



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECW-OR (1145)

3 OCT 2002

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS, AND
DISTRICT COMMANDS

SUBJECT: Policy Guidance Letter No. 57, Indian Sovereignty and Government-to-Government Relations with Indian Tribes.

1. The purpose of this memorandum is to provide the attached Policy Guidance Letter as interim Regulatory Program guidance for consulting with Indian tribes, until more detailed guidance is provided. Project managers should recognize that face-to-face meetings with tribal representatives are necessary for identifying and discussing issues concerning Corps permit actions that may affect tribal lands, historic properties, sacred sites, or trust resources. These meetings should be documented as part of the administrative record for each permit application. Documentation of issues raised through consultation with tribes, and the district's responses to those issues, should be included in the administrative record for the permit application. If the permit is issued, it should include appropriate special conditions identified by project managers to address those issues. Continuous dialog with tribal representatives is essential for good consultation.
2. More detailed guidance will be provided at a later date.

FOR THE COMMANDER:

A handwritten signature in black ink, appearing to read "Michael G. Enschede".

Michael G. Enschede
Acting Chief, Operations Division
Directorate of Civil Works

Enclosure

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS AND
DISTRICT COMMANDSSUBJECT: Policy Guidance Letter No. 57, Indian Sovereignty and Government-to-Government Relations
With Indian Tribes

1. Our Nation has long recognized the sovereign status of Indian tribes. The United States Constitution specifically addresses Indian sovereignty by classing Indian treaties among the "supreme Law of the land," and establishes Indian affairs as a unique focus of Federal concern. Principles outlined in the Constitution and treaties, as well as those established by Federal laws, regulations and Executive Orders, continue to guide our national policy towards Indian Nations.
2. On 29 April 1994, President Clinton reaffirmed the United States' "unique legal relationship with Native American tribal governments." In recognition of the special considerations due to tribal interests, the President directed Federal agencies to operate within a government-to-government relationship with federally recognized Indian tribes; consult, to the greatest extent practicable and permitted by law, with Indian tribal governments; assess the impact of agency activities on tribal trust resources and assure that tribal interests are considered before the activities are undertaken; and remove procedural impediments to working directly with tribal governments on activities that affect trust property or governmental rights of the tribes. The full text of the President's directive is found in enclosure 1.
3. The U.S. Army Corps of Engineers has lasting and positive relations with many Indian tribal governments. Since 1990, Indian tribes have been local partners in the development and construction of over 200 water resources development projects and each year, tribes apply for hundreds of permits under the Corps Clean Water Act permitting responsibilities. Still, I want to ensure that all Corps Commands adhere to principles of respect for Indian tribal governments and honor our Nation's trust responsibility. To this end I have enclosed U.S. Army Corps of Engineers Tribal Policy Principles, for use as interim guidance until more detailed statements are developed. These Principles have been developed with the Office of the Assistant Secretary of the Army (Civil Works) and are consistent with the President's goals and objectives.

Encls

1. On view in Library of Congress
or GPO archives
2. Principles

/s/

JOE N. BALLARD
Lieutenant General, USA
Commanding

Apr. 29 / Administration of William J. Clinton, 1994

Memorandum on Government-to-Government Relations With Native American Tribal Governments

April 29, 1994

Memorandum for the Heads of Executive Departments and Agencies

Subject: Government-to-Government Relations with Native American Tribal Governments

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties

may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the *Federal Register*.

William J. Clinton

[Filed with the Office of the Federal Register,
3:49 p.m., May 2, 1994]

NOTE: This memorandum will be published in the *Federal Register* on May 4.

U.S. ARMY CORPS OF ENGINEERS TRIBAL POLICY PRINCIPLES

TRIBAL SOVEREIGNTY - The U.S. Army Corps of Engineers recognizes that Tribal governments are sovereign entities, with rights to set their own priorities, develop and manage Tribal and trust resources, and be involved in Federal decisions or activities which have the potential to affect these rights. Tribes retain inherent powers of self-government.

TRUST RESPONSIBILITY - The U.S. Army Corps of Engineers will work to meet trust obligations, protect trust resources, and obtain Tribal views of trust and treaty responsibilities or actions related to the Corps, in accordance with provisions of treaties, laws and Executive Orders as well as principles lodged in the Constitution of the United States.

GOVERNMENT-TO-GOVERNMENT RELATIONS - The U.S. Army Corps of Engineers will ensure that Tribal Chairs/Leaders meet with Corps Commanders/Leaders and recognize that, as governments, Tribes have the right to be treated with appropriate respect and dignity, in accordance with principles of self-determination.

PRE-DECISIONAL AND HONEST CONSULTATION - The U.S. Army Corps of Engineers will reach out, through designated points of contact, to involve Tribes in collaborative processes designed to ensure information exchange, consideration of disparate viewpoints before and during decision making, and utilize fair and impartial dispute resolution mechanisms.

SELF RELIANCE, CAPACITY BUILDING, AND GROWTH - The U.S. Army Corps of Engineers will search for ways to involve Tribes in programs, projects and other activities that build economic capacity and foster abilities to manage Tribal resources while preserving cultural identities.

NATURAL AND CULTURAL RESOURCES - The U.S. Army Corps of Engineers will act to fulfill obligations to preserve and protect trust resources, comply with the Native American Graves Protection and Repatriation Act, and ensure reasonable access to sacred sites in accordance with published and easily accessible guidance.