

## TITLE 1 - GENERAL PROVISIONS

### CHAPTER 1-8 GOVERNMENT-TO-GOVERNMENT CONSULTATION

#### 1-8-1 Authority and Purpose

- (a) The authority for this Code is found in the Tribal Constitution under Article VI, Section 2.
- (b) To provide for continuity in the government-to-government consultation process between the Tribes and federal agencies of the United States.

#### 1-8-2 Background and Intent

The Council, as the governing body of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (Tribes), has determined that the interests of the Tribes are best served by providing guidance on government-to-government consultation since the process may have an impact on tribal rights and resources and is rooted in tribal sovereignty and federal policy.

#### (a) Federal Policy

(1) Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, signed on May 14, 1998, directs federal agencies to respect tribal self-government and sovereignty, tribal rights, and tribal responsibilities whenever they develop policies “significantly affecting Indian tribal governments.” Additionally on April 29, 1994, President Clinton executed a Presidential Memorandum directing agencies to “assess the impacts of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that Tribal government rights and concerns are considered during the development of such plans, projects, and activities.” Consequently, federal agencies have an affirmative obligation to protect tribal interests including those associated with tribal culture, religion, lands, subsistence, and commerce. Meaningful and timely consultation with the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians is a vital component of this process.

(2) The Advisory Council on Historic Preservation has issued regulations dealing with consultation under Section 106 of the Historic Preservation Act. Federal agencies are required to consult with tribes when they attach religious or cultural significance to an historic property *regardless of the location*. Accordingly, agencies must make a reasonable and good faith effort to identify tribes that attach such significance but may now live at great distances from the undertaking’s area of potential effect. The regulations also provide for a tribe to enter into an agreement with a federal agency regarding any aspect of

tribal participation in the review process. The agreement may provide the tribe with additional participation or concurrence in agency decisions under Section 106 provided that no modification is made to the roles of other parties without their consent.

(b) Intent

It is the intent of the Council to provide a consistent approach to government-to-government consultation to provide for meaningful and effective mutual decision-making.

1-8-3 Guiding Principals

Consultation is the formal process of cooperation, negotiation, and mutual decision-making between two sovereigns.

(a) Federal Responsibilities

Federal agencies have the obligation of seeking out tribes and providing meaningful opportunities for consultation. This generally means much more than public participation efforts such as sending letters, notices, and copies of documents to tribes and requesting comment. Where many public participation opportunities exist for a set period of time, consultation with the tribal government should be on an ongoing basis. Federal agencies must make concerted efforts to provide meaningful involvement in decision-making. It is important to understand that a tribe may elect not to participate in consultation or may decide to limit the scope of their consultation as necessary.

(b) Levels of Operation

Consultation operates at both policy and technical levels. It is the process through which the sovereigns develop a common understanding of technical and legal issues related to a decision and then use this understanding to formulate a decision. Meetings at both levels occur to differentiate between technical and policy issues.

(c) Participant Roles

Meaningful consultation requires that tribes and federal agencies understand their respective roles in the decision-making process. Tribes and federal agencies must understand the legal underpinnings of the government-to-government relationship and the obligations of the federal government under the Trust doctrine. Federal agencies will benefit from some understanding of the Confederated Tribes' unique culture, perspective, governmental infrastructure, and resources. Tribal governments must understand the policy decision-making authority of the federal agency and the non-tribal politics of the federal decision that the consultation will affect.

(d) Communication

Personal communication between agency and tribal officials will facilitate the decision-making process. Tribes cannot understand the political implications the decisions will have on the federal agency without personal communication. Similarly, the federal government cannot understand tribal issues and concerns without meeting with tribal officials and staff to discuss those issues and concerns. Without communication, consultation is meaningless and a mutual decision is difficult or impossible.

1-8-4 Objectives of Consultation

The Council hereby establishes objectives to be met by those participating in the government-to-government process, including but not limited to the following:

- (a) Assure that the Council understands the technical and legal issues necessary to make informed policy decisions;
- (b) Assure federal compliance with trust obligations as well as other applicable federal laws and policies affecting tribal rights, resources, culture, religion, subsistence and commerce;
- (c) Improve policy level decision-making of the Council and the federal government;
- (d) Achieve bilateral decision-making between two sovereigns;
- (e) Ensure the protection of tribal resources, culture, religion, and economy;
- (f) Ensure compliance with tribal laws and policies;
- (g) Develop and achieve mutual decisions through a complete understanding of technical and legal issues;
- (h) Improve the integrity of federal-tribal decisions.

1-8-5 Establishment of Point of Contact

- (a) The Council is the official point of-contact for government-to-government consultation unless Council chooses to designate a point-of-contact for a specific issue or range of issues.
- (b) Council may designate an alternate point-of-contact by issuing a written statement signed by Council Chairperson or Vice Chair.

### 1-8-6 Consultation Procedure

The Council hereby establishes the procedure for government-to-government consultation. The following procedure may be modified by the Council to suit the needs of the decision-making process and formulation of a decision:

- (a) The federal agency contacts the Council or its appointed point-of-contact to notify the Tribes of an impending project proposal or to conduct an activity that may or may not affect a tribal resource.
- (b) The Council responds to the agency that the issue is important and that it would like to initiate consultation.
- (c) Council requests federal agency technical experts meet with tribal technical staff or Council requests a policy-level meeting, initiating consultation.
- (d) Technical staffs meet to discuss technical and legal issues. Tribal staff understands the proposal. Federal agency staff understands at a technical level why the proposed activity is of concern to the Tribes.
- (e) Tribal staff briefs Council and provides opinions and recommendations.
- (f) Council contacts the federal agency to initiate consultation between policy-level decision-makers from the Tribes and the federal agency.
- (g) Additional meetings are held if necessary.
- (h) The federal agency and the Tribes formulate a decision. Assurances are made that the decision is consistent with applicable federal and tribal laws and policies.

APPENDIX A

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

GOVERNMENT-TO-GOVERNMENT CONSULTATION

**LEGISLATIVE HISTORY AND EDITORIAL CHANGES**

The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the "Government-to-Government Consultation Code", Resolution No. 01-089, Ordinance No. 029, on December 9, 2001, at a regular Tribal Council meeting. Vote was 7 (for), 0 (against) and 0 (abstaining).