

LUMMI INDIAN BUSINESS COUNCIL

2616 KWINA ROAD · BELLINGHAM, WASHINGTON 98226 · (360)384-1489

DEPARTMENT _____ DIRECT NO. _____

A PROPOSAL TO IMPROVE TRIBAL CONSULTATION WITH AMERICAN INDIAN NATIONS: ESTABLISHING A TRIBAL CONSENT REQUIREMENT

Submitted by the Lummi Nation

November 17, 2016

Background. Since the administration of President Bill Clinton and every president thereafter, the U.S. government has embraced a policy of consultation with American Indian tribal leadership prior to taking material actions relating to federally-recognized Indian and Alaska Native nations and tribes. This policy has resulted in significant improvement in the government-to-government relationship between the U.S. government and the 567 tribal nations located within the United States. The Tribal Consultation Policy, however, has not been a panacea, and there remain significant areas where improvement is needed. This proposal is intended to propose a major new improvement in the way in which the U.S. government interacts with American Indian nations and tribes, and Alaska Native tribes and corporations.

How the Tribal Consultation Policy Works Best. Since the Tribal Consultation Executive Order was first issued in 1994, all primary federal agencies have established their own consultation policy to implement regarding their actions with tribal nations. After 22 years, however, several independent agencies have not, claiming that the Tribal Consultation Executive Order does not apply to them. For example, the National Labor Relations Board, as an independent agency, has refused to implement a formal consultation policy pursuant to the Executive Order.

Consultation works best when federal agencies invite dialogue on issues of tribal concern, respond to expressed concerns, commence internal work plans in response to tribal concerns, and then invite further discussion with tribal leaders that results in formal agency response addressing the tribal concerns. A recent good example of this process in action involved the recent effort by the Environmental Protection Agency to develop a policy on enforcing Indian treaty rights.

At the White House Tribal Nations Conference in 2014, EPA Administrator Gina McCarthy and approximately a dozen of her senior staff met in open session with tribal leaders interested in discussing issues of mutual concern. Many items were addressed, but one that was the focus of several leaders, was the issue of EPA recognition of treaty-recognized Indian fishing rights,

particularly the rights to harvest fish in the Pacific Northwest and the Great Lakes. Based on that discussion, Administrator McCarthy indicated her interest in further reviewing her Agency's policies regarding recognition of treaty rights and to report back to the leaders in a subsequent session. A year later, again at the White House Tribal Nations Conference there was a follow-up discussion at which it was revealed that EPA was considering the adoption of a policy on Indian treaty fishing rights. This draft, in fact, was prepared and later released for comment in the fall of 2015. On February 19, 2016, the final EPA policy Guidance on Discussing Indian Treaty Rights was released which established the most innovative effort taken by a federal agency to protect Indian treaty rights.

A similar process was followed in consultations with tribal leaders in connection with efforts to strengthen the White House Council on Native American Affairs and to address the breakdown in federal response associated with the general lack of interagency cooperation. Tribal leaders were consulted, federal officials responded, and at the 2016 White House Conference, action was taken. On September 26, 2016, two multi-agency MOUs were announced – one dealing with Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights and Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites.

These policy documents are significant and historic federal actions which highlight the best potential outcomes associated with pro-active consultation and on-going dialogue between tribal and federal officials.

The Problem with the Current Tribal Consultation Policy. Unfortunately, the Tribal Consultation Policy has not always resulted in mutually acceptable outcomes. Two examples highlight the weaknesses of the Tribal Consultation Policy.

The first involves the efforts taken by the Internal Revenue Service since the early 2000s to audit tribal governments and assess income taxes on the benefits provided by tribal governments to their citizens. As revealed by a January 2014 Treasury Department Inspector General Report, the IRS conducted nearly 1000 audits of tribal governments and individual Indians in an effort to assess income taxes. No systematic effort to consult with tribal governments occurred to give prior notice of this effort. It was not until several years following commencement that tribal leaders – discussing amongst themselves – were able to piece together a picture of this systemic IRS targeting.

Once it was clear that tribal governments, tribal health care, and other general welfare benefits were being threatened, tribal leaders mobilized to invoke consultation with the Treasury Department. They also approached Congress. Ultimately, the IRS was not responsive and refused to provide the requested relief. In 2009, Congress stepped in to immunize tribal health care benefits from taxation through the Affordable Care Act (26 USC §139D). Following that, the IRS began a regulatory process to adopt a general welfare exclusion policy such as that applied to federal and state benefits that resulted in draft guidance in 2012. Comments and consultation with tribal leaders occurred, but it was clear by 2013 that the IRS would not cease audits and continue to target tribal governments. Tribal leaders again went to Congress which again responded in 2014 by enacting legislation to immunize all tribal general welfare benefits

from income taxation, to suspend all tribal government audits, and establish a tribal advisory committee to mandate consultation (26 USC §139E).

The most recent example of the failure of the Tribal Consultation Policy relates to the opposition of the Standing Rock Sioux Tribe to the \$3.8 billion crude oil Dakota Access Pipeline. The facts continue to be revealed, but the emerging picture is that the U.S. Army Corps of Engineers (COE) made efforts to consult with Standing Rock tribal leaders to discuss the permits being requested by Energy Transfer Partners to authorize construction of the pipeline less than a mile from the Standing Rock reservation and waterways. Tribal leaders opposed the pipeline project, but the consultation process did not adequately recognize their opposition. Eventually, the COE issued the requested permits allowing construction to commence. At this time, tribal leaders and advocates for Native rights are engaged in a vigorous and well-publicized stand-off near the construction site with the potential for violence and harm to both protesters and law enforcement.

By all measures, the failure of the Tribal Consultation Policy in this situation has led to cataclysmic consequences. Tribal leaders and much of Indian Country as a whole is dismayed and disappointed by the U.S. governments approach to this development project, which harkens back to the days 50 years ago when the COE systematically confiscated tribal lands for public works projects. DAPL proponents, too, are frustrated due to the millions of dollars that have been spent developing the project on to have a major obstacle arise during the construction phase. And federal and state officials are no doubt distressed due to the need to respect administrative and law enforcement responsibilities, at both expense, opportunity cost, and potential risk of harm to protesters and law enforcement.

These two situations are not the only examples of the failure of the Tribal Consultation Policy. As highlighted by these two examples, many of the failures of the existing Tribal Consultation Policy stem from the lack of a requirement to obtain tribal consent prior to implementing federal policies and projects that impact tribes. Action must be taken to improve the process of communication and action for the benefit of tribal, federal, and state governments.

Proposed Corrective Action to Expand the Tribal Consultation Policy. To remedy this state of affairs, it is proposed that President Obama and his successor issue a new Executive Order or Executive Memorandum, to accomplish the following:

- *Re-affirm* that Federal agencies consult with tribal governments prior to taking any material action that affects their interests;
- *Require* that Federal agencies secure the consent of tribal governments prior to taking any material action that affects their interests;
- *Mandate* that every federal agency develop, in consultation with tribal leaders, a Tribal Consultation and Consent Policy by 2018.

What is the Policy Rationale for a Tribal Consultation and Consent Policy?

Repeatedly throughout history the U.S. government has expended unnecessary time and expense because of a failure to seek the prior informed consent of Indigenous peoples when taking action that affects our interests. Recent examples relating to IRS auditing of tribal government benefits and the Dakota Access Pipeline highlight the cost of failing to consult and securing informed consent. In situations where Native peoples have rights that must be recognized, it is far better – as well as significantly more cost effective – to secure consent prior to implementing federal policies that implicate tribal interests.

Does Consultation and Consent Mean that the Indians Always Get what they Want?

No. The proposed new policy approach is not intended to change existing law. So, for example, existing procedures that require independent government action such as exercising law enforcement or homeland security protections would remain in effect. However, the justification for this policy evolution would be to ensure that obstacles to federal initiatives affecting Indian Country are addressed sooner rather than later for the benefit of all parties.

Conclusion. The United States has a long-term vested interest in promoting strong relations with American Indian nations and tribes and Alaska Native tribes and corporations. Federal Indian policy has supported tribal sovereignty and self-determination since the early 1970s and the social, economic, and political condition has improved since that time. Embracing a consent component to consultation will ensure that the long-term federal-tribal relationship will continue to grow for the benefit of both the Indigenous and American peoples.

Respectfully submitted,



Timothy Ballew II
Chairman

DRAFT
PRESIDENTIAL MEMORANDUM
ON TRIBAL CONSULTATION AND CONSENT

The White House
Office of the Press Secretary
For Immediate Release
_____, 2017

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND
AGENCIES

SUBJECT: Tribal Consultation

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications and securing the prior consent of tribes before taking action that implements those policies. This responsibility is required to respect and strengthen the government-to-government relationship between the United States and Indian tribes.

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian tribes. Consultation is a critical ingredient of a sound and productive Federal-tribal relationship, however, the last three presidential Administrations has revealed that consultation is inadequate unless paired with consent.

My Administration is committed to regular and meaningful consultation, collaboration, and consent with tribal officials in policy decisions that have tribal implications including, as an initial step, thorough complete and consistent implementation of Executive Order 13175. Accordingly, I hereby direct each agency head to submit to the Director of the Office of Management and Budget (OMB), within 90 days after the date of this memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175, as modified by this Executive Order. This plan shall be developed after consultation by the agency with Indian tribes and tribal officials as defined in Executive Order 13175. I also direct each agency head to submit to the Director of the OMB, within 270 days after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.

Each agency's plan and subsequent reports shall designate an appropriate official to coordinate implementation of the plan and preparation of progress reports required by

this memorandum. The Assistant to the President for Domestic Policy and the Director of the OMB shall review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.

In addition, the Director of the OMB, in coordination with the Assistant to the President for Domestic Policy, shall submit to me, within 1 year from the date of this memorandum, a report on the implementation of Executive Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the tribal consultation and consent process more effective, if any, should be included in this report.

The terms "Indian tribe," "tribal officials," and "policies that have tribal implications" as used in this memorandum are as defined in Executive Order 13175.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

BARACK OBAMA

DRAFT
PRESIDENTIAL EXECUTIVE ORDER
TO REAFFIRM THE WHITE HOUSE COUNCIL ON NATIVE AMERICAN
AFFAIRS

The White House

Office of the Press Secretary
For Immediate Release

_____, 2017

Executive Order -- Establishing the White House Council on Native American Affairs

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote and sustain prosperous and resilient Native American tribal governments, it is hereby ordered as follows:

Section 1. Policy. The United States recognizes a government-to-government relationship, as well as a unique legal and political relationship, with federally recognized tribes. This relationship is set forth in the Constitution of the United States, treaties, statutes, Executive Orders, administrative rules and regulations, and judicial decisions. Honoring these relationships and respecting the sovereignty of tribal nations is critical to advancing tribal self-determination and prosperity.

As we work together to forge a brighter future for all Americans, we cannot ignore a history of mistreatment and destructive policies that have hurt tribal nations. The United States seeks to continue restoring and healing relations with Indigenous peoples and to strengthen its partnership with tribal governments. Our more recent history demonstrates that tribal self-determination -- the ability of tribal governments to determine how to build and sustain their own communities -- is necessary for developing successful and prospering tribal communities. We further recognize that restoring tribal lands through appropriate means helps foster tribal self-determination.

This order establishes a national policy to ensure that the Federal Government engages in a true and lasting government-to-government relationship with federally recognized tribes in a more coordinated and effective manner, including by better carrying out its trust responsibilities through consultation and consent. This policy is established as a means of promoting and sustaining prosperous and resilient tribal nations by ensuring that Federal agencies are fully engaged in consultation and consent with tribal leaders before implementing Federal policies that have tribal implications. Greater engagement, meaningful consultation, and securing prior consent with tribes is of paramount importance in developing any policies affecting tribal nations.

To honor treaties and recognize tribes' inherent sovereignty and right to self-government under U.S. law, it is the policy of the United States to promote the development of prosperous and resilient tribal nations, including by:

(a) promoting sustainable economic development, particularly energy, transportation,

housing, other infrastructure, entrepreneurial, and workforce development to drive future economic growth and security;

(b) supporting greater access to, and control over, nutrition and healthcare, including special efforts to confront historic health disparities and chronic diseases;

(c) supporting efforts to improve the effectiveness and efficiency of tribal justice systems and protect tribal communities;

(d) expanding and improving lifelong educational opportunities for American Indians and Alaska Natives, while respecting demands for greater tribal control over tribal education, consistent with Executive Order 13592 of December 2, 2011 (Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities); and

(e) protecting tribal lands, environments, and natural resources, and promoting respect for tribal cultures.

Sec. 2. Establishment. There is established the White House Council on Native American Affairs (Council). The Council shall improve coordination of Federal programs and the use of resources available to tribal nations, and seek the prior consent of tribal leaders prior to implementing Federal policies that affect tribal interests.

Sec. 3. Membership. (a) The Secretary of the Interior shall serve as the Chair of the Council, which shall also include the heads of the following executive departments, agencies, and offices:

- (i) the Department of State;
- (ii) the Department of the Treasury;
- (iii) the Department of Defense;
- (iv) the Department of Justice;
- (v) the Department of Agriculture;
- (vi) the Department of Commerce;
- (vii) the Department of Labor;
- (viii) the Department of Health and Human Services;
- (ix) the Department of Housing and Urban Development;
- (x) the Department of Transportation;
- (xi) the Department of Energy;

- (xii) the Department of Education;
- (xiii) the Department of Veterans Affairs;
- (xiv) the Department of Homeland Security;
- (xv) the Social Security Administration;
- (xvi) the Office of Personnel Management;
- (xvii) the Office of the United States Trade Representative;
- (xviii) the Office of Management and Budget;
- (xix) the Environmental Protection Agency;
- (xx) the Small Business Administration;
- (xxi) the Council of Economic Advisers;
- (xxii) the Office of National Drug Control Policy;
- (xxiii) the Domestic Policy Council;
- (xxiv) the National Economic Council;
- (xxv) the Office of Science and Technology Policy;
- (xxvi) the Council on Environmental Quality;
- (xxvii) the White House Office of Public Engagement and Intergovernmental Affairs;
- (xxviii) the Advisory Council on Historic Preservation;
- (xxix) the Denali Commission;
- (xxx) the White House Office of Cabinet Affairs; and
- (xxxi) such other executive departments, agencies, and offices as the Chair may, from time to time, designate.

(b) A member of the Council may designate a senior-level official, who is a full-time officer or employee of the Federal Government, to perform his or her functions.

(c) The Department of the Interior shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations.

(d) The Council shall coordinate its policy development through the Domestic Policy Council.

(e) The Council shall coordinate its outreach to federally recognized tribes through the White House Office of Public Engagement and Intergovernmental Affairs.

(f) The Council shall meet three times a year, with any additional meetings convened as deemed necessary by the Chair. The Chair shall invite tribal leaders to participate in said meetings and may invite other interested agencies and offices to attend meetings as appropriate.

Sec. 4. Mission and Function of the Council. The Council shall work across executive departments, agencies, and offices to coordinate development of policy recommendations to support tribal self-governance and improve the quality of life for Native Americans, and shall coordinate the United States Government's engagement with tribal governments and their citizens. The Council shall:

(a) make recommendations to the President, through the Director of the Domestic Policy Council, concerning policy priorities, including improving the effectiveness of Federal investments in tribal nations, where appropriate, to increase the impact of Federal resources and create greater opportunities to help improve the quality of life for Indigenous peoples;

(b) coordinate, through the Director of the Office of Public Engagement and Intergovernmental Affairs, Federal engagement with tribal governments and Native American stakeholders regarding issues important to Indigenous peoples, including with tribal consortia, small businesses, education and training institutions including tribal colleges and universities, health-care providers, trade associations, research and grant institutions, law enforcement, State and local governments, and community and non-profit organizations;

(c) coordinate a more effective and efficient process for executive departments, agencies, and offices to honor the United States commitment to tribal consultation as set forth in Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), and my memorandum of _____, 2017 (Tribal Consultation and Consent); and

(d) assist the White House Office of Public Engagement and Intergovernmental Affairs in organizing the White House Tribal Nations Conference each year by bringing together leaders invited from all federally recognized Indian tribes and senior officials from the Federal Government to provide for direct government-to-government discussion of the Federal Government's Indian country policy priorities.

Sec. 5. General Provisions. (a) The heads of executive departments, agencies, and offices shall assist and provide information to the Council, consistent with applicable law, as may be necessary to carry out the functions of the Council.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) For purposes of this order, "federally recognized tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(e) For purposes of this order, "American Indian and Alaska Native" means a member of an Indian tribe, as membership is defined by the tribe.

(f) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

**DRAFT
PRESIDENTIAL MEMORANDUM
ON TRIBAL CONSULTATION AND CONSENT**

The White House
Office of the Press Secretary
For Immediate Release
_____, 2017

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Tribal Consultation

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications **and securing their prior consent before taking action that implements those policies. This responsibility is required to respect and strengthen the government-to-government relationship between the United States and Indian tribes.**

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian tribes. Consultation is a critical ingredient of a sound and productive Federal-tribal relationship. **however, the last three presidential Administrations has revealed that consultation is inadequate unless paired with consent.**

My Administration is committed to regular and meaningful consultation, **collaboration, and consent** with tribal officials in policy decisions that have tribal implications including, as an initial step, thorough complete and consistent implementation of Executive Order 13175. Accordingly, I hereby direct each agency head to submit to the Director of the Office of Management and Budget (OMB), within 90 days after the date of this memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175, **as modified by this Executive Order.** This plan shall be developed after consultation by the agency with Indian tribes and tribal officials as defined in Executive Order 13175. I also direct each agency head to submit to the Director of the OMB, within 270 days after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.

Each agency's plan and subsequent reports shall designate an appropriate official to coordinate implementation of the plan and preparation of progress reports required by

Author
Deleted: ,

Author
Deleted: are responsible for

Author
Deleted: ing

Author
Deleted: .

Author
Deleted: and

this memorandum. The Assistant to the President for Domestic Policy and the Director of the OMB shall review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.

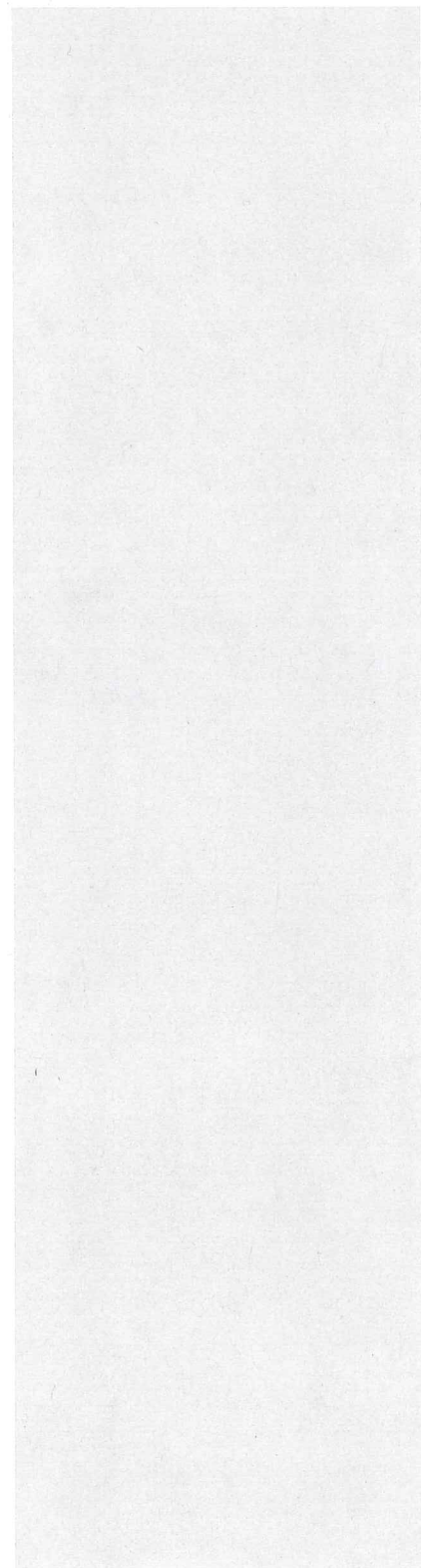
In addition, the Director of the OMB, in coordination with the Assistant to the President for Domestic Policy, shall submit to me, within 1 year from the date of this memorandum, a report on the implementation of Executive Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the tribal consultation and consent process more effective, if any, should be included in this report.

The terms "Indian tribe," "tribal officials," and "policies that have tribal implications" as used in this memorandum are as defined in Executive Order 13175.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

BARACK OBAMA



DRAFT
PRESIDENTIAL EXECUTIVE ORDER
TO REAFFIRM THE WHITE HOUSE COUNCIL ON NATIVE AMERICAN
AFFAIRS

The White House
Office of the Press Secretary
For Immediate Release
_____, 2017

Executive Order -- Establishing the White House Council on Native American Affairs

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote and sustain prosperous and resilient Native American tribal governments, it is hereby ordered as follows:

Section 1. Policy. The United States recognizes a government-to-government relationship, as well as a unique legal and political relationship, with federally recognized tribes. This relationship is set forth in the Constitution of the United States, treaties, statutes, Executive Orders, administrative rules and regulations, and judicial decisions. Honoring these relationships and respecting the sovereignty of tribal nations is critical to advancing tribal self-determination and prosperity.

As we work together to forge a brighter future for all Americans, we cannot ignore a history of mistreatment and destructive policies that have hurt tribal nations. The United States seeks to continue restoring and healing relations with Indigenous peoples, and to strengthen its partnership with tribal governments. Our more recent history demonstrates that tribal self-determination -- the ability of tribal governments to determine how to build and sustain their own communities -- is necessary for developing successful and prospering tribal communities. We further recognize that restoring tribal lands through appropriate means helps foster tribal self-determination.

This order establishes a national policy to ensure that the Federal Government engages in a true and lasting government-to-government relationship with federally recognized tribes in a more coordinated and effective manner, including by better carrying out its trust responsibilities through consultation and consent. This policy is established as a means of promoting and sustaining prosperous and resilient tribal nations by ensuring that Federal agencies are fully engaged in consultation and consent with tribal leaders before implementing Federal policies that have tribal implications. Greater engagement, meaningful consultation, and securing prior consent with tribes is of paramount importance in developing any policies affecting tribal nations.

To honor treaties and recognize tribes' inherent sovereignty and right to self-government under U.S. law, it is the policy of the United States to promote the development of prosperous and resilient tribal nations, including by:

(a) promoting sustainable economic development, particularly energy, transportation,

Author
Deleted: communities

Author
Deleted: Native Americans

Author
Deleted: ,

Author
Deleted: for o

Author
Deleted: communities

Author
Deleted: and

Author
Deleted: communities

housing, other infrastructure, entrepreneurial, and workforce development to drive future economic growth and security;

(b) supporting greater access to, and control over, nutrition and healthcare, including special efforts to confront historic health disparities and chronic diseases;

(c) supporting efforts to improve the effectiveness and efficiency of tribal justice systems and protect tribal communities;

(d) expanding and improving lifelong educational opportunities for American Indians and Alaska Natives, while respecting demands for greater tribal control over tribal education, consistent with Executive Order 13592 of December 2, 2011 (Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities); and

(e) protecting tribal lands, environments, and natural resources, and promoting respect for tribal cultures.

Sec. 2. Establishment. There is established the White House Council on Native American Affairs (Council). The Council shall improve coordination of Federal programs and the use of resources available to tribal nations, and seek the prior consent of tribal leaders prior to implementing Federal policies that affect tribal interests,

Sec. 3. Membership. (a) The Secretary of the Interior shall serve as the Chair of the Council, which shall also include the heads of the following executive departments, agencies, and offices:

- (i) the Department of State;
- (ii) the Department of the Treasury;
- (iii) the Department of Defense;
- (iv) the Department of Justice;
- (v) the Department of Agriculture;
- (vi) the Department of Commerce;
- (vii) the Department of Labor;
- (viii) the Department of Health and Human Services;
- (ix) the Department of Housing and Urban Development;
- (x) the Department of Transportation;
- (xi) the Department of Energy;

Author

Deleted: communities

- (xii) the Department of Education;
- (xiii) the Department of Veterans Affairs;
- (xiv) the Department of Homeland Security;
- (xv) the Social Security Administration;
- (xvi) the Office of Personnel Management;
- (xvii) the Office of the United States Trade Representative;
- (xviii) the Office of Management and Budget;
- (xix) the Environmental Protection Agency;
- (xx) the Small Business Administration;
- (xxi) the Council of Economic Advisers;
- (xxii) the Office of National Drug Control Policy;
- (xxiii) the Domestic Policy Council;
- (xxiv) the National Economic Council;
- (xxv) the Office of Science and Technology Policy;
- (xxvi) the Council on Environmental Quality;
- (xxvii) the White House Office of Public Engagement and Intergovernmental Affairs;
- (xxviii) the Advisory Council on Historic Preservation;
- (xxix) the Denali Commission;
- (xxx) the White House Office of Cabinet Affairs; and
- (xxxi) such other executive departments, agencies, and offices as the Chair may, from time to time, designate.

(b) A member of the Council may designate a senior-level official, who is a full-time officer or employee of the Federal Government, to perform his or her functions.

(c) The Department of the Interior shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations.

(d) The Council shall coordinate its policy development through the Domestic Policy Council.

(e) The Council shall coordinate its outreach to federally recognized tribes through the White House Office of Public Engagement and Intergovernmental Affairs.

(f) The Council shall meet three times a year, with any additional meetings convened as deemed necessary by the Chair. The Chair shall invite tribal leaders to participate in said meetings and may invite other interested agencies and offices to attend meetings as appropriate.

Sec. 4. Mission and Function of the Council. The Council shall work across executive departments, agencies, and offices to coordinate development of policy recommendations to support tribal self-governance and improve the quality of life for Native Americans, and shall coordinate the United States Government's engagement with tribal governments and their citizens. The Council shall:

(a) make recommendations to the President, through the Director of the Domestic Policy Council, concerning policy priorities, including improving the effectiveness of Federal investments in tribal nations, where appropriate, to increase the impact of Federal resources and create greater opportunities to help improve the quality of life for Indigenous peoples;

(b) coordinate, through the Director of the Office of Public Engagement and Intergovernmental Affairs, Federal engagement with tribal governments and Native American stakeholders regarding issues important to Indigenous peoples, including with tribal consortia, small businesses, education and training institutions including tribal colleges and universities, health-care providers, trade associations, research and grant institutions, law enforcement, State and local governments, and community and non-profit organizations;

(c) coordinate a more effective and efficient process for executive departments, agencies, and offices to honor the United States commitment to tribal consultation as set forth in Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), and my memorandum of _____, 2017, (Tribal Consultation and Consent); and

(d) assist the White House Office of Public Engagement and Intergovernmental Affairs in organizing the White House Tribal Nations Conference each year by bringing together leaders invited from all federally recognized Indian tribes and senior officials from the Federal Government to provide for direct government-to-government discussion of the Federal Government's Indian country policy priorities.

Sec. 5. General Provisions. (a) The heads of executive departments, agencies, and offices shall assist and provide information to the Council, consistent with applicable law, as may be necessary to carry out the functions of the Council.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

Author
Deleted: communities

Author
Deleted: Native American communities

Author
Deleted: Native Americans

Author
Deleted: Native Americans

Author
Deleted: November 5, 2009

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) For purposes of this order, "federally recognized tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(e) For purposes of this order, "American Indian and Alaska Native" means a member of an Indian tribe, as membership is defined by the tribe.

(f) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

