

Title 410 – National Instruction

KEY TRIBAL POLICIES, PROCEDURES AND PARTNERSHIPS

A Reference Guide for NRCS Employees

June 2009

USDA Natural Resources Conservation Service



(410-300, Second Edition, 2009)

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INTRODUCTION

Today, reservation Indians face a wide array of federal laws that regulate many of their activities. This body of legislation can be confusing for Indians and the federal employees who work with tribes, or with policy that will affect tribes. Determining which laws they must consider and abide by can be difficult, especially without prior knowledge of federal Indian policy. These policies not only regulate tribes; they also regulate government actions in order to protect tribes' rights. This annotated bibliography of pertinent laws and NRCS documents can serve as an introduction to the agency's tribal policy and to the policies that affect the tribal relations activities of many federal agencies.

Guides to Indian law contain comprehensive explanations of the policies that are most important in understanding the relationship between tribes and the U.S. government. Self-determination, consultation, and respect of sacred lands are key issues in contemporary federal Indian policy. Recent laws have restored tribes' powers of sovereign government, reversing earlier policies that dissolved or reorganized tribal governments. Tribes have the autonomy to provide social services for their members, organize their own governments, determine their membership, collect taxes, operate court systems, and more. Tribes' authority to govern themselves predates the formation of the United States and U.S. laws.

Consultation is a key element of U.S. recognition of tribal sovereignty. According to Executive Order 13175, each federal agency shall have an accountable process to ensure meaningful dialogue and timely input by tribal officials before performing any activities that have tribal implications. Consultation is not mandated by law, but by memoranda issued by Presidents Bill Clinton and George W. Bush. They direct federal agencies to formulate their own consultation policy. The procedures set in place by NRCS and the historic preservation law requires careful reading because tribal consultation is a time-consuming and complicated process. Many steps are involved in making sure that tribes' concerns are considered before actions that affect them (such as construction on tribal land) take place.

Respecting tribes' wishes to protect sites of religious and cultural significance is an important goal of consultation, and it is mandated in a law familiar to anyone who works in Indian law: the Native American Graves Protection and Repatriation Act (NAGPRA). Its relevance varies by agency, but it is important for NRCS to be aware that the law establishes procedures for protecting Indian remains and cultural objects if they are found during construction. Sacred sites are also addressed in a memorandum issued by President Clinton that directs agencies to respect sites of religious importance to tribes. These policies make honoring tribal religious concerns not only a matter of respect, but of federal regulation.

This reference guide summarizes pertinent policies that are organized into the following groups:

- **NRCS Policy and Handbooks**
- **Legislation and select implementing regulations, and**
- **Presidential and Departmental Directives.**

Agency policy provides guidelines for tribal relations. Legislation can be used to understand the basis for agency policy and presidential directives link the two by calling attention to executive agencies' responsibility to honor the federal government's trust responsibility that is reaffirmed through legislation.

The purpose of this guide is to make agency managers and employees aware of policies that impact their relations with tribes in carrying out conservation programs. The unique relationship between tribes and the U.S. government requires special attention; its complexity extends beyond that of a

civil rights issue because it is tribal sovereignty, not minority status, that shapes this relationship because tribes were sovereign nations before European colonization of the Americas and sovereignty is considered inherent in the NRCS government-to-government relationship and the related trust responsibility with Indian tribes.

NRCS POLICY AND HANDBOOKS

Reading agency policy concerning tribal relations is essential in understanding how laws directed toward all federal agencies specifically apply to NRCS. The General Manual and the Natural Cultural Resources Procedures Handbook provide valuable information concerning the relationship between tribes and the agency.

NRCS has established procedures for carrying out tribal consultation in accordance with the National Historic Preservation Act of 1966 and several other laws. Consultation is essential to dealing with tribes on a government-to-government basis; consulting with tribes before implementing activities or programs that affect them shows respect for them as sovereigns. NRCS has provided comprehensive information on how and why the agency cooperates with tribes.

[General Manual, Title 410, Rural Development, Part 405, American Indians and Alaska Natives](#)

This agency policy, updated in 2006, was created “to provide guidance for interactions with Indian Tribes and their members.” The definitions of “Indian” and “Indian Tribe” are derived from the American Indian Agricultural Resource Management Act, 25 U.S.C. 3701.

Subpart B, Policy and Principles, outlines the agency’s responsibilities on the broad level of government-to-government relationships, the trust responsibility, consultation, removal of impediments to working with tribes, collaboration with other agencies, and the furthering of tribal self-sufficiency, all of which will help tribes meet their natural resource needs.

Subpart C, Tribal Conservation Advisory Council, outlines procedures on Working Effectively with Indian Tribes at the State and local levels.

Subpart D, Roles and Responsibilities, deals with procedures for honoring the government-to-government relationship recognized in Subpart B. Tribes who wish to participate are responsible for creating a tribal conservation advisory council or a conservation district in order to provide local leadership. Advisory councils on the local, state, regional, and national levels can help tribes maintain communication with the agency. At the national office, the Chief, Deputy Chief for Programs, Regional Assistant Chiefs, and the Director of Resource Conservation Development and Outreach Division provide leadership in carrying out the mission of NRCS and ensuring program delivery to tribes and their members. State-level employees, including State Conservationists, State Tribal Liaisons, State Outreach Coordinators, District Conservationists, Resource Conservationists and Development Coordinators, and Cultural Resources Specialists are responsible for providing various forms of communication, coordination, and support.

[General Manual, Title 180, Conservation Planning and Application, Part 404, Memorandum of Understanding \(MOU\) among BIA, NRCS, and FSA Relative to Planning and Implementing USDA Conservation Programs on Indian Lands dated December 2006](#)

This MOU recognizes that “the BIA, NRCS, and FSA have common objectives of consulting with Indian landowners and Indian tribes, promoting the best management practices for Indian lands and managing and conserving natural resources.” Although the BIA is responsible for the administration of the land held in trust by the United States for Indian tribes, USDA agencies also have an interest in providing assistance to producers on tribal lands in managing and conserving natural resources. This

MOU defines the responsibilities of each to ensure that they will be able to work toward their shared goals through communication and cooperation.

As a result of the MOU, a common definition for Indian tribe - any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native Village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians – is now consistently applied among NRCS, FSA and BIA.

[General Manual, Title 180, Conservation Planning and Application, Part 401, Subpart D, NRCS, Conservation District and Tribal Personnel](#), provides instructions and an Office of General Council approved template for establishing a Mutual Agreement with Tribal Conservation Districts.

Programmatic Agreement (nationwide PA) among the United States Department of Agriculture, Natural Resources Conservation Service, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers, May 31, 2002 (NRCS A-3A75-2-64). (**[National Cultural Resources Handbook, Part 401, Section 601.61](#)**)

NRCS fulfills NHPA Section 106 requirements in accordance with the ACHP implementing regulations, 36 CFR 800, or the nationwide PA, executed under 36 CFR 800.14(a). This PA, when implemented by the State Conservationists with State Level Agreements and Tribal Consultation Protocols serves as alternate procedures to the ACHP regulations (i.e. substitutes for all or part of Subpart B of the regulations) pursuant to 800.14(a) and Section 110(a)(2)(E) of the NHPA. NRCS also follows **Programmatic Agreement (nationwide PA) among the United States Department of Agriculture, Natural Resources Conservation Service, the Advisory Council on Historic Preservation**, and the procedures set forth in the NRCS National Cultural Resources Procedures Handbook.

[General Manual, 420 Social Sciences, Part 401 - Cultural Resources \(Archeological and Historic Properties\)](#)

This GM part establishes the Natural Resources Conservation Service (NRCS) policy regarding responsibilities to historic and cultural properties under the National Historic Preservation Act of 1966 (NHPA), implementing regulations, NRCS Nationwide Programmatic Agreement, and other related authorities.

[NRCS National Cultural Resources Procedures Handbook \(Title 190, Subpart G, Appendices, Section 601.62\)](#)

Guidance on NRCS Cultural Resources Consultation with American Indian Tribes in Accordance with the National Historic Preservation Act of 1966 and Other Related Authorities

http://policy.nrcs.usda.gov/scripts/lpsis.dll/H/H_190_601_62.htm

This section of the agency's National Cultural Resources Procedures Handbook provides guidance on consultation with Indian tribes regarding cultural resources and historic properties.

A brief summary includes:

A. Why Consultation with American Indian Tribes Regarding Cultural Resources and Historic Properties is Important

As sovereign governments, tribes have a special legal status and different rights than other Americans, established by treaties, Federal laws, and executive orders. Consultation regarding cultural resources and historic properties must recognize the government-to-government relationship

that exists between the federal government and tribes, and tribes must be dealt with as distinct sovereigns rather than a single homogenous group. This relationship is connected to the federal trust responsibility. In exchange for vast tracts of tribal land that tribes ceded through treaties, the federal government agreed to take on fiduciary obligations to the tribes. These obligations include, among other things, managing and protecting natural and cultural resources. Although the Bureau of Indian Affairs is the agency with the lead role in carrying out the trust responsibility, all federal agencies must participate in it as well.

B. Consultation with Non-Federally Recognized Tribes, Other Indigenous Groups and Individual Tribal Members

Individual members of tribes and tribal organizations have the same rights as other citizens to have their opinions taken into account during the formation of federal decisions regarding the effects of their projects or “undertakings” on cultural resources and historic properties. These tribal organizations include state-recognized and non-federally recognized tribes, Pacific Basin communities, and Caribbean communities.

C. There Are a Number of Presidential Directives Written to Guide Agencies’ Relations and Interactions with American Indians Tribal Governments and Individual Tribe Members

Listed in this section are Executive Order 13175 (discussed below), 1994 Presidential Memorandum on Government-to-Government Relations (more recent Presidential Memoranda discussed below), Executive Order 13007 (discussed below), and Executive Order 12898: Environmental Justice (which states that agencies must avoid disproportionate adverse environmental impacts to low-income and minority populations).

D. What Does Consultation Mean

Consultation is defined as follows:

- *Essentially, consultation is collaboration.*
- *Consultation involves the participants in analysis of the issues and development and implementation of the resource decisions.*
- *Consultation requires two-way communication—it is NOT notification.*
- *Consultation means the process of seeking, discussing, and considering the views of others, and where feasible, seeking agreement on resource decisions.*
- *Consultation is based on the exchange of ideas.*

However, consulting parties do not have the power to stop an agency by withholding consent. When decisions involve resources on tribal land, agencies, exercising their Trust responsibilities (to protect the resources and rights of Tribes), are expected to give deference to tribal resource values, policies, preferences, and conservation and management plans.

E. Several Laws Specify Tribal Consultation Responsibilities for Agencies

This section lists five laws that are important in defining best practices in tribal consultation:

- *The National Historic Preservation Act of 1966 directs all federal agencies to consult with tribes through a process explained in section 106. NRCS’ approach is discussed in this document.*
- *The National Environmental Policy Act of 1969 does not mention tribes, but the Council for Environmental Quality regulations requires agencies to provide opportunities for tribal involvement in actions that may affect tribal lands.*
- *The American Indian Religious Freedom Act of 1979 emphasizes that the constitutional right to the free exercise of religion applies to indigenous religions. Agencies must make efforts to avoid adverse effects to tribal use of spiritual places.*

- *The Native American Graves Protection and Repatriation Act of 1989* is discussed below. This law and the *Archaeological Resources Protection Act of 1979* concern the treatment of human remains and cultural objects.

F. How to Do Consultation: Guiding Principles for NRCS

Ten guidelines are listed for best practices in tribal consultation. In brief, these are:

- *Build on existing consultative relationships with American Indian Tribes.*
- *Institutionalize consultation and collaboration procedures.*
- *Include, at a minimum, the following specifics in the agreements/protocols: primary contacts; how contacts are made; which lands are covered; when consultation should take place; what practices, programs or activities are covered; timeframes; procedures for settlement of disputes; and procedures for cancellation or amendment of the agreement/protocol.*
- *Initiate consulting on specific/new matters as early as possible in the project of program planning process.*
- *Establish training programs on consultation procedures and protocols in conjunction with Tribes within the State.*
- *Maintain NRCS' reputation of honesty and integrity in working with Tribes.*
- *Know the Tribes in your service area.*
- *Maintain government-to-government relationship by interacting at appropriate levels of authority or governmental stature.*
- *Focus cultural resources consultation protocols and agreements on pertinent issues for both NRCS and the individual sovereign Tribe.*
- *On tribal lands that cross State boundaries, State conservationists are encouraged to work together.*

LEGISLATION AND OTHER RELATED AUTHORITIES

Several pieces of legislation affect tribal relations activities of many federal agencies and are recognized for their significant role in defining federal Indian policy.

American Indian Agricultural Resource Management Act. P.L. 103-177; 25 USC 3701. December 3, 1993. -- provides the definition of "Indian tribe" used in NRCS policy, including the General Manual and MOU with BIA and FSA summarized earlier.

"The term 'Indian tribe' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized eligible for the special programs and services provided by the United States to Indians because of their status as Indians." 25 USC 3703 (10).

American Indian Religious Freedom Act, P.L. 95-341; 42 USC 1996,¹ August 11, 1978 -- provides that this principle is applied to federal lands in Executive Order 13007, “Indian Sacred Sites”

On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

National Historic Preservation Act of 1966 (NHPA), (P.L. 89-665, 80 Stat. 915, as amended; 16 U.S.C. 470; et seq.)

Under the NHPA, NRCS consults with Indian tribes with four contexts:

- (1) Tribes with Tribal land and Tribal Historic Preservation Officers (THPO) who have assumed the State Historic Preservation Officer (SHPO) responsibilities for these tribal lands (i.e. have signatory authority on agreements).
- (2) Tribes with tribal land and Tribal Historic Preservation Officers (THPO) who have not assumed all the State Historic Preservation Officer (SHPO) responsibilities.
- (3) Tribes with tribal lands who do not have a THPO.
- (4) Tribes with no tribal lands in the State but interest in properties of traditional religious and cultural importance or with tribal lands in the State but interest in these properties beyond the boundaries of their current reservation lands.

The National Environmental Policy Act of 1969 ((NEPA) P.L. 91-190; 42 USC 4321 and 4331-4335, as amended)

NEPA does not specifically mention American Indian Tribes, but the Council on Environmental Quality (CEQ) regulations (40 CRF Parts 1500-1508, especially Sec 1501.2, Sec 1501.4(e), Sec 1506.6, especially 1506.6(a)) require agencies to contact and provide Tribes and other publics opportunities to become involved in their NEPA procedures, including several steps in the preparation of an Environmental Impact Statement (EIS) when effects may occur to tribal lands.

Native American Graves Protection and Repatriation Act of 1990 (P.L. 101-601; 25 USC 3001.)

Under this act, all federal agencies and all museums receiving federal funds were required to inventory their collections of Indian artifacts, including human remains and cultural items, identify the tribes of origin, and inform the tribes that the collections contained these items. The tribes were able to request the expeditious return of the objects belonging to them, and many tribes exercised and continue to exercise this right.

The law also addresses the issue of ownership of remains and cultural items newly discovered during excavations on federal or tribal lands. If the artifacts are uncovered on tribal land, the tribe holding the land has ownership; if not, the owner is “the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects” (§3002). Other rules apply if the tribe is not known or if another tribe has a stronger cultural relationship with the remains or cultural items. **NRCS is not authorized to take possession or even hold archaeological collections (including cultural items, human remains, or objects of cultural patrimony) taken from other agencies’ lands, tribal lands or private lands. These collections belong to the land owner(s) unless State, Tribal or local law specifies an alternate disposition.**

¹ The U.S. Code is made available online by Cornell Law School: <http://www.law.cornell.edu/uscode/>

In addition, the law regulates the intentional excavation of human remains and cultural items on federal or tribal lands. If artifacts are inadvertently discovered through an activity such as construction, mining, logging, or agriculture, the activity must cease and the appropriate tribes must be notified.

Indian Self-Determination and Education Assistance Act of 1975, (P.L. 93-638; 25 USC 450) -- reaffirmed the federal government's commitment to tribal governments by requiring federal agencies to grant tribes the authority to administer federal Indian programs on their reservations. While the language of this law refers specifically to the Departments of the Interior and Health and Human Services, the "Congressional declaration of policy" with which the law opens applies to all federal relations with tribal governments:

The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires to those communities. [. . .] The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities (§450a).

Activities that can be performed in the spirit of this statement include the establishment of Tribal Conservation Districts, the implementation of Integrated Resource Management Plans, and tribal involvement in the Resource Conservation and Development Program, among others.

The definition of "Indian tribe" that appears in this law is cited in the 2002 Farm Bill and many other pieces of legislation and other documents. Note the inclusion of Alaska Native villages or corporations.

"Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (§450b).

Alaska Native Claims Settlement Act, 43 U.S.C. 1601, December 18, 1971 -- created a unique relationship between the federal government and Alaska Natives. It provided compensation to Alaska Natives for taking their land rights, provided land with full ownership rights to Native groups, and established the organization of thirteen regional corporations and many village corporations for distribution of the proceeds. All persons defined as "Native" in the law and born after December 18, 1971, were enrolled in regional corporations and issued corporate stock. Those people living in Native villages were also enrolled in village corporations and issued additional stock.²

² For more information on ANCSA, see summaries available online, such as <http://litsite.alaska.edu/aktraditions/ancsa.html>.

2008 Farm Bill – Food, Conservation, and Energy Act of 2008
(PL 107-110-246; 7USC 1926)

Many conservation opportunities in the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) address the unique circumstances and concerns of Indian tribes. Current programs were extended and new provisions were to enhance tribal participation and be responsive to tribal needs. The 2008 Farm Bill through law and regulations provides the following.

- Continues to address the unique circumstances and concerns of Indian Tribes and Alaska Natives.
- Promotes conservation of natural resources on agricultural land and land under the jurisdiction of an Indian Tribe.
- Provides for voluntary program participation.
- Offers incentives and focuses on improving access to USDA programs and services.
- Offers flexibility in decision making with most decisions made at the Tribal, State and local level.
- Recognizes the unique challenges of Indian farmers and ranchers who are just beginning their agricultural operation with limited financial resources and who have a special relationship with the U.S. government.
- Provides tribal producers equal opportunity to participate in the Environmental Quality Incentives Program (EQIP) at cost-share assistance for conservation practices up to 90 percent. In addition, up to 30 percent of such payments may be provided in a short-term advance for purchasing materials or contracting.
- Includes American Indians and Alaska Natives in the use of EQIP funds and the 5 percent set aside of Conservation Stewardship Program (CSP) acres for socially disadvantaged farmers.
- Exempts Federally recognized tribes from payment limitations and provides policy for allowing an official of BIA or a Tribal official to certify in writing that no one individual directly or indirectly receives more than the \$300,000 payment limitation.
- Continued access to the Wetlands Reserve Program, Wildlife Habitat Incentive Program and to Agriculture Management Assistance (AMA). The Wetland Reserve Program offers Tribes the incentive to enter into 30 year restoration cost-share agreements, 30-year easements or permanent easements.
- The Conservation Security Program offers payments to tribal producers for addressing resource concerns. The Grassland Reserve Program assists producers in protecting or restoring their grasslands, and the Conservation Innovation Grants, a component of EQIP, provides funding up to 50 percent of projects carried out by Tribal, State and or local governments or private organization or individuals.
- Authorizes certified technical service providers to provide assistance to agricultural producers and receive payments.

For the conservation programs and other opportunities available through the 2008 Farm Bill, the definition for Indian tribes:

Indian Tribe: means any Indian tribe, band, nation, pueblo, or other organization group or community including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian Lands: means (1) all lands held in trust by the United States for individual Indians or Tribes, or (2) all land titles held by individual Indians or Indian tribes subject to Federal restrictions against alienation or encumbrances, or (3) land which is subject to rights of use,

occupancy, and/or benefit of certain Indian tribes or (4) land held in fee title by an Indian, Indian family or Indian tribe.

Commodity Credit Corporation Payment Limitation and Payment Eligibility Regulation –

7 CFR Part 1400 — provides for the exclusion of Indian tribes from Adjusted Gross Income payment eligibility determination and payment limitation provisions. However, the payment eligibility and payment limitation requirements remain applicable to individual American Indians or Alaska Natives requesting and receiving program payments.

PRESIDENTIAL DIRECTIVES

In the following Executive Orders and Presidential Memoranda, Presidents Clinton and Bush reaffirm the federal government’s commitment to working with sovereign tribes on a government-to-government basis, respecting the unique legal relationship formed through treaties, statutes, and court decisions. They direct federal departments and agencies to carry out this responsibility by implementing procedures for carrying out effective consultation with tribes before performing actions that affect them.

Government-to-Government Relations with Native American Tribal Governments, Memorandum for the Heads of Executive Departments and Agencies, April 29, 1994.

(59 FR 22951)

In order to respect the federal government’s unique legal relationship with tribes, President Clinton directed the heads of each executive department or agency to consult with tribal governments before taking actions that affect them; assess the impact of federal plans, projects, programs, and activities on tribal lands; ensure that tribes’ concerns are considered during the planning process; remove procedural impediments to working with tribes; and work with other federal departments to ensure that the above measures are taken.

Executive Order No. 13007: Indian Sacred Sites. May 24, 1996.

(Available in Federal Register Vol. 61, No. 104, p. 26771)

President Clinton delineated the responsibilities of federal agencies to “accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners,” “avoid adversely affecting the physical integrity of such sacred sites,” and respect the confidentiality of some sacred sites. He directs agencies to implement procedures for carrying out these measures.

The term “sacred site” is defined as “any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.”

As noted in the Natural Cultural Resources Procedures Handbook, “for NRCS, this relates principally to our work on other agencies’ lands, some of our plant materials centers, and tribal lands; and abiding by tribal and other agencies’ policies and procedures.”

Executive Order No. 13175: Consultation and Coordination with Indian Tribal Governments. November 6, 2000.

(Available in Federal Register Vol. 65, No. 218, p. 67249)

President Clinton seeks to restate the importance of tribal consultation, government-to-government relationships, and the avoidance of imposing unfunded mandates. In doing so, he recognizes tribes’

right to self-government as “domestic dependent nations” with “sovereign powers over their members and territory” and orders that Federal agencies conduct government-to-government relations with tribes “to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.” This obligation includes honoring treaty and other rights, granting tribal governments’ administrative discretion, encouraging tribes to develop their own policies to achieve objectives shared by Federal programs, developing a process to ensure tribal input in regulatory policymaking that affects them, and avoiding the creation of unnecessary and unfunded regulations with tribal implications.

The National Cultural Resources Procedures Handbook explains, “If policies or regulations are discretionary, agencies must provide for tribal compliance costs; it is the policy of the NRCS to make every effort to minimize costs to the Tribes by holding required cultural resources consultation meetings as close to their homelands as possible.”

(This Executive Order replaced E.O. 13084, “Consultation and Coordination with Indian Tribal Governments, issues May 14, 1998.)

Government-to-Government Relationship with Tribal Governments, Memorandum for the Heads of Executive Departments and Agencies, George W. Bush, September 23, 2004.

(Available online: <http://www.whitehouse.gov/news/releases/2004/09/20040923-4.html>)

In this memorandum, President Bush reaffirms his administration’s commitment to working with tribal governments on a government-to-government basis and states that all executive departments and agencies will do the same and “adhere to these principles and work with tribal governments in a manner that cultivates mutual respect and fosters greater understanding to reinforce these principles.”

Executive Order No. 12898: Environmental Justice in Minority Populations (1994).

Agencies are, to the maximum extent feasible, to avoid disproportionate adverse environmental impacts (physical, social, cultural) to low income and minority populations. This may involve avoidance of adverse effects to subsistence, cultural, historical, and natural resources of the community.

DEPARTMENT REGULATIONS

Department Regulation 1340-007: Policies on American Indians and Alaska Natives (March 2008)

The purpose of this regulation is to (1) set forth the USDA’s Policy on government-to-government Tribal relations; and (2) provide policy and implementation guidance for Executive Order 13175 titled “Consultation and Coordination with Indian Tribal Government.”

Department Regulation 1350-001: Tribal Consultation (September 2008)

USDA established policy requiring consultation and participation by and between Indian tribes on USDA policy and activities. It defines policies that have tribal implications to be regulations, legislative comments, or proposed legislation and other policy statements or actions that have substantial direct effects on one or more tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

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