Comprehensive Tribal Consultation Process
Under the National Environmental Policy Act

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Why did we create this? Who is it for?

- In 2004 the Washington State Legislature directed the Transportation Permit Efficiency and Accountability Committee (TPEAC) to: “develop a model NEPA tribal consultation process for federal-aid transportation projects related to the preservation of cultural, historic and environmental resources”.

- Beginning in April 2005, WSDOT staff met with 27 / 29 federally recognized tribes in Washington State to discuss tribal consultation.

- It is guidance for WSDOT staff.

- This Model complements WSDOT Tribal Consultation Executive Order 1025.
What We Accomplished

- Developed 12 recommendations for an improved consultation process that were reviewed by TPEAC, WSDOT staff and tribes.

- Created a “model” process and guidance for WSDOT project teams to use on federal-aid transportation projects for which FHWA is the lead federal agency.

- Review of draft model by tribes, agency staff, Attorney General’s Office and other interested parties.
What this process doesn’t cover:

- Governor’s Executive Order 05-05 on Archaeological and Cultural Resources

- Consultation process for project for which FWHA is **NOT** the federal lead, including FTA, FAA, FRA

- Consultation process for SEPA only projects

- Non-tribal related compliance requirements for NEPA, Section 106 and other federal and state laws (SHPO, public involvement).
Why NEPA?

- The majority of WSDOT projects are “federalized”; they include federal dollars or approvals. NEPA can often be adopted to satisfy the State Environmental Policy Act (SEPA).

- NEPA acts like an umbrella; while conducting environmental analysis for NEPA compliance, WSDOT works to comply with other laws:
  - Federal Transportation Act: SAFETEA-LU
  - Section 106 of the National Historic Preservation Act
  - Endangered Species Act (ESA)
  - Preliminary analysis and preparation for other federal and state permits.
Principles of this Process

- **Provide Opportunities** for consultation; Consultation is a two-way street that requires the good faith participation of all parties.

- **Comprehensive** consultation
  - Engaging all affected tribal departments early, and on an ongoing basis throughout the life of the project.
  - It means more than complying with one statutory requirement to consult.

- **Early** consultation to:
  - Increase opportunities for avoidance and minimization of impacts to resources
  - Avoid project delay
  - Collaborate on resource protection

- Recognize that each project and tribe is unique. This “model” was created to allow flexibility.
What Does the Guidance Document Include?

- Chapter 1: Introduction
- Chapter 2: Goals and principals of consultation based on laws, policies and executive orders
- Chapter 3: Consultation Activities
- Chapter 4: Frequently Ask Questions

Themes:
- Initiating consultation
- Treaty rights
- Intertribal relations
- Tribal compensation
- Resources to help you

Comprehensive consultation
Cultural Resources
Resolving tribal concerns
Environmental Permitting
Sample Frequently Asked Questions

- How do I identify which tribes to consult with?

- How should I coordinate consultation under NEPA with other consultation requirements in Section 106 or treaty rights?

- When and how should I start discussing the project’s potential impacts to treaty rights?

- What are Traditional Cultural Properties (TCP) and how do I work with tribes to identify them?

- Is it appropriate to invite multiple tribes to the same meeting?

- What if a tribe objects to a specific issue on my project?

- How can I ensure that WSDOT and federal permitting agency’s consultation efforts are coordinated and effective?
What Does the Guidance Document Include?

**Appendices**
- Appendix A: NEPA Summary
- Appendix B: U&A Summary of Western Washington Tribes from the Attorney General’s Office
- Appendix C: Sample Consultation letter for NEPA DCE, Section 106 and APE
- Appendix D: Sample Consultation Letters for NEPA EA, Section 106
- Appendix E: Sample Consultation letter for NEPA EIS, Section 106 with Participating Agency invitation
- Appendix F: Tribal response card
- Appendix G: Sample project tribal consultation plan
- Appendix H: Sample consultation agreements
- Appendix I: Individual Tribal Protocols for Consultation
- Appendix J: Consultation Tracking Form
- Appendix K: ACHP Letter on Consultation
- Appendix L: Tribal service agreements
Questions?

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Model Available at: www.wsdot.wa.gov/environment/tribal