

**RESOLUTION OF THE GOVERNING BODY  
OF THE  
WASHOE TRIBE OF NEVADA AND CALIFORNIA**

**A Resolution for the Consultation Policy**

**WHEREAS**, the Washoe Tribe of Nevada and California (“Washoe Tribe”), is organized pursuant to the Provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended, to exercise certain rights of home rule and to be responsible for the general welfare of its membership; and

**WHEREAS**, pursuant to Article IV, Section (h) of the Constitution and Bylaws of the Washoe Tribe of Nevada and California, the Washoe Tribal Council has the power “to adopt resolutions not inconsistent with the constitution and bylaws, regulating the procures of the Washoe Tribal Council itself and other tribal agencies, tribal officers, or tribal organizations of the Washoe Tribe...”; and

**WHEREAS**, the Washoe Tribe as a sovereign nation has the authority to determine what constitutes as meaningful consultation as well as establish timelines which respect the capacity and sovereignty of the Washoe Tribe; and

**WHEREAS**, it has been determined that the interests of the Washoe Tribe are best served by providing guidance on what the Washoe Tribe considers to be government-to-government consultation, including defining consultation and determining requests from governments, agencies, departments, and organizations, through the creation of a Consultation Policy; and

**WHEREAS**, the Consultation Policy is intended to provide guidance to governments, agencies, departments, and organizations seeking to consult with the Washoe Tribe or seeking to develop or implement any regulation, policy, or other activities in the ancestral territory of the Washoe Tribe that may impact the inherent sovereignty or right to self-govern of the Washoe Tribe.

**BE IT RESOLVED BY THE WASHOE TRIBAL COUNCIL** that it hereby adopts and approves the implementation of the Consultation Policy dated May 2024 (attached).

**CERTIFICATION**

It is hereby certified that the Washoe Tribal Council is the governing body of the Washoe Tribe of Nevada and California composed of eleven (11) members of whom ten (10), constituting a quorum, were present at a meeting duly held on the 10<sup>th</sup> day of May, 2024, and that the foregoing resolution was adopted by the affirmative vote of nine (9) for, zero (0) against, and one (1) abstention pursuant to the authority contained in Article VI, Section 1(h) of the Amended Constitution and Bylaws of the Washoe Tribe of Nevada and California.

  
Autumn Burtt  
Secretary-Treasurer  
Washoe Tribe of Nevada and California

05/13/2024  
Date



# Washoe Tribe of Nevada and California

## Consultation Policy



Approved by Resolution 2024-05-WTC-034 on May 10, 2024

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## **Introduction to the Washoe Tribe of Nevada and California's Consultation Policy**

The Washoe Tribe of Nevada and California (Tribe) is organized under the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended, to exercise certain rights of home rule and be responsible for the general welfare of its membership. This includes defining consultation and determining requests from governments, agencies, departments, and organizations. It has been determined that the interests of the Tribe are best served by providing guidance on what the Tribe considers to be government-to-government consultation. As a sovereign government, the Washoe Tribe of Nevada and California shall develop working relationships with other governments, agencies, departments, and organizations because of the potential impact on Tribal rights and resources.

As a commitment to Tribal sovereignty and a meaningful government-to-government relationships, many tribal, federal, state, and local agencies and organizations are being directed or required to consult with the Tribe when developing regulations and policies or engaging in other activities that may affect Tribal resources. There is often some confusion on the part of governments, agencies, departments, and organizations as to what constitutes meaningful consultation. Many governments, agencies, departments, and organizations have their own unique consultation policies creating a confusing policy landscape for what constitutes consultation.

This policy is intended to provide guidance to governments, agencies, departments, and organizations seeking to consult with the Tribe or seeking to develop or implement any regulation, policy, or other activities in the ancestral territory of the Washoe Tribe that may impact the inherent sovereignty or right to self-govern of the Tribe. We are providing clear requirements that must be met for a meeting or meeting process to be considered "consultation."

### **Definitions**

**"Bi-lateral Government-to-Government Consultation"** means authorized individuals of the Tribe meet directly with the consulting entity in an effort to reach an agreement on a specific proposed regulation, rule, policy, program, project, plan, property decision, or other activity that would affect the resources, historic properties, cultural practices, and those persons under the jurisdiction of the Tribe.

**"Consultation"** means the process of seeking, discussing, and considering the views of others, and where feasible, seeking agreements with them on how resources should be identified, considered, and managed.

**"Consulting Entity"** means any tribal, federal, or state government, agency, department, or organization operating subject to tribal, federal, state, or local statutes or regulations that obligate them to consult with federally recognized Tribes.

**"Coordination Meetings"** means ongoing discussions between the Tribe and a consulting entity related to any proposed regulation, rule, policy, program, project, plan, property decision, inspection, or any other activity of the consulting entity. This often involves discussions between the Tribe and the consulting entity on issues of shared jurisdiction or responsibility.

**"Multi-lateral Government-To-Government Consultation"** means meetings between multiple Tribal governments with the consulting entity when policies or programs with broad application throughout Indian Country are being developed and/or modified by the consulting entity.

**"Sensitive Information"** means any information an authorized individual of the Tribe deems to be confidential.

“Free, Prior, and Informed Consent” (FPIC) allows Indigenous Peoples to provide or withhold/ withdraw consent, at any point, regarding projects impacting their territories. FPIC allows Indigenous Peoples to engage in negotiations to shape the design, implementation, monitoring, and evaluation of projects.

## **Legal Background**

### **United States**

The United States’ obligations and unique legal relationship with Indian tribal governments begins with the Constitution in the Commerce Clause and extends through treaties, statutes, executive orders and court decisions. A significant overview of federal laws and policies that describe the United States’ legal obligations to consult with Tribes on a government-to-government basis has been described elsewhere, such as, the Memorandum on Uniform Standards for Tribal Consultation (2022) and the National Association of Tribal Historic Preservation Officers (2005).

These definitions are consistent with federal court rulings and describes direct interaction with the affected Tribe, an exchange of views on the project or decision, and the aspiration to reach agreement on a course of action. Thus, a letter inviting consultation followed by a briefing given to the Tribe by the agency does not constitute consultation. Consultation and coordination may also serve to affect the Tribe’s assumption of leadership role in the management of federal programs consistent with the principles of self-governance and self-determination as codified in the Indian Self Determination and Education Assistance Act of 1975, (Public Law 93-638).

### **Intent**

Consultation is a process that respects Tribal sovereignty and recognizes the Tribe’s right to self-governance and self-determination. Consultation ensures the United States, the states of California and Nevada, and organizations located in Washoe ancestral territory are meeting their legal responsibilities with respect to the Washoe Tribe of Nevada and California.

It is the intent of the Washoe Tribe that this consultation policy led to effective and consistent direction for all consulting entities in the conduct of business with the Tribe. Government-to-government relationships will build and maintain the professional, cooperative, and effective reputation of the Tribe as a sovereign government and lead to increased opportunities in the best interests of the Tribe that are aligned with its goals.

## **Consultation Overview**

The Washoe Tribe defines consultation as the process of seeking, discussing, and considering the views of the Tribe, in pursuit of an agreement with the Tribe on the development of regulations, rules, policies, programs, projects, plans, property decisions and activities that may affect Tribal resources, historic properties, cultural practices, and those persons under Tribal jurisdiction. Beginning with what the United Nations Declaration on the Rights of Indigenous Peoples has termed, free, prior, and informed consent (FPIC), consultation requires true government-to-government contact between governments, agencies, departments, and organizations and the Tribe, where high-level agency representatives meet with Tribal or designees.

For some broad decisions, such as development and modification of federal policies that affect all Indian Nations similarly, the Tribe may accept invitations to participate in Multilateral-Tribal consultations.

For ongoing processes, such as water quality monitoring programs, for example, the Tribe may seek regular meetings at an agreed-upon interval. These meetings would be defined as coordination meetings that serve to clarify how Tribal and the consulting entity's jurisdictions or responsibilities apply to a given issue. Coordination meetings may serve as a forum for sharing data or making agreements to share responsibilities about data collection, housing, and access. Coordination meetings may also be used as an opportunity for the Tribe to provide input on processes such as the development of governments, agencies, departments, and organizations' plans. Often, coordination meetings involve only employees but may involve Tribal leaders or designees.

For other decisions, particularly but not limited to activities with a direct effect on Tribal resources, the Tribe may demand bi-lateral government-to-government consultation. This process is usually invoked when the proposed regulations, rules, policies, programs, projects, plans, property decisions, or activities will clearly have a significant and direct effect on Tribal resources, historic properties, cultural practices, signage that includes language, and/or those persons under Tribal jurisdiction.

Section 106 of the National Historic Preservation Act (1966) requires federal agencies to take into account the effects of their undertakings on historic properties. The regulations that implement section 106 (36 CFR 800) specify a distinct process of evaluation and consultation. The Tribe has a Tribal Historic Preservation Officer (THPO). Accordingly, consultations following the Section 106 process should go to the THPO and will be reviewed and coordinated in accordance with the Washoe Tribal THPO Plan.

### **Objectives of Consultation**

The objectives to be met by persons participating in a government-to-government consultation process, include, but are not limited to, the following:

1. Ensure that the authorized individual(s) of the Tribe have free, prior, and informed notice of, and understand, the technical and legal issues necessary to make informed policy decisions;
2. Ensure federal compliance with trust obligations as well as other applicable federal laws and policies affecting Tribal rights, resources, culture, religion, subsistence, and commerce;
3. Improve policy-level decision-making of the Tribe and the governments, agencies, departments, and organizations;
4. Achieve bi-lateral decision-making of the Tribe and governments, agencies, departments, and organizations;
5. Ensure the protection of Tribal rights, resources, culture, language, religion, and economy;
6. Ensure compliance with Tribal laws and policies;
7. Provide an opportunity for the Tribe to express views and concerns about the issue;
8. Develop and achieve mutual decisions through a complete understanding of technical and legal issues; and
9. Improve the integrity of governments, agencies, departments, and organizations – Tribal decisions.

### **Consultation Process**

1. Request for Consultation
  - a. Tribal Council hereby establishes the procedure for government-to-government consultation.

An agency, government, department, or corporation wishing to participate in government-to-government consultation with the Tribe must adhere to the following procedure unless an alternative process is approved, in writing, by the Tribal Council.

- b. If the Consulting Entity fails to request consultation on the development of regulations, rules, policies, programs, projects, plans, property decisions or activities that the Tribe believes may affect Tribal Resources, historic properties, contemporary cultural practices, and/or those persons under Tribal jurisdiction, the Tribe may take the initiative to request consultation. In this event, the Tribe expects a response from the Consulting Entity within 30 days of the receipt of the request.
2. Early in the planning process. Recommending a 90-day timeline, 30 days to schedule the Initial meeting with the remaining 60 days for follow-up and additional meetings as needed. Any consulting entity that seeks to develop regulations, rules, policies, programs, projects, plans, property decisions or activities that may affect Tribal resources, historic properties, cultural practices, and/or those persons under Tribal jurisdiction must request a consultation by sending a letter to the Tahoe Liaison by email at [TahoeLiaison@washoetribe.us](mailto:TahoeLiaison@washoetribe.us).

  - a. If the Consulting Entity fails to request a consultation on the development of regulations, rules, policies, programs, projects, plans, property decisions, or activities the Tribe believes may affect Tribal Resources, historic properties, cultural practices, and/or those persons under Tribal jurisdiction, the Tribe may take the initiative to request consultation.
  - b. In this event, the Tribe will determine an adequate response from the receipt of the request.
3. This letter should include a draft or overview of the scope of the project, including any maps of the project area, a summary describing how the contemplated regulations, rules, policies, programs, projects, plans, property decisions, or activities may affect Tribal Resources, historic properties, cultural practices, and/or those persons under Tribal jurisdiction.
4. The letter should also include a contact person, a timeline and schedule of the project, and any other relevant information to assist the Tribe in appropriately identifying potential impacts. At minimum this letter should include:

  - a. Who the responsible agency is, the nature of its involvement, and an agency contact person with his/her address, phone, and e-mail;
  - b. Project description, including size and configuration of the proposed action, total acreage, what is known about past and current land use, and the type and extent of the proposed ground disturbance, the location (street address if available);
  - c. A copy of the current plans;
  - d. Maps that clearly identify the location., including a copy of a 7.5" USGS map;
  - e. Clearly defined Area of Potential Effects (APE) for both direct and indirect (visual, audible, atmospheric changes) effects, to be described verbally and drawn on a map;
  - f. Information on any previous studies and recorded archaeological sites resources within the APE;
  - g. Sharp, clear photographs of the project area, including views from different perspectives. All photos should be clearly labeled and keyed to the map indicating location and direction of the view;

- h. The program, plan or project schedule or timeline. The Consulting Entity must present any technical and legal issues to the Tahoe Liaison team or their designee. The Consulting Entity will ensure the Tahoe Liaison team or their designee understand the proposed regulation, rule, policy, program, project, plan, property decision, inspection, or any other activity of the Consulting Entity.
5. If the Tahoe Liaison team determines it is in the best interest of the Tribe to participate in consultation and the Tribe has the capacity to participate in consultation, the Tribe will within 30 days after reception of the request for consultation, designate a Washoe Tribe department representative who will then schedule a pre-consultation meeting.

  - a. If the Tribe does not have the capacity to field the consultation request or it is determined that participation in consultation is not in the best interest of the Washoe Tribe of NV and CA, a designee will send a letter notifying the agency requesting consultation to notify them.

## Pre-consultation Meeting

1. Before the consulting entity moves past the scoping stage of the project, it must participate in a pre-consultation meeting.
  - a. This meeting will involve the assigned Washoe Tribe designee who will be responsible for briefing the Tahoe Liaison group before the first true consultation meeting.
2. In this meeting the consulting entity should present the proposed regulations, rules, policies, programs, projects, plans, property decisions, or activities and discuss how they may affect Tribal resources, historic properties, historical, traditional and cultural practices, and/or those persons under Tribal jurisdiction.

## Initial Consultation Meeting

1. The consulting entity arranges, in collaboration with the Washoe Tribe designee, a time, a place, and an agenda for the initial consultation meeting. The initial consultation meeting should address the following:
  - a. A discussion to determine if there are barriers to Tribal participation such as timing, financial obligations such as cost of labor, time, and travel, and/or location. The consulting entity must provide financial support to allow for consultation if necessary;
  - b. A discussion of any sensitivity regarding sacred sites affected by the project. No sacred or spiritual knowledge will be made available and relevant information to the consulting entity upon request or otherwise. Determinations for additional consultants such as elders or religious leaders will be done internally within the Washoe Tribe and communicated with the consulting entity through the designated Washoe Tribe department project; and
  - c. An agreed upon meeting format for the process;
2. Development of a consultation calendar or other agreed upon meeting interval to ensure that enough meetings are planned to ensure adequate Consultation. See Request for Consultation.
3. Prior to authorizing any agreement/consultation process/consultation calendar the Washoe Tribe shall ensure that such agreement:
  - a. Does not contain any provisions that in any way diminish or waive any trust obligation of the

Federal Government;

- b. Clearly sets forth the expectations of the Tribe for the roles and services to be performed by the Consulting Entity with respect to such agreement; and
- c. Is consistent with established Tribal goals and priorities.

### **Ongoing Consultation Meetings**

1. Consultation meetings should continue at regular intervals pursuant to the agreed upon consultation calendar or meeting interval until an agreement is reached or until the Tribe and consulting entity agrees that agreement is impossible.
2. Some consultation meetings may be in formal settings, while others may include site visits to project locations as needed. Informal meetings between employees and sub-groups or sub-committees may be formed on an ad hoc basis as needed and agreed upon.

### **Certification of Completed Consultation**

1. At the end of the process, the Tribe will offer a letter certifying that consultation was completed in compliance with this policy or not.
2. In the event the Tribe deems the Consulting Entity failed to consult properly, a letter from the Tribe will explain this failure and be shared with director or executive authority of the consulting entity. Any failure on behalf of the consulting agency to meet the requirements of this policy will require the consulting entity to reinitiate their consultation requests starting from step 1 (see process flow.)

### **Consultation Record**

1. Meeting notes, minutes, shared documents, and any recorded audio or video files shall be maintained in common between the Tribe and the consulting entity with the agreement that nothing shall be shared without the prior consent of the Tribe and consulting entity.
2. Culturally sensitive or relevant information provided by the Tribe shall remain confidential. Before sensitive information is shared, a non-disclosure agreement must be signed and executed.

### **Best Management Practices**

In addition to the above requirements for consultation, the Washoe Tribe suggests the following Best Management Practices for governments, agencies, departments, and organizations seeking to engage in consultation to abide by:

1. Multiple contacts at the beginning stages and continue throughout the project;
2. Multiple venues for consultation, such as the entity's office and locations close to the Tribal Headquarters and the area of the undertaking;
3. Formal and informal meetings;
4. The existence of a Tribal Liaison;
5. The Agency's fostering of a relationship with relevant Tribal employees;
6. An early effort to identify the areas of concern to the Tribe;

7. Provision to Tribe of full and candid information prior to the first meeting (in the consultation initiation letter and at the pre-consultation meeting);
8. An open-ended and flexible agenda (no hidden agendas);
9. Facilitators for the sessions, alternating between Agency and Tribal leaders or agreed upon third party;
10. A successful result viewed as partners arriving at an agreement, although reaching an agreement is not an end in itself;
11. Having in place a feedback mechanism to ensure agreed upon measures are in place and enforceable; and
12. Although the agenda of preliminary consultation meetings will likely be established by the Agency, the Tribe shall participate in the development of agendas for ongoing consultation meetings.

### **Process Flow**

The following is the process flow from receipt of a consultation request to completion.

- Step 1 agency submits letter by email to [TahoeLiaison@washoetribe.us](mailto:TahoeLiaison@washoetribe.us)
- Step 2 Tahoe Liaison reviews and assigns to a Department
- Step 3 assigned department contacts agency and establishes a meeting within 30 days of initial communication to include any potential financial support
- Step 4 initial meeting
- Step 5 address barriers
- Step 6 establish timelines
- Step 7 internal review by Washoe Tribe
- Step 8 follow up meeting (as needed but should probably have a timelines here as well)
- Step 9 additional information or meetings requested are submitted to the Washoe Tribe within 14 days of request
- Step 10 comments are submitted along with final review meeting
- Step 11 certification of completion submitted

Failure to fulfill obligations as outlined on behalf of the requesting agency will result in the resubmission of the consultation request starting at Step 1.

### **No Waiver of Sovereign Immunity**

All inherent sovereign rights of the Washoe Tribe of Nevada and California as a federally recognized Indian tribe with respect to provisions authorized in this policy are hereby expressly reserved, including sovereign immunity from unconsented suit. Nothing in this policy shall be deemed or construed to be a waiver of the Washoe Tribe of Nevada and California sovereign immunity from unconsented suit.