



# United States Department of the Interior

OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
Washington, D.C. 20240



**Subject:** OSMRE Standard Operating Procedure (SOP) 3000-01, *Tribal Consultation Procedures*

**Version Number:** FY2024-01

**Effective Date:** Effective Upon Issuance

**Responsibility:** Assistant Director, Program Support Directorate

## 1. Primary Reference(s):

- a. 301 Departmental Manual (DM) 7, Departmental Responsibilities for Consideration and Inclusion of Indigenous Knowledge in Departmental Actions and Scientific Research, Dec. 5, 2023.
- b. 502 DM 1, Collaborative and Cooperative Stewardship with Tribes and the Native Hawaiian Community, Nov. 30, 2022.
- c. 512 DM 2, Departmental Responsibilities for Indian Trust Resources, Dec. 1, 1995.
- d. 512 DM 3, Departmental Responsibilities for Protecting/Accommodating Access to Indian Sacred Sites, June 5, 1998.
- e. 512 DM 4, Departmental Policy on Consultation with Indian Tribes and Alaska Native Corporations, Nov. 30, 2022.
- f. 512 DM 5, Procedures for Consultation with Indian Tribes, Nov. 30, 2022.
- g. 525 DM 1, Environmental Justice Implementation Policy, Jan. 19, 2017.
- h. 600 DM 7, Nature-based Solutions, Dec. 8, 2023.
- i. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Feb. 11, 1994.
- j. Executive Order 13007, Indian Sacred Sites, May 24, 1996.
- k. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, Nov. 6, 2000.
- l. Executive Order 14112, Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination, Dec. 6, 2023.
- m. Presidential Memorandum, Uniform Standards for Tribal Consultation, Nov. 30, 2022.
- n. Office of Science and Technology Policy and Council on Environmental Quality, Guidance for Federal Departments and Agencies on Indigenous Knowledge, Nov. 30, 2022.

- o. Onshore Energy and Mineral Lease Management Interagency Standard Operating Procedures, Appendix G, Responsibilities and Procedures of Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and OSMRE for Coal Leasing and Mining Operations on Indian Lands, Sep. 23, 2013.
- p. Best Practices Guide for Identifying and Protecting Tribal Treaty Rights, Reserved Rights, and Other Similar Rights in Federal Regulatory Actions and Federal Decision-Making, Working Group of the Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty and Reserved Rights, Nov. 30, 2022.
- q. Tribal Treaty Rights Consultation Best Practices Flowchart, Working Group of the Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty and Reserved Rights, Nov. 30, 2022.
- r. Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites, Nov. 9, 2021.

## 2. Purpose

This SOP provides general procedures for Tribal consultations between appropriate Tribal officials and OSMRE officials. This SOP is not intended to supersede any previously agreed upon consultation protocols or established collaborative relationships between OSMRE and specific Tribes. This SOP does not create any right or benefit, substantive or procedural, enforceable at law or equity, by any party against the United States, its agencies (including DOI or any DOI bureau or office), officers, or employees or any persons.

## 3. Scope

All OSMRE officials should follow the procedures in this chapter for Tribal consultations.

## 4. Summary of Changes

This is a new SOP.

## 5. Definitions

- a. Allotted lands or individual allotments. Land owned by the United States in trust for an individual Indian or land owned by an individual Indian subject to a restriction on alienation.<sup>1</sup>
- b. BIA Superintendent. BIA official in charge of an agency office.<sup>2</sup>
- c. BLM Authorized Officer. Any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described in 25 CFR Parts 211 and 225 and in 43 CFR Parts 3480.<sup>3</sup>

---

<sup>1</sup> Onshore Energy and Mineral Lease Management Interagency Standard Operating Procedures, Appendix G, Responsibilities and Procedures of BIA, BLM, and OSMRE for Coal Leasing and Mining Operations on Indian Lands, Sep. 23, 2013.

<sup>2</sup> 25 CFR 225.3 “Superintendent.”

<sup>3</sup> 25 CFR 225.3 “Authorized officer.” The term “mining supervisor” is used for the same BLM official in 25 CFR 216.

- d. Federal lands (as defined within SMCRA). Any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.<sup>4</sup>
- e. Federal Trust Responsibility. A legal obligation under which the United States “has charged itself with moral obligations of the highest responsibility and trust” toward Indian Tribes. *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942). The nature of the trust relationship is defined by federal law (i.e., treaties, statutes, Executive orders, federal regulations) and can include particular duties or fiduciary obligations.<sup>5</sup>
- f. Federally recognized Indian tribe. An entity listed on the Department of the Interior’s list under the Federally Recognized Indian Tribe List Act of 1994, which the Secretary currently acknowledges as an Indian tribe and with which the United States maintains a government-to-government relationship.<sup>6</sup>
- g. Indian lands (as defined within SMCRA). “[A]ll lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian Tribe.”<sup>7</sup>
- h. Indian mineral owner. Any individual Indian or Alaska Native, or Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group that owns a mineral interest in oil and gas, geothermal resources or solid minerals, title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.<sup>8</sup>
- i. Indian reservation or Tribe’s reservation. means, unless another definition is required by Federal law authorizing a particular trust acquisition, that area of land over which the Tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma wherever historic reservations have not yet been reaffirmed, or where there has been a final judicial determination that a reservation has been disestablished or diminished, Indian reservation means that area of land constituting the former reservation of the Tribe as defined by the Secretary.<sup>9</sup>
- j. Indian surface owner. Any individual Indian or Alaska Native, or Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group that owns the surface estate in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.<sup>10</sup>

---

<sup>4</sup> 30 U.S.C. 1291(4).

<sup>5</sup> *United States v. Jicarilla Apache Nation*, 564 U.S. 162 (2011).

<sup>6</sup> 25 CFR 83.1 “Federally recognized Indian tribe.”

<sup>7</sup> 30 U.S.C. 1291(9).

<sup>8</sup> 25 CFR 225.3 “Indian mineral owner.”

<sup>9</sup> 25 CFR 151.2 “Indian reservation or Tribe’s reservation.”

<sup>10</sup> 25 CFR 225.3 “Indian surface owner.”

- k. Indigenous Knowledge (IK). A body of observations, oral and written knowledge, innovations, practices, and beliefs that promote sustainability and the responsible stewardship of cultural and natural resources through relationships between humans and their landscapes. IK cannot be separated from the people inextricably connected to that knowledge. It applies to phenomena across biological, physical, social, cultural, and spiritual systems. Indigenous Peoples have developed their knowledge systems over millennia and continue to do so based on evidence acquired through direct contact with the environment, long-term experiences, extensive observations, lessons, and skills.<sup>11</sup>
- l. Indigenous Peoples. Indigenous Peoples refers to people of Native American, Alaska Native, Native Hawaiian, Pacific Islander (e.g., American Samoans, Chamorros and Carolinians of Guam and the Northern Mariana Islands, and others), and Caribbean Islander (e.g., Taíno and others) descent, and others whose ancestors have occupied what is now known as the United States and its territories since time immemorial, including members of Tribal Nations.<sup>12</sup>
- m. Lease. Any contract, approved by the Secretary of the Interior under the Act of March 3, 1909, as amended, or the Indian Mineral Leasing Act of 1938 (IMLA), that authorize exploration for, extraction of, or removal of any minerals.<sup>13</sup>
- n. Minerals Agreement. Any joint venture, operating, production sharing, service, managerial, lease (other than a lease entered into pursuant to the IMLA or the Act of March 3, 1909), contract, or other minerals agreement; or any amendment, supplement or other modification of such minerals agreement, providing for the exploration for, or extraction, processing, or other development of minerals in which an Indian mineral owner owns a beneficial or restricted interest, or providing for the sale or other disposition of the production or products of such minerals.<sup>14</sup>
- o. Mining Plan. The complete plan submitted to BLM relating to the development, production, and recovery of coal resources as required by 25 CFR Parts 216 and 225, and minerals agreement or lease provisions. This is not the same mining plan required for surface coal mining and reclamation operations on Federal lands under the Mineral Leasing Act of 1920, as amended.<sup>10</sup>
- p. Nature-based Solutions. Actions that incorporate natural features and processes to protect, conserve, restore, sustainably use, and manage natural or modified ecosystems to address socio-environmental challenges while providing measurable co-benefits to both people and nature.<sup>15</sup>

---

<sup>11</sup> 301 DM 7.3(A).

<sup>12</sup> 301 DM 7.3(B).

<sup>13</sup> 25 CFR 212.3 "Lease."

<sup>14</sup> 25 CFR 225.3 "Minerals agreement."

<sup>15</sup> 600 DM 7.3(J).

- q. OSMRE Action with Tribal Implications. Any regulation, rulemaking, policy, guidance, legislative proposal, plan, programmatic or operational activity, or grant or funding formula changes that may have a substantial direct effect on a Tribe in matters including, but not limited to:
- (1) Tribal cultural practices; lands; treaty rights; resources; ancestral lands; sacred sites, including sites that are submerged; and lands Tribes were removed from, or access to traditional areas of cultural or religious importance on Federally managed lands and waters,
  - (2) The ability of a Tribe to govern or provide services to its members,
  - (3) A Tribe's formal relationship with OSMRE, be it nation-to-nation or beneficiary-to-trustee, or
  - (4) Any action planned by a non-federal entity that involves funding, approval, or other final agency action provided by OSMRE, unless the Tribe is a party to the action.<sup>16</sup>
- r. Proposed Action. Any proposed regulation, rulemaking, policy, guidance, legislative proposal, plan, programmatic or operational activity, or grant or funding formula changes by OSMRE.
- s. Sacred Site. Any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian Tribe or Native Hawaiian organization, or Indian or Native Hawaiian individual determined to be an appropriately authoritative representative of an Indian or Native Hawaiian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian or Native Hawaiian religion; provided that the Tribe, Native Hawaiian organization or appropriately authoritative representative of an Indian or Native Hawaiian religion has informed the agency of the existence of such a site.<sup>17</sup>
- t. State Historic Preservation Officer (SHPO). The official appointed or designated pursuant to Section 101(b)(1) of the National Historic Preservation Act of 1966, as amended (NHPA), to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.
- u. Tribal Governance Officer (TGO). An individual designated by the Department to carry out responsibilities described in 512 DM 4.<sup>18</sup>
- v. Tribal Historic Preservation Officer (THPO). Tribal official appointed by the Tribe's chief governing authority or designated by a Tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of NHPA Section 106 compliance on Tribal lands in accordance with section 101(d)(2) of the act.
- w. Tribal Liaison Officer (TLO). One or more individuals officially designated by a Bureau or Office to carry out responsibilities described in 512 DM 4.<sup>19</sup>
- x. Tribal Official. An elected or appointed Tribal leader or official designated in writing by a Tribe to represent the Tribe in government-to-government consultations.<sup>20</sup>

---

<sup>16</sup> 512 DM 4.3(B).

<sup>17</sup> Executive Order 13007, Indian Sacred Sites, May 24, 1996.

<sup>18</sup> 512 DM 4.3(D).

<sup>19</sup> 512 DM 4.3(E).

<sup>20</sup> 512 DM 4.3(F).

- y. Tribal trust resources. means an interest in land, water, minerals, funds, or other assets or property which is held by the United States in trust for an Indian tribe or an individual Indian or which is held by an Indian tribe or Indian subject to a restriction on alienation imposed by the United States.<sup>21</sup>
- z. Tribe. Any American Indian or Alaska Native Tribe, band, nation, pueblo, rancheria, village, or community.<sup>22</sup>

## 6. Departmental Tribal Consultation Policy

It is the policy of the Department that Bureaus and Offices:

- a. Consult on a government-to-government basis whenever there is a proposed Departmental Action with Tribal Implications, which includes an action that affect a Tribe's traditional homelands.<sup>23</sup> It is presumed that that any action with land or resource use or resource impacts may have Tribal implications.<sup>24</sup>
- b. Make good-faith efforts to invite Tribes to consult early in the planning process and throughout the decision-making process.
- c. Engage in robust, interactive, pre-decisional, informative, and transparent consultation when planning an action with Tribal implications.
- d. Seek consensus with impacted Tribes in accordance with the Consensus-Seeking Model explained in 512 DM 4.6 and Figure 1.<sup>25</sup>

## 7. OSMRE Responsibilities

- a. Director.

The OSMRE Director is responsible for carrying out the following Tribal consultation responsibilities:<sup>26</sup>

- (1) Ensuring that OSMRE identifies and invites any Tribe to consult on a government-to-government basis whenever there is an OSMRE Action with Tribal Implications.
- (2) Ensuring that procedures are established to carry out OSMRE's consultation activities and ensuring compliance with those procedures and 512 DM 4.
- (3) Removing procedural impediments to working directly and effectively with Tribal governments.
- (4) Designating in writing one or more TLOs.

---

<sup>21</sup> 25 CFR 900.6 "Trust resources."

<sup>22</sup> 25 CFR 83.1 "Tribe."

<sup>23</sup> 512 DM 5.4(A). Bureaus/Offices should also be aware that Tribes continue to have a connection and interest in their traditional homelands but may have been removed from those lands or may have reservations that are significantly reduced from their traditional homelands.

<sup>24</sup> *Id.*

<sup>25</sup> See also 512 DM 5.4(G).

<sup>26</sup> 301 DM 7, 502 DM 1, 512 DM 2, 512 DM 3, and 512 DM 4.

b. TLO.

The OSMRE TLOs are responsible for carrying out the following Tribal consultation responsibilities:<sup>27</sup>

- (1) Serving as the OSMRE principal point of contact for Tribal consultation matters.
- (2) Promoting and facilitating consultation and collaboration between Tribes and OSMRE.
- (3) Reporting to the TGO annually in the Tribal Consultation Annual Report of newly engaged national or regional consultations with Tribes and any updates to OSMRE consultation procedures or processes.
- (4) Promoting and facilitating the identification and inclusion of IK in OSMRE decisions and facilitating appropriate contacts between OSMRE and Indigenous Peoples.

c. OSMRE Staff.

OSMRE staff with subject matter expertise for the topic or program may be involved in the consultation but must first complete training to promote positive relations with Tribes, including but not limited to:

- (1) The implementation of 512 DM 4 and 5.
- (2) The general history of the relationship between the Federal government and Tribes, Tribal treaty rights, the Federal trust responsibility, Tribal culture and history, and current Tribal policies.<sup>28</sup>

**8. Procedures for Identifying when a Proposed Action requires a Tribal Invitation to Consult**

a. Consider all potential Tribal Implications of a Proposed Action

- (1) Because OSMRE is required to invite Tribes to consult as early as possible when considering a Proposed OSMRE Action with Tribal Implications, an important first step for OSMRE when considering any regulation, rulemaking, policy, guidance, legislative proposal, plan, programmatic or operational activity, or grant or funding formula changes is to determine whether that Proposed Action might have a substantial direct effect on a Tribe.<sup>29</sup>
- (2) The types of effects to consider include, but are not limited to, effects on:
  - (a) Tribal cultural practices; lands; treaty rights; resources; ancestral lands; sacred sites, including sites that are submerged; and lands Tribes were removed from, or access to traditional areas of cultural or religious importance on Federally managed lands and waters;
  - (b) The ability of a Tribe to govern or provide services to its members;
  - (c) A Tribe's formal relationship with the Department, be it nation-to-nation or

---

<sup>27</sup> 301 DM 7, 502 DM 1, 512 DM 2, 512 DM 3, and 512 DM 4.

<sup>28</sup> 512 DM 4.5(E).

<sup>29</sup> Does not include matters that are the subject of investigation, anticipated or active litigation, or settlement negotiations.

beneficiary-to-trustee; or

- (d) Any action planned by a non-federal entity that involves funding, approval, or other final agency action provided by the Department, unless the Tribe is a party to the action. Substantial direct effects on Tribes may include, but are not limited to, effects as shown in the Consensus-Seeking Model (Figure 1).<sup>30</sup>

- (3) However, even if a Proposed Action does not have Tribal implications, OSMRE may still engage in Tribal consultation and should consider inviting a Tribe or Tribes to consult if the Proposed Action may be of interest.

b. Identify Affected Tribes

Tribes that no longer reside in the geographic area affected by the Proposed Action may still ascribe religious, cultural, historical, spiritual, subsistence, or ceremonial significance to the area. Ancestral lands exist throughout the United States and should be assumed to exist, regardless of current land use and ownership. Many Tribes were removed from their ancestral homelands, while others traditionally shifted territories. As a result, multiple Tribes may have an affiliation to an area. For a list of publicly available resources to aid in identifying affected tribes, see Appendix A.

When considering a Proposed Action, OSMRE is required to make a good-faith and reasonable effort to identify and invite Tribes to consult that:

- (1) Are located within or in the vicinity of the geographic area that may be affected by the Proposed Action.
- (2) Have ancestral lands or a historic affiliation to the geographic area that may be affected by the Proposed Action.

c. Identify Applicable Treaties

When considering a Proposed Action, OSMRE is required to identify and protect any Tribal treaty rights, reserved rights, trust resources, and trust assets. If any potential impacts are identified, OSMRE must consult the affected Tribe or Tribes, and other DOI Bureaus, and the Office of the Solicitor, as appropriate.

- (1) Threshold questions for OSMRE to consider include:
  - (a) Do Tribal treaties, reserved rights, or trust resources exist within the geographic area to be affected by the Proposed Action?<sup>31</sup>
  - (b) What Tribal treaty rights, reserved rights, or other similar rights may exist in, or what Tribal treaty-protected resources rely upon, the area affected by the Proposed Action?
  - (c) How might Tribal treaty rights, reserved rights, or Tribal trust resources potentially be affected by the Proposed Action?

---

<sup>30</sup> 512 DM 4.3(B)(1)-(4).

<sup>31</sup> Established Tribal treaty databases: (1) Oklahoma State Tribal Treaty Database tool, <https://treaties.okstate.edu/>, (2) the National Archives Digital Tribal Treaty Database, <https://www.archives.gov/research/native-americans/treaties/catalog-links>.



## 9. Clarifying Roles and Responsibilities when Considering a Proposed OSMRE Action with Tribal Implications

### a. Coordinate with Other DOI Bureaus and Federal/State Agencies

When considering a Proposed OSMRE Action with Tribal Implications, OSMRE should coordinate and consult with other DOI Bureaus and Federal/State agencies, where appropriate.

- (1) If the Proposed Action has any potential to impact Tribal treaty rights, reserved rights, trust resources, trust assets, or Tribal health and safety are identified, consult the:<sup>32</sup>
  - (a) BIA,
  - (b) DOI Office of the Solicitor, and
  - (c) DOI Bureau of Trust Funds Administration.
- (2) If the Proposed Action has the potential to affect historic properties:
  - (a) Off Tribal lands—Consult the State historic preservation officer (SHPO).
  - (b) On Tribal lands—Consult the THPO, if available. Where the THPO has assumed the functions of the SHPO, only consult with the SHPO if requested by property owners,<sup>33</sup> or if the Tribe agrees to include the SHPO as a consulting party.<sup>34</sup>
- (3) If the Proposed Action is a permitting action involving coal leasing and mining operations on Indian lands, OSMRE staff should refer to Attachment G of the “Onshore Energy and Mineral Lease Management Interagency SOP,” which describes the responsibilities and procedures for cooperation and coordination among the BIA, BLM, and OSMRE.<sup>35</sup>
  - (a) BIA’s responsibilities include:
    - Approval or disapproval of prospecting permits.
    - Approval or disapproval of minerals agreements or lease issuances.
    - Monitoring and enforcement of minerals agreement or lease terms, conditions, and stipulations not related to the mining plan or SMCRA permit.
    - After issuance of a notice of noncompliance with an approved mining plan, lease, or minerals agreement terms, conditions, and stipulations, assesses penalties up to and including cancellation of the minerals agreement or lease.<sup>36</sup>

---

<sup>32</sup> 512 DM 2.4(B).

<sup>33</sup> 36 CFR 800.3(c)(1). Section 101(d)(2)(D)(iii) of the act authorizes owners of properties on Tribal lands which are neither owned by a member of the Tribe nor held in trust by the Secretary for the benefit of the Tribe to request the SHPO to participate in the section 106 process in addition to the THPO.

<sup>34</sup> 36 CFR 800.3(f)(3).

<sup>35</sup> 25 CFR Parts 211, Leasing of Tribal Lands for Mineral Development; 212, Leasing of Allotted Lands for Mineral Development; 216, Surface Exploration, Mining, and Reclamation of Lands; 225, Oil and Gas, Geothermal, and Solid Minerals Agreements; and 30 CFR Part 750, Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands.

<sup>36</sup> BLM concurrence required.

- Termination of minerals agreement or lease, and release of the minerals agreement or lease performance bond.

(b) BLM’s responsibilities include:

- Approval or disapproval of exploration operations under a BIA-approved minerals agreement or lease, outside of the SMCRA permit area.<sup>37</sup>
- Approval, disapproval, or conditional approval of the mining plan and mining plan modifications.<sup>38</sup>
- Monitoring, inspection, and enforcement of mining plan requirements for coal development, production, and resource recovery.
- After issuance of a notice of noncompliance with an approved mining plan, lease, or minerals agreement terms, conditions, and stipulations, taking appropriate action up to and including suspension of operations.<sup>39</sup>
- Approval or disapproval of abandonment of operations.<sup>40</sup>

(c) OSMRE’s responsibilities include:

- Issues SMCRA permit.<sup>41</sup>
- Approves, disapproves, or conditionally approves applications for SMCRA permit applications for renewal, revision, transfer, sale, or assignment.<sup>42</sup>
- Approves or disapproves exploration operations within an SMCRA permit area.<sup>43</sup>
- Monitoring, inspection, and enforcement of SMCRA permit requirements.
- Issues notices of violation, cessation orders, and orders to show cause; and assesses civil penalties required by SMCRA.<sup>44</sup>
- Approves or disapproves release of SMCRA performance bond.<sup>45</sup>

---

<sup>37</sup> After consultation with BIA and the Indian mineral owner.

<sup>38</sup> After consultation with BIA, the tribe, and OSMRE during the technical review of the mining plan.

<sup>39</sup> BIA concurrence required.

<sup>40</sup> After consultation with BIA and the Indian mineral owner.

<sup>41</sup> After consultation with BIA, BLM, and the tribe during the technical review of the PAP.

<sup>42</sup> Exceptions to these consultation procedures may occur with respect to certain minor revisions when expedited review of such revisions is necessary due to unforeseen circumstances and the environmental impacts of approving such revisions would be negligible. Such situations might include relocation of topsoil stockpiles, minor realignment of existing roads, or minor modifications to existing office facilities or other structures. In these circumstances, will immediately contact the BIA, BLM, and the tribe (by phone or fax) to make appropriate arrangements, make every attempt to ensure that the other bureaus are properly briefed and involved and as follow-up will provide all parties with a copy of the written decision and documentation.

<sup>43</sup> After consultation with BIA, BLM, and the tribe.

<sup>44</sup> After notifying BIA, BLM, and the Indian mineral owner.

<sup>45</sup> After consultation and joint inspection with the operator, BIA, BLM, tribal and surface owners.

(d) Joint responsibilities include:

- Exchanging information and appropriate communication with the other agencies.
- Notifying and inviting the other agencies to participate in examinations or meetings with applicants, operators, contractors, Indian mineral owners, Indian surface owners, and other involved parties.
- Participation as a lead or cooperating agency in the preparation of required NEPA documents.<sup>46</sup>
- Participation in interagency inspections, where appropriate.<sup>47</sup>
- Providing technical assistance to other agencies, if requested.
- Notifying the other agencies of any approvals, modifications, or terminations of Tribal Regulatory Programs<sup>48</sup>, tribal energy resource agreements, or self-determination contracts<sup>49</sup> that may affect the responsibilities described above.
- Providing technical assistance, if requested, to the BIA and BLM.

(4) If the Proposed Action involves mining and reclamation activities on off-reservation individual allotments in a state with an approved regulatory program, OSMRE staff should ensure the State Regulatory Authority consults with the BIA.

(5) If the Proposed Action has the potential to impact federally owned surface lands, consult the appropriate Federal Land Management Agency.

(6) On Indian lands not subject to an approved Tribal reclamation program, consult the appropriate BIA superintendent if the Proposed Action involves:<sup>50</sup>

- (a) Mitigation of emergency or extreme danger situations arising from past mining practices,
- (b) Reclamation of other areas determined to have high priority, or
- (c) Reclamation projects proposed to OSMRE by Tribes.

b. Coordinate Environmental Reviews

For a Proposed OSMRE Action with Tribal implications, Tribal consultation may be required by more than one federal environmental statute. Where applicable, OSMRE staff should coordinate

---

<sup>46</sup> BIA has lead responsibility for issues related to a minerals agreement or lease. BLM has lead responsibility for issues related to coal resource recovery and production. OSMRE has lead responsibility for issues related to SMCRA-related reclamation and post mining land use issues.

<sup>47</sup> May include inspections of a SMCRA permit, mining plan, or minerals agreement or lease, abandonment of operations, or SMCRA performance bond release.

<sup>48</sup> Approval by the Secretary of Interior of a Tribal Regulatory Authority under SMCRA.

<sup>49</sup> Pursuant to the Indian Self Determination Act and the Indian Tribal Energy Development and Self-Determination Act, as amended.

<sup>50</sup> 30 CFR 886.27.

consultations so that a single coordination can satisfy the various environmental review processes.<sup>51</sup>

- (1) If the Proposed Action has the potential to affect historic properties of religious and cultural significance to a Tribe<sup>52</sup>, consultation is mandatory under Section 102 of the NHPA to:
  - (a) Identify and evaluate historic properties of religious and cultural significance to a Tribe.
  - (b) Consider the special expertise of a Tribe, including IK.
  - (c) Assess effects of the Proposed Action to those properties.
  - (d) Where appropriate, resolve adverse effects to those properties.
- (2) If the Proposed Action requires National Environmental Policy Act of 1969, as amended (NEPA) compliance<sup>53</sup>, even if the action qualifies for a Departmental<sup>54</sup> or OSMRE categorical exclusion<sup>55</sup>, OSMRE is strongly encouraged to provide Tribal populations the opportunity to inform OSMRE's environmental analysis by helping to identify:<sup>56</sup>
  - (a) Effects to treaty, trust, and other natural resource issues, as well as to cultural resources in general.
  - (b) Conflicts with Tribal uses of the environment for cultural, religious, and economic purposes.
  - (c) Alternatives, mitigation measures, and/or Nature-based Solutions that would resolve potential conflicts.<sup>57</sup>
  - (d) Extraordinary circumstances.<sup>58</sup>
  - (e) Special expertise (including IK) of a Tribe or Tribal knowledge holders.

c. Consider IK

OSMRE should respect and promote the inclusion of IK in its decision making, resource

---

<sup>51</sup> CEQ & Advisory Council on Historic Preservation (ACHP), "NEPA and NHPA: A Handbook for Integrating NEPA and Section 106," [https://www.achp.gov/sites/default/files/2017-02/NEPA\\_NHPA\\_Section\\_106\\_Handbook\\_Mar2013\\_0.pdf](https://www.achp.gov/sites/default/files/2017-02/NEPA_NHPA_Section_106_Handbook_Mar2013_0.pdf).

<sup>52</sup>"Unless such properties have already been identified and the information is readily available, you probably will not know in advance. As with any undertaking that might affect historic properties, you must determine whether the proposed undertaking is generically the kind that might affect historic properties assuming such properties are present. If the undertaking is the kind of action that might affect places such as archaeological sites, burial grounds, sacred landscapes or features, ceremonial areas, or plant and animal communities, then you should consult with Indian Tribes that might attach religious and cultural significance to such places." (Excerpt from the ACHP Handbook on "Consultation with Indian Tribes in the Section 106 Review Process.")

<sup>53</sup> For guidance, refer to the OSMRE NEPA Handbook (OSMRE Directive REG-1).

<sup>54</sup> Departmental categorical exclusions are outlined in 43 CFR 46.210.

<sup>55</sup> OSMRE categorical exclusions are outlined in 516 DM 13.

<sup>56</sup> Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

<sup>57</sup> 600 DM 7. "Department of the Interior Nature-Based Solutions Roadmap," <https://nicholasinstitute.duke.edu/publications/department-interior-nature-based-solutions-roadmap>.

<sup>58</sup> Extraordinary circumstances are outlined in 43 CFR 46.215.

management, program implementation, policy development, scientific research<sup>59</sup>, and other actions. OSMRE should initiate an inclusive process that empowers the Tribe to determine if, and how, IK may be included in OSMRE's process. OSMRE should not assume that a Tribe will share its IK with the agency.

(1) Consultation is critical to:

- (a) Ensuring that IK is considered and applied in a manner that respects Tribal sovereignty and achieves mutually beneficial outcomes for Tribal and Indigenous communities.
- (b) Understanding how IK can inform OSMRE's decision making.
- (c) Facilitating the inclusion of IK in OSMRE's decision making.
- (d) Identifying IK holders.
- (e) Obtaining free, prior, and informed consent before receiving and including IK in OSMRE decision making.

## **10. Tribal Consultation Procedures for an OSMRE Action with Tribal Implications**

### **a. Invite Affected Tribes to Consult**

Once OSMRE determines that a Proposed Action has the potential to have Tribal implications and identified the relevant Tribe or Tribes, OSMRE should invite Tribes to consult. Ideally, this will happen as early as possible when considering an OSMRE Action with Tribal Implications.

During the Initial Planning Stage:

- (1) Letters inviting Tribes to initiate consultation should be addressed to the appropriate Tribal leader<sup>60</sup> and should include (at a minimum):
  - (a) Notification that OSMRE is considering a Proposed Action with Tribal implications.<sup>61</sup>
  - (b) Sufficient detail of the topic(s) to be discussed.<sup>62</sup>
  - (c) An OSMRE contact to provide feedback or request technical assistance.<sup>63</sup>
  - (d) Consultation session method (if predetermined by OSMRE).<sup>64</sup>
  - (e) Minimum of 30 days (preferably 45 days) notice<sup>65</sup> to request consultation.<sup>66</sup>

---

<sup>59</sup> Refer to 301 DM 7, Section 7.6B(4) for procedures for including IK in scientific research conducted by OSMRE.

<sup>60</sup> The BIA maintains a Tribal Leaders Directory which provides contact information for each federally recognized Tribe, [www.bia.gov/service/Tribal-leaders-directory](http://www.bia.gov/service/Tribal-leaders-directory).

<sup>61</sup> 512 DM 5.5(A)(1).

<sup>62</sup> 512 DM 5.5(A)(2)(a—e).

<sup>63</sup> 512 DM 5.5(A)(3).

<sup>64</sup> 512 DM 5.4(H). If OSMRE chooses to offer a pre-scheduled date for the Tribal consultation or listening session, the letter should provide a minimum 30-day notice.

<sup>65</sup> 512 DM 5.5(A)(4). If exceptional circumstances prevent notification within 30 calendar days, an explanation for the abbreviated notification will be provided in the invitation letter.

<sup>66</sup> 512 DM 5.5(A)(5).

- (2) In addition to “Dear Tribal Leader” letters, OSMRE may be required to send invitations to consult to a designated THPO, when:<sup>67</sup>
  - (a) A Proposed OSMRE Action has the potential to affect historic properties on Tribal lands.
  - (b) A Proposed OSMRE Action has the potential to affect historic properties of religious and cultural significance to a Tribe off Tribal lands.
- (3) For a permitting action involving coal leasing and mining operations on Indian lands, OSMRE may be required to consult the Indian Mineral Owner or Indian Surface Owner. Refer to the coordination process with the BIA in Section 9(a)(3).

b. Review Responses

After inviting Tribes to initiate consultation, OSMRE staff should:

- (1) Consider any requests for extensions.<sup>68</sup>
- (2) Treat any official request for initiation of consultation from a Tribe in an expedited fashion.<sup>69</sup>
- (3) If no response is received from either a Tribe or a THPO, OSMRE should make good-faith, reasonable, and periodic efforts to repeat the invitation and, when feasible, should allow a Tribe to join an ongoing consultation.<sup>70</sup> OSMRE should consider using different modes of communication to engage with a potentially impacted Tribe (letter, email, phone, etc.) and document each attempt.

c. Schedule Consultation

When scheduling a consultation, OSMRE staff should:

- (1) Work with the Tribe to schedule the consultation at a mutually agreeable time.<sup>71</sup>
- (2) Identify appropriate OSMRE representatives to participate in the consultation including:
  - (a) The OSMRE official with the authority to decide on the Proposed Action.
  - (b) The appropriate OSMRE TLO.
  - (c) OSMRE staff with subject matter expertise for the topic or program.

---

<sup>67</sup> The National Park Service (NPS) administers the national THPO program and maintains an up-to-date listing of all Tribes who have established THPOs under Section 101(d)(2) of the NHPA and the contact information of their THPOs, [www.nps.gov/history/hps/Tribal/thpo.htm](http://www.nps.gov/history/hps/Tribal/thpo.htm).

<sup>68</sup> 512 DM 5.5(A)(5)(a). A Tribe may request that the Department provide an extension of more than 30 days’ notice to consider whether to request consultation and, at its discretion, the Department may grant such requests.

<sup>69</sup> 512 DM 5.5(6). A Tribe may request that the Department initiate consultation when the Tribe believes that a Bureau/Office is considering a Departmental Action with Tribal Implications. The appropriate Bureau/Office TLO or appropriate representative will treat an official request for consultation in an expedited fashion and respond to the Tribe in writing that the Department has received the request, using the most expedient methods to communicate (e.g., by email in addition to U.S. Mail).

<sup>70</sup> 512 DM 5.5(5)(b). These efforts of engagement shall be appropriately documented.

<sup>71</sup> 512 DM 5.5(A)(6)(a).

- (3) Consider facilitation support.<sup>72</sup> Such support is available through the Office of Collaborative Action and Dispute Resolution (CADR).

d. Develop Consultation Process

- (1) OSMRE will work with Tribes, to the extent practicable, to develop a consultation timeline that:<sup>73</sup>
  - (a) Maximizes the opportunity for timely Tribal input.
  - (b) Is consistent with both Tribal and OSMRE schedules.
  - (c) Discloses any litigation, legal requirements, or other constraints that may impact the consultation schedule.<sup>74</sup>
  - (d) Communicates timelines for engagement so that all parties understand expectations.
- (2) An appropriate process<sup>75</sup>—
  - (a) Allows for meaningful Tribal input in determining effects of a Proposed Action on the Tribe.<sup>76</sup>
  - (b) Identifies OSMRE resources and staff with the appropriate qualifications, experience, and training to support each phase of the process.
  - (c) Includes an IK plan, if applicable, that describes engagement between OSMRE and Tribes to ensure that IK shared with OSMRE is considered.
  - (d) Removes barriers to participation of Tribal populations by improving the accessibility of meetings, crucial documents, and notices.<sup>77</sup>
  - (e) Supports Tribal capacity whenever possible by:
    - Offering technical assistance,
    - Utilizing a Tribe’s preferred methods of communication,
    - Compensating Tribes and knowledge holders for their expertise.
  - (f) Addresses the handling of confidential or sensitive information (including IK).

e. Address Confidentiality Risks

Before engaging in consultation, OSMRE staff should be aware of the legal limitations on keeping sensitive information confidential and plan how to address Tribal concerns about confidentiality.

---

<sup>72</sup> 512 DM 5.4(D).

<sup>73</sup> 512 DM 5.5(B).

<sup>74</sup> 512 DM 5.5(B)(3).

<sup>75</sup> 512 DM 5.5(B). Examples of appropriate processes for the proposal development stage include, but are not limited to, negotiated rulemaking, a Tribal leader task force, a series of open Tribal meetings, or single meetings.

<sup>76</sup> Under the NEPA process, if OSMRE is the lead agency on the preparation of an environmental assessment or environmental impact statement, OSMRE may invite a Tribe with special expertise with respect to any environmental issue to serve as a cooperating or joint lead agency. Relevant special expertise may include IK.

<sup>77</sup> 525 DM 1.

(1) Sensitive information gathered during consultation:

(a) Can include, but is not limited to:

- Historic properties of religious or cultural significance
- Sacred sites
- IK

(b) May be covered by statutory exemptions to the Freedom of Information Act (FOIA), including:

- Section 304 of the NHPA<sup>78</sup>—Exempts public disclosure of sensitive information about historic properties when disclosure could result in a significant invasion of privacy, damage to the historic property, or impede the use of a traditional religious site by practitioners. Information that is withheld under Section 304 needs to be redacted from public documents, including NEPA documents.
- Archaeological Resources Protection Act (ARPA)—Provides for the protection of archaeological resources and sites that are on public lands and Indian lands.
- Federal Cave Protection Act—Prohibits disclosure of information concerning the specific location of any significant cave or that would create a substantial risk of harm, theft, or destruction of such a cave.
- Mineral Leasing Act and Mineral Leasing Act for Acquired Lands—Contains Special Rules governing certain information concerning coal obtained under either the Mineral Leasing Act or the Mineral Leasing Act for Acquired Lands.<sup>79</sup>

(c) May be required to be released if not covered by a FOIA exemption or exclusion.

(2) When engaging in a Tribal consultation, OSMRE staff should:

- (a) Disclose the potential and risks for disclosure under the FOIA well in advance of receiving sensitive information.
- (b) Exercise caution not to overstate or overcommit regarding OSMRE's ability to protect the confidentiality of IK, including the outcome of a decision-making process or a conclusion of scientific research.
- (c) Request and record only that information about sacred sites that is absolutely necessary<sup>80</sup> to support required administrative decisions.

f. Seek Consensus

The Consensus-Seeking model is intended to apply to every OSMRE Action with Tribal Implications,

---

<sup>78</sup> ACHP, "Frequently Asked Questions on Protecting Sensitive Information About Historic Properties Under Section 304 of the NHPA," <https://www.achp.gov/digital-library-section-106-landing/frequently-asked-questions-protecting-sensitive-information>.

<sup>79</sup> Appendix B to Part 2, Title 43.

<sup>80</sup> For example, areas that Tribes regard as spiritually or culturally significant should be identified in the broadest terms practicable, sufficient to alert agencies to an area's significance without recording or revealing precise site locations or sensitive information about Tribal religious beliefs or cultural practices.

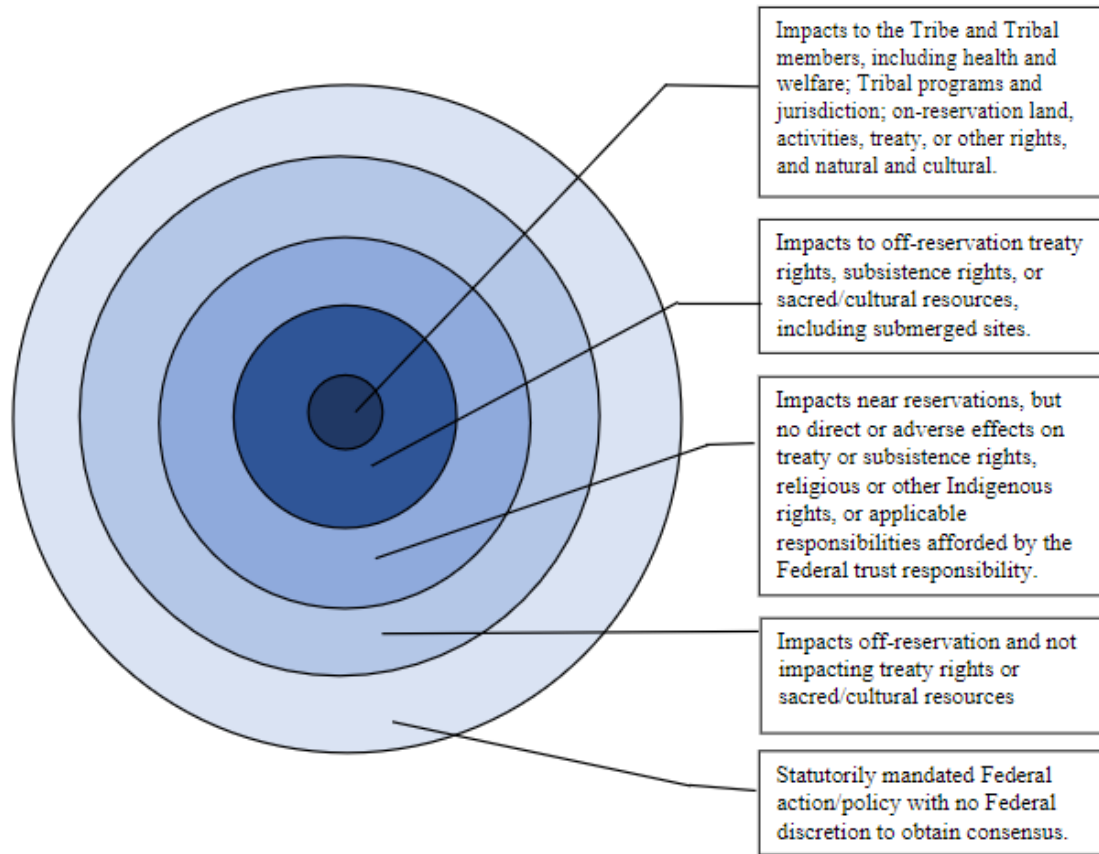


and the full range of impacts from such action, with the goal of achieving consensus on OSMRE's decision on a Proposed Action wherever possible (Figure 1).<sup>81</sup>

- (1) OSMRE should consult Figure 1 to determine the degree of impact on the Tribe to understand the degree to which Tribal consensus should be pursued. A Proposed Action with a likelihood of greater impact on a Tribe will require greater efforts by OSMRE to achieve consensus. For example, a Proposed Action with the potential to impact the health or welfare of a Tribe or Tribal member would require a greater level of consensus than an impact to an off-reservation resource.
- (2) For a Proposed Action that requires a greater degree of consensus, OSMRE may need to:
  - (a) Begin consultation earlier in the planning process.
  - (b) Provide additional opportunities for consultation or reach out to the Department for support, such as requesting services from CADR.
  - (c) Conduct additional targeted outreach to Tribes.
  - (d) Provide longer timeframes for an action that impacts Tribal interests.
- (3) When consensus cannot be reached, OSMRE staff should refer to the Dispute Resolution Process in 512 DM 5.4(G)(1). If the consulting parties encounter an impasse, the parties may utilize the impartial facilitation, mediation, and consensus-building services provided by CADR.

---

<sup>81</sup> 512 DM 4.6 and Figure 1, and 512 DM 5.4(G).



**Figure 1.** Consensus-Seeking Model Showing Increasing Dedicated Efforts for Tribal Consensus in Relation to Agency Action Impact (512 DM 4)

## 11. Post-Consultation Procedures

### a. Document Consultation

On completion of the consultation period, OSMRE staff should:

- (1) Prepare and transmit to a Tribe a record of consultation, including:<sup>82</sup>
  - (a) A summary of Tribal input.
  - (b) An explanation of how Tribal input was addressed.
  - (c) The reasoning for not incorporating Tribal input in an OSMRE decision, if applicable.
- (2) If the action involves a rulemaking, OSMRE will:
  - (a) Include in the preamble to the regulation—
    - A description of the extent of OSMRE’s consultation.
    - A summary of the nature of Tribal concerns.

---

<sup>82</sup> 512 DM 5.5(C).

- OSMRE’s position supporting the need to enter the regulation.
- A statement of the extent to which the concerns of Tribal officials have been met.

(b) Make available to the Director of the Office of Management and Budget any written communications submitted to the agency by Tribal officials.

b. Implement Action

When implementing the Final Federal Action Stage, OSMRE staff should consider:<sup>83</sup>

- (1) Soliciting Tribal feedback.
- (2) The Tribe’s need for training or technical assistance concerning the federal action.

c. Report Consultation

Upon completion of a consultation, OSMRE staff should:

- (1) Prepare a Consultation Summary Report.<sup>84</sup>
- (2) Address any anticipated effects of the Proposed Action on a Tribe or Tribes, OSMRE’s decision rationale, and how the decision is consistent with OSMRE’s federal Tribal trust responsibilities, in all relevant decision documents, including:
  - (a) Environmental Assessments
  - (b) Environmental Impact Statements.
  - (c) Records of decision.
  - (d) Mine plan decision documents.
  - (e) Permits.
- (3) Summarize in OSMRE’s Tribal Consultation Annual Report.
  - (a) Any information deemed sensitive or confidential by a Tribe should not be included in the Annual Report.

For additional information, please contact James Tyree, Division of Regulatory Support Chief, at [jtyree@osmre.gov](mailto:jtyree@osmre.gov).

Attachments: Appendix A.

Issued by:

---

Sterling J. Rideout  
Assistant Director, Program Support Directorate

---

<sup>83</sup> 512 DM 5.5(D).

<sup>84</sup> 512 DM 5.5(E).

## APPENDIX A

### Available Resources for Identifying Potentially Affected Tribes

- » U.S. Bureau of Indian Affairs—U.S. Domestic Sovereign Nations: Land Areas of Federally-recognized Tribes Map gives the user the ability to zoom, change base maps, and identify Tribal lands with the BIA Land Area Representation (LAR). The LAR depicts the external extent of Federal Indian reservations, land held in “trust” by the United States, “restricted fee” or “mixed ownership” tracts for federally-recognized Tribes and individual Indians. <https://bia-geospatial-internal.geoplatform.gov/indianlands/>
- » National Association of Tribal Historic Preservation Officers—Land Area & Name Directory (LAND) database. This database is under development and will contain only information populated by Indian Tribes, representing a fundamentally different approach to a perpetual challenge. <https://www.nathpo.org/land-approach/>
- » U.S. Department of Housing and Urban Development—Tribal Directory Assessment Tool. This tool contains information about Federally recognized Indian Tribes and their geographic areas of interest. Search by street address, county, state, or Tribe. <https://egis.hud.gov/tdat/>
- » U.S. Environmental Protection Agency—Guidance for Using Tribal Boundaries, Areas and Names Resources. The EPA Office of Mission Support (OMS) provides six feature services depicting geographic information for federally recognized tribes. Their associated boundaries and locational information were developed by the U.S. Census Bureau (USCB) and the U.S. Bureau of Land Management, with other field attributes enhanced by OMS to meet Agency needs and use cases. <https://www.epa.gov/geospatial/guidance-using-tribal-boundaries-areas-and-names-resources>
- » Library of Congress—Indian Land Cessions in the United States, 1784-1894. Maps of the land cessions made by American Indian Nations during the interval between the formal establishment of the United States and 1894. These are the same maps utilized by the NPS NAGPRA database. <http://memory.loc.gov/ammem/amlaw/lwss-ilc.html>
- » National Indian Law Library—Indian Claims Commission Materials. The Indian Claims Commission was established by Congress in 1946 to hear claims of 'any Indian Tribe, band, or other identifiable group of American Indians' against the United States. The Map and Index are based on information provided by the Indian Claims Commission. <http://hdl.loc.gov/loc.gmd/g3701e.ct008649>
- » U.S. Forest Service—Tribal Connections. The Federal and Indian Lands and Lands Cessions Viewer is an interactive map that shows the connection between national forests and grasslands, Tribal trust lands and Tribal lands ceded as part of a treaty. The map is used by the Forest Service as one tool of many to better inform land management decisions. <https://usfs.maps.arcgis.com/apps/webappviewer/index.html?id=fe311f69cb1d43558227d73bc34f3a32>
- » Partnership for the National Trails System—Native Lands, National Trails. Native Lands, National Trails (NLNT) is an Indigenous mapping and research project of the Partnership for the National Trails System (PNTS). In collaboration with the Bureau of Land Management, Native Land Digital and Ancestral Lands Conservation Corps, PNTS is pleased to present a suite of resources designed to inform the public and help National Trails and their nonprofit organization partners to advance the National Trails System’s knowledge of Indigenous ancestral Lands through partnership and collaboration with Indigenous communities along National Scenic and Historic Trails. <https://pnts.org/new/native-lands-national-trails/>