



STATE OF WASHINGTON

OFFICE OF THE INTERAGENCY COMMITTEE
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January 22, 2007

TOPIC #4: Implementation of Executive Order 05-05

Prepared By: Leslie Ryan-Connelly **Approved by the Director:** 

Presented By: Leslie Ryan-Connelly and Myra Barker

Proposed Action: Information Item

Summary:

In November 2005, the Governor signed Executive Order 05-05, Archeological and Cultural Resources. The order impacts all capital budget projects, including the IAC grant programs. IAC staff is working toward compliance with the Executive Order. Staff will brief the Board on accomplishments to date, next steps, and potential impacts to project sponsors.

Staff Recommendation:

Staff will continue to work on implementing Executive Order 05-05 and bring any emerging issues to the IAC Board's attention.

Background:

Executive Order 05-05 is intended to protect archeological and cultural resources that may be impacted as a result of state funded projects. Agencies are required to comply with the order for all capital funded projects, including development and land acquisitions. Compliance with the Executive Order must occur prior to the disbursement of any capital funds. Agencies must consult with the Department of Archeology and Historic Preservation (DAHP) as well as affected Tribes.

Consultation with DAHP requires submitting information regarding the project to the agency for their review. DAHP staff will either concur with a "no effect" determination or will recommend additional review, which may include a professional survey of the site or other actions. If DAHP determines that cultural resources will be impacted, IAC must develop a Memorandum of Agreement with DAHP for the project. The agreement will prescribe the steps to avoid, minimize, or mitigate for the impacts.



A parallel consultation with affected Tribes must also occur for all projects subject to DAHP consultation. Such consultation is required to follow the government-to-government protocols established under the 1989 Centennial Accord. Consultation is intended to be face-to-face between agency directors and elected tribal leaders, unless some other method of communication is negotiated between IAC and each Tribe. If a Tribe has cultural resources concerns regarding a project, a separate agreement is negotiated. The Department of Archeology and Historic Preservation must first review any agreement between IAC and a Tribe before it can be executed.

Executive Order 05-05 is similar to the federal Historic Preservation Act, which requires similar review. Projects funded through IAC's federal grant programs (see below) have already been required to comply with the federal law. The federal agency administering the grant program acts as the lead agency for consultation with affected tribes.

Those projects that must comply with the federal Historic Preservation Act can be exempted from the state Executive Order. This includes projects:

- That are funded through one of IAC's federal grant programs (Boating Infrastructure Grant, Land and Water Conservation Fund, and National Recreational Trails),
- That have federal matching funds,
- That require a federal permit (e.g., Section 404 Clean Water Act permit from the US Army Corps of Engineers Permit),
- That are sponsored by a federal agency, or
- That are located on federal land.

IAC staff submitted to the Department of Archeology and Historic Preservation the list of Boating Facilities Program, Nonhighway and Off-Road Vehicle Activities Program and NRTP projects approved for funding at the last two IAC Board meetings. Department of Archeology and Historic Preservation staff has concurred that 94 of the 99 projects are exempt from Executive Order 05-05 for one of the following reasons:

- The project includes one of the federal nexuses mentioned above and will require compliance with the federal Historic Preservation Act,
- The sponsor is another state agency and IAC is deferring to that agency to comply with Executive Order 05-05, or
- The project is a planning or maintenance grant that will not involve any new ground disturbance.

Therefore, there are five projects from the 2006 grant cycle that are undergoing additional consultation with Department of Archeology and Historic Preservation.

IAC staff is working with project sponsors to finalize this review so that the projects can get underway as soon as possible.

Next Steps:

There are a number of next steps which IAC staff has identified to assist with implementation of Executive Order 05-05 in the future. Items to pursue include:

- Developing a formal tribal consultation process to improve the efficiency of review of projects with each tribe,
- Developing a programmatic agreement with Department of Archeology and Historic Preservation to exempt certain programs and project types (e.g., federal grant programs, planning grants, maintenance projects, etc.),
- Adding language regarding compliance with Executive Order 05-05 to IAC policy manuals to ensure all potential sponsors are aware of this new requirement,
- Adjusting the application process for assessment of possible cultural impacts and extending grant contract milestones to allow applicants time to comply,
- Revising the contract General Provisions to specifically address compliance with Executive Order 05-05 and the steps to take if the project sponsor inadvertently discovers cultural resources during project construction,
- Working with state agency sponsors to ensure consultation meets the sponsors' and IAC's expectations, and
- Addressing how the Executive Order impacts review and approval of "conversions".

Attachments:

- Executive Order 05-05.

CHRISTINE O. GREGOIRE
Governor



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:

A handwritten signature in black ink, appearing to be "G. E.", written over a horizontal line.

Secretary of State