

Trust Responsibility and Consultation Matrix

Prepared by OSD Office of General Counsel - Modified 2004

DUTY	WHEN THE DUTY APPLIES
<p>Trust Responsibility</p> <ul style="list-style-type: none"> Protect “to the highest degree of fiduciary standards” trust lands and water and land habitats that support meaningful exercise of off-reservation hunting, fishing, and gathering rights Where trust responsibility applies, Indian interests cannot be subordinated to interests of the DoD absent overriding legal authority to do so 	<ul style="list-style-type: none"> Proposed action may affect* <u>trust lands</u> -trust lands are (1) tribally owned lands held in trust by the federal government; and (2) allotted lands owned by individual Indians but held in trust by the federal government; and (3) restricted fee allotments Proposed action may affect* <u>off reservation treaty rights</u> -off-reservation treaty rights are those use and occupancy rights reserved for Indians in a treaty, statute, judicial decision, or E.O. establishing a reservation <p>* even actions on DoD or other non-Indian-owned lands may affect trust land or off-reservation treaty rights and be conditional by the trust responsibility</p>
<p>Obtain Consent from Indian Tribe</p>	<ul style="list-style-type: none"> Prior to issuing an ARPA permit concerning excavation or removal on any archeological resource on Indian lands 16 USC 470cc (g)(2) [ARPA §4] When determining disposition of archeological items removed from Indian lands 16 USC 470dd (2) [ARPA §5] Before removing Native American human remains or cultural items from tribal lands 25 USC 3002(c)(2) [NAGPRA §3]
<p>Consult with Indian Tribe</p>	<ul style="list-style-type: none"> Prior to completing inventories of Native American human remains and associated funerary objects in an agency’s possession 25 USC 3003 (b)(1)(A) [NAGPRA §5] When determining the cultural affiliation of unassociated

<p>Consult with Indian Tribe, continued</p>	<p>funerary objects, sacred objects, and objects of cultural patrimony 25 USC 3004(b)(1)(B) [NAGPRA §6]</p> <ul style="list-style-type: none"> • When determining how to return cultural items or human remains 25 USC 3005(a)(3) [NAGPRA §7] • When carrying out an agency's NHPA responsibilities where an Indian tribe or Native Hawaiian organization attaches religious or cultural significance to National Register-eligible site 16 USC 470a(d)(6)(B) [NHPA §101] • When agency's preservation work may affect tribal concerns 16 USC 470h-2 (a)(2)(D) [NHPA §110] • When deciding how to deal with adverse effects of federal undertakings on National Register-eligible properties 16 USC 470h-2 (a)(2)(E)(ii) [NHPA §110] • During development of regulatory policies that have tribal implications E.O. 13175, 6 Nov 2000, Sec. 5 • Before taking actions that will affect federally recognized tribal governments Executive Memorandum, 29 April 1994, Section (b) • Before taking actions that adversely affect access to, the ceremonial use of, or the physical integrity of sacred sites E.O. 13007, 24 May 96, Section 2(b)(iii) • Invite affected Indian tribe to participate in scoping 40 CFR 1501.7 (a)(1) [CEQ NEPA Regs] • Invite comments on draft EIS 40 CFR 1503.1 (a)(2)(ii) [CEQ NEPA Regs] • May request Indian tribe to become a cooperating agency when proposal may affect trust lands or treaty rights 40 CFR 1503.5 [CEQ NEPA Regs]
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<p>Notify Indian Tribes</p>	<ul style="list-style-type: none"> • Prior to issuing an ARPA permit for work that may harm a religious or cultural site 16 USC 470cc (c) [ARPA §4] • After completing NAGPRA-required inventories of Native American human remains and associated funerary objects 25 USC 3003(d) [NAGPRA §5] • When summarizing federal agency holdings or collections of unassociated funerary objects, sacred objects, and objects of cultural patrimony 25 USC 3004(a) [NAGPRA §6] • Prior to taking an action that may restrict access to use of or affect the physical integrity of sacred sites E.O. 13007, 24 May 96, Section 2(a) • Provide notice of hearings, meetings, and availability of documents when proposal may affect trust lands or treaty rights 40 CFR 1506.6 (b)(3)(ii) [CEQ's NEPA Regs]
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