



CONSULTATION POLICIES

2018

State of Utah Board of Pardons and Parole Internal Operating Policies and Procedures	Reference: 1.04	Page: 1 of 3
	Effective Date: 7/11/2017	Revision Date: 7/10/2017
Subject: Tribal Consultation		

Purpose: Provide an opportunity for meaningful consultation with Indian Tribes within the state and comply with the provisions of Executive Order EO/2014/005, Executive Agency Consultation with Federally-Recognized Indian Tribes.

Authority: Utah Code Ann. §§77-27-2, and 77-27-4 (1953, as amended); UAC R671-101.

Definitions:

- 1) "Consultation" means the process by which the State and the Tribes may have the opportunity to exchange views and information, in writing or in person, regarding implementation of proposed state action that has, or may have, substantial tribal implications, such as impacts on the following:
 - a) Tribal Cultural practices, tribal lands, tribal resources, or access to traditional areas of tribal cultural or religious importance;
 - b) the ability of an Indian Tribe to govern or provide services to its members;
 - c) an Indian Tribe's formal relationship with the State; or
 - d) the consideration of the State's responsibilities to Indian Tribes.
- 2) Consultation between the State and the Tribes does not include matters that are:
 - a) applicable to an individual member of a tribe;
 - b) in litigation or settlement negotiations;
 - c) matters for which a court order limits the State's discretion to engage in consultation;
 - d) internal agency administration, operations, processes, and personnel matters; or
 - e) agency action that has general applicability to industrial, commercial, agricultural, or, other business activity in the State.

- 3) "Indian Tribe" means any federally recognized Indian Tribe listed in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. Section 479a and located wholly or partially in the State of Utah.
- 4) "Tribal implications" refers to regulations, rulemaking, and other policy statements or actions that have substantial direct effect on one or more tribes, on the relationship between the State and a tribe, or on the distribution of power and responsibilities between the State and a tribe, the status of a tribe as a Sovereign or governmental entity.
- 5) "Tribal Official" refers to an elected or appointed tribal leader or representative designated by the tribe and authorized to represent the tribe in government-to-government consultations.

Policy:

- 1) The agency shall consult with Indian Tribes to the extent practicable and permitted by law before action is taken that will have tribal implications. When the agency identifies a proposed action that requires consultation the Director of Administrative Services or designee shall send written correspondence to the appropriate tribal officials that clearly identifies;
 - a) the proposed action with tribal implications;
 - b) affected tribes;
 - c) any agency positions on the issues;
 - d) the type of input sought;
 - e) how to provide input; and
 - f) when to provide input.
- 2) In addition to the written correspondence requirement, the Board may use any other appropriate format to communicate with tribal officials.
- 3) Tribes may request consultation with the Board concerning tribal implication issues. The nature and design of any consultation will vary and be guided by the particulars of the immediate issues and the larger situation, such as the potential number of tribes that could be affected, the complexity of the issues, and time constraints.

- 4) The Board will compile an annual report detailing tribal consultations.
 - a) The report will include details about:
 - i) the Indian tribes affected;
 - ii) tribal officials, and agency officials or, personnel who participated; and
 - iii) the results of consultation efforts.
 - b) The report will be submitted to the Director of the Division of Indian Affairs.
 - c) The report is due one month prior to the commencement of the Native American Summit hosted by the Governor's Office.

Utah Department of Agriculture and Food Tribal Consultation Policy

Purpose:

The purpose of this policy is for the Utah Department of Agriculture and Food to establish processes for regular and meaningful consultation with Indian Tribes to comply with the provisions of Executive Order EO/2014/005, *Executive Agency Consultation with Federally-Recognized Indian Tribes*.

Definitions from Executive Order EO/2014/005:

- a. “Agency” means an executive agency or department that makes policy that has, or may have, a substantial direct effect on one or more of the Tribes. This order does not apply to independent entities as defined in Utah Code Annotated §63E-1-102(4)(a).
- b. “Agency Official(s)” means an individual or individuals designated and authorized to represent an agency for the purpose of implementation of the agency’s tribal policy.
- c. “Consultation” means the process by which the State and the Tribes may have the opportunity to exchange views and information, in writing or in person, regarding implementation of proposed state action that has, or may have, substantial tribal implications, such as the following:
 - i. Tribal cultural practices, tribal lands, tribal resources, or access to traditional areas of tribal cultural or religious importance; or
 - ii. The ability of an Indian Tribe to govern or provide services to its members; or,
 - iii. An Indian Tribe’s formal relationship with the State; or,
 - iv. The consideration of the State’s responsibilities to Indian Tribes.

Consultation between the State and Tribes does not include matters that are:

- i. Applicable to an individual member of a tribe; or
 - ii. In litigation or settlement negotiations; or,
 - iii. Matters for which a court order limits the State’s discretion to engage in consultation; or,
 - iv. Internal agency administration, operations, processes, and personal matters, however, the agencies involved will consult with the Tribes when hiring a new Director of Indian Affairs; or,
 - v. Agency action that has general applicability to industrial, commercial, agricultural, or other business activity in the State.
- d. “Indian Tribe” means any federally recognized Indian Tribe listed in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 479a and located wholly or partially in the State of Utah.
- e. “State Action With Tribal Implications” refers to regulations, rulemaking, and other policy statements or actions that have substantial direct effect on one or more tribes, on the

relationship between the State and a tribe, or on the distribution of power and responsibilities between the State and a tribe, or the status of a tribe as a sovereign or governmental entity.

- f. “Tribal Official” means an elected or appointed tribal leader or individual designated by the tribe and authorized to represent the tribe in government-to-government consultations.

Fundamental Principles from Executive Order EO/2014/005:

In formulating or implementing state action with tribal implications, agencies shall be guided by the following fundamental principles:

- a. The State has a government-to-government relationship with the tribal governments as set forth in the Constitution of the United States, the Utah Constitution, treaties, statutes, and court decisions.
- b. The State has recognized the right of the Tribes to self-government. The State desires to work with the Tribes on a government-to-government basis.
- c. When an agency intends to implement a state action with tribal implications, consultation should occur as part of a meaningful and comprehensive process that promotes effective communication between the tribe and the agency. The agency should make every effort to ensure that consultation with the tribe is conducted as early as possible, is carried out in good faith, and that honesty and integrity are maintained by the agency at all stages of the consultation process.

Designated Agency Official:

Per the terms of Executive Order EO/2014/005, the Utah Department of Agriculture and Food designates the following agency official to represent the agency for the purposes of implementing this Tribal Consultation Policy:

Doug Perry
Public Information Officer
(801) 538-7100
dougperry@utah.gov
P. O. Box 146500, Salt Lake City, UT 84114

Consultation Process:

Consultation consists of four phases: Identification, Notification, Input, and Follow-up:

- a. **Identification Phase:** When contemplating a state action, the Utah Department of Agriculture and Food will identify whether such action may have tribal implications per the guidelines of Executive Order EO/2014/005 and requires consultation.

- b. **Notification Phase:** If the Utah Department of Agriculture and Food determines a state action may have tribal implications and requires consultation, the Agency will notify the Tribe(s) to request consultation.

- i. Consultation should occur early in the decision-making process to allow tribes the opportunity to provide meaningful input and give state agencies the opportunity to consider input by the tribe(s). Agency officials will determine the best time to begin consultation.
- ii. Notification can occur in a number of ways depending on the nature of the proposed state action and the number of tribes potentially affected. For example, agencies may meet face-to-face with one or more tribes, may contact tribal governments by phone, through written correspondence, or provide notice through other accepted means.

Notification includes sufficient information for Tribal Officials to make an informed decision about whether to participate in consultation and how to provide informed input. Sufficient information includes:

- a. An overview of the contemplated state action,
- b. Description of the topic(s) to be discussed in consultation activities,
- c. A proposed timeframe during which consultation activities should take place and/or deadlines for Tribes submitting input, and
- d. The contact information for the designated Agency Official or other personnel who can respond to any questions, or provide any clarifications.

- c. **Input Phase:** The purpose of consultation is to receive input from Tribal Officials on state actions that have tribal implications. During the input phase, Tribal Officials will have the opportunity to submit input and discuss their questions and concerns. Input can be received in a number of ways depending on the nature of the proposed state action. Input can be received in face-to-face meetings, by phone, or by written communication.

The Utah Department of Agriculture and Food will consider input received from Tribal Officials regarding the proposed action as part of its decision-making process. The Agency may need to undertake subsequent rounds of consultation if there are significant changes in the originally-proposed activity, or as new issues arise.

- d. **Follow-up Phase:** After the Utah Department of Agriculture and Food consults with Tribal Officials regarding a proposed state action with tribal implications, and considers input received during the consultation process as part of its decision-making process, the Agency will follow-up with all Tribal Officials who participated in the consultation process.
- i. Once the Agency finalizes its action, the Agency Official will communicate the Agency's decision on the action to Tribal Officials and Indian Tribes who participated in consultation.

- ii. Follow-up with Tribal Official will include: a description of the action for which consultation occurred, a description of consultation activities including dates on which consultation occurred and names of those involved, the Agency decision on the action, and the contact information for the Agency Official or other personnel who can provide any technical assistance or respond to any questions.

Tribal Consultation Reporting:

The Utah Department of Agriculture and Food will track information about consultation activities, including, but not limited to: the number of consultations conducted, the Tribe(s) which were consulted, Tribal Officials and agency officials or personnel who participated in the consultations, and the results of consultation efforts.

The designated Agency Official will compile a report of all consultation activities for the prior fiscal year and submit the report to the Division of Indian Affairs one month prior to the commencement of the annual Governor's Native American Summit.

Miscellaneous:

The Utah Department of Agriculture and Food will provide reasonable training opportunities for agency officials or employees authorized to implement any state action with tribal implications, per the requirements of Executive Order EO/005/2014.

Nothing in this policy is intended to prevent a Tribe, the State, or the Agency from taking action or adopting a policy that the entity believes is in its best interest.

This policy is not intended to unnecessarily delay an action or the adoption of a policy.

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8/1/2017

State of Utah Mail - Utah Department of Corrections and Tribal Consultation Policy



Shirlee Silversmith <ssilversmith@utah.gov>

Utah Department of Corrections and Tribal Consultation Policy

2 messages

Mike Haddon <mhaddon@utah.gov>

Wed, Jun 21, 2017 at 11:04 AM

To: ssilversmith@utah.gov

Cc: Rollin Cook <rollincook@utah.gov>, London Stromberg <lstromberg@utah.gov>, Mindy Usher <musher@utah.gov>, Maria Peterson <maria.peterson@utah.gov>, Stephen Gehrke <sgehrke@utah.gov>

Shirlee.....

Our Department reviewed the Executive Order when it was released in 2014. In that review, it was determined we did not fit the definition of "Agency" in the order, as it specifically relates to agencies that make policy that has or may have a substantial direct effect on one or more of the Tribes.

This remains the case today. Two areas that were brought up where we might interact with Tribes include offender supervision and the sex offender registry. After consulting with Adult Probation and Parole, it does not appear we interact with the Tribes in either area. Offenders that may live on tribal land are not supervised by us, as it interferes with their sovereignty. In terms of the registry, once an offender is registering on tribal land, they are no longer required to register in Utah and are marked out of area.

In checking with Jacey Skinner, she indicated we may just need to update you - rather than create a policy - since we don't have policy that impacts any of the Tribes in Utah. Please let me know if this is sufficient, or if you see that our Department does, indeed, need to create a policy.

Thanks so much.

.....Mike

Mike Haddon, Deputy Director
Utah Department of Corrections
14717 Minuteman Drive
Draper, Utah 84020
801-545-5913
mhaddon@utah.gov



Shirlee Silversmith <ssilversmith@utah.gov>

Tue, Aug 1, 2017 at 10:56 AM

To: Mike Haddon <mhaddon@utah.gov>

Cc: Rollin Cook <rollincook@utah.gov>, London Stromberg <lstromberg@utah.gov>, Mindy Usher <musher@utah.gov>, Maria Peterson <maria.peterson@utah.gov>, Stephen Gehrke <sgehrke@utah.gov>, James Toledo <jtoledo@utah.gov>, Jill Love <jlove@utah.gov>, Mike Mower <mikemower@utah.gov>

Mike,

Thank you for the update and I appreciate your input and clarification. I will accept your explanation and place it on file with our Executive Order records.

Best,
Shirlee

[Quoted text hidden]

Shirlee Silversmith
Director
Utah Division of Indian Affairs
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UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
 TRIBAL CONSULTATION POLICY
 FEBRUARY 1, 2015

PURPOSE: The purpose of this policy is to establish procedures to ensure the Department of Environmental Quality (DEQ) engages in meaningful government-to-government consultation with Federally Recognized Indian Tribes, respects the sovereign status of the Tribes, and complies with the requirements of Executive Order **EO/2014/005: Executive Agency Consultation with Federally-Recognized Indian Tribes**, signed by Governor Gary R. Herbert on July 30, 2014.

FUNDAMENTAL PRINCIPLES: DEQ shall promptly identify department actions that may have substantial tribal implications as outlined in section 1.c. of EO/2014/005, and engage the Tribes in meaningful dialogue and information exchange about the action. DEQ shall consult with the Indian Tribes before action is taken to the extent practicable and permitted by law.

COMMUNICATION: Tribal officials may request consultation with the Executive Director of DEQ, the Tribal Liaison or any agency within the department at any time. The Deputy Director of DEQ is the designated liaison between the Tribes and the department. The Deputy Director will be responsible for monitoring department compliance with this policy, preparing reports, documenting consultation activities, and ensuring prompt and thorough response to requests for consultation.

PROCEDURES:

- I. The executive leadership at DEQ will be responsible for identifying actions by DEQ that may have tribal implications. Tribal issues will be discussed at least quarterly at regularly scheduled executive leadership meetings and will be a standing agenda topic at the annual DEQ leadership retreat.
- II. When a DEQ action with potential tribal implications is identified, DEQ officials will promptly identify the appropriate Tribal officials to engage in government-to-government consultation and determine the level of involvement the Tribe desires.
- III. Information about the DEQ action will be given to the designated Tribal officials and their representatives promptly and they will be given opportunity to provide input. Agency representatives will be available to discuss the action in detail with representatives identified by the Tribal officials.
- IV. Tribal officials and their representatives will be given advance notice and opportunity to comment on DEQ actions prior to the formal decision process where practicable and permitted by

law. Tribal officials will also be encouraged to provide comments and express concerns during routine public comment processes.

- V. DEQ will establish workgroups, task forces, committees, or other groups as needed to address issues affecting Indian Tribes. Representatives of DEQ will also participate on groups established by Indian Tribes as requested by Tribal Officials.
- VI. DEQ will maintain a record of all consultation activities and submit an annual report to the Director of Indian Affairs 30 days prior to the Native American Summit.

UTAH DEPARTMENT OF HEALTH FEDERALLY RECOGNIZED TRIBES OF UTAH CONSULTATION POLICY

I. Purpose

This Consultation Agreement dated November 2, 2006 is executed between the federally recognized Indian tribes of Utah and Urban Indian Health Organization (UIHO) of Utah signatory to this Agreement and the State of Utah, through the Governor and the Department of Health, through its Executive Director, in order to better achieve mutual goals through improved consultation process between their sovereign governments. This Agreement provides a framework for that government-to-government relationship and implementation procedures to assure execution of that process.

Each party to this Agreement shall respect the sovereignty of the other. The respective sovereignty of the state and of each federally recognized Indian tribe provide paramount authority for that party to exist and to govern. The parties share in their relationship particular respect for the values and culture represented by tribal governments. Further, the parties share a desire for a comprehensive, collaborative relationship between the State of Utah and the federally recognized Indian tribes in Utah reflecting a full government-to-government relationship and will work with all elements of state, tribal governments and UIHO to achieve such a relationship.

II. Definitions

For purposes of this Agreement the following terms shall apply:

Consultation: An enhanced form of communication that emphasizes trust, respect and shared responsibility. It is an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension. Consultation is integral to a deliberative process that results in an effective collaboration and informed decision making.

Representative: An individual with the expressed authority to speak on behalf of the Executive of that government.

Policy: A statement governing the rationale and implementation of department or program activities.

Formal communication: A written letter or document to inform or request input on a given topic. Replies are expected.

Informal communication: Includes a variety of communication methods to exchange ideas, establish logistics or matters of organizational processes. Replies are not always necessary.

Utah Indian Health Advisory Board: An Advisory Board to the Department of Health consisting of tribal representatives with expressed authority from their governments to maintain an open dialog with the Department of Health representatives on issues related to health. Elected tribal leaders are always welcome and able to speak on behalf of their tribe. The UIHO also participates on the Advisory Board with authority from its Board of Directors.

Indian Health Liaison: A designated person from the Department who serves as the primary point of contact in health issues relating to American Indians/Alaska Natives living in Utah.

III. Parties

Governor of Utah

The Chief Executive for the state of Utah recognizing the government – to – government relationship.

Indian Walk-In Center

The Urban Indian Health Organization (UIHO), provides health referral, diabetes education and mental health services for those American Indians /Alaska Natives living along Utah's Wasatch Front.

Tribal

There are eight federally recognized Indian tribes in the state of Utah: Confederated Tribes of Goshute Indians, Navajo, Northern Ute Tribe, Northwestern Band of Shoshone, Paiute Indian Tribe of Utah, San Juan Southern Paiute, Skull Valley Band of Goshute, and White Mesa Band of the Ute Mountain Ute. Each sovereign tribe has an independent relationship with each other and the state.

Utah Department of Health

The Utah Department of Health (UDOH) is the central state point of contact for all Public Health issues in Utah.

IV. Objectives

This Agreement provides the framework for that relationship between the State of Utah, Department of Health, the signatory tribes, and the UIHO.

This Agreement illustrates the commitment by the parties for implementation of the government-to-government relationship. This relationship respects the sovereign status of the parties, enhances and improves communication between them, and facilitates the exchange of ideas regarding health policy and the resolution of issues of concern.

This Agreement is intended to build confidence and establish trust among the parties in the government-to-government relationship outlining the process for implementing the policy. Not only is this process intended to implement the relationship, but also it is intended to institutionalize it within the organizations represented by the parties.

This Agreement also commits the parties to the initial tasks that will translate the government-to-government relationship into more efficient, improved and beneficial services to Indian and non-Indian people. This Agreement encourages and provides the foundation and framework for specific agreements among the parties outlining specific tasks to address or resolve specific issues.

The parties recognize that implementation of this Agreement will require comprehensive educational efforts to promote understanding of the government-to-government relationship within their own governmental organizations and with the public.

V. Implementation Process and Responsibilities

While this Agreement addresses the consultation process, its ultimate purpose is to improve the services delivered to people by the parties.

All health related issues that might become a consultation item will first be presented to the Utah Indian Health Advisory Board for their input on the need for consultation. Representatives of each government will have responsibility to determine whether an issue rises to the level of need for consultation. Once that need is determined, it will be conveyed by letter from the tribal representative(s), leader(s) or president(s) to either the Department of Health Executive Director or to the Indian Health Liaison.

When possible, notification of policy initiation, renewal or change, including Federal waivers, presented to the UIHAB and a formal letter of intent sent to each tribal chairperson or president 90 days prior to submission to Centers for Medicare and Medicaid Services or other regulatory agency. When operating under a legislative mandate or similar constraint not allowing for 90 days, the UIHO will be notified as soon as possible. The Department will initiate consultation following notification from a tribe(s) or UIHO that one is requested.

The consultation process will include but is not limited to:

- An initial meeting to present the intent and broad scope of the policy to the Utah Indian Health Advisory Board;
- Discussions at the Utah Indian Health Advisory Board meeting to more fully understand the specifics and impact of the proposed policy initiation or change;
- Open meeting for all interested parties to receive information or provide comment;
- A presentation by tribal representatives of their concerns and potential impact of the policy;
- Continued meetings until concerns over intended policy have been fully discussed;
- A written response from the Department of Health to tribal leaders as to the action on tribal concerns.

If imposed deadlines limit the opportunity for modifications proposed by a tribe(s) or UIHO and approved by the Department, the Department agrees to submit an amendment when an agreement is reached. Consensus on all issues is not required before the implementation of a policy.

The Department of Health, the signatory tribes and UIHO agree to assure consistency in the tribal representation and urban representation in the attendance of meetings. It is only through such mutual understanding of the issues and trust can be established which are paramount to the successful consultation process. The parties recognize that a key principle of their relationship is a requirement that individuals working to resolve issues of mutual concern are accountable to act in a manner consistent with this Agreement.

The parties recognize that their relationship will successfully address issues of mutual concern when communication is clear, direct and between persons responsible for addressing the concern. They recognize that in state government, accountability is best achieved when this responsibility rests within the state agency at the Executive Director level who reports to the Governor.

All parties recognize that a system of accountability within its organization is critical to successful implementation of the relationship. The Department of Health, under the organization of state government, has the authority and responsibility to deal with the particular health issue of concern to the tribes and UIHO. Therefore, all parties will direct their staff to communicate within the spirit of this Agreement.

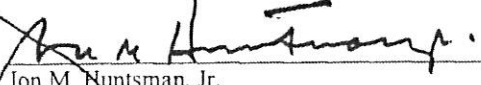
In order to accomplish these objectives and mutual understanding, the parties must ensure that the organization, decision-making process, other procedures for implementing the government-to-tribe relationship and relevant personnel are known to all parties. Finally, each party will establish a documented system of accountability.


As a component of the system of accountability within state and tribal governments, all parties will evaluate every two years, or as necessary, the implementation of the consultation process. A report will be issued 90 days after the consultation process review summarizing this evaluation and will include strategies and specific agreements to overcome obstacles and achieve specific goals.

VI. Sovereignty and Disclaimers


Each of the parties respects the sovereignty of each other. In executing this Agreement, no party waives any rights, including treaty rights, immunities, including sovereign immunities, or jurisdiction. Nor does this Agreement diminish any rights or protections afforded other Indian persons or entities under state or federal law. Through this Agreement parties strengthen their collective ability to successfully resolve issues of mutual concern.


While the relationship described by this Agreement provides increased ability to solve problems, it likely will not result in a resolution of all issues. This Agreement will not preclude any tribe or UIHO to operate independently outside of this Agreement, to address issues directly to the Governor or the Department's Executive Director.


Jon M. Huntsman, Jr.
Governor of Utah

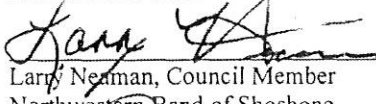

David N. Sundwall, MD, Executive Director
Utah Department of Health

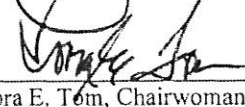
Date 11/02/06


Rupert Steele, Chairman
Confederated Tribes of Goshute Indians


Frank Dayish Jr., Vice President
Navajo Nation

Maxine Natchees, Chairwoman
Northern Ute Tribe


Larry Newman, Council Member
Northwestern Band of Shoshone


Lora E. Tom, Chairwoman
Paiute Indian Tribe of Utah

Evelyn James, President
San Juan Southern Paiute

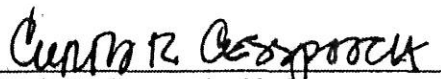
Leon Bear, Chairman
Skull Valley Band of Goshute Indians

Elayne Atcitty, Council Member
White Mesa Ute Mountain Ute Tribe



Dory Peters, Board of Directors Chairperson
Indian Walk-In Center

ADDENDUM
UTAH DEPARTEMENT OF HEALTH
FEDERALLY RECOGNIZED TRIBES OF UTAH
CONSULTATION POLICY

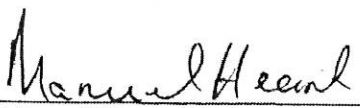
This is addendum to the "Utah Department of Health Federally Recognized Tribes of Utah Consultation Policy" which was executed on or about November 2, 2006, adds the undersigned individuals, and their respective Tribes, to the original Consultation Policy. The undersigned, on behalf of the respective federally recognized tribes wish to formally enter into this agreement as fully participating members in the consultation process outlined in the agreement with full rights and responsibilities as set forth therein.


Curtis R. Cesspoch, Chairman
Ute Indian Tribe

11/27/07
Date


Larwence Bear, Chairman
Skull Valley Band of Goshute Indians

6 DEC 07
Date


Manuel Heart, Chairman
Ute Mountain Ute Tribe

9/11/07
Date

**UTAH DEPARTMENT OF HUMAN SERVICES
FEDERALLY RECOGNIZED TRIBES OF UTAH**

CONSULTATION AGREEMENT

I. PURPOSE

This Consultation Agreement dated September 24, 2008, is executed between the undersigned federally recognized Indian tribes of Utah, the Indian Walk In Center (IWIC), the Utah Department of Human Services (DHS), and the State of Utah, in order to better achieve mutual goals through an improved consultation process. This Agreement provides a framework for a government-to-government relationship.

Each party to this Agreement shall respect the sovereignty and/or authority of the other. The respective sovereignty of the state and of each federally recognized Indian tribe provides paramount authority for that party to exist and to govern. The parties share in their relationship particular respect for the values and culture represented by tribal governments. Further, the parties share a desire for a comprehensive, collaborative relationship reflecting a full government-to-government relationship, and will work with all elements of DHS, IWIC, and tribal governments to achieve such a relationship.

II. DEFINITIONS

For purposes of this Agreement the following terms shall apply:

Consultation: An enhanced form of communication and coordination that emphasizes trust, respect and shared responsibility. It is an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension. Consultation is integral to a deliberative process that results in an effective collaboration and informed decision making.

Representative: An individual with the express authority to speak on behalf of the Executive of that government and/or an intertribal organization.

Principle: A statement governing the rationale of program activities and services.

Utah Department of Human Services Tribal and Indian Issues Committee: An Advisory Committee consisting of DHS representatives, tribal representatives, and Indian Walk In Center representatives, with express authority from their respective governing bodies to maintain an open dialog on issues related to human services. Elected tribal leaders, Indian Walk In Center and DHS staff are always welcome and able to speak with the Committee. This Committee is the formal pathway of communication between the Department of Human Services, the tribal governments and the Indian Walk In Center.

Indian Human Services Liaison: A designated person from the Department of Human Services, Executive Director's Office who serves as the primary point of contact within DHS for human services issues relating to American Indians/Alaska Natives living in Utah.

III. PARTIES

Governor of Utah: The Chief Executive for the State of Utah, in recognition of the government-to-government relationship.

Indian Walk-In Center: The organization that provides health and social service referral, diabetes education, behavioral health and substance abuse services for those American Indians/Alaska Natives living along Utah's Wasatch Front.

Tribal: The seven federally recognized Indian tribes in the state of Utah: Confederated Tribes of Goshute Reservations, Navajo Nation, Ute Indian Tribe, Northwestern Band of Shoshone, Paiute Indian Tribe of Utah, Skull Valley Band of Goshute Indians, and Ute Mountain Ute Tribe. Each sovereign tribe has an independent relationship with each other and the state.

Utah Department of Human Services: The Utah Department of Human Services includes the following: Division of Aging and Adult Services, Division of Child and Family Services, Juvenile Justice Services, Office of Public Guardian, Office of Recovery Services, Division of Services for People with Disabilities and the Utah State Developmental Center, Division of Substance Abuse and Mental Health and the Utah State Hospital, and Office of Licensing.

IV. OBJECTIVES

This Agreement provides the framework for the working relationship between the State of Utah, Department of Human Services, the signatory tribes, and the Indian Walk In Center.

This Agreement illustrates the commitment by the parties for implementation of the government-to-government relationship. This relationship respects the sovereign status of the State of Utah, Department of Human Services and the signatory tribes, enhances and improves communication and coordination between them, and facilitates the exchange of ideas and information regarding human services programs policy and the resolution of issues of concern.

This Agreement will not take the place of local Memorandums of Understanding between parties and divisions of the Department of Human Services.

This Agreement and Consultation process is designed to facilitate greater information sharing and program service coordination between the Department of Human Services, signatory tribes, and the Indian Walk In Center.

This Agreement is intended to build confidence and establish trust among the parties in the government-to-government relationship. Not only is this process intended to implement the relationship, but also it is intended to institutionalize it within the organizations represented by the parties.

This Agreement also commits the parties to the initial tasks that will translate the government-to-government relationship into more efficient, improved and beneficial services to Indian and non-Indian people. This Agreement encourages and provides the foundation and framework for specific agreements among the parties outlining specific tasks to address or resolve specific issues.

The parties recognize that implementation of this Agreement will require comprehensive educational efforts to promote understanding of the government-to-government relationship within their own governmental organizations and with the public.

IV. IMPLEMENTATION PROCESS AND RESPONSIBILITIES

While this Agreement addresses the consultation process, its ultimate purpose is to improve the services delivered for people by the parties.

Committee members will be appointed by their respective governing bodies and serve at the pleasure of their respective governing bodies. Committee members will be appointed for terms of service that coincide with their respective governing bodies' leadership terms.

Each tribe may appoint up to two Committee voting members, the Indian Walk In Center may appoint up to two Committee voting members and DHS may appoint up to two Committee members from each of its statutory Offices and Divisions. The Committee shall annually elect a chair from its membership.

Committee members appointed by their respective governing bodies are the only person authorized to vote. A majority of the voting members of the Committee shall constitute quorum and a vote of the majority of the members present at a meeting constitutes the action of the committee.

Committee Members shall receive no compensation or benefits for their services. Funding for the Committee will be supported by the DHS Division of Substance Abuse and Mental Health – UT CAN American Indian Workgroup budget until September 30, 2009 after which the funding will need to be renegotiated. Funding may cover pre-approved travel expenses and administrative costs. The Committee may not obligate DHS to pay for any expenses without the prior written approval of DHS.

The parties shall establish bylaws to govern its activities, including how Committee meetings shall be conducted, including formal and informal communication processes, and attendance requirements.

All meetings of the Department of Human Services Tribal and Indian Issues Committee will comply with Utah's Open and Public Meetings Act, Utah Code Annotated, Title 52, Chapter 4.

All human services related issues that might become a consultation item will be presented to the Human Services Tribal and Indian Issues Committee for their input on the need for consultation. Once that need is determined, it will be conveyed by letter from the party requesting consultation to the Human Services Tribal and Indian Issues Committee Chair.

When any party is considering the initiation, renewal or change of its human services policies, procedures, plans, principles, rules, laws, or other matter that may affect another party, the party considering the matter will present it to the Human Services Tribal and Indian, Committee 90 days prior to the change. When operating under a legislative mandate or similar constraint not allowing for 90 days notice, the Human Services Tribal and Indian Issues Committee will be notified as soon as possible. The Human Services Tribal and Indian Issues Committee will initiate consultation following the notification that one is requested.

The consultation process will include but is not limited to:

- An initial meeting to present the intent and broad scope of the proposed matter to the Human Services Tribal and Indian Issues Committee;
- Discussions at the Human Services Tribal and Indian Issues Committee meeting to more fully understand the specifics and impact of the proposed matter;
- Open meeting for all interested parties to receive information or provide comment;
- A presentation by tribal representatives and DHS representatives of their concerns and potential impact of the proposed matter;
- Continued meetings until concerns over intended matter have been fully discussed;
- A written response from the Department of Human Services to tribal leaders or from tribal leaders to DHS, as to the action on or outcome of concerns on the matter.

The parties and the Committee shall not disclose confidential, private, protected, or controlled information regarding individuals or discuss or make recommendations regarding individual cases or clients. The consultation process is limited to consideration of principles and other general issues of mutual concern to the parties.

The parties recognize their relationship will successfully address issues of mutual concern with communication that is clear, direct and between persons responsible for addressing the concern.

All parties recognize that a system of accountability within its organization is critical to successful implementation of the relationship. The Department of Human Services, under the organization of state government, has the authority and responsibility to deal

with the particular human services issues of concern to the tribe(s) and the Indian Walk In Center. Therefore, all parties will direct their staff to communicate within the spirit of this Agreement.

In order to accomplish these objectives and mutual understanding, the parties must ensure that their current organization, decision-making process, other procedures for implementing the government-to-government relationship and relevant personnel are known to all parties.

All parties will review and evaluate every two years, or as necessary, the implementation of the consultation process. A report will be issued to all parties 90 days after the consultation process review summarizing this evaluation and will include joint strategies and specific agreements to overcome obstacles and achieve specific goals.

Any amendments to this Agreement shall be in writing and shall not become effective until signed by all parties.

The Committee shall create By-Laws for the effective functioning of the Committee.

V. SOVEREIGNTY AND DISCLAIMERS

This Agreement and the consultation process do not create or provide any authority that obligates any person to implement the Committee's recommendations. Committee recommendations shall be given serious consideration and may result in specific Memorandums of Understanding, funding, or other applications, however Committee recommendations are non-binding.

Each of the parties respects the sovereignty of each other. In executing this Agreement, no party waives any rights, including treaty rights, immunities, including sovereign immunities, or jurisdiction. Nor does this Agreement diminish any rights or protections afforded other Indian persons or entities under state or federal law. Through this Agreement parties strengthen their collective ability to successfully resolve issues of mutual concern through communication and coordination.

While the relationship described by this Agreement provides increased ability to solve problems, it may not always result in a resolution of all issues. This Agreement will not preclude any party from operating independently outside of this Agreement, to address issues directly to any other party.

VI. THE INDIAN WALK IN CENTER

All parties understand that the Indian Walk In Center is not a federally recognized Indian Tribe; however, it is necessary that the IWIC be included in this agreement. The IWIC has a vital role in working together with all parties to provide for the health and well

being of the Indians living in Utah, who are members and citizens of each party (Tribes and states).

The general government-to-government principles do not apply to IWIC, however the Department of Human Services agrees to consult as detailed above, with IWIC to meet the goals of this agreement. IWIC will have all of the same rights and responsibilities as all other parties pursuant to this agreement.

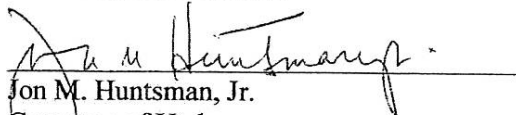
VII. OTHER ISSUES

This Agreement will become effective upon the signature of the Governor of the State of Utah, the Executive Director of the Utah Department of Human Services, and the Chairpersons of the federally recognized Indian tribes of Utah and Indian Walk In Center that choose to be a party to the Agreement.

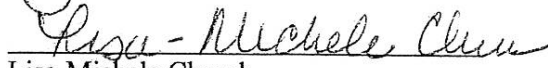
A party to this Agreement may terminate its participation in this Agreement by providing each other party with ten days written notice.

This Agreement shall terminate when the Governor of the State of Utah or the Executive Director of the Utah Department of Human Services withdraws from the Agreement, or the Chairperson of a federally recognized Indian tribe or the Indian Walk In Center of Utah may withdraw from this Agreement and the Agreement will remain in force as to all other parties.

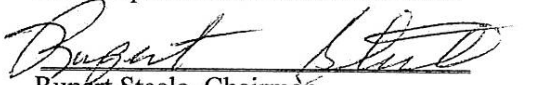
VIII. SIGNATURE PAGE


Jon M. Huntsman, Jr.
Governor of Utah

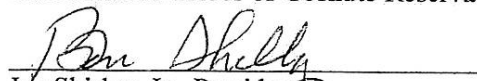
September 24, 2008
Date


Lisa-Michele Church
Executive Director
Utah Department of Human Services

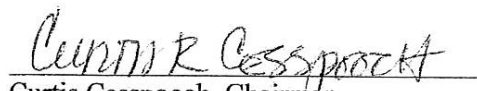
9.24.08
Date


Rupert Steele, Chairman
Confederated Tribes of Goshute Reservations

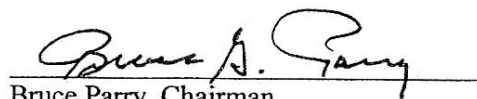
9/24/08
Date


Joe Shirley, Jr., President
Navajo Nation


09-24-08
Date


Curtis Cesspooch, Chairman
Ute Indian Tribe


9/24/08
Date


Bruce Parry, Chairman
Northwestern Band of Shoshone


Sept 24, 2008
Date


Lora E. Tom, Chairwoman
Paiute Indian Tribe of Utah

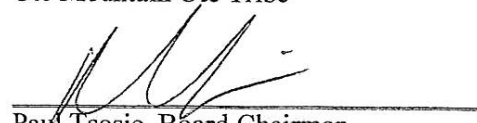
9/24/08
Date


Lawrence Bear, Chairman
Skull Valley Band of Goshute Indians

02 Oct 2008
Date


Ernest House Sr, Chairman
Ute Mountain Ute Tribe

9/24/08
Date


Paul Tsosie, Board Chairman
Indian Walk In Center

9/24/08
Date

VIII. SIGNATURE PAGE

Jon M. Huntsman, Jr.
Governor of Utah

Date

Lisa-Michele Church
Executive Director
Utah Department of Human Services

Date

Rupert Steele, Chairman
Confederated Tribes of Goshute Reservations

Date

Joe Shirley, Jr., President
Navajo Nation

Date

Curtis Cesspooch, Chairman
Ute Indian Tribe

Date

Bruce Parry, Chairman
Northwestern Band of Shoshone

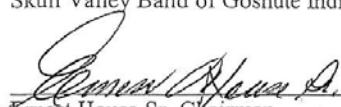
Date

Lora E. Tom, Chairwoman
Paiute Indian Tribe of Utah

Date

Lawrence Bear, Chairman
Skull Valley Band of Goshute Indians

Date



Ernest House Sr, Chairman
Ute Mountain Ute Tribe



Date

Paul Tsosie, Board Chairman
Indian Walk In Center

Date

Utah Department of Public Safety

TRIBAL CONSULTATION**174.1 PURPOSE**

The purpose of this policy is to provide an opportunity for meaningful consultation with Indian Tribes within the state and comply with the provisions of Executive Order EO/2014/005, Executive Agency Consultation with Federally-Recognized Indian Tribes.

174.2 DEFINITIONS

- (a) **"Consultation"** means the process by which the State and the Tribes may have the opportunity to exchange views and information, in writing or in person, regarding implementation of proposed state action that has, or may have, substantial tribal implications, such as impacts on the following:
1. tribal cultural practices, tribal lands, tribal resources, or access to traditional areas of tribal cultural or religious importance; or,
 2. the ability of an Indian Tribe to govern or provide services to its members; or,
 3. an Indian Tribe's formal relationship with the State; or,
 4. the consideration of the State's responsibilities to Indian Tribes.
- (b) Consultation between the State and the Tribes does not include matters that are:
1. applicable to an individual member of a tribe; or,
 2. in litigation or settlement negotiations; or,
 3. matters for which a court order limits the State's discretion to engage in consultation; or,
 4. internal agency administration, operations, processes, and personnel matters, however, the agencies involved will consult with the Tribes when hiring a new Director of Indian Affairs; or,
 5. agency action that has general applicability to industrial, commercial, agricultural, or other business activity in the State.
- (c) **"Indian Tribe"** means any federally recognized Indian Tribe listed in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. Section 479a and located wholly or partially in the State of Utah.
- (d) **"Tribal Implications"** refers to regulations, rulemaking, and other policy statements or actions that have substantial direct effect on one or more tribes, on the relationship between the State and a tribe, or on the distribution of power and responsibilities between the State and a tribe, the status of a tribe as a sovereign or governmental entity.
- (e) **Tribal Officials**—elected or appointed tribal leader or official designated by the tribe and authorized to represent the tribe in government-to-government consultations.

174.3 CONSULTATION PROCESS

- (a) Actions that Require Consultation:

1. DPS agencies shall consult with Indian Tribes to the extent practicable and permitted by law before action is taken that will have tribal implications. When an agency identifies a proposed action that requires consultation, the Commissioner or designee shall send written correspondence to the appropriate tribal officials that clearly identifies the proposed action with tribal implications, affected tribes, any agency positions on the issues, the type of input sought, how to provide input, and when to provide input.
2. In addition to the written correspondence requirement, DPS agencies may use any other appropriate format to communicate with tribal officials.

(b) Actions that May Require Consultation:

1. DPS agencies shall consult Indian Tribes as needed to evaluate whether a proposed action may have tribal implications. If a Tribe responds that a proposed action does have tribal implications, then the agency shall follow consultation procedures.

(c) Timing:

1. A DPS agency that identifies an action that requires or may require consultation shall contact the affected tribes as soon as practicable.

(d) Tribal Contact with DPS:

1. Tribes may request consultation with any DPS agency or may contact the Commissioner's Office directly concerning tribal implication issues. The nature and design of any consultation will vary and be guided by the particulars of the immediate issues and the larger situation, such as the potential number of tribes that could be affected, the complexity of the issues, and time constraints.

(e) Other Consultation Methods:

1. When possible, DPS agencies should establish or participate in workgroups, task forces, committees, or other groups with Indian tribes to address issues affecting Native Americans.
2. DPS agencies are also encouraged to attend meetings or conferences that allow for opportunities for tribal officials and agency representatives to exchange information and to provide technical assistance to Indian tribes.

(f) Emergency Response Committee Consultation:

1. The DPS representative appointed to conduct workshops of the Utah Tribal Emergency Response Committee will report to the Utah Tribal Leaders Meetings on the progress and information relayed.

174.4 TRIBAL CONSULTATION COMPLIANCE AND DATA

- (a) The Commissioner shall designate an employee to review compliance with this policy, identify consultation training opportunities, and gather consultation information from DPS agencies.
- (b) Agencies shall track information about consultations and report those to the designated employee, including details on the Indian tribes, tribal officials, and agency officials or personnel who participated, and results of consultation efforts.
- (c) The designated employee shall compile and submit an annual report to the Director of the Division of Indian Affairs on all consultation activities. This report shall be provided no later than one month prior to the commencement of the Native American Summit hosted by the Governor's Office.

Native American Tribal Consultation

Effective: February 9, 2015

UDOT 08A2-07

Revised: New

Purpose

To establish a policy for the Utah Department of Transportation (Department) so that Native American tribal issues are addressed in planning, designing, constructing, and maintaining transportation projects and to promote efforts to engage in regular and meaningful consultation with Utah's Indian Tribes.

Policy

The Department recognizes the sovereign status of the federally-recognized Indian Tribes (the "Tribes") located wholly or partially within the State of Utah. The Department respects each Tribe's government, people, history, culture, codes, and laws in recognition of tribal sovereignty. The Department encourages mutual understanding of unique cultural and organizational practices among the Tribes and the Department. The Department is committed to developing relationships with the Tribes and appreciates and encourages the Tribes' contribution to the transportation concerns of the State of Utah. The Department Executive Director of the Department, in his/her official capacity, or through his/her designee in good faith, will endeavor to implement the terms of this policy.

The Department will provide timely opportunities for communication with the Tribes about decisions that may affect them. The Department will share appropriate technical information and data with the Tribes in accordance with established Department policy. The Department will make every effort to consult with the Tribes as early as possible, is carried out in good faith, and that honesty and integrity are maintained by the Department at all stages of the consultation process. Consultation should occur as part of a meaningful and comprehensive process that promotes effective communication between the Tribes and the Department, including the Tribes sharing appropriate technical data through the established tribal policy with the Department.

Department management, including the Executive Director, Deputy Director, Region Directors, and other designated staff, will maintain appropriate working relationships with the Tribes including Tribe elected officials and staff while respecting the concerns of the Tribes and their communities.

1. The Executive Director will designate a point of contact in each of the Department's four regions.
2. The Executive Director will also designate a statewide point of contact for the Tribes who will be responsible for relationships, information sharing, and constructive dialogue with the Tribes and their representatives. The designees will be identified through notification to the Tribes, as well as, identified on the Department's Web site.

The Department will consult with the Tribes in accordance with State of Utah policies, Federal Highway Administration (FHWA) policies, and this policy during the transportation planning processes and implementation of the Statewide Transportation Improvement Program (STIP); during the environmental study processes; and during the implementation of infrastructure construction and maintenance programs. The Department will accomplish this policy through:

1. Official written notification to tribal chairpersons of individual projects that may be of interest to the Tribes,
2. Informal communication with tribal staff via telephone or email regarding projects of interest to the Tribes,
3. By providing additional information and updates to Tribes as requested,
4. By participating in the Governor's Native American Summit, and
5. By attending at least one Tribal Leader's Meeting, held quarterly, to provide updates on projects of interest to the Tribes.

The Department will engage in partnering efforts, when appropriate and as resources allow, to encourage and improve understanding and communication with the Tribes. These efforts may include:

1. Entering into programmatic agreements with those Tribes who are interested
2. Participating in the Utah Division of Indian Affairs' Native American Remains Review Committee.

The Department will provide training to Department officials and authorized employees to promote awareness on this policy and its intent and to promote effective consultation with the Tribes.

The Department will submit an annual report to the Director of the Utah Division of Indian Affairs outlining all consultation activities conducted during the previous fiscal year. This report will be submitted 30 days prior to the Governor's Native American Summit.

Background

The Department is charged with providing transportation systems that are safe, effective, facilitate the movement of people and goods, and meet present and future mobility needs. The Department is committed to working together with the Tribes for the common purpose of protecting the health, safety, and welfare of the traveling public in Utah through continuously improving relationships. The Utah Governor's Executive Order 2014/005 (July 30, 2014), "*Executive Agency Consultation with Federally-Recognized Indian Tribes*," furthermore requires state agencies to establish a tribal consultation policy for regular and meaningful consultation with the Tribes when there is a proposed state action with tribal implications as defined in this policy that affects a tribe as a sovereign or governmental entity.

Definitions

Consultation

The process by which the Department and the Tribes may have the opportunity to exchange views and information, in writing or in person, regarding the implementation of a proposed state action that has, or may have, substantial tribal implications, such as impacts on the following:

1. Tribal cultural practices, tribal lands, tribal resources, or access to traditional areas of tribal cultural or religious importance,
2. The ability of an Indian Tribe to govern or provide services to its members,
3. An Indian Tribe's formal relationship with the State, or
4. The consideration of the State's responsibilities to Indian Tribes.
5. Consultation between the Department and the Tribes does not include matters that are:
 - a. Applicable to an individual member of a tribe;
 - b. In litigation or settlement negotiations;
 - c. Matters for which a court order limits the State's discretion to engage in consultation;
 - d. Internal Department administration, operations, processes and personnel matters; however, the Department will consult with the Tribes when hiring a new Director of Indian Affairs; or
 - e. Agency action that has general applicability to industrial, commercial, agricultural, or other business activity within the State.

Indian Tribe

Any federally-recognized Indian Tribe listed in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 479a and located wholly or partially in the State of Utah.

State Action with Tribal Implications

Refers to regulations, rulemaking, and other policy statements or actions that have substantial direct effect on one or more tribes, on the relationship between the State and a tribe, or on the distribution of power and responsibilities between the State and a tribe, and the status of a tribe as a sovereign or governmental entity.



Department of
Workforce Services

Last Updated 12/12/14

Department of Workforce Services Federally-Recognized Indian Tribes Consultation Policy

In response to the Governor's executive order regarding consultation with federally-recognized Indian Tribes (Reference EO/2014/005 available at <http://www.rules.utah.gov/executivedocuments.htm#GRH>), the Utah Department of Workforce Services (DWS) has created this policy to ensure that tribes are consulted when the agency is contemplating actions that have tribal implications.

DWS is committed to engage in regular and meaningful consultation with the Tribes when the development of DWS policies may or will have substantial tribal implications. Consultation is carried out in good faith and DWS is committed to ensuring that honesty and integrity are maintained at all stages in the process. The process includes a period of identification, notification, discussion, and follow-up.

IDENTIFICATION: Process to Provide an Opportunity for Meaningful Consultation

DWS will identify activities that may be appropriate for consultation including an assessment of the intent, complexity, and potential implications for tribes under a proposed policy. As DWS evaluates these activities, it will consider the guidance provided under Sections 1(c) and 1(d) of EO/2014/005.

Section 1(c) of EO/2014/005

DWS will facilitate a consultation with Tribal Officials as an opportunity to exchange views and information when proposed state action may impact any of the following:

- i. Tribal cultural practices, tribal lands, tribal resources, or access to traditional areas of tribal cultural or religious importance; or
- ii. The ability of an Indian Tribe to govern or provide services to its members; or,
- iii. An Indian Tribe's formal relationship with the State; or,
- iv. The consideration of the State's responsibilities to Indian Tribes.

Section 1(d) of EO/2014/005

Consultation between DWS and the Tribes does not include matters that are:

- i. Applicable to an individual member of a tribe; or
- ii. In litigation or settlement negotiations; or,
- iii. Matters for which a court order limits the State's discretion to engage in consultation; or,



**Department of
Workforce Services**

Last Updated 12/12/14

- iv. Internal agency administration, operations, processes, and personnel matters; or,
- v. Agency action that has general applicability to industrial, commercial, agricultural, or other business activity in the State.

NOTIFICATION: Process to Provide Reasonable Notice for Consultation

DWS will notify tribes of potentially impactful policy proposals as early as possible in the process through means of electronic communication, such as email, or via telephone. Whenever possible, DWS will honor tribal preferences regarding the specific mode of contact. This notification will include sufficient information for Tribal Official(s) to make an informed decision about the desire to continue with consultation and sufficient information to understand how to provide informed input.

DISCUSSION: Process to Provide Active Participation by Tribal Official(s)

DWS will facilitate discussion of the proposed policy through a range of interactions, such as phone calls, meetings, or other appropriate interactions depending on the specific circumstances involved. DWS will coordinate with Tribal Official(s) to be responsive to their needs for information and to provide opportunities to provide, receive, and discuss input.

FOLLOW-UP

Consensus on all issues is not required before the implementation of the policy. DWS will provide feedback to Tribal Official(s) to explain how their input was considered in the final action. This will be provided via formal, written communication from the DWS Designated Official.

Designated Agency Official: _____

	Name and Job Title
	Phone Number
	Email Address



Department of
Workforce Services

Federally Recognized Indian Tribes Consultation Policy Department of Workforce Services Internal Procedure

Each Division is responsible for reviewing the DWS Consultation Policy regarding Federally-Recognized Indian Tribes and identifying particular actions that meet the criteria under the "Identification" section. This procedure describes the process of collaborating with Communications to facilitate consultation with the Tribes. Communications will act as the Designated Agency Official.

1. Send draft policy in a PDF document to Communications with a cover letter explaining the proposed policy change. Include in the cover letter the date feedback is due and who to contact with questions. Document should include a watermark that clearly indicates this is a draft policy.
2. Communications will send the proposed policy and cover letter to the Tribes with instructions to send feedback to Communications.
3. Communications will collect the feedback and send to the Operations contact.
4. Operations contact will review feedback from the Tribes. Operations contact may reach out directly to the Tribes for further questions or coordinate with Communications to schedule a formal consultation, as appropriate.
5. Operations will send the final policy to Communications in an email that includes how the Tribal feedback was considered. Communications will send to the Tribes.

STATE OF UTAH DIVISION OF WILDLIFE RESOURCES ADMINISTRATION	NO.: W1AG-26	NO. PAGES: 5
	EFFECTIVE DATE: February 8, 2016	
	APPROVED: Gregory Sheehan	
SUBJECT: TRIBAL CONSULTATION POLICY		
DISTRIBUTION: ALL DIVISION EMPLOYEES		

I. PURPOSE

The purpose of this policy is for the Division of Wildlife Resources ("Division") to establish processes for regular and meaningful consultation with Indian Tribes to comply with the provisions of Executive Order EO/2014/005, *Executive Agency Consultation with Federally-Recognized Indian Tribes*.

II. DEFINITIONS FROM EXECUTIVE ORDER EO/2014/005

- a. "Agency" means an executive agency or department of the State that makes policy that has, or may have, a substantial direct effect on one or more of the Tribes.
- b. "Agency Official(s)" means an individual or individuals designated and authorized to represent an agency for the purpose of implementation of the agency's tribal policy.
- c. "Consultation" means the process by which the State and the Tribes may have the opportunity to exchange views and information, in writing or in person, regarding implementation of proposed state action that has, or may have, substantial tribal implications, such as the following:
 - i. tribal cultural practices, tribal lands, tribal resources, or access to traditional areas of tribal cultural or religious importance;
 - ii. the ability of an Indian Tribe to govern or provide services to its members;
 - iii. an Indian Tribe's formal relationship with the State; or
 - iv. the consideration of the State's responsibilities to Indian Tribes.

Consultation between the State and Tribes does not include matters that are:

- i. applicable to an individual member of a tribe;
 - ii. in litigation or settlement negotiations;
 - iii. matters for which a court order limits the State's discretion to engage in consultation;
 - iv. internal agency administration, operations, processes, and personal matters, however, the agencies involved will consult with the Tribes when hiring a new Director of Indian Affairs; or
 - v. agency action that has general applicability to industrial, commercial, agricultural, or other business activity in the State.
- d. "Indian Tribe" means any federally recognized Indian Tribe listed in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 479a and located wholly or partially in the State of Utah.
- e. "State Action With Tribal Implications" refers to regulations, rulemaking, and other policy statements or actions that have substantial direct effect on one or more tribes, on the relationship between the State and a tribe, or on the distribution of power and responsibilities between the State and a tribe, or the status of a tribe as a sovereign or governmental entity.
- f. "Tribal Official" means an elected or appointed tribal leader or individual designated by the tribe and authorized to represent the tribe in government-to-government consultations.

III. **FUNDAMENTAL PRINCIPLES FROM EXECUTIVE ORDER EO/2014/005**

In formulating or implementing state action with tribal implications, agencies shall be guided by the following fundamental principles:

- a. The State has a government-to-government relationship with the tribal governments as set forth in the Constitution of the United States, the Utah Constitution, treaties, statutes, and court decisions.
- b. The State has recognized the right of the Tribes to self-government. The State desires to work with the Tribes on a government-to-government basis.
- c. When an agency intends to implement a state action with tribal implications, consultation should occur as part of a meaningful and comprehensive process that promotes effective communication between

the tribe and the agency. The agency should make every effort to ensure that consultation with the tribe is conducted early as possible, is carried out in good faith, and that honesty and integrity are maintained by the agency at all stages of the consultation process.

IV. DESIGNATED AGENCY OFFICIAL

Per the terms of Executive Order EO/2014/005, the Division of Wildlife Resources designates the following Agency Official to represent it for the purposes of implementing this Tribal Consultation Policy:

RAC and Wildlife Board Coordinator
1594 West North Temple, Suite 2110
Salt Lake City, Utah 84116
Phone: (801) 450-3093
E-mail: stacicoons@utah.gov

IV. CONSULTATION PROCESS

Consultation consists of four phases: Identification, Notification, Input, and Follow-up:

- a. **Identification Phase:** The Division implements policy, regulations, and wildlife management actions by presenting proposals to five regional advisory councils for input and recommendation and then to the Wildlife Board for final determination. Virtually, all Division actions potentially impacting Indian Tribes follow this process. Written summaries and documentation describing and pertinent to each proposal are prepared and distributed to the regional advisory councils and Wildlife Board prior to holding public meetings and making determinations.
- b. **Notification Phase:** The Division will notify Indian Tribes of its actions with tribal implications by sending to each tribe the same packet of information: 1) provided to the regional advisory councils and Wildlife Board; and 2) deliver the information to tribes contemporaneously with providing it to the regional advisory councils and Wildlife Board.
 - i. Indian Tribes having questions or comments on any proposed action may contact the Division directly or attend the regional advisory council/Wildlife Board meetings to voice comments there.
 - ii. Notification can occur in other ways when Division action outside the regional advisory/Wildlife Board process may have tribal implications. In such cases, the Division will notify and inform the

affected Indian Tribe by phone, written correspondence, electronic communication, or other accepted means.

Notification should include sufficient information for Tribal Officials to make an informed decision about whether to participate in consultation and how to provide informed input. Sufficient information includes:

- a. An overview of the contemplated state action;
 - b. Description of the topic(s) to be discussed in consultation activities;
 - c. A proposed timeframe during which consultation activities should take place and/or deadlines for Tribes submitting input; and
 - d. The contact information for the designated Agency Official or other Division personnel who can respond to any questions, or provide any clarifications.
- c. **Input Phase:** The purpose of consultation is to receive input from Tribal Officials on state actions that have tribal implications. During the input phase, Tribal Officials will have the opportunity to submit input and discuss their questions and concerns. Input can be received in a number of ways depending on the nature of the proposed state action. Input can be received in face-to-face meetings, by phone, or by written communication.
- The Division, Regional Advisory Councils and Wildlife Board will consider input received from Tribal Officials regarding a proposed action as part of its decision-making process. The Division may need to undertake subsequent consultation if there are significant changes in the originally-proposed activity, or as new issues arise.
- d. **Follow-up Phase:** After the Division consults with Tribal Officials regarding a proposed state action with tribal implications, and considers input received during the consultation process as part of its decision-making process, it will follow-up with all Tribal Officials who participated in the consultation process.
- i. Once the Division finalizes its action, its Agency Official will communicate the decision on the action to Tribal Officials or Indian Tribes who participated in consultation.

- ii. Follow-up with Tribal Officials should include: a description of the action for which consultation occurred, a description of consultation activities including dates on which consultation occurred and names of those involved, the Division's decision on the action, and the contact information for the Agency Official or other personnel who can provide any technical assistance or respond to any questions.

IV. TRIBAL CONSULTATION REPORTING

The Division will track information about consultation activities, including: the number of consultations conducted, the Indian Tribe(s) consulted, Tribal Officials and Agency Officials or personnel who participated in the consultations, and the results of consultation efforts.

The designated Agency Official will compile a report of all consultation activities for the prior fiscal year and submit the report to the Division of Indian Affairs one month prior to the commencement of the annual Governor's Native American Summit.

IV. MISCELLANEOUS

The Division will provide reasonable training opportunities for Agency Officials or employees authorized to implement any Division action with tribal implications, per the requirements of Executive Order EO/005/2014.

Nothing in this policy is intended to prevent an Indian Tribe, the State, or the Division from taking action or adopting a policy that the entity believes is in its best interest.

This policy is not intended to unnecessarily delay an action or the adoption of a policy.

**Governor's Office of Economic Development
Tribal Consultation Policy**

Purpose:

The purpose of this policy is for the Governor's Office of Economic Development to establish processes for regular and meaningful consultation with Indian Tribes to comply with the provisions of Executive Order EO/2014/005, *Executive Agency Consultation with Federally-Recognized Indian Tribes*.

Definitions from Executive Order EO/2014/005:

- a. "Agency" means an executive agency or department that makes policy that has, or may have, a substantial direct effect on one or more of the Tribes. This order does not apply to independent entities as defined in Utah Code Annotated §63E-1-102(4)(a).
- b. "Agency Official(s)" means an individual or individuals designated and authorized to represent an agency for the purpose of implementation of the agency's tribal policy.
- c. "Consultation" means the process by which the State and the Tribes may have the opportunity to exchange views and information, in writing or in person, regarding implementation of proposed state action that has, or may have, substantial tribal implications, such as the following:
 - i. Tribal cultural practices, tribal lands, tribal resources, or access to traditional areas of tribal cultural or religious importance; or
 - ii. The ability of an Indian Tribe to govern or provide services to its members; or,
 - iii. An Indian Tribe's formal relationship with the State; or,
 - iv. The consideration of the State's responsibilities to Indian Tribes.

Consultation between the State and Tribes does not include matters that are:

- i. Applicable to an individual member of a tribe; or
 - ii. In litigation or settlement negotiations; or,
 - iii. Matters for which a court order limits the State's discretion to engage in consultation; or,
 - iv. Internal agency administration, operations, processes, and personal matters, however, the agencies involved will consult with the Tribes when hiring a new Director of Indian Affairs; or,
 - v. Agency action that has general applicability to industrial, commercial, agricultural, or other business activity in the State.
- d. "Indian Tribe" means any federally recognized Indian Tribe listed in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 479a and located wholly or partially in the State of Utah.
 - e. "State Action With Tribal Implications" refers to regulations, rulemaking, and other policy statements or actions that have substantial direct effect on one or more tribes, on the

relationship between the State and a tribe, or on the distribution of power and responsibilities between the State and a tribe, or the status of a tribe as a sovereign or governmental entity.

- f. "Tribal Official" means an elected or appointed tribal leader or individual designated by the tribe and authorized to represent the tribe in government-to-government consultations.

Fundamental Principles from Executive Order EO/2014/005:

In formulating or implementing state action with tribal implications, agencies shall be guided by the following fundamental principles:

- a. The State has a government-to-government relationship with the tribal governments as set forth in the Constitution of the United States, the Utah Constitution, treaties, statutes, and court decisions.
- b. The State has recognized the right of the Tribes to self-government. The State desires to work with the Tribes on a government-to-government basis.
- c. When an agency intends to implement a state action with tribal implications, consultation should occur as part of a meaningful and comprehensive process that promotes effective communication between the tribe and the agency. The agency should make every effort to ensure that consultation with the tribe is conducted as early as possible, is carried out in good faith, and that honesty and integrity are maintained by the agency at all stages of the consultation process.

Designated Agency Official:

Per the terms of Executive Order EO/2014/005, the Governor's Office of Economic Development designates the following agency official to represent the agency for the purposes of implementing this Tribal Consultation Policy:

Linda Gillmor
Rural Program Manager
801-538-8804
lgillmor@utah.gov
60 E South Temple
Salt Lake City, Utah 84111

Consultation Process:

Consultation consists of four phases: Identification, Notification, Input, and Follow-up:

- a. **Identification Phase:** When contemplating a state action, the Governor's Office of Economic Development will identify whether such action may have tribal implications per the guidelines of Executive Order EO/2014/005 and requires consultation.
- b. **Notification Phase:** If the Governor's Office of Economic Development determines a state action may have tribal implications and requires consultation, the Agency will notify the Tribe(s) to request consultation.
 - i. Consultation should occur early in the decision-making process to allow tribes the opportunity to provide meaningful input and give state agencies the opportunity to consider input by the tribe(s). Agency officials will determine the best time to begin consultation.
 - ii. Notification can occur in a number of ways depending on the nature of the proposed state action and the number of tribes potentially affected. For example, agencies may meet face-to-face with one or more tribes, may contact tribal governments by phone, through written correspondence, or provide notice through other accepted means.

Notification includes sufficient information for Tribal Officials to make an informed decision about whether to participate in consultation and how to provide informed input. Sufficient information includes:

- a. An overview of the contemplated state action,
 - b. Description of the topic(s) to be discussed in consultation activities,
 - c. A proposed timeframe during which consultation activities should take place and/or deadlines for Tribes submitting input, and
 - d. The contact information for the designated Agency Official or other personnel who can respond to any questions, or provide any clarifications.
- c. **Input Phase:** The purpose of consultation is to receive input from Tribal Officials on state actions that have tribal implications. During the input phase, Tribal Officials will have the opportunity to submit input and discuss their questions and concerns. Input can be received in a number of ways depending on the nature of the proposed state action. Input can be received in face-to-face meetings, by phone, or by written communication.

The Governor's Office of Economic Development will consider input received from Tribal Officials regarding the proposed action as part of its decision-making process. The Agency may need to undertake subsequent rounds of consultation if there are significant changes in the originally-proposed activity, or as new issues arise.

- d. **Follow-up Phase:** After the Governor's Office of Economic Development consults with Tribal Officials regarding a proposed state action with tribal implications, and considers input received during the consultation process as part of its decision-making process, the Agency will follow-up with all Tribal Officials who participated in the consultation process.

- i. Once the Agency finalizes its action, the Agency Official will communicate the Agency's decision on the action to Tribal Officials and Indian Tribes who participated in consultation.
- ii. Follow-up with Tribal Official will include: a description of the action for which consultation occurred, a description of consultation activities including dates on which consultation occurred and names of those involved, the Agency decision on the action, and the contact information for the Agency Official or other personnel who can provide any technical assistance or respond to any questions.

Tribal Consultation Reporting:

The Governor's Office of Economic Development will track information about consultation activities, including, but not limited to: the number of consultations conducted, the Tribe(s) which were consulted, Tribal Officials and agency officials or personnel who participated in the consultations, and the results of consultation efforts.

The designated Agency Official will compile a report of all consultation activities for the prior fiscal year and submit the report to the Division of Indian Affairs one month prior to the commencement of the annual Governor's Native American Summit.

Miscellaneous:

The Governor's Office of Economic Development will provide reasonable training opportunities for agency officials or employees authorized to implement any state action with tribal implications, per the requirements of Executive Order EO/005/2014.

Nothing in this policy is intended to prevent a Tribe, the State, or the Agency from taking action or adopting a policy that the entity believes is in its best interest.

This policy is not intended to unnecessarily delay an action or the adoption of a policy.

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