UNITED STATES DEPARTMENT OF AGRICULTURE

ACTION PLAN

FOR TRIBAL CONSULTATION AND COLLABORATION

Plan submitted pursuant to

Presidential Memorandum dated November 5, 2009

Introduction and Background

The United States Department of Agriculture (USDA) is the Federal department providing leadership on food, agriculture, natural resources, and related issues based on sound public policy, the best available science, and efficient management. The key activities the Department engages in include: expanding markets for agricultural products and supporting international economic development; further developing alternative markets for agricultural products and activities; providing financing needed to help expand job opportunities and improve housing, utilities and infrastructure in rural America; enhancing food safety by taking steps to reduce the prevalence of food borne hazards from farm to table; improving nutrition and health by providing food assistance and nutrition education and promotion; and managing and protecting America's public and private lands working cooperatively with other levels of government and the private sector.

Contained within this document is USDA's Action Plan in response to President Obama's Memorandum on Tribal Consultation executed November 5, 2009. The President's Memorandum requires all Federal agencies to provide effective Tribal consultation and collaboration in the carrying out of their roles and responsibilities.

USDA Strategic Goals

As Secretary of Agriculture, Thomas J. Vilsack has been candid and direct about the challenges and opportunities facing USDA and the country, and the importance of fulfilling the vast missions of the Department as a champion of rural America, a steward of the environment, and a protector of our food supply. Four (4) strategic areas have been targeted by Secretary Vilsack as central to USDA's mission during the Obama administration:

- Rural Vitality - assisting rural communities to create prosperity so they are self-sustaining, repopulating, and economically thriving
- Conservation – ensuring America's forests and private working lands are conserved, restored, and made more resilient to climate change, while enhancing water resources
- Sustainability – ensuring America is the world leader in sustainable agricultural production, and biotechnology exports as America works to increase food security
- Nutrition and Health – ensuring that all America's children have access to safe, nutritious, and balanced meals

Central to supporting these priority goals is the need to transform the Department into a model Federal agency engaged in effective program delivery by enhancing leadership, encouraging employee inclusion, and focusing on customer and employee satisfaction. As a part of this latter Departmental objective, the improvement of Tribal consultation as well as the outreach efforts to reach more minority and women farmers are highlighted.

USDA's ongoing relation and future interaction with Tribal leaders and governments, Tribal communities, and individuals is deeply embedded within each of the Secretary's strategic priorities. By reaching for these goals in the Tribal context, USDA can play a critical role in improving Tribal economic self-sufficiency; improving nutrition and addressing critical health issues within Tribal communities; assisting Tribal communities in conservation of the natural systems intimately connected with their communities and in honoring the economic, ecological, social, spiritual, and cultural connections of Tribal communities to the Nation's landscapes; aiding Tribal governments and communities in reaching for and achieving food security; creating rural and agricultural businesses as a tool towards rural economic vitality; creating new infrastructure (utilities, water, wastewater and broadband) at the Tribal community level to improve Tribal vitality and resiliency; creating new business opportunities in Indian Country; and helping Tribal governments in creating sustainable Tribal communities.

USDA Mission Areas, Agencies, and Departments

USDA is made up of seven (7) distinct mission areas and seventeen (17) separate agencies. USDA has field offices, either as stand-alone offices or in consolidation or partnership with others, in virtually every county within the country. The mission areas of the Department and the accompanying agencies through which its responsibilities and authorities are carried out are sprawling and vast, and are as follows:

Natural Resources and Environment

The Natural Resources and Environment mission area ensures the health of the land through sustainable management. Its agencies work to prevent damage to natural resources and the environment, restore the resource base, and promote good land management.

Forest Service (FS) – sustains the health, diversity and productivity of the Nation's forests and grasslands to meet the needs of present and future generations**.**

Natural Resources Conservation Service (NRCS) – provides leadership in partnership efforts to help people conserve, maintain and improve our natural resources and environment.

Farm and Foreign Agricultural Services

The Farm and Foreign Agricultural Services mission area helps to keep America's farmers and ranchers in business as they face the uncertainties of weather and markets. They deliver commodity, credit, conservation, disaster, and emergency assistance programs that help improve the stability and strength of the agricultural economy.

Farm Service Agency (FSA) – FSA implements agricultural policy, administers credit and loan programs, and manages conservation, commodity, disaster and farm marketing programs through a national network of offices.

Foreign Agricultural Service (FAS) – FAS works to improve foreign market access for US products. This USDA agency operates programs designed to build new markets and improve the competitive position of US agriculture in the global marketplace.

Risk Management Agency (RMA) – RMA helps to ensure that farmers have the financial tools necessary to manage their agricultural risks. RMA provides coverage through the Federal Crop Insurance Corporation, which promotes national welfare by improving the economic stability of agriculture.

Rural Development

The Rural Development (RD) mission area is comprised of three agencies committed to increasing economic opportunity and improving the quality of life for all rural Americans. RD meets this mission in a variety of housing, utilities, business, and community development programs; promotes economic development by providing loans to businesses through banks and community-managed lending pools, while assisting communities to participate in community empowerment programs; provides resources through direct or guaranteed loans, grants, and technical assistance, research and educational materials; and works in partnership with state, local and Tribal governments, as well as rural businesses, cooperatives and nonprofit agencies.

Rural Utilities Service (RUS) – RUS programs focus on rural America's need for basic services such as clean running water, sewers and waste disposal, electricity, and telecommunications, including broadband.

Rural Housing Service (RHS) – RHS programs focus on rural America's need for single-family and multi-family housing as well as libraries, schools, health care, dependent care, emergency services, and other essential community facilities.

Rural Business – Cooperative Service (RBS) – RBS programs focus on attracting private capital to rural business development through loan guarantees, capitalization of locally-controlled revolving loan funds, grants for workforce development programs, as well as grants and loan guarantees for development of new business opportunities in renewable energy. RBS also provides financial and technical assistance to cooperatives, and is the mission area's lead agency for support of local and regional food systems.

Office of Community and Economic Development (OCED) – Housed at the mission area level, OCED oversees special initiatives to demonstrative effective community and regional planning and development.

Food, Nutrition, and Consumer Services

The Food, Nutrition and Consumer Services mission area works to harness the Nation's agricultural abundance to end hunger and improve health in the United States. Its agencies administer federal domestic nutrition assistance programs and the Center for Nutrition Policy and Promotion, which links scientific research to the nutrition needs of consumers through science-based dietary guidance, nutrition policy coordination, and nutrition education.

Food and Nutrition Service (FNS) – FNS increases food security and reduces hunger in partnership with cooperating organizations by providing children and low-income people access to food, a healthy diet, and nutrition education.

Center for Nutrition Policy and Promotion (CNPP) – CNPP works to improve the health and well-being of Americans by developing and promoting dietary guidance that links scientific research to the nutrition needs of consumers.

Food Safety

The Food Safety mission area ensures that the Nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and properly labeled, and packaged. This mission area also plays a key role in the President's Council on Food Safety and has been instrumental in coordinating a national food safety strategic plan among various partner agencies including the Department of Health and Human Services and the Environmental Protection Agency.

Food Safety and Inspection Service (FSIS) – enhances public health and well-being by protecting the public from food borne illness and ensuring that the nation's meat, poultry and egg products are safe, wholesome, and correctly packaged.

Research, Education and Economics

The Research, Education and Economics (REE) mission area is dedicated to the creation of a safe, sustainable, competitive United States food and fiber system, as well as strong communities, families, and youth through integrated research, analysis and education.

Agricultural Research Service (ARS) - is USDA's principal intramural research agency. ARS leads America towards a better future through agricultural research and information.

National Institute of Food and Agriculture (NIFA) – in partnership with land-grant universities, and other public and private organizations, NIFA provides the focus to advance a global system of extramural research, extension, and higher education in the food and agricultural sciences.

Economic Research Service (ERS) is USDA's principal social science research agency. Each year, ERS communicates research results and socioeconomic indicators via briefings, analyses for policymakers and their staffs, market analysis updates, and major reports.

National Agricultural Library (NAL) ensures and enhances access to agricultural information.

National Agricultural Statistical Service (NASS) serves the basic agricultural and rural data needs of the country by providing objective, important and accurate statistical information and services to farmers, ranchers, agribusinesses and public officials. This data is vital to monitoring the ever-changing agricultural sector and carrying out farm policy.

Marketing and Regulatory Programs

The Marketing and Regulatory Programs mission area facilitates domestic and international marketing of U.S. agricultural products and ensures the health and care of animals and plants. MRP agencies are active participants in setting national and international standards.

Agricultural Marketing Service (AMS) facilitates the strategic marketing of agricultural products in domestic and international markets while ensuring fair trading practices and promoting a competitive and efficient marketplace. AMS constantly works to develop new marketing services to increase customer satisfaction.

Animal and Plant Health Inspection Service (APHIS) provides leadership in ensuring the health and care of animals and plants. The agency also improves agricultural productivity and competitiveness.

Grain Inspection Packers and Stockyards Administration (GIPSA) facilitates the marketing of livestock, poultry, meat, cereals, oilseeds, and related agricultural products. It also promotes fair and competitive trading practices for the overall benefit of consumers and American agriculture. GIPSA ensures open and competitive markets for livestock, poultry, and meat by investigating and monitoring industry trade practices.

USDA Departmental Offices

USDA Departmental Offices that provide support throughout the entire Department and all agencies within mission areas include:

Departmental Management (DM) - DM provides central administrative management support to Department officials and coordinates administrative programs and services.

National Appeals Division (NAD) - NAD conducts impartial administrative appeal hearings of adverse program decisions made by USDA and reviews of determinations issued by NAD hearing officers when requested by a party to the appeal.

Office of the Assistant Secretary for Civil Rights (OASCR) - OASCR's mission is to facilitate the fair and equitable treatment of USDA customers and employees, while ensuring the delivery and enforcement of civil rights programs and activities. ASCR ensures compliance with applicable laws, regulations, and policies for USDA customers and employees regardless of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or familial status, political beliefs, parental status, protected genetic information, or because all or part of an individual's income is derived from any public assistance program.

Office of Budget and Program Analysis (OBPA) - OBPA provides centralized coordination and direction for the Department's budget, legislative and regulatory functions. It also provides analysis and evaluation to support the implementation of critical policies. OBPA administers the Department's budgetary functions and develops and presents budget-related matters to Congress, the news media, and the public.

Office of the Chief Economist (OCE) - OCE advises the Secretary on the economic situation in agricultural markets and the economic implications of policies and programs affecting American agriculture and rural communities. OCE serves as the focal point for economic intelligence and analysis related to agricultural markets and for risk assessment and cost-benefit analysis related to Departmental regulations affecting food and agriculture.

Office of the Chief Financial Officer (OCFO) - OCFO shapes an environment for USDA officials eliciting the high-quality financial performance needed to make and implement effective policy, management, stewardship, and program decisions.

Office of the Chief Information Officer (OCIO) - OCIO has the primary responsibility for the supervision and coordination of the design, acquisition, maintenance, use, and disposal of information technology by USDA agencies. OCIO's strategically acquires and uses information technology resources to improve the quality, timeliness and cost-effectiveness of USDA services.

Office of Communications (OC) - OC is USDA's central source of public information. The office provides centralized information services using the latest, most effective and efficient technology and standards for communication. It also provides the leadership, coordination, expertise, and counsel needed to develop the strategies, products, and services that are used to describe USDA initiatives, programs, and functions to the public.

Office of Congressional Relations (OCR) - OCR serves as the USDA's liaison with Congress. OCR works closely with members and staffs of various House and Senate Committees to communicate the USDA's legislative agenda and budget proposals.

Office of the Executive Secretariat (OES) - OES ensures that all Department officials are included in the correspondence drafting and policy-making process through a managed clearance and control system. Keeping policy officials informed of executive documents enhances the Secretary's ability to review sound and thought out policy recommendations before making final decisions.

Office of the Inspector General (OIG) - OIG investigates allegations of crime against the Department's program, and promotes the economy and efficiency of its operations.

Office of General Counsel (OGC) - The Office of the General Counsel (OGC) is an independent legal agency that provides legal advice and services to the Secretary of Agriculture and to all other officials and agencies of the Department with respect to all USDA programs and activities.

Office of Ecosystem Services - Beginning in FY 2010, the Department is establishing a new Office of Ecosystem Services to address the issues of climate change and ecosystem services markets.

Office of Tribal Relations (OTR) – NEW

In FY 2010, the Department received appropriations to launch a new Office of Tribal Relations (OTR). Janie Simms Hipp, the Senior Advisor to the Secretary, Tribal Affairs leads OTR. USDA OTR will serve from this point forward as the primary point of contact for Tribal issues, including those dealing directly with Tribal governments and Alaska Native Claims Settlement Act (ANCSA) Corporations, as well as those impacting Tribal members as individuals; will be responsible for serving as the single point of contact within the Department on Tribal Affairs; will advise the Secretary concerning Tribal issues and concerns; and will work cooperatively and collaboratively across all agencies of the Department to build a cooperative, collaborative, and integrated approach to issues, programs and services addressing the needs of American Indians and Alaskan Natives, including the conduct of Tribal consultation.

Organizationally, the OTR is situated within the Office of the Secretary and is the Department's lead office for Tribal consultation in accordance with Executive Order 13175-Consultation and Coordination with Indian Tribal Governments. Additional duties and responsibilities of the OTR will include: coordination and management of USDA's American Indian and Alaska

Native policy issues and serve as the Department's expert and informational resource to the Secretary; collaboration with and outreach to Tribes and national Native organizations; coordination of USDA participation in national Tribal meetings and Tribal site visits for USDA executive leadership; advice and assistance to the USDA regional and state field offices and Senior staff on Tribal affairs, coordination of the interdepartmental working group on Tribal Consultation and Collaboration; oversight of the Department's agency and office policies and processes for consultation; and coordination of the Secretary's policy development for Tribes.

Tribal Consultation Legal Background

The principles of Tribal consultation are found in a wide range of federal laws, regulations, Executive Orders and court orders.[1] In 1994, then President Clinton issued an Executive Memorandum titled, "Government-to-Government Relationship with Native American Tribal Governments." This Memorandum stated "Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with Tribal governments prior to taking action that affects federally recognized Tribal governments. All consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals." The 1994 Memorandum stated that all agencies within the federal executive branch shall:

- Operate within a government-to-government relationship with federally recognized Indian tribes;
- Consult, to the greatest extent practicable and permitted by law, with Indian Tribal governments before taking actions that affect federally recognized Indian tribes;
- Assess the impact of agency activities on Tribal trust resources and assure that Tribal interests are considered before the activities are undertaken;
- Remove procedural impediments to working directly with Tribal governments on activities that affect trust property or governmental rights of the tribes; and
- Work cooperatively with other agencies to accomplish these goals established by the President.

President Clinton thereafter issued Executive Order 13084, dated May 14, 1998 titled "Consultation and Coordination with Indian Tribal Governments", to establish regular and meaningful consultation and collaboration with Indian Tribal governments:

- In the development of regulatory practices on Federal matters that significantly or uniquely affect their communities;
- To reduce the imposition of unfunded mandates upon Indian Tribal governments; and
- To streamline the application process for and increase the availability of waivers to Indian Tribal governments.

[1] This document highlights several key sources in Appendix A.

On November 6, 2000, President Clinton issued his final directive from the White House regarding Tribal consultation, **Executive Order 13175**, titled "Consultation and Coordination with Indian Tribal Governments."

EO 13175, which mirrored the Administration's Federalism Executive Order pertaining to state and local governments, and required all departments and agencies to consult with tribes as they develop policy on issues that have Tribal implications. EO 13175 expanded the criteria to be met when formulating and implementing policies that have Tribal implications. It also required that each agency select an official with principal responsibility for the implementation of the order. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000 (which superseded Executive Order 13084 of the same title), provided instructions to agencies related to their policymaking, legislative and regulatory activities and stated: "Agencies shall respect Indian Tribal self- government and sovereignty, honor Tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian Tribal governments."

President Obama reaffirmed these principles through execution of his Memorandum on Tribal Consultation and Collaboration on November 5, 2009 during the historic White House Tribal Leaders Conference held in Washington DC.

Consultation Policies at USDA – History and Current Status

After release of Executive Order 13175 in 2000, USDA adopted a series of Departmental Regulations on Tribal consultation.[2] Only a few USDA agencies currently have adopted agency-level consultation policy, based upon the Departmental document. These are Forest Service, Natural Resources Conservation Service, Animal and Plant Health Inspection Service, and Rural Development. All other agencies either follow the Department-wide policy or are silent in their compliance with existing Departmental guidance. Until Secretary Vilsack assumed leadership of the Department, the Department did not take measures to adopt consistent reporting and accountability efforts to track consultation efforts and outcomes across the Department, or require all agencies of the Department to move forward in assuming consultation roles within their agency mission and program design or delivery.

USDA's Action Plan

As USDA continues to move forward, this plan is and will be an active and dynamic document. The ideas and initiatives contained within this Action Plan are meant to serve as a living process and starting point and will undergo continuing review and evaluation in order to improve consultation efforts and adapt to changing missions within the Department and/or changing program authorities. The Action Plan is designed to reflect the mission of the Department with

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[2] USDA Departmental Regulation, 1350-001, September 11, 2008, Tribal Consultation http://www.ocio.usda.gov/directives/doc/DR1350-001.pdf

USDA Departmental Regulation, 1340-007, March 14, 2008, Policies on American Indians and Alaska Natives http://www.ocio.usda.gov/directives/doc/DR1340-007.pdf

USDA Departmental Regulation 1020-005, October 3, 2008 Native American Working Group http://www.ocio.usda.gov/directives/doc/DR1020-005.htm

respect to American Indians and Alaska Natives and to comply with Legislative and Executive Branch mandates. Most importantly, by bringing the efforts contained within the Action Plan to fruition, USDA hopes to improve the lives of American Indians and Alaska Natives help revitalize, and more effectively fulfill the solemn trust responsibility of the Federal government.

USDA recognizes that the United States government and the governments of American Indians and Alaska Natives have a unique government-to-government relationship based on U.S. constitution, treaties, Federal statutes, court decisions, and executive branch policies, as well as moral and ethical considerations. This special relationship has emphasized self-determination for Indian people and meaningful involvement by Indian people in federal decision-making (consultation) where such decisions affect Indian people, either because of their status as Indian people or otherwise.

In the past, with just a few notable exceptions, USDA has carried out consultations with Tribal communities on an ad hoc, informal basis, except for the efforts within two agencies: the Natural Resources Conservation Service (NRCS) and the Forest Service (FS). NRCS and FS both have more complete plans and policies for consultation and regularly engage with Tribal governments and Tribal communities and individuals both in formal consultation and in informal but structured collaborative efforts. The Animal and Plant Health Inspection Service (APHIS) and Rural Development (RD) agencies also have policies in place regarding Tribal consultation and have engaged in limited consultation efforts in the past.

The FS, NRCS, APHIS and RD activities relating to Tribal consultation are not interrelated or interconnected, either in conducting consultation activities or in reporting activities related to consultation into a primary, centralized repository for supplementing and augmenting department-wide coordination and cooperation in conducting these important activities. Other agencies of the Department work with tribes in isolation and are not governed by agency-specific policies or coordinated and consolidated consultation or collaboration efforts.

Implementation of the Plan will lead to the establishment of a formal consultation process and policy across ALL Departmental agencies, and encourage and promote the use of effective personal and ad hoc communications that can create the foundation for meaningful and fruitful relationships at all levels of the Departmental organizations; including the important local level, where many of the key Department functions are carried out. The Plan will also lead to the creation of a reporting and accountability structure and process so that all Departmental Tribal consultation and collaboration work will be traceable and accountable. Employees within the Department responsible for the outcomes of those consultation and collaborative activities will be able to assess effectiveness and coordinate their efforts with other related Departmental initiatives. Through these efforts, the Department anticipates a much improved relationship with Tribal governments, ensure consistency throughout the Department, and improve program delivery necessary to meet the needs of Tribal governments, communities and individuals.

No other Department of Federal government has as large a local presence that provides such a wide array of services, programs and opportunities to partner with Federally-recognized tribes. The USDA field offices and partnership opportunities include: food, nutrition, agriculture, rural development, sustainability, bio-energy and related mission areas of the Department. The Action

Plan has as its goal to expand the Department's consultation and collaboration with and commitment to Tribal governments, communities, and individuals.

Appointment of Senior Advisor to the Secretary, Tribal Affairs and Establishment of the Office of Tribal Relations

In November 2009, the Secretary appointed the Senior Advisor to the Secretary, Tribal Affairs and established the new Office of Tribal Relations. The Senior Advisor attends all Senior Policy meetings and reports directly to the Secretary.[3] With the establishment of the new Office of Tribal Relations, a professional staff to support not only the Office of Tribal Relations, but the Secretary and other Senior Leadership as well as the ongoing improvement of Tribal relations and Tribal program and the consultation and collaboration process will occur.

Policies and Processes

New Departmental Regulation

During 2010 USDA will develop, clear, and issue a new Departmental Regulation governing Tribal Consultation which will provide the overarching regulation for the Department and all USDA agencies and offices and take the place of all previous Departmental Regulations relating to Tribal consultation, recognition of trust responsibilities and the government to government relationship with tribes. All agencies and offices of the Department will be required to either revisit or revise existing policy or craft new policies that conform to the new Departmental regulation, reflecting their unique program missions and organizational structures.

In order to better achieve policy consistency across all agencies, the Department will keep in mind the constraints of smaller, less robustly staffed agencies as well as the needs of smaller, less financially stable tribes. Many tribes reflected this in their comments: that federal agencies must work effectively, efficiently and in some cases in strategic regional venues in order to accommodate the needs of not only the tribes (in achieving effective consultation without financially crippling smaller or less financially stable tribes) but of the federal government itself in beginning to work more effectively and strategically across subject areas which have previously been segregated or isolated.

Critical Events as Triggers

Departmental regulations and agency policies will specifically identify critical events which absolutely require Tribal consultation and participation. These "trigger events" will be specifically described within the new DR for USDA and all agencies will examine their areas of responsibility and authority and craft specific triggering events that will guide consultation events at the agency level. These agency-level triggers will be incorporated into agency policies and employees will be notified and trained to recognize these critical events.

[3] Previous Native American Program Directors at USDA did not have a direct line of authority with the Secretary. In addition, all previous Native American Program Directors functioned as sole program professionals.

Reporting, Accountability, and Performance Measurement

Reports on Consultation

Each year, beginning with the 270-day reporting deadline contained within the President's Memorandum on Tribal Consultation, and continuing annually thereafter, USDA will publish a report on consultation. This report will also be posted on the department's web site and linked to the Departmental Tribal consultation policy. In addition, OTR will design and work throughout all agencies of the Department, to incorporate evaluation components and tools in any large consultation activities it implements. In reporting outcomes from consultation activities, USDA will specifically maintain a record of all consultations, evaluate whether the intended results were achieved, and report back to the affected tribes on the status or outcomes of consultation activities. An annual report on the impact of improved Tribal Consultation and Collaboration, including data on the impact of programs and services in Indian Country will be launched in 2010 and occur annually thereafter. This report will serve to not only keep the Secretary and the White House informed of the Department's progress, but will also be provided to Tribal governments and other Federal agencies to continually assist in improving the Department's activities. Requests for confidentiality of information provided through consultation will be respected and accommodated as law allows. Finally, the previously existing programs and services guide for Tribal leaders and communities will be updated during 2010; republished; provided on the USDA OTR website; and as a DVD to all Tribal leaders in the country.

Accountability & Measurement

Within the first year, USDA will establish department-wide guidance on performance measurements relating to Tribal consultation and collaboration which will be incorporated into individual personnel performance reviews and plans, particularly at the senior management level, which is the level at which effective formal consultation occurs. In addition, each USDA employee will have incorporated into the performance plans a measure important to their level of responsibility regarding Tribal collaboration and program service delivery. Finally, all employees will be required to incorporate into their training plans, specific training modules for working effectively with Tribal governments.

Reporting and Accountability Platform

Within the first year, the establishment and deployment of Department-wide reporting and accountability platform (using the OMB approved MAX location until a more appropriate Departmental tool can be launched) to capture all consultation and collaboration activities occurring throughout and across the entire Department, its various agencies and mission areas, will enable constant communication, reporting and accountability and a more transparent and vibrant working environment across the large Department in reaching its consultation and collaboration goals will occur. Evaluation and measurement tools will be identified and incorporated into the reporting and accountability platform.

Education & Training for USDA Staff

Education and training for Departmental staff is important to effective consultation. Consultation between USDA and Tribal governments cannot and should not be limited to one or a few strictly defined methods, but employees must be able to understand the legal foundations for consultation. While formalized consultation methods are necessary and will be incorporated into the USDA Action Plan, the Department intends to also incorporate more flexible and less structured means of consultation, communication, and collaboration with Tribal governments and communities. Within the incorporation of more robust consultation and collaboration comes the need to train USDA staff.

As soon as possible in 2010, USDA will instruct all staff to take the present OPM GoLearn "Working Effectively with Tribal Governments" learning module. Regular training briefings will be afforded Senior Policy staff. Additional training and education will be provided to senior managerial staff and senior policy staff at the local/field office level. OTR will lead the compilation of educational resources, the crafting of cultural competency training and educational modules, and will work with the AgLearn staff (which crafts and delivers USDA-specific training department-wide) to migrate the existing GoLearn training module, update the module if necessary, and craft additional training, education, and cultural competency opportunities suitable for USDA staff nationwide. The GoLearn training module is offered free of charge to all employees in Federal government.

Also within the first year, USDA will issue an internal guidance and provide educational resources to its personnel to assist them in understanding the meeting methodology and protocol for conducting effective consultation activities. Compliance with these educational resources and internal guidance will be monitored throughout 2010 and beyond to ensure program staffs across the Department are conducting consultation within acceptable frameworks.

Advisory and Leadership Working Groups

In year one, USDA will evaluate the creation of a Secretary's Tribal Consultation Advisory Group (made up of representatives of Tribal governments, intertribal organizations, and federal departmental personnel) to advise the Secretary concerning Tribal consultation needs and emerging issues of concern. USDA will also evaluate the creation of an Advisory Council on Tribal Consultation and Collaboration within each of the seven mission areas of the Department to analyze and provide input on the specific related programs residing within the unique mission areas of the Department.

Many Tribal leaders have however cautioned federal agencies against the sole use of such bodies as a means of input, since Tribal communities and cultures vary so widely and no one Tribal government is empowered to speak for all, either at a national or regional level. The Department acknowledges these issues and concerns and will closely examine how best to seat such bodies and how to ensure compliance with all applicable laws and regulations, including FACA requirements.

Within year one, USDA will create a new internal Working Group on Tribal Consultation and Collaboration (to take the place of the current USDA Native American Working Group). The new Working Group on Tribal Consultation and Collaboration will contain representatives from all USDA agencies (each agency and mission area represented) and will work across the Department to monitor and advise the Secretary and OTR regarding ongoing needs in relation to Tribal consultation, programs and services.

At least three subcommittees of the internal Working Group on Tribal Consultation and Collaboration will be seated: 1) policy development, 2) reporting and accountability, and 3) education/training. These subcommittees are already working under the existing Native American Working Group structure and will be migrated to the new intradepartmental Working Group structure. These subcommittees will provide ongoing recommendations and program guidance in their specific subject areas and additional subject area subcommittees will be seated by the OTR as needed.

Regional USDA Consultation Venues

In partially meeting the responsibilities of Tribal consultation, the Department will craft a series of formal, structured regionally based settings through which formal consultation will be convened around the entirety of the Department's mission areas and responsibilities. The topics for consultation in these regional settings will be solicited from tribes located in those regions.

Regional USDA Tribal consultation venues will seek to not only alleviate the travel, time, and financial impact on Tribal leaders to attend consultation meetings, but will also open up the Tribal consultation process to a more integrated, representative approach across ALL mission areas and agencies of the Department. This integrated, regional approach will allow the Department to deploy senior management in a cohesive, coordinated, and financially responsible fashion and through combined, collaborative, consultation opportunities, meet a secondary goal to identify those areas in which the sprawl of the Department can be overcome and the interrelated programs administered by the Department can be more effectively brought to bear on challenges faced by Tribal governments, communities and individuals.

Interagency Regional Consultation Venues will also be explored; combining USDA agencies and related Federal agencies whose mission and focus may interlock with the Department's authorized responsibilities in order to explore greater collaborative consultation to address issues of concern to Tribal governments. Examples could include: forest management, natural resource management, subsistence, nutrition and health. USDA is already involved in conversations with Department of Transportation, Department of Housing and Urban Development, Department of Commerce and the Indian Health Service in crafting means by which effective interagency program delivery can occur that would meet cross-agency goals for sustainable community development.

These issue-specific regional consultation opportunities will allow and foster new ways in which Federal agencies can function for the benefit of Tribal governments, communities, and

individuals. Issue-specific regional consultation venues, as identified by Tribal leaders since November 2009 and by Departmental staff may include:

- Traceability of Animal Disease
- Food Distribution Program on Indian Reservations
- Fractionated Land Program
- Federally Recognized Tribe Extension Professional program
- 1994 Tribal Colleges program
- Reburial policies and Culture and Heritage provisions of the Farm Bill
- Forest Products, Forest Management, and other Forest-Related and Conservation-Related Issues
- Substantially Underserved Trust Areas (SUTA), and
- Broadband

USDA commits to providing focused regional venues for coordinated Tribal consultation with regard to the programs identified above, as well as any new program authorities which the Department may be called upon to administer by new Congressional enactments.

Regularly Occurring Consultation and As-Needed Consultation

Consultation occurs when Departmental/Agency leadership at the senior-most level and a Tribal President/Chair/Governor/ANCSA Chairman or President and/or elected/appointed Tribal Leader formally meet or exchange written correspondence to discuss issues concerning either party. Consultation can and should occur on a regular basis and can also occur on an "as needed" basis. The Department and its agencies as well as the Tribes may raise issues that need to be addressed in program implementation. The type and extent of consultation will vary over time and should be guided by the immediate situations as those situations arise.

USDA and its agencies will take advantage of national meetings sponsored by different units of the Department and seek to utilize those venues to engage with Tribal leaders in consultation. While these can be effective use of resources, both for the Department/agency and the Tribe, these opportunities must be carefully crafted and will never take the place of being available on an as needed basis for consultation.

The nature and design of consultation interaction will vary and be guided by the particulars of the issues at hand, the larger background situation, the number of tribes that could be affected, the differences in and complexities of the issues from tribe to tribe, time constraints, and other important considerations. The new Departmental policies will provide the requirements for examining such important considerations in crafting consultations, and will provide a mechanism for reporting and assessing effectiveness of these considerations.

Departmental consultation polices will encourage face-to-face consultation as the most important means of conducting most consultation events. However, many Tribal leaders have expressed a desire that other means are explored as well, including web conferencing, video conferencing, webinars, and other electronic means for communicating.

Consultation via correspondence can also take place, but written communications should clearly identify the issues at hand, identify the potentially affected Tribes, include any agency positions

on the issues, and identify the type of input sought, how to provide input and when to provide input. In preparation for consultation on specific issues, all parties will be provided with adequate background information (should it exist) and time to review the information so that all may be appropriately and adequately informed and so that the resulting consultation may be maximally effective and beneficial.

Tribal governments, communities, and individuals will be given a specific and reasonable time to respond to developing policies and feedback and responses will be provided to consulting parties within a reasonable time frame. Experience has shown that response periods need to be ample in length.

Regional consultations will also provide the opportunity to solicit Tribes' priorities and needs in each of the program areas within which the Department and its agencies operate and articulate comments and concerns regarding regulations, legislation and other emerging or existing policy matters.

USDA's Annual Regional Consultation Plans will be announced each year through a published (Federal Register) two-pronged process: 1) publishing a "Notice of Opportunity for Input through Tribal Consultation" calling upon Tribal governments, ANCSA Corporations, intertribal organizations, communities, and individuals to provide input on a list of specific issues or areas for which Tribal consultation venues/opportunities should be developed within the coming time period (usually one year). These issues or areas for input will be tied to specific upcoming rulemaking agendas faced by the agencies within the Department and can include other emerging issues of concern to Tribes or related to developing areas of concern within the Department's overall authorities or missions; and 2) publishing a "List of Tribal Consultation Venues" after analysis and scheduling occurs.

Farm Bill Consultation

The Department commits to conducting a series of Tribal consultation venues in all regions of the country in the time period leading up to the next major piece of farm legislation – the Farm Bill. Every five (5) years Congress takes up new farm bill program authorities, reexamines old authorities and identifies needs for the farm, fuel, rural, energy and related sectors through a "Farm Bill". The last Farm Bill was passed by Congress in 2008 and implementation is still under way.

As the next Farm Bill approaches, USDA will encourage and support through its own hosted regional consultation venues, the opportunities for Tribal governments and intertribal organizations to provide input and focus to the Department in the ramping up period to the next Farm Bill. The Department anticipates this effort will begin in 2011 and continue throughout 2012.

Mechanisms for Additional Consultation

USDA will continually explore different avenues to reach out to Tribal governments, including but not limited to: paper and visual media, electronic communications via the Internet (twitter, face book, blogs, etc) and the use of teleconference, video conference and webinars. The OTR will work and collaborate with other key offices within the Department: the Office of Advocacy

and Outreach, the Office of General Counsel, the Office of External and Intergovernmental Affairs and others, to ensure that maximum coordination in consultation activities occurs.

OTR will also work closely with the 1994 Tribal Colleges so that these institutions may serve to strengthen the communications, consultation, and technical assistance and collaboration links between USDA and Tribal governments and further their own land grant educational institution mission and presence. OTR will also participate in key AI/A meetings, such as the Intertribal Agriculture Council/Indian Nations Conservation Alliance annual conference, the National Congress of American Indians, the USET meetings, SWIAA, NWIAC meetings and many others as a means of continually fostering consultation and collaboration.

Federal/Tribal/State Consultations

Many programs administered by USDA are actually carried out by State partners. Many agencies of Federal government require Tribal/state consultations. USDA will coordinate, through each agency program leadership, a means by which states can be encouraged and assisted in developing mechanisms for consultation with AI/A governments and Indian organizations existing within their borders. USDA will determine the feasibility of requiring that state/Tribal consultation actions be taken before states take actions affecting Tribal governments, communities and individuals. This analysis will occur in conjunction with the USDA Office of General Counsel. Should they occur, these Tribal/state consultations must be meaningful and each state must provide USDA program leadership with assurances that delivery of services/programs has been preceded with meaningful consultation with Tribal governments and an ongoing means for consultation is provided within the state program delivery context.

Budget, Legislative, and Policy Consultation

Many Federal agencies, including HHS, DOI and others, provide these opportunities on an annual basis in a single venue. Within these annual venues, all operating and staff divisions of the relevant departments are involved. Tribes are requested to and provide priorities and recommendations to the Department. During the first year, USDA will examine what might be the best venues to provide such opportunities, beginning in 2010.

The OTR will work across USDA in providing venues for legislative consultation to Tribal governments, perhaps in coordination with venues created for budgetary consultation. In addition, OTR will create opportunities for those working with Tribal governments, communities and individuals to identify specific policy and legislative efforts that would improve Tribal program delivery and collaboration.

OTR will also work with USDA Office of General Counsel and through the sub-committees of the Interagency Working Group on Tribal Consultation to conduct a comprehensive analysis of all USDA mission and agency related legislation for impact on programs and services important to Tribal governments, communities and individuals and impact on the Tribal consultation policies and will provide this analysis to the Secretary and all agencies of the Department. This type of all-USDA legislative review has never been undertaken with a Tribal perspective in mind. OTR will coordinate this effort and work closely with OGC in the conduct of such review during 2010.

Finally, OTR will encourage that all Tribal consultation venues incorporate the seeking of policy guidance from Tribal representatives and experts on existing programs and emerging issues important to Tribal governments, communities and individuals in order to proactively anticipate issues of concern.

Communications

During the first year, USDA will create a new website page for Tribal consultation linked from the USDA front. The OTR web page will be the primary portal for Tribal consultation-related information for the Department and all agencies (across all 17 agencies and 7 mission areas and through Departmental offices web pages) will be linked to the OTR web page. Meeting schedules, upcoming consultation events, and related consultation information will be posted on OTR website and throughout the Department's web presence. Information will also be linked to other relevant social media (face book, twitter, and other locations the department is linking to for expansion of communication messages). The Department's consultation policy will be posted throughout and linked with other important federal pages relating to Tribal consultation and/or Tribal programs.

In addition, OTR will continually maintain the "Tribalconsultation@usda.gov" email address to enable and encourage ongoing input from Tribal governments and communities; regularly communicate with Tribal leaders through written, telephonic, and related communication; and explore the ability to use video-conferencing, webinar, and related electronic means to facilitate communication and information-gathering (using appropriately accessible facilities such as field offices of USDA mission areas and agencies and partner field offices such as the Extension service offices located in almost all counties of the country and 1994 Tribal college venues). Finally, face-to-face discussions with Tribal governments, communities, individuals and national intertribal organizations will continually occur.

Finally, the OTR will revise and republish a Guide to USDA Programs and Services for Tribes, Tribal Governments, Communities and Individuals within the first six months following the reporting of this Action Plan to the White House. This project is already underway.

Conflict Resolution

Inherent in the government-to-government relationship, Tribes may elevate issues of importance to a higher or separate decision-making authority, such as the court system or into the White House. In addition, while some issues are the subject of consultation at the agency or regional level (such as forest management concerns) conflicts between the agency and the tribe consulting concerning a particular issue may arise. These eventualities can be raised with the Secretary or through the OTR to the Secretary.

The OTR will work with the OGC during 2010 to craft a departmental regulation/policy that would address the means and avenues by which conflict resolution can be initiated and resolved. These polices will recognize the importance of conflict resolution and peacemaking.

Regional Centers for Excellence

USDA will also begin in the first year, an internal study of the feasibility for identifying physical locations in appropriate regions that can be supported financially and programmatically, as "Regional Centers for Excellence in Tribal Consultation and Collaboration," to serve as physical locations for standing regional USDA and other federal government-involved consultations with Tribal governments, intertribal organizations and communities. These Centers could also serve as physical locations for the conduct of periodic technical assistance for tribes, communities and individuals concerning the programs, program application requirements, and the technical expertise necessary to successfully participate in USDA programs. In addition, the venues could serve as regional training centers for use by the 1994 Tribal Colleges (to augment the reach of their own programs) and the Federally Recognized Tribal Extension Programs which currently provide extension and education of knowledge within only 30+ Tribal communities of the over 500 federally recognized tribes. By physically and financially supporting potential "Centers of Excellence" the "lagging behind" of the most remote Tribal communities can become more cohesively addressed by USDA with the goal of bringing increased vitality to Tribal communities.

USDA Tribal Consultation Single Point of Contact

The USDA single point of contact is the Office of Tribal Relations. Notice of OTR as the single point of contact will be provided to all Tribal governments and known intertribal organizations. The OTR will work with the mission areas of the Department to stay advised and involve, as appropriate or on an as needed basis, in the formal process of consultation with Tribal governments around issue-specific areas which will be occurring from time to time within the agencies. The OTR has responsibility for also working with the Office of Intergovernmental and External Affairs, the Office of General Counsel, the Senior Policy Team as well as other key offices working across the Department in furtherance of these goals. OTR will work with Offices of Tribal Affairs/Relations at the agency level across USDA and with their counterparts in other Federal agencies.

The coordination of all issues involving Tribal consultation is focused in the Office of Tribal Relations (OTR) reporting directly to the Secretary of Agriculture. OTR's Director also serves as the Senior Advisor to the Secretary for Tribal Affairs. This individual is:

Janie Simms Hipp, J.D., LL.M. (Chickasaw)
Senior Advisor to the Secretary, Tribal Affairs
Director, Office of Tribal Relations
Office of the Secretary
500A Whitten Building
14th and Independence Ave. SW
Washington DC 20250
Janie.Hipp@osec.usda.gov
202-205-2249 (office)
202-720-1058 (fax)
Tribalconsultation@usda.gov

Agency-level Points of Contact

All agencies and mission areas of the Department will identify a Tribal consultation and collaboration single point of contact within that mission area and/or agency/program area. The individuals holding these responsibilities will be clearly identified within the agency and will be responsible for working collaboratively with the OTR and constitute a recognized sub-committee of the Intradepartmental Working Group on Tribal Consultation and Collaboration. These individuals will receive proper training from the Department to accomplish their responsibilities and will report, for purposes of Tribal consultation and collaboration, directly to the agency administration in their respective agencies. Ideally, these responsibilities will not be placed within the agency Offices of Civil Rights as the Tribal consultation requirements are treaty, trust, and government-to-government based, and not a function of civil rights.

Appendix A

Legal Authorities Requiring Consultation – Government-wide

NOTE: This listing is not an exhaustive list of all authorities. It is meant as a representative sample. Each agency is responsible for legal interpretations of applicable authorities.

American Indian Religious Freedom Act (AIRFA) (16 U.S.C. 1996)

AIRFA establishes the policy of the federal government "to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including, but not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."

Archeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. 470aa-mm)

ARPA requires federal agencies to consult with Tribal authorities before permitting archeological excavations on Tribal lands (16 U.S.C. 470cc(c)). It also mandates the confidentiality of information concerning the nature and location of archeological resources, including Tribal archeological resources.

National Historic Preservation Act (NHPA) (16 U.S.C. 470 et seq.)

In carrying out its responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A). (Section 101(d)(6)(B)).

Native American Graves Protection and Repatriation Act (25 U.S.C. 3001, et. seq.)

NAGPRA requires consultation with Indian tribes, traditional religious leaders and lineal descendants of Native Americans regarding the treatment and disposition of specific kinds of human remains, funerary objects, sacred objects and other items. Under the Act, consultation is required under certain circumstances, including those identified in Sections 3002(c), 3002(d), 3003, 3004, and 3005. Detailed information about NAGPRA and its implementing regulations is available at the National Park Service (NPS) National NAGPRA website, which can be found at: http://www.nps.gov/history/nagpra/

Regulations Requiring Consultation - Government-wide

NOTE: This listing is not an exhaustive list of all authorities. It is meant as a representative sample. Each agency is responsible for legal interpretations of applicable authorities.

Native American Graves Protection and Repatriation Act (NAGPRA) Implementing Regulations (43 CFR 10)

The NAGRPA implementing regulations refer to consultation or consultation-related concerns in several sections, including (but not limited to): 43 CFR 10.5 (consultation requirements for intentional excavation or inadvertent discovery), 43 CFR 10.8 (consultation requirements for summaries), 43 CFR 10.9 (consultation requirements for inventories). The regulations also specify other requirements for communicating with tribes, though without requiring consultation.)

National Environmental Policy Act (NEPA) Implementing Regulations 40 CFR Part 1500

NEPA requires the preparation of an environmental assessment (EA) or environmental impact statement (EIS) for any proposed major federal action that may significantly affect the quality of the human environment. While the statutory language of NEPA does not mention Indian tribes, the Council on Environmental Quality (CEQ) regulations and guidance do require agencies to contact Indian tribes and provide them with opportunities to participate at various stages in the preparation of an EA or EIS. CEQ has issued a Memorandum for Tribal Leaders encouraging tribes to participate as cooperating agencies with federal agencies in NEPA reviews. Section 40 CFR 1501.2(d)(2) requires that Federal agencies consult with Indian tribes early in the NEPA process. Other sections also refer to interacting with Indian tribes while implementing the NEPA process.

National Historic Preservation Act (NHPA) Regulations Implementing Section 106 (36 CFR Part 800)

The regulations implementing Section 106 of the NHPA require consultation with Indian tribes throughout the historic preservation review process. Federal agencies are required to consult with Indian tribes on a government-to-government basis, in a manner that is respectful of Tribal sovereignty. The regulations require federal agencies to acknowledge the special expertise of Indian tribes in determining which historic properties are of religious and cultural significance to them.

Unfunded Mandates reform Act of 1995, P.L.104-4, which states: "The purposes of this Act are…to assist Federal agencies in their consideration of proposed regulations affecting…Tribal governments by…requiring that Federal agencies develop a process to enable…Tribal governments to provide input when Federal agencies are developing regulations, and requiring that Federal agencies prepare and consider the budgetary impact of Federal regulations containing Federal mandates upon…Tribal governments before adopting such regulations (Sec.2)."

Indian Health Care Improvement Act, P.L. 94-437, Section 2(b): "A major national goal of the United States is to provide the quantity and quality of health services which will permit the health status of Indians to be raised to the highest possible level and to encourage the maximum participation of Indians in the planning and management of those services."

Indian Self-Determination and Education Assistance Act, P.L. 93-638, Section 3(a): "Congress...recognizes the obligation of the United States to respond to the strong express of the Indian people for self-determination by assuring maximum Indian participation in the direction of...Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities." Further language includes: It is the policy of the Secretary to facilitate the effort of Indian tribes and Tribal organizations to plan, conduct, and administer programs, functions, services and activities, or portions thereof, which the

departments are authorized to administer for the benefit of Indians because of their status as Indians…"

Executive Orders and Memoranda Requiring Consultation – Government-wide

NOTE: This listing is not an exhaustive list of all authorities. It is meant as a representative sample. Each agency is responsible for legal interpretations of applicable authorities.

EO 13175: Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000)

EO 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994) - Published in Federal Register, 59 FR 7629, Wednesday, February 16, 1994 http://www.hud.gov/offices/fheo/FHLaws/EXO12898.cfm

Section 6-606, entitled "Native American Programs," requires that each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with Tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally- recognized Indian Tribes.

Legal Authorities Requiring Consultation - Two or More Agencies

NOTE: This listing is not an exhaustive list of all authorities. It is meant as a representative sample. Each agency is responsible for legal interpretations of applicable authorities.

Statutes Requiring Consultation

DOI and HHS: Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) The Indian Self-Determination and Education Assistance Act (Public Law 93- 638, as amended) applies to certain activities of the Department of the Interior and the Indian Health Service, located in the Department of Health and Human Services). The Act establishes a Self-Determination Policy and permits federally recognized Indian tribes to plan, conduct, and administer programs and services that traditionally have been managed by the federal government, subject to the conditions specified by the Act and its implementing regulations. Both the Act and regulations require that consultation be carried out under specified circumstances.

DOJ, and HHS: Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA II) Pub.L. No. 109-162- (2005). Title IX (Safety for Indian Women), Sec. 90 – Consultation, 42 U.S. C. & 14045d Section 903 of Title IX, "Consultation", directs the Attorney General and Secretary of Health and Human Services to each conduct annual consultation with Indian Tribal government concerning the federal administration of Tribal funds and programs established under the Violence Against Women Act of 1994 and 2000. This requires the

Attorney General, during such consultations, to solicit recommendations from Indian tribes concerning: (1) administering Tribal funds and programs ; (2) Enhancing the safety of Indian women from domestic violence, dating violence, sexual assault and stalking; and (3) strengthening the federal response to such violent crimes.

DOI, DOJ, and HHS - Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008. Title VI—Emergency Plan for Indian Safety and Health. In general, there is an authorization for a 2 billion dollar emergency fund to be appropriated for a year period, beginning October 1, 2008, to remain available until expended on request by the Attorney General, the Secretary of the Interior, or the Secretary of Health and Human Services to carry out the emergency plan. Not later than one year after the date of enactment (July 30, 2008), the Attorney General, the Secretary of the Interior and the Secretary of Health and Human Services, in consultation with Indian tribes (as defined in section 4 of the Indian Self- Determination and Education Assistance Act (25 U.S.C. 450(b)), shall jointly establish an emergency plan that addresses law enforcement, water, and health care needs of Indian tribes, in specified categories and amounts.

Regulations Requiring Consultation

NOTE: This listing is not an exhaustive list of all authorities. It is meant as a representative sample. Each agency is responsible for legal interpretations of applicable authorities.

DOI and HHS: Indian Self-Determination and Education Assistance Act Implementing Regulations (25 CFR Parts 900 and 1000)

Secretarial Orders and Memoranda Requiring Consultation

NOTE: This listing is not an exhaustive list of all authorities. It is meant as a representative sample. Each agency is responsible for legal interpretations of applicable authorities.

DOC and DOI: Dept. of the Interior

SO 3206: Tribal Rights, Trust Responsibilities and the Endangered Species Act (June 5, 1997) This order was issued jointly by the Secretaries of the Interior and Commerce, and applies to both Departments. It provides guidance about the federal-Tribal relationship and how this relationship should affect the implementation of the Endangered Species Act. The order requires consultations with Tribal governments in several situations described in the order, including Principal 1's requirement that whenever "agencies, bureaus, and offices of the Departments are aware that their actions planned under the Act may impact Tribal trust resources, the exercise of Tribal rights, or Indian lands, they shall consult with, and seek the participation of, the affected Indian tribes to the maximum extent practicable and Principal 3(B)'s requirement that the "Departments shall conduct government-to-government consultations to discuss the extent to

which Tribal resource management plans for Tribal trust resources outside Indian lands can be incorporated into actions to address the conservation needs of listed species."

Legal Authorities and Other Policies, Procedures or Guidelines Requiring Consultation - Department, Agency, or Bureau Specific

NOTE: This listing is not an exhaustive list of all authorities. It is meant as a representative sample. Each agency is responsible for legal interpretations of applicable authorities.

United States Department of Agriculture (only)

USDA Web Page: http://www.usda.gov/na

USDA Departmental Regulation, 1350-001, September 11, 2008, Tribal Consultation http://www.ocio.usda.gov/directives/doc/DR1350-001.pdf

USDA Departmental Regulation, 1340-007, March 14, 2008, Policies on American Indians and Alaska Natives http://www.ocio.usda.gov/directives/doc/DR1340-007.pdf

USDA Departmental Regulation 1020-005, October 3, 2008 Native American Working Group http://www.ocio.usda.gov/directives/doc/DR1020-005.htm

Forest Service

FSM (Forest Service Manual) – 1500 -External Relations Chapter 1560 – State, Tribal, County, and Local Agencies, Public and Private Organizations

Forest Service Tribal Policies, Including Consultation, are contained in Section 1563, available at: http://www.fs.fed.us/cgi-bin/Directives/get_dirs/fsm?1500 (Available in word document or text document, select 1562 – 1566.11 from list)

Coordination with Tribal Land Use Management and Planning. The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) at Section 202(b) provides that:

In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian Tribes by, among other things, considering the policies of approved tribal land resource management programs.

Section 202 (c)(9) of FLPMA further directs the Secretary to coordinate land use planning with Tribes, to the extent the Secretary finds practical, by keeping apprised of tribal land use plans; ensuring that consideration is given to those tribal plans that are germane in the development of

land use plans for public lands; assisting in resolving inconsistencies between Federal and tribal plans; and providing for meaningful involvement in the development of land use programs, land use regulations, and land use decisions for public lands.

Consultation and Coordination with Tribes on Forest Planning. Regulations implementing the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 472 et seq.) direct the Forest Service to consult with and coordinate forest planning with Tribes. The land and resource management planning regulations, which implement NFMA, are set out at 36 CFR part 219. The full text of part 219 of the 1982 planning rule is set out in FSH 1909.12.

Consultation and Coordination with Tribes on National Forest System Project Planning and Decision Making. The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) and the Council on Environmental Quality (CEQ) implementing regulations at Title 40 of the Code of Federal Regulations, parts 1500-1509 (40 CFR parts 1500-1509) require Federal agencies to invite Tribes to participate in the scoping process for projects and activities that affect Tribes and requires NEPA documentation. Section 1501.2 requires that the Federal agency consults early with appropriate State and local agencies and Indian Tribes and with interested persons and organizations when its own involvement is reasonably foreseeable.

FSH (Forest Service Handbook) 1509.13 – American Indian and Alaska Native Relations Handbook

http://www.fs.fed.us/cgi-bin/Directives/get_dirs/fsh?1509.13

Natural Resources Conservation Service

General Manual: Title 410-Rural Development, Part 450-American Indians and Alaska Natives http://directives.sc.egov.usda.gov/17072.wba

General Manual: Title 420-Social Sciences, Part 401 Cultural Resources (Archeology and historical Properties) http://directives.sc.egov.usda.gov/17073.wba

Handbook: Title 190-Ecological Sciences, Part 601-National Cultural Resources Procedures Handbook. (see 601.62) http://directives.sc.egov.usda.gov/17090.wba

Rural Development

www.rurdev.usda.gov/rd/aian

Animal Plant Health Inspection Service

Directive 1040 concerning employees' relationship with the federally recognized tribes: http://www.aphis.usda.gov/about_aphis/programs_offices/anawg/downloads/1040-06.pdf

Office of the Assistant Secretary of Civil Rights

http://www.ascr.usda.gov/partnerships.html
http://www.ascr.usda.gov/doc/MOAUSDAAIHECSIGNED2508.pdf

Appendix B
Consultation on Consultation – Comments received from Tribal Leaders

When President Obama executed his Memorandum on Tribal Consultation, he directed Federal agencies to consult with Tribal leaders between November 5, 2009 and the 90-day period ending February 3, 2010 and on that February date, each Federal department submit an Action Plan to the White House that would be based not only on Tribal consultative input concerning the consultation process moving forward, but would encompass specific actions to be undertaken by each Department in improving its consultation and collaboration efforts for the betterment of Tribal leaders, governments, communities and individuals and in solemn recognition and compliance with the government-to-government and trust relationships owed the tribes by the Federal government. In seeking and gaining consultation on consultation, USDA participated in the following venues and following these venues, an analysis of the process and policy recommendations made by Tribal leaders is outlined (by venue) as well as the substantive issues raised during these venues that will guide USDA in implementing and making real future consultation efforts important to Tribal leaders:

- November 4, USDA Listening Session conducted in Washington DC when many Tribal leaders were in Washington to attend the White House Tribal Leaders Conference on November 5, 2009. (November 2009)
- Email address establishment: Tribalconsultation@usda.gov (December 2009) (comments still being received and will be reported in later documents)
- Letter from Secretary Vilsack to all Tribal leaders and government offices requesting their comments on the consultation process (December 2009) (comments still being received and will be reported in later documents)
- Consultation on Consultation conducted at the annual symposium of over 600 Tribal leaders, communities, and individual producers and conservation leaders (Intertribal Agriculture Council and Indian Nations Conservation Alliance) in Las Vegas, NV from December 7-11 (conducted with the Department of Commerce, Department of Education and the Army Corps of Engineers (December 2009)
- Participation alongside the Department of Interior and the Bureau of Indian Affairs in regional venues to solicit consultation comments on consultation process and polices in: Alaska, California, Oklahoma, Arizona, and Washington DC. (December and January 2009).

Comments received from Tribal Leaders concerning Consultation Process/Policy & Specific Consultation Issues, November 4, 2009 (USDA Listening Session; Washington DC).

On November 4, 2009 USDA hosted a Tribal Leaders Listening Session in Washington DC and invited all Tribal Leaders from all federally recognized tribes to attend during their visit to the nation's capital for President Obama's Tribal Leaders Conference held the following day on November 5, 2009. Over 130 leaders, staff or their representatives attended this session held in the Whitten Building, USDA headquarters. The following is a summary of specific comments received with a notation as to the leader offering either written or verbal remarks. Most comments received at the USDA Listening Session of November 4, 2009 were issue-specific in focus and have served to inform the USDA Action Plan:

- Subsistence and subsistence agriculture is significant to tribes; urging USDA to work with Congress to identify funds for salmon research; urging USDA to appoint true users of resources to key committees within the Department (Native Village of Napaimute, AK)
- Forest rules must be revisited; forest regulations must not go into effect without consultation; forest product/gathering exempt tribes, but individual Tribal members are the gatherers and as such the exemption must be revisited (Tlingit and Haida, AK)
- Broadband connectivity is the backbone of economic development; tribes are among unserved and underserved populations; funding of additional programs are needed (San Ildefonso Pueblo, NM)
- Forest management and forest health are of great concern; management of forest lands by the Forest Service is affecting valuable resources, depleting resources and violating aboriginal rights; canopies are enclosed and affecting berry and traditional medicinal foods and plant production (Colville Confederated Tribes, WA)
- Opposition to consolidation of FSA offices is causing remaining offices to be far removed from tribes and reservations; horse slaughter is an issue of concern for many on reservations as individuals off-reservation are abandoning sick, diseased or dying animals onto reservations; proper slaughter for horses is needed (Assiniboine & Sioux Tribes, MT)
- Opposition to National Animal Identification System (Assiniboine & Sioux Tribes, MT)
- Keepseagle litigation must be resolved (Assiniboine & Sioux Tribes, MT also noted by Three Affiliated Tribes, ND)
- Publications on Native foods, clinics and serving of Native foods to address health and nutrition issues; cannot serve Native food at functions because food is not USDA inspected; inspection services are not provided in AK; reduction of teen suicide and improvement of tourism in remote villages could be addressed through simple means, such as coffee shops, however no health license can be obtained because remote villages do not have water, roads and sewage facilities and infrastructure (South Central Foundation, Anchorage, AK)
- Subsistence hunting and fishing in Alaska affects over 200 villages which are economically and culturally dependent on these practices; need subsistence support program to assist with rising energy costs and impact on subsistence practices; need research opportunities for byproducts from hunting and fishing (Sealaska Corp, AK)
- Deforestation and fuels reduction are a problem in N. California, S. Oregon and NW Utah; tribes are requesting set asides for stewardship practices (with Forest Service); Tribal people have knowledge of forests; need waiver of policies to allow for flexibility in management and putting Tribal people to work managing forests (Pit River Tribe, CA)
- Native people must become more involved in the rule making process. Over 2.5 million cattle in MT with Indian ranchers owning 30% of the cattle, but they are seldom involved in the rulemaking process relating to cattle operations. Tribal producers must pay state branding fees but do not benefit from the programs funded by branding fees because cattle are run on Tribal lands; Tribal producers need assistance in offsetting costs of participating in inspection process (Chippewa-Cree, MT)

- Food in School Lunch programs must incorporate not only foods produced by Tribal producers but Tribal leaders must be consulted regarding the foods offered in school lunch programs to Tribal children (Chippewa-Cree, MT)
- NRCS policies must be of particular focus as USDA develops more complete consultation processes and polices (Pascua Yaqui, AZ; Tohono O'odham, AZ)
- Broadband infrastructure is needed in Indian Country; not only for economic development but in delivery of health care programs and programs to benefit Tribal youth (Navajo, AZ)
- USDA senior leadership positions should be filled; particularly those relating to Tribal programs (Navajo, AZ)
- Need to address impact of mining on Tribal communities; need to recognize the impact and contributions of Native people in food and sustainable practices; need to encourage and support traditional food practices, particularly to address rise in obesity and health problems associated with non-traditional foods; USDA support needed to improve growing and gathering of Native foods and plants by Native people; traditional mating grounds and forest areas are in trouble (Timbisha Shoshone, NV)
- Drinking water is unsafe; highly susceptible to H1N1 and other pandemics; economic development opportunities for people are needed; Tribal consultation should be the cornerstone of the Obama administration; water projects are needed (Organized Village of Saxman, AK)
- Commodity programs are still depended upon by Tribal people; need to involve youth in agriculture (farming and ranching, livestock production); joint management agreements with Forest Service, BLM and tribe needed; commercial pickers are destroying trees, resources and Tribal natural foods; communities need assistance to address these issues (Bishop Paiute, CA)
- Forest Service an Tribal Forest Protection Act must be enforced and implemented; biomass projects in conjunction with Forest Service need to be expanded; indigenous management practices should be enhanced; full funding for RUS and RD needed in communications and telecommunications necessary to developing Tribal infrastructure
- Although some tribes are near large water sources, they are prevented from using the water sources for drinking water; need access to water and assistance from USDA to gain access (Rosebud Sioux and Cheyenne River Sioux, SD)
- Traditional foods must be included in food distribution programs; no funding for provision for tribes to buy traditional foods within the food distribution program (Rosebud Sioux and Cheyenne River Sioux, SD)
- Loans to complete irrigation infrastructure needed (Pueblo of Laguna, NM)
- Bison meat must be incorporated into commodity and school lunch programs; Indian people fought to have the rules changed but purchasing is not done with Indian producers (Blackfeet, MT)
- Sacred sites consultation meetings requested (Rosebud Sioux, SD and Cheyenne River Sioux, SD)
- Alaska tribes are most economically-challenged; loss of one moose is the equivalent of one year's food supply; NRCS resource inventory has never been done for AK and request was made for same (Tyonek Native Corporation, AK)
- Use of NRCS programs is extremely difficult due to coordination needs in approving lease agreements through BIA in time to meet the 30-day NRCS enrollment period;

requests waiver or increase enrollment time to 90 days for tribes to give BIA time to process leases and increase participation of tribes and individual allottees (Umatilla Confederated Tribes, OR)

- Many tribes have as high as 85% unemployment rates; need economic development projects to address high unemployment problems (Oglala Lakota Sioux, SD)
- Carbon credits may be good resource to improve standard of living for tribes but currently there is not enough good knowledge about these (Oglala Lakota Sioux, SD)
- ARRA flexibility in funding is needed (Oglala Lakota Sioux, SD)
- Poaching of animals and forest products occurs on forest lands upon which Tribal people depend (Pueblo of Santa Clara, NM)
- Cooperative agreements for conserving property; conservation agreements for managing forests needed with Tribal individuals and Tribal governments (Pueblo of Santa Clara, NM)
- Application processes and financial requirements to apply for water and wastewater grants are too high for most tribes to meet; need streamlining in the application process and to address the financial requirements (Pueblo of Santa Clara, NM)
- More cooperation with Tribal land managers is needed for those National forests located in close proximity to Tribal communities (Leech Lake Band of Ojibwe, MN)
- Wild rice markets are being negatively impacted by lack of consistent state laws requiring wild rice grown in rice patties be labeled as such; need national expansion of MN labeling laws so that “fake” wild patty rice from other states can be addressed (Leech Lake Band of Ojibwe, MN)
- Irrigation system improvements are needed; funding through USDA RD is of great assistance in improvement of irrigation systems (Santa Ana Pueblo, NM)

Comments received by USDA from Tribal leaders at the IAC/INCA Annual Symposium December 9, 2009

- Rural Broadband on reservation lands. In order to address broadband we need to know where it currently exists on Tribal lands. Need a mapping of reservation so we can serve the underserved! On my reservation most everyone has broadband, but they don't have a computer to go to the internet.
- Consultation in Alaska: How does USDA reach all natives in AK? USDA needs to sit down with tribes, the village corps and the regional corps to have voices heard.
- How can Alaska be included in a conservation easement programs to preserve Salmon
- Smaller Tribes need more technical assistance
- Tribal Liaisons: Tribes would like to see the federal government consolidate Tribal liaisons and coordinate their efforts so we don't have our issues lost trying to voice our concerns.
- Tribes would like to see the government work with tribes on a regional basis; not to try and visit all the tribes at once, maybe bi-annual regional meetings to address consultation process.
- Tribes felt they need their own Tribal allocations for local Tribal emergency response.
- Tribes cannot compete for grants based on Tribal population growth, because they didn't get an estimated population growth report

- If USDA expects help from field personnel they need to make sure the information flows from top to bottom when a request goes out. This consultation letter sent to the tribes, never reached field people or local levels. But we are the one the tribes contact t on how to respond.
- Each agency has a different twist on what is consultation, hard for tribes to be experts in the many federal agencies
- When states (MT) report their unemployment rates they do not include the reservation statistics. States are supposed to be securing funds for us, but we are getting nothing. There needs to be some kind of redesign of the distribution of federal dollars to Indian county.
- USDA does not house all their offices on reservations. Would like to see USDA office more centralized and on reservations and the USDA office implement Indian preference
- Subsidies that the farmers receives compared to the ranchers are not comparable. Most of Tribal land is leased to nonmembers
- Tribal members can't come up with the funds required to buy land or buy livestock today
- How do the tribes compete and meet the USDA formulas for program funding to secure any types of subsidies
- The current drought and water monitoring regulations do not work or fit the situation Tribes have on reservations.

USDA also participated alongside the Department of Interior and the Bureau of Indian Affairs in Consultation on Consultation venues in Washington DC, Oklahoma City, Palm Springs, Phoenix, and Anchorage. Examples of comments include:

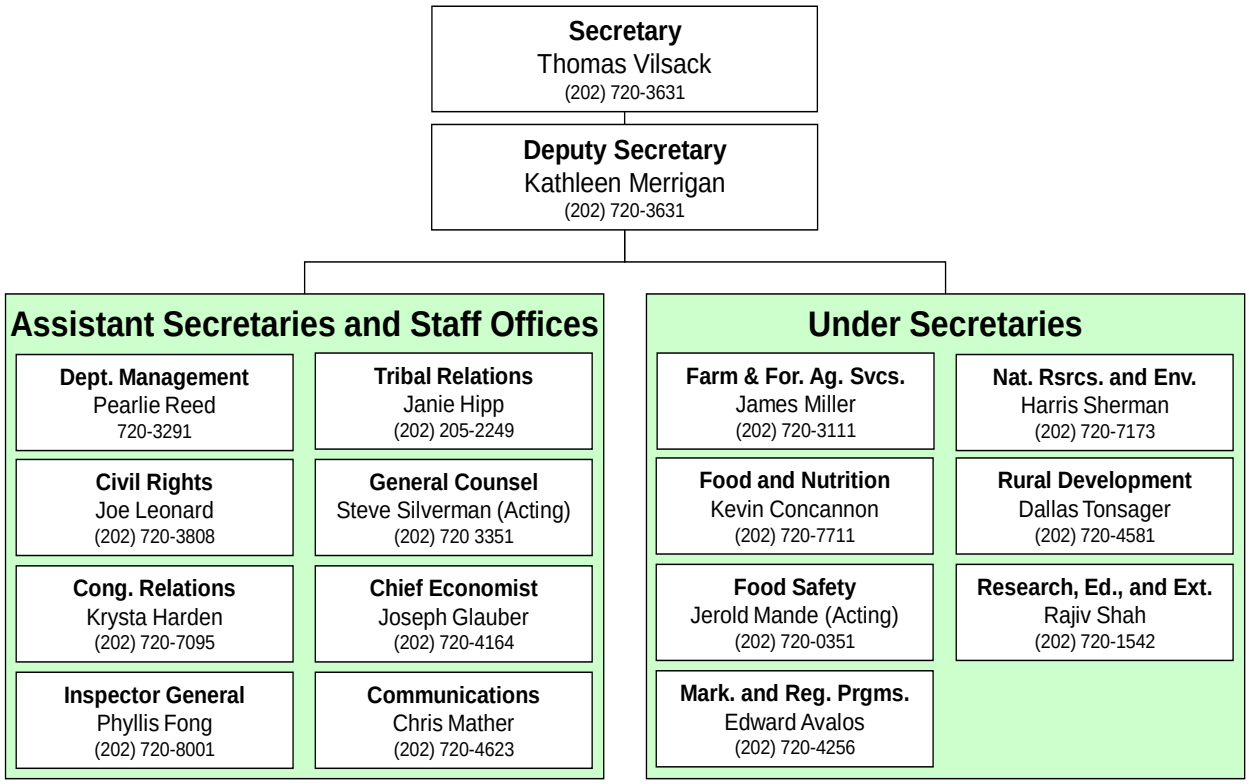
- Accountability (there need to be repercussions to Federal employees who do not do their duty.)
- The right Federal people need to be in the room. Tribal leaders bring people with actual decision making authority, but Federal agencies often send people to consult who do not have the authority to make a decision.
- Access to consultation/location. While tagging onto a conference makes sense on paper it leaves certain tribes out (presumably those with the least resources to travel to conferences.)
- Significant costs to consult can be borne by Tribes especially when consultation happens in groups at set locations.
- Federal employees need to have deadlines for the actions that they take in response to consultation meetings. Tribes have limited time to respond to Federal proposals but agencies have unlimited time to respond to tribes. Tribes should get some sort of receipt after a meeting saying what the agencies are going to do and by when.
- Notification to tribes needs to be timely and direct to Tribal leadership, not to the attorney of record etc. The tribes can designate who they want to consult for them but the agencies need to notify the Tribal leaders directly.
- Tribes need to be able to initiate consultation and to bring their own proposals.
- Consultation should begin at the concept phase, not at the proposal phase. One person said that the agencies would learn more about Tribal issues if they came with issues and ideas instead of coming with fully formed proposals.

- Frustration that we were consulting on consulting instead of working with known problems with consultation on substantive program issues. A related comment about implementation was that the agencies would not be able to fully implement until they wrote the costs of travel for high level decision makers and for Tribal officials into their budgets.
- Emergency/disaster preparedness planning –difficulty of coordinating all the federal agencies to work on disaster planning. Forest Service was part of the issue (but certainly not all.) Rural Development will also be a force for preparedness, particularly with water storage and community facilities.
- Needs to be Tribal representatives on policy formulation teams; Tribal staff should be involved because they are more permanent positions within the Tribal government. \
- Tribes felt it best to be given notice between 30 to 60 days in order to respond to USDA request due to Tribal workloads and limited Tribal staff
- Workshops should be held to address how to work with tribes, need better communication and consistency of information with USDA agencies; use more tele-conferences and web conferences
- Communication is real problem; what is process to get better information to Tribes. Not all Tribes have computer technology.
- Annual meetings need to be established and policy needs to be reviewed.
- When tribes speak or respond to agencies the agencies need to respond, tribes need to know they have been heard.
- Tribes felt it best to have regional and national consultation meetings.
- Tribes expressed concern with the Federal government building this policy, tribes need to create their own consultation policy on how they want to consult with agencies
- Most tribes have a different understanding of what Tribal consultation is
- How is accountability going to be addressed? Agencies need to change how they do business with tribes
- Section 106 concerns: how are tribes going to work with the agencies on cultural resource issues.
- When tribes compete for the same funding we become adversaries.
- Agencies need a good consultation policy
- At times agencies don't understand their own policies when working with tribes
- Must prioritize policy and put tribes on equal fooling
- Consultation must be on-going with tribes; have experienced problems of insurance issues, 638 tribes can't get additional funds and the census is a problem.
- Need a strategic plan and accountability is important, tribes need to be visible in process.

Comments received during joint USDA and CDC consultation venue (Atlanta, GA; Jan. 2010)

- Priorities included diabetes prevention and improved nutrition and improved road safety
- Recommendation that USDA could provide additional mechanisms for addressing these concerns and could play a pivotal role in coordination among Federal Departments.
- Tribal Consultation activities could be utilized to assist Tribes and other underserved populations to better understand USDA and its programs.

Preliminary Actions Taken:

A complete listing of all comments received during the November 4, 2009 Listening Session have been distributed to USDA Senior Leadership (Under Secretary and Administrators) and the OTR is following up with each comment within the applicable mission area of the Department. A full report of all follow up activities will be contained in the subsequent report to the Department's Action Plan. In addition, correspondence has been initiated with all Tribal leaders participating in the USDA listening session to continue collaboration with these individuals and to ensure that follow up at the Tribal level can be done in a timely and meaningful manner. Agencies within the Department will continually be advised of Tribal Consultation and issue-specific correspondence or other contacts received and proper attention and follow up will occur.

USDA Organizational Chart