

**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 (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 January 5, 2007.

CERTIFIED BY:

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

/s/
Stephen W. Warren
Executive in Charge and
Chief Information Officer

/s/
Maura C. Sullivan
Assistant Secretary for
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CONSULTATION AND COMMUNICATION WITH FEDERALLY-RECOGNIZED INDIAN TRIBES

1. PURPOSE. This directive contains the Department'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.

2. POLICY.

a. General. American Indian Tribes have a unique political status that entitles them to a special government-to-government relationship with the United States (U.S.) based on their federally-recognized status as sovereign nations. Formal tribal consultations and ongoing tribal communications are critical components of this relationship. Consultations promote the meaningful exchange of ideas and information while building trusted relationships between the Department and tribal governments. Pursuant to the Federally-Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-479a-1, Indian Tribes are Federally-Recognized by the Department of Interior (DOI).

b. Definition of Tribal Consultation.

(1) Tribal consultation is a formal, documented process by which input is sought from tribal officials from federally-recognized Indian Tribes on proposed Departmental actions, which may:

(a) Require tribal and VA senior leadership involvement;

(b) Involve the potential for direct, and substantial impact upon more than one Tribe or on the relationship between VA and Tribes;

(c) Affect tribal resources, rights, or land;

(d) Entail policy, legislative, or legal actions involving Tribes; or

(e) Change the distribution of authority and responsibilities between VA and Indian Tribes.

(2) Examples of Departmental actions requiring tribal consultation include, but are not limited to: rules and regulations, tribal authorizations or delegations involving Tribes; legislative comments or proposed legislation involving Tribes; policies, guidance, activities or programs affecting grants and funding, or operational activities involving Tribes.

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(3) 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, as 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, as set forth in section 3.c. of this Directive, to ensure any necessary coordination and collaboration occurs.

c. 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. Refer to Handbook 8603 for a step-by-step description of the tribal consultation process.

d. Definition of Tribal Communication. 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.

e. 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 Handbook 8603 for a step-by-step description of the tribal communication process.

f. 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.

3. RESPONSIBILITIES.

a. Office of Public and Intergovernmental Affairs-Office of Tribal Government Relations (OPIA-OTGR). OPIA-OTGR will:

- (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.

b. Under Secretaries, Assistant Secretaries, and Other Key Officials. Under Secretaries, Assistant Secretaries, and Other Key Officials, or their designee(s) will:

(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.

c. Office of Acquisitions, Logistics, and Construction (OALC), Office of Construction and Facilities Management (CFM). OALC, CFM will: 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 Handbook 7545 and VA Directive 0067 as related to Major (or other) Projects under their direction.

4. REFERENCES.

a. Executive Order 13175.

b. Department of Veterans Affairs Tribal Consultation Policy signed by the Secretary of Veterans Affairs.

5. DEFINITIONS.

a. **Administration.** A generic term used to identify one of the three major VA operational elements:

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- (1) Veterans Health Administration (VHA);
- (2) Veterans Benefits Administration (VBA); and
- (3) National Cemetery Administration (NCA).

When VHA, VBA, and NCA are referred to as a group, the term "Administrations" may be used.

b. Department. A generic reference to the entire Department of Veterans Affairs, which includes VA Central Office and all field facilities.

c. Staff Office. 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.

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-479a-1.

e. Government-to-Government Relationship. The relationship of the U.S. with tribal governments, in which the U.S. recognizes tribes as sovereign entities and interacts with them on the basis of respect for their sovereign status.

f. Listening Sessions. 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.

g. Tribal Consultation.

(1) Formal, documented process by which input is sought from tribal officials on proposed Departmental actions, which may:

- (a) Require tribal and VA senior leadership involvement;
- (b) Involve the potential for direct and substantial impact upon more than one Tribe or on the relationship between VA and Tribes;
- (c) Affect tribal resources, rights or land;
- (d) Entail policy, legislative, or legal actions involving Tribes;

(e) Change the distribution of authority and responsibilities between VA and Indian Tribes.

(2) 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, as 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, as set forth in this Directive, to ensure any necessary coordination and collaboration occurs.

h. Tribal Officials. Elected or duly appointed officials of Indian Tribes or authorized intertribal organizations.

i. Tribal Communication. Any other communication (verbal, electronic or written exchange of information) with tribal officials that does not meet the definition of tribal consultation.

j. Tribal Government. Governing structure of a sovereign, federally-recognized government of an Indian Tribe.