



A Crucial and Timely Conference on

Tribal Consultations

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

June 22 & 23, 2020 | Seattle, WA

Via Zoom

Agenda—Day 1

8:30 Registration Opens

9:00 Introduction & Overview

Andrew Fuller, Esq., *Program Co-Chair*

Ogden Murphy Wallace ~ Seattle, WA

Amelia Marchand, *Program Co-Chair, Director, Environmental Trust Department*

Colville Confederated Tribes ~ Nespelem, WA

9:15 Consultation as a Conversation Between Sovereigns

The nature and scope of the duty of consultation; differences between on-reservation projects vs. adjacent projects with impacts on Tribal lands; determining who should be involved and at what level

Andrew Fuller, Esq., *Program Co-Chair*

Consultation between Tribes and federal agencies: 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

10:45 Break

11:00 Consultation with Washington State Agencies

Update on the Washington State Attorney General's Tribal Consent and Consultation Policy: Identifying initiatives subject to the requirement; implementation lessons from early applications of the policy

Yasmin Ayesha Trudeau, Esq.,

Legislative Director and Tribal Liaison

Washington State Attorney General's Office ~ Olympia, WA

Updates on state guidelines and progress on efforts to integrate the state agencies into a blanket process

Craig A. Bill, *Director*

Governor's Office of Indian Affairs ~ Olympia, WA

12:15 Lunch (on your own)

1:30 Consultation on Environmental Issues: Special Issues for Impacts to Cultural Services

A framework for using consultation to avoid impacts, mitigate for, or restore cultural services using multi-criteria attribute theory and structured decision support

David A. Hanson, *Principal*
HansonRM ~ Blaine, WA

Using the method: Applications and case studies

William Trousdale, AICP, *President*
EcoPlan International ~ Vancouver, BC Canada

2:15 Environmental Consultation (cont'd): Water Quality and Comprehensive Planning

The beginning: Tribal Water Quality Standards, EPA Indian policy, and how the Confederated Tribes of the Colville Reservation (CCT) developed the first Tribal water quality standards under the Clean Water Act for surface waters within its reservation

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

The next chapter: Update on what is next for the CCT after approval of their water quality standards

Amelia Marchand, *Program Co-Chair*

3:30 Break

3:45 Consultation on Environmental Issues: Air Quality and Climate Change

Tribal climate resilience, adaptation, and mitigation planning to achieve a sustainable future: Triggers for consultation requirements and tips for identifying them; areas where proactive consultation can be to the Tribe's advantage

Michael Chang,
Climate Change and Sustainability Associate
Cascadia Consulting ~ Seattle, WA
The Hon. Chad Bowe chop, *Council Member*
Makah Indian Nation ~ Neah Bay, WA

5:00 Adjourn Day 1

Agenda—Day 2

9:00 Consultation as a way for Tribes and State or Local Governments to Pursue Common Interests

Perspectives on the potential benefits of a shift from consultation as a reactive response to an event to a proactive approach for finding better solutions to common problems as federal environmental protections evaporate: The coal terminal cases

Annie Szvetcz, *SEPA Policy Lead*
Washington State Department of Ecology
Olympia, WA

Perspectives on the potential benefits of a paradigm shift from consultation as a reactive response to an event to proactive approach for finding better solutions to common problems as federal environmental protections evaporate: The coal terminal cases

William B. Iyall, *Chairman*
Cowlitz Indian Tribe ~ Longview, WA

9:30 Litigation as a Consultation Enforcement Mechanism

Case study of the suit against the Army Corps' failure to properly consult during Dakota Access Pipeline permitting and the recent decision requiring the Corps to do a full EIS for the pipeline

Jan Hasselman, Esq., *Staff Attorney*
Earthjustice ~ Seattle, WA

10:30 Break

10:45 Consultation on Law Enforcement and Other Non-Environmental Issues

Consultation leading to intergovernmental agreements on economic issues, such as fuel or cigarette taxes, or health and safety issues

Scott Wheat, Esq.

11:30 Reservation Homeland Rights arising from Tribal Treaties or Executive Orders

The Culverts Case and protecting the environmental quality of Tribal homelands: How the range of activities subject to consultation needs to expand to reflect environment changes and other challenges to the quality and quiet enjoyment of Tribal homelands

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

12:15 Lunch (on your own)

1:30 Case Studies: Examples of Consultations on Issues Relating to Protection of Tribal Homelands

The Upper Columbia River (UCR) national and international consultation on returning salmon to the UCR

John E. Sirois, Committee Coordinator
Upper Columbia United Tribes ~ Spokane, WA

Consultation in the context of Natural Resource Damage Assessments (NRDA) where Tribal, State, and Federal Trustees are involved

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

Tribal land use planning and regulation of environmental health hazards

Alonzo A. Coby, Planning Director
Shoshone-Bannock Tribes ~ Fort Hall, ID

3:30 Evaluations and Adjourn

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

About the Conference

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.

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, is an opportunity 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.

New this year we will feature a panel on how Tribes and state or local governments can pursue common interests. We also will explore the concept of Tribal treaty and executive order Reservation Homeland Rights and how the range of activities subject to consultation needs to expand to reflect environmental changes and other challenges to the quality and quiet enjoyment of Tribal homelands.

We hope you'll join the conversation, both during the program and at the reception for faculty and attendees at the end of the first day. Register soon to reserve your seat!

~ Andrew Fuller, Esq. of Ogden Murphy Wallace and Amelia Marchand, of Colville Confederated Tribes, Program Co-Chairs

Registration & Other Conference Information

Tuition: Regular tuition for this program is \$895 with a group rate of \$805 each for two or more registrants from the same firm. For government employees and Tribal members, we offer a special rate of \$670. For students, people in their job for less than a year, and public interest NGO's, our rate is \$447.50. All rates include admission to all program sessions and the course materials. 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 Tuesday, June 16, 2020. 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 via Zoom.

Continuing Education Credit: Live credits: This program qualifies for 11.0 Washington MCLE, 11.0 AICP planner, and 11.0 ABCEP environmental professional credits. Upon request, we will 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 for download or on a flash drive at the same price as live attendance. The course materials alone are available for \$100. Replays will be available within five business days after the program or from the date we receive payment.

Faculty

Andrew Fuller, *Program Co-Chair*, focuses primarily on environmental and natural resource matters at Ogden Murphy Wallace. This includes assisting Tribes with the development and implementation of their Tribal Environmental Programs.

Amelia Marchand, *Program Co-Chair*, is the Director of the Environmental Trust Department for the Colville Confederated Tribes. In this role, she coordinates planning of the Department's six management areas to support, protect, and enhance subsistence uses, ecological functions, and regulatory codes of the Colville Tribes.

Craig A. Bill is Director of the Governor's Office of Indian Affairs for the State of Washington. He serves as an advisor on Tribal issues and liaison between the State of Washington and Indian Tribes and Tribal organizations and for promoting the government-to-government principles outlined with the 1989 Centennial Accord signed between the State and Tribes.

The Hon. Chad Bowechop serves as a Council Member for the Makah Indian Nation. Due to its location at the mouth of the Salish Sea, the Tribe has been very active in climate change adaptation planning and regulation of shipping.

Michael Chang is a Climate Change and Sustainability Associate at Cascadia Consulting. He previously was the Climate Adaptation Specialist for the Makah Tribe, where he helped coordinate the Tribe's climate adaptation and resiliency planning process.

Alonzo A. Coby is the Planning Director for the Shoshone-Bannock Tribes.

Richard A. Du Bey is chair of the Tribal Government Practice Group at Ogden Murphy Wallace. His practice focuses on environmental and natural resources law and tribal government matters.

David A. Hanson, Principal at HansonRM, specializes in the integration of economic, social, and environmental factors to evaluate and restore lost environmental services and habitat degradation.

Jan Hasselman is a Staff Attorney for Earthjustice. He currently serves as lead counsel to the Standing Rock Sioux Tribe in their litigation against the Army Corps of Engineers regarding approval of the Dakota Access pipeline.

William B. Iyall is Chairman of the Cowlitz Indian Tribe. He helped achieve federal Recognition of the Tribe and served as the Economic Development Committee Chair, providing leadership in the Tribes' economic development project on its Initial Reservation.

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.

John E. Sirois is Committee Coordinator for the Upper Columbia United Tribes. He currently focusses his work on reintroduction of salmon and addressing climate change impacts.

Thane D. Somerville, Morisset Schlosser Jozwiak & Somerville, represents Tribal governments and Tribal enterprises on issues of natural and cultural resource protection, Tribal treaty rights, water rights, jurisdictional disputes, taxation, protection of Tribal sovereignty, the federal trust responsibility, and Tribal economic development,

Annie Szvetcz is the SEPA Policy Lead for the Washington State Department of Ecology. She oversees the statewide administration of the State Environmental Policy Act including the SEPA Register, rulemaking, guidance, training and technical assistance.

William Trousdale is President of EcoPlan International. A certified professional planner in the United States and Canada. Currently, he is working with aboriginal communities in Canada on environmental issues.

Yasmin Ayesha Trudeau is Legislative Director and Tribal Liaison for the Washington State Attorney General's Office. Prior to her current role, she worked as Staff Counsel to the Washington State Senate Democratic Caucus.

Scott Wheat, Wheat Law Offices, has served Tribal governments in various capacities, including as general counsel, in-house associate counsel, and special gaming counsel.