Oregon Racing Commission Policy on Consultation with Tribes

Intent/Purpose/Statement of Need
In 2001, The Oregon Legislature adopted ORS 182.162-166. The statute directs state agencies to promote government to government relations with Oregon's Indian tribes. In compliance with the law, the Oregon Racing Commission (ORC) has adopted this policy to include tribes in the development and implementation of agency programs that affect tribal interests. ORC's intent is to maximize inter-governmental relations and collaboration, to resolve potential conflicts, and to enhance the exchange of information, ideas, and resources for the greater good of all Oregonians. ORC recognizes and respects the sovereign status of the Oregon federally recognized Tribes and their respective authorities on tribal lands. The Oregon Racing Commission considers this policy a living, breathing document that will evolve as needed.

Authority
- ORS 182.162-168 Formalizes state agencies relationship with Oregon's Tribes.
- ORS 190.110 Permits state agencies may enter into Interagency and Intergovernmental Agreements.

DEFINITIONS:

Legislative Commission on Indian Services (LCIS): In 1975, LCIS was created by statute to support Oregon Indians and state government when their interests and work affect each other.

State-Tribal Clusters: These State-Tribal groups were established, as an outcome of the first annual LCIS summit in 1997, to improve communication between the State agencies and Tribes. There are 6 groups or clusters that consists of representatives of state agencies and each of Oregon's nine federally recognized tribes:
- Cultural Resources
- Economic Development and Community Services
- Education and Workforce Training
- Health and Human Services
- Natural Resources
- Public Safety and Regulations

The ORC participates in the Economic Development and Community Services cluster.

Tribes: The nine federally recognized Indian Tribes in Oregon, are sovereign nations, with inherent authority over their affairs. Tribes have the right to govern their territory and their internal affairs and have a special relationship with the federal government, which is confirmed, clarified, and upheld in treaties, the U.S. Constitution, Supreme Court decisions and federal statutes. Each Tribe speaks for itself, and their areas of interest are not limited exclusively to individual reservation or trust land.

Oregon's nine federally recognized Tribes:

- Burns Paiute Tribe
- Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians
- Confederated Tribes of Grand Ronde
- Confederated Tribes of Siletz Indians
- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes of Warm Springs Reservation
- Coquille Indian Tribe
- Cow Creek Band of Umpqua Tribe of Indians
- Klamath Tribes

Application
All ORC employees, full time, and part time.

1. Tribal Relations

The individuals in the following roles are responsible for developing and implementing programs of the ORC that affect tribes:

Executive Director
Supervisor – Account Wagering

Account Wagering Supervisor is designated as ORC's Tribal Liaison.

ORC is committed to building and maintaining strong government-to-government relationships with Oregon's nine federally recognized tribes. It is ORC policy that:

- ORC will have an assigned a Tribal Liaison to Tribes.
- Tribal Liaison will develop and maintain key contacts and consult with Tribes to consider and address tribal concerns.
- Executive Director will offer to meet regularly with tribal leaders to consult on tribal interests related to the ORC.
- Tribal relations activities will build on creating and maintaining strong government to government relationships with Oregon's federally recognized tribes.
- ORC is committed to continuously improve communication between the agency and tribal representatives.
- ORC will build positive relationships with tribal leaders, manager, staff, and representatives to understand tribal interests, explore opportunities for greater partnerships and collaboration, and address tribal interests, as much as possible in ORC actions.

The following process will be used to identify the programs of the ORC that affect Tribes.

- Tribal Liaison will seek feedback from ORC about programs that affect or potentially affect Tribes.
- Tribal Liaison will share list of programs with appropriate cluster group for feedback.
- Tribal Liaison will update list of programs as necessary and distribute among staff.
- Contact the tribes to obtain their views on what may impact them.

In addition, ORC will implement the following best practices:

- Tribal Liaison will offer to meet with tribal leaders on a regular basis to build relationships and discuss upcoming issues of interests.
- ORC will ensure that agency managers and staff understand the sovereign authority and self-government of Tribes and their governments and ORC's obligations to consult on a government-to-government basis.
- ORC will provide training about tribal relations to staff who communicate or work with Tribes and their governments.
- The Tribal Liaison will seek furthering education on tribal relations at least annually.
- ORC will maintain tribal contacts on appropriate mailing lists and will request updates to contact information through key tribal contacts.
- ORC will invite Tribes to participate in ORC advisory committees and workgroups of interest.
- ORC will seek to understand programs that may affect Tribal interest through communication with Tribes.
- ORC will ensure inclusion of the Tribes prior to the development of policies and program activities that impact Tribes, utilizing a formal notice that provides descriptive content and a timeline.
- ORC will create opportunities for Tribes to raise issues with ORC and for ORC to seek consultation with the Tribes.
- ORC will consult whenever the Tribes request consultation.
- Once identified, ORC will meet and discuss relevant issues and ORC policies and actions that may impact tribes with the proper tribal representatives
- ORC will consider guidance, when appropriate, from the LCIS~~ORC~~ to establish proper communication channels with Tribes to increase knowledge and understanding of ORC programs.

ORC will disseminate this policy to all staff upon adoption and when updated. This policy will be incorporated into the ORC Policy Manual along with information regarding ORS 182.162 – 168. The Tribal Liaison will distribute an annual reminder to ORC staff regarding the policy.

2. Government to Government Consultation

ORC understands that consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties, which should lead to mutual understanding, collaboration, and partnership. Consultation is integral to a deliberative process that results in effective collaboration and informed decision-making, with the goal of reaching consensus on issues and better outcomes. Consultation should be viewed as a proactive agency action beyond mere notice of pending actions or decisions by the agency. It is designed to afford tribal representatives a reasonable opportunity to communicate the opinions of its members and provide support and/or suggest alternative views or actions by the agency.

Policy

ORC will engage in consultation with all tribes when its decisions or policies may affect Tribes, as identified by the ORC or tribal representatives. These include but are not limited to a decision or policy that:

- Has Indian or Tribal Implications
- Has a possible effect on one or more Tribes
- Has a possible effect on the relationship between the State and Tribes

- Has a possible effect on the distribution of power and responsibilities between the State and Tribes
- Is a federally or statutorily mandated proposal or change in which ORC has flexibility in implementation
- Includes policy development, program activities, rulemaking, or other event that impacts Tribes

If a decision or policy directly affects Tribes but is federally or statutorily mandated with no flexibility in implementation, no consultation will be required; however, the decision or policy will be communicated through updates from ORC to the Tribes. ORC will participate in consultation if requested by a Tribe.

Tribal Consultation Process

An effective consultation between ORC and the Tribes requires trust between all parties, which is an indispensable element in establishing a good consultative relationship. The degree and extent of consultation will depend on the potential impact of the decision or policy with input from the tribes.

Either ORC or a Tribe may identify a decision or policy and initiate consultation. When ORC initiates consultation it will consider the following factors to determine methods for consultation:

- Decision or policy's complexity, implications, time constraints, deadlines, and issues(s).
- How the decision or policy impacts Tribes.
- Determine which Tribes may be affected.

ORC will communicate directly with the Tribal Chairman, Chief, or designated representative regarding the consultation request and the decision or policy. Tribal attorneys shall be notified if ORC has contact information.

The most useful and appropriate consultation mechanism will be determined by ORC and Tribes after considering the policy or decision and its impacts on Tribes. Consultation mechanisms include but are not limited to one or more of the following:

- Mailings, including electronic mail
- Teleconferences
- Video conferences
- Face-to-face
- Roundtable
- Annual meetings

When possible, ORC will initiate consultation within 14 calendar days of identifying the policy or decision that may impact Tribes. The consultation communication will clearly provide affected or potentially affected Tribes, to the extent known or identified by the ORC, with detail of the policy or decision and clear and explicit instructions on the manner and timeframe in which to provide comments. The communication should include, but is not limited to:

- Purpose of the proposal/change and proposed implementation plan
- Anticipated impact on Tribes
- Method for providing comments/questions
- Timeframe for response

Upon response and request from a tribal representative, the ORC shall convene a meeting with the affected or potentially affected Tribes within 30 calendar days of such request. If no request for a meeting

is received within the established deadline (14 days), the ORC will send confirmation of such lack of request to confer, in writing, and provide an additional 3 business days before deeming the consultation requirement, above, satisfied and before proceeding with the subject agency action.

ORC will take the following steps to ensure appropriate communication and transparency:

- Post and maintain electronic information on the agreed upon consultation mechanism on ORC's website.
    - A dedicated section will be maintained on the ORC website for tribal consultation.
- Annually update mailing and email list to ensure communications are being provided to designated leadership. ORC may receive updates from individual tribes or through conferral with LCIS.

Tribal Consultation Performance Evaluation

To effectively evaluate the results of the consultation process and the ability of ORC to incorporate tribal recommendations, ORC will assess its performance on an annual basis in tribal consultation reports.

The ORC Executive Director is ultimately responsible for complying with this policy as part of the duties of that position. Therefore, compliance with this tribal consultation policy will be part of the Executive Director's annual review.

History
Effective: May 11, 2021
Revised January 26, 2022
Revised April 27, 2022

Adopted June 23, 2022

The Oregon Racing Commission will refer to the following web site Legislative Commission on Indian Services web page to determine appropriate tribal contacts or as provided by the tribes.