



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

MAY 18 2021

Dear Tribal Leader:

Thank you for providing your exceptionally thought-provoking and thorough input during the recent consultation with Department of the Interior (Interior) officials on implementation of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. I especially appreciate the time and effort you devoted given the compressed time frame, the fact that you were faced with multiple consultation requests from other Federal agencies, and the ongoing challenges associated with the pandemic that continue to require your attention.

Your comments, suggestions, and ideas have shaped the Detailed Plan for Improving Interior's Implementation of E.O. 13175, which I am pleased to share with you today.

Interior's detailed plan provides distinct action items to improve when and how every Interior official and staff member – Department-wide – engages in consultation with you. The plan's action items aim to leverage existing technology to establish Interior-wide training and communication tools to support the ability of Tribes and all individual Interior officials and staff to consistently engage in meaningful consultation. The action items also include directions to update Interior's consultation policy and to establish a Secretarial Tribal Advisory Committee to improve Interior's accountability for conducting meaningful consultation.

This plan is merely a starting point, but as the agency official responsible for coordinating implementation of this plan, I am committed to ensuring each of these concrete actions are taken to strengthen the foundation for future consultation. Please stay tuned for additional opportunities to consult and participate as we work toward achieving each of these action items.

Sincerely,

Bryan Newland  
Principal Deputy Assistant Secretary – Indian Affairs

Enclosure

# A Detailed Plan for Improving Interior's Implementation of E.O. 13175

## Message to the Director of the Office of Management and Budget from the Secretary of the Interior

It is with great pleasure that I share with you Interior's plan for improving Tribal consultation. As you will read, we refer to this plan as opening a new chapter in Tribal consultation. More accurately, this plan is Interior's contribution to the new chapter opened by President Biden, signified by his Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships. We refer to this as a new chapter in recognition of the long history of the Federal Government's relations with Tribes: a history in which the Federal Government often failed to live up to the treaty and trust responsibilities that have their foundation in the U.S. Constitution, much less afford Tribes the respect owed to them as sovereign entities that preceded the formation of the United States and endure to the present day.

Tribes are not interest groups. Tribes are sovereign entities with indigenous perspectives and knowledge that can improve the quality of Federal decisions and result in better outcomes for all affected communities. Tribal consultation offers a means for weaving Tribal input into our decision-making processes. It is my hope that this plan will make that integration second nature for all Interior officials.

Within this document, I have also highlighted that some Tribes' suggestions are beyond Interior's ability as a single Federal agency to address but may nevertheless be ripe for consideration – including suggestions to provide Tribes and Federal agencies with resources for consultation and suggestions to more indelibly codify government-wide consultation requirements. I ask that you consider these suggestions as you review all agencies' plans. In return, I will continue to do my best to facilitate interagency coordination on Tribal consultation, through the newly re-launched White House Council on Native American Affairs and for all of Interior's cross-cutting issues.

As a proud citizen of both the Pueblo of Laguna and the United States, I strive to set Interior on a new trajectory toward consistently robust and meaningful consultation with Tribal governments. I believe the plan enclosed here blazes a trail for that trajectory by providing Interior officials and staff with the knowledge and tools to achieve what, by both Federal and Tribal standards, is "meaningful consultation."

Deb Haaland

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## I. Introduction

On January 26, 2021, as one of his first executive actions, President Biden issued a Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation and Strengthening Nation-to-Nation Relationships. In it, President Biden established as a priority of his Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian policy.<sup>1</sup> The U.S. Department of the Interior (Interior) ardently supports that priority. Regular, meaningful, and robust consultation is an expression of respect for Tribal sovereignty and self-governance, and is both necessitated by and integral to fulfilling Federal trust and treaty responsibilities to Tribes.

President Biden's memorandum directs each Federal agency to submit to the Office of Management and Budget (OMB) a "detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175," which addresses consultation and coordination with Indian Tribal governments.<sup>2</sup>

Upon receiving this directive, Interior gathered input previously received from Tribes on the topic of consultation and determined that its detailed plan should go beyond merely meeting a baseline for implementation of the policies and directives of E.O. 13175, to focus on lasting, substantive improvements Interior can make in its implementation. It is with this mindset that Interior engaged Tribes in consultation. Tribes unanimously echoed that their prior input was still applicable, making clear that in some cases, Interior and its bureaus and offices have missed the mark on even meeting a baseline for meaningful consultation.

This detailed plan is therefore Interior's plan for beginning a new chapter in Tribal consultation – a chapter in which Interior officials view Tribal officials as partners in both the identification of potential Tribal implications and in the development of actions with Tribal implications. Tribes provided thorough and exhaustive input on how this can be accomplished. Interior does not purport to represent that this detailed plan addresses every suggestion provided; rather, this detailed plan addresses some of the high-level, elemental components of the new chapter. This detailed plan is just a start. Its implementation will take both dedicated resources and a continued commitment from all Interior bureaus and offices.

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<sup>1</sup> <https://www.govinfo.gov/content/pkg/FR-2021-01-29/pdf/2021-02075.pdf>

<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf>

## II. Summary of Tribal Consultation and Input Received

On February 11, 2021, Interior distributed a letter inviting Tribes to consult on how to improve Tribal consultation and scheduling four consultation sessions in early March 2021.<sup>3</sup> Each session was designated for Tribes in three Bureau of Indian Affairs (BIA) regions, covering the 12 BIA regions. On February 19, Interior then distributed a letter to Alaska Native Corporations, inviting them to consult at the session designated for the Alaska BIA region.<sup>4</sup> Included with each letter was a Framing Paper on “Improving Interior’s Consultation with Tribes” setting out the purpose of the consultation, summarizing the results of past consultations on similar topics, and posing four questions for Tribes’ consideration.<sup>5</sup>

Interior hosted the consultations telephonically to ensure everyone’s safety during the pandemic. The Chief of Staff of the Department of the Interior welcomed the Tribal representatives on each call on behalf of the incoming Secretary, Deb Haaland, whose confirmation hearings were held that same week. Transcripts of the sessions are available on Interior’s website at: <https://www.doi.gov/tribes/tribal-consultation>.

Together, approximately 240 representatives of 160 Tribes attended the sessions – representing approximately one-third of the 574 federally recognized Tribes:

- On March 8, there were 187 total attendees, including 62 Tribal representatives of 35 Tribes, and 1 ANC representative.
- In the March 10 morning session, there were 212 total attendees, including 89 Tribal representatives of 45 Tribes and 1 ANC representative.
- In the March 10 afternoon session, there were 154 total attendees, including 49 Tribal representatives of 27 Tribes and 1 ANC representative.
- On March 12, there were 219 total attendees, including 85 Tribal representatives of 52 Tribes, and 8 representatives of 5 ANCs.

The invitation letter also welcomed written input from Tribes and ANCs. Interior received 70 written submissions from Tribes and 6 from ANCs.

While only a portion of Tribes and ANCs provided comments, those that did provided thorough and thoughtful input. Tribes’ responses to the first two questions in the Framing Paper were consistent that the input received in 2009 still reflects Tribal views about consultation and that Interior should pursue the actions recommended by the January

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<sup>3</sup> [https://www.bia.gov/sites/bia.gov/files/assets/as-ia/raca/02.11.21-DTLL%20Improving%20Consultation%20with%20Tribes 2021-02-11\\_1.pdf](https://www.bia.gov/sites/bia.gov/files/assets/as-ia/raca/02.11.21-DTLL%20Improving%20Consultation%20with%20Tribes%202021-02-11_1.pdf)

<sup>4</sup> <https://www.bia.gov/consultation-listening-session/improving-interiors-consultation-tribes-consultation-tribes-alaska> - While the Presidential Memorandum addressed only consultation with Tribes, Federal agencies are required by law to consult with ANCs on any action with a substantial direct effect on them and it is foreseeable that any changes to the way Interior consults with Tribes that result from this Tribal consultation would affect Interior’s approach to consultation with ANCs.

<sup>5</sup> <https://www.doi.gov/sites/doi.gov/files/framing-paper-consultation-with-tribes.pdf>

2017 Report, but build upon and improve those actions. Many Tribes recounted a great need for improvements in consultation, based on past experiences.

Responses to the second two questions in the Framing Paper – suggestions for improvement and which improvements should be prioritized— were more varied, but several themes regarding past shortcomings surfaced. Those recurring themes included the following italicized themes, which have been grouped under broad umbrella headings. The umbrella headings are merely to assist with readability, as several themes could fit under more than one heading (e.g., failure to meet a consultation requirement may also mean that the communication does not meet the definition of “consultation”).

### Shortcomings in Past Consultation Efforts

#### Consultation Definition

- *Different bureaus within Interior define “consultation” and approach consultation differently.* Interior must improve its consistency and clarity in how it defines “consultation” and consults with Tribes.

#### Consultation Requirements

- *Federal agencies often treat consultation as merely a box-checking exercise.* For consultation to be meaningful, Federal agencies should seek free, prior, and informed consent (FPIC) from Tribes in accordance with the United Nation Declaration on the Rights of Indigenous Peoples (UNDRIP) or, at least, seek mutual consent or consensus.
- *Federal agencies often fail to consult with Tribes or contact Tribes for consultation after a decision has already been made.* Consultation must occur early, and must occur for any substantial direct effect on Tribes – not just effects on their reservation – to include effects on their ceded and ancestral lands; hunting, fishing, gathering, water and other rights; and may include personnel and funding actions.
- *Timeliness is crucial to meaningful consultation.* Tribes often do not receive notice sufficiently in advance of a scheduled consultation or receive notice that lacks the information necessary for the subject matter. Notice must be timely, informative, and easily accessible.
- *Sufficient time for meaningful consultation must be afforded.* Federal agencies often impose external, tight timelines on consultation.
- *Decision-makers must participate in the consultation.* Tribes sometimes participate in consultation sessions only to find the Federal decision-maker is not at the table. Federal officials with authority to make the decision must participate in the consultation.
- *Information must be freely exchanged between the Federal agency(ies) and Tribe(s).* Tribes cannot have an open dialogue with Federal officials if the Federal officials are withholding information. Federal officials must freely exchange information with Tribal officials and be transparent in consultation.

### **Tribes' Ability to Participate in Consultation**

- *Tribes are faced with conflicting consultation schedules.* Interior and other Federal agencies must better coordinate with each other in planning and executing consultation.
- *Tribes often lack the resources necessary to participate in consultation.* Resources are needed for Tribes to fully participate in consultation and for Federal agencies to uphold their consultation responsibilities.

### **Federal-Tribal Relationships**

- *Trust is lacking in relationships between many Federal and Tribal officials.* An ongoing relationship between Federal and Tribal officials is important in establishing the trust necessary to consult on any given issue.

### **Federal Knowledge**

- *Federal officials often lack an understanding of Tribes and trust and treaty relationships.* Before consultation even begins, Federal agency personnel must understand the trust and treaty responsibilities, the foundations of Indian law, Tribes' ancestral areas, the importance of consultation, and how to consult.

### **Federal Accountability**

- *Tribes don't receive feedback from agencies on how their input was addressed.* Federal officials must be accountable for how they integrate Tribes' input into decisions, and must communicate back justification for not accepting Tribes' recommendations.

In addition to describing past shortcomings in Interior's implementation of E.O. 13175, Tribes also pointed to several specific policies that inhibit meaningful consultation and provided concrete suggestions for improving consultation.

A primary concrete suggestion from Tribes was to incorporate the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) principles for free, prior and informed consent by Tribes to allow them to give or withhold consent for Federal actions or decisions that affect them. Several Tribes also suggested instituting a dispute resolution process based on international diplomacy standards, or mediation as an alternative to litigation, where consensus cannot be reached.

Other concrete suggestions included the following, which have been grouped under the broad umbrella headings used above.

## Suggestions for Improving Consultation

### Consultation Definition

- Update Interior’s Tribal consultation policy to clarify definitions and requirements and restore parts of the freestanding policy that were not incorporated into the Departmental Manual (DM) version;
- Define “meaningful consultation” to be a dialogue and requires free, prior, and informed consent, or joint decision-making or consensus prior to any Federal action or decision;
- Clarify what does and does not constitute consultation;
- Distinguish consultation from listening sessions;
- Distinguish ANCs from Tribes.

### Consultation Requirements

- Improve consistency in consultation within Interior and all Federal agencies;
- Require consultation for off-reservation, personnel, funding or other impacts to Tribes;
- Allow Tribes to initiate consultation;
- Require consultation as early as possible in the development of a proposed Federal action or policy and allow ample time for consultation;
- Standardize and codify consultation requirements to increase Federal officials’ accountability;
- Add a stage of consultation on the intended Federal course of action before Federal execution of the action;
- Define who participates in consultation to include the decision-makers of the Tribes and Federal agencies, and not third parties or organizations;
- Freely exchange information with the Tribe(s), while keeping Tribes’ confidential information confidential.

### Tribes’ Ability to Participate in Consultation

- Improve notice of Federal actions and consultation;
- Include an option for a pre-meeting on the consultation process;
- Allow for both virtual and in-person options;
- Customize consultation to the Tribe;
- Improve interagency coordination of consultation activities to reduce scheduling conflicts and coordinate on cross-agency issues.

### Federal-Tribal Relationships

- Establish ongoing relationships with Tribes, including official visits;
- Increase Indigenous representation in the workforce.

### Federal Knowledge

- Educate and train Federal employees on Tribal sovereignty, the government-to-government relationship, history, and trust and treaty responsibilities;
- Guide agencies less experienced in consultation.

## **Federal Accountability**

- Communicate clearly to Tribes about how their input is being incorporated into the Federal action or decision, rather than merely cataloguing their comments;
- Make consultation requirements enforceable;
- Actively monitor agencies' consultation activities and require reports;
- Form a Tribal Advisory Committee to advise the Secretary and Interior on consultation.

Several Tribes also strongly recommended reconstituting the White House Council on Native American Affairs (WHCNAA) by resuming Cabinet and staff-level WHCNAA meetings and appointing a WHCNAA Executive Director. These Tribes stated the importance of the WHCNAA in creating a more effective Federal government through strong inter-agency coordination and in reinforcing Federal-Tribal engagement and Tribal consultation.

Among the specific policies Tribes identified as inhibiting meaningful consultation were: Secretary's Order (S.O.) 3389, Coordinating and Clarifying National Historic Preservation Act Section 106 Reviews (Dec. 22, 2020); S.O. 3355, Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order (E.O.) 13807 of August 15, 2017 (Aug. 31, 2017), the Single Audit Handbook, and the Fee-to-Trust process.

Some Tribes stated that a codification of E.O. 13175's requirements into the U.S. Code is necessary to ensure that they remain in force through future changes in Administrations. A few Tribes also pointed out other sections of E.O. 13175 that are not directly related to consultation (deference and waivers) and suggested Interior could better fulfill those provisions. Several Tribes also provided input on other recently issued EOs.

Finally, a few Tribes, particularly newly federally recognized Tribes, stated that Interior has a duty to include non-federally recognized Tribes in its consultation.

## **III. Response to Tribal Input**

The Department considered each and every comment made by Tribal representatives and has crafted this detailed plan to improve consultation based on that input. Interior has succeeded in implementing a few of Tribes' suggestions already; however, it is clear that Interior, and all Federal agencies, have a considerable amount of work ahead to ensure that consultation is consistently meaningful and robust.

## Goals for Addressing Suggestions

To address the overarching themes in the shortcomings identified from Tribes and incorporate as many suggestions as possible, we have gleaned from them some overarching goals for improving consultation, as follows:

1. Improve Interior Officials' Understanding of Tribes, Trust and Treaty Relationships, and Consultation
2. Improve Coordination Among Federal Agencies
3. Improve Notice to Tribes
4. Improve Consistency with Interior Achieving Meaningful Consultation (including when to consult, who should consult, how to consult)
5. Improve Interior's Accountability in Consultation

Interior's plan for addressing these goals and incorporating Tribes' suggestions is provided in Section IV, below.

Beyond these goals, Tribes also provided input stating that Interior should be a model for other Federal agencies in how to conduct consultation, as it is often seen as the agency most experienced in Tribal consultation and houses several bureaus and offices dedicated to fulfilling trust and treaty responsibilities. Interior aims to reach an ideal where its consultation policies and practices can serve as a model for all Federal agencies subject to E.O. 13175.

## Early Successes in Addressing Suggestions

Suggestions that the Interior has already succeeded in implementing include:

- Reconstituting the WHCNA. The first WHCNA meeting since the Obama Administration was held on April 23, 2021, chaired by Secretary Haaland. The WHCNA plans to appoint an Executive Director and direct staff-level work to, among other things, promote inter-agency coordination and reinforce Federal-Tribal engage and Tribal consultation, as suggested by Tribes. The WHCNA will also spearhead resumption of the Tribal Nations Summit, which is tentatively scheduled for Fall 2021.
- Revoking S.O.'s 3389 Coordinating and Clarifying National Historic Preservation Act Section 106 Reviews (Dec. 22, 2020) and 3355 Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807 of August 15, 2017 (Aug. 31, 2017). On April 16, 2021, Secretary Haaland issued a new S.O. that revokes these policies. *See* S.O. 3398, Revocation of Secretary's Orders Inconsistent with Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (April 16, 2021).

## Suggestions Not Specifically Addressed in this Plan

Suggestions not incorporated into this plan may be appropriate for future consideration but were not directly included in this plan because the suggestions: relate more directly to other E.O.'s, are outside the scope of this plan, or are subject to resource and legal constraints.

### Other E.O.'s

Tribes provided input on Interior's implementation of E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; E.O. 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis; and E.O. 14008, Tackling the Climate Crisis at Home and Abroad. Interior will consider that input as it implements each of those respective E.O.'s.

### Outside Scope

With regard to Tribes' comments suggesting a Federal obligation to consult with non-federally recognized Tribes, Interior notes that it has a government-to-government relationship only with federally recognized Tribes and E.O. 13175 applies only to federally recognized Tribes. While government-to-government consultation is therefore not appropriate, other consultation with non-federally recognized Tribes may be appropriate to the extent required by specific statutes (e.g., the Native American Graves and Repatriation Act (NAGPRA)). This plan exclusively addresses government-to-government consultation, however.

### Resource and Legal Constraints

Some suggestions were not included in this plan due to resource and legal constraints upon Interior. For example, the suggestion that Interior must individually meet with each Tribe in order for consultation to occur. This suggestion is certainly appropriate for localized policies or actions with effects on only a certain number of Tribes, but is not feasible for national policies/actions with effects on all Tribes. As such, while not explicitly stated by Tribes, it appears there is a need to distinguish between consultation with Tribes on a national policy with effects on all Tribes ("national consultation") or action versus consultation with Tribes for a localized policy/action with effects on only a certain subset of Tribes ("localized consultation"). The type of consultation may affect who participates in the consultation, where the consultation occurs, and other factors. The detailed plan highlights this distinction where applicable. Likewise, the suggestion of imposing specific minimum timeframes in which consultation must be open for Tribal input is not feasible given that various resource and legal constraints may require Interior action on a tighter timeframe.

## Suggestions for OMB Consideration

Tribes suggested some items that extend beyond Interior to include cross-agency or budgetary recommendation. Interior notes these for OMB consideration. Several Tribes recommended:

- Codification in the U.S. Code of E.O. 13175's consultation requirements to ensure permanency through changing Administrations;
- Standardized and codified Federal government-wide consultation requirements to promote consistency across agencies;
- Better interagency coordination on consultation activities; and
- The provision of resources for the Tribes to participate in Tribal consultation, as well as for Federal agencies to uphold their consultation responsibilities.

The State-Tribal Collaboration Act, which New Mexico enacted in 2009, provides an example of codification of consultation requirements at the State level, which could be a model for Federal legislation.

## IV. Interior's Plan to Improve Implementation of E.O. 13175

Interior has identified six concrete action items to meet the goals listed above and begin a new chapter in its relationship with Tribes. These action items will establish Interior-wide infrastructure to support individual Interior officials' ability to consistently engage in meaningful consultation. These action items are also intended to facilitate Tribal participation in consultation as early as possible in the development of an action or policy with Tribal implications. As stated above, Interior views this plan as just a start, as these action items will require an initial investment of resources and effort to establish the strengthened foundation for future consultation. Achieving meaningful consultation for each action with Tribal implications will require continued commitment from all Interior bureaus and offices.

### Types of Consultation

As mentioned above, there is a need to distinguish between different types of consultation, in order to provide context for the action items listed below. Interior will use the following terms to distinguish among the types of consultation:

- *Nationwide consultation* means consultation with Tribes on a national policy/action with effects on all or most Tribes;
- *Regionalized consultation* means consultation with Tribes on a policy/action with effects on all or most Tribes in one or more regions;
- *Localized consultation* means consultation with Tribes for a policy/action with effects on only one Tribe or a certain subset of Tribes.

The term “consultation” as used in these action items does not include informal discussions with Tribes or regularly scheduled calls for general updates or check-ins.

### **Action Item 1: Centralized Consultation Website**

Interior’s first action item is to transform its existing Tribal consultation website at <https://www.doi.gov/tribes/tribal-consultation> into a multi-function website that can serve as a landing page for all items related to Tribal consultation hosted by Interior. A primary function of the website will be to include a schedule of all nationwide and regionalized Tribal consultations being hosted by Interior<sup>6</sup>, materials for those consultations (to the extent they do not involve sensitive information), a Federal point of contact on the consultation, and a “closeout” section for each such consultation where Interior describes how it considered and incorporated Tribal input into the final decision/action. Another function of the website will be to provide a centralized contact list of all Tribal Liaison Officers within Interior and centralized location for links to individual, standardized bureaus’ Tribal consultation webpages, so that Tribes will have the ability to easily access information for localized consultations.

This one action item will help establish infrastructure to meet multiple goals. The centralized website will meet goal 2 (Improving Coordination Among Agencies) by creating a means for communicating to other agencies (as well as among bureaus and offices within Interior) what consultations are planned for when, providing information to avoid scheduling conflicting sessions and coordinate on cross-cutting issues.

The website will assist in meeting goal 3 (improving Notice to Tribes) by providing Tribes with a single location to view all upcoming nationwide and regionalized consultation sessions being hosted by any Interior office or bureau and by providing Tribes with a single location to obtain information on localized consultations through the centralized contact list of all Tribal Liaison Officers and links to individual bureaus’ Tribal consultation webpages.

The website will also assist in meeting goal 5 (Improving Accountability) by providing a single location where Interior bureaus and offices will provide their responses to Tribal input on nationwide and regionalized consultations, an explanation of how that input was incorporated into the final agency decision, and a description of the final agency decision or action to “close out” the consultation. There may be circumstances in which it will not be appropriate to post on the website specific information as to how the Tribal input was incorporated into the final agency decision or action – such as for consultation implicating sensitive information such as sacred sites that should not be made widely available or for localized impacts in which direct communications to Tribes are more appropriate – but for

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<sup>6</sup> Localized consultations are excluded from this action item unless and until further consultation is conducted on the desirability of including one-on-one and individualized sessions, which may attract attention from the general public that may be undesirable from the Tribe’s perspective.

most nationwide consultations, this website will provide a high-level snapshot of accountability.

### **Action Item 2: Identify Technology to Improve Notice to Tribes**

Interior currently houses Tribal leader contact information for each Tribe in the Bureau of Indian Affairs (BIA) Tribal Leaders Directory (<https://www.bia.gov/tribal-leaders-directory>). This information is updated through BIA staff communications with Tribes, but includes outdated information at any given point in time because Tribes do not have the ability to update their information themselves. Interior will work to identify technology it can use that will ensure Tribal contact information is consistently up to date and record Tribal leaders' preferences for receiving notice of consultation (e.g., by email or U.S. mail) and for delivery of courtesy copies to other Tribal officials. Technology with these capabilities would be instrumental in meeting goal 3 (Improving Notice to Tribes) by ensuring the mechanics are in place for Interior officials to make contact with the appropriate Tribal officials, so that they can confidently meet consultation policy requirements for timeliness.

Interior will also explore the viability of adapting the U.S. Geological Survey (USGS) "Tribal Lands Locator" Toolkit for Interior-wide use to provide Interior officials and staff with more direction on when interests of certain Tribes may be implicated by a proposed project. The Tribal Lands Locator Toolkit is an ArcGIS tool in which USGS staff can enter the latitude/longitude coordinates or the shapefile of a proposed project area to determine whether the project area may intersect with Tribal trust lands. The Tribal Land Locator Toolkit utilizes a USGS viewer to access BIA Land Area Representations data sets and Census data sets to provide the most comprehensive representation of Tribal trust land boundaries. It also utilizes BLM data layers that show ANCSA-conveyed lands. The Census layers also provide Oklahoma historical reservation boundaries as well as Hawaiian Homelands and Alaska Native Village locations. While the Tribal Land Locator Toolkit currently contains a link to the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) shape files for the ceded lands with reserved rights of its member Tribes, the fact that there are no federal datasets showing all ceded lands with reserved rights means that those areas are not fully represented. This presents a potential opportunity for DOI to compile data sets showing all ceded lands with reserved rights, which could help ensure consultation for federal projects that may intersect with those lands as well as the others currently utilized by the Tribal Lands Locator Toolkit. This tool will assist Interior officials and staff in pinpointing which Tribes to notify, in support of goal 3 (Improving Notice to Tribes) and goal 4 (Improving Consistency with Interior Achieving Meaningful Consultation).

### **Action Item 3: Update Consultation Policy**

This action item will help Interior to meet goals 1 (Improving Interior Officials' Understanding of Tribes, Trust and Treaty Relationships, and Consultation), 3 (Improving Notice to Tribes), and 5 (Improving Accountability), and is likely to have the largest impact

on goal 4 (Improving Consistency with Interior Achieving Meaningful Consultation). While a few Tribes recommended that Interior establish a joint Federal-Tribal workgroup to update the policy, Tribes have already identified several clear-cut suggestions for improving the policy that Interior can readily incorporate. Among the suggestions Tribes have already provided for updating Interior's consultation policy are to make definitions of "consultation" and the thresholds for when consultation is required more clear, incorporate items from the 2011 consultation policy that were omitted when the policy was put into the Departmental Manual, clarify who should participate in consultation, and address meaningful consultation as involving Tribal consent or consensus.

As part of the effort to update the consultation policy, Interior will also develop—in consultation with Tribes—a "Model for Achieving Consensus." The Model for Achieving Consensus will have as its centerpiece a goal for Interior to obtain Tribal consent through a consensus-based approach for any given "policy with Tribal implications" as defined by E.O. 13175. A model is necessary to address the degrees of Tribal implications, accounting for such factors as whether potential effects are to on-reservation lands, off-reservation lands, ancestral lands, Tribal religious or cultural, subsistence, water, treaty, or other rights. The model will necessarily account for situations where Interior is statutorily mandated to take action and therefore without discretion to change its course based on Tribal consent or withholding of consent.

Updates to the consultation policy will also appropriately distinguish between the nationwide and regionalized consultations and localized consultations, to the extent that distinction affects questions such as who should consult, where to consult, and how to consult – all questions upon which Tribes provided input as part of this and prior consultations on how to achieve meaningful consultation. Interior will rely upon Tribes' input to guide it in the updates.

#### **Action Item 4: Educate Interior Officials and Staff on Tribes**

This action item is uniquely suited to addressing goal 1 (Improving Interior Officials' Understanding of Tribes, Trust and Treaty Relationships, and Consultation). Interior already offers a 3-day training on Tribal consultation that touches on trust and treaty relationships through DOI University and several bureaus offer abbreviated courses; however, Tribes have identified a need for improved education and training of Interior officials. With this action item, Interior will create a free, comprehensive, on-line training accessible to all Interior staff and officials. Additionally, as part of the policy updates in Action Item 2, Interior will require all Interior staff and officials to complete the training prior to engaging in consultation and will further review whether a requirement to complete the training should be included in performance reviews or otherwise required for all Interior decision-makers. This training will familiarize Interior staff and officials with major aspects of working with Tribes, provide an overview of Tribal government administration, promote cultural awareness, explain the foundation of the government-to-government relationship and treaty and trust responsibilities, instill recognition of Tribal

self-determination and self-governance, and direct Interior staff and officials to resources for more information.

In the longer term, Interior will work to compile compendiums of Tribes' histories (as provided by the Tribes themselves) and ancestral areas, including areas in which Tribes may have hunting, fishing, gathering or other subsistence rights, and other areas of importance to Tribes, as many Tribes may have already provided Interior and Federal agencies with ancestral areas on a county-by-county basis. Interior does not expect Tribes to provide locations of sacred sites or other sensitive information, however. As part of this effort, Interior will explore the feasibility of expanding the U.S. Fish and Wildlife Service Region 1's Land Acknowledgment Training to all of Interior, providing each Interior official and staff with resources for acknowledging the indigenous homelands in each area. This compendium will assist goal 3 (Improving Notice to Tribes) and goal 4 (Improving Consistency with Interior Achieving Meaningful Consultation) by better familiarizing Interior officials and staff with geographic areas that may implicate Tribal concerns, so that those officials and staff can recognize the potential for Tribal implications in the very nascent stages of a considered policy or action.

A few Tribes also commented that Interior could better implement E.O. 13175 Sections 3 (deferring to Tribal laws) and 6 (waiving Federal requirements for Tribes). Interior will address these comments as part of its actions to meet the first goal identified above, so that Interior officials and staff are made aware of the opportunities for deferring to Tribal laws and waiving Federal requirements for Tribes.

### **Action Item 5: Establish a Secretary's Tribal Advisory Committee (STAC)**

This action item reflects a discrete recommendation from Tribes – to establish a Secretary's Tribal Advisory Committee (STAC) as a forum for conversations between high-level Interior officials from each of the bureaus and elected Tribal representatives or their officially designated representatives. Other Federal agencies, such as the Department of Health and Human Services (DHHS), have similar advisory committees to facilitate intergovernmental discussions. The STAC will in no circumstance replace Tribal consultation on any given policy or action, but will provide Tribes, through the Tribal members, with regular access to the Secretary of the Interior to exchange views and information, and provide advice and/or recommendations with regard to the administration of DOI programs. This action item will assist Interior in meeting all of the goals, but most significantly goals 4 (Improving Consistency with Interior Achieving Meaningful Consultation) and 5 (Improving Accountability) because the STAC will provide a standing opportunity for the Tribal members to further institutionalize progress made in improving implementation of E.O. 13175 and ensure follow-through.

## Action Item 6: Review Specific Policies/Processes Tribes Identified as Inhibiting Consultation for Rescission or Revision

This action item will require Interior officials’ review of several policy statements or processes to rescind or revise them to address what Tribes perceive as obstacles to meaningful consultation. As mentioned above, Interior has already revoked SOs 3389 Coordinating and Clarifying National Historic Preservation Act Section 106 Reviews (Dec. 22, 2020) and 3355 Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807 of August 15, 2017 (Aug. 31, 2017). *See* S.O. 3398, Revocation of Secretary’s Orders Inconsistent with Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (April 16, 2021).

Among the remaining policy statements Tribes identified as appropriate for elimination or modification are the following Single Audit Handbook and the Fee-to-Trust process. Interior will therefore review these policies in light of Tribal input and the goals established in this plan and rescind or revise them, as appropriate.

### V. Timelines for Each Action Item

The following provides target dates for each action item, and components of each action item. In some cases, the target date is listed as “Tribal Nations Summit” in lieu of a specific date with the understanding that the Tribal Nations Summit will be scheduled for Fall 2021. Interior will work toward these target dates and provide its progress on meeting these dates in its 270-day progress report, due October 23, 2021.

#### Organized By Action Item

Action Item	Target Date
1. Establish website that lists schedule of Interior consultations and: 1.a. Includes or links to materials associated with each 1.b. Includes or links to a “closeout” section for each addressing Tribal input and explaining how it was incorporated into the final decision/action 1.c. Provides a centralized contact information page for all Tribal Liaison Officers within Interior 1.d. Links to any individual bureaus’ and offices’ Tribal consultation webpages	08/01/2021
1.e. Each bureau/office that conducts Tribal consultation has its own updated Tribal consultation webpage so that DOI website is fully functional	Tribal Nations Summit
2. Identify Technology to Improve Notice to Tribes	Tribal Nations Summit

3. Update Interior’s consultation policy to incorporate missing elements from 2012 freestanding policy and make other edits appropriate based on input during this round of consultation	Tribal Nations Summit
3.a. Consult on a “Model for Consensus”	09/01/2021
3.b. Finalize the “Model for Consensus”	12/31/2021
4. Create training for staff on trust and treaty responsibilities, the importance of Tribal consultation, and how to consult	Tribal Nations Summit
4.a. Compile Tribes’ histories/ancestral areas as they have defined them	Ongoing
5. Establish the STAC 5.a. Define membership	09/01/2021
5.b. Host first STAC meeting with Secretary 5.c. Schedule future STAC meetings	10/15/2021
6. Review specific policies/processes Tribes identified as inhibiting consultation for rescission or revision	11/01/2021

### Organized By Target Date

Target Date	Action Item
08/01/2021	1. Establish a website that lists schedule of Interior consultations and: <ul style="list-style-type: none"> <li>1.a. Includes or links to materials associated with each</li> <li>1.b. Includes or links to a “closeout” section for each addressing Tribal input and explaining how it was incorporated into the final decision/action</li> <li>1.c. Provides a centralized contact information page for all Tribal Liaison Officers within Interior</li> <li>1.d. Links to any individual bureaus’ and offices’ Tribal consultation webpages</li> </ul>
09/01/2021	4. Establish the STAC

	4.a. Define membership
09/01/2021	3.a. Consult on a “Model for Consensus”
10/15/2021	5.b. Host first STAC meeting with Secretary 5.c. Schedule future STAC meetings
11/01/2021	6. Review specific policies/processes Tribes identified as inhibiting consultation for rescission or revision
12/31/2021	3.b. Finalize the “Model for Consensus”
Tribal Nations Summit	2. Identify Technology to Improve Notice to Tribes
Tribal Nations Summit	3. Update Interior’s consultation policy to incorporate missing elements from 2012 freestanding policy and make other edits appropriate based on input during this round of consultation
Tribal Nations Summit	4. Create training for staff on trust and treaty responsibilities, the importance of Tribal consultation, and how to consult
Ongoing	3.a. Compile Tribes’ histories/ancestral areas

## **VI. Agency Official to Coordinate Implementation**

As required by President Biden’s memorandum, this plan designates an appropriate agency official to coordinate implementation of the plan and preparation of progress reports to be Bryan Newland, Principal Deputy Assistant Secretary for Indian Affairs and the Tribal Governance Officer for Interior.