

Featuring Speakers From:

- EPA Region 10
- Governor's Office of Indian Affairs
- Industrial Economics, Inc.
- Lower Elwha Klallam Tribe
- Lummi Nation
- Makah Tribe
- Morisset Schlosser Jozwiak & Somerville
- O'Neill Consulting
- Ogden Murphy Wallace
- Schwabe Williamson & Wyatt
- Skagit County Prosecuting Attorney's Office
- Stoel Rives
- Upper Columbia United Tribes
- Washington State Department of Natural Resources
- Washington State Department of Transportation

A Crucial and Timely New Seminar on

Tribal Consultations

What's new and important now;
strategies for success for all participants

June 6 & 7, 2019

Seattle, Washington
901 5th Avenue Building



Credits: 11.50 WA CLE | 11.50 AICP | 11.50 ABCEP (call about others)
Quick when/where: 8:30 a.m., 901 5th Ave

Tribal Consultations Conference
June 6 & 7, 2019 | Seattle, Washington
901 5th Avenue Building

Yes! Please register me:

Name: _____

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For which state(s)? _____

Register my colleague:

Name: _____

Email: _____

What type of credits do you need? _____

For which state(s)? _____

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Address: _____

City: _____ State: _____ Zip: _____

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If you cannot attend in person, check boxes to order:

- Audio Replay Video Replay Course Materials



- 8:00 Registration Opens
- 8:30 Introduction & Overview
 - Andrew Fuller, Esq., *Program Co-Chair***
Ogden Murphy Wallace ~ Seattle, WA
 - J. Nathanael Watson, Esq., *Program Co-Chair***
Stoel Rives ~ Seattle, WA
- 8:45 The Consultation Requirement
 - Where it came from; the nature and scope of the duty of consultation; differences between on reservation projects vs. adjacent projects; who should be involved and at what level; the importance of relationship-building to avoid conflicts
 - Andrew Fuller, Esq., *Program Co-Chair***
 - Development of consultation plans for administrative agencies: Case study of the EPA Region 10 Consultation Manual including provisions and how it has worked in practice
 - Elizabeth McKenna, Esq., *Assistant Regional Counsel***
EPA Region 10 ~ Seattle, WA
- 10:15 Break
- 10:30 Consultation when Federal Agencies are Involved
 - How the process might differ depending on the statute and agency; the most effective approaches from a best practice standpoint
 - Thane D. Somerville, Esq.**
Morisset Schlosser Jozwiak & Somerville ~ Seattle, WA
 - J. Nathanael Watson, Esq., *Program Co-Chair***
- 11:45 Lunch (on your own)



- 1:00 Consultation when State Agencies are Involved
 - State guidelines and efforts to integrate the state agencies into a blanket process
 - Craig A. Bill, *Director***
Governor’s Office of Indian Affairs ~ Olympia, WA
 - Case study of the cancellation, at the request of the Lower Elwha Klallam Tribe, of the graving dock at Ediz Hook in Port Angeles
 - Megan Cotton, *Tribal and Federal Relations Director***
Washington State Department of Transportation ~ Olympia, WA
 - William S. White, *Cultural Resource Archeologist***
Lower Elwha Klallam Tribe ~ Port Angeles, WA
- 2:45 Break
- 3:00 Boundary Waters and Consultation when Other Countries are Involved
 - DR Michel, *Executive Director***
Upper Columbia United Tribes ~ Spokane, WA
- 3:30 Needs-Based Friction Points: Climate Change Stressors on Natural Resources
 - Climate Change as a new driver that makes resources less available: Findings from the recent 4th National Climate Assessment; examples and case studies from Washington state
 - Michael Chang, *Climate Adaptation Specialist***
Makah Tribe ~ Neah Bay, WA
- 4:15 Tribal Consultation Case Study
 - Cherry Point coal terminal and Lummi Nation’s treaty-protected fishing rights: Consultation when the Tribe is 100% opposed and how it can best be utilized
 - Mary Michelle Neil, Esq., *Reservation Attorney***
Lummi Nation ~ Bellingham, WA
- 5:00 Continue the Exchange of Ideas: Reception for Faculty and Attendees
 - Sponsored by Ogden Murphy Wallace



About the Conference

LAW SEMINARS INTERNATIONAL

What previous attendees have said:

- “Very interesting presentations, thank you!”
- “Great speakers and the agenda flowed well.”
- “Excellent speakers, wide range of expert level knowledge, great update on current state of issues.”

Tribal consultation requirements are an often misunderstood and neglected requirement arising in the context of governmental actions. These requirements establish a mechanism for ensuring that the impacts a proposed governmental action have on a Tribe are acknowledged and addressed before the proposed action occurs. The consultation process is understood by many to be applicable only to federal agencies, but it is also necessary in the private sector whenever federal funding is utilized by a project, and when federal permits, licenses, or other approvals are necessary. Further, Washington has adopted its own Tribal consultation process, which provides a framework for government-to-government relations and interactions between the Tribes and the state. Done properly, consultation can help all parties build trust and meet their objectives. Failing to acknowledge and comply with applicable requirements may cause delays and open the door to judicial challenges to the proposed action.

This conference, focusing on the tribal consultation process at the federal, state, and local levels, will allow you to learn from lawyers, policy makers, and agency staff who will share their experiences with the consultation process, provide insight into the triggers for consultation in various contexts, and discuss best practices based on their experience. The second day will focus on current issues that make Tribal consultation more important than ever, practical tips for injecting consultation into the SEPA and NEPA processes, and how to develop a memorandum of understanding arising out of the consultation process.

Participate in our discussions, interact with the faculty in the question-and-answer sessions after each presentation, at breaks, and at the reception following day one of the seminar--and enjoy the truly extraordinary city that is Seattle.

**~ Program Co-Chairs: J. Nathanael Watson, Esq. of Stoel Rives
Andrew Fuller, Esq. of Ogden Murphy Wallace**



8:30 Consultation Regarding Environmental Impacts at the Local Level

The interplay with Tribal Treaty Rights: Implications of the US Supreme Court's 4-4 split in the Culverts Case and the resulting environmental quality obligations arising from the 9th Circuit's decision requiring improved stream flows for fish

Connie Sue M. Martin, Esq.
Schwabe Williamson & Wyatt ~ Seattle, WA

Special issues for off-reservation projects with potential impacts on Tribal fishing or other rights

Will Honea, Esq., Senior Attorney
Skagit County Prosecuting Attorney's Office
Mount Vernon, WA

Tips for effectively engaging Tribes in local project permitting processes

Sarah Roubidoux Lawson, Esq.
Schwabe Williamson & Wyatt ~ Seattle, WA

10:15 Break

10:30 Socio-Economic Analyses of Impacts to Tribal Resources, Rights, and Values

The economic science and art for defining the value of a non-use experience; traditional knowledge issues and their usefulness as an adaptive management concept

Robert E. Unsworth, Principal
Industrial Economics, Inc. ~ Cambridge, MA

Cultural values and Tribal sociological relationships with resources: Communicating Tribal values and culture to a trier of fact for the purpose of assessing and quantifying damages

Adam Stack
Industrial Economics, Inc. ~ Cambridge, MA

Use of cost-benefit analysis: Recent developments in agencies' use of cost-benefit analysis and what they mean for Tribes in the NRDA context

Catherine O'Neill, Esq.
O'Neill Consulting ~ Olympia, WA

12:15 Lunch (on your own)

1:30 The End Game: Development of a Memorandum of Understanding (MOU)

What an MOU should contain; practical tips for injecting consultations into SEPA and NEPA processes; consultations when environmental review is not involved

Richard A. Du Bey, Esq., Moderator
Ogden Murphy Wallace ~ Seattle, WA

Mason D. Morisset, Esq.
Morisset Schlosser Jozwiak & Somerville ~ Seattle, WA

Joenne McGerr, Director of Tribal Relations
Washington State Department of Natural Resources
Olympia, WA

3:00 Evaluations and Adjourn

Related Seminars & Video Replays:

CEQA in Northern California	May 3, 2019	San Francisco
Tribal Natural Resource Damage Assessments	May 23-24, 2019	Las Vegas
Water Law in Washington	June 27-28, 2019	Seattle
Using Hydrology to Resolve Water Disputes	July 17, 2019	Santa Fe
Tribal Water in California	January 28-29, 2019	Funner

See more at www.lawseminars.com



Registration & Other Conference Information

To Register:

Call us at: 206-567-4490
Fax the registration form to us at: 206-567-5058
Email us at: registrar@lawseminars.com
Online: www.lawseminars.com
Mail the registration form on the front page.
Walk-ins are welcome, subject to space availability.
Registration is complete when we receive payment or agree to later payment.

Tuition: Regular tuition for this program is \$695 with a group rate of \$625 each for two or more registrants from the same firm. For government employees and Tribal members, we offer a special rate of \$520. For students, people in their job for less than a year, and public interest NGO's, our rate is \$347.50. All rates include admission to all program sessions, food and beverages at breaks, and all course materials. Materials will be available for download and review a few days before the program. Make checks payable to Law Seminars International. Financial aid is available to those who qualify. Contact our office for more information.

Substitution & Cancellation:

You may substitute another person at any time. We will refund tuition, less a \$50 cancellation fee, if we receive your cancellation by 5:00 p.m. on Friday, May 31, 2019. After that time, we will credit your tuition toward attendance at another program or the purchase of an audio or video replay.

Location: The conference will be held at the 901 5th Avenue Building at 901 5th Ave in Seattle, WA 98164. Lodging is available at a number of nearby hotels.

Continuing Education Credits:

Live credits: This program qualifies for 11.50 WA MCLE, 11.50 AICP (Planner), and 11.50 ABCEP (Environmental Professional) credits. Upon request, we will apply for, or help you apply for, CLE credits in other states and other types of credits.

Time Shift Your Content:

Audio podcasts and video replays, with course materials, are available at the same price as live attendance. The course materials alone are available for \$100. Replays will be available within three business days after the program or from the date we receive payment.

Faculty: Tribal Consultations Conference



Andrew Fuller, Program Co-Chair, focuses his practice at Ogden Murphy Wallace on land use and environmental matters. This includes assisting Tribes with the development and implementation of their Tribal Environmental Programs.



J. Nathanael Watson, Program Co-Chair, is Of Counsel at Stoel Rives. His practice focuses on regulatory compliance and litigation under a variety of federal and state tribal and environmental laws. Prior to joining Stoel Rives, he was a trial attorney for the Environment & Natural Resources Division of the US Department of Justice.



Richard A. Du Bey, Moderator, is a Partner at Ogden Murphy Wallace. His practice focuses on environmental and natural resources law and tribal government matters including inter-governmental negotiations.



Craig A. Bill is the Director of the Washington State Governor's Office of Indian Affairs (GOIA). Prior to his appointment at the GOIA, he was the Director of Intergovernmental Affairs and Advisor to the Tribal Chairman for the Lummi Nation.



Michael Chang is a Climate Adaptation Specialist for Makah Tribe. He is leading the Tribe's effort to create a Makah Climate Adaptation and Implementation Plan.

Megan Cotton is the Tribal and Federal Relations Director for the Washington State Department of Transportation.

Will Honea is a Senior Attorney in the Skagit County Prosecuting Attorney's Office.



Sarah Roubidoux Lawson, Schwabe Williamson & Wyatt, works with tribal governments and tribal entities to achieve self-governance and economic development goals while protecting tribal resources and sovereignty.



Connie Sue M. Martin is a Shareholder at Schwabe Williamson & Wyatt. She helps Indian tribes, ports, companies of all sizes, and individuals, address environmental contamination and restore injured natural resources.



Joenne McGerr is Director of Tribal Relations for the Washington State Department of Natural Resources.

Elizabeth McKenna is Assistant Regional Counsel for EPA Region 10.



DR Michel is Executive Director for the Upper Columbia United Tribes. He has over 36 years of experience in forestry and natural resource management, as well as the technical and policy aspects of working for tribes.



Mason D. Morisset, Morisset Schlosser Jozwiak & Somerville, represents Tribes across the country on a wide variety of natural resource and other issues.



Mary Michelle Neil is a Reservation Attorney for the Lummi Nation. She has worked on a variety of tribal government matters, including on matters related to natural and cultural resources, economic development, environmental regulation, tax and other intergovernmental matters.



Catherine O'Neill, O'Neill Consulting, is a former Habitat Policy Analyst for the Northwest Indian Fisheries Commission and Professor of Law at Seattle University School of Law. Her current work focuses on issues of environmental justice for native peoples.



Thane D. Somerville, Morisset Schlosser Jozwiak & Somerville, provides comprehensive representation of Indian tribal governments and tribal enterprises on issues including natural and cultural resource protection, tribal treaty rights, jurisdictional disputes, protection of tribal sovereignty, and the federal trust responsibility.

Adam Stack is a Project Associate at Industrial Economics, Inc. He also is a Graduate Writing Fellow at the Center for Writing & Communicating Ideas at Harvard University.



Robert E. Unsworth is a Principal at Industrial Economics, Inc. His consulting practice focuses on applied natural resource and environmental economics.



William S. White is the Cultural Resource Archeologist for the Lower Elwha Klallam Tribe. He manages the restoration and reburial of 350 Klallam ancestors at the Washington State Department of Transportation "Graving Dock" site in Port Angeles.

June 6 & 7, 2019
Seattle, Washington

901 5th Avenue Building
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(206) 694-5000

Who Should Attend:

Attorneys; Tribal representatives; federal, state, and local government representatives; land use planners; environmental professionals; real estate developers; utility service providers; and others involved with economic development projects or other activities that are on, or may affect, Tribal lands, resources, or treaty rights

You Will Learn About:

- Scope of the duty of consultation
- Development of consultation plans for administrative agencies
- How federal consultation differs depending on the statute and agency
- State consultation guidelines
- Efforts to integrate Washington agencies into a blanket process
- Boundary waters and consultation when other countries are involved
- Climate change as a new friction point
- Local level consultation regarding environmental impacts
- Cultural values and Tribal service loss issues
- Consultation case studies
- Development of a Memorandum of Understanding (MOU) as the end game

To Register:

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