



# Detailed Plan of Actions 2021 (updated from 2010 plan)

Tennessee Valley Authority's (TVA) Detailed Plan of Actions to  
Implement the Policies and Directives of Executive Order 13175

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## Overview

The United States government has a unique legal relationship with Federally Recognized Indian Tribes (“Tribes”) set forth in the Constitution of the United States, treaties, statutes, and court decisions. As a federal agency, the Tennessee Valley Authority (TVA) is committed to work with Tribes within the framework of a government-to-government relationship, respecting tribal sovereignty and self-determination. The government-to-government relationship requires consultation between appropriate Tribal officials and TVA officials. TVA’s Tribal Consultation Official, Rebecca Tolene, has principal responsibilities under Executive Order (EO) 13175 (“Consultation and Coordination with Indian Tribal Governments”). TVA’s Tribal Liaison, Marianne Shuler, will assist in the performance of tribal consultations and other duties under EO 13175.

The Presidential Memorandum of January 26, 2021 (“Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships”) directs all federal agencies to submit, within ninety days, a detailed plan of the actions the agency will take to fully implement EO 13175. EO 13175 sets forth criteria “to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications.” TVA will submit an annual report of consultation efforts for Fiscal Year 2021 and submit reports annually thereafter per the requirement of the January 26, 2021, Presidential Memorandum.

This detailed plan of action outlines TVA’s plan for implementing a consultation and coordination policy that aligns with the policies and directives of EO 13175. TVA will develop, in consultation with Tribes, its *Tribal Consultation Standard Policy & Procedure* in order to meet the EO 13175 requirement for federal agencies to have an “accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” The Standard Policy and Procedure (SPP) will expand on TVA’s consultation process outlined within this detailed plan of action. TVA will review and update this policy on a four year cycle unless more frequent updates are otherwise required.

The United States government has both moral and legal obligations to tribal nations. The relationship between federal agencies and Tribes should be treated as a partnership. Over the past five years, TVA has increased its efforts to provide partnership and engagement opportunities to strengthen TVA’s relationship with Tribes, and to encourage meaningful cultural interaction between tribal representatives, TVA staff, and the public. The goal is to:

1. promote tribal sovereignty;
2. strengthen and build new relationships with Tribes;
3. improve understanding of TVA’s government-to-government relationship with Tribes;
4. increase awareness of Native American culture; and
5. provide platforms for Tribes to present their perspective in their own voice.

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## Tribal Consultation on 2021 Detailed Plan of Action

TVA consulted with Tribes on the development of its detailed plan of action. A detailed timeline documenting this consultation is provided below. TVA will continue to consult with Tribes on this detailed plan of action even after the April 26, 2021, deadline. If, through tribal consultation, revisions need to be made following the April 26 submittal, TVA will provide a revised copy of its detailed plan of action to the Office of Management and Budget and the Assistant to the President for Domestic Policy.

**February 18, 2021** - Discussed Presidential Memo (PM) and agency requirements during monthly tribal call. Informed Tribes that TVA would be sending its draft detailed plan following the meeting.

**February 18, 2021** - First draft of TVA's detailed plan of action was sent to Tribes for review and comment.

**March 18, 2021** - Discussed PM during monthly tribal call and reminded Tribes of call to discuss draft detailed plan.

**March 18, 2021** - Held tribal consultation call on draft detailed plan to receive Tribal comments.

**April 1, 2021** - Second draft of TVA's detailed plan of action was sent to Tribes for review and comment.

**April 5, 2021** - Held tribal consultation call on TVA's second draft detailed plan to receive Tribal comments.

**April 12, 2021**- Third draft of TVA's detailed plan of action was sent to Tribes for review and comment.

**April 15, 2021** - Discussed the detailed plan of action and the April 26 submittal deadline with Tribes during monthly tribal call.

**April 15, 2021** - Final detailed plan of action sent to Tribes.

## TVA's Actions to Strengthen Nation-to-Nation Relationships

- TVA has committed to transfer certain funerary objects that do not meet the definition of "cultural items" under Native American Graves Protection & Repatriation Act (NAGPRA) (*i.e.* non-NAGPRA funerary objects) to Tribes. TVA will continue to work to transfer these non-NAGPRA funerary objects to Tribes.
- TVA has committed to make land available to Tribes for the purposes of reburial of NAGPRA human remains and cultural items, and non-NAGPRA funerary objects. TVA entered into a memorandum of agreement (MOA) with Tribes in 2019 to facilitate these reburials. TVA will work with Tribes to develop an implementation plan and a long term management plan for these reburial locations.
- TVA has facilitated virtual meetings for Tribes to present their cultural history to cultural resource management firms that conduct work for TVA projects in order to improve

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understanding of the vital role Tribes play telling the story of their ancestors and thereby to improve archaeological reports. TVA will continue to facilitate opportunities for Tribes to engage with archaeologists and work to improve archaeological reports.

- TVA has facilitated face-to-face meetings for Tribes to talk to TVA employees in order to increase awareness of Native American culture, tribal sovereignty and the unique government-to-government relationship between Tribes and the U.S. Government.
- TVA has developed a speaker series to promote the protection of archaeological resources in the Tennessee Valley. Tribes are participating in this series to provide their perspective on the damage to Native American resources.
- TVA will develop other opportunities for Tribes to engage with TVA employees, contractors, law enforcement and the public to increase awareness of Native American culture, tribal sovereignty and the unique government-to-government relationship between Tribes and the U.S. Government.
- TVA will facilitate opportunities for Tribes to visit their ancestral homelands whenever possible and will provide financial assistance if funds are available.
- TVA will continue to participate in tribal sponsored outreach efforts (conferences, symposiums, public education, etc.) and will develop additional ways to support tribal outreach.
- TVA has held five archaeological Tribal Field Schools since 2016. TVA provides funding for Tribes to participate in these field schools. TVA will provide additional opportunities for Tribes to participate in this type of training on TVA land and provide financial assistance when funds are available.
- Tribes have assisted TVA in conducting National Historic Preservation Act (NHPA) Section 110 archaeological inventories on TVA land. TVA will continue to facilitate opportunities for Tribes to assist in TVA's archaeological inventory efforts. TVA will provide financial assistance if funds are available.
- TVA will facilitate opportunities for Tribes to assist in damage assessments and site remediation efforts under the Archaeological Resources Protection Act of 1979 (ARPA), when possible, and will provide financial assistance for the effort if funds are available.
- TVA partners with Tribes and provides funding for their participation as instructors in its Thousand Eyes Volunteer Site Stewardship program. This program has been in place since 2015 and trains members of the public to assist the agency with monitoring archaeological resources on TVA land. TVA will continue to support this partnership effort as funds are available.
- TVA will develop a native plant partnership with Tribes and provide opportunities for species rehabilitation, collection and propagation when feasible. TVA will provide financial assistance for tribal participation if funds are available.

- TVA will develop and support other training, guidance and assistance to Tribes when feasible and will provide financial assistance if funds are available.

## **Establishing Government-to-Government Consultation**

- TVA initiates government-to-government consultation with any Tribe(s) that has a religious or cultural interest in the Tennessee Valley and regions where TVA provides power, in accordance with all laws, regulations, and Executive directives (see Legal Authorities).
- TVA initiates government-to-government consultation with any Tribe(s) that has a religious or cultural interest in a location outside of the Tennessee Valley and regions where TVA provides power where TVA is the lead federal agency.
- TVA's initial contact with a Tribe is sent by letter from TVA's Tribal Consultation Official to the identified leader of the Tribe. Tribal Historic Preservation Officers (THPO) and/or their cultural resource staff are copied on this correspondence.
- This initial correspondence introduces TVA's Tribal Liaison who is responsible for day-to-day communication and interaction with Tribes. TVA's Tribal Liaison reaches out to the THPO or cultural resource staff and establishes communication, to ensure timely and effective communication and consultation.
- TVA's Tribal Liaison maintains a list of appropriate points of contact for each Tribe and each Tribe's most current area of interest (AOI) and updates as new information is provided.

## **Tribal Consultation Procedures**

- All correspondence with Tribes will be sent by TVA's Tribal Liaison to the previously established tribal points of contact.
- TVA will correspond with any Tribe that has expressed an interest in the county of concern (AOI mentioned above).
- TVA will conduct standard tribal correspondence for projects, partnerships, develop guidance or policy documents and other matters regarding the management and protection of Native American resources.
- It is TVA's preference to communicate via email and telephone. If a tribe requests to consult by mail, correspondence will be sent hard copy, signature required, along with an email copy stating the hard copy is in the mail.
- Tribes have 30 days to respond to all consultation from TVA unless a shorter period is requested by TVA for emergencies or events that require an expedited review. The 30 day comment period will begin upon receipt of signature for all hard copy correspondence and upon date of email for all email correspondence.

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- Tribes who choose to respond via hard copy can mail all consultation to TVA's Tribal Liaison at 400 W. Summit Hill Drive, Knoxville, Tennessee 37902.
  - TVA's Tribal Liaison, with input from appropriate TVA staff, will receive, review and respond to all tribal comments and questions. TVA takes all tribal comments seriously, and meaningfully considers all tribal requests.
  - If it is determined that TVA cannot meet tribal requests, TVA will hold face-to-face or virtual meeting(s) with Tribes in order to discuss the request and seek a resolution.
  - TVA holds a regularly scheduled tribal teleconference on the third Thursday of every month. To the extent possible, TVA's Cultural Compliance manager will attend these calls.
  - TVA holds an annual, week long tribal consultation meeting the third week of May. TVA's Tribal Consultation Official and Cultural Compliance manager will participate in this meeting.
  - TVA maintains regular communication with Tribes via email, video, teleconference, telephone and face-to-face meetings.
  - TVA will submit an annual report of consultation efforts for Fiscal Year 2021 and submit reports annually thereafter per the requirement of the January 26, 2021, Presidential Memorandum.

## **Sacred Sites, Traditional Cultural Places & Traditional Cultural Landscapes**

To meet its responsibility to protect sacred sites under the United Nations *Declaration on the Rights of Indigenous Peoples* and Executive Order 13007 *Indian Sacred Sites*, TVA, in consultation with Tribes, will:

- Facilitate opportunities for Tribes to access sacred sites to hold religious and private gatherings.
- When feasible, develop management plans on how the agency will manage and protect sacred sites on TVA land, or those affected by TVA undertakings.
- Develop a plan for the management and protection of forced Native American removal routes.
- Develop a plan and standard recordation forms for the management and protection of sensitive stone features.
- Create a data sharing agreement in order to keep sensitive tribal data confidential.

## **American Indian Religious Freedom Act (AIRFA)**

To meet its responsibility under AIRFA, TVA will consult with Tribes regarding sacred Native American objects of religious and cultural significance (such as dog burials) and develop

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management plans as needed for their treatment. TVA will facilitate opportunities for Tribes to access sacred sites to hold religious and private gatherings.

## **Archaeological Resources Protection Act (ARPA)**

To meet its responsibility under ARPA, as it pertains to tribal involvement and consultation, TVA will:

- Consult with Tribes regarding ARPA permit requests for research proposals and any archaeological work that has not already been adequately consulted on by other agencies.
- Periodically update Tribes on ARPA violations and the progress of TVA's ARPA Enforcement Program.

## **Native American Graves Protection & Repatriation Act (NAGPRA)**

To meet its responsibility under NAGPRA, TVA, in consultation with Tribes will:

- Continue to complete repatriations and dispositions of human remains and cultural items as defined under NAGPRA.
- Develop a guidance document for Disposition as defined in NAGPRA.
- Develop a guidance document for Repatriation as defined in NAGPRA.
- Follow its Comprehensive Agreement for inadvertent discoveries.

## **National Historic Preservation Act (NHPA)**

To meet its responsibility under NHPA, TVA, in consultation with Tribes, will:

- Follow its Programmatic Agreement (PA) [*executed February 2020 and expires February 2030*] on Section 106 compliance for TVA's undertakings covered under that PA. This PA outlines TVA's process for screening planned agency actions under Section 106.
- Develop a plan for determining appropriate timing of consultation with Tribes for Section 106 undertakings that fall under the standard review process.
- Identify and evaluate historic properties for their eligibility to the National Register of Historic Places (NRHP) under Section 110. TVA will consult with Tribes on all of its Section 110 activities that involve Native American resources.
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- When feasible and funds are available, nominate or support the nomination of historic properties to the NRHP.
  - When feasible, develop management plans for Native American historic properties.

**Legal Authorities (not exhaustive list)**

American Indian Religious Freedom Act (1978)

Archaeological Resource Protection Act of 1979 (1979)

Native American Graves Protection and Repatriation Act (1990)

National Historic Preservation Act (1966)

National Environmental Policy Act (1970)

Executive Order 13007- Indian Sacred Sites (May 26, 1996)

Executive Order 13175- Consultation and Coordination with Indian Tribal Governments (November 6, 2000)

Executive Memorandum "Government to Government Relations with Native American Tribal Governments" (April 24, 1994)

Executive Memorandum "Tribal Consultation" (November 5, 2009)

Executive Memorandum "Tribal Consultation and Strengthening Nation-to-Nation Relationships" (January 26, 2021)

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## Definitions

**Area of Interest** - The area determined by an individual Tribe to be their ancestral territory. This information is used to know what Tribe to consult with in a given area. Tribes expand and contract this area at their discretion.

**Consultation** - The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the consultation process (36 CFR § 800.16(f)). Consultation involves the federal agency making a good faith effort to engage the Tribe(s) early and considering tribal input in the decision making process.

**Federally Recognized Indian Tribes** - A federally recognized tribe is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation; and is eligible for funding and services from the Bureau of Indian Affairs pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. Federally recognized tribes are recognized as possessing certain inherent rights of self-government (i.e., tribal sovereignty) and are entitled to receive certain federal benefits, services, and protections because of their special relationship with the United States.

**Historic Property** - Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. Historic properties include artifacts, records, and remains that are related to and located on such properties. The term includes properties of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization that meet National Register criteria (36 C.F.R. §800.16[l]).

**Management Plan**- A document that outlines how TVA will identify, evaluate and manage sensitive Native American resources on TVA property. This document will also address how these resources are handled in the Section 106 consultation process.

**NAGPRA Cultural Items** - Human remains and associated and unassociated funerary objects; sacred objects; and objects of cultural patrimony as defined in NAGPRA (25 U.S.C. 3001[3]).

**Non-NAGPRA Funerary Objects** - Objects that do not fall within the definition of “cultural items” under NAGPRA, but based on an abundance of verified archaeological evidence, oral traditions, and historical or other relevant information, are determined by TVA, in consultation with Tribes, to be intentionally buried in the vicinity of a Native American individual(s).

**Tribal Historic Preservation Officer (THPO)** - The tribal official designated by the Tribe’s chief governing authority, designated by a tribal ordinance, or preservation program who has assumed the responsibilities of the SHPO for purpose of Section 106 on tribal lands.

**Undertaking** - A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency; those carried out with federal financial assistance; and those requiring a federal permit, license or approval. This includes not only TVA projects and programs, but grants or loans that TVA provided for a non-Federal project even if that assistance is only for a part of the project.