

Consultation Process for use During the Development of the SKATS RTSP and TIP

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SKATS Transportation Management Area

December 12, 2017 Revised: December 12, 2018, April 25, 2019, February 25, 2020

As part of the regional transportation planning process to develop the long-range plan and the short-term program, the U.S. Department of Transportation promulgated rules through the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) that require metropolitan planning organizations (MPOs), such as SKATS, to follow a Continuing, Cooperative and Comprehensive planning process. This includes the requirements, as detailed in 23 CFR 450.316, for conducting consultation with other governments, agencies or stakeholders that are affected by the regional transportation system during the transportation planning process. The process SKATS uses to address this requirement is presented in this document and is based on recommendations from discussions with the FHWA, the FTA and the Oregon Department of Transportation (ODOT). This document represents the cooperatively developed process between SKATS and the applicable governments and agencies, and clarifies the process, timeframes, and roles and responsibilities of each of the parties involved. This document will be reviewed and updated as necessary every four years prior to the update of the Regional Transportation Systems Plan (RTSP).

Outreach Efforts Undertaken By SKATS

There are three documents that demonstrate how SKATS will interact with other governments, agencies and the public as part of the transportation planning process.

- 1) The first is the MPO/DOT/Transit agreement¹ required by 23 CFR 450.314 which provides a matrix of the roles and responsibilities between the three agencies regarding long-range and short-range financial planning used in the preparation of transportation plans and programs; the collection, analysis and reporting of federally required performance measures; and the annual listing of obligated projects. This document is updated every 5-10 years. The most recent version of this agreement (IGA 32794) was executed on February 9, 2019.

¹ The most recent version of this agreement is included as an appendix in the SKATS Unified Planning Work Program available at <http://www.mwvcog.org>

- 2) The second document, the *SKATS Public Participation Plan (PPP)*² was last adopted in November 2017. It details how and when SKATS will engage the public to provide feedback on the transportation planning documents that are developed. The PPP specifies a 30-day period for the public review of the Regional Transportation Systems Plan (RTSP), Transportation Improvement Program (TIP) and associated Air Quality Conformity Determination (AQCD). This period is also used for consultation with the AQCD group (as discussed on page 6) if an AQCD has been developed as part of updating or amending the RTSP or TIP. Comments from the public, agencies and tribal governments are considered and incorporated as appropriate and are presented at the Public Hearing for the adoption of the RTSP or TIP. The comments and the responses are included in an appendix of the final document.

Consultation is defined as “...a two-way flow of information and opinion exchange where one or more parties confer with other identified parties in accordance with an established process and, prior to taking action(s), considers the views of the other parties and periodically informs them about action(s) taken...”

- 3) The third document is this *Consultation Process* which describes how SKATS will involve the resource agencies, tribal governments and other entities that are listed in 23 CFR 450.316(b) during the development of updates to the RTSP and TIP. In this context and in relation to the federal regulation, consultation is defined as “... that one or more parties confer with other identified parties in accordance with an established process and, prior to taking action(s), considers the views of the other parties and periodically informs them about action(s) taken. This definition does not apply to the “consultation” performed by the States and the Metropolitan Planning Organizations (MPOs) in comparing the long-range statewide transportation plan and the metropolitan transportation plan, respectively, to State and tribal conservation plans or maps or inventories of natural or historic resources (see section 450.216(j) and sections 450.324(g)(1) and (g)(2))” (from the definitions in 23 CFR 450.104 emphasis added)

Consultation Requirements

There are four sections of federal regulations that identify when consultation should take place with SKATS member agencies, Tribal Governments and external agencies during the development of the RTSP or TIP. These are with:

- 1) Agencies or officials responsible for other planning activities inside the MPO affected by transportation including State and local planned growth, economic development, tourism, natural disaster risk reduction, environmental protection, airport operations, or freight movements. This includes consulting with Tribal governments as appropriate. (23 CFR 450.316 (b) and (c))
- 2) Federal, State, and Tribal land management, wildlife and regulatory agencies to discuss potential environmental mitigation activities and potential areas to carry

² Available at <http://www.mwvcog.org/programs/transportation-planning/skats/public-participation/>

out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the metropolitan transportation plan. (23 CFR 450.324 (f) (10))

- 3) State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of the transportation plan. (23 CFR 450.324 (g)). This will include:
 - a. A comparison of the RTSP to state conservation plans or maps, if available
 - b. A comparison of the RTSP to inventories of natural or historic resources, if available
- 4) The relevant agencies that are involved with air quality conformity determinations. (40 CFR 93.105).

These requirements are addressed in the discussion that follows for each of the four groups, with the agencies and tribal governments identified as part of one or more of the four groups. These groups are:

- 1) **Tribal Government Consultation:** Both the Confederated Tribes of Grand Ronde and the Confederated Tribes of Siletz Indians of Oregon have interests in the SKATS area.
- 2) **General Transportation Consultation:** Local jurisdictions and agencies that are involved in planning efforts in the area.
- 3) **Cultural, Historic and Environmental (CHE) Consultation Group:** Agencies that have expertise in cultural, historic and environmental planning. Note there will be overlap with the Environmental Mitigation Consultation Group.
- 4) **Environmental Mitigation Consultation Group:** Agencies that have expertise in environmental mitigation strategies and planning.
- 5) **Air Quality Conformity Determination (AQCD) Consultation Group:** Agencies with expertise in air quality issues.

Some of the entities identified for inclusion in the above four groups are already involved in our planning processes, such as being on the SKATS Technical Advisory Committee. Other agencies and the tribal governments are contacted during the consultation period by the method that they specified during outreach in 2017 (TIP) and 2018 (RTSP). Every effort is made to identify the appropriate person at each agency. This is verified and updated during the development process for each document, which takes place every two to four years. Each person will receive the necessary documents providing the background information to allow them to understand the situation and make meaningful comments.

Tribal Government Consultation

The United States Government has a unique relationship with American Indian governments as set forth in the Constitution of the United States, treaties, statutes, judicial decisions, and Executive orders and Presidential memorandums. Therefore, to the greatest extent practicable and to the extent permitted by law, SKATS is required to

consult with tribal governments prior to taking actions that have substantial direct impact on federally recognized tribal governments. In order to ensure that the rights of sovereign tribal governments are fully respected, all such consultations are to be open and candid so that tribal governments may evaluate for themselves the potential impact of relevant proposals³.

Within the SKATS area, two tribal governments have historic interests or ancestral lands: The Confederated Tribes of Grand Ronde and the Confederated Tribes of Siletz Indians of Oregon. Both governments will be contacted during the RTSP and TIP update period according to the process described in this document to determine their interest in participating in the RTSP or TIP update. In addition, the Confederated Tribes of Grand Ronde are members of the Mid-Willamette Valley Council of Governments (MWVCOG) and usually are on the MWVCOG Board of Directors. As members, they receive updates that include information on SKATS projects, programs, and plan updates.

General Transportation Consultation

The agencies and organizations that have been identified to be consulted for the RTSP or TIP updates are summarized in **Table 1** and correspond to groups listed in 23 CFR 450.316(b). In addition to the groups in Table 1, other agencies and organizations are also notified through the public outreach process discussed in the *Public Participation Plan*. Results of the consultation will be recorded and added to the record of the document as appropriate. Some consultation will coincide with the defined public review period for a document, and as such will be 30-days in duration. Comments received will be summarized and responded to as appropriate and included in the final RTSP or TIP.

Table 1: General Transportation Consultation List

Affected by Transportation (450.316 (b))	Entity
State Growth	Oregon Department of Land Conservation and Development (DLCD)
Local Growth	Planning departments of cities & counties within SKATS
Economic Development	SEDCOR (Strategic Economic Development Corporation)
Tourism	Travel Salem, Travel Oregon
Natural Disaster Risk Reduction	Oregon Department of Transportation (ODOT) Office of Maintenance and Sustainability Coordinator
Environmental Protection	FHWA, National Marine Fisheries Service (NMFS), Oregon Department of Environmental Quality (DEQ), Oregon Department of Fish and Wildlife (ODFW), DLCD, Oregon Department of State Lands (DSL), Oregon State Historic Preservation Office (SHPO), US Fish and Wildlife Service (US FWS), US Environmental Protection Agency (US EPA), US Army Corp of Engineers (US ACE), cities & counties

³ ODOT has developed a process for consultation with the Tribes in Oregon. SKATS will review it and include the appropriate language when revising this document in the future.

Airport Operations	Salem Airport – Salem Community Development Dept.
Freight Movements	ODOT Freight, Planning/Public Works departments of cities & counties, Oregon Trucking Association

Cultural, Historic and Environmental Consultation

This consultation occurs after SKATS has developed the draft financially constrained project list for the RTSP and has performed an analysis of the proposed projects with inventories of cultural, historic and natural resources. The results of this analysis will be presented to the agencies listed in **Table 2** along with the necessary information of the projects to allow for the agency representative to provide meaningful feedback regarding the possible impacts that the proposed projects might have to the cultural, historic or natural resource(s). This discussion involves many of the same agencies that participate in the Environmental Mitigation consultation. The issues identified through this consultation should be used by the agencies implementing the project(s) to make the necessary changes at an early development stage to minimize any impact. The results of this consultation will be summarized in the *Impacts* chapter of the RTSP as appropriate.

Table 2: Cultural, Historic and Environmental Consultation Group

Cultural, Historic and Environmental 450.324 (h)	Entity
State Land Use Management	DLCD
Local Land Use Management	Planning departments of cities & counties within SKATS
State Natural Resources	ODFW, DLCD, Oregon Department of Geology and Mineral Industries
Local Natural Resources	Planning departments of cities & counties within SKATS
State Environmental Protection	DEQ
Local Environmental Protection	Planning departments of cities & counties within SKATS
State Conservation	DLCD
Local Conservation	Planning departments of cities & counties within SKATS
State Historic Preservation	SHPO
Local Historic Preservation	Planning departments of cities & counties within SKATS, local historic preservation offices

Environmental Mitigation Consultation

Consultation with the agencies identified in **Table 3** occurs during the development of the RTSP after the draft financially constrained project list is formalized. The purpose is to determine the type of activities that can be carried out in the SKATS area with the greatest potential to restore and maintain any environmental function that is negatively affected by the proposed projects. These activities may not necessarily be associated with a particular project but could be region-wide policies or programs. Discussion of the

mitigation strategies used in the SKATS area are presented in the RTSP in the *Impacts* chapter.

Table 3: Environmental Mitigation Consultation Group

Environmental Mitigation 450.324 (g) (10)	Entity
Federal land management	n/a
State Land Management	DLCD, DSL
Federal Wildlife	USFWS, NMFS
State Wildlife	ODFW
Federal Regulatory	US EPA, US ACE
State Regulatory	DEQ
Tribal Governments	The Confederated Tribes of Siletz Indians of Oregon and The Confederated Tribes of Grand Ronde

Air Quality Conformity Determination (AQCD) Consultation

Following passage of the federal Clean Air Act Amendments in 1990, the Salem-Keizer area was designated as a non-attainment area for the carbon monoxide (CO) and 1-hour ozone (O₃) national ambient air quality standards (NAAQS). However, monitoring data since that time has shown that pollutant levels are decreasing. Based on this history of clean air, the Oregon Department of Environmental Quality (DEQ) removed the CO monitor in 2006 and developed a Carbon Monoxide Limited Maintenance Plan for the SKATS region, which was submitted to the US Environmental Protection Agency (EPA) in 2007 and went into effect March 2, 2009⁴. As an area with a limited maintenance plan, SKATS is no longer required to perform a regional emissions analysis for CO but still must demonstrate conformity as discussed below. On April 30, 2004, EPA formally designated the entire state of Oregon “attainment” for the new 8-hour ozone NAAQS. According to federal rules, while areas with approved limited maintenance plans are not required to perform a regional emission analysis, they are required to demonstrate conformity of the transportation plans as stated in 40 CFR part 93, subpart A. As part of this process, 40 CFR 93.105 requires interagency consultation with the appropriate federal, state and local agencies before making conformity determinations as part of adopting the RTSP or TIP.

The Salem-Keizer Area Transportation Study (SKATS) MPO is the lead agency responsible for making the conformity determination for the RTSPs and TIPs, RTSP amendments, TIP amendments, and preparing and distributing the draft and final documents. The MPO is the agency responsible for assuring the adequacy of the interagency consultation. The SKATS Technical Advisory Committee (TAC) is designated under this regulation as the standing committee for the purposes of consultation on air quality. Members of the SKATS TAC include representatives of the City of Salem, City of Keizer, City of Turner, Marion County, Polk County, Salem Area Mass Transit District,

⁴ Salem-Keizer Area Carbon Monoxide Limited Maintenance Plan, State Implementation Plan Volume 2 Section 4.57, June 4, 2007 Oregon Department of Environmental Quality. (EPA Approval is located at 73 FR 79655.)

Salem-Keizer School District, Oregon Department of Land Conservation and Development, Oregon Department of Transportation, Oregon Department of Environmental Quality, and FHWA. This committee currently meets monthly, and the meetings are open to the public.

The agencies that are part of the AQCD consultation group are listed in **Table 4**. The AQCD is included as part of the associated adopted RTSP or TIP, and any comments received from the consultation group are recorded in the AQCD and presented during the Public Hearing for the adoption of the associated RTSP or TIP.

Table 4: AQCD Consultation Group

Entity
Federal Highway Administration
Federal Transit Administration
ODOT
Oregon Department of Environmental Quality
U.S. Environmental Protection Agency, Region X

Consultation Outreach and Results

SKATS staff contacted representatives from each of the agencies and Tribal governments listed in the tables above to provide background information on the consultation process SKATS is required to confirm that they are the appropriate contact person and to determine whether and how they would like to be contacted for the requisite consultation process during the development of the RTSP and TIP. The representatives were informed of the milestones in the development of the RTSP and TIP where agency comment is solicited, and an estimate of how much time it would take them to review the appropriate document and approximately when the review would take place. Each representative was asked to complete a short form documenting whether and how they would like to be contacted at the following steps of document development: (Results are summarized in Appendix A).

- Kick-off for developing the RTSP or TIP
- Reviewing the Potential Impacts of the Draft Projects in the RTSP on Cultural, Historic and/or Natural Resources
- Reviewing Potential Environmental Mitigation strategies in the RTSP
- Reviewing the Public Review Draft of the RTSP or TIP

Integrating the Consultation Process into Development of the Plan and TIP

The discussion above describes which agencies and governments will be contacted during the development of an update to the RTSP or TIP. In the discussion that follows, the products or tasks that are anticipated to be completed are presented.

Consultations Used in Developing the RTSP

As the RTSP is developed, consultation with the groups defined above takes place at certain key points to ensure that their input provides meaningful feedback that will identify any relevant issues and thus make the final document better tailored to the users of the transportation system in the SKATS area. As shown in **Table 5**, consultation will take place at certain milestones during the development of the document.

Table 5: Roles and Responsibilities for Consultation in the Development of the RTSP

Key Decision Point	Consults With	Lead	Activity	Products
Preparing RTSP Update: Initial Notification – After initial schedule of events has been developed	See Table 3 list of agencies for consultation	SKATS	Notify agencies and request updated contact information	Updated contact information
		Agency	Supply updated contact information	
Draft Financially Constrained Project List/Plan for RTSP	Local jurisdictions, public, affected groups listed in Table 3	SKATS	Provide the financial projections and initial list of projects	Financial projections and project list
		Agency	Provide comments on financial projections and projects.	
Environmental Mitigation Strategies for RTSP - After draft financially constrained Project List is defined	Environmental Mitigation Consultation Group (Table 5)	SKATS	Section describing mitigation strategies	Feedback on strategies and additional suggestions
		Agency	Review mitigation strategies and provide feedback	
Cultural, Historic and Environmental (CHE) Impacts of the RTSP	CHE Consultation Group (Table 4)	SKATS	Provide maps of project and resources, and analysis of possible impacts	Review location of projects and resources, provide feedback on initial analysis of potential impacts
		Agency	Review maps and analysis and provide feedback	
Reviewing Public Review Draft of the RTSP	All consultation groups, local jurisdictions and agencies, public	SKATS	When Public Review Draft of the document is released	Public comment period is for a minimum of 30 days
Review Air Quality Conformity Determination for RTSP	AQCD Group (Table 6)	SKATS	Draft AQCD for review by AQCD Group and included in Public Review of associated RTSP.	Review is typically for 14-21 days during the public comment period
		Agency	Review draft AQCD and provide feedback	

Adopt RTSP	SKATS	Include a disposition of comments and input from the steps above in the final document
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Consultations Used in Developing the TIP

As the TIP is developed, a similar process for engaging the groups identified above in consultation will take place. Outreach to different groups and agencies happen at certain decision points to ensure input is received early enough in the TIP update process as to be useful in its development, as shown in **Table 6**. Note that TIP amendments and administrative modifications do not involve consultation except by the Air Quality Conformity Determination (AQCD) consultation group when warranted by Air Quality regulations for non-exempt projects.

Table 6: Roles and Responsibilities for Consultation in the Development of the TIP

Key Decision Point	Consults With	Lead	Activity	Comment
Preparing TIP Update: Initial Notification	See Table 3 list of agencies for consultation	SKATS	Notify agencies of TIP timeline and request updated contact information.	Updated contact information
		Agency	Supply updated contact information.	
Draft Financially Constrained Project List for TIP - After financial projections and initial list of projects are available	Local jurisdictions, public, affected groups listed in Table 3	SKATS	Request feedback on the initial list of projects.	Consider feedback to include in Draft TIP
		Agency	Review materials and provide information regarding the proposed projects.	
Reviewing Public Review Draft of the TIP	All consultation groups, local jurisdictions and agencies, public	SKATS	Release the Public Review Draft of the TIP, notify all groups and request feedback.	Public comment period for TIP updates is for a minimum of 30 days
		Agency	Review materials, provide comments, and include the projects in the appropriate document.	
Review Air Quality Conformity Determination for TIP	AQCD Group (Table 6)	SKATS	Send the Draft AQCD for review to the AQCD Group (included in Public Review of associated TIP).	Review is typically for 14-21 days during the public comment period

		Agency	Review materials, provide comments, and include the projects in the appropriate document.	
Adopt TIP and AQCD		SKATS	Include a disposition of comments and input from the consultation agencies in the final document.	

Appendix A: Consultation Survey Responses

Responses from the following Entities have been received as of January 8, 2019 (April 24, 2019 for Grand Ronde) regarding the RTSP (**Table 7**) and the TIP (**Table 8**)

Table 7: Responses for Participating in RTSP Development

Agency	Category	Kickoff	Draft List	CHE Impact	Enviro Mitigation	Draft Document
US Army Corps of Engineers	Environmental Protection	Yes	Yes	Yes	Yes	Yes
Oregon Department of Fish and Wildlife	Environmental Protection	No	Email	Email	Email	Email
Oregon DOT -Region 2	Environmental Protection	No	No	Email	Email	Email
Oregon Division of State Lands	Land Use Management	No	No	Email	Email	No
Salem Airport	Airport Operators	Email	Email	Email	Email	Email
Oregon DOT – Freight	Freight Management	No	No	No	No	No
The Confederated Tribes of Siletz Indians⁵	Tribal Government	Yes	?	?	?	Yes
The Confederated Tribes of the Grand Ronde	Tribal Government	Letter /email	Letter /email	Letter /email /phone	Letter /email	Letter /email

Table 8: Responses for Participating in TIP Development

Agency	Category	Kickoff	Draft List	Draft Document
The Confederated Tribes of the Grand Ronde	Tribal Government	No	Letter /email	Letter /email
US Army Corps of Engineers	Environmental Protection	Yes	No	Yes
Oregon Division of State Lands	Land Use Management	Email	Email	Email
Salem Airport	Airport Operators	Email	Email	Email
Oregon DOT – Freight	Freight Management	No	No	No

SKATS is continuing to reach out to the following Entities to determine their preferred method of contact but have not received a response as of April 25, 2019.

⁵ A representative called and stated they are interested but did not specify any of the options. A mailed form was not returned.

Table 9: No Response Received

Agency	Category
SEDCOR	Economic Growth and Development
National Marine Fisheries Service	Natural Resources
US Fish and Wildlife Service	Natural Resources
Oregon State Historic Preservation Office	Historical Preservation
Oregon DOT – Emergency Response	Natural Disaster Risk Reduction