

**CONSULTATION AND COMMUNICATION WITH
FEDERALLY RECOGNIZED INDIAN TRIBES**

- 1. REASON FOR ISSUE:** To update the Department of Veterans Affairs (VA) policy for consulting and communicating with federally recognized Indian Tribes.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This directive sets forth policies, roles, and responsibilities for consulting and communicating with federally recognized Indian Tribes.
- 3. RESPONSIBLE OFFICE:** Office of Public and Intergovernmental Affairs (OPIA) (002), Office of Tribal Government Relations (075).
- 4. RELATED HANDBOOK:** VA Handbook 8603, Consultation and Communication with Federally Recognized Indian Tribes.
- 5. RESCISSION:** VA Directive 8603 dated February 20, 2015.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/s/
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CONSULTATION AND COMMUNICATION WITH FEDERALLY RECOGNIZED INDIAN TRIBES

1. PURPOSE.

- a. This directive contains the VA's policy for consulting and communicating with federally recognized Indian Tribes and applies to all organizational elements across the Department. This directive establishes that the Office of Public and Intergovernmental Affairs-Office of Tribal Government Relations (OPIA-OTGR) manages and facilitates the tribal consultation process, while providing advice and guidance on tribal communications.
- b. The U.S. Government has a unique relationship with American Indian and Alaska Native Tribal Governments as set forth in the Constitution of the United States, treaties, statutes, court decisions, executive orders, and memoranda. The United States acknowledges the right of federally recognized Indian Tribes to self-government. Indian Tribes exercise inherent sovereign powers over their members and territory. Further, the U.S. Government has a trust responsibility to American Indian and Alaska Native Tribes, as outlined in federal Indian law. Fulfillment of this responsibility is a fundamental component of the government-to-government relationship between the Federal Government and federally recognized Indian Tribes. The VA establishes this policy in order to enhance the relationship of cooperation, coordination, open communication, good will; to work in good faith to amicably and fairly resolve issues/differences; and to continue to pursue mutually agreeable objectives successfully.
- c. Thus, in accordance with the following directives, VA establishes this Tribal Consultation Policy:
 - (1) [Executive Order 13175 of November 6, 2000](#) (Consultation and Coordination with Indian Tribal Governments); the United Nations Declaration of the Rights of Indigenous Peoples, which the United States endorsed in December 2020;
 - (2) Guidance promulgated during the White House Tribal Nations Conference, November 5, 2009, wherein the President reaffirmed the Federal Government's commitment to meaningful consultation with Indian Tribes, by directing that each Federal Agency adopt a "detailed plan of action" to implement Executive Order 13175 of November 6, 2000, 65 Fed. Reg. 67249-67252;
 - (3) [Presidential Memorandum of January 26, 2021, Tribal Consultation and Strengthening Nation-to-Nation Relationships](#).

2. POLICY.

- a. **General.** VA will seek to enhance positive government-to-government relations between VA, and all federally recognized Indian Tribes, and to establish

meaningful consultation procedures to develop, improve, and/or maintain partnerships with American Indian and Alaska Native Tribes. Consultations between VA and Indian Tribes will strive:

- (1) To meet the responsibilities inherent in the U.S. Government's treaty/trust relationship with federally recognized Indian Tribes.
 - (2) To grant federally recognized Indian Tribes maximum administrative discretion with respect to federal statutes and regulations administered by Indian Tribes, as required by Executive Order 13175.
 - (3) To identify areas where deference to federally recognized Indian Tribes, as required by Executive Order 13175.
 - (4) To work with Indian Tribes on any actions affecting tribal lands, tribal sacred sites, treaty rights or other acquired rights, tribal statuses as governments, and legislation directed solely at tribal peoples; and
 - (5) To attempt to reach consensus with Indian Tribes on all matters affecting them. To that end, VA will meet the intent of Executive Order 13175 and the President's directive to establish meaningful consultation procedures with American Indian and Alaskan Native Tribes. Ultimately, the goal of this policy is to improve American Indian and Alaska Native Veterans' access to VA programs and services through strengthened government-to-government partnership with Indian Tribes.
- b. **Confidentiality:** VA will continue to protect and exhibit a high degree of respect and sensitivity regarding confidential information provided by Tribal Governments and staff and ensure confidentiality to the extent provided by applicable Federal law.
- c. **Recognize and Respect Sovereignty:** VA, as a representative of the United States Government, recognizes that the various American Indian and Alaska Native Tribes are sovereign governments. The recognition and respect of sovereignty is the basis for government-to-government relations and this Policy.
- d. **Efficiently address Tribal Issues and Concerns:** VA acknowledges that Indian Tribes and tribal programs serving Veterans have first-hand expertise regarding the needs and circumstances of the Veterans in their communities. Subsequently, VA recognizes the value of the American Indian and Alaska Native Tribes' input regarding VA policies, programs and/or services. Thus, it is important that the Tribes' interests are continuously reviewed and considered by VA in its policy, program and/or services development processes.
- e. **Administrative Discretion:** VA acknowledges that Indian Tribes have the authority to follow their own processes for administering services and programs for Veterans. By deferring to tribally-administered Veterans' programs wherever such programs are present, VA maximizes the administrative discretion of

American Indian and Alaska Native Tribes. Further, VA recognizes the importance of providing capacity-building trainings to aid federally recognized Indian Tribes in developing their own policies for serving their Veteran populations.

- f. **Interpretive Methodology:** VA shall apply the Supreme Court's Indian Canons of Construction as the methodology for interpreting ambiguous language within treaties or statutes. These canons require that:
- 1) Treaties be interpreted as the Indians would have understood them;
 - 2) Treaties are liberally construed in favor of the Indians with all ambiguities resolved in their favor; and
 - 3) Abrogation of tribal sovereignty or property rights be expressed by Congress clearly and unambiguously.
- g. **Collaboration and Mutual Resolution:** VA recognizes that good faith, mutual respect, and trust are fundamental to meaningful collaboration and communication policies. As concerns arise, VA shall continue to strive to address and mutually resolve them with impacted American Indian and Alaska Native Tribes.
- h. **Communication and Positive Relations:** VA shall strive to enhance positive government-to-government relations with the American Indian and Alaska Native Tribes by: (1) continuing to interact with the Tribes in a spirit of mutual respect; (2) seeking to understand the varying Tribes' perspectives; (3) enhancing communication, understanding and appropriate dispute resolution with the Tribes; and (4) continuing to work through the government-to-government process towards a shared vision in areas of mutual interest.
- i. **Limits on Consultation:** This policy will not diminish any administrative or legal rights and remedies otherwise available by law to VA or American Indian or Alaska Native Tribes.
- (1) The Policy does not prevent VA or the Tribes from entering into Memoranda of Understanding, Intergovernmental Agreements, Joint Powers Agreements, professional service contracts, or other established administrative procedures and practices mandated by Federal law or Tribal laws or regulations.
 - (2) VA retains final decision-making authority with respect to actions undertaken by VA and within Federal jurisdiction. In no way should this Policy impede VA's ability to manage its operations.
 - (3) This Policy is not intended to create any new right, benefit, or trust responsibility, substantive or procedural, enforceable law by a party against the United States, VA, or any person.

- j. **Dissemination of Policy:** Upon adoption of this Policy, VA will ensure the Policy is disseminated to all VA employees and to the various Indian Tribes.
- k. **Amendments and Review of Policy:** All policies must be reviewed and recertified within five (5) years of issuance to ensure they reflect current procedures and are consistent with other Enterprise directives and handbooks.
- l. **Effective Date:** This Policy shall become effective upon certification by the certifying official.
- m. **Sovereign Immunity:** The Policy shall not be construed to waive the sovereign immunity of the United States or any of its Agencies, or any Tribe, or to create a right of action by or against the United States or a Tribe, or any official of either, for failing to comply with this Policy. The VA hereby adopts this Federal - Tribal Consultation Policy.

3. TRIBAL CONSULTATION.

- a. **Authority:** The Secretary of Veterans Affairs, or his/her designated representatives shall consult with Tribal Officials, or their delegated representatives, who possess authority to negotiate on their behalf. The Deputy Assistant Secretary for Intergovernmental Affairs (DAS) is responsible for day-to-day implementation of this policy and shall lead coordinating VA's relationships with Tribal Governments and other tribal entities. The DAS shall continue to represent the Secretary in interactions and will serve as the liaison on these matters between VA and the American Indian and Alaskan Native Tribes. The DAS is designated as the VA's primary point of contact for implementation of this policy, and for coordinating VA's relationships with American Indian and Alaska Native Tribal Governments and other tribal entities.
- b. **Applicability:** Tribal consultation is most effective and meaningful when conducted before taking actions that impact American Indians and Alaskan Natives. VA acknowledges that a best-case scenario may not always exist, and that VA and the Tribes may not have sufficient time or resources to fully consult on a relevant issue; however, consultation should be initiated as soon as practicable to discuss any relevant issues.
- c. **Focus:** The principal focus for government-to-government consultation is with American Indian and Alaska Native Tribes through their duly appointed Tribal Officials. Nothing shall restrict or prohibit the ability or willingness of Tribal Officials and the Secretary to meet directly on matters that require direct consultation. VA recognizes that the principle of intergovernmental collaboration, communication, and cooperation is a first step in government-to-government consultation. VA shall continue to determine when direct leader to leader meetings shall occur.
- d. **Areas of Consultation:** VA, through reviewing proposed plans, policies, rules, or other pending and proposed programmatic actions, recognizes the need to

assess whether such actions may impact Indian Tribes and/or American Indian and Alaska Native Tribes. Consultation shall take place prior to any actions that may have the potential to significantly affect tribal resources, rights, or land. VA strives to notify appropriate Tribal Officials about such actions in an effort to provide Tribal Officials the opportunity to pursue and/or engage in the consultation process.

- e. **Initiation:** Written notification requesting consultation by VA, or an Indian Tribe shall serve to initiate the consultation process. VA shall provide prior notice of at least 30 days about upcoming tribal consultation meetings. If an urgent issue necessitates exceptions to this requirement, VA shall explain the reasons for any such exceptions in the written notice. Written notification, at the very least, shall:
 - (1) Identify the proposed action to be consulted upon.
 - (2) Identify personnel who are authorized to consult on behalf of VA or the Tribe.
- f. **Tribal Consultation operates as an enhanced form of communication that emphasizes trust and respect.** It is a shared responsibility that allows an open and free exchange of information and opinion among parties that, in turn, may lead to mutual understanding and comprehension. Consultation with American Indian and Alaska Native Tribes is a unique government-to-government process with two main goals.
 - (1) To reach consensus in decision-making; and
 - (2) whether consensus is reached, to afford any party the opportunity to issue a dissenting opinion for the record, and more importantly to have honored each other's sovereignty:
- g. **Process for Tribal Consultation.** OPIA-OTGR manages, facilitates, and documents tribal consultations for the Department. Administrations and Staff Offices wanting to consult with an Indian Tribe must seek guidance from, and coordinate with, OPIA-OTGR before, during, and after the consultation process. Should legal questions arise, Administrations and Staff Offices must also consult with the Office of the General Counsel (OGC), as needed.
- h. Tribal Consultations that are conducted on matters relating to historic preservation, cultural resources, and the impacts of proposed actions under the National Environmental Policy Act as referenced in VA Directive and Handbook 7545 and VA Directive 0067 are not required to follow the consultation procedures set forth in this Directive. VA Directive and Handbook 7545 and VA Directive 0067 dictate tribal consultation for those matters. However, all tribal consultations and communications on such matters must be reported to OPIA-OTGR. Refer to VA [Handbook 8603](#) for a step-by-step description of the tribal consultation process.

- i. **Post-Consultation Summary:** Following each tribal consultation, VA shall develop a summative report that details the comments received and how VA plans follow-up on any recommendations offered by Indian Tribes or tribal organizations. VA shall distribute this report to the American Indian and Alaska Native Tribes involved within 30 days of the meeting's conclusion or at the end of the written comment period as directed and offer them an opportunity to provide further feedback in response to the summary.
- j. **Definition of Tribal Communication.** Communication means verbal, electronic or written exchange of information between duly appointed officials of VA and Indian Tribes. Any other communication (verbal, electronic or written exchange of information) with tribal officials that does not meet the criteria of tribal consultation is informal communication. This can include listening sessions. If an Administration or Staff Office is unsure of the distinction between tribal consultation and tribal communication, contact OPIA-OTGR for further guidance at tribalgovernmentconsultation@va.gov.
- k. **Process for Tribal Communication.** OPIA-OTGR provides advice and guidance on tribal communications across the Department. Administrations and Staff Offices should communicate key findings from tribal communications to OPIA-OTGR for situational awareness. Refer to VA [Handbook 8603](#) for a step-by-step description of the tribal communication process.
- l. **Exclusions.** Exclusions to this policy include those matters that are the subject of litigation or in settlement negotiations or matters undertaken in accordance with an administrative or judicial order where VA has no discretion with respect to consultation.
- m. **Protocol.** When working with Indian Tribes and/or tribal governments, it is important to understand the unique political relationship between American Indian and Alaskan Native Tribal Governments and the United States Government. Under both Federal and common law, Indian Tribes are sovereign governments with recognized powers of self-government. The status of Indian Tribes as sovereigns means that Tribes possess the inherent right to develop their own forms of government, to determine their own citizenship and to make their own judicial systems. Thus, it is important not to assume that one tribe or one leader speaks for all.
- n. **VA recognizes the unique sovereign status of Indian Tribes.** To promote effective communication and collaboration between VA and the Tribes relating to this Policy, VA shall continue to endeavor to understand the protocols for interacting with each American Indian and Alaska Native Tribe. Collaboration is a recursive process in which two parties work together to achieve a common set of goals. Collaboration may occasionally occur, between VA and the Tribes, their respective agencies or VA's, or their official designees. Collaboration begins with joint effort that lays the groundwork for mutually beneficial relations, including identifying issues and problems, generating improvements and solutions, and

providing follow-up as needed. Timely communication is also fundamental to collaboration. Thus, VA shall provide advance notice of at least 30 days regarding tribal consultation meetings. Urgent issues may necessitate exceptions to this requirement, but VA shall explain the reasons for any such exceptions within the written notice.

- o. Consensus serves as a decision-making method for reaching agreement through a participatory process that:
 - (1) Involves VA and Indian Tribes through their official representatives;
 - (2) Actively solicits input and participation by VA and the Tribes; and
 - (3) Encourages cooperation in reaching agreement on the best possible decision for those affected.
- p. VA shall continue to endeavor to conduct deliberations with Indian Tribes in good faith and in accordance with the processes outlined in this Policy. Within this process, it is understood that consensus, while a goal, may not always be achieved.
- q. In instances when VA is requesting tribal input on draft documents through tribal consultation, VA shall strive to provide the most recent version for tribal review in advance of the tribal consultation meeting. The VA Office of Tribal Government Relations will work with the VA Office of Congressional and Legislative Affairs and Office of General Counsel to ensure certification accompanies draft regulations and proposed legislation with tribal implications.

4. GENERAL PROVISIONS.

- a. **The Role of the Advisory Committee on Tribal and Indian Affairs:** The Committee serves in an advisory capacity, providing guidance to the Secretary of Veterans Affairs on topics pertaining to Indian Tribes, tribal organizations, and American Indian and Alaska Native Veterans within the context of VA services and programs. Key Committee activities include elevating to the Secretary information shared by Indian Tribes, tribal organizations, and American Indian and Alaska Native Veterans; recommending solutions to address issues faced by Indian Tribes and American Indian and Alaska Native Veterans; and ensuring that Indian Tribes and tribal organizations are aware of pertinent issues on which VA requests their input. The Committee's role is to supplement and facilitate interaction between VA and American Indian and Alaska Native Tribal Governments; however, this guidance does not replace the need for government-to-government consultation between VA and federally recognized Indian Tribes. VA recognizes that each federally recognized Indian Tribe is a sovereign entity and therefore must have the opportunity to represent its own constituents through government-to-government consultation.

- b. **The Role of Work Groups:** VA, in consultation with recognized Tribal officials, may appoint a Tribal Work Group to develop recommendations and provide input on VA policies, programs and/or services as they might impact American Indian and Alaska Native Tribes. VA or the Work Group may develop procedures for the organization and implementation of Work Group functions.
- c. **Communication:** VA recognizes that Tribal Officials may communicate with appropriate VA employees outside the consultation process to ensure that any policies will not adversely impact tribal interests. While less formal mechanisms of communication may be more effective at times, this does not negate VA's or the Tribe's ability to pursue formal consultation on a particular issue or policy.
- d. **Informal Communication with Indian Organizations:** The Federal-Tribal relationship is based on a government-to-government relationship. VA recognizes the existence of Indian organizations, such as those representing or providing services to urban and/or off-reservation American Indians and Alaska Natives. Through this Policy, VA recognizes that it may continue to solicit recommendations or otherwise collaborate and communicate with these organizations and may do so through offices that VA established to serve those populations.

5. RESPONSIBILITIES.

- a. **Under Secretaries, Assistant Secretaries, and Other Key Officials.** Undersecretaries, Assistant Secretaries, and Other Key Officials, or their designee(s) shall:
 - (1) Coordinate with OPIA-OTGR throughout the tribal consultation process;
 - (2) Seek advice and guidance from OPIA-OTGR on tribal consultation and communication;
 - (3) Respond to data calls received from OPIA-OTGR in a timely manner;
 - (4) Communicate any tribal-initiated or Administration/Staff Office-initiated issues for consultation to OPIA-OTGR;
 - (5) Comply with all laws, regulations, policies, and handbooks relating to tribal consultation and communication.
- b. **Office of Acquisitions, Logistics, and Construction (OALC), Office of Construction and Facilities Management (CFM).** OALC, CFM shall: As needed and in response to data calls, provide OPIA-OTGR with information on consultations and communications conducted with federally recognized tribes on matters relating to historic preservation, cultural resources, and the impacts of proposed actions under the National Environmental Policy Act as set forth in [VA Directive and VA Handbook 7545 and VA Directive 0067](#) as related to major (or other) projects under their direction.

- c. **Office of Public and Intergovernmental Affairs-Office of Tribal Government Relations.** (OPIA-OTGR). OPIA-OTGR shall:
- (1) Manage, facilitate, and document the tribal consultation process;
 - (2) Provide advice and guidance on tribal consultation and communication;
 - (3) Issue periodic data calls within VA requesting issues for tribal consultation, prior communication with tribal governments, and inputs required for annual reports to OMB and/or other entities;
 - (4) Communicate any tribal-initiated or VA-initiated issues for consultation to relevant Administrations and Staff Offices; and
 - (5) Comply with all laws, regulations, policies, and handbooks relating to tribal consultation and communication.

6. REFERENCES.

- a. [Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, November 6, 2000.](#)
- b. [The Presidential Memorandum of January 26, 2021, Tribal Consultation and Strengthening Nation to Nation Relationships.](#)
- c. [VA Handbook 7545, Cultural Resource Management Procedures](#)
- d. [VA Directive 0067, VA National Environment Policy Act Implementation](#)

7. DEFINITIONS.

- a. **Administration.** (Source: 38 U.S.C. § 101. Definitions) A term used to identify one of the three major VA operational elements. When VHA, VBA, and NCA are referred to as a group, the term "Administrations" may be used.
- b. **Advisory Committee on Tribal and Indian Affairs** (Source: <https://department.va.gov/administrations-and-offices/tribal-government-relations/advisory-committee/>) refers to the statutory advisory committee established by the Secretary of Veterans Affairs as required by Section 7002 of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020. The Committee provides advice and guidance to the Secretary of Veterans Affairs on all matters relating to Indian Tribes, tribal organizations, Native Hawaiian organizations, and American Indian and Alaska Native Veterans.

- c. **Department.** (Source: 38 U.S.C. § 301. Department) A reference to the entire Department of Veterans Affairs, which includes VA Central Office and all field facilities:
 - (1) Veterans Health Administration (VHA);
 - (2) Veterans Benefits Administration (VBA); and
 - (3) National Cemetery Administration (NCA).
- d. **Federally Recognized Indian Tribe.** An American Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.
- e. **Good Faith.** Good faith is a broad term that's used to encompass honest dealing. Depending on the exact setting, good faith may require an honest belief or purpose, faithful performance of duties, observance of fair dealing standards, or an absence of fraudulent intent.
- f. **Government-to-Government Relationship** describes the relationship between VA and the American Indian and Alaskan Native Tribal Governments. VA recognizes the importance of collaboration, communication, and cooperation with American Indian and Alaskan Native Tribes. VA further recognizes that VA policies, programs and/or services may directly or indirectly affect these Tribes. Accordingly, VA recognizes the value of dialogue with the American Indian and Alaska Native Tribes on specific policies, programs, and/or services.
- g. **Indian Organizations** means those organizations, predominantly operated by Indian Tribes that represent or provide services to all American Indians or Alaska Natives living on and/or off tribal lands and/or in urban areas.
- h. **Indian Tribe** means an American Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.
- i. **Listening Sessions.** (Source: [VA Handbook 8603](#)) Sessions in which government officials listen to input or feedback from tribal leaders or members, for the purpose of sharing information on topics of interest to the government, tribes, or both. These sessions can be used to gather information or gain understanding about complex issues. These differ from tribal consultations, which focus on proposed Departmental actions.
- j. **Participation** (Source: [VA Handbook 8603](#)) describes an ongoing activity that allows interested parties to engage one another through negotiation, compromise and problem solving to reach a desired outcome.

- k. **Staff Office.** (Source: [VA Handbook 8603](#)) A generic term used to identify one of the offices included under VA Central Office. This does not refer to VHA, VBA, and NCA, nor does it refer to medical facilities, regional offices, or cemeteries.
- l. **Tribal Communication.** (Source: [VA Handbook 8603](#)) Any other communication (verbal, electronic or written exchange of information) with tribal officials that does not meet the definition of tribal consultation.
- m. **Tribal Consultation.** (Source: [VA Handbook 8603](#)) Formal, documented process by which input is sought from tribal officials on proposed Departmental actions, which may:
 - (1) Require tribal and VA senior leadership involvement;
 - (2) Involve the potential for direct and substantial impact upon more than one Tribe or on the relationship between VA and Tribes;
 - (3) Affect tribal resources, rights or land;
 - (4) Entail policy, legislative, or legal actions involving Tribes.
- n. **Tribal Government** is defined as any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.)
- o. **Tribal Officials** (Source: [VA Handbook 8603](#)) are the elected or duly appointed officials of Indian Tribes or authorized intertribal organizations.
- p. **Trust Responsibility.** Legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and federally recognized tribes.
- q. **Work Groups** (Source: [VA Handbook 8603](#)) means task forces established through a joint effort by VA and individual Indian Tribes. Work Groups can be established to address or develop more technical aspects of policies or programs separate or in conjunction with the formal consultation process. Work Groups shall, to the extent possible, consist of members from VA and participating Indian Tribe(s).