

[DISCUSSION DRAFT]117TH CONGRESS
1ST SESSION**H. R.** _____

To prescribe procedures for effective consultation and coordination by Federal agencies with federally recognized Tribal Governments regarding Federal Government actions that impact Tribal lands and interests to ensure that meaningful Tribal input is an integral part of the Federal decision-making process.

IN THE HOUSE OF REPRESENTATIVES

Mr. GRIJALVA introduced the following bill; which was referred to the Committee on _____

A BILL

To prescribe procedures for effective consultation and coordination by Federal agencies with federally recognized Tribal Governments regarding Federal Government actions that impact Tribal lands and interests to ensure that meaningful Tribal input is an integral part of the Federal decision-making process.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Requirements, Expectations, and Standard Procedures

1 for Effective Consultation with Tribes Act” or the “RE-
2 SPECT Act”.

3 **SEC. 2. TABLE OF CONTENTS.**

4 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Findings and purposes.
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- Sec. 5. Definitions.

TITLE I—STANDARDS FOR CONSULTATION

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TITLE II—CONSULTATION PROCEDURES

- Sec. 201. Assessing Tribal impacts.
- Sec. 202. Consultation stage.
- Sec. 203. Decision stage for proposed activity.
- Sec. 204. Decision stage for proposed regulatory action.

TITLE III— DOCUMENTATION AND REPORTING

- Sec. 301. Documentation and reporting.

TITLE IV— IMPLEMENTATION AND TRAINING

- Sec. 401. Designated agency official.
- Sec. 402. Consultation policy.
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TITLE V—TRIBAL SOVEREIGNTY

- Sec. 501. Tribal sovereignty.
- Sec. 502. Sensitive Tribal information.

TITLE VI—JUDICIAL REVIEW

- Sec. 601. Judicial review.

5 **SEC. 3. FINDINGS AND PURPOSES.**

6 (a) FINDINGS.—Congress finds that—

7 (1) the United States has a unique, legally af-
8 firmed government-to-government relationship with
9 Tribal Governments, as set forth in the Constitution

1 of the United States, treaties, statutes, Executive
2 Orders, and court decisions;

3 (2) the United States recognizes the right of
4 Tribal Governments to self-govern and supports
5 Tribal sovereignty and self-determination;

6 (3) the United States, through treaties, stat-
7 utes, and historical relations, has defined a unique
8 trust relationship and responsibility to protect and
9 support Tribal Governments;

10 (4) owing to this trust relationship, the United
11 States has a responsibility to consult with Tribal
12 Governments on a government-to-government basis
13 when formulating policies and undertaking activities
14 that may have impacts on Tribal lands and interests;

15 (5) procedures for such consultation should be
16 designed and structured to give Tribal Governments
17 the opportunity to provide meaningful, informed
18 input throughout the development and decision-mak-
19 ing processes;

20 (6) increasing Federal and Tribal capacities for
21 effective consultation while building institutional
22 knowledge fosters greater efficiency and will benefit
23 future actions;

24 (7) the consultation process should be formal-
25 ized according to best practices that are designed

1 and administered by the agency and that fulfill the
2 legal requirements mandated by this Act;

3 (8) consulting with Tribal Governments during
4 the formulation of long-term management plans re-
5 duces the likelihood of project delays and increases
6 the efficiency of project implementations; and

7 (9) effective consultation demands ongoing, re-
8 spectful communication between agencies and Tribal
9 Governments.

10 (b) PURPOSES.—The purposes of this Act are—

11 (1) to establish and support a process of reg-
12 ular, meaningful consultation and collaboration with
13 Tribal Governments in the initiation of Federal ac-
14 tivities and the development of Federal policies and
15 regulations that impact Tribal lands and interests;

16 (2) to strengthen the United States' govern-
17 ment-to-government relationship with Tribal Govern-
18 ments; and

19 (3) to establish minimum standard procedures
20 to ensure the above goals are achieved.

21 **SEC. 4. SENSE OF CONGRESS.**

22 It is the sense of Congress that—

23 (1) consultation constitutes more than simply
24 notifying an Tribal Government about a planned un-
25dertaking;

1 (2) effective, meaningful consultation requires a
2 two-way exchange of information, a willingness to
3 listen, an attempt to understand and to genuinely
4 consider each other’s opinions, beliefs, and desired
5 outcomes, and a seeking of agreement on how to
6 proceed concerning the issues at hand; and

7 (3) consultation can be considered effective and
8 meaningful when each party demonstrates a genuine
9 commitment to learn, acknowledge, and respect the
10 positions, perspectives, and concerns of the other
11 parties and when Federal agencies accommodate
12 Tribal concerns to the extent feasible and consistent
13 with applicable law.

14 **SEC. 5. DEFINITIONS.**

15 For the purposes of this Act:

16 (1) **ACTIVITY.**—The term “activity” means any
17 plan, project, or program funded in whole or in part
18 under the direct or indirect jurisdiction of a Federal
19 agency, including—

20 (A) those carried out by or on behalf of an
21 agency;

22 (B) those carried out with Federal finan-
23 cial assistance;

24 (C) those requiring a Federal permit, li-
25 cense, or approval; and

1 (D) those subject to state or local regula-
2 tion administered pursuant to a delegation or
3 approval by a Federal agency.

4 (2) AGENCY.—The term “agency” means any
5 authority of the United States that is an agency
6 under section 551 of title 5, United States Code.

7 (3) LEAD AGENCY.—The term “lead agency”
8 means a designated agency that will fulfill the collec-
9 tive consultation responsibilities under this Act if
10 more than one agency is involved in an activity or
11 regulatory action. Any agency that does not des-
12 ignate a lead agency shall remain individually re-
13 sponsible for the consultation responsibilities of that
14 agency under this Act.

15 (4) MEMORANDUM OF AGREEMENT.—The term
16 “memorandum of agreement” means a document
17 that records the terms and conditions agreed upon
18 by an agency, or lead agency, and a Tribal Govern-
19 ment or designated Tribal Leader Task Force
20 through the consultation process regarding an activ-
21 ity or regulatory action.

22 (5) NEW DISCOVERY.—The term “new dis-
23 covery” means any unexpected development that oc-
24 curs during the course of an activity, such as the
25 discovery of a new archeological site, unanticipated

1 impacts on organisms or ecosystems, or the realiza-
2 tion of unintended consequences that may have im-
3 pacts on Tribal lands and interests.

4 (6) REGULATORY ACTION.—The term “regu-
5 latory action” means any regulation, policy, guid-
6 ance, or grant funding formula change that is pro-
7 posed by an agency.

8 (7) SACRED SITE.—The term “sacred site”
9 means any geophysical or geographical area or fea-
10 ture that is identified by a Tribal Government—

11 (A) as sacred by virtue of its established
12 religious significance to, or ceremonial use by,
13 a Tribal religion; or

14 (B) to be of established cultural signifi-
15 cance.

16 (8) STANDARD METHOD OF COMMUNICATION.—
17 The term “standard method of communication”
18 means the mode of communication that the agency
19 uses in the typical course of communicating with
20 persons outside the Federal Government.

21 (9) STANDARD PROCESS.—The term “standard
22 process” means a process for Federal agency and
23 Tribal Government interactions agreed to by both
24 parties through consultation and certified in a
25 memorandum of agreement that applies to certain

1 specified activities or regulatory actions, or to lim-
2 ited categories of activities or regulatory actions.

3 (10) TRIBAL GOVERNMENT.—The term “Tribal
4 Government” means the governing body of any In-
5 dian or Alaska Native Tribe, band, nation, pueblo,
6 village, community, component band or component
7 reservation, individually identified (including par-
8 enthetically) in the list published most recently as of
9 the date of enactment of this Act pursuant to sec-
10 tion 104 of the Federally Recognized Indian Tribe
11 List Act of 1994 (25 U.S.C. 5131).

12 (11) TRIBAL IMPACT.—The term “Tribal im-
13 pact” means any Federal action that may have an
14 impact on one or more Tribal Governments on mat-
15 ters, including—

16 (A) Tribal cultural practices, lands, re-
17 sources, or access to traditional areas of cul-
18 tural or religious importance;

19 (B) Tribal treaty-protected rights;

20 (C) the ability of a Tribal Government to
21 govern or provide services to its members;

22 (D) a Tribal Government’s formal relation-
23 ship with the Federal Government; or

1 (E) the consideration of the Federal Gov-
2 ernment's trust responsibility to Tribal Govern-
3 ments.

4 (12) TRIBAL LEADER TASK FORCE.—The term
5 “Tribal Leader Task Force” means a task force that
6 is collaboratively determined by affected Tribal Gov-
7 ernments.

8 **TITLE I—STANDARDS FOR** 9 **CONSULTATION**

10 **SEC. 101. STANDARDS FOR CONSULTATION.**

11 (a) SCOPE.—Consultation with Tribal Governments
12 shall occur before undertaking any proposed Federal activ-
13 ity or finalizing any Federal regulatory action that may
14 have Tribal impacts. Additionally, consultation with Tribal
15 Governments shall occur for all activities that would affect
16 any part of any Federal land that shares a border with
17 Indian Country, as defined in section 1151 of title 18,
18 United States Code, but is not limited to activities on such
19 lands.

20 (b) LIMITATION.—Nothing in this Act shall—

21 (1) exempt an agency from additional consulta-
22 tion required under any other law or from taking
23 any other consultative actions as required by any
24 other law or agency prerogative in addition to those
25 required by this Act; or

1 (2) preclude an agency from additional con-
2 sultation that complies with agency regulations for
3 consultation, advances agency consultation practices,
4 or supports agency efforts to build or strengthen
5 government-to-government relationships with Tribal
6 Governments.

7 **TITLE II—CONSULTATION**
8 **PROCEDURES**

9 **SEC. 201. ASSESSING TRIBAL IMPACTS.**

10 As early as possible in the planning stage of an activ-
11 ity or a regulatory action, the agency, or lead agency,
12 shall—

13 (1) prepare a Tribal Impact Statement that
14 identifies any potential Tribal impacts of the pro-
15 posed activity or regulatory action. At a minimum,
16 the Tribal Impact Statement shall include the scope
17 of the activity or regulatory action being considered,
18 including any geographic areas important to Tribal
19 Governments that might be affected, as well as a list
20 of all affected Tribal Governments;

21 (2) make a good faith effort to identify areas
22 that contain sacred sites important to Tribal Gov-
23 ernments, whether such sacred sites are explicitly
24 known to an agency or not; and

1 (3) publish the completed Tribal Impact State-
2 ment in the Federal Register before any further ac-
3 tion on the proposed activity or regulatory action.

4 **SEC. 202. CONSULTATION STAGE.**

5 (a) INITIAL CONSULTATION OUTREACH.—The agen-
6 cy, or lead agency, shall—

7 (1) transmit, via the agency’s standard method
8 of communication, a formal request for a consulta-
9 tion meeting, along with along with a copy of the
10 proposed activity or regulatory action as well as copy
11 of the Tribal Impact Statement as prepared accord-
12 ing to section 201, to each affected Tribal Govern-
13 ment identified in the Tribal Impact Statement. In
14 the case of a proposed activity, the documents shall
15 also be transmitted to relevant Tribal governmental
16 agencies (including the Tribal Historic Preservation
17 Officer or cultural resource manager), and relevant
18 non-Tribal stakeholders (including the State Historic
19 Preservation Officer and local governments that
20 have jurisdiction on any affected land via agreement
21 with the agency);

22 (2) at the request of an affected Tribal Govern-
23 ment, transmit, via the agency’s standard method of
24 communication, a copy of the Tribal Impact State-

1 ment and the letter requesting a consultation meet-
2 ing to non-governmental Tribal stakeholders;

3 (3) not request consultation with non-govern-
4 mental Tribal stakeholders without the written con-
5 sent of the affected Tribal Government;

6 (4) follow up within 5 business days to ensure
7 receipt of the documents by all intended recipients;
8 and

9 (5) if the documents were not received by any
10 of the intended recipients, retransmit all materials
11 via a form of communication that is suitable to the
12 recipient.

13 (b) **NON-RESPONSE TO CONSULTATION OUT-**
14 **REACH**—If, after a good faith effort, the agency, or lead
15 agency, fails to engage an affected Tribal Government in
16 the consultation process, the agency, or lead agency, may
17 conclude its consultation efforts by providing the Tribal
18 Government with a written notification and explanation
19 for its decision, signed by the head of the agency, or lead
20 agency, which shall be made part of the official consulta-
21 tion record record as described in section 401(a).

22 (c) **MEETING ARRANGEMENTS.**—

23 (1) The agency, or lead agency, shall negotiate
24 with each affected Tribal Government to determine
25 the format, agenda, and goals of a consultation

1 meeting, and shall keep thorough documentation of
2 all steps taken to engage the affected Tribal Govern-
3 ment in consultation meetings.

4 (2) In appropriate circumstances, a Tribal
5 Leader Task Force may be formed, to aid in con-
6 sultation on activities that are regional in scope or
7 that affect multiple Tribal Governments. To the
8 maximum extent possible, the Tribal Leader Task
9 Force shall represent a cross-section of Tribal inter-
10 ests with respect to the proposed activity or regu-
11 latory action.

12 (d) CONSULTATION MEETING REQUIREMENTS.—A
13 consultation meeting shall—

14 (1) begin with confirmation of the format,
15 agenda, and goals of the meeting, with adequate
16 time scheduled for introductions and any ceremonial
17 proceedings;

18 (2) be structured to allow for meaningful and
19 respectful interaction throughout the meeting among
20 all meeting participants; and

21 (3) conclude with planning for the next meet-
22 ing, if necessary, as well as confirmation of the
23 method of any potential interim communications be-
24 tween all parties participating in the consultation.

1 (e) CONCLUSION OF CONSULTATION WITH A MEMO-
2 RANDUM OF AGREEMENT.—

3 (1) Except as provided by subsection (b), sub-
4 section (f), and subsection (g), consultation shall
5 conclude only upon the execution of a memorandum
6 of agreement signed by the head of the agency, or
7 lead agency, and the head of the affected Tribal
8 Government or the members of the designated Trib-
9 al Leader Task Force.

10 (2) The memorandum of agreement—

11 (A) may address multiple activities or reg-
12 ulatory actions if the activities or regulatory ac-
13 tions are similar and repetitive in nature, or are
14 multistate or regional in scope, or where routine
15 management activities are undertaken at Fed-
16 eral installations, facilities, or other land man-
17 agement units;

18 (B) may establish standard processes for
19 certain categories of activities and regulatory
20 actions determined through consultation and
21 defined in the memorandum of agreement;

22 (C) shall, in the case of a proposed activ-
23 ity—

1 (i) include a provision for monitoring
2 and reporting on the implementation of the
3 activity;

4 (ii) include provisions for reconsider-
5 ation if the activity has not been completed
6 within a specified time; and

7 (iii) include provisions to address new
8 discoveries, which may include halting the
9 activity and returning to the consultation
10 stage.

11 (3) The signed memorandum of agreement may
12 be amended at any time by the joint approval of all
13 signatories.

14 (f) CONCLUSION OF CONSULTATION WITHOUT A
15 MEMORANDUM OF AGREEMENT.—

16 (1) The agency, or lead agency, shall make a
17 good faith effort through sustained interaction and
18 collaboration to reach a consensus resulting in a
19 memorandum of agreement.

20 (2) If, after a good faith effort, the agency, or
21 lead agency, determines that further consultation
22 will not be productive, it may conclude consultation
23 by providing the Tribal Government with a written
24 notification and explanation for its decision, includ-
25 ing identification of any legal, policy, or factual bar-

1 riers that prevented the agency from reaching agree-
2 ment with the affected Tribal Government, signed by
3 the head of the agency, or lead agency, which shall
4 be made part of the official consultation record
5 record as described in section 401(a).

6 (g) TRIBAL WITHDRAWAL FROM CONSULTATION.—
7 An affected Tribal Government may at any point decide
8 to withdraw from the consultation process. In such case,
9 the agency, or lead agency, shall provide the affected Trib-
10 al Government with the opportunity to submit a written
11 statement, explanation, or comment on the consultation
12 proceedings that will become part of the official consulta-
13 tion record as described in section 401(a).

14 **SEC. 203. DECISION STAGE FOR PROPOSED ACTIVITY.**

15 (a) PROPOSAL DOCUMENT.—Upon completion of the
16 consultation stage pursuant to section 202, the agency,
17 or lead agency, shall—

18 (1) compile a proposal document consisting of
19 the plan for the proposed activity, its anticipated
20 Tribal impacts, and any signed memorandum of
21 agreement;

22 (2) include sufficient supporting documentation
23 to the extent permitted by law to enable any review-
24 ing parties to understand its basis;

1 (3) transmit, via the agency's standard method
2 of communication, a copy of the proposal document
3 to the affected Tribal Governments, including those
4 that withdrew from the process;

5 (4) follow up within 5 business days to ensure
6 receipt of the proposal document by all intended re-
7 cipients;

8 (5) if the proposal document was not received
9 by an intended recipient, retransmit all material via
10 a form of communication that is suitable to the re-
11 cipient; and

12 (6) after the verified receipt of the proposal
13 document by all intended recipients, the proposal
14 document shall be published in the Federal Register.

15 (b) PUBLIC COMMENT PERIOD.—The agency, or lead
16 agency, shall provide a period of not less than 90 days
17 after publication of the proposal document in the Federal
18 Register for public comment. A 30-day extension of the
19 90-day period shall be automatically granted upon request
20 by an affected Tribal Government.

21 (c) PRELIMINARY DECISION DOCUMENT.—After ex-
22 piration of the public comment period pursuant to sub-
23 section (b), the agency, or lead agency, shall prepare a
24 preliminary decision letter, signed by the head of the agen-
25 cy, or lead agency, that shall—

1 (1) state the decision to proceed or not proceed
2 with the activity;

3 (2) state the rationale for the decision;

4 (3) list any changes to the proposed activity
5 made in response to the comments filed pursuant to
6 subsection (b);

7 (4) specifically address any points where the de-
8 cision conflicts with the request of an affected Tribal
9 Government, including a detailed explanation of why
10 the request was disregarded;

11 (5) transmit, via the agency's standard method
12 of communication, a copy of the preliminary decision
13 letter to the affected Tribal Governments, including
14 those that withdrew from the process;

15 (6) follow up within 5 business days to ensure
16 receipt of the preliminary decision letter by all in-
17 tended recipients; and

18 (7) if the preliminary decision letter was not re-
19 ceived by an intended recipient, retransmit the mate-
20 rial via a form of communication that is suitable to
21 the recipient.

22 (d) TRIBAL RESPONSE PERIOD.—The agency, or
23 lead agency, shall provide a period of no less than 45 days
24 after issuance of the preliminary decision letter for a re-
25 sponse by an affected Tribal Government.

1 (e) FINAL DECISION DOCUMENT.—After expiration
2 of the Tribal Response Period pursuant to subsection (d),
3 the agency, or lead agency, shall prepare a letter stating
4 the final decision of the agency, signed by the head of the
5 agency, or lead agency, that shall—

6 (1) state the decision to proceed or not proceed
7 with the activity;

8 (2) state the rationale for the decision;

9 (3) list any changes to the preliminary decision
10 in response to comments received from an affected
11 Tribal Government pursuant to subsection (d);

12 (4) specifically address any points where the
13 final decision conflicts with the request of an af-
14 fected Tribal Government, including a detailed ex-
15 planation of why the request was disregarded;

16 (5) transmit, via the agency's standard method
17 of communication, a copy of the final decision letter
18 to the affected Tribal Governments, including those
19 that withdrew from the process;

20 (6) follow up after 5 business days to ensure re-
21 ceipt of the final decision letter by all intended re-
22 cipients; and

23 (7) if the final decision letter was not received
24 by an intended recipient, retransmit the material via

1 a form of communication that is suitable to the re-
2 cipient.

3 (3) PUBLICATION OF LETTER.—The agency
4 shall make public the final decision letter.

5 **SEC. 204. DECISION STAGE FOR PROPOSED REGULATORY**
6 **ACTION.**

7 (a) DECISION DOCUMENT.—Upon completion of the
8 consultation stage pursuant to section 202, the agency,
9 or lead agency, shall prepare a decision letter, signed by
10 the head of the agency, or lead agency, that shall—

11 (1) state the decision to proceed or not proceed
12 with the proposed regulatory action;

13 (2) state the rationale for the decision;

14 (3) list any changes to the proposed regulatory
15 action made at the request of an affected Tribal
16 Government during the consultation process as out-
17 lined in section 202;

18 (4) specifically address any points where the de-
19 cision conflicts with the request of an affected Tribal
20 Government, along with a detailed explanation of
21 why the request was disregarded;

22 (5) transmit, via the agency's standard method
23 of communication, a copy of the decision letter to
24 the affected Tribal Governments, including those
25 that withdrew from the process;

1 (6) follow up within 5 business days to ensure
2 receipt of the decision letter by all intended recipi-
3 ents; and

4 (7) if the decision letter was not received by an
5 intended recipient, retransmit the material via a
6 form of communication that is suitable to the recipi-
7 ent;

8 (c) PUBLICATION IN FEDERAL REGISTER.—the deci-
9 sion letter shall be published in the Federal Register
10 alongside the final decision on the regulatory action.

11 **TITLE III— DOCUMENTATION** 12 **AND REPORTING**

13 **SEC. 301. DOCUMENTATION AND REPORTING.**

14 (a) OFFICIAL CONSULTATION RECORD.—The agen-
15 cy, or lead agency, shall—

16 (1) keep an official consultation record that al-
17 lows accurate tracking of the process so that the
18 agency and all consulting parties can correct any er-
19 rors or omissions, and provides an official record of
20 the process that can be referred to in any litigation
21 that may arise;

22 (2) document all efforts to initiate consultation
23 as well as documenting the process once it has
24 begun, such as correspondence, telephone logs, and
25 emails;

1 (3) keep notes so that the consultation record
2 documents the content of consultation meetings, site
3 visits, and phone calls in addition to information
4 about dates and who participated; and

5 (4) include all documentation in the official con-
6 sultation record.

7 (b) PAYMENT FOR TRIBAL DOCUMENTATION
8 WORK.—If the agency, or lead agency, asks a Tribal Gov-
9 ernment for specific information or documentation that in
10 any way fulfills the duties of the agency in a role similar
11 to that of a consultant or contractor, then the agency, or
12 lead agency, must pay for such services, if so requested
13 by the Tribal Government, as it would for any private con-
14 sultant or contractor.

15 (c) REPORT TO CONGRESS.—Each agency shall sub-
16 mit a biennial report on its consultation activities to Con-
17 gress, including outcomes.

18 **TITLE IV— IMPLEMENTATION**
19 **AND TRAINING**

20 **SEC. 401. DESIGNATED AGENCY OFFICIAL.**

21 No later than 90 days after the date of the enactment
22 of this Act—

23 (1) the head of each agency shall designate an
24 official with principal responsibility for the agency’s
25 implementation of this Act; and

1 (2) each bureau or office within the agency
2 shall designate one or more officials with the respon-
3 sibility to work with the principal agency official on
4 implementation of this Act.

5 **SEC. 402. CONSULTATION POLICY.**

6 No later than 180 days after enactment of this Act,
7 the designated agency official shall submit to the Office
8 of Management and Budget a description of the agency's
9 consultation policy, including all designated agency offi-
10 cials, in conformity with this Act.

11 **SEC. 403. TRAINING.**

12 Each agency shall design training for staff aimed at
13 improving the agency's capacity for interacting with Trib-
14 al Governments and executing the consultation process.
15 The training shall—

16 (1) promote consultation, communication, col-
17 laboration, and other interactions with Tribal Gov-
18 ernments;

19 (2) outline and reinforce the agency duties con-
20 cerning Tribal interests; and

21 (3) strengthen the understanding of the United
22 States' government-to-government relationship with
23 Tribal Governments.

1 **TITLE V—TRIBAL SOVEREIGNTY**

2 **SEC. 501. TRIBAL SOVEREIGNTY.**

3 (a) IN GENERAL.—Agencies shall recognize and re-
4 spect Tribal self-government and sovereignty, honor Tribal
5 treaty and other rights, and strive to meet the responsibil-
6 ities that arise from the unique legal relationship between
7 the Federal Government and Tribal Governments.

8 (b) MAXIMUM TRIBAL ADMINISTRATIVE DISCRE-
9 TION.—With respect to Federal statutes and regulations
10 administered by Tribal Governments, the Federal Govern-
11 ment shall grant Tribal Governments the maximum ad-
12 ministrative discretion possible.

13 (c) ALTERNATIVES TO FEDERAL REGULATION.—
14 With respect to the formulation and implementation of
15 policies that have an impact on Tribal matters, agencies
16 shall—

17 (1) encourage Tribal Governments to develop
18 their own policies to achieve program objectives;

19 (2) when possible, defer to Tribal Governments
20 to establish standards; and

21 (3) in determining whether to establish Federal
22 standards, consult with Tribal Governments as to
23 the need for Federal standards and any alternatives
24 that would limit the scope of Federal standards or

1 otherwise preserve the prerogatives and authority of
2 Tribal Governments.

3 **SEC. 502. SENSITIVE TRIBAL INFORMATION.**

4 Notwithstanding chapter 7 of title 5, United States
5 Code (commonly known as the Administrative Procedure
6 Act), consultation meetings shall be closed to the public
7 at the request of the Tribal Government. Notwithstanding
8 section 552 of title 5, United States Code (commonly
9 known as the Freedom of Information Act), all informa-
10 tion designated by the Tribal Government as sensitive,
11 such as the location of sacred sites or other details of cul-
12 tural or religious practices, shall be deleted from any pub-
13 lic publication made as part of the consultation process
14 or in the process of carrying out the activity. Once infor-
15 mation has been designated as sensitive, the agency will
16 determine in consultation with the Tribal Government who
17 may have access to the information for the purposes of
18 carrying out the activity.

19 **TITLE VI—JUDICIAL REVIEW**

20 **SEC. 601. JUDICIAL REVIEW.**

21 A Tribal Government may seek judicial review of a
22 determination of an agency under this Act in accordance
23 with subchapter II of chapter 5 of title 5, United States
24 Code, and chapter 7 of title 5, United States Code (com-
25 monly known as the Administrative Procedure Act), if the

- 1 Tribal Government has exhausted all other administrative
- 2 remedies available to the Tribal Government.