Appendix K: Advisory Council on Historic Preservation letter regarding tribal consultation.

Preserving America's Heritage

March 15, 2006

Sharon Love
Washington Division
Federal Highway Administration
Suite 501 Evergreen Plaza
711 South Capitol Way
Olympia, WA 98501-1284

RE: *Section 106 requirements for Tribal Consultation.*

Dear Ms. Love:

Some time ago, you requested clarification from the ACHP regarding FHWA's responsibilities for consultation with Indian tribes under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) and our regulations at 36 CFR Part 800. Your specific question relates to the boundaries established by existing treaty fishing rights, and whether these boundaries limit FHWA's responsibilities for consultation with Indian tribes with an interest in the project area.

As you know, Section 101(d)(6)(B) of the NHPA requires the agency official (FHWA) to consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking. 36 CFR 800.3(f)(2) elaborates on this responsibility, stating that "*[t]he agency official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.*" The ACHP regulations require that even where one tribe holds treaty rights in the geographic area containing the undertaking and its area of potential effects, Federal agency officials must consult with any tribe that attaches religious and cultural significance to historic properties as provided in 36 CFR 800.3(f)(2). FHWA must consider the views of all consulting parties in the Section 106 process.

It is not uncommon for multiple Indian tribes to attach significance to the same historic property. Where multiple tribes disagree on the appropriate treatment of a property of traditional religious and cultural significance, the consultation process should be used to attempt to resolve those differences.

Thank you for seeking our views on this issue. If you need further clarification or wish to discuss this with my staff, please feel free to contact Carol Legard, our FHWA Liaison, at 202-606-8522

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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or via email at clegard@achp.gov. You may also contact Valerie Hauser, our Tribal Program Coordinator at 202-606-8530 or vhauser@achp.gov.

Sincerely,

Charlene Dwin Vaughn

for Don L. Klima
Director
Office of Federal Agency Programs

cc:

Allyson Brooks, WA SHPO
Danny Capri, FHWA
Douglas MacDonald, WSDOT
MaryAnn Naber, FPO, FHWA