

# Effective Tribal Consultation

## Overview

This training is intended for representatives of Native Nations and federal agencies engaged in Government-to-Government (G-to-G) interactions who want to improve inter-governmental relations. This training program focuses the historical legal and policy background of Federal and tribal relations on developing awareness of intercultural communications and values, building trust, applying the principles of interest-based consultation, key elements and best practices for effective G-to-G consultation.

This highly participatory and interactive course will help develop awareness of the many facets of G-to-G consultation including: historical context, law, policy, sovereignty, communication, cross-cultural awareness and, interest-based consultation and collaborative negotiation. This training exposes those new to G-to-G consultation to the broad range of concepts and skills for effectively working with Native Nations and communities.

## Competency-Based Learning Objectives

<b>Competencies</b>	<b>Learning Objectives</b>
Knowledge of Federal Indian laws and policies and their effect within tribal nations and communities	<ul style="list-style-type: none"><li>• Develop appreciation of how Federal Indian laws and policies have shaped Tribal-Federal relations</li><li>• Identify outcomes of past federal Indian law and policies within tribal nations and communities</li><li>• Demonstrate understanding of key concepts and terms used in reference to tribal consultation; for example, sovereignty and self-determination</li></ul>
Knowledge of federal-tribal consultation policies	<ul style="list-style-type: none"><li>• Develop an understanding of the origin and evolution of federal tribal consultation policy</li><li>• Describe key components of federal tribal consultation policies</li><li>• Demonstrate understanding of tribal consultation principles</li></ul>
Knowledge of communication protocols and cross-cultural awareness that foster positive intergovernmental relations	<ul style="list-style-type: none"><li>• Understand the significance of different ways of communication</li><li>• Recognize the importance of consideration in intercultural communications.</li><li>• Explore best practices for cross-cultural communication.</li></ul>
Skill in interest-based consultation	<ul style="list-style-type: none"><li>• Determine why it is important to understand each parties' interests</li><li>• Demonstrate sharing and exploration of interests of all parties in the context of government-to-government consultation</li></ul>

<b>Competencies</b>	<b>Learning Objectives</b>
Knowledge of the various governmental and tribal roles associated with tribal consultation	Develop awareness of, as well as the benefits of interacting with, the different roles and responsibilities associated with tribal consultation: <ul style="list-style-type: none"> <li>• Federal &amp; Tribal leadership – chairs, governors</li> <li>• Native American Liaison(s) within the agencies – tribal government contact with agency</li> </ul>
Skill in joint planning of tribal consultations	<ul style="list-style-type: none"> <li>• Demonstrate ability to jointly discuss and identify the purpose of a tribal consultation; i.e.: to share information or engage in dialogue</li> <li>• Demonstrate ability of governmental and tribal counterparts to engage in joint agenda development and consultation planning</li> <li>• Develop awareness of the need to adjust to a variety of cultural, organizational, and decision-making structures among Native Nations</li> </ul>
Knowledge of key concepts to prepare for and foster effective consultation meetings	<ul style="list-style-type: none"> <li>• Explore and apply key concepts and best practices for effectively consulting with Native Nations</li> </ul>

**Suggested reading:**

- (1) Fisher, Roger and William Ury. 2003. *Getting to Yes: Negotiating Agreement Without Giving In*. New York, NY: Random House.
- (2) Ury, William. 1993. *Getting Past No: Negotiating with Difficult People*. New York, NY: Bantam Doubleday.
- (3) Prucha, Francis Paul. 1984. *The Great Father: The United States Government and the American Indians*. University of Nebraska Press.
- (4) Pommersheim, Frank, 1997. *Braid of Feathers: American Indian Law and Contemporary Tribal Life*, University of California Press.
- (5) Deloria, Vine. 2003. *God is Red: A Native View of Religion*, Fulcrum Publications.
- (6) Deloria, Vine, and Clifford Lytle. 1998. *The Nations Within: The Past and Future of American Indian Sovereignty*, University of Texas Press.
- (7) Getches, David H. and Charles F. Wilkinson, Robert A. Williams, 2004. *Cases and Materials on Federal Indian Law*, West Publishers.
- (8) Miller, Robert J. Consultation or Consent: The United States Duty to Confer with American Indian Governments. *North Dakota Law Review*, Vol. 91, 2015, Forthcoming. Available at SSRN: <http://ssrn.com/abstract=2666687>.
- (9) Cohen, F. 2012 ed. *Handbook of Federal Indian Law*, LexisNexis.
- (10) Wilkinson, Charles. 2006. *Blood Struggle: The Rise of Modern Indian Nations*, W.W. Norton and Co.
- (11) Echo-Hawk, Walter F. 2012. *In the Courts of the Conqueror: The 10 Worst Indian Law Cases Ever Decided*, Fulcrum Publishing.
- (12) Brown, D. 2010 (Reprint). *Bury My Heart At Wounded Knee: An Indian History of the American West*, Picador.
- (13) Velarde, Veronica E. 2015. *Tiller's Guide to Indian Country: Economic Profiles of American Indian Reservations*, BowArrow Publishing.
- (14) Momaday, N. S. 2010 (Reprint). *House Made of Dawn*, Grove Press.

**EFFECTIVE TRIBAL CONSULTATION  
AGENDA  
DAY 1**

**MORNING**  
8:30 am

**Introductions and Objectives**

*Introductions*

- *Learning goals and objectives*
- *Overview of agenda & materials*
- *Ground rules for course - making the most of our time together*
- *Honoring Native identity*

**What is Tribal Consultation?**

- Pillars of Effective Consultation
- Understanding History

*Activity One: Exploring National Congress of American Indians President Brian Cladoosby's 2016 State of Indian Nations Message*

**BREAK**  
9:45 am

**Building a Context for Trust between Sovereigns**

- Law and Policy in Indian Country
- Tribal Sovereignty
- Federal Authority in Indian country
- Federal Trust Responsibility

**Federal-Indian Policy Eras**

- Post-Contact and Pre-Constitutional Development
- Treaty Making
- Removal and Reservations
- Allotment and Assimilation
- Indian Reorganization
- Termination
- Self-Determination and Self-Governance

**Native Nations Today**

- What is Indian country?
- Demographic statistics of Native Americans
- Native Nation governance
- United Nations Declaration on the Rights of Indigenous Peoples
- Asserting Tribal Sovereignty and Treaty Rights: Treaty fishing in the Pacific Northwest
- Billy Frank Jr.: Asserting Tribal Sovereignty and Treaty Rights
- Video Salmon Defense's "Back to the River"

*Activity Two: Exploring the Evolution of Federal Indian Policy*

**LUNCH**

1:00pm **Conflict and Communication**

- Sources of Conflict
- Why does conflict happen between the U.S. and Native Nations?
- Communication Principles and Best Practices
- Non-Verbal Communication
- Attending to Non-Verbal Signals
- Framework for Cross-Cultural Communication
- Cross Cultural Differences
- Cross Cultural Meetings

*Activity Three: Cross Cultural Exercise*

**Principles and Concepts of Interest-Based Consultation**

- What is Interest-Based Consultation?
- Video “Getting to Yes: Negotiating Agreement Without Giving In”
- What is Positional Consultation?
- Disadvantages of Positional Consultation
- Benefits of Interest-Based Consultation

*Activity Four: Identifying Interests*

**BREAK**

3:00 pm

**Working Nation-to-Nation**

- Tribal Consultation Policy Timeline
- Executive Order 13175
- President Obama’s 2009 Memorandum
- Federal agency consultation policies

*Activity Five: Exploring Federal agency consultation policies*

- Federal statutory consultation responsibilities
- Executive Order consultation requirements
- Consultation in the courts

**Mock Consultation Overview: Fictional Big Salmon Land Exchange**

- Consultation Scenario and Role Play

**HOMEWORK: Review Mock Consultation Scenario and Role Play**

5:00 pm **ADJOURN for the day**

**DAY 2**

**MORNING**

8:30 am

**Welcome back! Review yesterday's material, perspectives, questions**

**Consultation Process Steps**

- Step One: Initial Planning
- Types of Meetings?
- Project proponents
- Suggested components of a consultation request
- Information sharing
- Determining protocol
- Consultation Process: Step Two
- Pre-Consultation Meeting
- Collaborative agenda
- Confidentiality
- Using a third party neutral
- Consultation meeting
- Consultation Process: Steps Three and Four

**BREAK**

9:45 am

**Key Elements of Effective Tribal Consultation**

- Learn about the Tribe before consultation
- Equal sovereign footing
- Know the Tribe's protocol
- Tribal and federal consultation views
- Contact early and often
- Trust, respect, integrity
- If no change, explain why
- Consultation is not Tribal public participation
- Sensitive and confidential information
- Regular federal training
- Federal funding support
- Tribal liaison
- Collaborative negotiation

**Additional tips for effective tribal consultation**

- Before, during, and after consultation

**Mock Consultation Process**

- Review Mock Consultation Scenario
- Mock Consultation Pre-Planning Meeting
- Mock Consultation Planning Meeting
- Mock Consultation Preparation
- During the Mock Consultation

**BREAK**

3:30 am

**Mock Consultation Debrief  
Course Evaluation**

5:00 pm

**ADJOURN**