

EXECUTIVE ORDER NO. 2005-003

ADOPTION OF STATEWIDE TRIBAL CONSULTATION POLICY ON THE PROTECTION OF SACRED PLACES AND REPATRIATION

WHEREAS, the State of New Mexico and Tribes, Pueblos, and Nations within New Mexico recognize and respect the other's sovereignty;

WHEREAS, the New Mexico Constitution recognizes the sovereign authority of Tribes, Pueblos, and Nations in New Mexico under Article XXI, Section 2;

WHEREAS, the State of New Mexico's actions may have the unintended and inadvertent result of disturbing and adversely impacting Native American cultural and historic sites and sacred places, requiring a process of consultation to avoid any irreplaceable loss;

WHEREAS, the preservation, disposition and repatriation of Native American ancestral human remains, cultural items and cultural property displays respect for ancestral remains, promotes tribal patrimony and preserves the historical, ancestral and cultural heritage of Native Americans and the State of New Mexico;

WHEREAS, the State of New Mexico and the public benefit from protecting and preserving Native American historic and cultural sites and sacred places;

WHEREAS, consultation is critical and necessary to ensure that the State and Tribes, Pueblos, and Nations of New Mexico are better able to adopt and implement policies and programs in a manner that is cognizant of the other sovereign's concerns and interests; and

WHEREAS, the careful consideration of the preservation, disposition, and repatriation of Native American human remains, cultural items, cultural property and the protection of sacred places when undertaking governmental agency action is consistent with applicable provisions and requirements of state and federal mandates. See, e.g., New Mexico Cultural Properties Act, NMSA 1978, Section 18-6-8.1; New Mexico Cultural Properties Protection Act, NMSA 1978, §§18-6A-1 to -6; New Mexico Prehistoric and Historic Sites Preservation Act, NMSA 1978, §§ 18-8-1 to -7; Native American Graves Protection and Repatriation Act, 25 U.S.C. §3001 *et seq.* (1990); National Historic Preservation Act, 16 U.S.C. §470 *et seq.* (1966); Archeological Resources Protection Act of 1979, 16 U.S.C. §470aa (1990); American Indian Religious Freedom Act of 1978, 42 U.S.C. §1996 (1978); National Environmental Policy Act, 42

U.S.C. §4321 *et seq.* (1969); Exec. Order 13,007, 6 Fed. Reg. 26,771 (1996); and Exec. Order 13,175, 65 Fed. Reg. 67,249 (2000).

NOW THEREFORE, I, Bill Richardson, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and the Laws of New Mexico, do hereby direct the following executive agencies to present to me a jointly proposed tribal consultation policy on the protection of sacred places and repatriation no later than thirty (30) days after the date of this Executive Order:

- 1) Energy, Minerals and Natural Resources Department;
- 2) Environment Department;
- 3) Department of Cultural Affairs;
- 4) Department of Game & Fish;
- 5) General Services Department;
- 6) Office of the State Engineer;
- 7) Interstate Stream Commission; and
- 8) Department of Transportation.

I FURTHER DIRECT that the tribal consultation policy be prepared in accordance with the following terms and conditions:

- 1) The above-listed agencies shall communicate, confer and consult with authorized representatives of tribal governments in the preparation of the proposed policy;
- 2) The policy shall contain an effective consultation process that provides for meaningful and timely input by authorized representatives of tribal governments before the agency takes a major state action;
- 3) The policy shall contain procedures for assessing the potential cultural, social, and physical impact of the agency's plans, projects, programs and activities for major state actions and a mechanism for initiating tribal consultation, including adequate notification requirements;
- 4) The policy shall direct consultation participants to identify methods for addressing the discovery, treatment, care, preservation, disposition or repatriation of Native American ancestral human remains, cultural items and cultural property and access to sacred places, consistent with applicable state and federal laws;
- 5) The policy shall set forth the kind of information that the agency must convey to the tribe/pueblo in the context of consultation;
- 6) The policy shall include provisions regarding the protection of sensitive and sacred information, consistent with state legal requirements;

- 7) The policy shall specify methods for giving notice to the general public, Tribes, Pueblos, and Nations about the policy's existence, including publication of the policy on the agency's website; and
- 8) The Department of Indian Affairs shall serve as an adviser to the above-listed agencies and shall provide assistance and advice in the development of the policy.

THIS ORDER supersedes any other previous orders, proclamations, or directives in conflict. This Executive Order shall take effect immediately and shall remain in effect until such time as it is rescinded by the Governor.

ATTEST:

DONE AT THE EXECUTIVE OFFICE
THIS 1st DAY OF FEBRUARY, 2005.

REBECCA VIGIL-GIRON
SECRETARY OF STATE

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO

BILL RICHARDSON
GOVERNOR