

## Course 3—MANDATED CONSULTATION: Relational Strategies for Rules & Regs

### TRAINING AGENDA<sup>1</sup>

**COURSE AGENDA: Lecture Modules & Exercises (Noon – 5 pm **PST**).**

#### Prologue.

- Welcome, Introductions. Housekeeping (*wireless research access*).
- Mandated Consultation: Relationships Precede Rules & Regs.
- The IOITT Formula. Exercise: Selection & Source.

#### Module 1. Rules & Regs—Types & Triggers.

- Prologue: Frameworks, Triggers Identification, Issue-Spotting, and Risk Management.
- Initial Assessment: Tribal Roles (*governance structures, shapes & sizes, and consultation POE*).
- 3 Types: FIL, SMR & Special. Frameworks & Triggers. Intro to Scenarios-Based Planning.
- Exercise: Scenarios Assessment—Types, Triggers, & Who to Call (SMR/E)?

#### Module 2. Conventional Approaches + The One that Works for All.

- Three Approaches for Some. One Approach for All.
- Good News Bad News: Comparing Regulatory (*mandated*), Legal (*risk*), and Relational (*interest-based*).

#### Module 3. The Tools.

- Organizational Relations: GOE/SOE/POE. Exercise: GOE/SOE/POE.
- Interpersonal Relations: Consultation Focal Point. Exercise: POE/POC Selection, People Matching.
- Instrumental Relations: Instruments & Formalized & Rels. Exercise: Creative Premise Instruments.

#### TRAINING OUTCOMES & COMPETENCIES.

- Learn proven relational strategies to overcome mandated consultation challenges and reduce risk.
- Understand the three categories of mandated consultation, and conventional approaches to each.
- Review and categorize regulatory frameworks requiring tribal consultation and identify triggers and issues.
- Practice the steps of an integrated tribal engagement plan—GOE/SOE/POE, assessment, and drafting.
- Learn and apply proven organizational, interpersonal, and instrumental strategies for tribal engagement.
- Review and engage with source material, examples, and readings from multiple disciplines.
- Understand how Federal Indian Law and various legal concepts effect consultation.

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<sup>1</sup> Note: Curriculum may revise in response to feedback regarding MCLE certification needs and/or participant professional demographics.

## READINGS & RESOURCES

NOTE: Resources below are for reference, and will not be tested and are not mandatory. Scenario and exercise materials will be provided during trainings at no additional cost.

### Subject Matter Reading

Timothy Coombs, “Ongoing Crisis Communication—Planning, Managing, and Responding,” 5<sup>th</sup> Edition, Sage Publications (2018) (ISBN-13: 978-1544331959). Ch. 3: The Crisis Mitigation Process: Building Crisis Resistant Organizations; Ch. 4: Crisis Preparing—Part I; Ch. 5: Crisis Preparing—Part II; Ch. 6: Recognizing Crises.

### Examples & Cases

ROW & Easement Lease Renewal (Pipeline)

Bad River Band v. Enbridge (U.S. D.C. Wisconsin, July 23, 2019)  
Complaint published via Turtle Talk Blog, University of Michigan School of Law:  
<https://turtletalk.files.wordpress.com/2019/07/01-complaint-1.pdf>

Treaties—Fish Passage, ROW & State Highway Culverts

“Washington State Loses Big Legal Battle over Salmon Culverts,” Seattle Times, May 19, 2017:  
<https://www.seattletimes.com/seattle-news/washington-state-loses-big-legal-battle-over-salmon-culverts/>

Katie Fairbanks, The Daily News, July 26, 2019:  
[https://tdn.com/news/local/cowlitz-county-tribe-receive-million-in-fish-barrier-removal-grants/article\\_2f65ac6c-01fb-5d10-9e3a-24e223f78c54.html#tncms-source=infinity-scroll-summary-siderail-latest](https://tdn.com/news/local/cowlitz-county-tribe-receive-million-in-fish-barrier-removal-grants/article_2f65ac6c-01fb-5d10-9e3a-24e223f78c54.html#tncms-source=infinity-scroll-summary-siderail-latest)

Sacred Sites & Federal Trust Responsibility

Muskogee Creek v. Porch Band & U.S. DOI (NAGPRA)  
“Muskogee Creek Nation Renews Lawsuit over Desecration of Burial Ground,” Indianz.com, June 5, 2019:  
<https://www.indianz.com/IndianGaming/2019/06/05/muscogee-creek-nation-renews-lawsuit-ove.asp>

### Frameworks & Triggers: Rules & Regs Links

Administrative Procedure Act (APA)

-EPA Agency Overview: <https://www.epa.gov/laws-regulations/summary-administrative-procedure-act>  
-5 U.S. Code Ch. 5: <https://www.law.cornell.edu/uscode/text/5/part-1/chapter-5>

American Indian Religious Freedom Act (AIRFA)

-NHA Issue Overview: [http://www.nativehistoryassociation.org/preservation\\_airfa.php](http://www.nativehistoryassociation.org/preservation_airfa.php)  
-42 U.S. Code § 1996: <https://www.law.cornell.edu/uscode/text/42/1996>

Archaeological Resources Protection Act (ARPA)

-NPS Agency Overview: <https://www.nps.gov/archeology/tools/Laws/ARPA.htm>  
-16 U.S. Code Ch. 1B: <https://www.law.cornell.edu/uscode/text/16/chapter-1B>

Bureau of Land Management IM 2014-094

-BLM Agency Overview & IM 2014-094: <https://edit.blm.gov/policy/im-2014-094>

Clean Air Act (CAA)

-EPA Agency Overview: <https://www.epa.gov/clean-air-act-overview>  
-42 U.S. Code Ch. 85: <https://www.law.cornell.edu/uscode/text/42/chapter-85>

Clean Water Act (CWA)

-EPA Agency Overview: <https://www.epa.gov/laws-regulations/summary-clean-water-act>  
-33 U.S. Code Ch. 26: <https://www.law.cornell.edu/uscode/text/33/chapter-26>

Coastal Zone Management Act (CZMA)

-NOAA Agency Overview: <https://coast.noaa.gov/czm/act/>  
-16 U.S. Code Ch. 33: <https://www.law.cornell.edu/uscode/text/16/chapter-33>

Department of Interior Order No. 3355 (2017)

- DOI Agency Overview: [https://www.doi.gov/sites/doi.gov/files/elips/documents/3355\\_-\\_streamlining\\_national\\_environmental\\_policy\\_reviews\\_and\\_implementation\\_of\\_executive\\_order\\_13807\\_establishing\\_discipline\\_and\\_accountability\\_in\\_the\\_environmental\\_review\\_and\\_permitting\\_process\\_for.pdf](https://www.doi.gov/sites/doi.gov/files/elips/documents/3355_-_streamlining_national_environmental_policy_reviews_and_implementation_of_executive_order_13807_establishing_discipline_and_accountability_in_the_environmental_review_and_permitting_process_for.pdf)
- DOI Order No. 3355 (original): [https://www.doi.gov/sites/doi.gov/files/uploads/3355\\_-\\_streamlining\\_national\\_environmental\\_policy\\_reviews\\_and\\_implementation.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/3355_-_streamlining_national_environmental_policy_reviews_and_implementation.pdf)

DOT Order 5301.1

- DOT Agency Overview: <https://www.transportation.gov/individuals/foia/dot-order-53011-american-indiansalaska-nativestribes>
- Order 5301.1: <https://www.transportation.gov/sites/dot.gov/files/docs/DOT%205301.1.pdf>

Endangered Species Act (ESA)

- FWS Agency Overview: <https://www.fws.gov/endangered/laws-policies/>
- 16 U.S. Code Ch. 35: <https://www.law.cornell.edu/uscode/text/16/chapter-35>

Executive Order 13007

- DOI Agency Overview: <https://www.doi.gov/pmb/cadr/programs/native/Executive-Order-13007>
- E.O. 13007: <https://www.govinfo.gov/content/pkg/FR-1996-05-29/pdf/96-13597.pdf>

Executive Order 13175

- DOE Agency Overview: <https://www.energy.gov/nepa/downloads/eo-13175-consultation-and-coordination-indian-tribal-governments-2000>
- E.O. 13175: <https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf>

Federal Land Policy and Management Act (FLPMA)

- BLM Agency Overview: <https://www.blm.gov/about/laws-and-regulations>
- 43 U.S. Code Ch. 35: <https://www.law.cornell.edu/uscode/text/43/chapter-35>

Fixing America's Surface Transportation Act (FAST Act)

- FHWA Agency Overview: <https://www.fhwa.dot.gov/fastact/>
- Pub. L. 114-94 (Repealed): <https://www.law.cornell.edu/uscode/text/49/24104>

Forest Practices Act (FPA)

- Washington DNR Overview: <https://www.dnr.wa.gov/programs-and-services/forest-practices>
- Washington DAHP Overview: <https://dahp.wa.gov/project-review/forest-practices-act>

National Environmental Policy Act (NEPA)

- EPA Agency Overview: <https://www.epa.gov/laws-regulations/summary-national-environmental-policy-act>
- 42 U.S. Code Ch. 55: <https://www.law.cornell.edu/uscode/text/42/chapter-55>

National Historic Preservation Act (NHPA)

- Advisory Council on Historic Preservation (ACHP) Overview: <https://www.achp.gov/protecting-historic-properties>
- 36 C.F.R. Pt. 800: <https://www.law.cornell.edu/cfr/text/36/part-800>

Nationwide Permits (NWPs)

- ACOE Agency Overview: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>
- 33 C.F.R. Pt. 330: <https://www.law.cornell.edu/cfr/text/33/part-330>

Native American Graves Protection and Repatriation Act (NAGPRA)

- DOI Agency Overview: <https://www.nps.gov/nagpra/>
- 25 U.S. Code Ch. 32: <https://www.law.cornell.edu/uscode/text/25/chapter-32>

Natural Gas Act (NGA)

- FERC Agency Overview: <https://www.ferc.gov/industries/gas/indus-act/pipelines.asp>
- 15 U.S. Code Ch. 15B: <https://www.law.cornell.edu/uscode/text/15/chapter-15B>

Rivers and Harbors Act (RHA)

- FEMA Agency Overview: <https://www.fema.gov/summary-permits-clean-water-act/rivers-harbors-act>
- 30 Stat. 1121 Ch. 425: [https://www.law.cornell.edu/topn/rivers\\_and\\_harbors\\_appropriation\\_act\\_of\\_1899](https://www.law.cornell.edu/topn/rivers_and_harbors_appropriation_act_of_1899)

Surface Mining Control and Reclamation Act (SMCRA)

- NPS Agency Overview: <https://www.nps.gov/subjects/energyminerals/smcra.htm>
- 2006 Amendments: [https://www.law.cornell.edu/topn/surface\\_mining\\_control\\_and\\_reclamation\\_act\\_amendments\\_of\\_2006](https://www.law.cornell.edu/topn/surface_mining_control_and_reclamation_act_amendments_of_2006)

#### Tribal Transportation Improvement Program (TTIP)

- FHWA Agency Overview: <https://fh.fhwa.dot.gov/programs/ttp/planning/ttip.htm>
- 23 C.F.R. § 170: <https://www.law.cornell.edu/cfr/text/23/part-170>
- 23 C.F.R. § 450.316: <https://www.law.cornell.edu/cfr/text/23/450.316>

#### U.S. Forest Service Organic Administration Act (OAA)

- FS Agency Overview: <https://www.fs.fed.us/forestmanagement/aboutus/histperspective.shtml>
- 16 U.S. Code § 527: <https://www.law.cornell.edu/uscode/text/16/527>

#### Washington State Office of the Attorney General Centennial Accord Plan

- WA OAG Tribal Consent and Consultation Policy: <https://www.atg.wa.gov/tribal-consent-consultation-policy>