

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

1. REASON FOR ISSUE. To establish the Department of Veterans Affairs (VA) procedures for consulting and communicating with federally-recognized Indian Tribes.

2. SUMMARY OF CONTENTS/MAJOR CHANGES. This handbook sets forth procedures and other key elements 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 DIRECTIVE. VA Directive 8603, *Consultation and Communication with Federally-Recognized Indian Tribes*.

5. RESCISSION: NONE

CERTIFIED BY:

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

/s/
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**PROCEDURES FOR CONSULTATION AND COMMUNICATION WITH
FEDERALLY-RECOGNIZED INDIAN TRIBES**

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**PROCEDURES FOR CONSULTATION AND COMMUNICATION WITH
FEDERALLY-RECOGNIZED INDIAN TRIBES**

1. PURPOSE AND SCOPE.

a. This handbook sets forth procedures, processes, and key elements for consulting and communicating with federally-recognized Indian Tribes consistent with VA Directive 8603.

b. This handbook includes information on the roles and responsibilities of VA employees when consulting and communicating with federally-recognized Tribes.

c. This handbook applies to all organizational units across VA.

d. Exclusions to this handbook 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.

e. 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 Handbook, 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 Handbook and VA Directive 8603, to ensure any necessary coordination and collaboration occurs.

2. AUTHORITIES

This handbook is governed by the following authorities:

a. Executive Order 13175.

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

3. DEFINITIONS.

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

(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 United States with tribal governments, in which United States 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 Handbook, 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 Handbook and VA Directive 8603, 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.

4. ROLES AND RESPONSIBILITIES.

a. Office of Public and Intergovernmental Affairs (OPIA)-Office of Tribal Government Relations (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 OTGR throughout the tribal consultation process;
- (2) Seek advice and guidance from OTGR on tribal consultation and communication;

- (3) Respond to data calls received from OTGR in a timely manner;
- (4) Communicate any tribal-initiated or Administration/Staff Office-initiated issues for consultation to OTGR;
- (5) Comply with all laws, regulations, policies and handbooks relating to tribal consultations 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.

5. PROTOCOLS AND PRINCIPLES FOR TRIBAL CONSULTATION AND COMMUNICATION

VA recognizes the sovereign status of Indian Tribes, so it is important that VA employees understand the unique political relationship between tribal governments and the United States (U.S.) Government (see Appendix C for history). Under both Federal and common law, Indian Tribes are sovereign governments with recognized powers of self-government. Each Tribe possesses 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 for VA employees not to assume that one tribe or one leader speaks for all.

Consultation, in particular, is a unique government-to-government process that attempts to reach consensus in decision-making; and whether or not consensus is reached, to afford any party the opportunity to issue a dissenting opinion for the record.

Nonetheless, within this process, it should be understood that consensus, while a goal, may not always be achieved.

VA employees must follow the principles listed below when engaging in consultation and communication with Indian Tribes:

a. Confidentiality: VA will 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.

b. Government-to-Government Relations: VA recognizes the importance of consultation and communication with tribal governments. VA further recognizes that VA

policies, programs and/or services may directly or indirectly affect these tribal governments. Accordingly, VA recognizes the value of dialogue with tribal governments on specific policies, programs, and/or services.

c. Efficiently addressing Tribal Issues and Concerns: VA recognizes the value of tribal government input regarding VA policies, programs and/or services. Thus, it is important that tribal government interests are continuously reviewed and considered by VA in its policy, program and/or services development processes.

d. Mutual Resolution: VA recognizes that good faith, mutual respect, and trust are fundamental to meaningful consultation and communication policies. As concerns arise, VA should continue to strive to address and mutually resolve them with affected tribal governments.

6. PROCEDURES FOR CONSULTATION WITH FEDERALLY-RECOGNIZED INDIAN TRIBES.

a. Consultation is a core component of the government-tribal relationship, encompassing communication, respect, and partnership. VA employees must follow these nine major steps when conducting a tribal consultation process:

(1) Identify issues for tribal consultation (issues may be identified by OPIA-OTGR, Administration/Staff Office, or tribal government). The following criteria can be used to determine when an issue requires Tribal consultation:

- Requires tribal and VA senior leadership involvement.
- Potential for direct and substantial impact upon more than one tribe or on the relationship between VA and Tribes.
- Affects tribal resources, rights or land.
- Involves policy-related legislative or legal actions involving Tribes.
- Changes the distribution of authority and responsibilities between VA and tribes.

Specific criteria that can be used to distinguish between tribal consultation and tribal communication are located in Appendix B. If VA employees are unsure of whether consultation is required, consult with OPIA-OTGR for additional guidance.

Issues may be tribal-initiated. Tribal-initiated consultations may occur through letter, email or phone call. VA employees may request the tribe send its request for consultation in written form with anticipated tribal attendees and agenda items. VA employees should always respond to requests for consultation and not dismiss them arbitrarily. In addition, VA employees should inform OPIA-OTGR of all requests for tribal consultation.

(2) Administrations and/or Staff Offices provide OPIA-OTGR with written notification of issue(s) for tribal consultation that are VA or tribal-initiated.

(3) Conduct internal VA meeting between relevant office(s) and OPIA-OTGR to schedule and prepare for consultation, and address any necessary concerns and issues. Consultation should take place prior to any actions that may have the potential to significantly affect tribal resources, rights, or land. VA employees should use these pre-meetings to identify tribal leaders, clarify issues, plan the meeting, and learn about the tribe's history, culture, and political structure.

(4) OPIA-OTGR notifies tribal leaders regarding proposed consultation meeting (formal letter, phone call or email). VA initiated consultations begin with a purpose for the meeting expressed through a formal letter from the decision-maker in VA to the tribal leader. VA employees should strive to provide the tribe at least 30-day notice prior to a consultation meeting being held. Although exceptions can occur, they must be explained in the letter. Adequate notice will include a description of the project/action, timeline, and possible outcomes.

(5) OPIA-OTGR drafts and publishes a Federal Register notice concerning the consultation meeting. VA employees should include all relevant information as contained in Step (4).

(6) OPIA-OTGR in collaboration with the VA Administration or program offices initiating the tribal consultation work to complete all necessary preparations for the meeting, including but not limited to pre-meeting activities, identifying and assessing the issues, identifying what goals are to be accomplished during tribal consultation (see Appendix A for general considerations for conducting meetings).

(7) Hold the meeting (see Appendix A for general considerations for conducting meetings), elicit inputs, and document communications and outcomes.

(8) Follow up as necessary. VA officials can engage in oral exchanges with tribal representatives, followed by a letter to recap participants' understanding of the meeting.

(9) OPIA-OTGR will develop and publish any necessary reports.

b. Maintain positive relations with tribal governments to ensure VA enters into productive partnerships with tribes, which will help both entities to better serve Veterans.

c. Consult with the Office of General Counsel (OGC), as needed.

7. PROCEDURES FOR COMMUNICATIONS WITH FEDERALLY-RECOGNIZED INDIAN TRIBES.

a. Not all exchanges require government-to-government formal consultation. VA employees wanting to engage in any other communication (verbal, electronic, or written exchange of information) with tribal officials that do not meet the definition of tribal consultation must follow these steps:

(1) Identify issue as requiring communication and not consultation. Specific criteria that can be used to distinguish between tribal consultation and tribal communication are located in Appendix B. If VA employees are unsure of whether consultation is required, they should consult with OPIA-OTGR for additional guidance.

(2) Engage in verbal, electronic, or written communication with tribal officials. This form of communication usually occurs on a regular basis and is more individual-based.

(3) Follow-up as necessary.

(4) Communicate any key findings or outcomes to OPIA-OTGR for situational awareness.

b. Maintain positive relations with tribal governments to ensure VA enters into productive partnerships with tribes, which will help both entities to better serve Veterans.

c. Consult with OGC, as needed.

APPENDIX A

GENERAL CONSIDERATIONS FOR CONDUCTING MEETINGS

a. Pre-Meeting Activities. Identify the overarching need, purpose, and goals for the meeting. When a consultation is VA-initiated, VA should consult with tribes as early as possible when an action may have tribal implications. VA-initiated consultations begin with a purpose for the meeting expressed to the tribes through a formal letter from the decision-maker in VA to the tribal leader. VA should strive to provide the tribe at least 30-day notice prior to a consultation meeting being held. Although exceptions to the 30-day notice requirement can occur, VA must explain those reasons in the letter to the tribe. Adequate notice will include a description of the project/action, timeline, and possible outcomes. Tribal-initiated consultations may occur through letter, email or phone call. VA may request the tribe send its request for consultation in written form with anticipated tribal attendees and agenda items.

b. Identify and Assess the Issues. Evaluate the information collected so far, collaboratively decide with tribe(s) the type and level of meeting to hold, gaps in information, and a meeting agenda. When meeting with tribal leaders, keep in mind that two different agendas may converge—VA's and the tribe. All agendas must be understood, respected, and ultimately integrated. Be prepared to be flexible.

c. Identify What You Want to Accomplish. Consider why VA is meeting with the tribe and what is expected to be accomplished:

- (1) To exchange information, discuss ideas, or seek advice.
- (2) To obtain comments to proposed VA plan(s) or action(s).
- (3) To reach mutual agreement on processes or procedures for maintaining communication and solving problems.
- (4) To build opportunities for developing collaborations and working relationships.

d. Identify with Whom You Will Meet. Identify with whom you will meet and give consideration to their role and position in the tribal government, or status within the tribal community. Tribes are solely responsible for determining who from the tribal government attends any meeting.

e. Identify the Type of Meeting. Determine whether the meeting is expected to be a formal meeting between senior VA staff and the tribal leader or the tribal council, or whether it will be an informal meeting between designated VA and tribal technical representatives. Identification of the type of meeting will help to ensure that the appropriate level and type of VA staff will attend the meeting.

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f. Meeting Format. Give consideration to the meeting format and the type of relationship that has been established, or needs to be established, with the tribe(s). The format for the initial meeting (or first few meetings) with the tribe(s) might conform to tribal procedures. Subsequent meetings ideally should conform to the procedures mutually agreed upon in the consultation protocol outlined by the tribe(s) and VA. Possible meeting formats include: presentation followed by a discussion, listening session, small group “breakout,” question-and-answer session, or a combination of these.

g. Assess the Role of Third-Party Participants. Government-to-government consultation is a Federal responsibility. Many times, two or more federal agencies are collaborating on a particular action appropriate for consultation. Joint consultations can be effective and efficient. Consider the following questions regarding third-party participants:

- (1) What do they know about the topic?
- (2) What is their stake in the meeting?
- (3) Who are they politically and socially?
- (4) What is their attitude about the meeting topic, and toward VA and the tribe(s)?
- (5) How are they perceived by the tribe(s)?
- (6) Will their actions have impacts on the proceedings?
- (7) Are all affected groups present, and thus all sides of the issue fairly represented?
- (8) Who are the decision makers and are they present?

h. Select the Meeting Site. Government-to-government consultation can be held at tribal headquarters or elsewhere. Consider selecting meeting locations that are reasonably accessible to the tribal government, from logistical and economic perspectives. For example, select a meeting location on or near a reservation, or attend intertribal events where representatives from many tribes will be in attendance (e.g. National Congress of American Indians, the United South and Eastern Tribes, etc.). Thus, consultation with several tribes at once can be accomplished.

Alternating meeting locations at VA and tribal offices might also be an alternative and equitable solution. Lastly, depending upon the issue or action, consider meeting in the field where appropriate VA staff can conduct a site visit with tribal Veterans.

i. Verbal Presentations. VA participants presenting information should make a “good-faith effort” to exchange their ideas, views, and information at meetings, freely, openly and tactfully. Statements made to tribal leaders will be taken seriously and viewed as representing the positions of VA and the U.S. Government. Offer and promise only what can be delivered.

j. Attendance Sheet and Building Information. Especially during a formal consultation meeting, it is recommended an attendance or “sign-in” sheet be prepared and made available at the meeting. Making contact and establishing good communication is important. Once the list is complete and everyone has signed in, copies should be made available to the attendees. When the meeting is held at a VA location, initiate the meeting by providing the attendees with building logistical information including an explanation of what to do if an alarm goes off and the smoking, beverage, food and restroom arrangements.

k. Visual Aides. Consider the usefulness of visual aids—a map of the area, facility plans, diagrams, organizational and flow charts, etc. Visual information is sometimes easier to absorb than verbal. Be aware of the technical capabilities at tribal offices. Prior to the day of the meeting, ask if you are allowed to present visual aids and, if allowed, work with the tribal technical staff to line up any needed equipment. Offer to bring and set up your own equipment. Refrain from using VA jargon and acronyms in your presentation; it helps to ensure that everyone fully understands what is being presented.

l. Media Involvement. If media will be present at a meeting, or if VA and the tribe expect to deal with the media, consider working with the tribe to prepare a joint media handout or news release prior to the scheduled meeting. If a joint news release is not desirable or feasible, either the tribe or VA, or both, may decide to issue its own. In the absence of an agreed-upon media protocol, this is a discretionary matter for both VA and the tribe. VA staff should consult with appropriate VA public/media affairs offices.

m. The Host’s Offer. Commonly, when tribes host meetings they provide food and beverages for guests. If VA is the host, non-Federal participants will expect appropriate refreshments to be provided. Be aware that there is a prohibition on using Federal funds for light refreshments.

n. Meeting Closure/Consensus. Before leaving the meeting, VA employees should assess the following:

- (1) Was the agenda covered?
- (2) Did everyone have the opportunity to contribute?
- (3) Did everyone understand the issues?

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(4) Did everyone understand the process for action?

(5) Did everyone understand what will happen next?

(6) Did the participants make any commitments about what will happen next (i.e. is another meeting warranted?)

o. Measuring Meeting Success. Questions to be considered after the meeting, and some answers, might include:

(1) How do you know if you have had a successful meeting? Success can be measured from several levels or aspects. For example, simply obtaining a meeting with a particular tribe might be considered a success in one situation. In another, a written agreement might cap a series of negotiations. If there is an opportunity to talk informally with someone from the tribal delegation, ask for his or her assessment of the meeting. Find out what he or she expects will happen next.

(2) What if there is a difference of opinion about what happened at the meeting? Avoid putting off an oral inquiry to reconcile this difference. Since oral communication is the preferred means of information exchange among many tribal cultures, expect most contacts to be face-to-face and, to a lesser degree, by telephone or e-mail. After oral exchanges, send a letter to the tribal participants recapping VA's participants' understanding of the meeting.

**APPENDIX B
DEFINITIONS, PROCESS, AND ROLES AND RESPONSIBILITIES**

	TRIBAL CONSULTATION	TRIBAL COMMUNICATION
Definition	Formal documented process by which input is sought from tribal officials on proposed Departmental action expected to result in direct and substantial tribal implications.	Any other communication (verbal, electronic, or written exchange of information) with tribal officials that does not meet the definition of tribal consultation.
Criteria	<ul style="list-style-type: none"> • Requires tribal and VA senior leadership involvement. • Potential for direct and substantial impact upon more than one tribe or on the relationship between VA and Tribes. • Affects tribal resources, rights, or land. • Involves policy-related legislative or legal actions involving Tribes. • Changes the distribution of authority and responsibilities between VA and tribes. 	<ul style="list-style-type: none"> • Conduit for sharing and gathering information. • Acts as a means to build a positive, ongoing relationship. • Often done on a daily basis with regards to operational issues.
Process Overview	<ol style="list-style-type: none"> 1. Identify issues for tribal consultation. 2. Notify OPIA-OTGR/Administration/Staff Office of issue for consultation. 3. Conduct internal VA meeting to schedule and prepare for consultation. 4. Notify tribal leaders of consultation. 5. Draft and publish federal register notice. 6. Complete all necessary preparations for the meeting. 7. Hold meeting, elicit inputs, and document communications and outcomes. 8. Follow up as necessary. 9. Develop and publish report. 	<ol style="list-style-type: none"> 1. Administration/Staff Office and OPIA-OTGR coordinate to ensure issue is appropriate for communication, not consultation. 2. Engage in communication with tribal officials. 3. Follow up as necessary. 4. Communicate any key findings to OPIA-OTGR for situational awareness.
OPIA-OTGR Responsibilities	<ul style="list-style-type: none"> • Manages and facilitates the tribal consultation process. • Issues data calls for consultations. • Provides advice and guidance. • Communicates issues to Administration/Staff Office. 	<ul style="list-style-type: none"> • Provides advice and guidance. • Issues data calls for any prior and/or planned future communications.
Administration /Staff Office Responsibilities	<ul style="list-style-type: none"> • Respond to data calls. • Coordinate with OPIA-OTGR to plan/prepare for consultations. • Communicate issues for consultation. 	<ul style="list-style-type: none"> • Respond to data calls. • Document communications. • Consult OPIA-OTGR, as needed.
Examples	Extending VA policy, controversial/sensitive issues, change to grants process impacting Tribes.	Listening sessions, communications that occur on a daily basis, more individual-based.

APPENDIX C

HISTORY

Historically, consultation has been a core component of the federal-tribal relationship. Its early origins can be found in the treaty-making process, where Federal and tribal sovereigns conducted their discourse on a government-to-government basis. The term “consultation” frequently appears in treaties and is used to describe the process of maintaining and conducting formal federal-tribal communications. More recently, references to a consultation process with tribes are found in a variety of laws, Executive and Secretarial Orders, regulations, and policies as a required component of federal-tribal relations. The President is head of the Executive Branch and has powers listed within the Constitution to control the Executive Agencies. VA, as an Executive Agency, must follow these Orders, such as Executive Order 13175, Consultation and Coordination with Indian Tribal Governments.

Executive Order 13175 (November 6, 2000) sets forth the following fundamental principles to guide agencies in formulating or implementing policies that have tribal implications:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.