TRIBAL TREATY RIGHTS CONSULTATION
BEST PRACTICES FLOWCHART

1. IDENTIFY
   - Identify agency action, decision, or rulemaking
   - Identify applicable treaties

2. IDENTIFY
   - Identify affected Tribes and agency decision maker

3. INVITE
   - Invite affected Tribes to consult

4. INITIATE
   - Initiate consultation

5. CONSIDER
   - Consider treaty rights and statutory law in consultation with Tribes

6. SPEAK
   - Communicate decision to Tribe

7. PROVIDE DETAILED INFORMATION to permit the Tribal participants to review the agency’s proposed understanding of the treaty right, reserved right, or other similar rights that may be implicated

8. ALLOW TIME for the Tribe(s) to respond with information that may inform agency decision-making

9. PROVIDE A WRITTEN SUMMARY of all Tribal comments received and how comments were considered and resolved

10. EXPLAIN HOW treaty rights were considered and how consultation information was utilized in the decision

11. SCHEDULE consultation to allow timely, adequate notice to Tribe(s) absent extenuating circumstances, and prior to federal decision point(s)

12. PROVIDE CONSIDER information and views provided by Tribes

13. DEVELOP A LIST OF RELEVANT TREATIES AND ASSOCIATED RIGHTS through consultation with local Tribes

14. DEVELOP CONSULTATION PROTOCOLS and treaty and cultural training in consultation with affected Tribes

15. ASK THE TRIBES how to best communicate with tribal government officials, leaders, and employees

16. ASK ABOUT TRIBALLY DEVELOPED CONSULTATION LAWS AND POLICIES

17. IDENTIFY Tribes with treaty, reserved, or other rights related to the project area, regardless of the Tribe’s current location

18. IDENTIFY APPLICABLE TREATIES
   - Potential databases include the Oklahoma State Tribal Treaty Database (https://treaties.okstate.edu/) or the National Archives Digital Tribal Treaty Database (https://www.archives.gov/research/native-americans/treaties/catalog-links)

19. IDENTIFY TREATIES ARE LAWS
   - Field staff should have a list of relevant treaties in their service areas and be familiar with them well in advance of any agency actions or decisions

20. IDENTIFY RELATIONSHIP BUILDING
   - INTRODUCE themselves to their Tribal counterparts
   - DEVELOP CONSULTATION PROTOCOLS and treaty and cultural training in consultation with affected Tribes
   - ASK THE TRIBES how to best communicate with tribal government officials, leaders, and employees
   - ASK ABOUT TRIBALLY DEVELOPED CONSULTATION LAWS AND POLICIES

21. IDENTIFY TRIBAL IMPACTS
   - Does the proposed action have the potential to affect a natural or cultural resource, the habitat or ecosystem supporting a natural or cultural resource?

22. IDENTIFY THREE THRESHOLD QUESTIONS:
   - ONE: Do treaties, reserved rights, or other similar rights exist that are implicated by proposed agency action?
   - TWO: What treaty rights, reserved rights, or other similar rights may exist in, or what treaty-protected resources rely upon the area affected by the proposed action?
   - THREE: How might treaty rights, reserved rights, or other similar rights potentially be affected by the proposed action?

23. IDENTIFY IDENTIFY APPLICABLE TREATIES
   - Treaty-ceded lands may be located far from a Tribe’s existing reservation

24. IDENTIFY IDENTIFY AFFECTED TRIBES AND AGENCY DECISION MAKER
   - The existence, nature, or scope of an asserted Tribal right may not be clearly established, or may be disputed by other Tribes, third parties, or others

25. SUSTAIN Identify treaty rights and statutory law in consultation with Tribes

26. CONSIDER Consider treaty rights and statutory law in consultation with Tribes

27. EXPLAIN HOW treaty rights were considered and how consultation information was utilized in the decision

28. PROVIDE A WRITTEN SUMMARY of all Tribal comments received and how comments were considered and resolved

29. PROVIDE MEASURES to protect the confidentiality of any sensitive Indigenous knowledge consistent with Tribal direction and to the fullest extent permitted by the FOIA and other applicable law

30. PROVIDE MEASURES to communicate relevant federal legal obligations, e.g., FOIA, as they pertain to information like sensitive Indigenous knowledge

31. EXPLAIN HOW treaty rights were considered and how consultation information was utilized in the decision

32. PROVIDE MEASURES to protect the confidentiality of any sensitive Indigenous knowledge consistent with Tribal direction and to the fullest extent permitted by the FOIA and other applicable law

33. PROVIDE CONSIDER information and views provided by Tribes

34. PROVIDE DETAILED INFORMATION to permit the Tribal participants to review the agency’s proposed understanding of the treaty right, reserved right, or other similar rights that may be implicated

35. ALLOW TIME for the Tribe(s) to respond with information that may inform agency decision-making

36. PROVIDE A WRITTEN SUMMARY of all Tribal comments received and how comments were considered and resolved

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