




Secretary of Transportation

Number: E 1025.01

February 19, 2009

Tribal Consultation

I. Introduction

A. Purpose

This Secretary's Executive Order reaffirms the commitment of the Washington State Department of Transportation (WSDOT) to provide consistent and equitable standards for working with the various tribes across the state. We recognize that each federally recognized tribe is a distinctly sovereign nation. Our goal is to create durable intergovernmental relationships that promote coordinated transportation partnerships in service to all of our citizens. More information on specific consultation procedures is available in the WSDOT Centennial Accord Plan.

B. Supersession

This supersedes the Secretary's Executive Order with the same title dated February 19, 2003.

C. What Has Changed

Clarified that Tribal Consultation is independent of the public participation process; tribal members have equal access to the public process. Clarifies identified roles and responsibilities. Responsibility to maintain a log of contacts is added.

II. Executive Order

WSDOT employees are directed to enter into Tribal Consultation as outlined in this Secretary's Executive Order with tribes who have ancestral homelands within the state boundaries, including those having reservations located outside of the state, on all decisions that may affect tribal rights and interests.

Consultation means respectful, effective communication in a cooperative process that works toward a consensus, before a decision is made or an action is taken. WSDOT is committed to government-to-government consultation with tribes on actions that affect identified tribal rights and issues. Consultation means more than simply informing affected tribes about what the department is planning to do. Consultation with governments occurs independently of the public participation process. Representatives of tribal governments and tribal members have equal access to the public participation process.

WSDOT acknowledges that consultation is a process, not a guarantee of agreement on outcomes. While dedicated to implementing constructive consultation practices, the department hopes to go beyond issue-specific consultation. The goal is to achieve mutually beneficial priorities, programs and interests.

Given the number of tribes, the extent of tribally reserved rights, and the size and the complexity of WSDOT, the department may not be able to identify in advance all issues that may be appropriate subjects for Tribal Consultation. However, as appropriate issues are identified, WSDOT will begin the consultation process.

III. Responsibilities

A. Tribal Liaison Responsibilities

1. The Headquarters Government Relations Office Tribal Liaison (HQ Tribal Liaison), and the Regional / Office Tribal Liaisons and Coordinators (Region Tribal Liaisons) are responsible for assisting tribes and the department with implementing effective government-to-government relations. The HQ Tribal Liaison regularly coordinates with the Region Tribal Liaisons.
2. The HQ and Region Tribal Liaisons provide tribes with a point of contact within the department and help tribes gain access to the appropriate staff to assist in understanding the department's programs, policies and procedures.
3. The HQ and Region Tribal Liaisons assist the department in understanding tribal issues, making contacts, initiating consultation, and by promoting on-going coordination with tribes.

4. The HQ and Region Tribal Liaisons are available to facilitate meetings, negotiate intergovernmental agreements on behalf of the department and Secretary, and help reconcile differences between the department and tribal governments.
5. There are many opportunities for consultation and communication. Operational activities will be conducted between appropriate department staff and tribal employees, with notification of meetings made to the appropriate HQ or Region Tribal Liaisons.
6. Official government-to-government consultation will be conducted between the Secretary or the Secretary's designee and the Tribal Council, with notification made to the HQ Tribal Liaison. The HQ Tribal Liaison will coordinate communications with Regional Administrators, Region Tribal Liaisons, and other appropriate WSDOT staff.
7. The HQ Tribal Liaison will strive to reply to tribal requests for state comments and consultation on tribal actions in a timely manner and coordinate communications with appropriate WSDOT program staff, Regional Administrators, and Region Tribal Liaisons.

B. Employee Responsibilities

1. Employees will notify the HQ Tribal Liaison and Region Tribal Liaisons and establish appropriate lines of communication with Division Directors, or Regional Administrators and staff, of any contact or consultation with tribal leadership to ensure central continuity in all activities. In addition, employees will maintain a record of all contact and consultation with tribal governments and make them available to the HQ Tribal Liaison on request.
2. Employees will be proactive in consulting with tribes on all pending decisions that may affect identified tribal rights and interests.
3. As issues with tribal implications occur, employees will cooperatively establish the manner and time frame for consultation with the appropriate tribal governments and keep the HQ Tribal Liaison and Region Tribal Liaisons informed.

4. When a rule or policy process is planned that may affect tribal rights and interests, employees will invite interested tribes to consult on a government-to-government basis, while at the same time encourage tribal participation as key members of any planned advisory group.
5. Employees will be receptive to all requests from tribal governments for intergovernmental consultation on actions, policies and issues within the department's authority.
6. Employees will provide the HQ Tribal Liaison with drafts of agreements for review to ensure consistency across the state. Agreements may include Memoranda of Agreement (MOA), Memoranda of Understanding (MOU), and contracts.

IV. Additional Resources and Authorities

A. Unique Legal Status of Tribes

The unique legal status of tribes, rights reserved through historic treaties, and cultural interests throughout the state, creates a unique relationship between tribes and WSDOT. Tribes maintain sovereignty rights that predate the formation of the United States and the State of Washington and are guaranteed under treaties and federal laws. Since 1924, tribal members have been citizens of the United States and the State of Washington. Due to federal laws affirming tribal sovereignty, each reservation in the state constitutes a bordering jurisdiction for state agencies. WSDOT actions outside reservations may affect the tribes and the residents of reservations, just as the actions within reservations may affect the state and its citizens.

B. 1989 Centennial Accord

This Secretary's Executive Order is based on the *Centennial Accord Between The Federally Recognized Indian Tribes In Washington State And The State Of Washington* of 1989. The *Centennial Accord* is published on the Intranet by the Governor's Office of Indian Affairs at <http://www.goia.wa.gov/govtogo/centennial.html>.

C. 1999 Implementation Guidelines

This Secretary's Executive Order is also based on the *Washington State/Tribal Government-to-Government Implementation Guidelines* of 1999. These guidelines were determined by a combined tribal and state taskforce, and are published on the Intranet by the Governor's Office of Indian Affairs at <http://www.goia.wa.gov/govtogov/guidelines.html>. That document's "Key Principles of Government-to-Government Policy" and "Guiding Principles of the Consultation Process" are excerpted here:

Section I, Item C: "Key Principles of Government-to-Government Policy"

"The State of Washington and the federally recognized tribes within the state have committed to improving and maintaining effective government-to-government relations. The state and tribes acknowledge that while successful intergovernmental communication and cooperation is not a guarantee of agreement on every issue, it will ensure a durable, effective working relationship to the benefit of all of the citizens of Washington State. Toward this goal the state and tribes will:

- "Work directly with each other in a government-to-government fashion, rather than as subdivisions of other governments.
- "Take appropriate steps to remove legal and procedural impediments to working directly and effectively with each other's governments and programs.
- "Endeavor to assure that each other's concerns and interests are considered whenever their actions or decisions may affect the other's governments or programs.
- "Encourage cooperation between tribes, the state and local government to resolve problems of mutual concern.
- "Work with federal agencies that have related responsibilities.
- "Incorporate these Principles into planning and management activities, including budget, program development and implementation, legislative initiatives, and ongoing policy and regulation development processes.
- "Coordinate and provide mutual assistance as the governments assume new regulatory and program management responsibilities."

Section II, Item A: “Guiding Principles of the Consultation Process

“The Centennial Accord (signed in 1989) and the New Millennium Agreement (signed in 1999) establish the basic framework and provide the general foundation for tribal/state relations. However, at the 1999 Tribal/State Summit held in Leavenworth, Washington, tribal and state elected officials agreed that a well-delineated communication process was needed in order to provide for a structure to “operationalize” the Accord into a day-to-day working relationship. In order to promote successful consultation and collaboration between tribal governments and the state, the following guiding principles should be followed:

1. **“Commitment to Consultation.** The state and tribes, and their agencies and departments, commit to consulting with each other on matters that directly affect the other.

2. **“Communication and consultation is a two-way street.** Communication between tribal governments and state agencies should be direct and involve two-way dialogue and feedback. Face-to-face meetings between the appropriate tribal and state policy and/or technical level staff can increase understandings of any proposed actions and enhance the development of effective outcomes and solutions. While face-to-face meetings are generally desirable, phone calls, correspondence and other methods of communication should also be utilized.

3. **“Build upon already established and on-going relationships between tribal/state officials.** Formation of specific actions, policy and program development can be more productive if conducted within the framework of an on-going relationship. Additionally, since consultation may demand significant use of time and resources of many individuals, this on-going relationship will assist in best utilizing these resources for all parties.

4. **“State governments are assuming greater responsibility under the federal government’s policy of increased “devolution” of programs.** “Devolution” is the delegation of authorities or duties to a different level of government. Before the delegation of these programs, the tribes worked directly with the federal administrators on issues of concerns to them. The tribes have continuing interests in many of these delegated programs, and the tribal interests should be considered in the administration of these programs by the state.

5. ***“Issues that require consultation should be identified as soon as possible in order to involve both parties early on in the process.*** The need for consultation and who makes the determination may be difficult to define in all cases and will vary among the governments. Consultation can be initiated by either a tribal government or state agency. As a general rule, any decision or action which would directly impact or involve tribal governments, its land base and/or operation of its programs requires consultation with those tribal governments. To ensure sufficient time for input before decisions are made and actions taken, requires early involvement of all parties affected by those actions.
6. ***“State/Tribes should make every effort to respond to and participate in the consultation process.*** State/Tribal governments should strive to ensure that appropriate communication and response is provided to any request for consultation. If there is no response to an initial request to engage in consultation, it should not be assumed that the state or tribes have no interest in participating in this process. State/Tribal governments and organizational structures will vary. Good faith efforts should be undertaken to involve affected governments.
7. ***“Parties should ensure that consultation occur through the interaction of officials with comparable governmental stature and authority.*** In order to maintain the government-to-government relationship, tribes and state agencies are encouraged to send policy officials to represent those interests which require joint final decision-making on key policy issues. However, tribes or state agencies may identify program and/or technical staff to attend meetings when appropriate, depending on the nature of the issue, and where similar representation is anticipated.
8. ***“Honesty and integrity must be maintained by all parties in the consultation process.*** Mutual respect and trust are fundamental elements in establishing a good consultative relationship. Tribal and state officials should be open with information that may be beneficial or critical to making a decision or developing a position.”



Americans with Disabilities Act (ADA) Information

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- Office of Equal Opportunity (OEO) at (360) 705-7097.
- Persons who are deaf, hard of hearing, or speech disabled may contact OEO through the Washington Relay Service at 7-1-1.