

## H&LP Procedure for Sharing

### Local Agency Environmental Discipline Reports with Tribes

February 9, 2010

#### Introduction

The *WSDOT Model Comprehensive Tribal Consultation Process for the National Environmental Policy Act* (July 2008) provides the framework for project consultation between WSDOT and tribes. One of the principal tenets of this document is a commitment to provide interested tribes with the desired project information as early as it is feasible to do so. To help to achieve early and effective coordination on local agency projects, each January Highways and Local Programs (H&LP) provides tribes with a list of upcoming projects and offers to meet to discuss any tribal concerns.

H&LP is committed to fulfilling the commitments laid out in the model tribal consultation policy, but in some cases must vary its approach due to the substantively different environmental process used on local agency projects. One very notable difference is that for state projects WSDOT Regions and Modes take an integrated approach to NEPA, SEPA and permitting for state transportation projects. On local agency projects, however, H&LP addresses only NEPA—both SEPA and permitting are handled by the responsible local agencies months to sometimes years after NEPA is completed.

With the exception of ESA, which must be completed prior to concluding NEPA, the majority of the decision making on natural-resource issues on local agency projects does not occur until permitting. For this reason it is highly challenging to engage in meaningful early consultation on many of the environmental issues of interest to tribes. For example, H&LP reviews wetland mitigation plans to ensure that the overall approach is within the bounds of the U.S. Army Corps' and Department of Ecology's joint mitigation guidelines. However, both the project's impact area and the actual mitigation plan frequently change as a result of post-NEPA negotiations between the local agency and staff at the Corps and Ecology during the 404/401 permitting process. Mitigation for streams follows a similar course, but the actual final mitigation is determined during permitting with the Corps and Department of Fish & Wildlife.

The rest of this paper lays out FHWA's and H&LP's practice for the sharing with tribes environmental discipline reports prepared for NEPA Documented Categorical Exclusions on local agency projects.

## **When can discipline reports be shared?**

If a tribe lets us know that they are interested in a specific environmental discipline report for a project, H&LP will make it available after two things have occurred:

- (1) The quality-assurance/quality-control reviews have been completed by the WSDOT discipline experts. Environmental justice and Section 4(f) reports can be released only after quality-assurance/quality-control reviews have been completed by FHWA.
- (2) An email is sent from H&LP's environmental engineer to FHWA's area engineer requesting permission to release the document. The document may be sent to a tribe as soon as permission is granted; the report may be sent after 7 days if no response is received from FHWA.

## **Who will send discipline reports?**

The H&LP environmental engineer will typically be the person responsible for providing discipline reports to tribes.

## **How will the reports be provided?**

In the interest of conserving resources, H&LP prefers to send PDFs of discipline reports by email or by uploading them onto an FTP site. However, in cases where electronic documents are unavailable or in instances where the tribe does not have access to the internet, H&LP and FHWA will send printed paper copies.

## **Is there a formal comment period?**

There is no legal comment period for CE/DCE-level NEPA documents. However, NEPA always allows for new information to be considered and for the process to be reopened if deemed appropriate.