

Executive Order 05-05 (EO 05-05) requires review of all capital construction projects and land acquisitions for the purposes of capital construction projects that are not undergoing Section 106 review under the National Historic Preservation Act of 1966. The Executive Order is included as pages 3-5 of Attachment G.

The EO 05-05 process is not required if you meet any of these conditions:

- your project is a capital equipment only project
- your project is an operations only project
- your project includes federal funding and is completing the federal Section 106 environmental review process

If your project is subject to Executive Order 05-05, you will need to include time and money in your project schedule and budget for compliance. Previous project teams have spent at least three to six months on this process. The following lists typical steps in the process to comply with Executive Order 05-05.

1. WSDOT-Public Transportation (PT) determines which of the selected grant projects are subject to Executive Order 05-05 (EO 05-05).
2. WSDOT-PT provides the grantees with a copy of the EZ form required to review the project for compliance with EO 05-05 and a copy of the Unanticipated Discovery Plan (UDP) template.
3. The grantee submits the completed EZ form for review to WSDOT-PT who submits the form for review by WSDOT-Environmental. WSDOT-Environmental reviews the form for completeness and determines the tribes affected based on the project location.
4. If the information in the form needs additional clarification, WSDOT-Environmental returns the form to WSDOT-PT with notes on the necessary revisions. WSDOT-PT consults with the grantee to complete the form.
5. Simultaneously:
 - a. Once the form contains all necessary information, WSDOT-Environmental submits the form for review by the Department of Archaeology and Historic Preservation (DAHP).
 - b. With the information from the EZ form, WSDOT-PT prepares letters notifying the tribes of the project. Notification to the tribes requires a 30-day waiting period for response.
 - c. The grantee can begin preparing the Unanticipated Discovery Plan document with the information on the tribes affected by the project.
6. Simultaneously:
 - a. DAHP reviews the project and issues a letter to WSDOT-Environmental with a ruling on what is required to comply with EO 05-05.

- b. The grantee submits the UDP to WSDOT-PT for review.
 - c. If any responses are received from the notified tribes, the responses will be shared with WSDOT-Environmental, DAHP and the grantee. WSDOT-PT will coordinate with the grantee and WSDOT-Environmental on a response.
7. WSDOT-Environmental provides the letter from DAHP to WSDOT-PT who provides it to the grantee along with consultation on next steps. Based on DAHP's ruling one of the following three cases is likely¹².
 - a. DAHP rules that a cultural resource survey is required. A cultural resource survey cannot be completed until design of the project has reached a point that clearly indicates the location and depth of all ground disturbing construction activities.
 - b. DAHP rules that a site monitor is required during all construction activities exceeding a certain depth.
 - c. DAHP rules that the project is not likely to affect cultural resources and nothing further is required.
8. If a cultural resource survey is required, the grantee must provide a report documenting the findings of the cultural resource survey of the project and site to WSDOT. WSDOT-PT and WSDOT-Environmental are available to assist in reviewing potential scopes of work for the cultural resource survey or draft reports.
9. Once the report is complete and submitted to WSDOT-PT, WSDOT-Environmental will review and present the findings to DAHP for consideration. DAHP will review and respond on whether the findings of the survey meet the compliance for EO 05-05.
10. Once the EO 05-05 compliance is met, the project will be given notice to proceed.³

¹ DAHP may require that the design be completed or close to final before ruling on the project.

² In all cases if anything is uncovered during construction activities, stop work immediately and follow the directions in the project's Unanticipated Discovery Plan.

³ A project may not begin construction until EO 05-05 compliance is met.



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

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EXECUTIVE ORDER 05-05

ARCHEOLOGICAL AND CULTURAL RESOURCES

WHEREAS Washington has a rich and diverse cultural heritage, as represented by the numerous archaeological and historic sites that have been identified and located throughout our state; and

WHEREAS preservation and protection of these sites provides educational and cultural values for all citizens and leads to better understanding between cultures of our shared history; and

WHEREAS many citizens of Washington contribute their time and efforts to preserve and protect Washington's unique archaeological and historic sites, and traditional cultural places; and

WHEREAS these sites and places hold special cultural, historical, and spiritual significance for both tribal members and citizens of Washington; and

WHEREAS the Department of Archaeology and Historic Preservation (DAHP) and the Governor's Office of Indian Affairs (GOIA) have key statewide responsibility to enhance the public's awareness of the need and value of protecting Washington's heritage and establish effective consultation with Native American tribal governments.

NOW, THEREFORE, I, Christine O. Gregoire, Governor of the state of Washington, hereby order all state agencies to:

1. Review capital construction projects and land acquisitions for the purpose of a capital construction project, not undergoing Section 106 review under the National Historic Preservation Act of 1966 (Section 106), with the DAHP and affected Tribes to determine potential impacts to cultural resources. This review shall be required on all capital construction projects unless they are categorically exempted by DAHP. Cultural resources are defined as archeological and historical sites and artifacts, and traditional areas or items of religious, ceremonial and social uses to affected tribes. This review should be done as early in the project planning process as possible. Should DAHP identify a known culturally significant site in the area of a project, or should DAHP inform the agency of the potential that such a significant site is likely to be found in a project locale, the agency shall:

A. Work with DAHP and affected Tribes on appropriate archaeological survey and mitigation strategies consistent with state and federal laws.

B. Consult with affected Tribes in a way that includes a face-to-face meeting or other agreed upon method to discuss the project before a state agency completes the project design. The agency will work with GOIA and DAHP to identify affected Tribes and, if needed, seek their help to arrange a meeting to discuss the project in question. If an agency is unable to arrange such a meeting, it will promptly notify GOIA and DAHP of the situation.

C. Take reasonable action to avoid, minimize or mitigate adverse effects to the archeological or cultural resource.

D. Notify DAHP and GOIA, in advance, of any meeting with affected Tribes during which matters concerning cultural resources related to a capital construction project will be discussed, and extend invitations to both agencies to attend any such meetings. If representatives from DAHP or GOIA cannot attend, the agencies will provide DAHP and GOIA with detailed meeting notes.

2. Submit all agreements between state agencies and affected Tribes concerning cultural resources that are developed outside the Section 106 process for review and comment to DAHP. DAHP's review and comment on any such agreement must occur before the agency can sign such agreement. Consult with DAHP and affected Tribes during project design and prior to construction on projects not undergoing Section 106 review, as a condition to receiving state grants or loans for the purposes of a capital construction project. Should either DAHP or the affected Tribes identify cultural resources affected by the proposed project, the state agency or agencies will ensure that the grant recipient finds reasonable ways to avoid, minimize or mitigate impacts to the resource before state funding is disbursed. State agencies shall take steps to insure that this type of review is incorporated into their grant and loan management process.

3. The Office of Financial Management is directed to include in its capital budget instruction a requirement that agencies consult with DAHP and GOIA, as appropriate, as part of the budgeting process for pre-design, design and construction.

4. To the extent that they have not already received training, all appropriate state agency employees managing capital construction projects or pass through capital grants will attend Government-to-Government training and Cultural Resource training provided by GOIA and DAHP.

5. By January 15, 2007, DAHP shall report back to the Governor's Office and the Office of Financial Management on the implementation of this executive order including any recommendations on ways of improving implementation.

I invite institutions of higher education, public schools, statewide elected officials, boards, commissions, and others to implement the practices herein described within their agencies.

This executive order takes effect immediately.




IN WITNESS WHERE OF, I have hereunto set my hand and caused the seal of the state of Washington to be affixed at Olympia this 10th day of November, Two Thousand and Five.

Christine Gregoire

CHRISTINE O. GREGOIRE
Governor of Washington

BY THE GOVERNOR:



Secretary of State