

**Commission on Indian Trust Administration and Reform
Operating Protocols, Approved March 2, 2012**

This document describes the authority, objectives and scope for the Commission on Indian Trust Administration and Reform; its operating structure and how Commissioners will communicate and make decisions. The Operating Protocols are intended to govern the activities of the Commission and to provide guidance to help members achieve the highest level of productive dialogue and viable, consensus recommendations.

I. Authorization

Refer to Commission on Indian Trust Administration and Reform Charter Section 2. Authority

II. Objective and Scope

The objective of the Commission is described in Section 4 Paragraphs E, F, G of the Commission Charter.

The scope of the Commission's activities shall be:

- A. To meet, as a Commission, as described in the Charter Sections 9 and 10.
- B. Review and take into consideration input from the public, interested parties, and trust beneficiaries, received at regional listening sessions and other forums.
- C. To take into consideration comments submitted to the Commission by any subcommittees established by the Designated Federal Officer (DFO).

III. Participation

- A. Participation as members is limited to representatives of the Federal Government, and the individuals selected as Commissioners.
- B. All Commissioners are appointed by the Secretary.
- C. The Secretary will appoint a DFO (5 U.S.C. Appx. § 10(e)). The role of the DFO is described in the Charter Section 8. Additionally, the DFO may propound or approve guidelines providing details for the administration of the Commission's operations.
- D. The consensus of the Commission is determined by those members present at the time of deliberation and decision.
- E. For the purposes of deliberating, consulting with constituents on tentative agreements, and reaching consensus the Commissioners shall represent trust beneficiaries and Federal agencies.

- F. Participation in and effective consensus decision making requires consistent attendance by Commissioners. Commissioners commit to attend as many meetings as possible, and let the DFO know if they are not able to participate.
- G. Any member of the Commission may withdraw from the Commission at any time by notifying the DFO in writing.

IV. Decision-making

- A. The Commission will operate by consensus, defined as concurrence of the members present. A consensus decision at its best is the strongest form of agreement a group can reach. It is an outcome that *all members can support*. However, at a minimum, a consensus agreement may be a compromise that *all members can accept*, “live with” and at a minimum will not oppose. Reaching a consensus decision requires each member to *accept* a proposal, decision or agreement as a whole. They do not have to equally support all component parts. They must concur that it is the best solution possible for the issue(s) in question at this moment in time given the individuals and groups involved and their relationships. Reaching a consensus requires all members to educate each other about the important needs, interests and concerns of those they represent, and develop an integrative solution or agreement that addresses and satisfies both individual and group interests to the greatest extent possible.
- B. Members may choose to “abstain.” Abstention is a non-vote, and therefore does not count for or against consensus.
- C. If a member disagrees with a proposal, he or she should make every effort to offer an alternative satisfactory to all members. Members should not block or withhold consensus unless they have serious objections to the proposal. The goal of the Commission is to reach consensus, recognizing that not all members will be equally satisfied with the outcome. Consent means that members can accept, even if reluctantly, the agreement that emerges.
- D. If a Commissioner is absent from a meeting in which consensus will be deliberated or decided, the absence will be equivalent to not dissenting.
- E. All agreements reached during deliberations are understood to be tentative until the Commission reaches formal consensus. A formal consensus agreement will be considered to have been reached when either the Chair, facilitator or a group member has articulated the proposed agreement, all Commissioners present either verbally or non-verbally affirm their support for it, or at a minimum agree not to actively oppose or subvert it. Once consensus is achieved, the members may not thereafter withdraw their consensus.
- F. On matters of process (agenda setting, changing the agenda, sequencing issues, and other process decisions), should the Commission reach an impasse, the DFO will render a decision to move the proceedings forward.

V. Agreement

- A. The goal of the Commission is to develop a report that reflects a final consensus by the Commission.
- B. If the Commission reaches consensus it will transmit its report(s) to the Secretary. The report(s) will contain the Commission's recommendations to be used by the Secretary to accomplish the duties outlined in Charter Section 4E, F & G.
- C. The Commission will prepare a draft consensus report for the Secretary's review. The Secretary shall have 30 days to review and respond to the draft report, unless the Secretary requests additional time. Commissioners will take the Secretary's comments into consideration when preparing its final report.
- D. On issues where consensus is reached, Commissioners will refrain from opposing or commenting negatively on the consensus-based language.
- E. If the Commission does not reach consensus, members will determine what to report to the Secretary about the Commission's efforts. The Commission, through the facilitator(s), may transmit to the Secretary a report specifying any areas in which the Commission reached agreement, as well as the explanation for the disagreements, a description of the interests that must be satisfied to reach an agreement, and if possible, ways to address the differences. If a non-consensus report is submitted to the Secretary, any Commissioner may include as an addendum to the report additional information, recommendations, or materials.
- F. If the Commission reaches final consensus on some but not all of the issues, the Secretary will consider, to the extent possible, those areas of consensus in any subsequent administrative action and duly consider the dialogue and proceedings generated during the work of the Commission.
- G. Commissioners and stakeholders should keep in mind that the duties of this Commission are solely advisory. While the report(s) generated by the Commission are intended to provide important guidance to the Department in developing policy and regulatory changes, ultimate responsibility for the agency's regulatory and policy structure lies with the Secretary.

VI. Commission Meetings

- A. Commission meetings will be conducted in accordance with the Federal Advisory Committee Act (FACA).
- B. All meetings of the full Commission will be announced in the Federal Register prior to the meeting and will be open to the public. Brief opportunities for oral public comment will be provided at least once during each Commission meeting. The Commission is not expected to respond to these comments during the oral

public comment period. The time and manner of these comments shall be as determined by the DFO. Members of the public will be permitted to file written comments to the Commission through the DFO, before or after meetings. Comments provided to the Commission will become part of the public record.

- C. The DFO is responsible for developing an agenda for all meetings of the Commission that will be distributed ahead of time. This agenda will be developed in accordance with FACA through consultation with the facilitators, the Commission Chair, the Commission, or a subcommittee of the Commission.
- D. Members may request caucuses by and among subgroups of Commission members at any time, with the DFO's concurrence. The facilitators also may request caucuses. No decisions, however, can be reached outside of full and public Commission deliberations.
- E. The Commission, in consultation with the DFO, may form subcommittees or work groups to advance discussion, generate options, and develop preliminary proposals for full consideration by the Commission. Subcommittees or work groups must be created by the full Commission, have a clear charge, and ensure participation of a diversity of interests. A subcommittee or work group is not a decision-making body.
- F. The DFO shall comply with 374 DM 6 prior to agreeing to accept technical assistance in support of the Commission's activities. Upon agreement of the DFO, the Commission may accept technical assistance from representatives of other organizations or may also seek technical assistance from its members' own organizations. Technical advisors have no authority to make decisions on behalf of the Commission, nor can they report directly to the Department of the Interior (DOI).
- G. Commission meeting summaries will be prepared by the facilitators and, after review and approval by the Commission and DFO, will be made available to the public. The summaries will identify points of tentative agreement and final agreement and generally be written without attribution.
- H. The DFO and the Commissioners, with the facilitators, will periodically review and assess the Commission's progress to determine if the process is meeting their needs and the interests of the participants.

VII. Safeguards for Participation

- A. All members must act in good faith in all aspects of the work of the Commission. Members agree that specific offers made in open and candid problem solving conversations will not be used against any other member in future litigation or public relations. Good faith requires that individuals not represent their own personal or Tribe's or organization's or agency's views as views of the entire

Commission, and that the views and opinions they express in the Commission deliberations are consistent with the views they express in other forums.

- B. Members commit to the principles of decency, civility, and tolerance. Members must be willing to envision and shape a positive future for Trust management and administration. Members accept that there are different views (locally, regionally, and nationally) and all members each have a legitimate interest and right to be part of determining the solutions. Commissioners must exercise leadership within their respective constituencies to foster a climate of joint problem solving on the Commission and publicly, engage with their constituencies to keep them informed, and to ensure their constituents support rather than undermine the process.
- C. Each Commissioner is free to speak with the press *on behalf of the Tribe, organization, or agency he or she represents*, but must make it clear in and to the media that his or her comments should not be attributed to the Commission as a whole. Commissioners will not attribute statements to others involved in the Commission, nor seek to present or represent the views or position of other members in or to the media. If the Commission as a whole, and the DFO determine that there is a need to communicate formally with the press, they will designate a spokesperson(s) and/or draft a statement or press release in coordination with the Department's public affairs office. Commissioners agree to not divulge information shared in confidence during the proceedings to the public or media, even if requested. "Media" for these purposes includes: print, television and radio; websites; and any other public information distribution mechanism.
- D. The DFO will ensure compliance with these, Commission on Indian Trust Administration and Reform (Commission) operating protocols.
- E. The Commission and DFO may revisit the operating protocols as needed.
- F. Orderly conduct of meetings.

To ensure that everyone has a chance to be heard and to hear others, the Commissioners and the DFO will:

- Pay attention to speakers and issues being discussed in the meeting, and avoid side conversations,
- Allow people to speak and refrain from interrupting, and
- Be brief and speak to the point.

In order to find creative, innovative solutions, the Commissioners and the DFO will:

- Avoid judging ideas prematurely,
- Look for the need or interest that gives rise to the idea,
- Look for ways to improve proposals, and
- Try to remain open minded.

Some disagreements are inevitable, but they should be focused on the issues involved rather than on the people holding a particular view. Therefore, the Commissioners and DFO will:

- Promote cooperative interactions and avoid competitive behaviors that put down other participants,
- Promote positive behaviors that promote productive discussions and agreement and avoid behavior that is disruptive to the work of the group, and
- Address one another in a respectful manner.

- G. The Commission may recommend to the DFO sanctions for violations of these operating protocols.
- H. Members are expected to attend all meetings and to participate on the Commission in good faith. Commissioners serve at the discretion of the Secretary and he may remove Commissioners unable to fulfill their obligations to serve on the Commission. The Secretary will make every effort to fill the seat to represent that interest within the FACA approval process for membership.

VIII. Additional Roles and Responsibilities

Commissioners and the DFO shall:

- A. Arrive at the meetings prepared to discuss the issues on the agenda, having reviewed the documents distributed in advance.
- B. Share all relevant information with other Commissioners in a timely manner. Members understand that a decision to withhold or not share key information in a timely manner will seriously compromise deliberations.
- C. The progress of deliberations is the responsibility of each Commissioner, the DFO, as well as the Commission as a whole. Should any member be concerned that another member, agency personnel, DFO, or facilitator is in some way impeding progress, the member will raise the concerns in a spirit of helpful, constructive criticism. The goal is to move the deliberations forward.
- D. As a matter of courtesy, Commissioners agree to notify the Chair, and all other Commissioners before initiating any adversarial or legal proceedings that may involve other Commissioners or which could adversely affect deliberations of the Commission. Notification should provide all parties adequate time to consider options, and take appropriate measures to minimize potential adverse impacts on the work of the Commission.

Role of Chair

- A. In coordination with the DFO, open and adjourn the meetings and ensure the Commission makes progress on its agendas.
- B. Assist the DFO and facilitators in the development of agendas and approaches for addressing relevant issues;
- C. Coordination between meetings of issues to be discussed;
- D. Assist the DFO and facilitators of the functioning of the subcommittees

Management Consultant

- A. *To be completed at a future date.*

Role of Facilitator(s)

- A. The facilitator(s) serve at the discretion of the full Commission and the Department of the Interior. The DFO and facilitators are responsible for helping to ensure that the process runs smoothly, developing meeting agendas, preparing and distributing draft and final summaries, generating draft agreements, and helping the members resolve their differences and achieve consensus on the issues to be addressed by the Commission.
- B. The facilitators have no decision making authority and cannot impose any solution, settlement, or agreement among any or all of the members.
- C. The facilitators will abide by the Ethical Standards of the Association of Conflict Resolution. In part, these standards require that: *“The neutral must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by word or by action and a commitment to serve all parties as opposed to a single party.”*
- D. The facilitators may use any number of techniques to help ensure that everyone has the opportunity to speak, that comments are kept to a reasonable length of time, and that subjects under discussion are provided sufficient time and focus for progress.
- E. The facilitators will be available, to the extent schedule and budget allow, to facilitate Commission sessions, caucus deliberations, subcommittee meetings, and/or work groups.
- F. The facilitators will be available to consult confidentially with members during or between meetings. Facilitators, if asked, are required to hold confidences even if that means withholding information that the facilitators would prefer to be made

available to the full group. Confidentiality protections do not extend to threats or reports of criminal action.

- G. The facilitators may engage in shuttle diplomacy among various parties during the deliberations. Within the bounds of the FACA, these deliberations may be conducted in confidence.
- H. Parties are encouraged to express any concerns about the facilitators' role or action: first, to the facilitators directly; or, as needed to: 1) the U.S. Institute for Environmental Conflict Resolution and as appropriate, 2) Commission Chair and the DFO.

IX. Date of Termination

These operating protocols are subject to biennial review and will terminate two years from the date the Commission's Charter is filed unless, prior to that date, the Charter is renewed under the provisions of Section 14(a)(2) of FACA.

X. Consistency

These operating protocols are intended to be consistent with the Commission Charter and all applicable laws and regulations. In the event of any inconsistency or conflict, the statute, regulation, or the Commission's Charter shall govern.