



**US Army Corps
of Engineers**

**PROGRAM MANAGEMENT PLAN
(PMP)**

Tribal Nations Community of Practice

**DRAFT
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Tribal Nations Community of Practice (TNCOP) Program Management Plan

Executive Summary

The Tribal Nations Community of Practice (TNCOP) has evolved from the Tribal Nations Program and from the Corps' recognition that Tribal Nations are invaluable program and project partners and present many opportunities for the Corps to carry out its missions and fulfill its Trust responsibilities at the same time. Not only is there a legal obligation to consult with Federally recognized Indian Tribes on the part of the Federal government and to work with them for their betterment, but there is also a vast potential to partner with Tribes experiencing water resources issues.

This Program Management Plan (PMP) recognizes American Indian and Alaska Native groups as important and vital USACE partners. Its purpose is to ensure that all programs administered by USACE are carried out with the awareness of our Trust responsibility and that Federally recognized Tribes are sovereign Nations, not merely stakeholders, and that we interact with each one on a government-to-government basis.

In the Project Management Business Process (PMBP), the team approach is central, along with shared responsibility for program success, the seeking of continuous improvement, and effective communications in all activities and processes. In the Corps' 2012 structure, the horizontal team approach is highly emphasized - Divisions are now considered "Headquarters forward" and Districts have a vital say in program development. The TNCOP makes use of this new structure by putting all members at all levels in communication with one another and to give TNCOP members equal say.

This Management Plan will assist USACE in successfully meeting its obligations to Native Americans and will be incorporated into the PMBP process and "2012" as an important program area. The Management Plan describes the goals, strategies and structure that will allow the Program to be customer, stakeholder, and partner-focused. It takes into account the unique relationship that tribes have with USACE and allows enough room for individual Districts to have HQ support and guidance regarding Native Programs; have flexibility to allow District's to craft their own Native Program based on their regional needs; and allow USACE-wide coordination on Native issues.

On the last pages of this document you will find the Department of Defense's Native American and Alaska Native Policy and USACE's six Tribal Policy Principles, written in 1998. The Tribal Nations Program defines the process to implement these principles, while the Tribal Nations Community of Practice will carry out the implementation.

**U.S. ARMY CORPS OF ENGINEERS
PROGRAM MANAGEMENT PLAN
TRIBAL NATIONS COMMUNITY OF PRACTICE**

INTRODUCTION

Our Nation has long recognized the status of Indian Tribes as sovereign Nations. Our Constitution specifically addresses Indian sovereignty by noting that treaties with Indian Nations are the “supreme law of the land.” Federal agencies have unique relationships with Native American and Alaska Native tribal governments, and a “trust responsibility” to protect Native American rights from adverse impacts whenever possible. This government-to-government relationship is rooted deeply in our Nation’s history.

USACE has had a long, complicated, controversial and highly visible relationship with Tribal governments. Our agency, along with many others, at one time contributed to the relocation of Tribes from their lands, and the destruction of their governments. Today, USACE views Tribes as potential partners and customers in water resources issues. If we view Tribes in this new light, we will be able to fulfill our Trust responsibilities to them as well as accomplish our missions at the same time. Almost every program and project initiated by USACE affects an Indian Tribe in some way. We recognize that it is our obligation under the law to consult with any Tribe on an undertaking that may affect them.

The USACE Tribal Nations Program has evolved over recent years as corporate awareness of the special status of Native Americans, our legal obligations to them, and our capability to partner with Tribes on solutions to water resources issues on and near Indian lands has grown. The purpose of this Program Management Plan (PMP) is to define the program and outline its structure as embodied in the Tribal Nations Community of Practice (TNCOP).

GOAL OF THE PROGRAM

With Tribes as full and equal partners, it will be possible to successfully carry out USACE missions and fulfill Trust responsibilities at the same time. USACE has the opportunity to respond to the needs of Indian Nations within the scope of our Strategic Vision, by integrating Tribal interests into existing programs and efforts from the beginning of each initiative. The TNP will provide direction to the command on all aspects of successful interaction with Tribal governments. TNCOP members, guided by the principles in this document, and the strategies to be defined in future documents, will ensure that the goal of simultaneous mission accomplishment and fulfillment of Trust responsibility is achieved to the satisfaction of all parties.

STRATEGIES

There are two major strategies with many tasks needed to carry out the program goal: 1) changing Corps corporate culture, and, 2) building Native American economic capability. These efforts will be initiated by the TNCOP.

Changing corporate culture:

To improve Corps corporate culture, we must educate ourselves through visibility of the Program and the training of USACE personnel are key. Visibility will be enhanced by the creation of a Communications Plan and will include such items as getting press for the program and raising the status of Tribal Liaisons throughout the command. The TNCOP will provide the network necessary for consistency within the agency and for coordination with other agencies.

Training will be developed to include cross-cultural interaction guidelines, interpretation of existing USACE and DoD policies and legal opinions, proper use of existing funding authorities to assist Tribes and how to fund Corps Tribal programs, and strategies to mainstream Tribal issues, thus changing the perception of Tribes as “obstacles” to “opportunities.”

Improving economic capability:

There are a great number of existing authorities that can provide partnership opportunities with Tribes. Some are general in nature, such as Planning Assistance to States (Section 22 of WRDA 1974), and others apply to Tribes in particular, such as Section 503 of WRDA 2000, which applies to five counties in New Mexico and is used extensively by the Navajo Nation. New authorities, must be sought and appropriations acquired for new and existing programs and projects.

As this is written, funding has been appropriated for the first time for projects conducted under Section 203 of WRDA 2000, Tribal Planning Partnerships. Tribes are working with Corps Districts and contacting their congressional delegations to stimulate funding and authorities. The TNCOP will spearhead efforts such as these.

Strategy Plan

The existing draft Tribal Nations Strategy will be expanded and serve as the implementation plan with specific strategies and guidance for achieving long-term Program goals. Regional plans and guides will be considered for all Divisions, based on the existing Northwest Division Guide and NWD’s individual District desk guides.

TN CoP MEMBERSHIP, STRUCTURE AND FUNCTIONS

CoP Members

General Membership

Members of the TNCoP who are Tribal Liaisons in their District or Division function as program managers, liaisons, and problem solvers; forging positive relationships between Corps Districts and Native American communities. These functions are both necessary and mutually beneficial. The community of Tribal Liaisons developed in response to the critical need for the Corps to develop a network of dedicated professionals who focus primarily on working with Tribal people through all decision-making processes, including, but definitely not limited to, compliance with cultural resource management statutes and guidance.

Tribal Liaisons are the core of the Community of Practice, by coordinating with Tribes to identify needs (e.g., planning, design, and construction) and priorities in Indian Country, and relaying these needs and wants to the District. They also perform a very important protocol function, bridging gaps in communication between two or more distinct cultures and forging effective working relationships.

CoP members are not restricted to Tribal Liaisons, but include program managers, planners, engineers and scientists within the Corps, as well as outside individuals who support the program – Tribal officials and members, universities and museums, consultants, and specialists from other Federal and state agencies. The CoP extends throughout USACE, including all Districts, Divisions, Laboratories, and Mandatory Centers of Expertise. The CoP supports Regional Integration Teams (RITs) and individuals of the CoP become integral members of Product Delivery Teams (PDTs).

The TNCoP benefits from bringing in to HQUSACE, on a rotational basis, Tribal Liaisons, or other qualified staff, from the field on developmental assignments (first such assignment occurred in September 2004). The detailees benefit from the Washington experience and the Headquarters benefits from learning more about Tribal issues from different cultural areas across the Nation. This creates a win-win situation and an opportunity to become “situational aware” for both HQ and the field. In time, rotation of Tribal Liaisons or other TNCoP members from one District to another, to a Division, the Pentagon, another agency, or a Tribal office may be considered.

TNCoP Leader

The TNCoP is chaired by the HQUSACE Tribal Liaison. Establishment of this position in 2003 at HQUSACE formalized our commitment to Tribes, engaged the chain of command at all levels, and served internal and external coordination functions. Issue identification, evaluation, and resolution activities are coordinated through this position that ensures that the command is realistic in its responses to Tribes. The Tribal Liaison uses existing authorities and resources to address Tribal matters, leverage Corps activities with activities of others, and advise the ASA(CW) or the ASA (I&E), Chief, and Director of Civil Works or Military Programs concerning legislative and budgetary needs.

The TNCoP Leader maintains regular communication with the field offices and is thus able to identify issues of importance to the higher command. TNCoP members look to the CoP Leader to provide and interpret guidance and policy to the field, and to steer the direction of the Program.

Product Delivery Teams (PDTs)

An informal and fluid PDT at the HQUSACE level (and HQ Forward) that advises the CoP Leader and the CoP members includes members of all mission areas of the Command, as well as OASA(CW) and DoD. Many HQ-level offices – Civil Works, Military Programs, Real Estate, Contracting, Counsel – may have several representatives from their areas because of their different program missions. Members of this group provide advice and information on specific areas of expertise. Other members of this group provide fresh ideas and strategic thinking to the CoP Leader and CoP members.

Ad hoc PDTs may form to address particular issues. For example, the planning and execution of the next Tribal Liaisons national meeting will require a PDT, as will the editing and completion of the draft *Tribal Nations Strategy*.

TNCoP Functions

The TNCoP is basically a group of professionals that share knowledge, common practices and learning experiences to promote the goals of the Tribal Nations Program and to integrate it successfully into Corps missions and function areas.

It ensures communication, consistency, accountability and visibility among its members on issues affecting Native Americans nationwide. It provides a USACE focus on Federal trust responsibilities and a means for addressing complex and politically sensitive issues. Members serve as subject matter experts; share knowledge and lessons learned; assess and recommend changes to processes, if necessary; resolve issues; and ensure that Tribal concerns are considered from the earliest stages of every project and program. It develops

and implements programs and projects, guidance and policies. It supports Districts and Divisions in trouble shooting and solving specific issues.

To ensure communication, the CoP will acquire dedicated space on “Groove”, the “AKO” website, or other suitable communications tool. Access to these websites will make it possible for the entire TNCOP to review a draft document at the same time and post comments on the web for all members to view. This forum will promote efficiency and the cross-fertilization of new and improved ideas. The TNCOP recently met for the first time in Washington DC (September 2004) and will continue meeting officially on an annual basis and will communicate (VTC, email, etc.) on a monthly/quarterly or “as-needed” basis.

RESOURCE REQUIREMENTS

The TNCOP is supported primarily with GE funds, although operations funds are also tapped. Ideally, a certain percent of project funds from each project or program should be allocated to support the salary of the District/Division Tribal Liaison. O & M monies should also be tapped in Districts where much of the work with Tribes is done on military installations. It is very important to have a certain amount of overhead funds available for unforeseen expenses in all Districts. Overall, an integrated, programmatic approach will be cost effective as various agency resources are combined, and as activities are accomplished in a more coordinated, systematic fashion.

The TNCOP Leader has a modest yearly budget to support core CoP members to attend meetings, or for Tribal members to participate in Corps activities, to name two activities. This budget should be maintained and increased to ensure participation of members at training sessions or conferences when District resources are tight.

MILESTONES AND PERFORMANCE MEASURES

Critical milestones have already been met that demonstrate the early success of the Tribal Nations Program. The Tribal Liaison position at Headquarters was created in April, 2003. HQUSACE held its first annual Liaison Team meeting in Washington DC on 21-23 September 2004 to coincide with the opening of the Smithsonian’s National Museum of the American Indian. The location and agenda of the next meeting is in progress. The initial training session on Cross Cultural Awareness exclusively for the Corps has been developed and presented at the Memphis District in February 2005.

Future milestones will be developed by the TNCOP and presented in the *Tribal Nations Strategy*. Highest on the priority list are consistent consultation guidelines, and the visibility and legitimacy of the program. Milestones will be used in part as performance measures of overall program success.

Performance measures will be developed and will also appear in the *Tribal Nations Strategy*. A likely task to be tackled early on is standard performance measures for Tribal Liaisons. These include the ability to communicate with Tribes and with the Corps; demonstrated willingness to accept criticism; diplomatic and communications skills; and ability to conduct consultations in which all parties gain.

Milestones and performance measures will help the TNCOP bridge identified gaps in USACE policy and execution. Such gaps include the lack of effective authorities and funding mechanisms; insufficient cultural knowledge and sensitivity; and conflicting interpretations of our Trust responsibility.

Similarly, milestones and performance measures will also help the TNCOP in building Tribal economic capability. Tasks may include identifying Indian Country infrastructure needs and solutions; expanding Federal partnerships to Indian Nations; identifying policy and legislative needs improvements; and identifying and sponsoring ongoing technical training and education.

Attaining the goal of improving Corps corporate culture may be measured and charted by educating and training Corps personnel; maintaining the Tribal Nations Program; issuing policy guidance where necessary; and developing effective two-way communication and cultural sensitivity.

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The TNCOP will periodically perform a *situation analysis* and ask the question, "how are we doing" by reviewing our failures and successes with Tribal Nations. Our achievements include partnering agreements (over 100 MOAs/ MOUs), success stories (Everglades Projects with Seminoles, Missouri River Basin Section 106 Programmatic Agreement), and proven practices (contracting with Tribes, joint training initiatives, program and project management). We can build on these and other successes, incorporate them into performance measures, and identify remaining gaps in USACE Tribal policies and actions.

CONCLUSION

The Tribal Nations Program has tremendous potential in pointing the way toward fulfilling Corps missions in Indian Country in ways mutually beneficial to USACE and to Native Americans. Alaska Native and American Indian communities provide potential employees, contractors, and partners. Tribal members are great sources of ideas for programs and projects in all major Corps mission areas and how to carry them out. The Tribal Nations Community of Practice can maximize the number and quality of working relationships with Tribes and be an effective tool in Corps mission execution.

DEPARTMENT OF DEFENSE NATIVE AMERICAN AND ALASKA NATIVE POLICY (1998)

PREAMBLE

These principles establish the Department of Defense's (DoD) American Indian and Alaska Native Policy for interacting and working with federally-recognized American Indian and Alaska Native governments (hereinafter referred to as "tribes"¹). These principles are based on tribal input, federal policy, treaties, and other federal statutes. The DoD policy supports tribal self-governance and government-to-government relations between the federal government and tribes. Although these principles are intended to provide general guidance to DoD Components on issues affecting tribes², DoD personnel must consider the unique qualities of individual tribes when applying these principles, particularly at the installation level. These principles recognize the importance of increasing understanding and addressing tribal concerns, past, present, and future. These concerns should be addressed prior to reaching decisions on matters that may have the potential to significantly affect protected tribal resources, tribal rights, or Indian lands.³

I. TRUST RESPONSIBILITIES

DoD will meet its responsibilities to tribes. These responsibilities are derived from: Federal trust doctrine (i.e., the trust obligation of the United States government to the tribes); Treaties, Executive Orders, Agreements, Statutes, and other legal obligations between the United States government and tribes, to include:

1. Federal statutes (e.g., Native American Graves Protection and Repatriation Act, American Indian Religious Freedom Act, National Environmental Policy Act, National Historic Preservation Act, Alaska National Interest Lands Conservation Act, Alaskan Native Claims Settlement Act, and Archeological Resources Protection Act); and

2. Other federal policies (e.g., Executive Order 12898, "Environmental Justice"; Executive Order 13007, "Indian Sacred Sites"; Executive Order 13021 "Tribal Colleges and Universities"; "Executive Memorandum: Government to Government Relations with Native American Tribal Governments," dated 29 April 1994; and Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments").

DoD will annually review the status of relations with tribes to ensure that DoD is: Fulfilling its federal responsibilities; and addressing tribal concerns related to protected tribal resources, tribal rights, or Indian lands.

II. GOVERNMENT TO GOVERNMENT RELATIONS

Build stable and enduring relationships with tribes by: Communicating with tribes on a government-to-government basis in recognition of their sovereignty;

Requiring meaningful communication addressing tribal concerns between tribes and military installations at both the tribal leadership-to-installation commander and the tribal staff-to-installation staff levels;

Establishing a senior level tribal liaison in the Office of the Secretary of Defense and other appropriate points of contact within DoD to ensure that tribal inquiries are channeled to appropriate officials within DoD and responded to in a timely manner;

Providing, to the extent permitted by DoD authorities and procedures, information concerning opportunities available to tribes necessary to enable tribes to take advantage of opportunities under established DoD authority to: 1) compete for contracts, subcontracts, and grants, and participate in cooperative agreements; 2) benefit from education and training; 3) obtain employment; and 4) obtain surplus equipment and property;

Assessing, through consultation, the effect of proposed DoD actions that may have the potential to significantly affect protected tribal resources, tribal rights, and Indian lands before decisions are made;

Taking appropriate steps to remove any procedural or regulatory impediments to DoD working directly and effectively with tribes on activities that may have the potential to significantly affect protected tribal resources, tribal rights, and Indian lands; and

Working with other federal agencies, in consultation with tribes, to minimize duplicative requests for information from tribes.

III. CONSULTATION

Fully integrate (down to staff officers at the installation level) the principle and practice of meaningful consultation and communication with tribes by:

Recognizing that there exists a unique and distinctive political relationship exists between the United States and the tribes that mandates that, whenever DoD actions may have the potential to significantly affect protected tribal resources, tribal rights, or Indian lands, DoD must provide affected tribes an opportunity to participate in the decision-making process that will ensure these tribal interests are given due consideration in a manner consistent with tribal sovereign authority;

Consulting consistent with government-to-government relations and in accordance with protocols mutually agreed to by the particular tribe and DoD, including necessary dispute resolution processes;

Providing timely notice to, and consulting with, tribal governments prior to taking any actions that may have the potential to significantly affect protected tribal resources, tribal rights, or Indian lands;

Consulting and negotiating in good faith throughout the decision-making process; and

Developing and maintaining effective communication, coordination, and cooperation with tribes, especially at the tribal leadership-to-installation commander level and the tribal staff-to-installation staff levels.

IV. NATURAL AND CULTURAL RESOURCES PROTECTION

Recognize and respect the significance tribes ascribe to certain natural resources and properties of traditional or customary religious or cultural importance by:

Undertaking DoD actions and managing DoD lands consistent with the conservation of protected tribal resources and in recognition of Indian treaty rights to fish, hunt, and gather resources at both on- and off-reservation locations;

Enhancing, to the extent permitted by law, tribal capabilities to effectively protect and manage natural and cultural tribal trust resources whenever DoD acts to carry out a program that may have the potential to significantly affect those tribal trust resources;

Accommodating, to the extent practicable and consistent with military training, security, and readiness requirements, tribal member access to sacred and off-reservation treaty fishing, hunting, and gathering sites located on military installations; and

Developing tribal specific protocols to protect, to the maximum extent practicable and consistent with the Freedom of Information Act, Privacy Act, National Historic Preservation Act, and Archeological Resources Protection Act, tribal information regarding protected tribal resources that has been disclosed to, or collected by, the DoD.

William S. Cohen
Secretary of Defense

1. As defined by most current Department of Interior/Bureau of Indian Affairs list of tribal entities published in Federal Register pursuant to Section 104 of the Federally Recognized Indian Tribe List Act.

2. This policy is not intended to, and does not, grant, expand, create, or diminish any legally enforceable rights, benefits, or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor shall this policy be construed to alter, amend, repeal, interpret, or modify tribal sovereignty, any treaty rights, or other rights of any Indian tribes, or to preempt, modify, or limit the exercise of any such rights.

3. Definition of Key Terms:

Protected Tribal Resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

Tribal Rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Indian Lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

USACE TRIBAL POLICY PRINCIPLES

Policy Guidance Letter No. 57, Indian Sovereignty and Government-to-Government Relations With Indian Tribes, including U.S. Army Corps of Engineers Tribal Policy Principles (February 18, 1998). Those principles are listed below:

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.