**TRIBAL TREATY RIGHTS CONSULTATION**

**BEST PRACTICES FLOWCHART**

**CONSULTATION INVOLVES RELATIONSHIP BUILDING**
Well in advance of any agency action or regulatory planning, field staff should:

- **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**

**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.

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

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

**IDENTIFY AFFECTED TRIBES AND AGENCY DECISION-MAKER**

**IDENTIFY** Tribes with treaty, reserved, or other rights related to the project area, regardless of the Tribe’s current location. Treaty-ceded lands may be located far from a Tribe’s existing reservation.

**IDENTIFY** applicable treaties.

**IDENTIFY** affected Tribes and agency decision maker.

**INVITE** affected Tribes to consult

**ONE:** Draft “Dear Tribal Leader” letter

**TWO:** Plan to send to recognized governing leadership of the Tribe(s) with at least 30 days notice

**THREE:** Plan to provide a minimum 30-day time for written comments as permitted

**FOUR:** Plan to provide a written summary of comments received and agency response

**FIVE:** Schedule consultation to allow timely, adequate notice to Tribe(s), absent extenuating circumstances, and prior to federal decision point(s)

**SIX:** Develop consultation protocols ahead of time to recommend procedures for how consultation will occur. Federal agencies should communicate relevant federal legal obligations, e.g., FOIA, as they pertain to information like sensitive Indigenous Knowledge.

**PROVIDE** consultation that will be accessible and convenient to Tribal participants

**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

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

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

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

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

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Agencies should **CAREFULLY CONSIDER** information and views provided by Tribes

Take 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.