

# Native American Tribal Consultation

Effective: February 23, 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 tribal 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*," 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; 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.