

We believe that in the manual & handbook it is important to define the terms used in the primary planning statute for National Forest System Lands:

43 USC 1712(b) *Coordination of plans for National Forest System lands with **Indian land use planning** and management program for purposes of development and revision. In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for **Indian tribes** by, among other things, considering the policies of approved tribal land resource management programs.* (36 C.F.R. § 219.4(a)2, 25 USC Chapters 33 and 39)

Forest Service Manual 1900

1920.32

The responsible official shall ~~provide to federally recognized Indian Tribes and Alaska Native Corporations the opportunity to undertake consultation~~ **consult with tribal officials** consistent with Executive Order 13175 of November 6, 2000, and 25 U.S.C. 450 **et seq. 25 USC 3109**, (36 CFR 219.4(a)). **With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.** Consultation for plans ~~should be~~ **are conducted** in accordance with FSH 1509.13 – American Proposed FSM 1920, Version—02/14/2013. **In addition, the U.S. Forest Service will partner with the Bureau of Indian Affairs the Tribes primary fiduciary to meet the federal governments Indian Trust obligation for planning and implementation of Indian programs.**(43 USC 1712(b), 25 USC Chapter 33 and 39, 25 USC 450 et seq)

Forest Service Handbook 1909.12

05 - Definitions:

1. We accept the definition and citation for “Indian Tribe”
2. Indian land means land title to which is held by–
 - a. the United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe, or
 - b. an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation; (25 USC 3103(10))
3. Indian Land Use Plan: a land use plan approved by the Bureau of Indian Affairs, Regional Director, guided by the values of Indian beneficial owners (25 USC Chapters 33 and 39)

Indian Consultation is cited in the section concerning “Assessing Tribal Importance” EO 13175 that requires consultation with “Tribal officials ”

Tribal officials means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

‘tribal organization’ means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is

democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: (25 USC 450(b)(1))

A “Tribal governing body” means the group recognized by the Secretary as having the authority to speak for the Tribe. The term includes tribal councils, general councils, business committees, boards of directors, business councils or whatever group the Indian tribe has empowered to speak on its behalf.

Tribal Consultation to “Consultation with Tribal Officials” and include the :

On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms (EO 13175).

Chapter 10- 11

4. Develop relationships with interested parties to facilitate public and government participation among government entities, Indian Tribes, private landowners, and other partners and interested parties. **Similarly must include Indian beneficial landowners**

Chapter 10-11.1(a)

(2) Coordinate with or provide opportunities for the regional forester, Agency staff from State and Private Forestry and Research and Development, federally recognized Indian Tribes and Alaska Native Corporations, other governmental and non-governmental parties, and the public to provide existing information for the assessment.

This is an inherent Federal fiduciary Trust obligation not a Tribal requirement performed by the BIA Regional Director under 25 USC Chapters 33 and 39 for Indian beneficial land owners. (43 USC 1712(b)). The section could be revised to simply apply by reference the appropriate statutes as follows **and Indian beneficial land owners (43 USC 1712(b), 25 USC Chapters 33 and 39).**

11.13 Consultation with Tribal Officials

Include reference to (EO 13175)

13.14 (6)

Include Inter-Tribal Organizations

Forest-tribal-BIA relations

13.6

External information sources include:

2. Comprehensive plans of Indian Tribes **beneficial owners (43 USC 1712(b) & 25 USC Chpt 33 & 39)**, States, counties or cities or plans of these governments focused on recreation, infrastructure, or transportation.

13.7(1)

Include intertribal organizations

13.7(2)

This section should separate animals and fish. Take is not regulated by the U.S. Forest Service for valuable Indian Assets. The harvesting of animals and fish is an important Indian right. A separate sentence to the effect:

The benefit of managing habitat to protect and enhance the populations of fish and wildlife (25 USC 3103(7) & EO 13443)

13.7(4)

Conditions and trends of resources that affect areas of Indian importance considering Indian and tribal rights.

Add to the last paragraph. The responsible official shall coordinate areas of important Indian and tribal importance. The management of these areas shall reflect the required coordination and partnership with Indian people and the Bureau of Indian Affairs (43 USC 1712(b))

13.7 (page 60)

4. Tribal forest protection is recognized as an Indian Trust obligation of the Bureau of Indian Affairs and the U.S. Forest Service (25 USC 3115(a), 16 USC 594 and 25 USC 3109)

5. Indian Land Use Plans (43 USC 1712(b) – 25 USC Chpt 33 & 39)

6. Indian Programs (25 USC 450 et. seq. and 25 USC 3109)

13.9

Land ownership is the basic pattern of public and private ownership of both surface and subsurface estates. **Indian Trust and restricted land holdings to surface, subsurface, as well as rights to animals and fish.**

External information sources include:

1. Plans, reports, or other information from **BIA**/Indian Tribes (43 USC 1712(b)), States, counties, or other local governments on land ownership, status and use, access, or transportation. This may include spatial data or maps maintained by these governments.

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Amendments/Revisions may be required to meet Indian Trust obligations (17 USC 1712(b))

21.22

(36 CFR 219.4(a)(2); FSH 1909.12, chapter 40, sec. 44; FSH 1509.13, chapter 10)

The responsible official shall engage in formal, meaningful consultation and collaboration with Tribal officials on new plans or plan revisions as part of the Federal government-to-government

relationship and Executive Order 13175 (**43 USC 1712(b)**), Consultation and Coordination with Indian Tribal Governments. FSH 1509.13, chapter 10, and FSH 1909.12 and Chapter 40 - Key Processes Supporting Land Management Planning, provide guidance regarding consultation and coordination with Indian Tribes and Alaska Native Corporations.

22.32

4):

a. Engagement of communities, individuals, Indian Tribes, **Indian organizations**, and others early in the participation process, to define existing and desired roles and contributions of the plan area;

23

(3) Habitat protection, improvement and connectivity to Indian lands in order to ensure that particular species that are important to the enhancement of the Indian Trust (25 USC 3103(7)) are managed for the benefit of Indian people (43 USC 1712(b)).

23.13(b)

(5) add BIA-following Tribes

23.22(c)

The responsible official shall identify the contribution of fish and wildlife to the economic and social sustainability coordinating with Indian Plan and programs (43 USC 1712(b)).

23.22i

The USFS and the BIA shall partner to manage areas of importance to Indian and Tribal interests in a consistent and equitable manner in an effort to protect and improve important Indian assets (43 USC 1712(b))

23.22p

At a minimum, the responsible official shall review and consider the plans, planning efforts, and land use policies of ~~federally recognized Indian Tribes, Alaska Native Corporations~~ **for Indian Lands (43 USC 1712(b))**, other Federal agencies, and State and local governments and document the review in the EIS (36 CFR 219.4(b)). As a result of the review, problems and opportunities affecting multiple ownerships can be recognized

43.15

The responsible official should also take into account opportunities to design and carry out monitoring **programs** with Indian Tribes or Alaska Native Corporations or **Intertribal organizations** to the extent practicable and appropriate (36 CFR 219.12(c)(3)(iii)). Participation by Indian Tribes and Alaska Native Corporations in a collaborative process is voluntary and would supplement, not replace consultation.

43.16

(2) For plan development or revision, the responsible official shall coordinate with Indian land use planning and management programs. In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs. ~~review planning and land use policies of federally recognized Indian Tribes (43 U.S.C. 1721(b), 25 USC Chapter 33 and 39)~~ The U.S. Forest Service recognizes that this requirement is part of the unique Indian Trust obligation to Indian people and their assets held in public and Indian Trust as well as land with Indian restricted rights. The U.S. Forest Service and the BIA shall coordinate their efforts to maximize the benefit to the Indian and Public Trust.

Above guidance relates to specific statutory requirements as it relates to the US Forest Service, the BIA and Indian beneficiaries. We believe this is the most important section of the U.S. Forest Service guidance, as it can clearly indicate that the U.S. Forest Service and the BIA as the primary fiduciary for Indians have a responsibility to partner.

Separate Point Shown Below:

~~Alaska Native Corporations, other Federal agencies, and State and local governments, where relevant to the plan area.~~ The results of these reviews shall be displayed in the environmental impact statement (EIS) for the plan (40 CFR 1502.16(c), 1506.2). The review shall include consideration of:

- (i) The objectives of federally recognized Indian Tribes, Alaska Native Corporations, the Bureau of Indian Affairs, other Federal agencies, and State and local governments, as expressed in their plans and policies;**

Examples include planning efforts of ~~Indian Tribes and Alaska Native Corporations~~, States, counties, local governments, **Indian Tribes, Alaska Native Corporations, Intertribal organizations, the Bureau of Indian Affairs**, other federal agencies, community wildfire protection planning groups, soil and water conservation districts, watershed groups, or other non-governmental organizations.

43.17a

(2) Coordinate with or provide opportunities for the regional forester, agency staff from State and Private Forestry and Research and Development, **Bureau of Indian Affairs, Indian beneficial owners, federally recognized Indian Tribes and Alaska Native Corporations, intertribal organizations**, other governmental and non-governmental parties and the public to provide existing information for the assessment. (36 CFR 219.6, **43 USC 1712(b)**, **36 C.F.R. § 219.4(a)2**, and **EO 13175**)

(iii) Opportunities to design and carry out monitoring **while promoting Indian Self Governance** with federally recognized Indian Tribes ~~and~~ Alaska Native Corporations, **Intertribal organizations and the Bureau of Indian Affairs**.

(36 CFR 219.12(c), **43 USC 1712(b)**, **25 USC 3109**, **25 USC 450 et. seq.**, **36 C.F.R. § 219.4(a)2**, ,and **EO 13175**)

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The Washington Office, Director, Office of Tribal Relations, is responsible for advice and counsel on the government-to-government relationships and consultation with **tribal officials** of federally recognized Indian Tribes, **intertribal organizations** and Alaska Native Corporations.

(2) Consultation with federally recognized Indian Tribes and Alaska Native Corporations. **The Department recognizes that the Federal Government has certain trust responsibilities to Indian people and their assets held in public and Indian trust. The federal government maintains ~~and~~ a unique legal relationship with federally recognized Indian Tribes. The responsible official shall honor the government-to-government relationship between federally recognized Indian Tribes and the Federal government. The responsible official shall provide to federally recognized Indian Tribes, ~~and~~ Alaska Native Corporations and intertribal organizations the opportunity to undertake consultation consistent with Executive Order 13175 of November 6, 2000, ~~and~~ 25 U.S.C. 450 et. seq., 25 USC 3109 note.** (36 CFR 219.4(a))

The Federal Government's government-to-government relationship with federally recognized Indian Tribes and Alaska Native Corporations is often based on treaties and intergovernmental agreements, and requires consultation. **The Bureau of Indian Affairs as the primary fiduciary for Indian people supports Indian Self-determination through federal interagency agreements with the U.S. Forest Service (25 USC 3109 and 25 USC 450 et. seq.).** Consultation during the plan revision should be in accord with FSH 1509.13 - American Indian and Alaska Native Relations Handbook, chapter 10 - Consultation with Tribes. Identify plan monitoring questions and associated indicators for the plan monitoring program as part of formal tribal consultation on the plan.

IMPORTANCE OF U.S. FOREST SERVICE – BIA PARTNERSHIP
TO MEET THE FEDERAL GOVERNMENT’S INDIAN TRUST OBLIGATION
TO INDIAN PEOPLE AND THEIR ASSETS

	PUBLIC “TRUST” LAND		INDIAN TRUST & RESTRICTED LANDS (INDIAN LAND)
BENEFICIAL OWNERS	INDIANS & NON-INDIANS		INDIANS-(TRIBAL TRUST/TRIBAL RESTRICTED) INDIANS & NON INDIANS - ALLOTMENTS
PRIMARY CORPUS	LAND WITH RESOURCES ****HABITAT****		INDIANS NON-THREATENED/ENDANGERED FISH AND WILDLIFE LAND WITH RESOURCES
MISSION	PROTECT/IMPROVE LAND WITH RESOURCES ****JOBS****		IMPROVE INDIAN QUALITY OF LIFE PROTECT/IMPROVE LAND WITH RESOURCES PROMOTE INDIAN ECONOMIC OPPORTUNITIES
PRIMARY FIDUCIARY	U.S. FOREST SERVICE		BUREAU OF INDIAN AFFAIRS
SHARED TRUST OBLIGATION	INDIANS & THEIR ASSETS		INDIANS & THEIR ASSETS
COMMON GOAL			PROMOTE INDIAN SELF GOVERNANCE
UNIQUE INDIAN MECHANISMS “INDIAN CONSENSUAL”			INDIAN TRUST ACCOUNTS (25 USC § 3109) PARTNERSHIP FOR INDIAN SELF-DETERMINATION (25 USC 450 et. seq.)
SHARED			FEDERAL INDIAN TRUST OBLIGATION
COMMON LIABILITIES			FOREST HEALTH THREATS & WILDLAND FIRE

U.S. FOREST SERVICE

BIA (Primary Trustee to American Indians and Alaska Natives)

PARTNERSHIP TO BENEFIT INDIAN PEOPLE AND THEIR ASSETS HELD IN INDIAN TRUST AND RESTRICTED STATUS AND HELD IN THE PUBLIC TRUST
PROMOTING INDIAN SELF GOVERNANCE
RECOGNIZING OUR UNIQUE RELATIONSHIP WITH INDIAN PEOPLE, THEIR ASSETS, AND THEIR GOVERNMENTAL BODIES
RESPECTING AND PARTNERING WITH TRIBAL OFFICIALS AND INDIAN BENEFICIAL OWNERS

Federal Land Policy Management Act
43 USC 1712(B)
INDIAN PLANS/POLICIES/PROGRAMS
INHERENT FEDERAL TRUST OBLIGATION OF
FEDERAL LAND MANAGERS (USFS/BIA)
FEDERAL SHARED INDIAN TRUST OBLIGATION
TO INDIANS
& THEIR ASSETS "INTRUSTED" TO THE FEDERAL GOVERNMENT
IN PUBLIC OR INDIAN TRUST OR INDIAN RESTRICTED STATUS

25 USC § 3115A
16 USC §§ 7301-7304
16 USC §§ 583 et. seq.
Landscape Management

INDIAN PLANS/PROGRAMS/INDIAN SELF-DETERMINATION (ISD)
INDIAN **LAND PLANNING/PROGRAM LAW** ISD LAW
BIA INDIAN PRIMARY FIDUCIARY INDIAN TRUST OBLIGATION
25 USC CHAPTER 33 AND 39, 25 USC §§ 450 et. seq.
25 USC § 3109 –USFS/BIA PARTNERSHIP
****TO PROMOTE INDIAN SELF GOVERNANCE***

EO 13175
Consultation
REQUIRES PARTNERSHIP OF FEDERAL TRUSTEES BIA/USFS

INDIAN PLANNING/PROGRAMS & ISD REGULATIONS
25 CFR PART 163, 25 CFR PART 900
25 CFR § 163.35 IMPLEMENTING REGULATION 25 USC § 3109

INDIAN LAND USE AND MANAGEMENT PROGRAM POLICIES
INDIAN PLANNING/PROG. POLICIES INDIAN SELF-DETERMINATION POLICIES
53 IAM (0-12), 30 BIAM 10 13 IAM-20 BIAM SUPPLEMENTS
HANDBOOKS AND SUPPLEMENT INTERDEPARTMENTAL HANDBOOK
CHAPTER 0 – IMPLIMENTS 25 CFR § 163.35
56 IAM (1 & 2)

36 C.F.R. § 219.4(a)2

FSM 1900 Chapter 1920
FSH 1920

NATIONAL FOREST SYSTEM LAND PLAN

INDIAN LAND USE PLAN

BIA/USFS –FOREST HEALTH & PROTECTION NATIONAL AGREEMENTS
COMMERCIAL CONTRACTS-AGREEMENTS FOR VENDORS

INDIAN (LAND MANAGEMENT) PROGRAMS
UNIQUE MECHANISMS THAT PROMOTE INDIAN SELF GOVERNANCE-
(ie TRUST DEPOSITS, ISD AWARDS)
****FEDERAL INTERAGENCY AGREEMENT**** (facilitates 53 IAM Chapter 0)
BIA/USFS –FOREST HEALTH & PROTECTION NATIONAL AGREEMENTS

PROVIDING BETTER FEDERAL GOVERNMENT REPRESENTATION, IN AN EFFORT TO MEET OUR SHARED INDIAN TRUST OBLIGATION
(FEDERAL GOVERNMENT "OFFICIALS USFS/BIA") TO (TRIBAL GOVERNMENT – "TRIBAL OFFICIALS") – EO 13175