

Washoe Tribe of Nevada and California



January 29, 2010

Rodger J. Boyd
Deputy Assistant Secretary
Office of Native American Programs
Washington Office
451 7th Street, Room 4126
Washington, D.C. 20410
TribalConsultationPolicyComments@hud.gov

Via Electronic Mail

Dear Deputy Assistant Secretary Boyd:

Re: Tribal Consultation Policy – Comments

Pursuant to the electronic mail dated January 28, 2010, the Washoe Tribe of Nevada and California offers its comments regarding the development of the Department of Housing and Urban Development's consultation and coordination policy.

President Obama's Memorandum of November 5, 2009, states that, pursuant to Executive Order 13175, executive departments and agencies, "... are charged with engaging in regular and meaningful consultation and collaboration with tribal officials ..." Towards development of a policy that provides for regular and meaningful consultation and collaboration, the Washoe Tribe's written comments are as follows:

In order to be regular and meaningful, tribal consultation must occur whenever actions by the Department will impact tribal interests. Further, consultation must occur very early in the decision-making process, long before any decisions are made.

The Washoe Tribe believes firmly that effective consultation is an ongoing, interactive process. Regular and meaningful consultation is an ongoing dialogue. Consultation is not a task that is simply initiated, implemented and completed in order to further any one particular undertaking. As such, Consultation should occur whenever actions by the Department will impact tribal interests.

The Department's consultation policy must ensure that tribes are involved in the initial determination of whether a particular policy or action will affect tribal interests. Consultation cannot be limited to those circumstances where an agency makes an independent determination that such consultation is "practicable" or when an agency makes an independent determination that the effect on the tribe's interests warrants consultation. Meaningful consultation includes tribal involvement in most fundamental questions regarding the need for action, the strength of the impact on the tribe's interests, and the scope of issues to be considered. Early, pre-draft consultation helps insure that complex matters are thoroughly vetted, analyzed and understood before positions are taken. Any consultation policy that would allow the Department to merely inform the tribes about proposed policies immediately prior to their adoption without allowing for input or resolution to impacts on tribal interests would be unacceptable. Further, the Department's consultation policy must require the Department work with tribes to identify mutually agreeable resolutions to the issues or problems identified through the consultation process. For example, before Program Guidance or Program Notices are released, consultation should occur with the Tribes about the content of those Guidance and Notices. Currently, Program Notices are being issued that require the Tribe to adopt changes without any consultation. Additionally, Program Guidance, which should be for guidance purposes only, is being enforced as mandatory changes without any consultation whatsoever. This is unacceptable as it imposes a large burden on the Indian Housing Block Grant Program and as it is out of compliance with current Executive Orders.

In order to be regular and meaningful, tribes must have ample notice of upcoming tribal consultations.

Most tribes operate with few resources. The Washoe Tribe is no different. When the Department gives short notice of consultations, travel expenses are more costly. Resources that should rightfully be spent ensuring the safety and security of those living on tribal lands have to be diverted to costly travel expenses. The Tribe is forced to choose between attending face-to-face consultations to address important nation-wide issues and to call attention to issues they face and with staying home to attend to those issues. In addition, when short notice is given, the Tribe does not have enough time to properly prepare. Regular and meaningful consultation requires ample notice so that the tribes have an opportunity to gather tribal leaders, develop positions on discrete issues, decide who should attend the consultation, and make the necessary travel arrangements. Oftentimes, it takes over three weeks for the Tribe to receive mailed notices from Washington D.C. Any computation of notice periods should take this into account. The Tribe's preference is for the Department to allow a thirty-day mailing time frame and a thirty-day preparation time frame—for a minimum total of a sixty-day notice period.

Meaningful consultation requires consultation between tribal leaders and decision makers within the Department.

As discussed above, tribes must expend precious resources to attend consultations. If tribes are going to expend resources to attend face-to-face consultations, they deserve to delegate who amongst them is best suited to represent the Tribe's interests on a particular

issue and those individuals should then have the opportunity to interact with Department officials that have decision making authority. That being said, formal consultation with tribal governments is not a substitute for regular communications between the Department and tribal leaders. It is imperative that Department staff develop strong lines of communication in order to understand tribal issues more thoroughly and to understand the diversity of tribal issues. Attorney General Eric Holder's recent directive to the US Attorneys' Office to meet and consult with local tribes annually and to develop localized operational plans is a good example of how to develop and maintain those strong, local lines of communication. Such meetings, which are no substitute for consultation with the Department itself, should be conducted using modern technology in order to lessen the burden on the Tribes. Teleconferencing and videoconferencing facilities are available to some tribes and should be used to enhance communication.

In order to be meaningful, the Department's Consultation Policy must include follow up provisions.

When tribes consult with federal officials, work hard to identify mutually agreeable solutions to problems and then are never informed whether or not those solutions were implemented, it is demoralizing and disconcerting, to say the least. It leads tribal leaders to question whether or not expending the resources to attend consultations is in the best interests of those living on tribal lands. Additionally, tribal leaders don't know what works if they are not informed when effective solutions are found. As such, written follow up via the United States Postal Service, electronic mail, as well as information posted on the Department's webpage should be implemented. A separate section of the Department's webpage should be developed to assist in the dissemination of information for tribes and tribal members. These follow up provisions should occur no more than thirty days after the Department has made a final decision on an issue.

In order to be meaningful, the Department's Consultation Policy must provide for accountability.

A consultation policy without accountability cannot provide for meaningful tribal consultation. The Department's policy should provide tribes with a remedy when the Department fails to consult in accordance with its policy. This remedy should, at the very least, permit the tribe's to initiate consultation upon request and should stay the Department's proposed action until that consultation process has been completed in compliance with the policy. This Department should not be allowed to issue Policy Notices or Policy Guidance with no consultation.

In order to be meaningful, the Department should coordinate with other Federal agencies.

In consultation with the Tribes, the Department should identify areas in which is should be coordinating with other Federal agencies. For example, the Department could coordinate with other agencies so that one environmental review process is accepted by all executive agencies. As stated earlier, meaningful consultation is an ongoing dialogue. The more this Department interacts with the Tribes, the more issues can be identified as

appropriate for development consistent policies and procedures for more a efficient process throughout the Federal government.

Thank you for your attention to this matter.

Sincerely,



Waldo W. Walker
Tribal Chairman