CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

I. Purpose

This Directive and its implementing Instruction creates an accountable process for the Department of Homeland Security’s implementation of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments as amended by The Congress." This Directive establishes the DHS tribal consultation policy and outlines component responsibilities. It establishes department-wide requirements regarding government-to-government consultation.

This Directive implements the requirements stipulated in Section 706, "Improved Coordination with Tribal Governments" of the "Coast Guard Authorization Act of 2010." It tasks all DHS components and offices to recognize and protect, to the maximum extent practicable, tribal treaty rights, and trust assets. It leads to improved consultation and coordination with the tribal governments of Federally Recognized Indian Tribes across all missions, including USCG oil spill prevention, preparedness, response, and natural resource damage assessment.

This Directive implements Section 102 of the "Illegal Immigration Reform and Immigrant Responsibility Act." which requires consultation with Indian tribes to minimize impacts on the environment, culture, commerce, and quality of life for those living near the border in connection with border barrier construction.


The consultation processes outlined in this Directive can be applied to other tribal consultation requirements. This Directive provides the policy direction to address whole community mission requirements without requiring each component or office to establish a separate supporting tribal consultation policy. It is intended to be flexible enough for each component or office to adopt. This Directive reinforces a foundation for honoring tribal sovereignty, accompanied by productive and long-lasting collaborative
communications, consideration, and engagement with tribal governments, Alaska Native Corporations, and tribal organizations.

II. Scope

This Directive applies throughout the Department, and the DHS Tribal Consultation Policy of May 11, 2011 is superseded and rescinded.

III. Authorities

A. Public Law 111-281, "Coast Guard Authorization Act of 2010"
B. Public Law 108-447, "Consolidated Appropriations Act, 2005"
C. Public Law 104-208, "Illegal Immigration Reform and Immigrant Responsibility Act of 1996"
D. Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments"
E. Executive Order 13647, "Establishing the White House Council on Native American Affairs"
F. Presidential Memorandum of January 26, 2021, "Tribal Consultation and Strengthening Nation to Nation Relationships"
G. DHS Delegation Number ____, Delegation to the Assistant Secretary for Office of Partnership and Engagement of ___

IV. Responsibilities

A. The **Assistant Secretary for the Office of Partnership and Engagement** is the principal official responsible for the Department's tribal consultation and coordination efforts as outlined in the Delegation of Authority to the Assistant Secretary. The Assistant Secretary has full adjudication authority of waiver requests or appeals.

B. The **Deputy Assistant Secretary, Office of Intergovernmental Affairs**, ensures department-wide implementation of this Directive and implementing Instruction. The Deputy Assistant Secretary may be delegated authority from the Assistant Secretary.
C. The **Director of Tribal Affairs** within the Office of Intergovernmental Affairs carries out the day-to-day activities to implement this Directive and its implementing Instruction.

D. **Component Heads** support the department-wide implementation of this Directive and implementing Instruction.

V. **Policy and Requirements**

A. **Policy Statements:**

1. The United States Government has a unique legal and political relationship with American Indian and Alaska Native tribal governments as outlined in the Constitution of the United States, treaties, statutes, court decisions, executive orders, and memoranda. The United States recognizes the rights of Federally Recognized Indian Tribes to self-governance and self-determination. Indian tribes exercise inherent sovereign rights and governance over their members and their territories.

2. The Department is committed to strengthening the government-to-government relationship between the United States and Indian tribes. DHS recognizes that its policies, programs, and services may directly or indirectly impact Indian tribes and is committed to regularly and meaningfully collaborating, communicating, and cooperating with tribal governments and Alaska Native Corporations.

3. The Department is committed to upholding the federal trust responsibility to Indian tribes and adhering to the various treaties and agreements made between the governments.

4. The Department is committed to early informal collaboration and early meaningful formal consultation with Indian tribes and Alaska Native Corporations across all component programs in matters that may have tribal implications.

B. **Requirements:**

1. All components and offices that interact with Indian tribes, citizens of Indian tribes, or that may cause a Tribal Implication will appoint a primary tribal affairs practitioner. This point of contact will work with other tribal affairs practitioners across the Department to facilitate a
coordinated approach to collaborating with Indian tribes and conducting formal tribal consultations, as necessary.

2. To determine any potential need for formal consultation, all components and offices will initiate early collaboration with Indian tribes on potential or proposed actions, including legislative recommendations and rulemaking that may have tribal implications or have the potential to create an unfunded mandate, including for the voluntary participation in federal programs, to evaluate the need for formal consultation.

3. All formal consultations with Indian Tribes will be conducted in a deliberative process with the formal appointment of a DHS Consultation Official, notice to potentially interested tribal governments, meaningful engagement, and adjudication of substantive input from participants.

B. **General Provisions:**

1. DHS will periodically consult with Indian Tribes and Alaska Native Corporations to review the effectiveness of this Directive and make revisions, as necessary.

2. This Directive has been adopted for the purpose of strengthening government-to-government relationships, communications, and mutual cooperation between the Department and Tribal governments. It is not intended to, and does not create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other persons.

3. DHS adopts this Directive under the authorities above. This Directive does not replace or change any existing obligations of DHS under the "National Environmental Policy Act," the "National Historic Preservation Act," the "Archaeological Resources Protection Act," or any other statute.

4. The provisions of the "Federal Advisory Committee Act" (5 U.S.C. App.) do not apply to Consultations undertaken pursuant to this Directive. In accordance with section 204(b) of the Unfunded Mandates Reform Act of 1995 (Pub.L. 104-4, approved March 22, 1995), the "Federal Advisory Committee Act" is not applicable to consultations between the Federal Government tribal consultation
officials and elected officers of Tribal governments or their designated employees with authority to act on their behalf.

VI. Questions

Address any questions or concerns regarding this Directive to the Director of Tribal Affairs, Office of Intergovernmental Affairs, Office of Partnership and Engagement.