

**National Archives and Records Administration
Initial Tribal Consultation Plan of Action
April 26, 2021**

I. BACKGROUND.

Executive Order 13175 of November 6, 2000 (Consultation and Coordination with Indian Tribal Governments), charges executive departments and agencies with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications because they have substantial direct effects on one or more Indian Tribes. The Presidential Memorandum of January 26, 2021 (Tribal Consultation and Strengthening Nation-to-Nation Relationships), requires each agency to prepare and periodically update a detailed plan of actions to implement the policies and directives of Executive Order 13175.

On January 26, 2021, the President directed each agency to submit, within 90 days (by April 26, 2021), a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. This plan is the first ever tribal consultation plan developed by the National Archives and Records Administration (NARA) and it will be continually refined based on lessons-learned, best practices, and consultation with Tribal Nations and Tribal officials as defined in Executive Order 13175.

II. APPROACH TO CONSULTATION.

NARA is committed to honoring Tribal sovereignty and including Tribal voices in policy deliberation that affects Tribal communities. The federal government, and thus, NARA, has a Tribal trust responsibility, a legally enforceable fiduciary obligation to all federally recognized Tribes. Tribal consultation is a necessary component of upholding the federal government's trust and treaty obligations and serves as a key building block of the Nation-to-Nation relationship. NARA has much to learn from Tribal Nations, and strong communication is fundamental to a constructive relationship. Input acquired through regular, meaningful, and robust Tribal consultation is now an integral part of decision-making at NARA.

Tribal consultation requires advance planning, participation by principles authorized to act, clearly articulated goals, and advance disclosure of the options that NARA is contemplating together with background information necessary to assess those options. Consultation will be rooted in meaningful dialogue where the viewpoints of Tribes and NARA are shared, discussed, and analyzed. Moreover, Tribal consultation shall precede action by NARA.

NARA will consider its outreach intended for the general public in the United States and identify how that outreach could be extended to include Tribal consultation.

Typically, multiple Tribes have an interest in the same set of archival records or would be impacted by a single, proposed agency action. In these situations, NARA may consult with multiple Tribes in a group setting. In general, NARA will not engage in bi-lateral

engagement or consultation when we know that multiple Tribes have an interest in a proposed action.

Consultation is, but isn't limited to, in-person meetings, video-conferences, teleconferences, and correspondence to discuss a specific issue. In the case of in-person meetings, video-conferences, and teleconferences, the consultation may be expanded upon through subsequent correspondence after consultation is initiated. On a case-by-case basis, consultation may be held through a series of written correspondence with Tribal leadership, but this process of utilizing written correspondence should only be used when other methods of dialogue are not feasible.

NARA officials will be open and candid during Tribal consultations. NARA will respect Tribal sovereignty regardless of whether consultation is initiated by a Tribe or NARA.

When doubt exists as to whether or not a policy has tribal implications, NARA will assume the need to consult.

If the matter under consultation involves sensitive information, NARA will work with the affected Tribes to develop a consultation process that addresses the sensitivity of the information to the extent permitted by Federal law. If litigation or legal requirements impact NARA's consultation, NARA will explain the constraints to the affected Tribes. If a determination is made that the Administrative Procedure Act or other Federal law or regulation expressly prohibits discussion at any point, the affected Tribes will be notified at the earliest opportunity.

NARA will work with other departments and agencies, when and as appropriate, to coordinate consultation.

III. DESIGNATION AND RESPONSIBILITIES OF TRIBAL LIAISON.

The Archivist of the United States has designated the Chief Operating Officer (COO) as the Senior Agency Official for Tribal Consultation and Tribal Liaison. The COO will advise and make recommendations to the Archivist of the United States on NARA policies, issues, programs, and activities with Tribal implications. The COO is responsible for coordinating implementation of this plan with members of NARA's Management Team and the preparation of required progress reports. The COO is also responsible for identifying pertinent NARA officials to participate in consultation and ensuring that NARA participants have decision-making authority over the matter that is subject to consultation. The COO shall also be certain that Tribal input is meaningfully considered in NARA's decision-making process.

IV. INFORMATION SESSIONS.

NARA has not traditionally conducted Tribal consultation as envisioned in the President's memorandum. As a result, NARA is not known to many Tribes and NARA has a great deal to learn from the Tribes. As the record-keeper for the United States, NARA's mission and

the interests of Tribes are inextricably linked. NARA's archival holdings document the interactions of the United States Government with Tribes. Our records are of significant interest to the Tribes. However, NARA has a great deal of work to do to help Tribes understand our mission and our holdings. To that end, we will hold a series of introductory, information sessions in the coming year to provide information to the Tribes so that they might be better positioned to initiate or participate in consultation with NARA on matters that implicate Tribal interests. These will include background information on NARA's holdings, the records life-cycle, the Federal Records Act, the Presidential Records Act, and how NARA provides access to its records. The COO will be joined by subject matter experts to help provide information to Tribes to better position Tribal leaders to make informed decisions about proposed actions by NARA and ways that NARA might partner with Tribes to promote Tribal interests. In addition, NARA will create a webpage dedicated to making this information more readily available to the Tribes.

V. REGULATIONS AND PROPOSED LEGISLATION.

Any draft regulations or draft proposed legislation that have Tribal implications shall be developed with full and robust Tribal consultation. In transmitting any draft final regulation that has tribal implications to OMB or in transmitting proposed legislation, NARA shall include a certification from the COO stating that Tribal consultation requirements have been met in a meaningful and timely manner in accordance with Executive Order 13175.

VI. RECORDS SCHEDULES.

Records schedules that clearly implicate Tribal interests shall be developed by departments and agencies with Tribal consultation. Before NARA approves any records schedule, the Chief Records Officer, overseen by the Executive for Agency Services, shall require the pertinent Federal department or agency to determine, to the fullest extent practicable, whether or not the schedule implicates Tribal interests and that required Tribal consultation has occurred. To the extent that NARA concurs that a records schedule clearly implicates Tribal interests, the COO may require additional Tribal consultation prior to final approval of the records schedule by the Archivist of the United States.

VII. DIGITIZATION PRIORITIES.

NARA will consult with Tribes to prioritize records that implicate Tribal interests for digitization or similar projects (i.e., projects involving Citizen Archivist, transcription, description, etc.).

VIII. EXHIBITS, PUBLIC PROGRAMS, AND OUTREACH.

NARA will consult with Tribes when developing exhibitions or public programs that implicate Tribal interests.

IX. CLOSURE OF FACILITIES OR RECORDS MOVES.

NARA will consult with Tribes whenever NARA considers the closure of a facility that contains records that implicate Tribal interests or whenever NARA intends to permanently

move accessioned holdings that implicate Tribal interests from a facility where they have otherwise been available for public research.

X. TRIBAL INITIATED COMMENTS OR INPUT.

At any point, Tribes may submit written comments or input via email to the COO using william.bosanko@nara.gov. Additionally, Tribal governments may request one-on-one consultation meetings with NARA to discuss any topic of interest to them. Please use the subject line "NARA Consultation Tribal Comments" in your email. Written comments or input can also be addressed to William J. Bosanko, COO and Tribal Liaison, National Archives & Records Administration, Suite 4200, 8601 Adelphi Road, College Park, MD 20715. Mr. Bosanko can also be reached at 301-837-3604.

A Tribe may request consultation, and any official request for consultation shall be treated by NARA in an expedited fashion. NARA shall respond acknowledging the request, using the most expedient method.

XI. NARA INITIATED CONSULTATION.

The COO will be assisted by the Executive Secretariat, who will both share responsibility for maintaining and updating contact information for all federally recognized Tribes.

NARA will provide written notice to, and begin consultation with, Tribes as early as possible when considering an action with Tribal implications. NARA will also provide Tribes with a meaningful opportunity to participate in consultation.

The distribution of information to Tribes in and of itself is not consultation. Notification of consultation must include sufficient detail of the topic to be discussed to allow Tribal leaders an opportunity to fully engage in the consultation. Adequate notice includes providing a description of the topic(s) to be discussed, a timeline of the process, and possible outcomes. The notice must also give Tribal leaders the opportunity to provide feedback prior to the consultation. Notice shall be given at least 30 days prior to a planned consultation. If exceptional circumstances prevent notification within 30 days of the consultation, an explanation for the abbreviated notification will be provided in the invitation letter.

If NARA initiates consultation with a Tribe, but does not receive a response, NARA will make reasonable and periodic efforts to repeat the invitation and document the engagement efforts. NARA will allow an affected Tribe to join an ongoing consultation.

NARA will solicit the views of affected Tribes regarding the process and timeline to consult and work with Tribes to structure the process, to the extent practicable, in a manner that considers specific Tribal structures, traditional needs, and schedules of the Tribes.

XII. DOCUMENTATION.

Upon completion of any consultation, a summary shall be prepared of the consultation activities. This information shall be considered during the preparation of the required annual report.

XIII. DEFINITIONS.

"Policies that have tribal implications" or similar statements in this plan of action refer to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian 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.

"Tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

"Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.