Governor's Office of Indian Affairs (GOIA)
State-Tribal Consultation Guidelines

I. Introduction

These guidelines and principles are based on input from Tribal Nations and are intended to improve consistency, transparency, and accountability in how agencies initiate, invite, conduct, record, and report Tribal consultation. While these are baseline principles, standards and protocols, agencies are encouraged to tailor and expand upon them in collaboration with Tribes and in alignment with their missions and program areas.

II. History of the State of Washington's Government-to-Government Relationship

The State of Washington recognizes the inherent sovereignty of federally recognized Tribal governments and affirms their right to self-governance and self-determination. The State honors Tribal rights and the unique government-to-government relationships it maintains with each of the federally recognized Tribes whose traditional lands and territories include present-day Washington.

Through the ratification of treaties, Article XXVI of the Washington State Constitution, and in further alignment with the United States' constitutional framework for Indian Tribes, it is recognized that the Federal Government is the primary entity with which Indian Tribes maintain a trust and treaty relationship. Treaty-reserved rights occupy a unique constitutional and legal status that are distinct from general interests or concerns. The state only has jurisdiction over Tribal reservations, and trust lands where Congress has authorized such authority. For example, under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et seq., Congress authorized eligible Tribes and states to enter into Tribal-State gaming compacts. Another example of Congressional delegation is Public Law 83-280 (PL 280), where the federal government delegated certain criminal and limited civil jurisdiction in Indian Country to states, including Washington, where applicable under federal and/or state law.

To strengthen the government-to-government relationship, in 1989, the State of Washington and the federally recognized Tribes whose traditional lands and territories include parts of Washington State signed the **"Centennial Accord between the Federally Recognized Tribes in Washington State and the State of Washington."** The Centennial Accord provides a principled framework for a government-to-government relationship, and implementation procedures to ensure execution of that relationship. The Centennial Accord calls for state agencies and Tribal governments to develop procedures to implement government-to-government policies.

State and Tribal government leaders convened a Summit in Leavenworth, Washington, from November 1-3, 1999, to discuss institutionalizing the government-to-government relationship. The State/Tribal Summit concluded with the signing of the "New Millennium Agreement" which committed the State and Tribal leaders to strengthen their relationship and work cooperatively on issues of mutual concern.

In addition, in December 2004 the State formalized the relationship with federally recognized

Indian Tribes located outside the state with treaty reserved rights within Washington through the **"Out-of-State Accord - Federally Recognized Indian Tribes with Treaty Reserved Rights in Washington State."** This Accord holds the same weight as the Centennial Accord and the New Millennium Agreement.

Since the New Millennium agreement, the State has enacted RCW 43.376, *Government-to-Government Relationship with Indian Tribes* and Executive Order 25-10, *A New Foundation for Washington State's Governmental Relations with Sovereign Tribal Nations.*

These guidelines are based on the following sources of information and include the following additional resources:

- Washington Centennial Accord and Millenium Agreement
- Out of State Accord – Federally Recognized Indian Tribes with Treaty Reserved Rights in Washington State
- RCW 43.376
- Presidential Executive Order 13175 of November 6, 2000
- Uniform Standards for Tribal Consultation - Presidential Memo, November 30, 2022
- Executive Order 25-10 - Tribal Relations
- The Governor's Office of Indian Affairs maintains a Tribal Chair Contact List.

III. Definitions

- **Authorized Representative:** A formally designated representative of a Tribal government or state agency. Each Tribal government determines its own process for selecting Tribal leadership and representatives. State agencies should designate consultation representatives with appropriate decision-making authority and share this information with Tribal partners. These principles align with the government-to-government commitments outlined in the Centennial Accord, New Millennium Agreement, and the Out-of-State-Accord.

- **Consultation:** Consultation requires an enhanced form of communication that emphasizes trust and respect. It requires a shared responsibility that allows an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension. Consultation consists of respectful, meaningful, and effective two-way communication, in an effort to achieve mutual understanding between a state agency and a Tribe of their respective interests and perspectives. Consultation occurs *before* an agency initiates a decision or moves forward with its action, and requires *ongoing* communication and coordination with authorized representatives. Agencies should err on the side of consultation when there is reasonable uncertainty about whether an action could affect Tribes.

  Consultation with Tribal governments is an endeavor, which is uniquely a government-to-government process and set of protocols. Due to this unique government-to-

government relationship, state agencies can offer a consultation to Tribal governments. In this government-to-government consultation process, the goal is to reach consensus during decision making. There are varying levels of consultation that are undertaken with a desire to reach mutually agreeable decisions that acknowledge the broad interests within the state, including interests of concern to state government as well as to Tribal governments, while recognizing agreement cannot always be reached.

- **Federally Recognized Tribe**: A federally recognized Tribe is an American Indian or Alaska Native Tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs. (See *Indian Entities Recognized by and Eligible to Receive Services From the United States Bureau of Indian Affairs*, 91 Fed. Reg. 8387 (Jan. 30, 2026).)

  Furthermore, federally recognized Tribes are recognized as possessing certain inherent rights and authorities of self-government (i.e., Tribal sovereignty) and are entitled to receive certain federal benefits, services, and protections because of their special relationship with the United States.

- **Government-to-Government:** Describes the relationship between Tribes and the federal government. It is also used to describe the relationship and protocols between Tribes and other governments, like states.

- **Participation:** Participation is an ongoing activity that allows all interested parties to engage with one another through negotiation, compromise, and problem solving to reach a desired outcome.

- **Tribal Sovereignty:** Sovereignty is the authority Tribes have to make and enforce laws, regulations, policies, and to establish courts and other forums for resolution of disputes and/or rights. The sovereignty that Tribes possess is inherent, meaning it comes from within the Tribe itself and existed before the founding of the United States.

- **Trust Responsibility:** Reference is often made of the unique legal governmental status of American Indians and Alaska Natives to the United States. Trust responsibility is a legally enforceable obligation of the United States to protect Tribal self-determination, Tribal lands, assets, resources, reserved and treaty rights, as well as carrying out the directions of federal statutes and court cases.

- **Washington State Sovereignty:** Each State is a sovereign entity in our federal system and has governmental powers except as limited in the U.S. Constitution, such as limits imposed by the supremacy clause making federal laws and treaties the supreme law of the land.

IV. Forms of Tribal Engagement

State agencies engage with Tribes in several ways. While other forms of engagement may support or precede consultation, a notification letter alone does not constitute the initiation of consultation. Below are examples of how state agencies may engage with Tribes:

- ***Dear Tribal Leader Letter (DTLL)*** **–** A formal written communication from an agency to Tribal government leadership describing any proposed decision or action including policies, programs, projects, regulations, agreements, legislation, or the distribution of state funds that may impact Tribal governments, Tribal rights or interests, Treaty and/or Indigenous rights, land base, traditional waterways, resources, or the operation of Tribal programs. A DTLL does not, by itself, constitute consultation or initiate consultation. It is simply a proposal, offer or an invitation by a state agency to engage in consultation with a federally recognized Tribe. Agencies should provide DTLLs to impacted federally recognized Tribes whose traditional lands and territories include parts of Washington State.

- ***Roundtable*** **–** A forum that allows state agencies and Tribes to share and exchange information. A roundtable often occurs prior to a formal Tribal Consultation. Roundtables may include multiple agencies and Tribes. A roundtable is not a substitute for a formal government-to-government consultation with individual Tribes.

- ***Listening Session*** **–** An opportunity for agencies to share information and receive input and feedback on policies, programs, projects, or proposals. Agencies share information with Tribes to receive Tribal input and concerns. A listening session is not a substitute for a formal Tribal consultation. Listening sessions may include multiple Tribes.

- ***Tribal Consultation*** **–** The primary mechanism for engaging with Tribes on a government-to-government basis through early, meaningful, and ongoing communication and coordination with authorized representatives regarding any proposed decision or action including policies, programs, projects, regulations, agreements, legislation, or the distribution of state funds that may impact Tribal governments, Tribal rights or interests, Treaty and/or Indigenous rights, land base, traditional waterways, resources, or the operation of Tribal programs. Tribal consultation is *only* for federally recognized Tribes.

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

- ***Specific Statutory Consultation Requirements*** **–** Some state and federal statutes contain specific requirements for consultation that the State is obligated to follow, and which may differ from these guidelines. For example, under the Climate Commitment Act (CCA),

consultation regarding CCA related or funded projects, policies, or actions, must comply with RCW 70A.65.305. Other examples of statutes with specific requirements include the Healthy Environment for All (HEAL) Act consultation requirements at 70A.02.100 and Section 106 of the National Historic Preservation Act.

V. Reviewing Existing Tribal Consultation Policies

When a state agency initiates a consultation with a Tribe, the agency should inquire whether the Tribe has its own Tribal consultation policy. If both the state agency and the Tribe have existing consultation policies, both policies must be reviewed to ensure alignment in the consultation process. The state agency and Tribe should recognize that the consultation policy may differ between the sovereigns and seek to mutually agree upon the consultation process to be used.

VI. Guiding Principles of the Consultation Process (Updated version of the Guiding Principles from the New Millennium Agreement Implementation Guidelines)

1. ***Commitment to consultation.*** The state and Tribes, and their agencies and departments, commit to consulting with each other on matters that directly affect the other. Agencies should also consider cumulative effects and impacts when determining whether consultation is necessary or what information should be discussed during consultation. When an agency is uncertain whether an action may impact Tribal rights or interests, the agency should err on the side of consultation.

2. ***Communication and consultation is a two-way street.*** Communication between Tribal governments and state agencies should be direct and involve two-way dialogue and feedback. Face-to-face meetings between the appropriate Tribal and State policy and/or technical level staff can increase understanding of any proposed actions and enhance the development of effective outcomes and solutions. While face-to-face meetings are generally desirable, phone calls, virtual meetings, correspondence and other methods of communication should also be utilized.

3. ***Build upon already established and on-going relationships between Tribal/state officials.*** Formation of specific actions, policy and program development can be more productive if conducted within the framework of an on-going relationship. Additionally, 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.

4. ***State governments are assuming greater responsibility under the federal government's policy of increased "devolution" of programs.*** "Devolution" is the statutory delegation of authorities or duties to a different level of government. Before the delegation of these programs, the Tribes worked directly with the federal administrators on issues of concern to them. The Tribes have continuing interests in many of these delegated programs, and the Tribal interests should be considered in the administration of these programs by the state.

5. ***Issues that require consultation should be identified as soon as possible to involve both parties early on in the process***. The need for consultation and who makes the determination may be difficult to define in all cases and will vary among the governments. **As a general rule, any proposed state decision or action including policies, programs, projects, regulations, agreements, legislation, or the distribution of state funds that may impact Tribal governments, Tribal rights or interests, Treaty and/or Indigenous rights, land base, traditional waterways, resources, or the operation of Tribal programs requires consultation with affected Tribal governments. Agencies should initiate consultation as early as possible in the planning and development process and maintain engagement throughout decision-making.**

   To ensure sufficient time for input before decisions and actions are made and actions taken requires early involvement of all parties affected by those actions. Tribal consultation should provide Tribal governments with the opportunity to offer input, express concerns, and provide solutions to matters impacting their Tribe.

   Agencies should provide meaningful consideration to Tribal input as part of their informed decision-making process, and revise program and policy proposals based on Tribal input. The level of engagement and response must be commensurate with the level of potential impacts. Agencies should be prepared to revise program and policy proposals based on Tribal input when significant impacts are identified. For example, if agency actions may significantly affect Tribal rights, resources, or interests the agency should work with Tribes to mitigate impacts, and, when appropriate, seek prior and informed consent.

6. ***State and Tribal governments should make every effort to respond to and participate in the consultation process***. State and Tribal governments should strive to ensure that appropriate communication and response are provided to any request for consultation. Recognizing that Tribal governments have varying levels of capacity, the State should utilize multiple methods of communication and maintain contact lists to ensure that consultation notices are shared broadly with the appropriate Tribal government leadership and staff, to support awareness and engagement. To support robust communication, Tribal governments are encouraged to regularly update state agencies on key contacts, including authorized representatives and delegated staff, as appropriate. If there is no response to an initial request to engage in consultation, it should not be assumed that the state or Tribes have no interest in participating in this process. State and Tribal governments' and organizational structures will vary, and good faith efforts should be undertaken to involve the affected governments. Both parties should work collaboratively to establish shared expectations for communication and response timeframes to support meaningful and effective consultation.

7. ***Parties should ensure that consultation occurs through the interaction of officials with comparable governmental stature and authority***. To maintain the government-to-government relationship, Tribes and state agencies are encouraged to send policy officials to represent those interests which require joint final decision-making on key policy issues. However, each Tribe and state agency should strive to have authorized representatives for the purpose of decision making and accountability. Tribes or state agencies may identify program and/or technical staff to attend meetings when appropriate, depending on the nature of the issue, and where similar representation is anticipated. However, when Tribal government leadership is engaged in consultation, the state should participate with its agency director unless the Tribe has indicated otherwise.

8. ***Honesty and integrity must be maintained by all parties in the consultation process***. Mutual respect and trust are fundamental elements in establishing a good consultative relationship. Tribal and state officials should be open with information that may be beneficial or critical to deciding or developing a position.

VII. Expectations for Consultation

Adequate preparation and identification of key elements are essential in conducting the consultation process. The following logistics and mechanics will assist in providing a forum for productive deliberation and decision-making:

1. ***Identify the participants in the process***. Each Tribe and the state have the right to determine who will represent them in the consultation process, however, each Tribe and state agency should strive to have authorized representatives for the purpose of decision making and accountability. Tribes may choose to engage in consultation at their discretion, not as a requirement. Certain responsibilities or authorities for specific actions may be dictated by Tribal council resolutions, state legislation, EO 25-10, or other requirements. Each agency shall designate a primary point of contact for Tribal consultation matters who is responsible for advising agency staff on all matters pertaining to the Tribal consultation and serving as the primary point of contact for Tribal officials and authorized representatives seeking to consult with the agency. Each agency should provide the names and contact information of the designated agency points of contact for Tribal consultation in its DTLL, and any communication materials. It should not be expected that staff will make policy decisions or take formal positions without authorization from their respective government officials. Furthermore, all participants should disclose any limitations on their ability to make decisions on behalf of their agency/Tribe, prior to any consultation meetings.

2. ***Provide a clear description of the nature of the issue and/or conflict***. Any related documentation or statements that outline the purpose and/or describe the issue to be addressed should be provided in advance to all parties involved in the consultation process. These documents should clearly explain any proposed actions and the details of the decision or policy to be developed. Any sensitive information, legal limitations, or requirements for disclosure of information should be identified in advance.

3. ***Allow ample time to review documents and respond to requests for consultation***. Depending on the nature or complexity of the issues to be addressed, the amount of time will vary for different Tribes or agencies. While some decisions may require quick actions due to statutorily imposed deadlines, every effort should be made to provide written notice in advance to allow for adequate and meaningful input and response. Agencies should invite Tribes to engage in consultation at least 30 days (60 days when feasible) prior to the start of the desired Tribal consultation period. If the agency is aware of any time constraints, the agency should clearly identify those in the DTLL. Any deadlines for written comments should be at least 30 days after the consultation is held. To address emergent consultation periods, agencies should develop clear protocols and processes for the consultation process to account for Tribal government needs.

4. ***Establish and adhere to a schedule for consultation***. State and Tribal officials should jointly determine the protocols, timing, and number of meetings needed to consult to the best of their abilities. State agencies are encouraged to work with Tribes to establish forums of engagement based on the nature of the issue for information sharing, Tribal participation, and Tribal consultation.

5. ***Recognize that Tribes are traditionally, culturally and administratively different from each other***. Agencies should be adaptive to allow space for each Tribe to define their own meaningful consultation facilitation strategies and practices for their context, culture, and place. Do not assume the same approach will work for all Tribes. Tribes have varying degrees of governmental and managerial infrastructure, as well as differing financial resources. State agencies need to recognize and understand that some information is sensitive, especially regarding traditional religious practices. Furthermore, in some cases, Tribal customary laws or religious rules regarding issues of confidentiality may not be negotiable. Tribes may be hesitant to share such information unless they have a clear understanding of how the information will be protected. Agencies should discuss confidentiality expectations with Tribes before requesting sensitive information and clearly explain any limitations on confidentiality under state public records and open government laws. Agencies should provide this information early enough to allow Tribes to make informed decisions about whether an how to share sensitive information. Transparency about the legal limitations and confidentiality protections is essential to building and maintaining trust.

6. ***Use of workgroups to develop recommendations***. In some cases, development of recommended actions on various technical, legal or policy issues may be facilitated through the establishment of a joint Tribal/state workgroup or other agreed upon processes, by the Tribe and State. Products developed by the workgroup may be used to facilitate final policy decisions. Agencies are encouraged to develop recommendations and/or to collect feedback on documents. Agencies must in good faith collaborate and accept Tribal feedback prior to developing and finalizing documents.

7. ***Report on the outcomes of the consultation***. Reflective of a meaningful government-to-government consultation, the goal is to reach consensus during the process. While consensus may not always be fully achieved, Tribal and state agency officials should be involved and

actively participate in the decision-making process so that all views are heard and considered. Each agency should maintain a record of the consultation process, including a summary of the Tribal input received and a general explanation of how Tribal input influenced or was incorporated into the agency action. Documentation should also include any commitments made by the agency and any agreed upon next steps. If Tribal suggestions are not incorporated, the agency shall provide a general explanation for why consensus could not be attained. Tribes can submit comments to state agencies on whether or not they agree with an agency's decision. Within a timely manner, the head of each agency shall disclose to the affected Tribe or Tribes the outcome of the consultation, the decisions made because of the consultation, and the basis for why Tribal input was/was not considered in the agency's decision-making process. Tribes may request additional consultation if consensus is not achieved.

VIII. Dispute Resolution Process

While the goal of consultation is to achieve mutual understanding and agreement, there may be times when differences arise that cannot be immediately resolved. Either party may request the elevation of a dispute, in which case both parties should determine whether consultation should continue while the dispute is being elevated or resolved. In such cases, the following principles should guide efforts to address and resolve disputes:

- ***Good Faith Commitment*:** Both the state and Tribal governments should commit to resolving disagreements in a manner that honors the government-to-government relationship and respects Tribal sovereignty.

- ***Collaborative Problem-Solving***: When consensus cannot be reached, parties should engage in additional dialogue, which may include follow-up meetings, clarification of concerns, or identification of shared values and goals.

- ***Leadership Elevation*:** If disagreement persists, the issue may be elevated to higher-level leadership either within the state agency or the Tribal government, up to and including a meeting with the Governor and Tribal Leaders. Parties will need to ensure the appropriate and equivalent representation and decision-making authority is involved at every step.

- ***Optional Third-Party Support*:** Upon mutual agreement, a neutral facilitator or mediator may be invited to support respectful dialogue and assist with finding common ground.

- **Ongoing Relationship Focus:** Regardless of the outcome, the process should prioritize maintaining a respectful relationship and continuing consultation on other matters in good faith. This approach supports the intent of the Centennial Accord, New Millennium

Agreement, and the Out-of-State Accord by fostering communication, trust, and mutual problem-solving between sovereign governments.

These principles reflect best practices from both federal and state guidance and should be adapted in partnership with each Tribe to meet specific contexts, histories, and priorities.