

## **U.S. DEPARTMENT OF ENERGY POLICY ON CONSULTATION AND ENGAGEMENT WITH INDIAN TRIBES INCLUDING ALASKA NATIVE ENTITIES**

### **PURPOSE**

It is the policy of the Department of Energy (DOE or the Department) to recognize and fulfill its legal obligations to identify, respect, protect, and conserve tribal trust resources; carry out its trust relationship with federally recognized Indian tribes and tribal members entities including Alaska Native entities, as defined in DOE Order 144.1; and invite Indian tribes to consult on a government-to-government basis whenever there is a DOE action with potential impacts on tribal interests. DOE shall engage Indian tribes in good faith and invite Indian tribes to consult in the earliest stages and throughout the decision-making process to ensure robust, interactive, pre-decisional, informative, and transparent consultation. Tribal consultation should maximize opportunities to seek consensus wherever possible.

This policy and its governing principles provide a foundation and guideline for Departmental interactions and consultation with Indian tribes, as further described in DOE Order 144.1 and other applicable requirements.

### **BACKGROUND**

Federally recognized Indian tribes are sovereign nations with unique political and legal standing predating the inception of the United States (U.S.) and later acknowledged in the U.S. constitution and subsequent U.S. Supreme Court cases, Executive Orders and laws culminating in a longstanding government-to-government relationship with the federal government. Indian tribes retain the inherent right to self-govern and the federal government has a tribal trust responsibility. Therefore, federal actions affecting tribal rights including treaty rights, self-governance, or tribal interests and resources, require engagement, consultation, and implementation in a collaborative and culturally sensitive manner.

DOE released its first American Indian Policy in 1992 and subsequently issued DOE Order 1230.2, which established DOE's responsibilities in carrying out the American Indian Policy. At the request of Indian tribes in 1998, the Secretary of Energy agreed to revise the

1992 American Indian Policy to implement DOE Order 1230.2. Additional revisions were completed in 2006 and 2009. The April 2021 Presidential Memorandum on *Tribal Consultation and Strengthening Nation-to-Nation Relationships* and the November 2023 *Memorandum on Uniform Standards for Tribal Consultation* resulted in DOE updating its American Indian Policy and DOE Order 144.1.

## **POLICY PRINCIPLES**

### **I. DOE RECOGNIZES ITS GOVERNMENT-TO-GOVERNMENT RELATIONSHIP WITH INDIAN TRIBES, INCLUDING ALASKA NATIVE ENTITIES, AND COMMITS TO FULFILLING ITS FEDERAL TRUST RESPONSIBILITIES.**

DOE will be diligent in fulfilling its federal trust responsibility to Indian Tribes, including Alaska Native entities, through government-to-government consultation, implementation of its American Indian and Alaska Native Policy, and program management activities. DOE will pursue actions that uphold treaty and the rights of tribes. The Department recognizes that certain Indian tribes have treaty-protected, trust protected, and other federally protected rights to resources on and off tribal lands (e.g., tribal trust lands, tribal fee lands, usual and accustomed areas, and as applicable, other lands outside reservation and jurisdictional boundaries) and will, to the extent of its authority, uphold tribal rights and protect trust resources.

Within the bounds of statute, regulations, and policies, DOE will, to the maximum extent practical, maximize the inclusion of tribes in as many aspects of DOE's mission as possible, to the extent such actions are authorized or not prohibited by applicable requirements.

DOE commits to protecting tribal rights and trust interests of tribes during interactions with state and local governments and other stakeholders about DOE actions potentially impacting Indian tribes, including Alaska Native entities. The Department will inform and educate state and local governmental entities and other stakeholders about the DOE's role and responsibilities regarding

its government-to-government relationship and federal tribal trust responsibility with tribes.

DOE will seek to determine the impacts of legislation and Departmental proposed policy upon tribes through consultation or collaboration with Indian tribes, including Alaska Native entities, consistent with the intent and purpose of this Policy.

**II. THE DEPARTMENT RECOGNIZES AND COMMITS TO A GOVERNMENT- TO-GOVERNMENT RELATIONSHIP AND WILL INSTITUTE APPROPRIATE PROTOCOLS AND PROCEDURES FOR PROGRAM AND POLICY IMPLEMENTATION.**

DOE acknowledges federally recognized tribal governments are sovereign nations and recognizes certain Alaska Native entities as defined in the Indian Self-Determination and Education Assistance Act (1975) (ISDA) with primary authority and responsibility for the protection of the health, safety, and welfare of their citizens. The Department acknowledges the right of each tribe, including Alaska Native entities, to set their own priorities and goals in developing, protecting, and managing their natural and cultural resources. This recognition includes separate and distinct entities, such as ISDA and the Alaska Native Claims Settlement Act (ANSCA), that are independent of state governments.

DOE commits to inviting Indian tribes to engage early in the planning process and consult whenever a Departmental plan, action, or ongoing activity has the potential to impact tribal interests or resources. DOE will seek to operate under the assumption that all proposed actions, programs, and related activities, including those with land or resource use or resource impacts, may have the potential to impact tribal interests, and as appropriate, should engage and extend consultation invitations accordingly. DOE recognizes that many Indian tribes maintain cultural connections and interests, even though through federal Indian policies, they may have been removed from their traditional homelands, and that their tribal reservation lands have been significantly reduced from their original lands. DOE acknowledges that Indian tribes continue to maintain a deep connection to their traditional homelands and sacred sites and continue to have

reserved rights in those lands and should be consulted when any plan, action, or ongoing activity has the potential to affect those lands.

DOE will utilize best practices and procedures to enhance engagement and meet government-to-government consultation requirements to protect tribal treaty and reserved rights in agency decision-making and regulatory processes. Consultation best practices and procedures will include protocols for communication between tribal leaders and the Secretary, senior, and other Departmental officials and representatives.

### **III. THE DEPARTMENT WILL ESTABLISH MECHANISMS FOR OUTREACH, NOTICE AND CONSULTATION, AND ENSURE INTEGRATION OF INDIAN TRIBES INCLUDING ALASKA NATIVE ENTITIES INTO DECISION-MAKING PROCESSES.**

To ensure the protection and exercise of tribal rights, DOE will engage and consult with Indian tribes, including Alaska Native entities, on current and proposed agency actions including proposed policies, projects, programs that may have the potential to impact tribes.

DOE will engage and consult with Indian tribes when proposed Departmental actions may potentially impact tribal interests including but not limited to, tribal lands and traditional homelands, tribal rights, or cultural and natural resources. DOE Order 144.1 provides additional requirements, including Departmental requirements for consultation.

Department wide, DOE will implement training for headquarters and field staff on the federal government's legal obligations and trust responsibility to Indian tribes, including the government-to-government relationship, tribal sovereignty, Native American history especially as it relates to energy projects and policies, tribal governance, consultation requirements and best practices, Indigenous Knowledge and use of Native Languages, and American Indian and Alaska Native cultural awareness.

DOE will conduct periodic reviews and evaluations of DOE consultation policies and activities in collaboration with Indian tribes.

#### **IV. DEPARTMENT-WIDE COMPLIANCE WITH APPLICABLE FEDERAL CULTURAL RESOURCE PROTECTION AND OTHER LAWS AND EXECUTIVE ORDERS WILL ASSIST IN PRESERVATION AND PROTECTION OF HISTORIC AND CULTURAL SITES AND TRADITIONAL RELIGIOUS PRACTICES.**

The Department will incorporate trainings on sacred sites and cultural resource protection and use the interagency best practice guide on Sacred Sites Protection and other applicable interagency documents. The Department will engage and consult with any interested Indian tribe, including Alaska Native entities, regarding DOE actions potentially effecting lands of religious or cultural significance to tribes. Regarding actions by DOE on lands not under DOE control or when an action of another federal agency takes place on DOE land, DOE will consult with Indian tribes in accordance with this Policy. Consultation will include tribal involvement in identifying and evaluating historic and cultural resources and sacred sites including traditional cultural properties; facilitating tribal involvement in determining and managing adverse effects; collaboration in the development and signing of memoranda of understanding, agreements, grants, and contracts with DOE when appropriate.

Departmental engagement and consultation with Indian tribes will include the prompt exchange of information regarding identification, evaluation, and protection of cultural resources. To the extent allowed by law, consultation will respect and address tribal policies on confidentiality and management of cultural resources, as appropriate. Engagement and consultation will include matters regarding tribal location and management methodology; Indigenous Knowledge; climate adaptation; repatriation and other disposition of objects and human remains; access to sacred areas and traditional resources located on DOE lands, consistent with safety and national security considerations; and cultural resources impact assessment of potential loss to tribal communities.

**V. THE DEPARTMENT WILL INITIATE A COORDINATED DEPARTMENT-WIDE EFFORT TO COMMUNICATE AND PROVIDE INDIAN TRIBES AND ALASKA NATIVE ENTITIES WITH ENERGY RESOURCE DEVELOPMENT, TECHNICAL ASSISTANCE, BUSINESS AND ECONOMIC SELF-DETERMINATION DEVELOPMENT OPPORTUNITIES, EDUCATION, AND TRAINING PROGRAMS FOR INDIAN TRIBES.**

The Department will implement a coordinated and consistent communication effort to inform Indian tribes about:

- Energy development opportunities on tribal lands, traditional homelands, or on lands which may affect a tribe(s)
- Energy efficiency opportunities
- Research and development activities
- Renewable and conventional energy generation, transmission, distribution, marketing, and energy services
- Emerging energy markets
- Emerging energy technology opportunities
- Tribal power purchase preference, grants, and contracts
- Educational opportunities, including education in science, technology, engineering, and mathematics (STEM)
- Workforce development, internships, fellowships, and scholarships
- Availability of technical assistance and training opportunities
- Conventional and renewable energy development programs
- Contracting opportunities for tribal government and service-providers, tribal enterprises, and Indian owned and operated businesses.

DOE recognizes the need for direct funding and technical assistance from applicable DOE and National Laboratory programs that address regulation, energy planning, and development of energy resources on and off tribal lands and Alaska Native site-controlled and trust lands.

DOE commits to elevating Indigenous Knowledge in federal scientific, and policy processes. DOE recognizes the importance of Indigenous Knowledge in management decisions related to land and resource management, and sacred sites or affecting traditional homelands. Where appropriate, DOE will identify actions and suggested practices and

guidance in alignment with Indigenous Knowledge and pursue opportunities to collaborate with tribes.

**VI. THE SECRETARY OF ENERGY WILL CONDUCT PERIODIC SUMMITS AND REGULAR DIALOGUES WITH TRIBAL LEADERS TO REVIEW IMPLEMENTATION OF THIS POLICY AND FOR ISSUE RESOLUTION.**

The Secretary of Energy and Departmental leaders will engage tribal leaders in periodic summits and dialogues to assess the effectiveness and implementation of this U.S. Department of Energy Policy on Consultation and Engagement with Indian tribes, including Alaska Native Entities Summits and dialogues may include discussions around the Department's missions and activities pertaining to energy, research and development, environment, cleanup, and national security, as appropriate.

**VII. THE DEPARTMENT WILL WORK WITH OTHER FEDERAL, STATE, AND LOCAL GOVERNMENTS RELATIVE TO ACTIONS POTENTIALLY AFFECTING TRIBES.**

DOE will coordinate with other federal and state agencies on related responsibilities to tribal matters. The Department's mission encompasses many complex issues where cooperation among multiple governments (tribal, federal, state, and local) is essential. DOE will coordinate with such other governmental entities and encourage early communication regarding actions potentially affecting tribes including aligning funding programs and application procedures, as appropriate, consistent with applicable requirements. DOE will further promote interagency and interdepartmental coordination among tribal, federal, state, and local governments to assist Indian tribes in resolving issues.

1 This Policy is not intended to, and does not grant, expand, create, or diminish any legally enforceable rights, benefits, or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor shall this Policy be construed to alter, amend, repeal, interpret, or modify tribal sovereignty, any treaty rights of any Indian tribes, or to preempt, modify, or limit the exercise of any such rights. Nothing herein shall be interpreted as amending or changing current DOE orders and guidance

regarding classified information, including need to know.