

List of State and Federal Consultation Guidelines

(DRAFT Work in Progress)

NEW MEXICO

Authority:

- 2003—Governor of the State of New Mexico and 21 out of 22 Indian Tribes of New Mexico adopted the “2003 Statement of Policy and Process” to “establish and promote a relationship of cooperation, coordination, open communication and good will, and [to] work in good faith to amicably and fairly resolve issues and differences.”
- Executive Order 2005-004 mandating the Executive State agencies adopt tribal consultation plans
- N.M. Stat. Ann. §§ 11-18-1 to 11-18-5 (State-Tribal Collaboration Act adopted in 2009, requiring New Mexico state agencies to establish policies and appoint tribal liaisons to promote effective communication and collaboration between state agencies and tribes; providing for training and an annual summit);

Resulting Agency Policies:

- <https://www.cms.gov/Outreach-and-Education/American-Indian-Alaska-Native/AIAN/Downloads/Pilot-Tribal-Consultation-Efforts-by-the-State-of-New-Mexico.pdf>
- **State-Tribal Consultation Protocol**
 - HHS State-Tribal Consultation Protocol
 - Background
 - Purpose
 - Principles
 - Definitions
 - General Provisions
 - Intergovernmental Coordination and Collaboration
 - Annual HHS-TRIBAL Summits
 - Dissemination of Protocol to HHS Employees
 - Amendments to the Protocol
 - Effective Date
 - Sovereign Immunity
- **New Mexico Indian Affairs Department, State-Tribal Consultation, Collaboration and Communication Policies**, available at http://www.iad.state.nm.us/statetribal_policies.html (last visited Dec. 21, 2018).
 - General Organization of All Policies:
 - Background
 - Purpose
 - Principles
 - Definitions
 - General Provisions
 - Collaboration and Communication
 - Consultation

- Dissemination of Policy
- Amendments and Review of Policy
- Effective Date
- Sovereign Immunity
- Closing Statement/Signatures
- All of the following agencies also have tribal liaisons
https://www.iad.state.nm.us/tribal_liaisons.html
 - [African American Affairs, Office of](#)
 - [Aging and Long-Term Services Department](#)
 - [Agriculture, Department of](#)
 - [Children, Youth and Families Department](#)
 - [Corrections Department](#)
 - [Cultural Affairs, Department of](#)
 - [Economic Development Department](#)
 - [Energy, Minerals and Natural Resources Department](#)
 - [Environment Department](#)
 - [Expo New Mexico](#)
 - [Finance and Administration, Department of](#)
 - [Game and Fish, Department of](#)
 - [General Services Department](#)
 - [Health, Department of](#)
 - [Higher Education Department](#)
 - [Homeland Security and Emergency Management, Department of](#)
 - [Human Services Department](#)
 - [Indian Affairs Department](#)
 - [Information Technology, Department of](#)
 - [National Guard, New Mexico](#)
 - [Public Defender, Department of](#)
 - [Public Education Department](#)
 - [Public Safety, Department of](#)
 - [Regulation and Licensing Department](#)
 - [State Engineer, Office of](#)
 - [State Investment Council](#)
 - [State Personnel Office](#)
 - [Taxation and Revenue Department](#)
 - [Tourism Department](#)
 - [Transportation, Department of](#)
 - [Veterans' Services, Department of](#)
 - [Workers' Compensation Administration](#)
 - [Workforce Solutions, Department of](#)

CALIFORNIA

Authority:

- Cal. Exec. Ord. B-10-11 (2011) (creating position of Governor's Tribal Advisor to facilitate communication and consultation with tribes), available at <http://gov.ca.gov/news.php?id=17223> (last visited Dec. 21, 2018);

- Assembly Bill 52 (AB 52, Gatto, Chapter 532, Statutes of 2014)(CEQA Related)
 - http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB52&search_keywords

Resulting Agency Policies:

- **California Natural Resources Agency** http://resources.ca.gov/tribal_policy/
 - **California Energy Commission** <https://www.energy.ca.gov/programs-and-topics/programs/tribal-program>
 - Tribal Consultation Policy: https://www.energy.ca.gov/sites/default/files/2019-06/2017CEC_Tribal_Consultation_Policy.pdf
 - **Public Utilities Commission** <https://www.cpuc.ca.gov/tribal/> , <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M212/K861/212861685.PDF>
 - Introduction
 - Tribal Liaison
 - Policy goals
 - Background Regarding CPUC Authority
 - Facilitating Tribal Government Participation
 - Confidentiality
 - Tribal Consultation Under CEQA
 - **Cal Division of Water Resources** <https://water.ca.gov/About/Tribal-Policy>

WASHINGTON

Authority

- Exec. Order No. 2006-14 (Ariz. 2006) (directing all state agencies to develop tribal consultation policies and to designate a principal point of contact for tribal issues), available at <https://des.az.gov/sites/default/files/Executive-Order-2006-14.pdf> (last visited Dec. 21, 2018);

Resulting Policies

- Governor’s Office of Indian Affairs: <https://goia.wa.gov/>
 - Implementation Guidelines
- Attorney General’s Office Policy

OREGON

The State of Oregon has adopted a structure for government-to-government relations with the federally recognized tribes in Oregon, first through a 1996 governor's executive order 2 and then through legislation adopted in 2001. 3 The executive order and statute require state agencies to designate tribal “key contacts,” and provide for an annual meeting of state and tribal leaders. The statute requires state agencies to establish tribal relations policies and to provide an annual report. It also requires annual training for managers and employees who have regular contact with tribes. Through the executive order process, the state and tribes established interest area “cluster groups” of state agency and tribal staff who meet on a regular basis to share information and discuss issues of concern. 4

WISCONSIN

Wisc. Exec. Order No. 39 (2004) (directing state cabinet agencies to consult Wisconsin tribes when formulating and implementing policies or programs directly affecting them), available at https://docs.legis.wisconsin.gov/code/executive_orders/2003_jim_doyle/2004-39.pdf (last visited Dec. 21, 2018);

MICHIGAN

Mich. Exec. Dir. No. 2004-5 (2004) (requiring state agency consultation with tribes and requiring each agency to designate a coordinator for interactions with tribes), available at http://www.michigan.gov/formergovernors/0,4584,7-212-57648_36898-92821--,00.html (last visited Dec. 21, 2018);

UTAH

Utah Exec. Order 2014/005 (2014) (requiring state agency consultation with tribes, requiring consultation policies and annual tribal summit), available at <http://www.rules.utah.gov/execdoks/2014/ExecDoc155570.htm> (last visited Dec. 27, 2017);

MINNESOTA

Minn. Exec. Order 13-10 (2013) (requiring cabinet level state agencies to develop and implement tribal consultation policies and designate principal point of contact for Minnesota tribes), available at <https://www.leg.state.mn.us/archive/execorders/13-10.pdf> (last visited Dec. 21, 2018).

KANSAS

Kan. Stat. Ann. § 46-2303 (establishing joint committee on tribal relations);

SOUTH DAKOTA

S.D. Codified Laws Ann. §§ 1-54-1 to 1-54-4 (establishing South Dakota Department of Tribal Relations); S.D. Codified Laws Ann. § 2-6-20 (creating state-tribal relations committee); S.D. Codified Laws Ann. § 2-6-23 (outlining responsibilities of state-tribal relations committee);

OKLAHOMA

Okla. Stat. Ann. 74 § 1222 (creating committee and defining committee responsibilities);

2015 S.C.R.2 Concurrent Resolution Regarding Navajo Water Rights Settlement (Utah 2015) available at <https://le.utah.gov/~2015/bills/static/SCR002.html> (last visited Dec. 21, 2018) (declaring support for water rights settlement).

ALASKA

MONTANA

FEDERAL AGENCIES

Authority

- Older Americans Act, P.L. 89-73, as amended;
- Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended;
- Native American Programs Act, P.L. 93-644, as amended;
- Indian Health Care Improvement Act, P.L. 94-437, as amended;
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.104-193;
- Presidential Executive Memorandum to the Heads of Executive Departments dated April 29, 1994;
- Presidential Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000; and
- Presidential Memorandum, Government-to-Government Relationship with Tribal Governments, September 23, 2004
- Presidential Memorandum, Tribal Consultation, November 5, 2009
- American Recovery and Reinvestment Act of 2009, P.L. 111-5, 123 Stat. 115 (Feb. 17, 2009).
- Children's Health Insurance Program Reauthorization Act of 2009, P.L. 111-3, 123 Stat. 8 (Feb. 4, 2009).
- Patient Protection and Affordable Care Act of 2010, P.L. 111-148, 124 Stat. 119 (Mar. 23, 2010).

Resulting Agency Policies

- Bureau of Land Management Tribal Relations Handbook
 - https://www.blm.gov/sites/blm.gov/files/uploads/H-1780-1_0.pdf
 - Introduction
 - Building and Maintaining Tribal Relationships
 - Tribal Consultation General Considerations
 - Guidance for Tribal Consultation in Planning and Decision Support
 - Guidance for Tribal Consultation Applicable to the National Conservation Lands Program
 - Guidance for Consultation Applicable to the Fire Management Program
 - Guidance for Consultation Applicable to the Forest and Woodlands Program
 - Guidance for Consultation Applicable to the Rangeland Management Program
 - Guidance for Consultation Applicable to the Fish and Wildlife Program
 - Guidance for Consultation Applicable to the Cultural Heritage Program
 - Guidance for Consultation Applicable to the Renewable Energy Program
 - Guidance for Consultation Applicable to the Fluid Mineral Program
 - Guidance for Consultation Applicable to the Minerals Program
 - Guidance for Consultation Applicable to the Cadastral Survey Program
 - Guidance for Consultation Applicable to the Realty Program
- U.S. Department of Health and Human Services, Tribal Consultation Policy
<https://www.hhs.gov/sites/default/files/iea/tribal/tribalconsultation/hhs-consultation-policy.pdf>

- Purpose
- Background
- Tribal Sovereignty
- Policy
- Philosophy
- Objectives
- Consultation Participants and Roles
 - Indian Tribes
 - Indian Organizations
 - Office of Intergovernmental Affairs
 - Assistant Secretary for Finance and Resources
 - HHS Divisions
 - Interdepartmental Council on Native American Affairs
 - Regional Offices
- Tribal Consultation Process
 - Communication Methods
 - HHS Response to Official Tribal Correspondence
 - Policy Developments through process
 - Schedule for Consultation
- Consultation procedures and responsibilities
 - Consultation parties and mechanisms—consultation occurs
 - Consultation procedures
- Establishment of Joint Tribal/Federal Workgroups and/or Taskforces
- HHS Budget Formulation
- Tribal Consultation Performance and Accountability
- Evaluation, Recording of Meetings and Reporting
- Conflict Resolution
- Tribal Waiver
- Effective Date
- Definitions
- U.S. Fish and Wildlife Service
 - Introduction
 - Background
 - Purpose
 - Objectives
 - Tribes: Their Rights and Responsibilities
 - Cultural Diversity and Awareness
 - Consultation
 - A History and Legal Background
 - With Whom Do You Consult?
 - When is Consultation Necessary? (proactive, reactive, responsive)
 - Range of Consultation Contexts
 - Recommended Consultation Protocol

OTHER RESOURCES

Cohen's Handbook of Federal Indian Law

NATHPO Tribal Consultation: Best Practices in Historic Preservation

