

# The Consultation Process



# Consultation

- Defined in laws, amendments, executive orders, etc.
- Origins in tribal sovereignty as acknowledged in U.S. Constitution
- Government-to-government
- An process – **Not A Event**
- Exchange of views
- May or may not involve agreement



# Consultation - The Process

- What is Consultation?
  - The word implies a conference, a discussion, an exchange between two or more people or parties
  - It is not simply notification
  - It is not simply reporting information
  - Each Tribe has their own view of what constitutes consultation



# Activities that may result in consultation

- Military Construction projects
- Public work projects
- Environmental restoration projects
- Military ground forces training
- Military aircraft training



# Activities that may result in consultation

- Protection of natural resources, archeological and sacred sites, and tradition use areas on
  - Current military installations
  - DoD training areas
  - Formerly Used Defense Sites (FUDS)



# Activities that may result in consultation

- Drafting:
  - Integrated Natural Resource Management Plans
  - Integrated Cultural Resource Management Plans
  - MILCON Plans
  - Installation Tribal Relations Plan

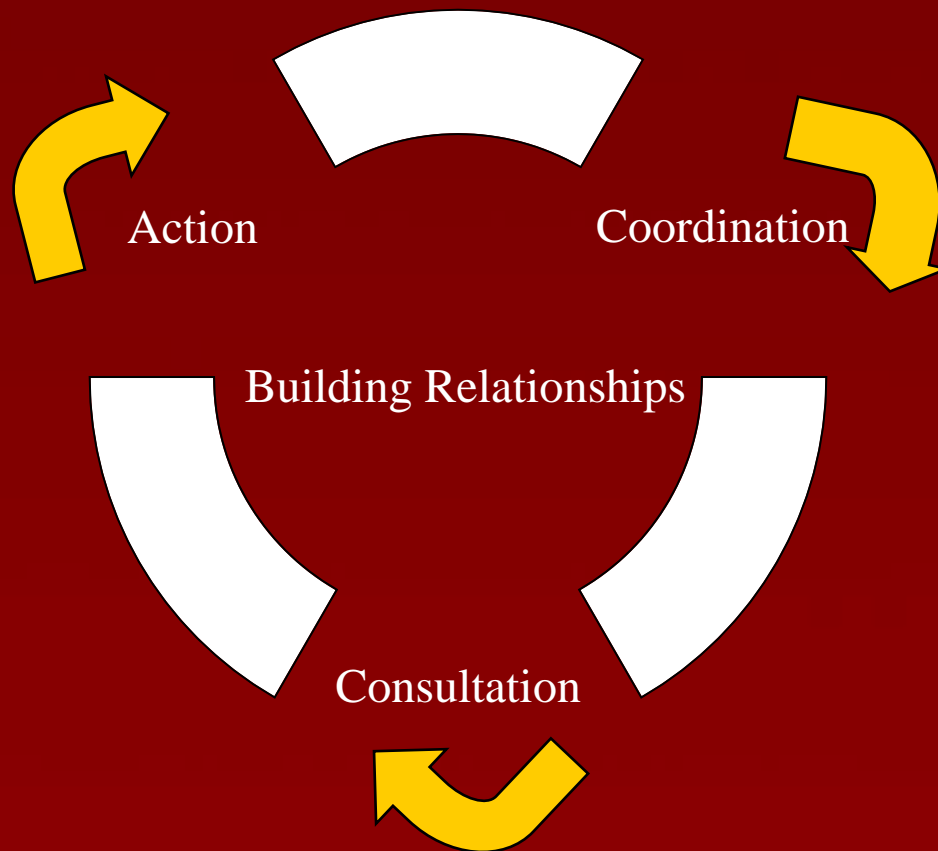


# Consultation - DoD Decision

- Through its Policy and Instruction, DoD made a fundamental decision to partner with tribes on decisions related to tribes' concerns and issues
  - Prioritize those cultural and natural resources needing protection
  - Select best management practices
  - Long-range planning and monitoring



# Consultation Process





# Government-to-Government Consultation

- May involve high level of formality
- Meeting of two heads of government or their appointed representatives
- Occurs when there is mutual agreement that consultation is taking place
- Critical elements – Start Talking Early, Talk Often, Be Open and Honest



# Government-to-Government Consultation, continued

- Consultation must be initiated at a government-to-government level with each tribe (Be prepared to address the perception of the “divide and conquer” approach)
- Once established, federal agencies may use tribal consortia to exchange information (Keep open a offer to consult individually as needed)
- Only tribes may authorize use of tribal consortia for consultation
- Tribal consortia may *not* be used for initial consultation





*Frances Cussen (left), representing the Caddo Nation of Oklahoma, and Brig. Gen. Charles H. Swannack Jr., commander of the Joint Readiness Training Center and Fort Polk, sign a comprehensive agreement for the Native American Graves Protection and Repatriation Act at Fort Polk Nov. 3. The middle flag behind them is the Caddo flag.*

Frances Cussen, Caddo Nation Tribal Council, and Brig. General Charles Swannack, Jr., Fort Polk, signed a comprehensive NAGPRA agreement



# Government-to-Government Coordination

- Could occur at a leadership or staff level
- Critical element of maintaining on-going dialogue
- Coordinate to set up processes and ground rules
- Could help facilitate legal notification
- Effective coordination allow us to “talk early, talk often”



# Informal Consultation

- On-going dialogue between the staff of two governments
- Exchange of information and opinions
- Can be in person, by phone or by mail
- Informational meetings that are not issue or event driven





# Informal Consultation

- The head of a tribal government and an installation commander, may delegate to their staff development of a mutually agreed upon consultation process and procedures to maintain an ongoing relationship
- Critical element of maintaining an ongoing dialogue: “talk early, talk often, be open and honest”



# Differing Expectations

As you define your installation's goals in consultation and as you prepare for consultation, keep in mind differences in expectations



# Installation View of Consultation

## Common view of consultation purpose

- Meet with tribes and indicate agency has listened
- Focus on techniques and details used
- Be friendly and show concern





# Tribal View of Consultation

What's important to tribes

- *Exchange* of views and ideas
- Listening
- Meaningful input in final decisions and plans
- Achieve mutual understanding



# Consultation Steps

1. Prepare planning document
2. Determine consulting partners
3. Make contact with consulting partners
4. Arrange for consultation meeting
5. Hold consultation meeting
6. Repeat step 5 as needed
7. Come to agreement



# Step 1: Prepare Planning Document

- Define areas of potential effect or shared concern
- Determine your installation's objectives
- Keep an open mind about your how your objectives are met
- Consult before any decisions have been made



# Step 2: Determine Consulting Partners

List tribes potentially having an interest in affected area or situation. How?

- Research prior installation consultations
- Contact known tribes
- Contact state or regional intertribal organizations for information
- Contact local or nearby Tribal Historical Preservation Officers (THPOs)
- Be inclusive



# Step 2: Determine Consulting Partners, continued

In the United States there are:

- 337 federally recognized Tribes
- 230 federally recognized Alaska Native entities
- = 567 federally recognized tribal and native entities
  
- Over 300 tribal and native entities which are NOT federally recognized
  
- [Federal Register List](#)



# Step 3: Contact Consulting Partners

- Installation commander formally contacts by letter the head(s) of tribal government(s) to request consultation meeting and includes relevant information about the purpose of the consultation, what agencies will be involved
- If the issue involves NHPA, the commander may request consultation through the THPO, if the tribe(s) has one



# Step 4: Arrange Consultation Meeting

After initial letters and follow-up calls:

- Determine if there are barriers to tribal participation, such as timing, funding, and location
- Determine if religious leader(s) need to be included
- Jointly establish meeting format and goals
- Jointly set date, time, place, and agenda of the consultation meeting
- Be upfront about confidentiality issues regarding information shared
- Contact components attorney regarding ethics issues regarding gifts/meals from tribe



# Step 5: Hold Consultation Meeting

- Confirm meeting format, facilitator, and issues at start of the meeting
- Discuss, exchange views, and listen
- Encourage meeting participants to get to know each other
- Before concluding, make plans for the next meeting





# Step 6: Repeat Step 5 As Needed

- Be prepared to hold several or multiple consultations
- Vary the meeting locations, e.g., at the installation, at the tribal facility, or near the affected site
- Follow the same planning and preparation practices in Steps 1-4



# Step 7: Come to Agreement

- Agreement is desirable but not necessary for a successful consultation
- Consultation can be effective even without consensus
- Developing a positive relationship through the consultation process is a critical factor in a successful consultation meeting



# Action

- Distribute draft minutes of consultation to all parties
  - Request input, finalize jointly
- Agree to follow-on meetings or assign both staffs to finish products, plan formal signing ceremony
- Implement agreed-upon plans or actions
- Continue to - **Communicate, Coordinate & Document**



# Practical Issues

- **Confidentiality:** You don't need to know everything
- **Reimbursement for “invited” travel:** Can be done for meeting planning, but not for actual consultation
- **Payment for services:** For data, technical information & background, other professional services
- **Food:** Use representational funds to provide food
- **Gifts:** Find a (legal) way to accept them.



# Some Final Thoughts on Meetings...

- Be genuine, empathetic, compassionate but strong
- Accept, respect diversity
- Choose a positive approach
  - Learn how to disagree without being disrespectful
  - Utilize a comfortable, non-threatening tone
- Stay calm in the face of anger
  - Forgive and move forward
- Enjoy being there!



# Building Relationships

- Informal meetings help develop trust between leaders
- Staff level coordination is essential
- Find other opportunities to work together
- Invite tribal leaders to special events
- Enjoy social time together
- Get pictures or video's and share with the tribe
- Send a hand written "thank you" with a picture from the commander, to key individuals



# Some Things to Remember

- Avoid even the appearance of the past approach of “decide, announce, defend” (DAD)
- Have reasonable expectations
- **Be as flexible as possible** - about deadlines and schedules
- Consultation can be effective without consensus; agreement is desirable, but not necessary



# Mutual Benefits of Consultation

- Initial investment of time and money helps ensure mission will not be compromised
- Working in Indian Country can be professionally exciting and personally rewarding





**NWO District Commander, Col David C. Press and CRST Chairman Joseph Brings Plenty during the dedication of the tribes Mni Wastewater Intake Ceremony**

