

# **COQUILLE INDIAN TRIBE CODE**

## **Chapter 191**

### **Part 1 – General Governmental Affairs**

#### **Tribal Government Consultations**

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Tribal Government Consultation Ordinance

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## 191.010 General

### 1. Purpose

This Ordinance sets forth the processes and requirements for official consultation between the Tribe and other Governments or Entities involving policies and issues that, in the Tribal Council's opinion, affect the welfare, safety and security of the Tribe and its citizens. It is the purpose of this Ordinance to ensure that meaningful consultation is made with free, prior, and informed consent of the Tribe through its appropriate Tribal official(s).

### 2. Scope of Consultation

This Ordinance applies whenever core rights and vital interests of the Tribe are affected, including when:

- (a) the Tribe requests consultation on any matter covered under this Ordinance with any Government Agency,
- (b) major technical, legal, and/or policy issues are raised or at issue,
- (c) the implementation of the National Environmental Policy Act, (NEPA) is initiated,
- (d) the implementation of the National Historic Preservation Act has triggered a "106 Review,"
- (e) the Tribe requests consultation with a Government Agency,
- (f) consultation is required to ensure access or protection of the Tribe's sacred sites so tribal members may practice their traditional ceremonies under the American Indian Religious Freedom Act or other federal or international law,
- (g) prior approval by the Tribe is required before permitting excavations under applicable laws including but not limited to the Archeological Resources Protection Act, as amended,
- (h) any action affects a particular property of spirituals, historical, and/or cultural significance to the Tribe that is protected or acknowledged under the National Historic Preservation Act, including the treatment and disposition of specific kinds of human remains, funerary objects, sacred objects, and other items,
- (i) the Indian Self-Determination and Education Assistance Act mandates consultation for specific actions taken by Government Agencies.
- (j) the National Environmental Policy Act (NEPA) requires agencies to contact Indian tribes early in the development of environmental assessments or environmental impact statements (or otherwise) for any projects that may impact tribal interests, and
- (k) any proposed or ongoing action constitutes an adverse action against the sovereignty, jurisdiction, or rights of the Tribe, or its citizens,.

### 3. Definitions

- (a) **Consent** means free, prior, and informed permission or agreement within the meaning of the United Nations Declaration on the Rights of Indigenous People.
- (b) **Consulting Party** means any party seeking consultation with the Tribe.
- (c) **Cultural Properties** means anything associated with cultural practices or beliefs of the

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Tribe which are rooted in the Tribe's history and are, in the Tribal Council's opinion, important in maintaining the continuing cultural identity of the Tribe.

- (d) **Government-to-Government Consultation** means the process under which the Tribe acting through the Tribal Council or the Tribe's duly authorized Executive, Department, Division, or Office officially has engaged in substantive and meaningful communication and/or collaboration and participation, in furtherance of the principles of developing programs and policies that benefit the Tribe, its citizens which promotes enhanced communication that emphasizes trust, respect, and shared responsibility with the consulting party.
- (e) **Government** means the Federal government, and any state, province, nation, or recognized tribe.
- (f) **Government Agency** means any department, independent establishment, Government corporation, or other agency of another Government.
- (g) **Free** means voluntary and in the absence of coercion, outside pressure, intimidation, or manipulation.
- (h) **Informed** means having all relevant, objective and high quality information as well as considering all subjective views and positions. This may include the input of traditional elders, spiritual leaders, traditional subsistence practitioners, employees, officials, consultants and traditional knowledge holders, with adequate time and resources to find and consider information that is impartial and balanced as to potential risks and benefits and adequate opportunities to engage in a back-and-forth conversation.
- (i) **Tribe** means the Coquille Indian Tribe.
- (j) **Coquille Tribal Council or Tribal Council** means the elected governing body of the Tribe as described in the Constitution of the Coquille Indian Tribe.
- (k) **Chairperson** means the Chairperson of the Tribal Council.
- (l) **Prior** means a process taking place before any decision is made by the consulting party that, in the Tribe's sole opinion, allows (1) sufficient lead time for the information gathering, sharing, and evaluation to take place according to the Tribe's decision-making process, (2) meaningful discussions between authorized representative(s) and decision maker(s) of the Tribe and the consulting party, and (3) consultation processes proscribed in this Ordinance.
- (m) **Proposed Action** means the activity that a consulting party is analyzing, considering, suggesting or desiring to take.

#### 4. Background and Intent

- (a) The Tribal Council has determined that the interests of the Tribe are best served by instituting protocols that will strengthen the relationship and understanding between the Tribe and other sovereigns.
- (b) It is the intent of the Tribal Council to institute consistent and specific processes and protocols to provide for meaningful collaboration and mutual effective decision-making. It is in the public interest to put all consulting parties on notice of the process and protocols which must be followed under tribal law to have meaningful Government-to-Government (or other) consultations with the Tribe.
- (c) Nothing in this Ordinance is intended to change the day-to-day work responsibilities and delegated authorities of Tribal government employees, nor their ability to engage with

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officials from other governments to perform their properly assigned functions.

5. Guiding Principles

Consultation operated at both policy and technical levels through which the consulting parties develop a common understanding to formulate a decision and ensure that it is based on meaningful consultation on matters covered by this Ordinance.

**191.010 General Policy**

1. Objectives of Consultation. The objectives of consultation are to:

- (a) Ensure that the Tribal Council makes informed decisions.
- (b) Ensure federal compliance with legal and trust obligations as well as other applicable federal laws and policies affecting tribal rights, resources, culture, religion, subsistence, and commerce in the Tribe's cultural landscape.
- (c) Ensure that consulting parties provide responsive and useful information to the Tribe.
- (d) Ensure that consulting parties receive responsive and useful information from the Tribe.
- (e) Improve policy level decision-making of the Tribal Council and other Governments.
- (f) Achieve bilateral decision-making between sovereigns.
- (g) Ensure the protection of tribal resources, cultural properties, religious freedom, health, and economic welfare.
- (h) Ensure compliance with tribal laws and policies.
- (i) Ensure free, prior, and informed consent before any significant (in the Tribal Council's opinion) tribal interests covered by this Ordinance are affected or the integrity of the Tribe's water, land, or other resources are significantly (in the Tribal Council's opinion) affected.
- (j) Improve the integrity and reliability of other government decisions and strengthen the Government-to-Government relationship between the United States and the Tribe.
- (k) Create a record of the consulting party's and the Tribe's efforts to:
  - a. identify and share useful or relevant information,
  - b. engage in deliberations over the use of that information,
  - c. make decisions that are sensitive to Tribal interests.

2. Point of Contact

- (a) CITC Chapter 190 addresses the primary points of contact for governments and entities wishing to consult with the Coquille Indian tribe.

3. Consultation Process

The Tribal Council hereby establishes the following process for covered Government-to-Government consultations.

- (a) Standing to Consult: The Tribe shall only enter into consultation over covered issues or

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interests with duly authorized representatives and officials authorized to make decisions on the subject matter of the consultation.

- (b) Notice Requesting Consultation: Notice requesting consultation shall be given to the Tribe's designated point-of-contact at least sixty (60) days in advance of any scheduled consultation, calculated from the day after receipt by the Tribe's point-of-contact.
- (c) Requirements of Notice: The consulting party's notice requesting consultation shall provide its contract's name, title, address, email address, phone number, the scope and purposes of the consultation, and any anticipated or proposed action including identifying all issues that may impact the Tribe.
- (d) Information and Background: At least 30 days in advance of any consultation, the consulting party shall submit directly to the Tribe's designated point-of-contact a briefing paper that discusses the reasons for the proposed action, any proposed memorandum of agreement, and any written statements, documents, maps, and coordinates regarding the scope of the project.
- (e) Discussion: At the election of the designated point-of-contact, the consulting party and the Tribe shall have direct party-to-party meetings including face to face, telephone, and interest meetings with the duly authorized governmental representatives and officials authorized to make decisions to ensure both parties have a free and informed understanding of the issues, proposed actions, and their consequences.
- (f) Delegated Consultation: The Coquille Indian Tribal Council Chairperson, or Tribal Council, may delegate to a designated point-of-contact the authority to respond to a notice of consultation and waive any protocol for routine and technical matters.

#### 4. Failure to Comply

- (a) All purported consultations done in violation of this Ordinance are invalid and shall have no legal, procedural or political effect.
- (b) Any person violating this Ordinance is prohibited from (1) relying upon invalid consultation attempts for any purpose, and (2) asserting or representing to any person, entity, or court that it conducted a meaningful government-to-government consultation with the Tribe or asserting that it obtained the Tribe's informed consent for any purpose.

#### **191.800 Consultation Fee**

The Tribal Council is authorized to assess a consultation fee to reimburse the Tribe for its actual or estimated organizational costs and opportunity costs related to consultations with any other party. Parties contacting the Tribe to request consultation should be prepared to provide such reimbursement. The Tribal Council also may establish a *de minimus* consultation reimbursement amount that would apply in situations where the Tribe's costs are too difficult or small to calculate.

#### **191.900 Waiver**

The Tribal Council may waive some or all of the provisions of this resolution provided that any such waiver shall not be inferred and must be clear and unequivocal.

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History of Amendments to 191:

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