

## DEPARTMENT OF NATURAL RESOURCES TRIBAL GOVERNMENT CONSULTATION POLICY

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This Policy broadly defines provisions for enhancing the Washington State Department of Natural Resources' (DNR) consultation processes, including communication, consultation, coordination and partnership with Federally Recognized Tribal Governments. This Policy is in addition to and is not intended to alter or amend DNR's responsibilities under existing laws, court orders or rules that guide consultation with Indian Tribes.

The principles guiding this Policy include:

- Respecting the sovereignty and self-governance of each Federally Recognized Tribe;
- Protecting Tribal rights and respecting Tribal rights to resources within ancestral homelands and their fishing, hunting and gathering areas;
- Following the government-to-government relationship under RCW 43.376.020;
- Implementing first and often consultation throughout the process;
- Enhancing communication and coordination, and improving meaningful State-Tribal relations;
- Promoting Tribal input into DNR decision-making processes;
- Providing information early to allow for timely Tribal involvement in the design of a process or action implicating Tribal interests;
- Promoting transparency and encouraging Tribal participation; and
- Recognizing that individual Tribes may have preferred consultation protocols, which should be deferred to in the consultation process.

This policy applies to DNR interactions with Federally Recognized Tribes located in, or with rights in, Washington State. This Policy does not supersede any state-wide consultation policies or procedures, or those developed with individual Tribes, nor does it replace individual DNR-Tribal memoranda of agreement, consultation plans, or other specific agreements between DNR and a Tribe or Tribes.

This policy builds on the existing [Commissioner's Order on Tribal Relations](#) (September 10, 2010). This policy provides guidelines and expectations for DNR employees to consult and coordinate on a government-to-government basis with Federally Recognized Tribes when a proposed DNR policy, agreement or program implementation may affect Tribal interests. DNR may coordinate with Federally Recognized Tribes on individual permit decisions, particularly when there is a known Tribal interest, and will honor Tribal requests for coordination and/or consultation. This Policy does not apply to specific DNR civil or criminal enforcement of statutes and regulations.

For more information on the implementation of this Policy, visit <https://www.dnr.wa.gov/about/tribal-relations>

## **Policy on Communicating, Consulting, Coordinating and Partnering with Tribal Governments**

*Tribal Nations are partners to the Washington State Department of Natural Resources (DNR) in stewardship and management of our shared public lands, waters, and resources. DNR recognizes that this partnership is situated within the context of a history of colonization and decisions and actions by the State which have and continue to harm Tribal communities and their traditional practices of resource management and their access to and exercise of Tribal rights and resources. This policy is written in an effort to foster mutual respect, and establish regular and meaningful consultation and collaboration with Tribal officials in the development of State policies that have Tribal implications. DNR seeks to strengthen the government-to-government relationship with Tribes that share territory with and have interests in Washington State.*

1. The Department of Natural Resources will consult on a government-to-government basis with Federally Recognized Tribal Governments when proposed DNR policies, agreements or program implementation may affect Tribal interests.

a. This Consultation Policy implements the Washington Governor's Centennial Accord and Millennium Agreement that establishes the foundation for State/Tribal relations, and Chapter 43.376 RCW, which sets forth state agency duties for implementing government-to-government relationships with Tribes that have shared territory and interests within Washington State.

b. Consultation shall be conducted in good faith and with respect.

i) Department staff will endeavor to understand a Tribe's sovereign and inherent rights, including reserved rights and Tribal treaty rights, treaty resources, Tribal data, and Tribal priorities, perspectives, challenges and constraints.

ii) Department staff will endeavor to explain DNR's role, interests, and objectives.

iii) DNR will work with Tribes to identify solutions that are mutually beneficial and do not negatively impact Tribal sovereign and inherent rights, Tribal treaty resources, and Tribal interests.

iv) Communication between Department staff and Tribal Governments will be direct and involve two-way dialogue and feedback.

c. Tribal consultation will occur at the earliest possible point in the process, particularly when decisions may have a significant impact on Tribes, would have a substantial compliance cost, or may result in a new or changed policies.

2. Tribal Consultation is distinct from DNR's community engagement and public participation processes.

a. Community engagement including, but is not limited to the following:

i) Board of Natural Resources and Forest Practices Board meetings;

ii) Commissions, Committees, and Advisory Group meetings,

- iii) Rulemaking hearings;
- iv) SEPA public comment periods; and,
- v) HEAL Act related engagement of highly impacted and overburdened communities.

b. While Tribal consultation is distinct and apart from these efforts, Department staff will make every effort to include Tribal Nations, Tribal members, and Tribal perspectives into DNR's community engagement and public participation processes.

3. When developing policies that have potential impacts on Tribal sovereign and inherent rights DNR will adhere to the following:

a. Department staff will honor sovereign and inherent Tribal rights and will work with affected Tribes to minimize or eliminate potential impacts to the Tribe(s).

b. Department staff will examine current policies, agreements and decisions which unduly burden Tribal access to their traditional resources and attempt to resolve these impacts when they arise. Any prior decision conducted without consultation should be reviewed upon request of a Tribe.

c. Department staff will respect Tribal self-government and sovereignty, and should invite Tribes to develop their own policy, agreement, program implementation and/or data management to address any potential impacts.

d. Department staff should also invite Tribes to co-develop policy, agreement, program implementation and/or data management goals and outcomes to address any potential impacts and seek partnership opportunities.

e. Department staff will communicate early with Tribes, and will work with Tribes to identify potential impacts and seek to share information that could assist Tribes with developing or co-developing a policy, agreement, program implementation and/or data management to address any potential impacts.

f. Department staff are encouraged to communicate, collaborate, and partner with Tribes to address potential impacts in the development of agency work. These actions can be in coordination with formal consultation, or occur prior to or after formal consultation.

g. Department staff will provide documents without charge and without requiring formal public records requests whenever possible. This informal sharing of documents will not constitute, or be a substitute for, a formal public records request (PRA). Such informal requests will not be subject to the requirement of the PRA.

4. DNR will consult with Tribes in the development of policies, agreements, land transfers and program implementation that may affect Tribal interests.

a. Consultation may be requested by DNR or by a Tribe or Tribes by contacting the Office of the Commissioner of Public Lands through email, letter, or phone call.

b. At the beginning of development of a proposed policy, agreement, land transfer or program implementation, the Project Lead will use the Washington State Department of Archaeological + Historic Preservation (DAHP) Tribal Consultation Map to determine which Tribes to notify to begin consultation. Tribes with interests known to overlap project areas, or whose Tribal land or known Usual and Accustomed areas overlap with project areas will be notified for consultation. Each contacted Tribe will then determine whether their interests, including any potentially impacted archaeological resources, cultural resources, traditional materials, traditional places, or areas of historical significance, are affected by the proposed policy, agreement, land transfer or program implementation and decide whether to participate in the consultation process.

a. The Project Lead shall also complete the Tribal interests' assessment.

c. To ensure that consultation is meaningful, communication must occur early in a process, including all relevant information, including new information as requested by the Tribe(s) to potentially influence the action or decision, or the data collection associated with it. In some cases, there is a single time period where meaningful consultation can be achieved; in other cases, it may be necessary to consult early in the process, and then consult again at a later point when the Department action is more developed.

d. DNR will build upon already established and on-going relationships between Tribal/State officials. Formulation of specific actions can be more productive if conducted within a framework of an on-going relationship. 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. Many of these on-going relationships may best suit staff-to-staff level consultation before being elevated to a Tribal Chair.

e. Tribes have differing levels of resources to respond to projects or actions affecting Tribal interests. DNR will be sensitive to these differences in planning the consultation effort.

f. The Project Lead should defer to the Tribal position regarding whether consultation is necessary or required and if there is uncertainty, consult with the Director of Tribal Relations/Tribal Liaison and, as appropriate, the Attorney General's Office.

## 5. Tribal Relations Training

a. **Executive Leadership Team:** The ELT members should participate in annual Tribal relations training.

b. **Project Leads:** Project Leads should participate in annual Tribal relations training.

c. **All Agency Staff:** All agency staff should participate regularly in Tribal relations training.

## 6. DNR Roles and Responsibilities for Tribal Consultation

- a. **Commissioner of Public Lands:** The Commissioner oversees DNR's participation in the Government-to-Government consultation. The Commissioner may designate a member of DNR's Executive Leadership Team (ELT) to represent DNR at a Government-to-Government meeting or at a Leadership Meeting with a Tribe.
- b. **Director of Tribal Relations:** The Director of Tribal Relations is a Special Assistant to the Commissioner of Public Lands and is the Department's Senior Tribal Liaison. The Director of Tribal Relations reports directly to the Commissioner of Public Lands, pursuant to [RCW 43.376.020](#), and works with ELT, senior managers, and staff to promote effective collaboration, communication, consultation and co-management between DNR and Tribes. They serve as a key contact within DNR for Tribal Governments, and coordinate Tribal Relation and Government-to-Government training working with the Governor's Office for Indian Affairs (GOIA) and DNR's Office of Workplace Culture and Development.
- c. **Deputy Supervisors:** Deputy Supervisors are responsible for ensuring that staff within each of DNR's core programmatic areas understand this policy and implement the policy using the accompanying guide to carry out policy, projects and implementation activities in their respective areas and regions.
- d. **Project Lead:** The Project Lead is DNR's main point of contact and has primary responsibility to work with the Director of Tribal Relations on the Tribal consultation process and is the main point of contact for DNR during the course of consultation.

### DEFINITIONS:

That the following definitions are intended solely to provide guidance for implementation of this policy and are not intended to construe terms defined by law.

**Archaeological resources:** Provide evidence of the cultural continuum of people occurring across time and space throughout the diverse landscapes of Washington. Archaeological resources demonstrate the variety of activities engaged in by Tribal ancestors (such as Tribal fishing, hunting, gathering and spiritual practices) which still continue today. Examples of archaeological resources include shell middens, lithic scatters, rock paintings, talus slope gravesites, and culturally modified tree locations.

**Centennial Accord:** The agreement entered into between Federally Recognized Tribes in Washington State and the State of Washington on August 4, 1989 which sets the foundation for the government-to-governmental policy.

**Consultation:** A process of meaningful, early and complete communication and coordination between DNR and a Tribal Government when considering a DNR policy, agreement, land transfer or program implementation that may affect Tribes and/or Tribal rights or resources.

Consultation includes seeking, discussing, and considering the views of federally recognized Tribal Governments regarding a State action or decision. Consultation consists of respectful, meaningful, and effective two-way communication, in an effort to achieve mutual understanding between DNR and a Tribe of the respective interest and perspectives, before DNR makes its decision or moves forward with its action. As a process, consultation includes several methods of interaction that may occur at different organizational levels. The appropriate level of interaction is determined by past and current practices, adjustments made through this Policy, the continuing dialogue between DNR and Tribal governments, and program and regional procedures and plans.

**Coordination:** A process of working with Tribes at a technical, program, project, and/or staff-to-staff level. Coordination is not a substitution for consultation when required under this policy.

**Cultural Resources:** Archaeological and historical sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes and as otherwise identified and defined by a Tribe or Tribes.

**Department staff:** A permanent, temporary, or volunteer worker.

**Executive Leadership Team (ELT):** The Department's Executive Leadership Team is composed of the Executives, Directors, and Senior Advisors within the Commissioner's Office, and the Chief Operating Officer, Deputy Chief Operating Officer, and Deputy Supervisors.

**Federally Recognized Tribes:** Those Indian Tribes which are on the list published annually by the Bureau of Indian Affairs pursuant to 25 USC § 479a-1. Federally recognized Tribes located in, or with rights in, Washington are listed on the Governor's Office of Indian Affairs website - [Federally Recognized Indian Tribes | GOIA \(wa.gov\)](#).

**Governor's Office for Indian Affairs (GOIA):** The Governor's Office of Indian Affairs promotes the government to government relationship between the State of Washington and Indian Tribes, advocates for the social and economic betterment of all American Indians and Alaska Natives living within Washington State and educates for a greater cultural understanding of Tribes.

**Government-to-Government Meeting:** A planned and structured meeting, typically between the Commissioner of Public Lands and one or more leaders of a Tribe.

**HEAL Act:** The HEAL Act defines 'environmental justice' in state law, outlines how agencies should consider community needs and environmental justice in their work, establishes a permanent environmental justice council to work with state agencies, Tribes, and overburdened communities to help create environmental justice legislation, and expands equitable community participation. See [Chapter 70A.02 RCW](#).

**Historic Sites:** Locations where Tribal or non-Tribal events and activities have taken place since contact with Euro-Americans. Historic sites often, but not always, have written records that document the events and activities that occurred at a particular location. Examples of historic sites include homesteads, forts, lumber mills and cabins.

**Historical Significance:** The quality or qualities associated with events that have made a significant contribution to the broad patterns of state, local, national, or Tribal history, or that quality or qualities associated with the lives of persons significant in local, state, national or Tribal history.

**Leadership Meeting:** A meeting of leaders of multiple Tribal Governments. DNR participation in a leadership meeting is not a substitute for offering government-to-government consultation with individual Tribes.

**Millennium Agreement:** An agreement signed in 1999 which committed the State/Tribal leaders to work on strengthening their relationship and to work cooperatively on issues of mutual concern through the development of Government-to-Government Implementation Guidelines providing a consistent approach for state agencies and tribes to follow.

**Office of Workplace Culture and Development:** Focuses on cultivating an agency-wide mindset of “leaders as coaches, employees as problem-solvers” to support growth and innovation, continuous process improvement, and public service.

**Off Reservation Rights:** Tribal rights that exist outside the exterior boundaries of a Reservation. These can include but are not limited to open and unclaimed lands, Traditional and Customary Use areas, ceded lands, Usual and Accustomed [fishing] areas (U&A), off Reservation trust and fee lands, and cultural resource interests beyond Reservation boundaries.

**Open and Unclaimed Lands:** This treaty term has not been clearly defined. Federal courts have ruled, however, that certain public lands (such as National Forests) not set aside for uses incompatible with hunting can be considered open and unclaimed.

**Project Lead:** The person within DNR designated or otherwise responsible for serving as the lead employee on a particular policy, agreement, land transfer or program proposal.

**Reserved rights:** Rights that a Tribe did not cede to the United States and/or that have been explicitly reserved by Tribe(s) through treaties. For example, in the Stevens Treaties Tribes ceded territory to the United States but expressly reserved certain traditional hunting, gathering, and fishing rights (See Sovereign and Inherent Rights and Off Reservation Rights). All rights not granted were reserved.

**Sovereign and Inherent Rights:** Tribes have self-governed themselves as sovereign nations for thousands of years. Taken together, sovereign and inherent rights are the intrinsic and political rights of federally recognized Tribes. **Sovereign rights** are the inherent authority of Tribes to govern themselves as a result of the legal and political status as sovereign nations. Tribal sovereignty is a political status recognized by the state and federal governments, U.S. Constitution, treaties and upheld by the U.S. Supreme Court. Tribes have the right to be consulted on the most significant issues affecting them, lands, territories and resources and for the state government to observe and enforce these agreements. **Inherent rights** are the fundamental rights for Tribes to govern themselves and the authority to determine priorities and strategies on development or use of their lands, territories and cultural resources. These rights

include the autonomy to protect their Indigenous rights of their own form of government to protect and preserve their culture, family systems, economies and restore their nations.

**State Environmental Policy Act (SEPA):** The State Environmental Policy Act (SEPA) applies to actions by every state agency, county, city, port, and special districts within Washington State and requires consideration of probable significant adverse environmental impacts.

**Traditional Places:** landscapes, sacred sites, legendary areas, natural resources, indigenous uses and objects which are identified (often with traditional names) by affected Indian tribes in the state of Washington as being important for the maintenance and perpetuation of their traditional rights, values, and practices. These landscapes, places, and objects provide subsistence and spiritual relationships, as well as stability and meaning to community ceremonies, customs and beliefs. Examples of traditional places include sacred ceremonial sites, groves used for gathering edible/medicinal plants and sources of materials used for traditional tools and arts.

**Traditional Materials:** Resources used by Indigenous people to sustain their culture. Traditional materials come from the broad variety of plants, animals and minerals that are native to Washington's landscapes. The individual species recognized as a cultural resource are specific for each Tribal Nation. Traditional and current cultural values for plants include their use as medicines, foods, tools, textiles, building materials, carvings, and sacred objects. Examples of some traditional materials include bear grass, tule, and cedar and birch trees.

**Tribal Chair:** Tribal Leader/Elected Official

**Tribal Consultation:** An open and continuous exchange of information that leads to mutual understanding and informed decision making between the agency and Tribal Governments.

**Tribal Data:** Tribal data is defined by the Global Indigenous Data Alliance as "cultural heritage embedded in [Indigenous Peoples'] languages, knowledges, practices, technologies, natural resources, and territories".

**Tribal Interests:** Only Tribes can ultimately determine what may affect them, therefore all DNR policies, agreements, or program implementation may be of interest to Tribes.

**Tribal Liaison:** The person appointed by the Commissioner of Public Lands pursuant to RCW 43.376.030 to be responsible for serving as a contact person with Tribal Governments and maintaining communications between DNR and affected Tribal Governments. DNR's Director of Tribal Relations is its Tribal Liaison.

**Usual and Accustomed areas (U&A):** Every fishing location where members of a Tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the Tribe, and whether or not other tribes then also fished in the same waters.