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Department of Interior  
Secretary Salazar  
1849 C Street, NW  
MS 4141-MIB  
Washington, DC  
20240

Dear Secretary Salazar,

The Standing Rock Sioux Tribe's Tribal Historic Preservation Office (SRST-THPO) offers its comments via this letter. The Draft Tribal Consultation Policy contains a numbers of issues that need to be addressed.

### Section III. Definitions

D. Departmental Action with Tribal Implications. The statement defining access to traditional areas of cultural or religious importance on Federally-managed lands needs to be redefined to state access to traditional areas of cultural or religious importance on Federally-managed undertakings or projects. Not all federally managed projects occur on Federally-managed lands. This will bring the Tribal Consultation Policy in line with other existing Federal laws such as the National Historic Preservation Act (NHPA).

*I. Tribal Officials – An elected or duly appointed Tribal leader or official delegate designated in writing by an Indian Tribe.*

Consultation under NHPA requires that federal agencies consult with Tribal Historic Preservation Offices (THPO) if the tribe has assumed such functions. There might be some confusion here in the future on the correct person to contact for a given federal undertaking. Statements need to be included in this section that this tribal official as defined in this consultation policy is in addition to the people that already need to be

contacted under existing and future laws such as NHPA and does not replace them. Additionally, comments need to be included that consultation under this Tribal Consultation policy does not fulfill or meet the requirements of consultation under other existing or future federal and tribal laws or policies.

#### Section V. Communication.

##### First Paragraph.

*Communication methods should avoid impersonal forms of communication...*

Impersonal forms of communications as the third paragraph states that the use of meetings, telephone conversations, written notice or a combination of all three are to be used and this seems to contradict the impersonal form statement. If the tribe requests that meetings are to be held for a given project will the Federal Agency ignore our request as it is stated in the policy that any of the three will suffice. This is unacceptable as it is written.

*A Bureau or Office will identify the participants in the consultation process including the decision makers and the affected Indian Tribes.*

In reference to consultation under Section 106 of NHPA, notifying a Tribal official under this draft policy is not the same as notifying the THPO office that there is a proposed undertaking. As such the Federal Agency would be in violation of Section 106 by only consulting according to this Draft Tribal Consultation Policy.

*Following initial notification of the opportunity for consultation, on-going communications concerning issues affecting Indian Tribes are meant to promote regular consultation.*

If a tribe does not respond to the initial notification or attend a meeting are they excluded from future consultations? This is occurring currently with various Federal Agencies and needs to be addressed and stopped.

#### Section VI. Accountability and reporting.

*On an annual basis, Bureaus and offices shall report to the Secretary the results of their efforts promote consultation with tribes.*

Will the tribes be furnished with a copy of these reports as well for comments and to check for accuracy? The Standing Rock Sioux Tribe Tribal Historic Preservation Office (SRST-THPO) gets numerous reports that state we were consulted when we were not.

What process for grievance will be in place when an annual report generated by a Federal Agency does not match the documents on file with the tribe?

*The Secretary of the Interior will provide an annual report to Indian Tribes and may use the Department's website to share the reporting information where appropriate.*

This statement is very vague. What will this report contain? How does submitting this report via the Departmental website not constitute an informal form of communication which this tribal policy is attempting to avoid? This whole statement needs to be rewritten for clarification.

*Where significant conflict occurs between Indian Tribes and a Bureau or Office in the consultation process, Bureau and Office leaders in conjunction with the Solicitor's Office are encouraged to promote the use of collaborative problem-solving, facilitation, mediation, and other existing processes for conflict resolution as tools to utilize in the consultation process. The following statement needs to be added to this paragraph*

Notwithstanding the current, existing and future laws in place and their recommended resolution process. This policy for tribal consultation cannot in any way shape or form replace the recommended dispute resolutions processes within federal law and the statement provided within the policy is attempting to do that.

#### VIII. Consultation Guidelines.

*Consultation guidelines are meant to establish uniform practices and common standards, that all Bureaus and Offices will use, except when otherwise agreed to in writing by a Bureau or Office and Indian Tribe through an individual protocol conforming with the guidelines in this section.*

Does the replace the guidelines established in Federal Law? Once again, there will be confusion created when a Federal Law dictates that consultation occur in one set way and this policy deviates from that. Lead Federal Agencies will be required to follow the Law but that might contradict what is in this policy.

*Initiating Consultation. If exceptional circumstances prevent notice within 30 days of the consultation, explanation for the abbreviated notification will be provided in the invitation letter.*

Please define exceptional circumstances. Poor planning does not constitute exceptional circumstances. This really needs to be addressed in the definitions category.

*This does not mean that the Bureau or Office has reached a preliminary decision on the issue which is the topic of consultation.*

This is going to be very problematic as it pertains to Section 106 consultation. The tribes are currently one of the last entities consulted with when it comes to consultation under that law. It is far more common to have the lead Federal Agency make a determination of effect on a project and then the tribes are notified even though the Section 106 process clearly states that tribes should be considered consulting parties early in the process. This is almost never done. Hopefully, the Tribal Consultation Policy will address this issue but that is not likely as the Federal Agency will just state they are following the law and the policy even though they are following the law incorrectly.

*In the event that the Bureau or Office makes an attempt to initiate consultation and does not receive a response, the Bureau or Office should make reasonable and periodic efforts throughout the process to repeat the invitation.*

In the Section 106 process we have the opportunity to comment at any stage of the process. Will this policy replace federal laws?

Stages of Consultation 1.

*A Bureau or Office may conduct a meeting or other forms of interaction with Indian Tribes in order to receive and evaluate comments as part of the Initial Planning Stage.*

Who is fiscally responsible for these meetings? Most of the tribes and tribal entities operate on shoestring budgets and cannot afford to attend meeting half way across the country. The location of these meetings will be every bit as important as the meeting itself in terms of successful consultation.

*Proposal Development Stage*

*If litigation or legal requirements impact a Bureau's or Office's schedule for conducting consultation, then the Bureau or Office should explain these constraints to the Indian Tribe.*

How will consultation proceed after this is explained? What options will be in place for additional consultation in these circumstances. As it is written, it just appears that the tribe is just expected to say ok?

*Negotiated Rule Making.*

Please define negotiated rule making.

If the Bureau or Office schedules a single meeting or letter as their part for fulfilling this policy consultation and the tribes feel that a series of meetings would be more appropriate, what happens then? The Bureau or Office has technically completed what they consider to be consultation with tribes according to this policy even though the tribes do not feel the same. What stipulations will be in place for basically ignoring the tribes recommended consultation effort that the Bureau or Office should be conducting for a given project.

*Implementation of Final Federal Action Stage*

*Exigent circumstances may allow the Department to take measures that deviate from this policy, but the Department should make every effort to comply and should explain to Indian Tribes as soon as emergency circumstances arise.*

What would constitute an emergency or exigent circumstance? This sentence implies that the Department can ignore this policy if they believe it falls into an emergency circumstance scenario. If this is the case, will the Department be ignoring its requirements to consult with Tribes under Federal Law as well? This really needs to be clarified.

In conclusion, the SRST-THPO submits its concerns regarding the proposed Draft Tribal Consultation Policy. Please include us in future drafts pertaining to this policy.

Sincerely,

STANDING ROCK SIOUX TRIBE



Waste'Win Young  
Tribal Historic Preservation Officer