

Pawnee Nation of Oklahoma

# Government-to- Government Consultation

Statute



PBC Approved June 5, 2021 by Resolution #21-00

## TITLE 1 – GENERAL PROVISIONS

### CHAPTER 1-8 GOVERNMENT-TO-GOVERNMENT CONSULTATION

#### 1-8-1 Purpose

This statute establishes Pawnee Nation Government-to-Government Consultation processes and requirements for official consultation with a) federal agencies, b) states, and c) tribes, and d) other governmental entities involving policies and issues affecting the welfare, safety and security of the Pawnee Nation and its citizens. This statute is intended to apply when consultation is requested by a party, or the Pawnee Nation requests consultation. It is the purpose of this statute to ensure that meaningful Government-to-Government consultation is made with free, prior, and informed consent of the Pawnee Nation through its appropriate Tribal official(s).

#### 1-8-2 Scope of Consultation

This statute applies whenever core rights and vital interests of the Pawnee Nation of Oklahoma are affected, including when:

- (a) the Pawnee Nation requests consultation on any matter covered under this statute with any Federal Agency,
- (b) major technical, legal, and/or policy issues are raised or at issue,
- (c) the implementation of the National Environmental Policy Act, (NEPA) is initiated,
- (d) the implementation of the National Historic Preservation Act has triggered a “106 Review,”
- (e) the Pawnee Nation requests consultation with a state, other tribe, or government entity,
- (f) consultation is required to ensure access or protection of Pawnee religious sites so tribal members may practice their traditional religions under the American Indian Religious Freedom Act or other federal or international law,
- (g) prior approval by the Pawnee Nation is required before permitting excavations under the Archeological Resources Protection Act of 1979,
- (h) any action affects a particular property of religious, historical, and/or cultural significance to the tribe that is protected under the National Historic Preservation Act, including the treatment and disposition of specific kinds of human remains, funerary objects, sacred objects, and other items,
- (i) the Indian Self-Determination and Education Assistance Act mandates consultation for specific actions taken by the Department of the Interior (DOI) and the Indian Health Service,
- (j) the National Environmental Policy Act (NEPA) requires agencies to contact Indian tribes early in the development of environmental assessments or environmental impact statements for any projects that may impact tribal interests, and
- (k) other proposed action constitutes an adverse action against the sovereignty, jurisdiction, and treaty rights of the Pawnee Nation, the human rights of its people, or other rights secured to them by tribal, federal, state, or international law.

#### 1-8-3 Definitions

- (a) “Consent” means free, prior, and informed permission or agreement within the meaning of the United Nations Declaration on the Rights of Indigenous People

- (b) “Consulting party” means the Pawnee Nation or any party seeking consultation with the Pawnee Nation.
- (c) “Cultural Properties” means anything associated with cultural practices or beliefs of the Pawnee Nation which are rooted in the Pawnee Nation’s history and are important in maintaining the continuing cultural identity of the Pawnee Nation.
- (d) “Government-to-Government Consultation” means the process under which the Pawnee Nation acting through the Pawnee Business Council or the duly authorized President, Department, Division, or Office officially has engaged in substantive and meaningful communication and/or collaboration and participation, in furtherance of the principles of developing programs and policies that benefit the Pawnee Nation, its citizens which promotes enhanced communication that emphasizes trust, respect, and shared responsibility with the consulting party.
- (e) “Federal agency” means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government.
- (f) “Free” means voluntary and in the absence of coercion, outside pressure, intimidation, or manipulation.
- (g) “Informed” means having all relevant information reflecting all views and positions. This includes the input of traditional elders, spiritual leaders, traditional subsistence practitioners and traditional knowledge holders, with adequate time and resources to find and consider information that is impartial and balanced as to potential risks and benefits.
- (h) “Pawnee Nation or Tribe” means the Pawnee Nation of Oklahoma.
- (i) “Pawnee Business Council” means the governing body of the Pawnee Nation.
- (j) “President” means President of the Pawnee Business Council.
- (k) “Prior” means a process taking place before any decision is made by the consulting party that allows (1) with sufficient lead time for the information gathering, sharing, and evaluation to take place according to the decision-making processes provided by the Pawnee Nation, (2) meaningful discussions between authorized representative(s) and decision maker(s) of the Pawnee Nation and the consulting party, and (3) consultation processes proscribed in this statute.
- (l) “Proposed action” means a consulting party’s proposed action which impacts the welfare, safety or security of the Pawnee Nation and its citizens or other core rights or vital interests covered by this statute.
- (m) “UTM” means Universal Transverse Mercator.

#### 1-8-4 Background and Intent

- (a) The Pawnee Business Council has determined that the interests of the Pawnee Nation are best served by instituting protocols that will strengthen the relationships between the Pawnee Nation and other sovereigns.
- (b) It is the intent of the Pawnee Business Council to institute consistent and specific processes and protocols to provide for meaningful collaboration and mutual effective decision-making.
- (c) It is in the public interest to put all consulting parties on notice of the process and protocols which must be followed under tribal law to have meaningful Government to Governments consultations with the Pawnee Nation on issues and interests covered by this statute.

#### 1-8-5 Guiding Principles

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Consultation operates at both policy and technical levels through which the consulting parties develop a common understanding to formulate a decision and ensure that it is based on meaningful consultation on matters covered by this statute.

#### 1-8-6 Objectives of Consultation

The objectives of consultation are to:

- (a) ensure that the Pawnee Business Council understands the technical and legal issues necessary to make informed policy decisions under this statute,
- (b) ensure federal compliance with trust obligations as well as other applicable federal laws and policies affecting tribal rights, resources, culture, religion, subsistence, and commerce in the Pawnee Nation tribal cultural landscape,
- (c) improve policy level decision-making of the Pawnee Business Council and the federal government,
- (d) achieve bilateral decision-making between sovereigns,
- (e) ensure the protection of tribal resources, cultural properties, religious freedom, health, and economic welfare,
- (f) ensure compliance with tribal laws and policies,
- (g) ensure free, prior, and informed consent before any tribal interests covered by this statute are affected or the integrity of the Pawnee Nation's water, land, resources are threatened, and
- (h) improve the integrity and reliability of federal-tribal decisions and strengthen the Government-to-Government relationship between the United States and the Pawnee Nation of Oklahoma.

#### 1-8-7 Establishment of Point of Contact

- (a) The President of the Pawnee Business Council shall be the official point-of-contact for Government-to-Government consultation. The President may designate as a point-of-contact a person or department of the Pawnee Nation for routine, technical, or other recurring issues and may delegate tasks required by this enactment.
- (b) The Pawnee Business Council may designate an alternate point-of-contact.

#### 1-8-8 Consultation Process

The Pawnee Business Council hereby establishes the following process for covered Government-to-Government consultations.

- (a) Standing to Consult: The Pawnee Nation shall only enter into Government-to-Government consultation over covered issues or interests with duly authorized governmental representatives and officials authorized to make decisions on the subject matter of the consultation.
- (b) Notice requesting consultation: Before scheduling any consultation, the consulting party shall give the President of the Pawnee Business Council, thirty (30) days after receipt by the point-of-contact of notice requesting consultation.
- (c) Requirements of the Notice: The consulting party's notice requesting consultation shall provide the President its contact's name, title, address, email address, phone number, email address, the

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scope and purposes of the consultation, and any anticipated or proposed action including identifying all issues that may impact the Pawnee Nation.

- (d) Information and Background: Within 30 days of notice requesting consultation, the consulting party shall submit to the President a briefing paper that discusses the reasons for proposed action, any proposed memorandum of agreement, and any written statements, documents, maps, and UTM coordinates regarding the scope of the project.
- (e) Submission of information to consulting party: The President shall have 30 days after receipt of the consulting party's briefing paper and documents, to submit any information the Pawnee Nation requests it to consider.
- (f) Discussion: At the election of the President, the consulting party and the Pawnee Nation shall have direct one-on-one meetings including face to face, telephone, and internet meetings with the duly authorized governmental representatives and officials authorized to make decisions to ensure both parties have a free and informed understanding of the issues, proposed actions, and their consequence.
- (g) Decision and Recommendation: Within 30 days after discussion between the parties concludes as determined by the President, the Pawnee Business Council shall provide its decision and recommendations on the consulting party's proposed action.
- (h) Delegated consultation: The President may delegate to a designated a point of contact the authority to respond to a notice of consultation and waive any protocol for routine, technical and routine matters.
- (i) Nasharo Council: The President shall refer to the Nasharo Council issues identified in the Pawnee Nation Constitution that require Nasharo Council review and approval.

#### 1-8-9 Opt-in and Opt-out provision for non-covered interests and issues.

- (a) This statute recognizes that duly authorized Pawnee Nation officials often receive numerous consultation requests in the normal course of work which can routinely be addressed by tribal staff without invoking the process and protocols prescribed by this statute. In such instances, by delegation of authority, the President may waive, in part or in whole of the processes and protocols required by this statute.
- (b) After consulting with their supervisors and the President, tribal staff may invoke the consultation requirements prescribed by this statute, whenever it appears that that a consultation request may require this statutory process in order to the protect the core issues and vital interest of the Nation covered by this statute.

#### 1-8-10 Failure to Comply.

- (a) All purported consultations done in violation of this statute are invalid, void ab initio, and a nullity.
- (b) Any person violating this statute is prohibited from (1) relying upon invalid consultation attempts for any purpose, and (2) asserting or representing to any person, entity, or court that it conducted a meaningful government-to-government consultation with the Pawnee Nation or asserting that it obtained the Pawnee Nation's informed consent for any purpose.

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