



**LAW SEMINARS
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A Crucial and Timely Conference on

Tribal Consultations

Current strategies for success for all participants

September 16 & 17, 2021

Pacific Time Zone

Agenda—Day 1

9:00 Introduction & Overview

Amelia Marchand, *Program Co-Chair*
Colville Confederated Tribes ~ Nespelem, WA
Andrew Fuller, Esq., *Program Co-Chair*
Ogden Murphy Wallace ~ Seattle, WA

9:15 Consultation Between Tribes and Federal Agencies

Case study of of inter-governmental interactions and consultation in the Natural Resource Damage assessment and remedy selection processes

John Carlucci, Esq., *Assistant Solicitor (inv)*
U.S. Department of the Interior ~ Washington, DC

10:00 Consultation with Washington State Agencies

Case study of consultation policies at the Attorney General's office, including recognition of customary Tribal law plus traditional religious and other practices that may make some things nonnegotiable

Yasmin Ayesha Trudeau, Esq., (inv)
Legislative Director
Washington State Attorney General's Office
Olympia, WA

Asa K. Washines, *Tribal Liaison (inv)*
Washington State Attorney General's Office
Olympia, WA

10:45 Break

11:00 Spotlight on Environmental Justice: State and Federal Efforts to Address Equity and EJ with Tribes

The long road toward justice

Tyson Hawk Oreiro,
Executive Advisor for Tribal Affairs
Washington State Department of Ecology
Olympia, WA

Working with Tribal Governments to address equity and Environmental Justice

Wenona Wilson, *Senior Tribal Policy Advisor*
US EPA Region 10 ~ Seattle, WA

12:15 Lunch Break

1:30 Using Tribal Historic Preservation Acts to Trigger Consultation on Cultural Resource Issues

The National Historic Preservation Act and other opportunities for Tribal participation in protecting Native places

Valerie J. Grussing, Ph.D., *Executive Director*
National Association of Tribal Historic Preservation Officers
Washington, DC

Update on efforts to protect the Bears Ears National Monument

Patrick Gonzales-Rogers, *Executive Director*
The Bears Ears Inter-Tribal Coalition
Albuquerque, NM

2:45 Break

3:00 Transboundary Consultation

Overview of the Canadian Supreme Court's ruling that the Sinixt people, part of the 12 Confederated Tribes of the Colville Reservation, have constitutionally protected hunting rights on their ancestral land in current-day British Columbia

Mark G. Underhill, Esq.
Arvay Finlay ~ Vancouver, BC Canada

Implications of the Court's ruling that indigenous rights in Canada flow from prior occupation by aboriginal peoples and that their forced displacement, which is the story of many indigenous groups in North America, does not extinguish those rights

Robert Hamilton
University of Calgary ~ Calgary, AB

Transboundary consultation on downstream impacts in the US from Canadian mining operations: Update on progress towards BC governmental recognition of the impacts

Frederick Otilius Olsen, Jr., *Executive Director*
Southeast Alaska Indigenous Transboundary Commission
Sitka, AK

5:00 Adjourn Day 1

Agenda—Day 2

9:00 Creating Negotiating Leverage on Environmental Issues: Using Tribal Law to Impose Higher Standards

Integrating indigenous peoples' customary laws into western legal frameworks and how that ties with the key principle of free, prior and informed consent that is emphasized in the UN Declaration on the Rights of Indigenous Peoples

Rudolph C. Ryser, Ph.D., *Executive Director*
Center for World Indigenous Studies
Olympia, WA

Tips for obtaining EPA Treatment as a State (TAS) status for federal Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act (RCRA) enforcement in addition to Tribal codes

Ian A. Shavitz, Esq.
Lippes Mathias Wexler Friedman ~ Washington, DC

Update on implementation issues and resulting work by the Tribe to improve its code; how the Tribe is working with First Nations in BC to improve the quality of upstream flows through development of their own standards

Amelia Marchand, *Program Co-Chair*

10:30 Break

10:45 Negotiating Leverage (cont'd)

Failure to consult as grounds for reversing an agency decision: Case law trends where an issue is whether failure to consult can constitute grounds for reversal; issues regarding the procedural mechanics for undoing a rule adopted without consultation

Will Cook, Esq., *Special Counsel*
Cultural Heritage Partners ~ Richmond, VA

Resisting creation of loopholes such as federal delegation of authority to a state agency to avoid federal project approval or arguing that a national rule affects everyone so there is no obligation to consult with Tribes

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

Preparing for a possible flood of requests for consultation: Tips for setting up review and engagement processes and for selecting the organizational structure that best fits into the Tribe's overall government operations

Victoria Flowers,
Environmental Specialist and Brownfields Coordinator
Oneida Tribe of Indians of Wisconsin ~ Oneida, WI

12:00 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

What a difference an election can make. In the nation's capital, we're seeing a transition from the Trump Administration's disregard of Tribal concerns and consultation requirements to the Biden Administration's efforts to give Tribes a meaningful seat at the table.

The state-level trend is for greater recognition that agencies need to consult with Tribes as sovereigns rather than private sector stakeholders. For example, in Washington State, there is new recognition that some customary Tribal laws and religious practices will make some things nonnegotiable during a consultation process.

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. In this year's program we will cover case law trends where an issue is whether failure to consult can constitute grounds for reversal.

This program 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. We will explore areas where Tribes can create negotiating leverage and close consultation loopholes.

It is an opportunity for all participants in activities subject to consultation requirements to navigate an evolving legal landscape. We hope you'll join the conversation!

~ 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, we offer a special rate of \$670. For Tribal members, public interest NGO's, students and people in their job for less than a year, our rate is \$447.50. All rates include admission to all program sessions and course materials.

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As an added value bonus, you'll receive access to audio and video recordings of the program at no extra charge. 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, September 10, 2021. After that time, we will credit your tuition toward attendance at another program or the purchase of an audio or video replay.

Continuing Education Credit: Live credits: This program qualifies for 8.75 WA MCLE, 8.75 ABCEP environmental professional, and 8.75 AICP planner credits. Upon request, we will help you apply for CLE credits in other states and other types of credits.

Time Shift Your Content: Audio and video replay files, with course materials, are available for download or on a flash drive at the same price as live attendance. Files are available for downloading five business days after the program or from the date we receive payment. Flashdrive orders are sent via First Class mail within seven business days after the program or from the date we receive payment. The course materials alone are available for \$100.

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.

John Carlucci is the Assistant Solicitor for the Environmental Restoration Branch at the U.S. Department of the Interior. He represents the Department in CERCLA, OPA and CWA NRD assessment and restoration claims.

Will Cook is Special Counsel to Cultural Heritage Partners. He helps his clients navigate the Section 106 process of the National Historic Preservation Act at the project level with an emphasis on historic viewsheds and landscape protection.

Victoria Flowers is an Environmental Specialist and Brownfields Coordinator for the Oneida Tribe of Indians of Wisconsin.

Patrick Gonzales-Rogers is the Executive Director of The Bears Ears Inter-Tribal Coalition where he supervises the staff and the direction of the tribal land management plans for the Bears Ears Monument. He previously was the Senior Tribal Policy Advisor at EPA and served as the Director of the Office of Hawaiian Affairs (OHA) Washington, DC Office.

Valerie J. Grussing, Ph.D., is the Executive Director of the National Association of Tribal Historic Preservation Officers (NATHPS). Previously, she served as Cultural Resources Coordinator for NOAA's National Marine Protected Areas (MPA) Center and Tribal Liaison for NOAA's National Ocean Service.

Robert Hamilton is an Assistant Professor in the Faculty of Law at the University of Calgary. His primary research and teaching interests are in Aboriginal law, property law, legal history, legal theory, and the relationship between state and Indigenous legal orders. He has worked with a number of Indigenous nations on rights, title, and land claims issues.

Frederick Otilius Olsen, Jr. is Executive Director of the Southeast Alaska Indigenous Transboundary Commission (SEITC) which consists of fifteen federally recognized Tribes of Southeast Alaska whose mission is to protect Tribal lands and waterways for future generations. SEITC member Tribes include Metlakatla, Saxman, Ketchikan, Wrangell, Petersburg, Klawock, Kasaan, Hydaburg, Craig, Kake, Douglas, Sitka, Yakutat, Klukwan, and Central Council Tlingit & Haida Indian Tribes of Alaska.

Tyson Hawk Oreiro is Executive Advisor for Tribal Affairs at the Washington State Department of Ecology. He is an enrolled tribal member of Lummi Nation and formerly served as Lummi Nation's Economic Development Commission Chairman.

Rudolph C. Ryser, Ph.D., is Executive Director of the Center for World Indigenous Studies. He founded the Center for World Indigenous Studies in 1979 and is widely recognized around the world as the principal architect of theories and principles of Fourth World Geopolitics. He also is the author of the seminal book *Indigenous Nations and Modern States: The Political Emergence of Nations Challenging State Power* (2012) and the *Fourth World Geopolitical Reader*.

Ian A. Shavitz is a partner at Lippes Mathias Wexler Friedman and team leader for the firm's Environment and Energy Practice. For his tribal clients, Mr. Shavitz has assisted in securing required approvals for development projects located on and off tribal lands, advised on the environmental aspects of land-to-trust applications and leasing of tribal lands, and drafted provisions of tribal codes and regulations.

Yasmin Ayesha Trudeau is Legislative Director 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.

Mark G. Underhill is a partner at Arvay Finlay. He maintains a broad general civil litigation practice, with particular expertise in aboriginal, administrative and environmental law, including multi-party disputes involving property remediation and liability for contamination.

Asa K. Washines is the Tribal Liaison for the Washington State Attorney General's Office. He is a former Yakima Nation Councilmember and recently served as Policy Advisor to the Navajo Nation.

Wenona Wilson is the Senior Tribal Policy Advisor for US EPA Region 10. She is a member of the Confederated Tribes of the Colville Reservation. Prior to joining the EPA, she worked for the Colville Tribes as their Tribal Land Use Administrator and for several urban Native American non-profits.