I. Introduction

The Minnesota Department of Iron Range Resources and Rehabilitation (IRRR) recognizes and understands that the United States and the State of Minnesota have a unique legal relationship with federally recognized Tribal Nations, as affirmed by the Constitution of the United States, treaties, statutes, and case law. The State of Minnesota is home to eleven federally recognized Tribal Nations ("Minnesota Tribal Nations") with elected or appointed Tribal Governments. Four of the Minnesota Tribal Nations are fully or partially located within the Taconite Assistance Area (TAA) as defined under Minn. Stat. Sec. 273.1341, which is the geographic service area of the IRRR. These four Tribal Nations ("identified Tribal Nations") are: Bois Forte, Fond du Lac, Grand Portage and Leech Lake.

The State of Minnesota recognizes and supports the unique status of the Minnesota Tribal Nations and their right to existence, self-govern, and possess self-determination. IRRR recognizes that although the State of Minnesota is not a party to the treaties that established these inherent rights, I

The State acknowledges that Minnesota Tribal Nations are comprised of a majority of the State’s 108,000 American Indians and provide significant employment in the State. Members of the Minnesota Tribal Nations are citizens of the State of Minnesota and possess all the rights and privileges afforded by the State.

The State of Minnesota and the Minnesota Tribal Nations significantly benefit from working together, learning from one another, and partnering when possible.

Meaningful and timely consultation between the IRRR and the Minnesota Tribal Nations located fully or partially within the TAA will facilitate better understanding and informed decision making by allowing for collaboration on matters of mutual interest and help to establish mutually respectful and beneficial relationships between the IRRR and Minnesota Tribal nations.

The IRRR has developed the following policy for consultation, coordination and cooperation with each of the four Minnesota Tribal Nations located within the IRRR’s TAA service area. Nothing in this policy constitutes a waiver and shall not be construed to be a waiver of any Tribal Nation’s rights to participate in any state, federal or local rulemaking, litigation, agency hearing or permitting process, legislative deliberations or hearings, nor is the IRRR authorized to represent any Tribal Nation’s position on a matter that was the subject of consultation without the prior consent of the Tribal Nation.

II. Policy

The IRRR will consult with the four Minnesota Tribal nations within its service area prior to September 1st of each year to allow each Tribal Nation to provide input and identify issues that the agency should consider and develop as part of the agency’s budget and legislative agenda for the upcoming year.
The IRRR will also consult on a government-to-government basis with the four Minnesota Tribal Nations within its service area when IRRR actions and decisions may directly affect tribal interests. Consultation is a process of meaningful communication, coordination and cooperation between IRRR and tribal officials prior to IRRR taking actions or implementing decisions that may directly affect or impact a Tribal Nation.

This policy establishes guidelines and institutional controls and seeks to strike a balance between providing sufficient guidance for purposes of achieving consistency and predictability while allowing for, and encouraging, the tailoring of consultation approaches to reflect the circumstances of each consultation situation and to accommodate the preferences of tribal nations.

The consultations that will result from the implementation of this policy are not intended to preclude or replace the existing, on-going and future meetings, communications and exchanges of information and input that occur between the IRRR staff and Tribal Nations that are expected to continue on a regular basis. The main differences between consultations and more routine communications are that consultations include formal steps to identify the issue(s), notify parties and develop a record of the process. This stepwise process allows time and opportunity to learn and understand as well as provide input into a decision that has not yet been made.

III. Consultation Process

A. When Consultation Occurs

Consultation should occur early enough to allow a Tribal Nation the opportunity to provide meaningful input that can be considered prior to IRRR deciding whether, how, or when to act on the matter under consideration. As proposals and options are developed, consultation, coordination and cooperation should be continued, to ensure that the overall range of options and decisions is shared and deliberated by all concerned parties, including additions or amendments that occur later in the process.

Consultation may be initiated by IRRR through written notification to a Minnesota Tribal Nation located within the IRRR’s service area or may be requested by any of the Minnesota Tribal Nations located within the service area through a written request to the IRRR from a Tribal Official. Notifications for consultation should occur between the Designated IRRR Tribal Liaison and the Tribal Official as identified in section C.

B. How Consultation Occurs

There is no single formula for what constitutes appropriate consultation, and the planning and implementation of consultation should consider all aspects of the action under consideration.

The Consultation process consists of four (4) steps: Identification, Notification, Input, and Follow-up.

1. Identification – IRRR or the Tribal Nation identify activities or issues that may be appropriate for consultation. Identification should include a determination of the complexity, implications and resource constraints of the activity, as well as identification of the potentially affected Tribal Nation.

2. Notification – One party notifies the other party of its desire to hold a consultation. Any notification from the IRRR should include sufficient information for the Tribal Nation to make informed decisions about participation and how to provide informed input.
3. Input - The requesting party provides input to the other party on the consultation matter. This can occur in a number of ways, including meetings, written and oral exchanges of information, phone calls, or other ways depending on the specific circumstances. Subsequent rounds of consultation may need to take place in order to be responsive to Tribal Nation needs, to provide sufficient opportunity to provide, receive, and discuss input, and as new issues arise.

4. Follow-up – The IRRR will work together with the Tribal Nation to build a written record of the consultation. The IRRR will strive to provide a record of consultation meeting topics and the discussion surrounding those topics. This record will be provided to the consulting Tribal Nation for review. The IRRR will include any clarifications or corrections in the final notes for the record.

Consultation input and follow-up will be informal, tribal staff to IRRR staff, unless a Tribal Nation or the IRRR believes that consultation regarding a specific topic is not productive. In such case, a Tribal Chair or Official or the IRRR Tribal Liaison may provide a written request to the other party requesting that formal consultation occur for a specific topic.

The consulting Tribal Nation or the IRRR may invite another party to the consultation if both the Tribal Nation and the IRRR are in agreement.

C. Roles and Responsibilities

1. IRRR Tribal Liaison – The IRRR Commissioner shall designate an IRRR employee as the agency’s Tribal Liaison. Responsibilities include coordination and implementation of Tribal Nation consultation in accordance with this Policy. The Tribal Liaison has the authority for identifying and defining IRRR actions appropriate for consultation, evaluating the adequacy of that consultation, ensuring that IRRR program and consultation practices are consistent with this Policy, and is responsible for ensuring that a written record of the consultation is maintained. The Tribal Liaison will identify the specific IRRR staff who will participate in the consultation and will have a direct line of communication with the IRRR Commissioner, Deputy Commissioner, and other senior-level staff, in order to appropriately conduct government-to-government communications.

2. Tribal Official – The Tribal Official is an elected, appointed or Designated Consultation Official. Each Tribal Nation will determine their own roles and responsibilities within the consultation process, as defined by their individual policies and procedures.

By: ____________________________
Mark R. Phillips, Commissioner

Dated: September 30, 2019