



THE TULALIP TRIBES

The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, and Skykomish tribes and other tribes and band signatory to the Treaty of Point Elliott

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March 31, 2011

Tracie Stevens
National Indian Gaming Commission
144L Street, NW, Suite 9100
Washington, D.C., 20005

Re: Comments from the Tulalip Tribes of Washington on the Draft NIGC Government-to-Government Tribal Consultation Policy

Dear Chairwoman Stevens:

The Tulalip Tribes of Washington would like to thank you for the opportunity to comment on the NIGC Government-to-Government Tribal Consultation Policy. It is evident that the NIGC goal is to carry out the provisions of President Obama's Memorandum and Executive Order 13175; you have succeeded and we applaud you for listening to the concerns from Indian County. The policy provides the necessary and needed framework for meaningful and effective consultation between Indian Tribes and the NIGC.

Below, we are providing detailed recommendations to strengthen the implementation of the framework. These comments were also provided verbally at the tribal consultation in April of this year.

1. Section II – Definitions

- **(B) Action with Tribal Implications (“Action”) and (C) EO 13175 Policies that have Tribal Implications.** We strongly recommend that these definitions be revised. The policy as written requires consultation when a departmental action has tribal implications and uses the term “substantial direct effect” in defining when an “action” has a tribal implication. We recommend the following underlined language be added to these definitions requiring consultation when there is either a “substantial direct effect or any potential adverse effect.

The term “substantial direct effects” is subjective and leaves too much open for interpretation as to what is “substantial.” The language in the Executive Order is a baseline for federal agencies; agencies are free to adopt its own policies so long as the policy meets or exceeds the language in Executive Order 13175. The added language recommended above will provide the necessary safeguards for consultation that are envisioned in the Executive Order.

- **(F) NIGC Consultation Office (“TCO”).** Persons designated to these positions/assignments must have a reasonable amount of experience and knowledge of Indian tribes. We strongly recommend that these are requirements of the assignments. Furthermore, tribes should be afforded the opportunity to comment on potential candidates.

2. Section VI. B. Accountability and Reporting

We recommending adding the underlined language to the first paragraph of this section. “Indian Tribes are encouraged to submit annual reports on consultation efforts and these reports shall be used in evaluating the current process and improving the consultation efforts.”

The addition of the above underlined language will ensure that the tribes perspectives are considered in the NIGC review of its efforts to facilitate meaningful, timely, and regular consultation.

3. Section VII. Communication, Coordination and Collaboration

This section discusses the use of a Tribal leader task force or Tribal advisory group. In the policy, you state you may use these groups for help to inform the NIGC in its decision-making and understanding of the Tribal perspective. We agree that these groups can be helpful so long as the process is not slowed. Furthermore, use of a Tribal task force or advisory group cannot be considered in lieu of formal consultation with tribal leaders or representatives and should not be considered as such. Finally, we recommend adding guidelines as to how these groups will be formed. They must be representative of both large and small tribes to ensure that all tribal interests are being represented. We trust that you will use these groups accordingly.

We encourage the NIGC to move forward with the adoption of the NIGC Government-to-Government Tribal Consultation Policy. We thank you again for hearing tribal concerns on the lack of consultation in the past and for addressing these concerns in this policy. We thank you again for the work you have done and look forward to consultation under this new policy.

Thank you.

Sincerely,



Mel R. Sheldon Jr.
Chairman

Cc: TTT BOD
Governmental Affairs, Tulalip Tribes
Lisa M Koop, Tulalip Tribes Attorney