

Summary of Tribal Consultation Requirements

Archaeological Resources Protection Act (ARPA): Requires us to notify an Indian tribe before approving a Cultural Resource Use Permit for the excavation of archaeological resources if we determine that a place having cultural or religious importance to the tribe may be harmed or destroyed by the permitted work. We must allow 30 days for the tribe to respond before issuing the permit. If the tribe responds to our notification by asking to consult with us, we must arrange that consultation within 15 days.

National Historic Preservation Act (NHPA): Requires us to consult with Indian tribes to identify properties with tribal religious or cultural significance that are potentially eligible for the National Register of Historic Places. Such properties, or places, are often called "traditional cultural properties (TCPs)." The purpose of consulting tribes is to determine what effects our action might have on those places, and to determine ways to avoid or mitigate those effects. As much as possible, we should do this consultation through the public participation opportunities of our normal land use planning and NEPA compliance procedures.

National Environmental Policy Act (NEPA): We can't fully meet NEPA's requirement to "preserve important historic, cultural and natural aspects of our national heritage" without understanding and considering the heritage of American Indians and Alaska Natives. In fact, the regulations implementing NEPA specifically require us to consult with Indian tribes. The NEPA review process can be used to meet our tribal consultation responsibilities under several other authorities—NAGPRA, AIRFA, NHPA and EO 13007—providing us with a good way to consolidate our consultation efforts and the documentation of those efforts.

Native American Graves Protection and Repatriation Act (NAGPRA): We are required to consult with Indian tribes before we excavate, or authorize the excavation of, Native American human remains and funerary objects found with them. The purpose of consulting is to find out from tribes how they would like us to treat these remains, e.g., whether these remains should be reburied on site without being removed from the area where they were discovered, or given to the tribe for reburial on tribal land. NAGPRA also requires this kind of consultation when human remains or funerary objects are inadvertently discovered during land use activities. In such cases, the activity must stop, and the tribes are allowed 30 days to respond before the activity can resume. A third requirement for consultation focuses on human remains, funerary objects, sacred objects and objects of cultural patrimony that were removed from public land in the past and are now in museum collections. Tribes must be consulted to determine their affiliation with these items and to determine how these items should be cared for or repatriated to tribes that claim them.

American Indian Religious Freedom Act (AIRFA): AIRFA reminds Federal agencies that American Indians enjoy the same First Amendment guarantees as all other people. It seeks to correct Federal policies and practices that could (a) deny access to sacred sites required in traditional religions, (b) prohibit use and possession of sacred objects necessary for religious

ceremonies, and (c) intrude upon or interfere with religious ceremonies. This law is different from the others in that it breaks from the normal government-to-government relationship that requires us to consult with tribal government officials. AIRFA instead requires us to consult with the practitioners of the religion, the Medicine people, religious leaders, and traditionalists, not tribal officials or non-practitioners. AIRFA focuses not just on religious places, but also on religious practices, directing agencies to consider both before doing things that could affect them.

Federal Land Policy and Management Act (FLPMA): The land use planning process called for in FLPMA, with its associated environmental review, provides for tribal participation. Land use planning is one of our primary means for complying with tribal consultation responsibilities. This process offers several opportunities for interested tribes to raise issues, express their views, and identify places of concern.

Executive Order 13007 "Indian Sacred Sites." This executive order does not create any new right or benefit for Indian tribes, but it does direct federal agencies to accommodate access to Indian sacred sites and ceremonial use of those sites by Indian religious practitioners. It also directs us to avoid adversely affecting the physical integrity of sacred sites to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions. EO 13007 reinforces the purposes of the American Indian Religious Freedom Act with regard to sacred sites.