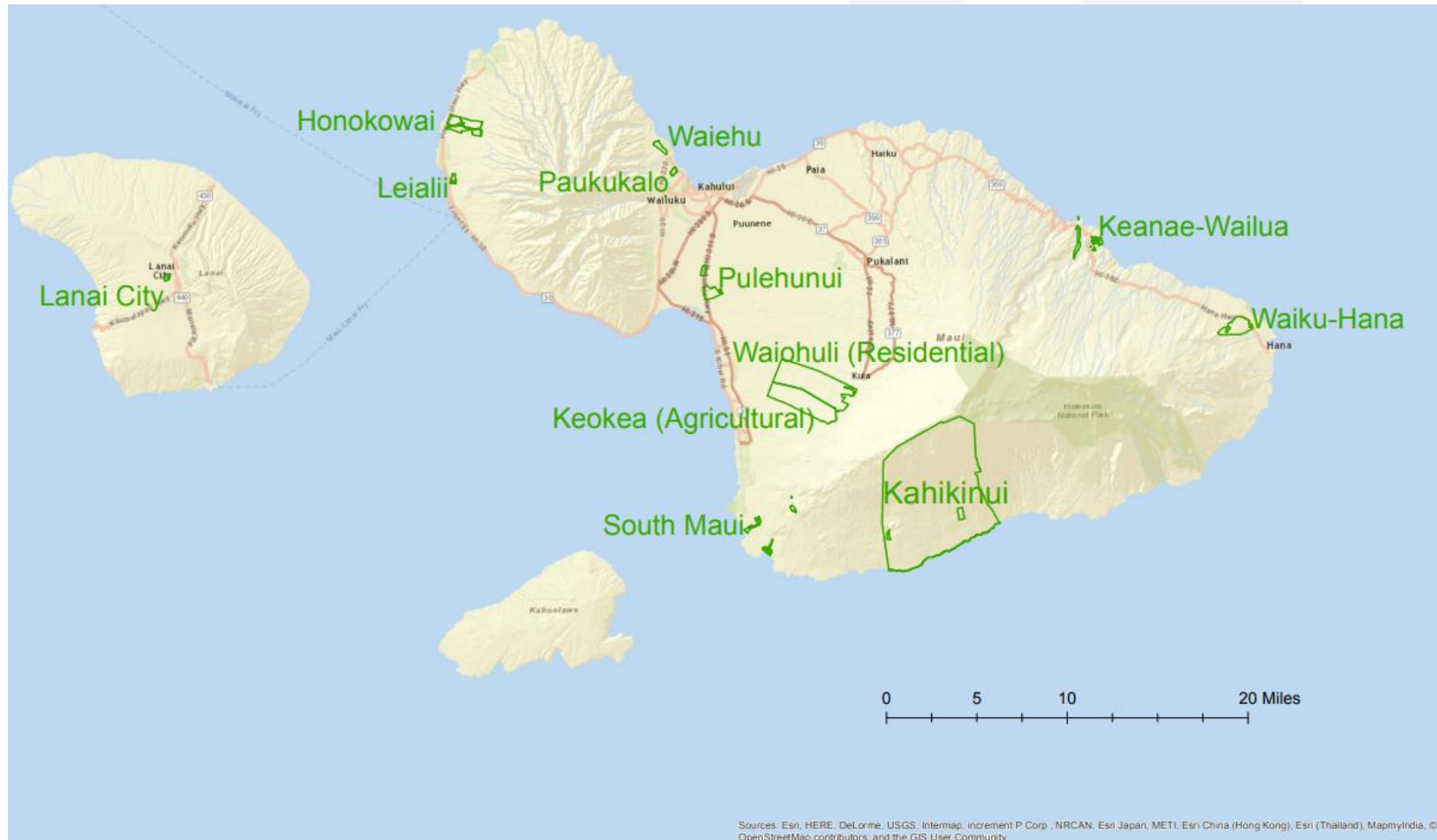
Introduction to Indian Country and Tribal Lands

Hawaiian Homelands – Kaua'i



Introduction to Indian Country and Tribal Lands

Hawaiian Homelands – Maui and Lana'i



Introduction to Indian Country and Tribal Lands

Hawaiian Homelands - Molokai



Introduction to Indian Country and Tribal Lands

Hawaiian Homelands – O’ahu



Multiple Tribal Stakeholders Within Every Tribe

- Elected Tribal Leaders
- Tribal Historic Preservation Office
- Tribal IT Department
- Tribal Economic Development Staff
- Tribal Utility Staff
- Other Tribal Programs (Natural Resources, Land Management, etc.)
- Tribal Members



Don't assume a signed letter or communication with one person from a Tribe means that all the other tribal parties are fully informed of your project or supportive of it.

Additional Regulatory Requirements



Regardless of whether or not you are proposing to cross tribal lands, as soon as you accept funds from Rural Development you must comply with the National Environmental Policy Act (NEPA) and RD's implementing regulations prior to drawing down funds and prior to construction.

- Includes compliance with Section 106 of the National Historic Preservation Act and requirement for RD to consult with Tribes
- BIA Rights of Way Regulations when crossing tribal lands
 - <https://www.bia.gov/as-ia/raca/rights-way-25-cfr-169>
- Other potential challenges

Additional Regulatory Requirements



“The National Historic Preservation Act (NHPA) requires federal agencies, in carrying out the Section 106 process, to consult with Indian tribes and Native Hawaiian organizations (NHOs) when historic properties of religious and cultural significance to them may be affected by a project that they carry out, license, or financially assist (also referred to as an undertaking). The ACHP’s regulations implementing Section 106, 36 C.F.R. Part 800, in turn, require federal agencies to consult with Indian tribes and NHOs throughout the review process for such projects. This requirement applies regardless of the location of the historic property.”

From Early Coordination With Indian Tribes During Pre-application Processes – A Handbook. Published by the ACHP

7 Guiding Principles: Federal Infrastructure Funding On Tribal Lands And In Indigenous Communities

These principles are designed to aid federal agencies in designing and improving programs that fund infrastructure projects involving Tribal Nations, Tribal Lands, and indigenous peoples.

1. **Allow Tribal Self-certification Of “Served.”**

- Tribal Governments are the official authority on whether tribal lands are served, unserved, or underserved by providers of a specific infrastructure sector. Federal agencies should consult with Tribal Governments to determine whether tribal land is adequately served. **The USDA is currently taking actions to implement this principle.**

2. **Require Tribal Resolutions Of Support.**

- Require any applicant seeking funds to build infrastructure on Tribal Lands to have a Resolution of Support from the appropriate Tribal Government in order to be eligible to receive those funds.

3. **Require Compliance With Tribal Law.**

- Include language requiring compliance with tribal laws and regulations in loan and grant agreements with all borrowers, including non-Tribal. Enforce the terms of loan and grant agreements that fail to comply with tribal laws and regulatory bodies.

7 Guiding Principles: Federal Infrastructure Funding On Tribal Lands And In Indigenous Communities (continued)

4. **Do Not Limit Tribal Self-government.**

- Infrastructure program requirements cannot require sovereign Tribal Nations to abrogate their self-government powers, such as the power to regulate and govern.

5. **Allow Flexibility.**

- Read ambiguous statutory requirements as flexibly as possible and in favor of Tribal Nations

6. **Narrow “Duplication” Definitions.**

- Read statutory limitations on “duplication” of funding and services as narrowly and as flexibly as possible when working with Tribal Nations to ensure their eligibility to apply for funding and provide infrastructure services in their own lands.

7. **Directly Fund Tribal Governments.**

- Where statutory language allows flexibility, do not require Tribal Nations to apply for funding through state governments. Allocate funds directly to Tribal Governments or create a federally administered fund for Tribal Nations.

Recommendations

- Utilize RD staff expertise
- Understand the land tenure of proposed service territory
- Start building relationship of mutual trust and respect as soon as possible
- Approach Tribes with respect as partners, custodians of a unique cultural heritage, landowners and sovereign nations
- Be prepared to work with BIA and tribal land management staff if your project will cross tribal lands

Resources

Advisory Council on Historic Preservation (ACHP)

- On-line Training Resources
 - <https://www.achp.gov/training/elearning>
- Early Coordination Handbook
 - www.achp.gov/sites/default/files/documents/2019-10/EarlyCoordinationHandbook_102819_highRes.pdf

Department of Housing and Urban Development (HUD)

- Tribal Directory Assessment Tool - <https://egis.hud.gov/TDAT/>

USDA Rural Development Regulations & Guidance

- PART 1970—ENVIRONMENTAL POLICIES AND PROCEDURES
 - <https://www.ecfr.gov/cgi-bin/text-idx?SID=2d8457de87c022d0e240337e369f665f&mc=true&node=pt7.14.1970&rgn=div5>
- Subpart H - Historic and Cultural Resources Instruction
 - <https://www.rd.usda.gov/sites/default/files/1970h.pdf>





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