

U.S. Department of Energy  
Washington, D.C.

Order  
DOE O 144.1  
Approved: XX-XX-23

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**SUBJECT:** DEPARTMENT OF ENERGY (DOE) REQUIREMENTS FOR CONSULTATION AND ENGAGEMENT WITH INDIAN TRIBES INCLUDING ALASKA NATIVE ENTITIES PURSUANT TO DOE POLICY (CITE NUMBER AND/OR FORMAL NAME)

1. PURPOSE. This Order communicates Departmental, Headquarters program, field site, laboratory, and contractor responsibilities and requirements for government-to-government consultation and engagement with federally-recognized Indian tribes that arise from *U.S. Department of Energy Policy on Consultation and Engagement with Indian Tribes including Alaska Native Entities* (DOE Policy xxx.x; the Policy). It expands and clarifies Departmental policy on consultation with Indian tribes and acknowledges the provisions for conducting consultation in compliance with the U.S. Constitution; treaties between the United States and Indian tribes; applicable statutes, which include, but are not limited to, the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, American Indian Religious Freedom Act, and National Environmental Policy Act; Executive Order (EO) 13175 *Consultation and Coordination with Indian Tribal Governments*; and the *Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships* (January 2021) and *Presidential Memorandum on Uniform Standards for Tribal Consultation* (November 2022). This Order also transmits the Contractor Requirements Document, Document and Consultation Guidance, and guidance for implementation for DOE offices.
2. CANCELLATION. DOE O 1230.2, *American Indian Tribal Government Policy*, dated 4-8-92. Cancellation of a directive does not, by itself, modify or otherwise affect any contractual obligation to comply with the Order. Contractor Requirement Documents (CRDs) that have been incorporated into or attached to a contract remain in effect until the contract is modified to either eliminate requirements that are no longer applicable or substitute a new set of requirements.
3. APPLICABILITY.
  - a. DOE Elements. Except for the exclusions in paragraph 3c, this Order applies to all Departmental elements, including those created after the Order is issued; sites; and National Laboratories. (Go to: [DOE Departmental Elements — DOE Directives, Guidance, and Delegations](#) for the current listing of Departmental elements.)

The Administrator of the National Nuclear Security Administration (NNSA)

will assure that NNSA employees and contractors comply with their respective responsibilities under this Order. Nothing in this Order will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration specific policies, unless disapproved by the Secretary.

b. DOE Contractors.

- (1) Except for the exclusions in paragraph 3c, the Contractor Requirements Document (CRD), Attachment 1, sets forth requirements of this Order that apply to contracts that include the CRD.
- (2) Each DOE Head of Departmental Element must ensure the CRD (tailored to the extent appropriate by the Head of Departmental Element's appointed DOE Contracts Tribal Point of Contact) is included in contracts (both management and operating (M&O) contracts and non-M&O contracts) under which work and contractor interactions may potentially result in an impact on the traditional and cultural lifeways, natural resources, treaty rights, reserved treaty rights, and any other legal rights of federally recognized Indian tribes.

c. Exclusions.

- (1) This directive does not affect Departmental interactions where the Indian tribe being potentially impacted is a party to an action planned by a non-federal entity, that involves funding, approval, or other final agency action provided by the Department. A letter of support for an action does not determine whether an Indian tribe is a party to an action.
- (2) This directive does not apply to Departmental interactions with non-federally recognized tribes including state recognized tribes and indigenous groups.
- (3) In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 U.S.C. §§ 2406 and 2511 and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Directive for activities under the Director's cognizance, as deemed appropriate.
- (4) Bonneville Power Administration under DOE Secretarial Delegation No. 00-033.00A of 9-27-02. DOE Order 1230.2 on "American Indian Tribal Government Policy" originally was

delegated to the BPA Administrator. The current Secretarial Delegation No. 00-033.00A to the BPA Administrator continues this approach.

4. REQUIREMENTS.

- a. Tribal Training for DOE Officials. To successfully realize regular, meaningful, and robust consultation and/or engagement for the purpose of enhancing DOE decisions as they relate or potentially relate to tribes and tribal equities. Any Department staff who will represent or support the Department in consultation or engagement, or programs that may have the potential to impact tribes, should first complete training to effectively work with tribes, including training on implementation of this Order.
- (1) DOE personnel and contractors will receive annual training on the following topics:
- (a) Colonization , federal Indian policy, and the associated impacts to Native American people and tribal governments.
  - (b) The tribal sovereignty, federal tribal trust responsibility, and government-to-government relationship between the federal government and tribes;
  - (c) The treaty rights of tribes;
  - (d) Sacred sites and cultural resource protection;
  - (e) History of U.S. energy policies and energy projects and its continued impacts to tribes
  - (f) The culture and history of American Indians, Alaska Natives, and tribes;
  - (g) Existing consultation policies of the tribe(s), as well as tribal government structures, and decision-making processes;
  - (h) The DOE Policy and Order 144.1;
  - (i) American Indian and Alaska Native cultural awareness, including Indigenous Knowledge;
  - (j) Tribal governance.
- b.

c. Government-to-Government Consultation with Tribes

Requirement for Consultation. DOE Elements must invite Indian tribes early and throughout the planning process to engage and consult whenever a Departmental plan or action may have potential to impact tribal lands, rights or interests. DOE Elements should operate under the assumption that all actions with land or resource use may have the potential to impact (or implications) tribal interests and should extend consultation invitations. DOE Elements should understand that tribes continue to have deep connections and continued legal rights to their traditional homelands. Tribes may have been forcefully removed from their homelands or may have reservations that are significantly reduced from their traditional homelands due to past federal Indian policies. DOE Elements should consult with tribes when Departmental Actions have with the potential to impact tribal lands, interests or rights both on and off reservation.

(1) Appropriate Representatives at Consultation.

- (a) The Department official with authority to decide on the proposed Departmental Action must participate in the consultation.
- (b) The elected official of the tribe, acting in the official capacity as the leader of the tribe, may participate or choose to designate alternate or additional tribal representatives to participate in the consultation, including their legal counsel and traditional and cultural leaders.
- (c) DOE Element staff with subject matter expertise for the topic or program may be involved in the consultation.

(2) Coordination. DOE Elements will work with each other and with other federal agencies, where appropriate, to coordinate consultation, and coordinated consultations will adhere to this order to the extent feasible.

(3) Facilitation Support. In planning consultation, DOE Elements should consider best practices, including, but not limited to, the use of neutral facilitation and other collaborative problem-solving approaches to promote effective dialogue and conflict resolution.

(4) Conduct During Tribal Consultation and Engagement. DOE Elements must be open and candid with tribal governments and incorporate tribal views and Indigenous Knowledge in DOE's decision-making processes. The consultations and engagement, whether initiated by the tribe or the Department, must be respectful of tribal sovereignty. The goal is to have tribal leaders and federal representatives engage in respectful dialogue

based on mutual understanding of the issues to reach a common agreement pursuant to the principles laid out in paragraph xxx.x.

- (5) Seeking Consensus. The Department recognizes that the importance of any particular action or impact to tribes will vary from case-to-case but affirms the goal is to achieve consensus wherever possible. The basis of consultation is rooted in meaningful dialogue where the viewpoints of tribes and the Department are shared, discussed, and analyzed. To seek consensus, Departmental elements may need to begin consultation early in the planning process, provide additional opportunities for consultation, conduct additional targeted outreach to tribes, and, where possible, provide longer timeframes for actions that may impact tribal interests.
- (6) Consultation Session Methods. Consultation session methods may include, but are not limited to, in-person meetings, video conferences, teleconferences, and correspondence to discuss a specific issue, and must identify the session as government-to-government consultation in advance of the scheduled meeting. Consultation session methods may be expanded upon through subsequent correspondence after consultation is initiated through written notification. The Department will strive to include both in-person and remote consultation session methods to provide tribes with access to participate in at least one consultation session for a specific issue, regardless of their travel capabilities. On a case-by-case basis, consultation may be held through a series of written correspondence with the tribal leadership, but only when other consultation session methods are not feasible.

Note: Providing notification (the distribution of information from one or more Departmental offices) to one or more tribes of a Departmental action as a stand-alone effort is not consultation.

- d. Consultation Procedures. DOE Elements will carry out the consultation stages described below for a Departmental Action with potential impacts (or implications) to tribal interests.
  - (1) Initial Planning Stage.
    - (a) The appropriate Department official(s) within a DOE Element will invite tribes to consult as early as possible when considering a Departmental Action with potential impacts (or implications) to tribal interests and will provide tribes a meaningful opportunity to participate in the consultation process. (The appropriate Department officials are those individuals who are knowledgeable about the matters

at hand, are authorized to speak for a DOE Element, and who exercise authority in the disposition and implementation of the DOE Element action.)

- (b) The invitation should include sufficient detail of the topic(s) to be discussed to allow tribal leaders to determine if they want to accept the offer to consult and, if so, provide an opportunity to fully engage in consultation. An adequate invitation to consult includes the following:

- 1 A description of the topic(s) to be discussed;
- 2 The scope of the proposed Departmental action under consideration;
- 3 The purpose of the Departmental action under consideration;
- 4 A timeline of the process, and possible outcomes of the Departmental action under consideration; and
- 5 Identification of DOE Elements that will participate in the consultation and the development and implementation of the Departmental action under consideration.
- 6 As feasible, a recognition of willingness to avoid scheduling meetings that interrupt ceremonies, cultural traditions, and critical times of year for subsistence harvest, fishing, or hunting, and an invitation for the Indian tribe to disclose those times in a manner that does not disclose sensitive information.

e

- (2) The invitation should give tribal leaders the opportunity to provide feedback prior to the consultation, including time to request technical assistance and/or clarification on how the consultation process conforms to the requirements in this Order.
- (3) If a tribe chooses not to engage in consultation, the Departmental Element(s) should discuss alternative means of engagement with the tribe.

- (4) If the invitation announces a scheduled tribal consultation session, the DOE Element will ensure that notice to the tribe(s) is given at least 30 days prior to the first scheduled consultation session. If exceptional circumstances prevent notification within 30 calendar days, an explanation for the abbreviated notification will be provided in the invitation letter.
  - (5) If the invitation announces the opportunity to consult, without a scheduled tribal consultation session, the invitation will give the tribal leaders at least 30 calendar days' notice (preferably at least 45 calendar days) to request consultation before Department action planning proceeds.
    - (a) A tribe may request that the Department provide an extension of more than 30 days' notice to consider whether to request consultation and, at its discretion, the Department may grant such requests.
    - (b) If a DOE Element invites a tribe to consult but does not receive a response, the DOE Element should make good-faith, reasonable and periodic efforts to repeat the invitation and, when feasible, should allow a tribe to join an ongoing consultation. These efforts of engagement shall be appropriately documented.
  - (6) A tribe may request that the Department initiate consultation when the tribe believes that a DOE Element is considering a Departmental Action with potential impacts to tribal interests. The appropriate DOE Tribal Liaison Officer or appropriate representative will treat an official request for consultation in an expedited fashion and respond to the tribe in writing that the Department has received the request, using the most expedient methods to communicate (e.g., by email in addition to U.S. Mail).
    - (a) Whenever a tribe requests consultation the Department will work with the tribe to schedule the consultation at a mutually agreeable time, usually 30 days in advance.
- e. Proposal Development Stage. The DOE Element will develop a process when developing a proposed action that maximizes the opportunity for timely input by tribes and is consistent with both tribal and DOE Element schedules and allows for tribal input in determining if there may be potential impacts (or implications)



to tribal interests. Examples of appropriate processes for the proposal development stage include, but are not limited to, rulemakings, a tribal leader task force, a series of open tribal meetings, or individual meetings. DOE Elements may perform these activities during the Initial Planning Stage, above, as appropriate.

- (1) DOE Elements will solicit the views of affected tribes regarding the process timeline to consult on a Departmental Action with potential impacts to tribal interests. Offices should work with tribes to structure a process, to the extent practicable, that considers specific Tribal structures, traditional needs (including Native language accommodations), and schedules of the tribes. DOE Elements may proceed with the expectation that interested tribes will respond within a reasonable time, and only after documenting attempts to follow up on consultation invitation letters thorough multiple forms (e.g., letters, emails, telephone calls, etc.).
  - (2) When the matter under consultation involves confidential or culturally sensitive information, the DOE Elements will work with the tribe to develop a consultation process that addresses the confidentiality or cultural sensitivity of the information to the extent permitted by federal law.
  - (3) If litigation, legal requirements, or natural disaster emergencies impact a DOE schedule for conducting consultation, the DOE Element shall explain the constraints to the tribe. If a determination is made that the Administrative Procedure Act or other federal law or regulation expressly prohibits continued discussion at a specified point in the decision-making process, the DOE Element will inform the tribes at the earliest opportunity in this stage of the process.
- f. Record of Consultation. On completion of the consultation period, the head of the DOE Element or their designee must prepare and transmit to the tribe (or for national and regional consultations or if appropriate, publish on the DOE website) documentation in a record of consultation that describes:
- (1) A summary of tribal input received;
  - (2) An explanation of how that tribal input was addressed;
  - (3) The reasoning for any instance in which tribal suggestions were not incorporated into the Departmental action or consensus could not be attained.
- g. Implementation of Final Federal Action Stage. DOE Elements may consider implementing a post-consultation review process that invites tribal feedback or considers the need for training or technical assistance concerning the final federal



action. The post-consultation review process shall not limit the Department's deliberative process privilege regarding internal considerations or any other applicable privilege.

h. Consultation Summary Report. Upon completion of the consultation, DOE Elements must prepare a summary of the consultation activities. Information from the summaries should be used to develop the Annual Report.

i. Government-to-Government Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations: The Department recognizes and respects the distinct, unique, and individual cultural traditions and values of Alaska Native peoples and the statutory relationship between certain Alaska Native entities and the federal government. To the extent that concerns expressed by Indian tribes including Alaska Native entities substantively differ, Departmental officials shall give due consideration to the rights of sovereignty and self-government of federally recognized Indian tribes, and to the unique legal status and rights of Alaska Native entities. Department officials shall also be mindful that ANCSA Corporations hold title to lands conveyed pursuant to ANCSA and related legislation.

- (1) It is the policy of the Department to recognize and fulfill its legal obligations to consult with Alaska Native entities on the same basis as Indian tribes to the extent permitted by law. All DOE Elements shall make good-faith efforts to invite Alaska Native entities to consult early in the planning process and throughout the decision-making process and engage in robust, interactive, pre-decisional, informative, and transparent consultation when planning actions that may have impacts to the interests of Alaska Native entities (see section x.x. for consultation process and section xx for the definition of Indian tribe). It is the goal of the Department to maximize opportunities to seek consensus throughout the consultation process.

j. Interaction with Indian Tribes.

- (1) DOE will interact with Indian tribes in a manner that recognizes their sovereignty, the unique relationship the federal government has with them, and the federal Trust responsibility. Interactions will be conducted in a manner that does not embarrass, demean, dismiss, or denigrate either the federal government or Indian tribes.
- (2) DOE Headquarters Tribal Liaison Officers' contact information will be listed on the DOE website to facilitate transparency and communication.

- (3) Departmental elements will collaborate, as appropriate, with other federal and state agencies with responsibilities pertaining to Indian tribes.
- (4) Departmental elements will seek to identify and reduce barriers to meaningful participation and access to Departmental program opportunities, including, but not limited to, access to funding opportunities, economic development, research & development, and technical assistance.

k. Contracts.

- (1) After being notified by their Heads of Departmental Elements or designees of the contracts affected, Contracting Officers will include the Contractor Requirements Document (CRD) (tailored to the extent appropriate by the DOE Contracts Tribal Point of Contact for the contract) in the affected contracts (and solicitations for what will become affected contracts).
- (2) Contracting Officers will include the CRD in affected contracts per the procedures in DOE O 251.1D “DEPARTMENTAL DIRECTIVES PROGRAM.” Contracting Officers will include the CRD in both affected Management & Operation (M&O) contracts and in affected non-M&O contracts. For affected M&O contracts, Contracting Officers will include the CRD in the contracts unilaterally (after providing the affected M&O contractor the opportunity to assess the CRD’s effects and to provide feedback per the DOE Acquisition Regulation (DEAR) 970.5204-2 M&O contract clause “Laws, regulations, and DOE directives”). For affected non-M&O contracts that include the DEAR 970.5204-2 M&O contract clause “Laws, regulations, and DOE directives,” Contracting Officers will include the CRD in the contracts unilaterally (after providing the affected non-M&O contractors the opportunity to assess the CRD’s effects and to provide feedback). For affected non-M&O contracts that do not include the DEAR 970.5204-2 M&O contract clause “Laws, regulations, and DOE directives,” Contracting Officers shall attempt to include the CRD in the non-M&O contracts bilaterally.
- (3) Heads of Departmental Elements or designees will identify affected contracts by determining, if under the contract work, contractor interactions could reasonably be expected to result in an impact on the traditional and cultural lifeways, natural resources, treaty rights, reserved treaty rights, and any other legal rights of a federally recognized Indian tribe or tribes.

- (4) Heads of Departmental Elements or designees will designate a DOE Contracts Tribal Point of Contact for each affected contract who will be responsible for:
  - (a) Supporting the Contracting Officer in including the CRD in an affected contract;
  - (b) Tailoring the CRD if necessary (including adding tribal provisions, specific requirements, and DOE-related agreements);
  - (c) Acting as the contractor's primary point of contact for fulfilling its obligations under the CRD;
  - (d) Ensuring the contractor provides adequate training to its employees;
  - (e) Coordinating with other relevant tribal points of contact as appropriate.
1. Annual Report. Heads of Departmental Elements must submit information by October 30 each year to the Assistant Secretary for Congressional and Intergovernmental Affairs. The annual report is a summary of all Departmental Element government-to-government consultations that were conducted on a nationwide or regional basis during one fiscal year. Additionally, the report may contain any government-to-government consultation efforts conducted one-on-one with tribes to highlight consultation successes, challenges, or best practices. The report may also contain significant Tribal engagement activities. The information in the Annual Report is a summary of, and should be compiled from, all the information captured during the fiscal year. Public meetings should not be included in the reporting information. Additionally, any information deemed sensitive or confidential by a tribe should not be included in the Annual Report. The annual report should include:
  - (1) Tribal consultation capacity.
    - (a) Name of the Headquarters Tribal Liaison Officer.
    - (b) Tribal consultation and engagement training, including training dates, content, and number of staff who completed training.
  - (2) Consultation activities.
    - (a) Summarize and list all consultation topics.

- (b) List all tribes consulted.
  - (c) List the location of each consultation by city and state and congressional district or indicate if consultation was held remotely.
  - (d) Summarize outcomes (e.g., decisions made, actions planned or taken, and how Tribal input was incorporated).
  - (e) Summarize successes and recommendations for improvements to the consultation process. Departmental Elements should get permission from the tribe before including any information on successes in the annual report.
- (3) Report Prepared By, Date Prepared, and Approving Official.

5. RESPONSIBILITIES.

This section describes the responsibilities of all DOE Elements involved in tribal interactions as well as reporting requirements.

- a. Heads of Departmental Elements.
- (1) Ensure that procedures are established to carry out the consultation activities of their organizations and ensure compliance with those procedures.
  - (2) Designate in writing one or more Tribal Liaison Officer (Headquarters Tribal Liaison Officer), who is a federal employee, to carry out the responsibilities described in this order.
  - (3) Inform the Deputy Assistant Secretary for Intergovernmental and Tribal Affairs (DAS) of government-to-government consultations, meetings, briefings, or similar levels of interactions with Indian tribes or tribal organizations. The DAS must be informed regarding all meetings with tribal leaders and will decide if a representative from the Office of Congressional and Intergovernmental Affairs should be present.
  - (4) Submit an annual report to the Deputy Assistant Secretary for Congressional Affairs summarizing the office's compliance with the principles of the Order. Reports shall include information as identified in section X.

- (5) Oversee the programmatic DOE Head of Departmental Element's Contracts Tribal Representative and the DOE Contracts Tribal Point of Contact for contracts in fulfilling their responsibilities for tribal government engagement and activities.
  - (6) Ensure that personnel under their purview receive training as required in section x.x of this order.
  - (7) Develop an implementation plan to implement this Order and Policy, including identifying staff, budget, training, and (if needed) internal guidelines.
  - (8) Identify affected contracts and notify Contracting Officers. Identify affected contracts by determining if under the contract's work contractor interactions could reasonably be expected to result in a potential impact on the traditional and cultural lifeways, natural resources, treaty rights, reserved treaty rights, and any other legal rights of a federally recognized Indian tribe including certain Alaska Native entities.
  - (9) Appoint a DOE Contracts Tribal Point of Contact for each affected contract who will be responsible for: supporting the Contracting Officer in including the CRD in an affected contract; tailoring the CRD if necessary (including adding tribal provisions, specific requirements, and DOE related agreements); acting as the contractor's primary point of contact for fulfilling its obligations under the CRD; ensuring the contractor provides adequate training to its employees; and coordinating with other relevant tribal points of contact as appropriate.
- b. Heads of Field Elements in Conjunction with Responsible Heads of Headquarters Elements.
- (1) Designate in writing one or more Field or Site Tribal Liaison Officer, who is a federal employee, to carry out the responsibilities described in this order.
  - (2) Develop an implementation plan for the site to implement the policy and order, including identifying staff, budget, training, and (if needed) internal guidelines.
  - (3) Oversee the Field or Site Element Tribal Liaison Officer whose responsibilities include regular interaction with senior field element management about the site's interaction and consultation with Indian tribes.

- (4) As needed, develop, and implement additional internal guidelines to assist management in its responsibilities to implement this Order and Policy in areas under their cognizance.
  - (a) Field elements must invite Indian tribes early in the planning process to consult whenever a Departmental plan, process, or action with potential impacts, to tribal interests arises.
  - (b) Guidelines should relate and include, but are not limited to, statutory, regulatory, and other procedures for interactions and consultation with Indian tribes and suggested approaches to address impediments.
- (5) Inform the Headquarters Tribal Liaison Officer about all meetings, briefings, or similar levels of interactions with Indian tribes or tribal organizations.

c. Tribal Liaison Officer.

- (1) The Headquarters or Field/Site Tribal Liaison Officer is a federal employee designated by their Head of Departmental Element or Head of Field Element to carry out the responsibilities described in this order.
- (2) Serve as the Departmental Element principal point of contact for tribal consultation matters.
- (3) Promote and facilitate consultation and collaboration between tribes and their office.
- (4) Report to the DAS for Intergovernmental and Tribal Affairs (Tribal Governance Officer) annually in the Tribal Consultation Annual Report of newly engaged national or regional consultations with Indian tribes and any updates to their office consultation procedures or processes.
  - (a) Serve as a liaison and resource for management and staff to facilitate consistent interactions, consultation, and government-to-government relations with Indian tribes.
  - (b) Field or Site Tribal Liaison Officers will work with their Headquarters counterpart to coordinate on upcoming tribal consultations, meetings, events, and other engagement activities.

- (c) As appropriate, serve as the point of contact for the Contracting Officer, as needed, to assist with tribal issues in applicable solicitations and contracts.
  - (d) Maintain a list of current contact information for leadership and staff from Indian tribes for whom there are regular interactions.
  - (e) Educate and train or facilitate the education and training of management and relevant staff about this Order, the Policy and its principles and requirements, and any other relevant tribal guidance.
- d. Assistant Secretary for Congressional and Intergovernmental Affairs.
- (1) Collect from the heads of departmental elements an annual report due October 30 of each year that details interactions with Indian tribes and compliance with the principles of the Policy. This report will be submitted to the Director of the Office of Management and Budget by October 30 of each year.
  - (2) Chair the DOE Tribal Engagement Steering Committee as outlined in the Charter, supported by the Deputy Assistant Secretary for Intergovernmental and Tribal Affairs.
- e. Deputy Assistant Secretary for Intergovernmental and Tribal Affairs (DAS).
- (1) Serve as the Tribal Governance Officer (TGO). The TGO is appointed by the Secretary and is responsible for carrying out the responsibilities in this order including the following:
    - (a) Serve as the Secretary's representative when requested to do so in matters pertaining to consultation.
    - (b) Lead and manage the Department's consultation efforts to ensure effective government-to-government relationships with Indian tribes.
    - (c) Oversee the Department's compliance with this Order, E.O. 13175, and other requirements pertaining to government-to-government consultation.
    - (d) Implement a Departmental reporting system to ensure that consultation efforts are documented and properly reported.



- (2) Execute the responsibilities of the DOE Tribal Engagement Steering Committee as outlined in the committee charter.
- (3) Host regular conference calls or meetings with Tribal Liaison Officers.
- (4) Provide policy, consultation, and engagement guidance to heads of Departmental elements concerning the Department's relationships with the tribes.
- (2) Serve as the Department's lead point of contact for Indian tribes and tribal organizations on the DOE webpage and other internal communication documents.
- (3) Identify and maintain a contact list for Tribal Liaison Officers.
- (4) Maintain and distribute reference resources needed to support Policy implementation activities on a regular basis.
- (5) Work with Departmental elements to seek to identify and reduce barriers to meaningful participation and access to Departmental program opportunities, including, but not limited to, economic development, research & development, and technical assistance.
- (6) Provide guidance and monitor Headquarters and field implementation of procedures for consultation with Indian tribes to ensure that tribal rights, including concerns regarding cultural resources management, are considered.
- (4) Promote cooperation with federal and state agencies that have related responsibilities to Indian tribes.
- (7) Serve as the Department's lead point of contact for interagency coordination and cooperation on initiatives such as to preserve tribal treaty rights, sacred sites, and indigenous knowledge.

f. General Counsel. Provide advice to DOE elements and the DOE Tribal Engagement Steering Committee pertaining to legal requirements and policies related to the topics in this Order.

Department Staff. Any Department staff who will represent and/or support the Department in consultation or engagement should first complete training to promote positive relations with tribes. (see paragraph x.x)

Adhering to guidance provided in this order and ensuring that staff are trained on working with tribal communities will create greater and more well-rounded engagement.

- g. Office of Indian Energy Policy and Programs. The Office of Indian Energy Policy and Programs is within the Undersecretary for Infrastructure and supports Indian tribes in developing and deploying energy projects, typically on tribal lands. These programs encompass various aspects of energy, including capacity building, efficiency, and the development of electrical generation and transmission facilities. The office does not typically conduct tribal consultation because it provides funding to Indian Tribes and their instrumentalities. However, the office has experience and relationships with Indian Tribes which may be relevant to support other offices in carrying out consultation and engagement.
- h. DOE Tribal Engagement Steering Committee (TESC). This is an internal committee comprised of representatives from Departmental Elements with tribal equities. TESC will:
  - (1) Purpose: Provide a forum for assistance and advice to DOE Headquarters Tribal Liaison Officers and senior management.
    - (a) Address cross-cutting tribal related activities and concerns and identify opportunities for synergy across various sectors within DOE.
    - (b) Ensure that tribal rights are upheld and tribal interests and views are meaningfully considered and appropriately documented.
    - (c) Coordinate, collaborate, and provide recommendations on tribal related issues and activities across all DOE elements.
    - (d) Provide recommendations directly to the Deputy Secretary on implementing tribal related topics involving the Department.
    - (e) Identify regulatory, statutory, and/or procedural impediments to the Department working and consulting with tribes.
  - (2) Each DOE Element with equities or work that may impact

tribal rights, resources, or interests will designate one or more federal employees to serve as a member of the TESC to represent senior leaders of each element for regular meetings. Periodically, meetings will be held with senior leaders of elements at the direction of the TESC Chair.

- (3) Chair: The Assistant Secretary of Congressional & Intergovernmental Affairs will serve as TESC Chair or delegate those responsibilities to the Deputy Assistant Secretary, and will call meetings, set agendas, and ensure actions are completed.
- (4) Meetings shall occur on a regular basis to be determined by the Chair, at a minimum monthly, or special meetings may be called at the request of senior Element leaders. An agenda, a meeting summary, and actions shall be distributed to members.

i.

j. DOE Contracts Tribal Point of Contact.

- (1) For each contract they are assigned, serve as the information resource and liaison for both the federal management and staff and for the Contractor to facilitate the Government's and the Contractor's appropriate interaction with, consultation with, and government-to-government relations with Indian tribes.
- (2) Serve as the Contractor's first and primary point of contact for all matters relating to the Contractor's fulfilling its obligations under the CRD included in the contract. Interact directly with the Contractor's Tribal Point of Contact for facilitating the federal government's and the Contractor's appropriate interaction with, consultation with, and government-to-government relations with Indian tribes.
- (3) Support the Contracting Officer in including the CRD in an affected contract, tailoring the CRD if necessary (including adding tribal provisions, specific requirements, and related DOE agreements); provide the CRD to the Contracting Officer.
- (4) Assist the Contractor in fulfilling its obligations in the CRD, if existing Departmental training programs are not adequate, coordinate with the Contractor's Tribal Point of Contact in the Contractor's developing adequate training programs and using them to train the Contractor's employees about the affected tribes, their tribal governments, their culture, their treaty rights, their reserved treaty rights, and their other legal rights.

- (5) Draft and submit an annual report of interactions and meetings with Indian tribes and submit it to Heads of Field Element or Responsible Heads of Headquarters Element.
  - k. Head of the Contracting Activity. In conjunction with the responsible head of field element, ensure Contracting Officers include the CRD (tailored to the extent appropriate by the DOE Contracts Tribal Point of Contact for the contract) in affected contracts and solicitations.
  - l. Contracting Officer. After being notified by the Head of the Departmental element or designee of the affected contracts, include the CRD (tailored to the extent appropriate by the DOE Contracts Tribal Point of Contact in affected contracts.
6. REFERENCES. The following references are included by reference in this Order.
  - a. U. S. Department of Energy Policy on Consultation and Engagement with Indian Tribes Including Alaska Native Entities, dated Month, DD, YYYY.
  - b. Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, Jan 26, 2021. [Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships | The White House](#)
  - c. Presidential Memorandum on Tribal Consultation, Nov 5, 2009, [Presidential Memorandum: Tribal Consultation \(2009\) \(energy.gov\)](#)
  - d. Executive Order 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments. [Federal Register :: Consultation and Coordination With Indian Tribal Governments](#)
  - e. DOE P 141.1, Department of Energy Management of Cultural Resources, dated 5-2-01 and certified 1-28-11, or its successor. [Department of Energy Management of Cultural Resources](#)
7. DEFINITIONS.
  - a. Alaska Native. A member or descendent of any of the indigenous peoples of Alaska.
  - b. Alaska Native Claims Settlement Act (ANCSA) Corporation. Any Alaska Native Village Corporation, Group Corporation, Urban Corporation, former reserve corporation, or ANCSA Corporation as

defined in, or established pursuant to, the Alaska Native Claims Settlement Act. (43 U.S.C. § 1602(g)).

- c. Alaska Native Village Corporation. An Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village, as defined in and established pursuant to the Alaska Native Claims Settlement Act ([43 U.S.C. § 1602\(j\)](#)) (ANSCA).
- d. Consultation. A tribal consultation is a two-way, government-to-government dialogue between official representatives of Indian tribes and Federal agencies to discuss Federal proposals before the Federal agency makes decisions on those proposals. The Federal agency provides sufficient advance notice to appropriate Indian tribes of upcoming consultation sessions and, following the consultation sessions, explains to Indian tribes how the final agency decision incorporates tribal input. Consultation should maximize opportunities to seek consensus to the greatest extent practicable.
- e. Cultural Resources. This includes but is not limited to “historic properties” as defined in the National Historic Preservation Act, “archaeological resource” as defined in the Archaeological Resources Protection Act, and “cultural items” as defined in the Native American Graves Protection and Repatriation Act.
- f. DOE Tribal Engagement Steering Committee. Group of Tribal Liaison Officers representing offices with tribal interests within the Department. The purpose of the Tribal Engagement Steering Committee is to coordinate on tribal issues across affected DOE offices.
- g. Departmental Action with potential impacts to tribal interests. Any Departmental regulation, rulemaking, policy, guidance, legislative proposal, plan, programmatic or operational activity, or grant or funding formula changes that may have potential impacts on tribal interests in matters including, but not limited to:
  - (1) Tribal cultural practices; lands; treaty rights; resources; ancestral lands; sacred sites, including sites that are submerged; and lands tribes were removed from, or access to traditional areas of cultural or religious importance on federally managed lands and waters;
  - (2) The ability of a tribe to govern or provide services to its members;
  - (3) A tribe’s formal relationship with the Department, be it

government-to-government or beneficiary-to-trustee; or

- (4) Any action planned by a non-federal entity that involves funding, approval, or other final agency action provided by the Department, unless the tribe is a party to the action planned by the non-federal entity.
- h. Government-to-government Consultation. Government-to-government consultation is a process based on a bilateral recognition of sovereignty and is generally focused on a given issue or set of issues, including compliance with a variety of statutes, policies and administrative actions that direct the federal government to consult with Indian tribes. Consultations are defined as having both Department and tribal officials with decision-making authorities present at the government-to-government consultation session(s)/meeting(s) regarding the proposed Departmental Action with potential impacts to tribal interests.
- i. Indian Tribe or Tribes. Indian tribe has the same definition as in the Indian Self Determination and Education Assistance Act, 25 U.S.C. § 5304(e). This definition includes certain Alaska Native entities, specifically “any Alaska Native village or regional or village corporation as defined in or established pursuant to [ANCSA], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” For the purposes of this Order and Policy xxx.x, these tribes are referred to as “designated”.
- j. Indigenous Knowledge. Indigenous Knowledge is a body of observations, oral and written knowledge, innovations, practices, and beliefs developed by tribes and Indigenous Peoples through interaction and experience with the environment. It is applied to phenomena across biological, physical, social, cultural, and spiritual systems. Indigenous Knowledge can be developed over millennia, continues to develop, and includes understanding based on evidence acquired through direct contact with the environment and long-term experiences, as well as extensive observations, lessons, and skills passed from generation to generation. Indigenous Knowledge is developed by Indigenous Peoples including, but not limited to, tribal Nations, Native Americans, Alaska Natives, and Native Hawaiians. Each tribe or indigenous community has its own place-based body of knowledge that may overlap with that of other tribes.
- k. Trust Responsibility. Promotion and protection of tribal treaty rights, federally recognized reserved rights, and other federally recognized interests of the beneficiary American Indian and Alaska Native nations; determining, documenting, notifying, and interacting with Indian tribes with regard to the potential impact of Departmental programs, policies,



and regulations to protect American Indian and Alaska Native traditional and cultural ways of life, natural resources, treaty, and other federally recognized and reserved rights.

- l. Sacred Sites. “Sacred site” means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the Indian tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site. [Executive Order 13007 | U.S. Department of the Interior \(doi.gov\)](#)
  - m. Subsistence. Subsistence is defined by federal law as “the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption; and for the customary trade, barter or sharing for personal or family consumption.” [eCFR :: 36 CFR Part 13 Subpart F -- Subsistence](#)
  - n. Tribal Official. An elected or appointed tribal leader or official designated in writing by an Indian tribe to represent the tribe in government-to-government consultations.
  - o. Tribal Governance Officer (TGO). The individual in the DOE Office of Congressional and Legislative Affairs designated by the Department to carry out responsibilities described in this order.
  - p. Tribal Liaison Officer(s). One or more individuals officially designated by an office to carry out responsibilities described in this order.
  - q. Treaty and Trust Resources and Resource Interests. Natural and other resources specified and implicit in treaties, statutes, and agreements, or lands or other resources held in trust by the United States for the benefit of Indian tribes or individuals.
8. NECESSITY FINDING STATEMENT. In compliance with Sec. 3174 of P.L. 104-201 (50 U.S.C. 2584 note), DOE hereby finds that this Order is necessary for the protection of human health and the environment or safety, fulfillment of current legal requirements, or conduct of critical administrative functions.
  9. CONTACT. Questions concerning this Order should be directed to the



DISCUSSION DRAFT. Pre-decisional. This document will be finalized through the DOE Directives Review Board Process

Office of Congressional and Intergovernmental Affairs at  
[TribalConsultation@hq.doe.gov](mailto:TribalConsultation@hq.doe.gov) or 202-586-5450.

BY ORDER OF THE SECRETARY OF ENERGY:

DAVID M. TURK  
Deputy Secretary

DRAFT

**CONTRACTOR REQUIREMENTS DOCUMENT**  
**DOE O 144.1, *Department of Energy American Indian Tribal Government Interactions and Policy***

Regardless of the performer of the work, the Contractor is responsible for complying with the requirements of this contractor requirements document (CRD) and flowing down the CRD's requirements to subcontracts to the extent necessary to ensure the Contractor's compliance.

The Contractor's primary point of contact regarding the Contractor's obligations under this CRD is the DOE Contracts Tribal Point of Contact for this contract.

The DOE Contracts Tribal Point of Contact for this contract is **XXXXXXXXXX**.

The Contractor must assist the Department on an ongoing basis to achieve meaningful consultation with Indian Tribes on a government-to-government basis. Among other things, the Contractor must assist the Department in meeting its responsibilities under this Order and accompanying Policy, as well as under any applicable treaties, laws, regulations, Executive Orders, or other applicable requirements (e.g., the Framework to Provide Guidance for Implementation of the US Department of Energy's American Indian and Alaska Native Tribal Government Policy and DOE P 141.1, *Department of Energy Management of Cultural Resources*) to ensure that the rights and interests of Indian Tribes are identified, considered, and protected, as appropriate, with respect to work and other activities at DOE-owned and controlled sites and facilities.

In assisting the Department in achieving meaningful consultation with Indian Tribes on a government-to-government basis, the Contractor must:

Designate a Contractor Tribal Point of Contact to interact with the DOE Contracts Tribal Point of Contact.

1. In performing its work at the DOE-owned site or facility, appropriately protect the human health and safety, the environment, the cultural resources, the treaty rights, the reserved treaty rights, and the other legal rights of the federally recognized Indian tribes.
2. Ensure its managers provide adequate and appropriate visibility to, and are accountable for, integrating the Contractor's obligations under this CRD into the Contractor's performance of work that involves DOE's interactions with Indian tribes. If existing Departmental training programs are adequate for the Contractor to fulfill its obligations under this CRD, use them to train employees about the affected Indian tribes, their tribal Governments, their cultures, their treaty rights, their reserved treaty rights, and their other legal rights. If existing Departmental training programs are not adequate, coordinate with the designated DOE Contracts Tribal Point of Contact, develop adequate training programs, and use them to train employees about the affected Indian tribes, their tribal governments, their cultures, their treaty rights, their reserved treaty rights, and their other legal rights.
3. Communicate timely and openly with the DOE Contracts Tribal Point of Contact

and the federally recognized Indian tribes about its proposed work that may involve tribal rights and interests (including, but not limited to: environmental monitoring and compliance, emergency operations and management, local citizens' advisory boards, etc.). Include Indian tribes throughout the development and implementation of its proposed work. In all cases, the contractor must allow for a reasonable amount of time for comment by Indian tribes prior to the contractor's preparation and execution of its proposed work.

4. Support and cooperate with DOE in meeting its obligations related to DOE's government-to-government consultations with federally recognized Indian Tribes.

Comply with the following specific requirements and the following related DOE agreements with an Indian Tribe or Tribes: **XXXXXXXXXXXXX**

