

**U.S. Department of Defense Plan of Action to
Implement the Policies and Directives of
Executive Order 13175**



Official Department of Defense Seal

May 2021

Office of the Secretary of Defense

I. Introduction

The origins of the Department of Defense's (DoD) consultation obligations derive from the federal trust responsibility to Indian Tribes, the fiduciary duty to manage Tribal resources, treaties with Indian Tribes, federal laws concerning natural and cultural resources, and Executive Orders. The federal trust responsibility entails legal duties, moral obligations, and the fulfillment of understandings and expectations in the continuous government-to-government relationship between the Federal Government and federally recognized Indian Tribes. This trust responsibility incorporates a fiduciary obligation on behalf of the United States, and by extension to the Department, to protect Tribal treaty rights, lands, assets, and resources that fall within DoD's purview, as well as a duty to carry out the authorities of federal laws and regulations with respect to federally recognized Indian Tribes. Further, this trust responsibility extends to all DoD program offices and every Federal employee. All DoD personnel, civilian and military, are "Trustees" and responsible for ensuring the Department's responsibilities are upheld to support tribal self-government; protect and enhance tribal lands and resources; and protect the welfare of Indian Tribes and their membership. With these principles in mind, this document outlines the Department's commitment to improving implementation of Executive Order (E.O.) 13175, Consultation and Coordination With Indian Tribal Governments.

The Presidential Memorandum of January 26, 2021, Tribal Consultation and Strengthening Nation-to-Nation Relationships directs each federal agency, in consultation with 574 federally recognized Indian Tribes, to develop and submit to the Office of Management and Budget (OMB) a plan of action for engaging in regular, meaningful, robust consultation and implementing the policies and directives of E.O. 13175 (2000).

Since publishing the Department of Defense American Indian and Alaska Native Policy in 1998, the Department has provided its leaders and staff guidance on how to undertake good faith efforts to build effective relationships with federally recognized Indian Tribes and meet the Department's Federal Trust responsibilities to Indian Tribes. The Department engages in consultation with Indian Tribes on rulemaking and policy development, proposed military training and construction actions, plans, or ongoing activities that may have the potential to significantly affect protected Tribal lands, cultural properties, or Tribal treaty rights.

The Department routinely consults at the military installation level with Indian Tribes on land-disturbing activities, training, over-flights, the management of properties of traditional religious and cultural importance, the protection of sacred sites from vandalism and other damages, access to sacred sites and treaty-reserved resources, Tribal reserved treaty rights, access to subsistence resources, land use decisions, and military construction projects.

II. Department of Defense progress since the 2010 Plan of Action

The DoD welcomes the opportunity to report on progress since it issued the first plan of action on consultation in January 2010, and to outline an approach to ensure all aspects of government-to-government consultation with American Indian and Alaska Native Tribes is consistently timely, meaningful, and robust in all instances and across all organizations.

Since DoD first issued a plan of action on consultation, the Department has updated and expanded its efforts to ensure continuing improvement on practices Department-wide. Among the key updates and actions in policy, programs, training, and outreach include:

Policy Actions Since 2010

- The DoD submitted to the OMB annual updates to the plan of action, including information from the Departments of the Army, Navy, Air Force, and the U.S. Army Corps of Engineers about the thousands of Tribal consultations held and outreach efforts conducted with Tribes by military installations across the Nation.
- Signed the Interagency Memorandum (MOU) of Understanding on Coordination and Collaboration for the Protection of Indian Sacred Sites (2012, extended in 2016).
 - Signatories include: Departments of the Interior, Defense, Energy, Agriculture, and the Advisory Council on Historic Preservation;
 - Issued guidance for Military Departments to help protect the confidentiality of sensitive information about the location, content, and character of Indian sacred sites (2018); and
 - The Office of the Secretary of Defense (OSD) staff led the effort to work with volunteer subject matter experts on Native American Affairs to create an online training module for federal employees on Sacred Sites (www.justice.gov/tribal/video/sacred-sites-training-video).
- Signed the Interagency MOU on Protection of Tribal Treaty Rights Related to Natural Resources (2016), joining other cabinet agencies.
- First published in 2006, the Department updated DoDI 4710.02: DoD Interaction With Federally Recognized Tribes (2018).
 - The updated issuance provides additional clarity about what proposed actions and ongoing installation operations create requirements to consult, how to plan for an effective consultation, who to involve in consultation, considerations regarding Tribal protocols, how to address culturally sensitive information, and how to record the results of a consultation.
- The Alaskan Command updated the Alaska Implementation Guidance to address the unique legal and cultural context of Alaska Native affairs the state (2020).
- The Departments of the Army (2012), the Navy (2019), and the Air Force (2020), and the U.S. Army Corps of Engineers (2012) each updated their Tribal consultation policies.

Program Actions Since 2010

Native American Lands Environmental Mitigation Program

In 2020, DoD secured statutory authorization in the FY 2021 National Defense Authorization Act for the Native American Lands Environmental Mitigation Program (NALEMP). The authorization

of NALEMP confirms and establishes in law the principles that have governed the Department's administration of NALEMP since 1996. In addition, the authorization outlines NALEMP activities performed in consultation with the affected Indian Tribes; and provides authority for DoD to enter into cooperative agreements with federally recognized Indian Tribes.

The NALEMP addresses environmental impacts to Indian lands, Alaska Native Claims Settlement Act-conveyed properties, and tribal treaty rights attributable to past DoD activities. Impacts are typically associated with hazardous materials, munitions debris, underground fuel storage tanks, unsafe buildings, lead-based paint and asbestos, and abandoned equipment. The goal of the NALEMP is to complete mitigation of sites by restoring health and human safety, protecting natural resources, protecting cultural resources, and returning tribal lands to optimal use as defined by the Tribe.

NALEMP uses site evaluation and assessment processes consistent with national environmental regulatory requirements while also considering other potential effects on Tribal communities' way of life. NALEMP-eligible sites are screened to determine priority for cleanup action based on health, safety, and environmental criteria. NALEMP reviews life-ways issues, or impacts to traditional ways of life, including the ability of Tribes to conduct subsistence activities or access sites for cultural or religious purposes. In addition, the program considers economic issues such as whether access to natural resources for commercial use and/or land for development is impacted.

The DoD has assessed over ninety percent of 1,100+ reported potential impacts to Indian lands from past military activity for program eligibility. Since 1996, DoD has executed over 350 NALEMP cooperative agreements with 64 Indian Tribes, with a total funding value of over \$150 million. To-date, Indian Tribes have led the effort to complete cleanup of 88 sites and removed hundreds of tons of munitions debris, construction debris, and contaminated soil.

Going forward, the Department anticipates continued support for cooperative agreements under NALEMP for at least twenty years at the current pace of funding. DoD is committed to ensuring that sustainment of traditional lifeways remains central criteria for prioritizing available funding for cleanup projects; building Tribal capacity to manage environmental projects is an increasing focus of assistance to NALEMP partner Tribes; and allocating available funding for environmental mitigation strategies that use traditional ecological knowledge to address legacy pollution of Tribal lands and protect cultural resources vital to the affected Tribes.

Native American Graves Protection and Repatriation Act

The OSD has worked with the Military Departments to enhance their management of collections of items subject to the Native American Graves Protection and Repatriation Act (NAGPRA) by

improving curation practices, improving consultation on inadvertent discoveries, and enhancing efforts to repatriate human remains according to NAGPRA regulations.

Department of Defense Cultural Communications and Consultation Training

The OSD has trained over 1,000 uniformed and civilian personnel since 2010, providing skills and information vital to building successful working relationships with Indian Tribes affiliated with the lands managed by the military installation.

The OSD-sponsored American Indian and Alaska Native Cultural Communications and Consultation Courses include half-day Executive briefings and 3-day course, with the agenda tailored to the consultation issues in the region/area of the requesting installation.

Course instructors include Native American experts and Tribal Leaders who provide a first-hand perspective on Tribal history and contemporary concerns. DoD also coordinates with an area Tribe affiliated with the lands of the host installation to hold a cultural event to help educate local military leaders and staff on the history of the Tribe, historical relationship with the Department, and the Tribe's contemporary concerns about their lands, rights, and resources.

III. Department of Defense Plan of Action – 2021

On February 8, 2021, in response to the Presidential Memorandum of January 26, 2021, Tribal Consultation and Strengthening Nation-to-Nation Relationships, the Department distributed by email to each of the federally recognized Indian Tribes a "Dear Tribal Leader" letter requesting written comments on the Department's plan of action.

The letter requested Tribal Leaders help provide guidance on how DoD could:

- Enhance its consultation efforts;
- Identify procedures to ensure that consultation is regular, meaningful, and robust;
- Build awareness among Tribal Leaders of DoD policies on consultation;
- Improve Department of Defense Instruction 4710.02: *DoD Interactions With Federally Recognized Tribes* (available at www.denix.osd.mil/na);
- Enhance the capacity of military installation leaders and staff to engage effectively with tribes and foster stronger nation-to-nation relationships;
- Protect Tribal lands, rights, and resources from impacts related to the ongoing operations of military installations and training activities;
- Measure the progress of its ongoing efforts to consult and coordinate with Tribes;
- Promote the success of DoD-Tribal partnerships and collaborative efforts;
- Address legacy pollution of Tribal lands due to past DoD activity;
- Recognize the service and sacrifice of Native American veterans; and
- Communicate with Tribes and Tribal-owned businesses about opportunities to work with the Department.

Nearly 40 Indian Tribes, national Indian organizations, Alaska Native Corporations, Tribal businesses, and business organizations submitted significant and thought-provoking written

comments on DoD's policies, programs, training, and outreach initiatives related to American Indians and Alaska Natives.

On April 13, 16, and 19, 2021, the Department held regional virtual consultations attended by dozens of Tribal Leaders from across the country and Alaska. Tribal leaders echoed the recommendations in the comments other Tribal Leaders submitted in writing, and offered additional insights from the direct experiences of the Tribal Leaders with positive and challenging aspects of consultation and working relationships with DoD and its agencies.

The Department welcomed input in preparing an updated plan of action to help ensure DoD and all its agencies meet the challenges and opportunities of the future. DoD also looks forward to using the plan to foster stronger and mutually beneficial nation-to-nation relationships with Indian Tribes as the Department carries out its mission.

The Department will demonstrate that it is responsive to Tribal Leaders' and Tribal organizations' input by setting out specific, measurable, and timely actions the OSD will take to drive positive change in consultation efforts Department-wide.

The written and verbal comments the OSD gathered from Tribal Leaders and organizations covered policy, program, training, and outreach issues. The OSD's plan of action to address improvements in each of those areas is outlined below.

Current Department of Defense Consultation Policy

The most common response from Indian Tribes during the consultation process was the request for DoD to strengthen its commitment to regular, meaningful, and robust consultations at the installation level. While acknowledging that DoDI 4710.02 is a "good foundation" for consultation, Tribes recommended that DoD provide stronger guidance to Military Departments to ensure installation level staff understand and are capable of executing consultations.

To that end, before the end of 2021, OSD will:

- Schedule the first in an annual series of regional consultation calls with Tribes to gather input on the efficacy and appropriateness of DoD programs that affect or serve Tribes.
- Initiate a review of the consultation policies of each of the Military Departments to determine opportunities to ensure they are aligned with E.O. 13175 and current Administration policies and guidance. If they are not aligned, coordinate with the organizations to develop a schedule for updating their policies and aligning them with E.O. 13175 and updates to DoDI 4710.02.
- Initiate OSD-led virtual and in-person (as permissible due to COVID-19) regional consultation to update DoDI 4710.02, including consideration of how to:
 - redefine consultation and include the aim of achieving mutual consensus, when possible;
 - provide guidance on a recommended frequency, and a consistent DoD-wide understanding of regular, meaningful, and robust consultation;
 - enhance the description of when consultation is required;

- reflect DoD's commitment to ensuring that its environmental programs reflect the goals of E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and the Department's update to its Environmental Justice Strategy;
- review the Military Department progress regarding the statutory requirement to provide information on the status of consultation with each Tribe affected by proposed military construction projects;
- clarify the responsibilities of DoD to record the results of consultation and report them to Tribal participants, with recognition given about how the Tribe's concerns were considered; and
- reinforce requirements to consult with Alaska Native Corporations as required by statutes.
- Review opportunities to create a DoD Tribal Advisory Committee comprised of Tribal Leaders and DoD leadership on how to enhance the nation-to-nation relationship.
- Review opportunities to establish a DoD Steering Committee on Tribal Consultation comprised of OSD and Military Department leadership to facilitate compliance with Tribal consultation requirements and coordinate the efforts of the DoD Components on enhancing relationships with Tribal governments.
- Participate in interagency coordination to enhance policy alignment and leveraging of federal resources to address Tribal concerns and improve consultation efforts, including:
 - the White House Council Environmental Justice Advisory Council and their efforts to address Whole-of-Government strategies to implement E.O. 12898;
 - the White House efforts to address the whole-of-government approach to climate change as outlined in E.O. 14008, Tackling the Climate Crisis at Home and Abroad;
 - the White House Council on Native American Affairs pursuant to E.O. 13647 of 2013;
 - the Steering Committee of the two dozen federal agency signatories to the 2016 Interagency MOU on Protection of Tribal Treaty Rights Related to Natural Resources; and
 - the Steering Committee of the five federal agency signatories to the 2016 Interagency MOU on Coordination and Collaboration for the Protection of Indian Sacred Sites.
- Coordinate with the Office of the Under Secretary of Defense for Acquisition and Sustainment officials leading the Department's efforts on climate change to:
 - inform Tribes concerned about potential impacts to their resources, treaty rights, or lands from climate change, about the Department of Defense Climate Assessment Tool;
 - promote awareness of the Department of Defense Climate Assessment Tool to the Military Departments and encourage its use; and
 - review with the U.S. Army Civil Works program ways to enhance Tribal Leaders' awareness of how existing U.S. Army Corps of Engineers (USACE) programs and resources may assist Tribes address concerns about resilience to the impacts of climate change.

Department of Defense Programs

In order to address opportunities to make programs more responsive, effective, and better serve the needs of the Tribal communities they support, before the end of 2021, OSD will:

- Review and report to Indian Tribes on the feasibility of creating a permanent staff position for the DoD Senior Advisor and Liaison for Native American Affairs, currently staffed through a four-year temporary Intergovernmental Personnel Act agreement;
- Initiate review of the feasibility of scaling up DoD's Native American Lands Environmental Mitigation Program to provide additional resources to address more quickly confirmed areas of legacy pollution of Tribal lands by past DoD activity;
- Seek opportunities to work with the DoD Office of Reserve Affairs (ORA) to promote to Indian Tribes the types of assistance available from the ORA-sponsored Innovative Readiness Training Program (IRT); and
 - The IRT Program provides military units hands-on, real-world training in American communities including Tribal communities in need of medical and veterinary services, infrastructure support, cybersecurity enhancements, and construction of housing units and other buildings.
- Review opportunities to provide internships for Native American students or fellowships for Native American professionals working on climate change or racial justice issues.
 - Partner with professional organizations to outline duties and identify potential duties for interns and candidates for FY 2023 and beyond.

Department of Defense Public Outreach

In order to expand Tribal access to information about DoD policies, programs, and training on Tribal consultation, by the end of 2021, the OSD will:

- Augment the Native American Affairs pages of the DoD environmental website (Defense Environment, Safety, and Occupational Health Network and Information Exchange (DENIX – www.denix.osd.mil/na)) to post additional consultation resources and tools, including:
 - The DoD plan of action and an invitation to Tribal Leaders to share input on an ongoing basis;
 - Develop and share guidance on planning, organizing, participating in, recording, and reporting the results of consultation and how Tribal input was considered or addressed;
 - Regarding the update to DoDI 4710.02, coordinate with Tribal organizations and use the BIA Tribal Leaders Directory to publicize and provide ample notice of regional virtual or in-person consultation sessions, distribute summaries of input received from Tribal Leaders during consultation sessions, and report on the progress of the policy update process;
 - Draft and post template proclamations for military installations to use in recognizing National Native American Heritage Month in November; and

- Provide information on support available to Indian Tribes through the IRT Program.
- Presentation by the DoD Senior Advisor and Liaison for Native American Affairs at a workshop during at least two virtual or in-person (as COVID-19-related conditions permit) conferences of national or regional Indian organizations representing the interests of Indian Tribes:
 - to gather input on Tribal Leaders' concerns and interests regarding working with the Department; and
 - to promote awareness of how to do business with the Department.
- Seek opportunities for targeted virtual consultations or listening sessions with organizations representing the interests of Native-owned businesses, in partnership with the DoD Office of Small Business Programs:
 - to gather input about the impact of DoD contracting, acquisition initiatives, and regulations as they affect opportunities for Indian-owned businesses.

The Defense Environment, Safety & Occupational Health Network and Information Exchange (DENIX) is a collaborative cloud platform used to share and report the Department's specific environment, safety & occupational health (ESOH) information with the public and DoD communities. More than 50 DoD and Military Department organizations and environmental programs call DENIX home, giving the Department a platform to communicate to Tribes authoritative information and resources on consultation and related policies and programs. The Department will use DENIX to provide Tribes updates on initiatives to enhance effective consultation DoD-wide, to promote to Tribal Leaders opportunities to engage in national and regional consultations on updates to DoD policy, share how Tribal input was addressed, and introduce additional consultation resources for Tribal Leaders.

Department of Defense Consultation and Cultural Communications Training

In order to enhance the effectiveness and accessibility of training to prepare DoD military and civilian leaders to fulfill their obligations for government-to-government consultation with federally recognized Indian Tribes, before the end of 2021, OSD will:

- Schedule and deliver at least two online or in-person (as COVID-19-related conditions permit) for DoD civilian and uniformed personnel at a requesting military installation existing OSD-sponsored courses on consultation and intercultural communications.
- Develop and post to DENIX at least one recorded webinar for military installation commanders and staff to address one of the key topics outlined below:

- Guidelines for conducting effective, regular, meaningful, and robust consultation with Tribes;
- Off-reservation treaty rights Tribes hold to natural resources;
- Guidelines regarding the confidentiality of information related to Indian Sacred Sites; and
- Begin development of modules to cover the following priority topics and clarify the schedule of when they will be brought online:
 - Origins of the federal Trust responsibility and the nation-to-nation relationship between the U.S. Government and Indian Tribes;
 - Historical trauma experienced by Tribal communities;
 - How to incorporate information presented in the DoD Climate Assessment Tool to consult with Tribes to:
 - Address potential impacts to treaty-protected resources
 - Address potential impacts to Tribal cultural resources
 - Impact of legacy pollution, environmental injustices on Tribal communities; and
 - Service of Native Americans in the military.

IV. Conclusion

The Deputy Assistant Secretary of Defense for Environment and Energy Resilience (DASD(E&ER)) will serve as the Department official designated to oversee the implementation of the Department's plan of action. The Office of the DASD(E&ER) will coordinate with the Military Departments to gather input from them about the policy, programmatic, training, and outreach efforts they undertake and include that information and recommendations for improving the Department's plan in the progress report due October 18, 2021, and annually thereafter.

The Department of Defense continuously makes good faith efforts to improve policies and meaningfully consult with federally recognized Indian Tribes on all matters that may have the potential to significantly affect protected Tribal resources, Tribal rights, or Indian lands. The Department supports the initiatives of the Presidential Memorandum of January 26, 2021, Tribal Consultation and Strengthening Nation-to-Nation Relationships and is committed to engaging in regular, meaningful, robust consultation and implementing the policies and directives of E.O. 13175, Consultation and Coordination With Indian Tribal Governments (2000).