Today’s Topic: Improving Consultation and Engagement with Tribes

Objectives:

• Identify opportunities to improve early and meaningful consultation and engagement with Tribes for low-carbon energy projects and planning

• Identify information, training, and other resources that would help applicants, local governments, and state and federal agencies better engage and consult with Tribes to improve understanding and consideration of Tribal interests and concerns related to low-carbon energy projects

Please note this meeting is being recorded; the recording and all slides will be posted to Ecology's project website
Agenda

• Advisory Board Perspectives on Improving Consultation and Engagement with Tribes
• State Agency Presentations on Tribal Consultation and Engagement in Washington
• Break (2:40)
• Breakout discussions: Early and Meaningful Engagement with Tribes
• Breakout discussions: Building Understanding of Tribal Engagement and consultation in Washington
• Public Comment (4:15)
• Wrap up and Next Steps
Participating Effectively via Zoom

- To reduce background noise, please mute yourself when you are not speaking
- Advisory Board members please show your video
- If you have questions or ideas to share during presentations, please chat them to the group, and we can address them during the Q&A and discussion time
- During discussions, please let us know you’d like to jump in by “raising your hand”
Public Participation

- Members of the public will be muted, off video, and off chat until public comment
- Members of the public may observe breakout discussions
- There will be an opportunity for 2-minute public comments at the end of the meeting. At that time, members of the public who would like to comment should raise their hands if they would like time to speak
- You may also submit comments at the e-comment site: [https://sea.ecology.commentinput.com/?id=tiufU](https://sea.ecology.commentinput.com/?id=tiufU)
Proposed Topic Schedule (June-Aug)

**Today**

- Improving Consultation and Engagement with Tribes
- Appeals Process; Financial Support and Funding

**June 8**
- Environmental Justice and Community Engagement
Upcoming Meetings

• Public Information Meeting:
  – June 16, 2-4 PM

Flyers with the meeting details have been distributed to Advisory Board members
Quick Ice Breaker

• What is your favorite summer picnic food?

Please use Zoom chat to respond
Advisory Board Perspectives on Improving Consultation and Engagement with Tribes
Improving Consultation and Engagement with Tribes

- Vice-Chairman Patrick DePoe, Makah Tribe
- Lisa Anderson, Puyallup Tribe of Indians
Questions?
State Agency Presentations on Tribal Consultation and Engagement in Washington
Tribal Consultation in Washington

• Tribal Consultation in Washington: Dr. Allyson Brooks, Department of Archaeology and Historic Preservation

• Government to Government Overview: Craig Bill, Governor’s Office of Indian Affairs
Governor’s Office of Indian Affairs

ECY – Low Carbon Energy Siting Study Advisory Board
Government to Government Overview
June 8, 2022
Section 1: Demographics

- 29 Federally-Recognized Indian Tribes
- 3 Out of State Tribes with Treaty Reserved Rights in Washington
Washington State Today
Tribal Reservations and Treaty Ceded Areas
Section 2: Treaties, Executive Orders & Administrative Process

Indian Nations have always been considered as distinct independent political communities, retaining their original natural rights, as undisputed possessors of the soil…The very term “nation” so generally applied to them, means “a people distinct from others.”

Chief Justice John Marshall
United States Supreme Court
Worcester v Georgia
31 US (6 Pet.) 515, 561 (1832)
What is a Treaty?

The U.S. Supreme Court said:

“A treaty, including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations.”
Treaty Facts

• A treaty is not a grant of rights to a Indian Tribe. It is a grant of rights from the Indian Tribe to the U.S. government, and a reservation of rights not granted.

• Treaty rights do not diminish with the passage of time, periods of nonuse, or changes in technology. Some treaty rights extend outside of reservation boundaries, including the right to hunt, fish and gather in usual and accustomed areas.
Treaties signed in Washington State

Treaty of Medicine Creek, 1854
Treaty of Point Elliott, 1855
Treaty of Point No Point, 1855
Treaty of Neah Bay, 1855
Treaty with the Yakama, 1855
Quinault Treaty, 1856
Treaty with Walla Walla 1855
Executive Orders

- In 1871, Congress ended treaty making with Indian Tribes.

- Relations with Tribes were formalized through Presidential Executive Orders or Congressional Acts.

- Off-reservation rights of Executive Order Tribes differ from those Tribes with treaty rights, unless those obtained through legal and/or congressional action.
Administrative Process

Currently, Indian Tribes are recognized through the following processes:

- By act of Congress
- Federal Acknowledgement Process-25 C.F.R. Part 83
- By decision of United States court
What is Tribal Sovereignty?

It is the right of Tribes, as “domestic dependent nations” to exercise self-determination and the right to self-government, unless these powers have been modified by treaty or by an act of Congress.
Section 3: State ~ Tribal Relations
Centennial Accord

1989 Historic Document

- Signed between federally recognized tribes in WA and the Governor.

Framework


Guidelines

- Establishment of mutual goals through improved relationships between sovereign governments.
- Work together to address issues of mutual interest.
New Millennium Agreement

In 1999, State and Tribal Leaders met for a 2-day summit in Leavenworth to develop options regarding the institutionalization of the government to government relationship. State and Tribal Leaders made the following commitments:
New Millennium Agreement

Work to increase the understanding of tribes' legal and political status as governments through training opportunities;

Develop consultation process, protocols and action plans; Identify an Agency Tribal Liaison.

Encourage the Washington Legislature to establish a structure to address issues of mutual concern to the state and tribes;

Enhancing communication and coordination through the Governor's commitment to strengthen his Office of Indian Affairs and the member tribes' commitment to strengthen intertribal organizations.
Out of State Accord

In December 2004, Governor Locke signed an *Out of State Accord* with the Confederated Tribes of Umatilla Indian Reservation, the Nez Perce Tribe and the Confederated Tribes of Warm Springs in recognition of each of those Tribes having ceded lands in Washington State and treaty reserved fishing rights along the Columbia River.
RCW 43.376 – Government to Government
Establishing a government to government relationship between state government and federally recognized Indian Tribes

- Memorializes the Centennial Accord into state law

- State Agency requirements under RCW 43.376:
  1. Make reasonable efforts to collaborate in development of policies, agreements and administrative policy that impacts Indian Tribes.
  2. Designate a “Tribal Liaison” who reports directly to head of agency.
  3. Ensure Tribal Liaisons and appropriate staff have training in government to government relations.
  4. Submit an annual report to Governor on tribal activities.
  5. Governor and Statewide Elected Officials meet annually.
Principles of Government to Government

1. Respect
2. Trust
3. Communication
Best Practices

Internally –

• Develop a state agency policy plan in coordination with or guided by Tribal input.
• Institutionalize openness and access.
• Evaluate policy positions versus litigation positions.

Externally –

• Communicate and build relationships proactively.
• Share and receive information.
• Be open minded about solutions. Take reasonable risks
• Understand and respect all Tribes are different and individual.
• Informal Consultation and Formal Consultation.
END
Questions?
Break: Will Return at 3:17
Breakout Discussions: Early and Meaningful Engagement with Tribes
Breakout Sessions

• ~25-minute small group discussions followed by report-outs

• Members of the public invited to observe breakouts

• Please do not click “Close Breakout Room” button
Breakout Sessions: Discussion Questions

• From your experience, what have been the opportunities and challenges for early and meaningful engagement with Tribes for clean energy projects? For planning?
Breakout Discussions: Building Understanding of Tribal Engagement and Consultation in Washington
Breakout Sessions

• ~30-minute small group discussions followed by report-outs

• Members of the public invited to observe breakouts

• Please do not click “Close Breakout Room” button
Breakout Sessions: Discussion Questions

• For non-Tribal participants, are you aware of training about Tribes, Tribal sovereignty, Tribal treaty rights, or Tribal consultation? If you’ve taken training, what did you find most useful?

• For Tribal participants, what do you think useful training on Tribes, Tribal sovereignty, Tribal treaty rights, and Tribal consultation should include?

• For Tribal participants, what is the most important thing to understand when working with a Tribe?

• For all participants, what is the best way to make this information available to applicants?
Instructions for Public Comment

• Members of the public that are interested in making 2-minute statements are invited to do so
• Please use Zoom to raise your hand if you would like to make a statement, and you will be unmuted
• Please introduce yourself
• To the extent possible, please frame remarks as comments rather than questions
• Written statements can be sent to the e-comment site: https://sea.ecology.commentinput.com/?id=tiufU
Wrap Up & Next Steps
Wrap Up and Next Steps

• Follow-up from today
• Next Meeting: July 13, Environmental justice and community engagement