

February 4, 2000

TRIBAL CONSULTATION IN EPA REGION 10

WORKING DEFINITION OF TRIBAL CONSULTATION

“Consultation” means the process of seeking, discussing, and considering the views of federally recognized tribal governments at the earliest time in EPA Regions 10's decision-making. Consultation generally means more than simply providing information about what the agency is planning to do and allowing comment. Rather, consultation means two-way communication that works toward a consensus reflecting the concerns of affected federally recognized tribe(s).

DRAFT GUIDING PRINCIPLES

1. The Region will consult with federally recognized tribal governments in a sensitive manner respectful of tribal sovereignty.
2. The Region will maintain government-to-government communications with federally recognized tribal governments by interacting through officials of appropriate stature and authority.
3. In situations where EPA has the ultimate decision-making authority, federal policies direct EPA to consult with affected federally recognized tribal governments prior to making decisions. The Region will work within the following guidelines when deciding how to consult with federally recognized tribes:
 - ◆ When the matter may directly affect the environment, resources, treaty rights or other legal rights of a specific or small number of federally recognized tribes, EPA will meet with, have conference calls, and send letters to tribal leaders of the affected individual tribe(s).
 - ◆ When seeking perspectives from all interested federally recognized tribes in the Region on national or broad Regional issues, EPA will meet with, or have a conference call, or solicit written comments in a letter from EPA;
 - ◆ When looking for broad guidance on tribal policy or implementation matters of national or Regional interest either at a preliminary stage or requiring fast turn-around, EPA will rely on the Regional Tribal Operations Committee for assistance and input;
4. On specific matters, the Region should contact potentially affected federally recognized tribes as early as practicable, to provide time for consultation prior to making a decision.
5. The Region will encourage regular participation of federally recognized elected tribal representatives or their designees on Regional planning groups.
6. The Region should notify directly federally recognized tribe(s) where specific tribal interest or trust resources may be involved, and offer the respective tribe(s) an opportunity to participate without

resolving whether the tribe(s) has a legal right to consultation.

7. The Region will meet with individual federally recognized tribes upon request of the tribe's leaders.
8. The Region should endeavor to build an on-going relationship with each federally recognized tribal government to increase communication, and to ensure that consultation on specific proposals will be more constructive and effective.
9. The Region will encourage meetings with federally recognized tribal governments on their homelands, to the extent resources allow, to strengthen the EPA federal-tribal relationship and facilitate EPA understanding of respective tribal issues, concerns and perspectives.
10. Public participation which involves individual citizens of Indian Country, is not the same as consultation with affected federally recognized tribal governments. EPA has the responsibility to consult with federally recognized tribal governments separate from, and in addition to, the public participation process for interested stakeholders.
11. Consultation with tribal governments, which should occur prior to the public participation process, does not replace requirements to promote public participation that may apply to a given proposed federal action.

ISSUE RESOLUTION

If disputes arise between one or more tribes and EPA Region 10, the parties will strive to address the matter informally, at the staff level. In the event that staff are unable to resolve a dispute, the issue will be presented to immediate supervisors, who will attempt to resolve the dispute. If the dispute is not resolved, the staffs will present the matter to progressively higher levels of management until consensus is reached. In the event consensus is not reached, the EPA Regional Administrator, after consulting with the elected leader(s) of the federally recognized Tribe(s), will make the final decision.

Department of Defense

American Indian and Alaska Native Policy

October 20, 1998

PREAMBLE

These principles establish the Department of Defense's (DoD) American Indian and Alaska Native Policy for interacting and working with federally-recognized American Indian and Alaska Native governments (hereinafter referred to as "tribes"¹). These principles are based on tribal input, federal policy, treaties, and other federal statutes. The DoD policy supports tribal self-governance and government-to-government relations between the federal government and tribes. Although these principles are intended to provide general guidance to DoD Components on issues affecting tribes², DoD personnel must consider the unique qualities of individual tribes when applying these principles, particularly at the installation level. These principles recognize the importance of increasing understanding and addressing tribal concerns, past, present, and future. These concerns should be addressed prior to reaching decisions on matters that may have the potential to significantly affect protected tribal resources, tribal rights, or Indian lands.³

I. TRUST RESPONSIBILITIES

DoD will meet its responsibilities to tribes. These responsibilities are derived from:

- Federal trust doctrine (i.e., the trust obligation of the United States government to the tribes);
- Treaties, Executive Orders, Agreements, Statutes, and other legal obligations between the United States government and tribes, to include:
 1. Federal statutes (e.g., Native American Graves Protection and Repatriation Act, American Indian Religious Freedom Act, National Environmental Policy Act, National Historic Preservation Act, Alaska National Interest Lands Conservation Act, Alaskan Native Claims Settlement Act, and Archeological Resources Protection Act); and
 2. Other federal policies (e.g., Executive Order 12898, "Environmental Justice"; Executive Order 13007, "Indian Sacred Sites"; Executive Order 13021 "Tribal Colleges and Universities"; "Executive Memorandum: Government to Government Relations with Native American Tribal Governments," dated 29 April 1994; and Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments").

DoD will annually review the status of relations with tribes to ensure that DoD is:

- Fulfilling its federal responsibilities; and
- Addressing tribal concerns related to protected tribal resources, tribal rights, or Indian lands.

II. GOVERNMENT TO GOVERNMENT RELATIONS

Build stable and enduring relationships with tribes by:

- Communicating with tribes on a government-to-government basis in recognition of their sovereignty;
- Requiring meaningful communication addressing tribal concerns between tribes and military installations at both the tribal leadership-to-installation commander and the tribal staff-to-installation staff levels;
- Establishing a senior level tribal liaison in the Office of the Secretary of Defense and other appropriate points of contact within DoD to ensure that tribal inquiries are channeled to appropriate officials within DoD and

responded to in a timely manner;

- Providing, to the extent permitted by DoD authorities and procedures, information concerning opportunities available to tribes necessary to enable tribes to take advantage of opportunities under established DoD authority to: 1) compete for contracts, subcontracts, and grants, and participate in cooperative agreements; 2) benefit from education and training; 3) obtain employment; and 4) obtain surplus equipment and property;
- Assessing, through consultation, the effect of proposed DoD actions that may have the potential to significantly affect protected tribal resources, tribal rights, and Indian lands before decisions are made;
- Taking appropriate steps to remove any procedural or regulatory impediments to DoD working directly and effectively with tribes on activities that may have the potential to significantly affect protected tribal resources, tribal rights, and Indian lands; and
- Working with other federal agencies, in consultation with tribes, to minimize duplicative requests for information from tribes.

III. CONSULTATION

Fully integrate (down to staff officers at the installation level) the principle and practice of meaningful consultation and communication with tribes by:

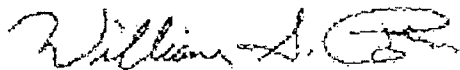
- Recognizing that there exists a unique and distinctive political relationship between the United States and the tribes that mandates that, whenever DoD actions may have the potential to significantly affect protected tribal resources, tribal rights, or Indian lands, DoD must provide affected tribes an opportunity to participate in the decision-making process that will ensure these tribal interests are given due consideration in a manner consistent with tribal sovereign authority;
- Consulting consistent with government-to-government relations and in accordance with protocols mutually agreed to by the particular tribe and DoD, including necessary dispute resolution processes;
- Providing timely notice to, and consulting with, tribal governments prior to taking any actions that may have the potential to significantly affect protected tribal resources, tribal rights, or Indian lands;
- Consulting and negotiating in good faith throughout the decision-making process; and
- Developing and maintaining effective communication, coordination, and cooperation with tribes, especially at the tribal leadership-to-installation commander level and the tribal staff-to-installation staff levels.

IV. NATURAL AND CULTURAL RESOURCES PROTECTION

Recognize and respect the significance tribes ascribe to certain natural resources and properties of traditional or customary religious or cultural importance by:

- Undertaking DoD actions and managing DoD lands consistent with the conservation of protected tribal resources and in recognition of Indian treaty rights to fish, hunt, and gather resources at both on- and off-reservation locations;
- ~~Enhancing~~, to the extent permitted by law, tribal capabilities to effectively protect and manage natural and cultural tribal trust resources whenever DoD acts to carry out a program that may have the potential to significantly affect those tribal trust resources;
- Accommodating, to the extent practicable and consistent with military training, security, and readiness requirements, tribal member access to sacred and off-reservation treaty fishing, hunting, and gathering sites located on military installations; and
- Developing tribal specific protocols to protect, to the maximum extent practicable and consistent with the

Freedom of Information Act, Privacy Act, National Historic Preservation Act, and Archeological Resources Protection Act, tribal information regarding protected tribal resources that has been disclosed to, or collected by, the DoD.



William S. Cohen
Secretary of Defense

1. As defined by most current Department of Interior/Bureau of Indian Affairs list of tribal entities published in Federal Register pursuant to Section 104 of the Federally Recognized Indian Tribe List Act.

2. This policy is not intended to, and does not, grant, expand, create, or diminish any legally enforceable rights, benefits, or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor shall this policy be construed to alter, amend, repeal, interpret, or modify tribal sovereignty, any treaty rights, or other rights of any Indian tribes, or to preempt, modify, or limit the exercise of any such rights.

3. Definition of Key Terms:

- **Protected Tribal Resources:** *Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.*
- **Tribal Rights:** *Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.*
- **Indian Lands:** *Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.*