

Consultation Protocol for Policy & Statewide Issues

Between the Washington State Department of Transportation (WSDOT) and Tribal Governments with interests in Washington State.

Background:

In accordance with the Centennial Accord and the WSDOT Secretary's Executive Order 1025.01, WSDOT maintains a commitment to consultation with Tribes on their identified Tribal rights and interests. Consultation means respectful, meaningful, effective communication in a cooperative process that works toward a consensus, before a decision is made or action is taken. Consultation is a process rather than a guarantee of outcomes.

Purpose:

The purpose of this document is to outline the process for formal Government-to-Government Consultation on statewide or policy issues. These protocols will help bring consistency to WSDOT's consultation process. It is WSDOT's intent to involve Tribes early and continuously in the development of statewide policies and plans. WSDOT will continue to consult with individual Tribes on specific projects or issues.

Consultation on policy and / or statewide issues may be initiated by WSDOT or at the request of a Tribe. Consultation may be for the following matters:

- Proposed change to agency policy or protocol that is likely to have an effect on federally recognized Tribes
- Existing policy or issues concerning or impacting Tribes
- New statewide plans or updates to existing statewide plans
- New WSDOT transportation grant programs or changes to existing transportation grant programs
- Agency request legislation that will affect Tribes
- Any other proposed statewide or policy action that affects Tribes

There are two common approaches for consultation:

- Consultation meetings
- Tribal review of draft documents

Consultation Meetings

WSDOT or a Tribe may schedule a formal consultation meeting to discuss a statewide or policy issue with Tribal representatives.

- WSDOT staff will work with the WSDOT Government Relations Tribal Liaison who will survey WITPAC delegates to determine when a formal consultation meeting is necessary. Not all issues will require a formal consultation meeting
- Consultation meetings will involve the highest level of WSDOT and include the Secretary, Deputy Secretary, Chief of Staff, Chief Engineer or the applicable Division Director as appropriate.
- If a Tribe requests that WSDOT schedule a consultation meeting, a written request describing the nature and scope of the consultation should be sent to

the Secretary of Transportation with a copy to the Government Relations Tribal Liaison.

Notification Process:

- WSDOT will send a minimum of two written notifications to Tribal Chairs for a consultation meeting
 - The first one within 30 - 45 calendar days prior to the consultation meeting
 - The second one within 15 – 20 calendar days prior to consultation meeting

- WSDOT will email Washington Indian Transportation Policy Advisory Committee (WITPAC) Delegates, alternates and copy staff contacts with the following information:
 - Consultation meeting notification
 - Follow-up meeting notification
 - Minutes distribution

- Notification for a consultation meeting will include any draft documents for review (e.g. policies, plans)
 - A due date for comments will be included in the notice
 - The comment period for draft documents will extend a minimum of two (2) weeks after a formal consultation meeting in which the draft document is discussed
 - WSDOT will respond to all written comments it receives (including email)
 - The Division responsible for the specific consultation will develop a brief written report on the outcomes of the consultation meeting. Tribal Chairs and all participants will be notified that this report is available upon request within 30 calendar days of issuing the final document

Tribal Review of Draft Documents

When WSDOT seeks review of a draft document by external stakeholders on a statewide or policy issue of interest to Tribes, WSDOT will request Tribal review. WSDOT Staff will follow the process below when seeking formal Tribal review and comment on a draft document and a consultation meeting is not part of the consultation.

- WSDOT will send the draft document with a formal cover letter to Tribal Chairs with an electronic copy to the appropriate Tribal staff
- In the cover letter, WSDOT will briefly describe, from the Department’s perspective, anticipated impacts to Tribes
- WSDOT will provide a minimum 45 calendar day review and comment period for draft documents. A due date for comments will be included in the

cover letter. WSDOT will make reasonable efforts to accommodate Tribal requests for additional time for review

- WSDOT will offer to meet with individual Tribes at their request
- WSDOT will respond to all written comments it receives (including email).
- WSDOT may proceed with the document development process after the 45 day review period
- The Division responsible for the specific consultation will develop a brief written report on the outcomes of the consultation on draft documents. Tribal Chairs and all participants will be notified that this report is available upon request within 30 calendar days of issuing the final document

Workgroups and WITPAC Subcommittees:

Workgroups and Washington Indian Transportation Policy Advisory Committee (WITPAC) Subcommittees may be established for discussions, problem resolution and preparation for consultation on a policy issue of interest to Tribes. When issues are approached by utilizing a subcommittee or work group process, notification of any final outcomes to these meetings will be distributed to the affected WSDOT Department and WITPAC Delegates.

- These workgroups / subcommittees will provide the opportunity for technical teams from the state and Tribes to address any technical challenges or barriers
- To work collaboratively on development of technical solutions
- Subcommittees will develop issue matrices and provide status updates at each WITPAC meeting

Tribal participation on formal WSDOT Committees:

When WSDOT establishes a committee of external stakeholders on statewide or policy issues of interest to Tribes, WSDOT will include at least one Tribal representative on the committee (e.g. the development of a statewide planning document).

- WSDOT will send a letter to each Tribal Chair, and an electronic copy to the appropriate staff, to request their nomination of a representative to the committee
- The number of Tribal representatives should be commensurate with the representation of other jurisdictions on the committee
- In the event multiple Tribes nominate a representative, WSDOT will select and appoint a representative to the committee
- WSDOT acknowledges that a Tribal committee member will provide a Tribal perspective, but will not represent all Tribes
- WSDOT will notify Tribal Chairs and appropriate staff of the appointment.
- WSDOT will circulate draft documents or products to individual Tribes for review and comment
- WSDOT will meet with individual Tribes upon request to discuss the effort
- The WSDOT division responsible for a specific committee will develop a written report on outcomes of the work done by a formal WSDOT committee

that includes Tribal representation. Tribal Chairs and all participants will be notified that this report is available upon request within 30 calendar days of the completion of the committee's purpose or work

Implementation and Issue Resolution:

WSDOT will incorporate these protocols into its agency Executive Order on Tribal Consultation and conduct training to ensure that they are understood by WSDOT management and staff.

If a Tribe(s) becomes concerned that these protocols were not implemented on a policy or statewide issue, they are encouraged to contact the WSDOT Government Relations Tribal Liaison. The Tribal Liaison will facilitate a meeting of Tribal representatives and the Division Director responsible for a specific consultation effort. If concerns are not fully resolved, the Tribal Chair may request a consultation meeting with the Secretary of Transportation.