



Tribal Partnership Program

Draft USACE Engineering Pamphlet Overview August 22, 2023

Quana Higgins, Acting Assistant for
Tribal and Regulatory Affairs

Office of the Assistant Secretary of the
Army for Civil Works

Lisa Morales
Senior Tribal Liaison

Headquarters, US Army Corps of
Engineers



Tribal Partnership Program – Overview



Goals of this Webinar:

- (1) Provide *who* is covered under this policy and *where* we are in the process;
- (2) Provide *why* we are developing a comprehensive policy;
- (3) Provide an overview of *what* the policy covers; and
- (4) Ensure Tribal Nations know *who* to reach out to for requesting Nation-to-Nation Consultation, or for provide written feedback by September 22, 2023

Planning
Tribal Partnership Program

Contents (Listed by chapter and page number)

Chapter 1
Program Overview, page 1

Chapter 2
General Program Principles, page 13

Chapter 3
Project Management Requirements for Tribal Partnership Program Activities, page 28

Chapter 4
Feasibility Phase Leading to Congressional Authorization, page 32

Chapter 5
Programmatic Feasibility Phase, page 36

Chapter 6
Design and Construction Phase, page 40

Chapter 7
Watershed Studies, page 46

Chapter 8
Technical Assistance, Water-Related Planning Activities, and Feasibility-Like Studies Without a Recommendation for Design and Construction, page 61

Chapter 9
Non-Traditional Water Resources Development Projects, page 64

Chapter 10
Other Provisions, page 70

Chapter 11
Real Estate, page 73

Appendixes

A. References, page 76

EP 1105-2-64 • Day Month 20XX i



WHO This Policy Covers



The US Army Corps of Engineers is strengthening Nation-to-Nation relationships through our partnerships.

Eligibility for the program includes:

- Federally recognized tribes and ANCSA Corporations
- Projects must be located primarily within Indian country (18 U.S.C. 1151), in the jurisdictional area of an Oklahoma Tribe (as determined by the Secretary of the Interior as eligible for trust land status) or in proximity to an Alaska Native Village



Tribal Partnership Program Guidance Development – *Where We Are*

UNCLASSIFIED



Development of Comprehensive Guidance

- January 2022 – March 2023
- *Federal Register Notice* July-August 2022
- *Interim guidance from ASA(CW)* issued November 2022
- *Water Resources Development Act of 2022* passed in December 2022
- Internal Review January – February 2023

Request for Tribal Consultation

- Dear Tribal Leaders letter sent on July 25, 2023
- 60-day review
- *Deadline for receiving written comments or requesting G2G is September 22, 2023*

Final Policy

- Target: Signing before November 2023 White House Tribal Nations Summit

UNCLASSIFIED

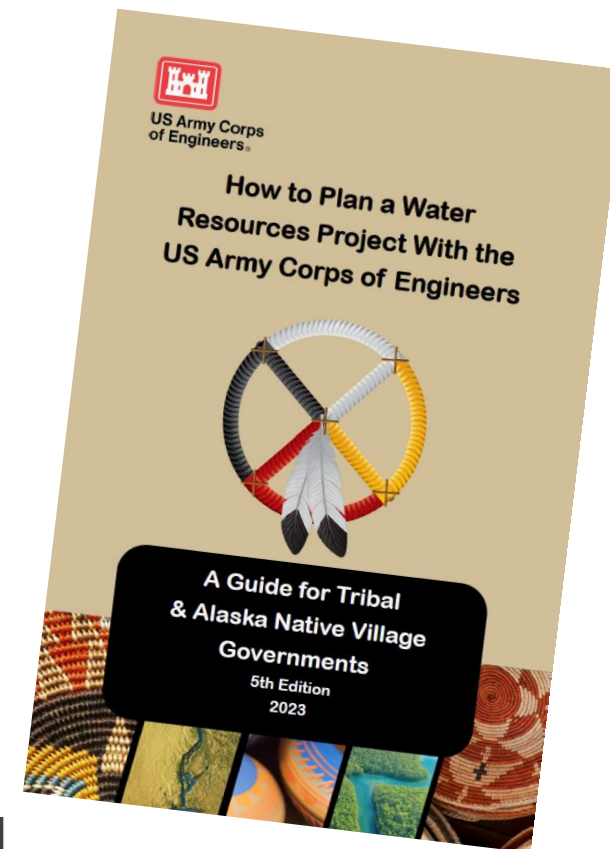


Tribal Partnership Program Authority



Section 203 of WRDA 2000, as amended, authorizes the Program which includes:

- Water-related planning activities - study, design, and construction
- Must substantially benefit Indian Tribes
- Includes flood risk management, environmental restoration and protection, navigation, and preservation of natural and cultural resources, watershed assessments and planning activities/technical assistance
- Located:
 - Primarily within Indian Country (18 U.S.C. 1151)
 - Jurisdictional area of an Oklahoma Tribe (as determined by the Secretary of the Interior as eligible for trust land status)
 - Proximity of an Alaska Native Village





TPP Authority, Cont.



Feasibility Studies Recommending a Water resources development project

- If recommended project is greater than \$26,000,000*, study ends in a Chief's Report and requires authorization from Congress for construction phase;
- If recommended project (or per separable element) equal to or less than \$26,000,000*, design and construction can proceed under the Programmatic authority for design and construction without further Congressional approval.

Preservation of Natural and Cultural Resources

- Must be related to a water resources development project

Technical Assistance or Feasibility-Like Studies

- Watershed assessments or stand-alone water-related planning activities
- Feasibility-type report without recommendations for resource planning

Other such Projects Deemed to be Appropriate by the ASA(CW)



TPP Authority, Cont.



Cost Share

- Feasibility 50% federal/50% Tribal (first \$200,000 is fully federal)
- Watershed Assessments 75% federal/25% Tribal
- Technical Assistance 100% federal

In-kind Services

- 100% of Tribal cost share can be fulfilled through contribution of in-kind services

Adjusted Cost Share Waiver – Section 1156 of WRDA 1986, as amended

- Waives the cost share amounts owed by a Tribe up to a certain amount
- Applies to feasibility studies and construction
- FY23 Adjusted Waiver: \$665,000
- Waiver limit includes an annual inflation adjustment (Section 135 WRDA 2020)

Ability to Pay

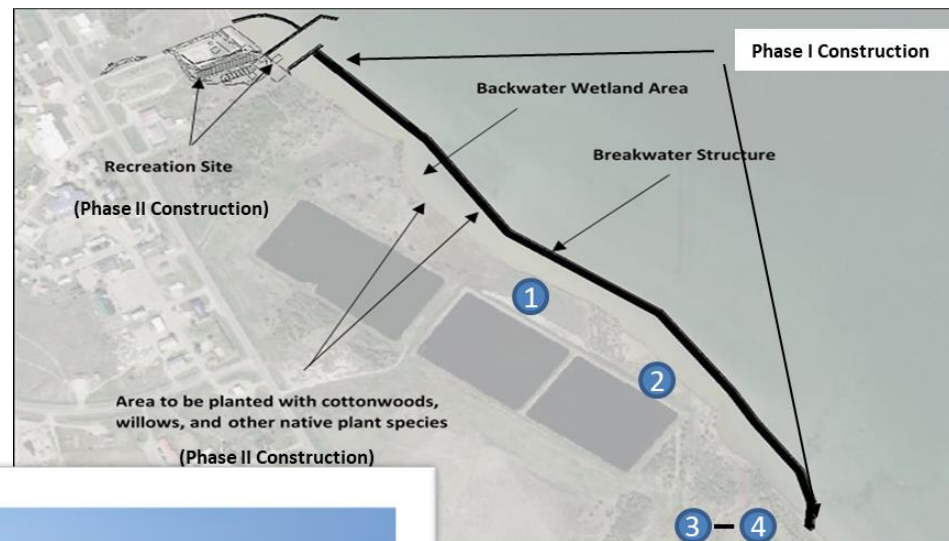
- Results in further reduction of cost-share amount owed by the Tribes
- Applies to all phases of TPP
- Per capita income must be less than the per capita income of 2/3 of the counties in the U.S.



Tribal Partnership Program Example



Lower Brule Sioux Tribe Sewage Lagoon Protection Ecosystem Restoration Project



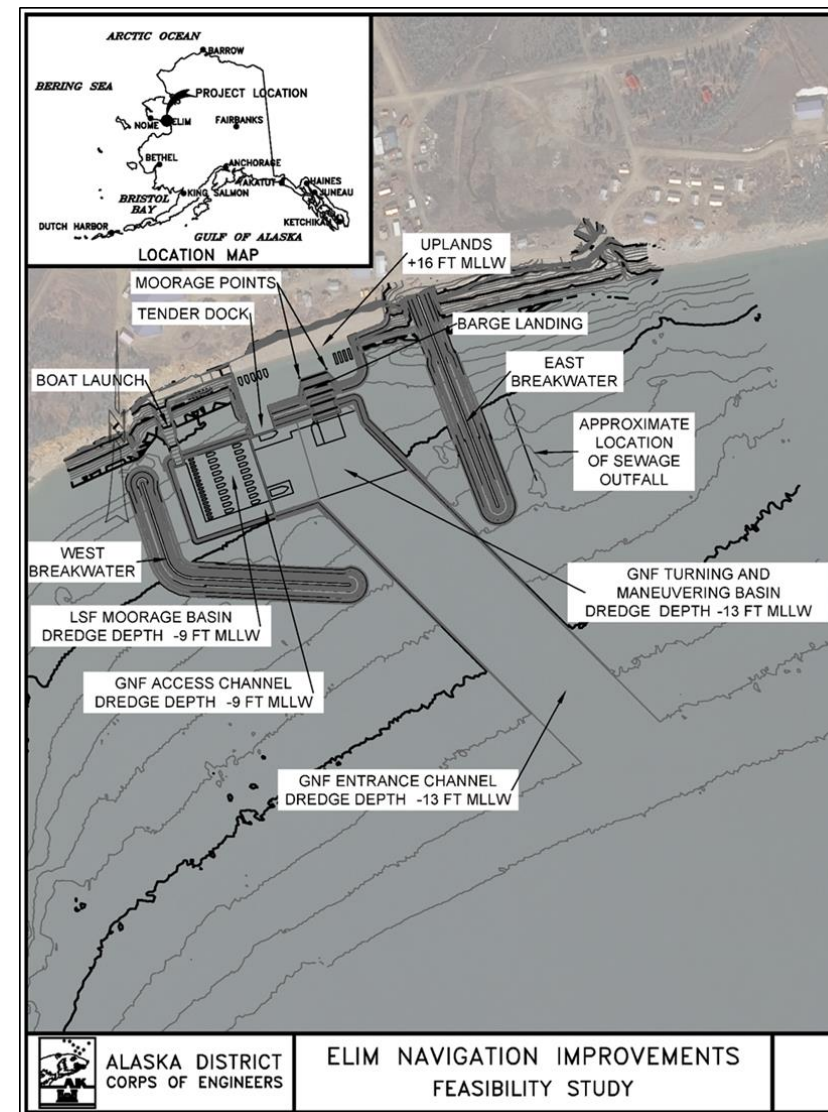


Tribal Partnership Program Example



Elim Harbor Subsistence Harbor, AK Preconstruction, Engineering, and Design

- Located on the shore of Norton Bay about 96 miles east of Nome, Alaska, the project aims to provide safe, reliable and efficient navigation along with access and moorage for the community of Elim.
- Currently, Elim has no moorage, harbor, or boat landing infrastructure.
- Estimated Total Project Cost of \$78M (FY 2022).
- Provided funding under the Bipartisan Infrastructure Law.

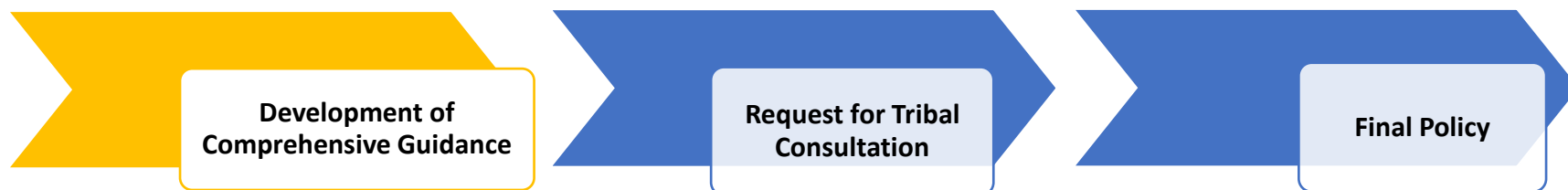




The *WHY* – Modernize Civil Works Initiatives



- (1) Update to the USACE Civil Works Tribal Consultation Policy
- (2) Develop Comprehensive Guidance for the Tribal Partnership Program
- (3) Potential rulemaking on the Regulatory Program's implementation procedures for Section 106 of the National Historic Preservation Act found at 33 CFR Appendix C
- (4) Potential rulemaking to develop implementing procedures for the Principles, Requirements and Guidelines
- (5) Finalize an environmental justice policy, including a definition for purposes of Section 160 of the Water Resources Development Act of 2020 for the “economically disadvantaged community”

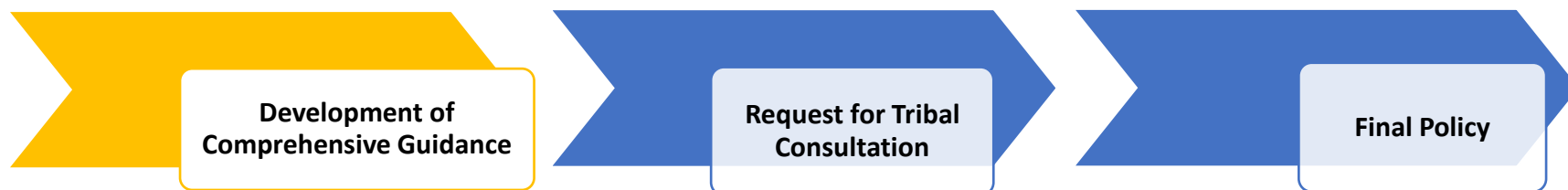




The WHY – Other Policy Initiatives



- Reinvigoration of TPP, Acting ASA(CW) memo dated 23 June 2021
- Implementation of Environmental Justice and Justice40 Initiative, [March 2022](#)
- Federal Register Notice, Modernization of Army Civil Works Policy Priorities, Vol. 87, No. 107, Friday 3 June 2022.





Tribal Feedback on Existing Guidance Federal Register Notice

UNCLASSIFIED



Waiver of Cost Share Requirements ★

Use of EO 13175 Waiver for the Tribal Cost Share when Corps projects caused the water resources issue

Ability to Pay Calculations ★

There should not be a rigid formula and all Tribes should automatically be eligible

Removal of cost share match requirement ★

Corps should remove cost share requirement for projects that enhance tribal lands and resources

Communication on Ability to Pay and Cost Share Waiver Processes ★

Need increased communication and provide technical assistance to navigate adjusted waiver process

Geographic Distribution of TPP Projects ★

There should be equity in the distribution of TPP projects

Review of Comprehensive TPP Guidance ★

The draft comprehensive guidance should be submitted to tribes for multiple rounds of feedback

Projects Authorized under TPP ★

Corps should use maximum discretion in approving projects not specifically enumerated in the TPP authority

★ Authority Barrier

★ Under discussion / Future Policy

★ Included in Policy

Assistant Secretary of the Army (Civil Works)

UNCLASSIFIED



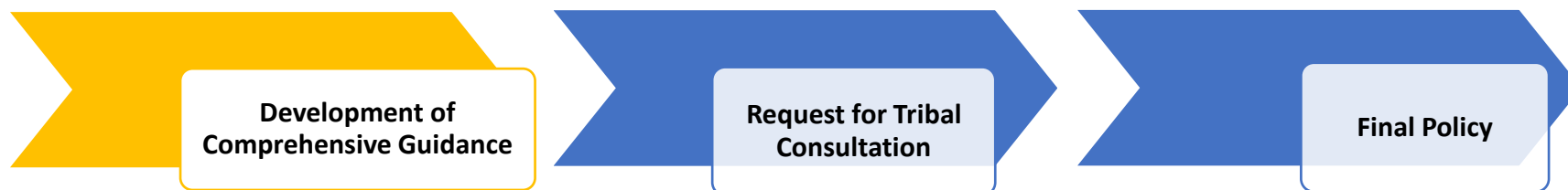
ASA(CW) Interim Guidance on TPP



Considerations for All TPP Projects:

- *The federal objective of all TPP studies is to substantially benefit Indian tribes.*
- We are making a determination on whether the projects are feasible and includes the appropriate cost sharing for the purpose the project most closely aligns.
- Feasible means: technically feasible; the economic, environmental, and social benefits to the Tribal Nation outweigh the costs; project is cost-effective; and the project is environmentally acceptable.

https://planning.erdcdren.mil/toolbox/library/MemosandLetters/ASACW_TPP_Memo_29November2022.pdf



Assistant Secretary of the Army (Civil Works)



ASA(CW) Interim Guidance on “Other such projects”

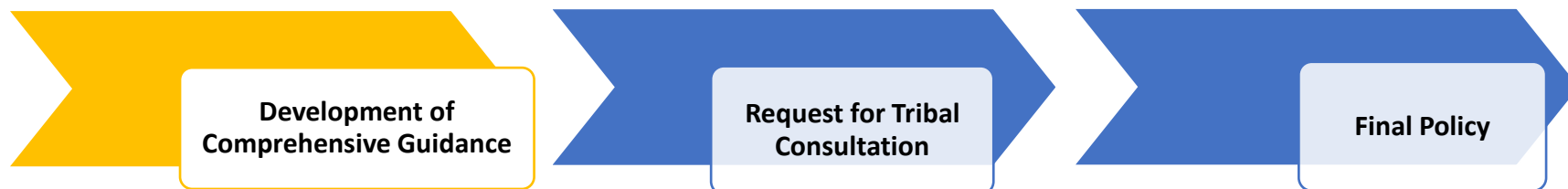
UNCLASSIFIED



Non-Traditional Water Resources Projects

- Districts may consider and recommend TPP studies and projects that address the preservation of cultural and natural resources *and such other projects determined to be appropriate* based on the following criteria:
 1. Related to a water resource;
 2. Aligns with Corps capabilities and core competencies
 3. Project is anticipated to be under the authorized programmatic limit for TPP
- Others may be elevated to ASA(CW) for decision.

https://planning.ercd.dren.mil/toolbox/library/MemosandLetters/ASACW_TPP_Memo_29November2022.pdf



Assistant Secretary of the Army (Civil Works)

UNCLASSIFIED

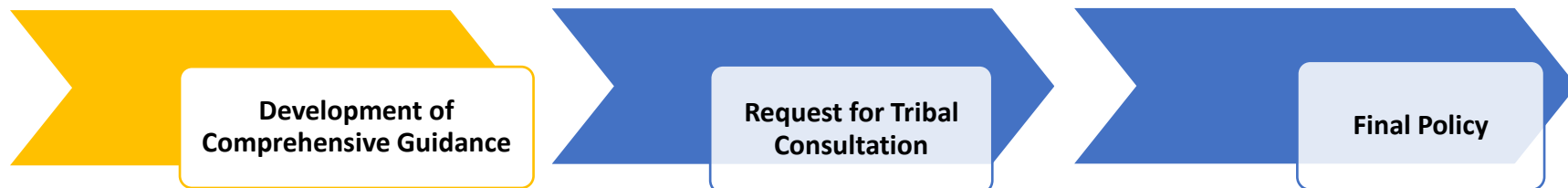


Water Resources Development Act of 2022 Changes to TPP

UNCLASSIFIED



- Changed definition of “Indian tribe” to 25 U.S.C. 5304 from 25 U.S.C. 450b.
- Under Authorized Activities:
 - Added projects for hurricane and storm damage reduction including erosion control
 - Added technical assistance to Tribes:
 - Assistance for planning to ameliorate flood hazards, to avoid repetitive flood impacts, to anticipate, prepare, and adapt to changing hydrological and climatic conditions and extreme weather events, and to withstand, respond to, and recover rapidly from disruption due to flood hazards; and
 - The provision of, and integration into planning of, hydrologic, economic, and environmental data and analyses.



Assistant Secretary of the Army (Civil Works)

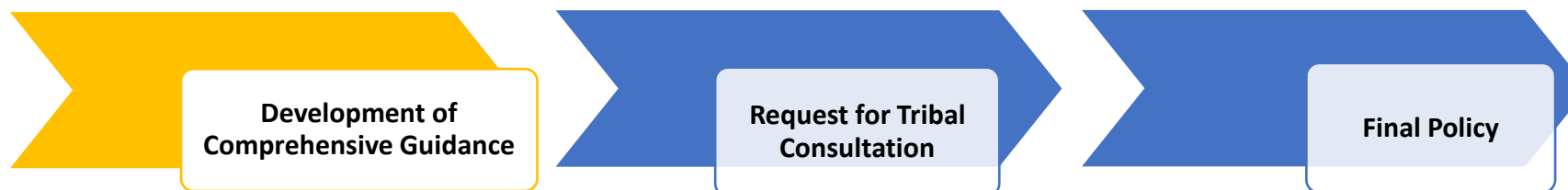
UNCLASSIFIED



WRDA 2022 Changes to TPP, cont.



- Design and Construction per project limit (or separable element of a project) raised to \$26M from \$18.5M.
- Project Justification: The Secretary may implement a project (other than Ecosystem Restoration) if the project will –
 - ✓ significantly reduce potential flood or hurricane and storm damage hazards (which may be limited to hazards that may be addressed by measures for erosion mitigation or bank stabilization);
 - ✓ improve the quality of the environment;
 - ✓ reduce risks to life safety associated with the hazards described in subparagraph (A); and
 - ✓ improve the long-term viability of the community.

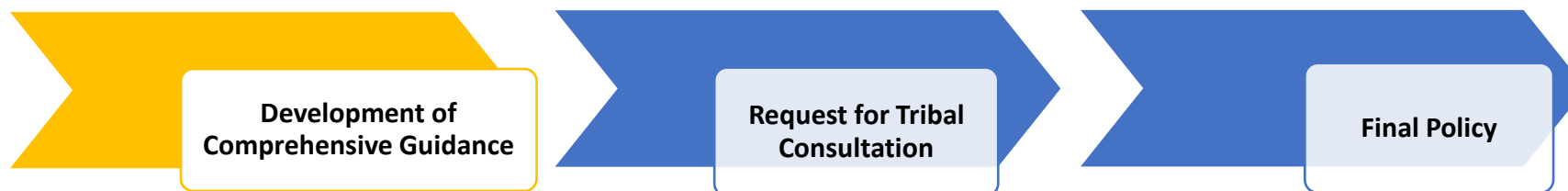




WRDA 2022 Changes to TPP, cont.



- Initial Costs up to \$200k for Feasibility Studies will be federally funded.
- Federal share of other water-related planning activities and technical assistance changed to 100% from 50%.
- Program sunset changed from 2024 to 2033.

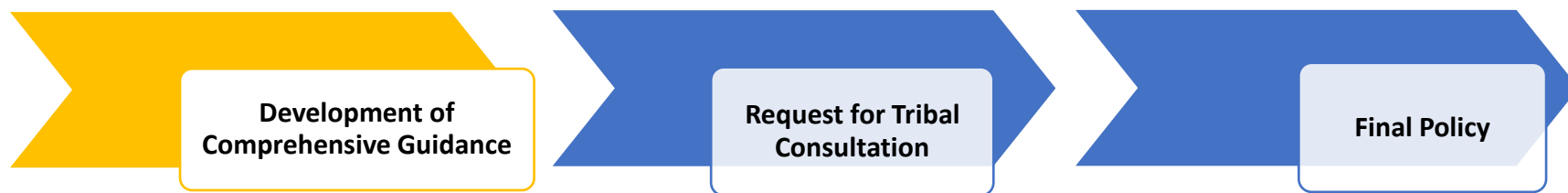




Summary of Internal Comments & Revisions



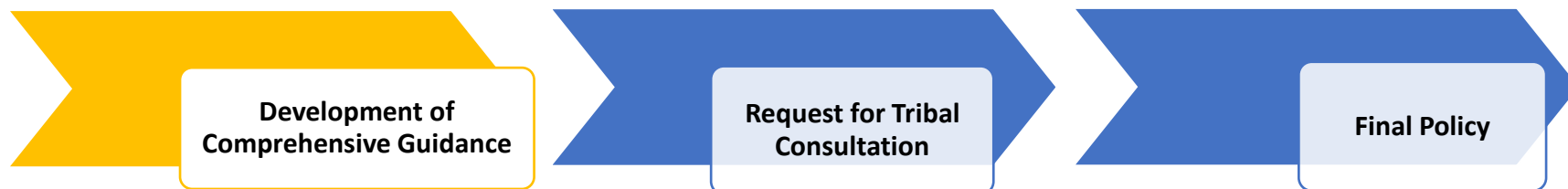
- Application of Sections 1001 and 1002 of WRRDA 2014: 3x3 implications
 - ✓ Guidance clarifies which types of reports are subject to the reporting requirements for time and cost of feasibility studies
 - ✓ Maximum federal study costs are waived up to \$3M without further approval from ASA(CW)
- National Economic Development Plan Exceptions for Programmatic Efforts
 - ✓ NED exceptions are still required for projects requiring specific authorization from congress until agency specific procedures come out.
 - ✓ As a matter of policy, the ASA(CW) does not require a NED exception request for programmatic and non-traditional efforts.





Summary of Internal Comments & Revisions

- Work In-Kind
 - ✓ Added process for developing In-Kind MOU with Tribal partners for specifically authorized projects
 - ✓ Added flexibility for programmatic projects for alignment on a scope of work in lieu of a MOU
- Indigenous Knowledge and how to use it in TPP
 - ✓ *Honest discussions up front during scoping:* tools keep culturally sensitive information safe or weighing of risks of disclosing this information
 - ✓ Incorporated into General Planning Principles for Program
 - ✓ Process added for identification, where and how IK was used to drive decision-making

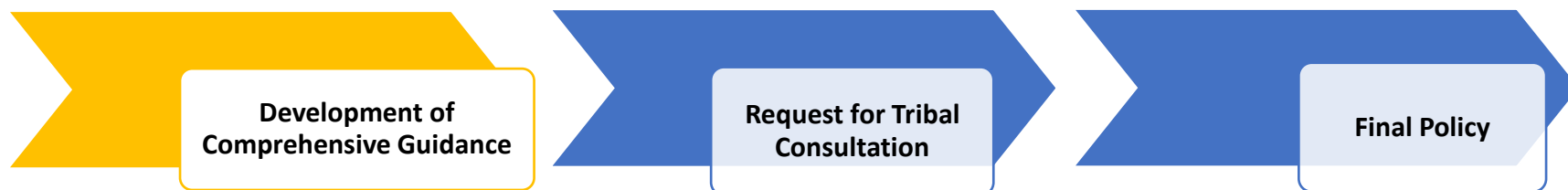





Summary of Internal Comments & Revisions



- Alaska Native Corporations
 - ✓ Definition of Indian Tribe from WRDA 2022 amendment includes ANCSA Corporations
 - ✓ Specific guidance not added to this version – parallel policy development
- Defining scope of Tribal Real Estate & Best Practices
 - ✓ Process added for special value considerations and conceptual acquisition plan for lands not already owned by the Tribe (*primarily* within Indian Country)
 - ✓ Process added for allotted land coordination with BIA and HQUSACE Real Estate



 MENU U.S. ARMYSEARCH 

Army Civil Works Seeking Tribal Input on Draft Partnering Policies

By Lauren Leuck August 1, 2023



The Office of the Assistant Secretary of the Army for Civil Works continues to modernize how business is conducted with Tribal Nations by strengthening Nation-to-Nation relationships through partnerships. Army Civil Works is currently seeking input and engaging in Tribal consultation on the draft [Tribal Partnership Program Engineering Pamphlet](#) and a revised [non-Federal interest policy](#) to include partnering with Alaska Native Claims Settlement Act (ANCSA) Corporations.

A webinar for each policy will walk through a summary of the policies, overview of any changes, and provide an open forum for comments. These webinars will also be recorded and placed here when they are available. The webinar information is below.

USACE Tribal Partnership Program Engineering Pamphlet Overview

August 22, 2023 at 12:00 PM PDT

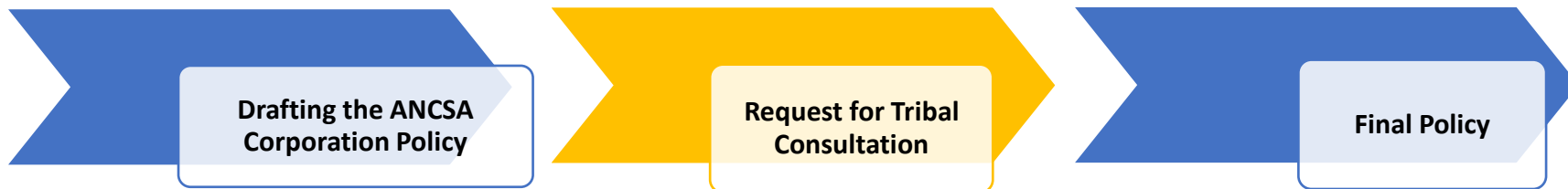
https://www.army.mil/article/268795/army_civil_works_seeking_tribal_input_on_draft_partnering_policies



How to Request Individual Tribal Consultations:

Please submit Tribal Consultation Requests and/or written input to Quana Higgins at: quana.n.higgins.civ@army.mil by September 22, 2023.

For more information on Army Civil Works actions on these and other Tribal Nations initiatives, visit the [ASA\(CW\) Initiatives webpage](#).

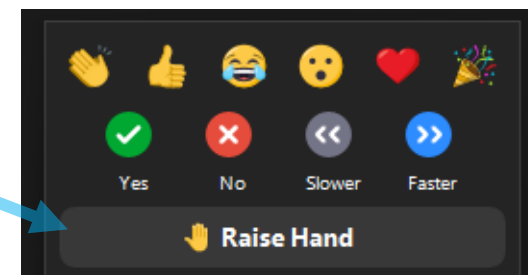
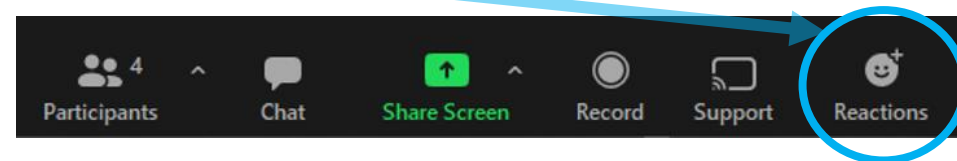




How to Request to Speak



- If you would like to speak, please raise your hand.
 - On a computer (or mobile device), select the **Reactions** button then click on “**Raise Hand**”
 - If you called in, you may also press *9 on your phone to raise your hand.



- When it is your turn to speak, the host will call on you by using your name or phone number.
- At that time, you can unmute yourself by pressing the unmute button on your screen or dialing *6 on your phone.
- Please feel free to turn on your video while you are speaking.
- If you have technical issues, please use the chat function.