

**Department of Administrative Services  
Tribal Consultation Policy**

**Purpose:**

The purpose of this policy is for the Department of Administrative Services 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 Department of Administrative Services designates the following agency official to represent the agency for the purposes of implementing this Tribal Consultation Policy:

Richard P. Amon  
Deputy Executive Director  
801-538-3091  
[ramon@utah.gov](mailto:ramon@utah.gov)  
3120 State Office Building  
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 Department of Administrative Services 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 Department of Administrative Services 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 Department of Administrative Services 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 Department of Administrative Services 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 Department of Administrative Services 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 Department of Administrative Services 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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