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Legal Guardian for Future Generations

A Legal Guardian for Future Generations is a person who advocates the legal interests of future generations in a clean, healthy and life-sustaining environment. These interests should be considered by federal officials negotiating with sovereign Native American tribes, administrative agencies drafting regulations, Attorneys General and the Department of Justice reviewing their enforcement priorities, courts determining the impacts of environmental degradation on a community, and in many other contexts. Tribal councils, presidents, governors, mayors or judges could appoint a legal guardian to guide their decisions.

More and more state constitutions and state and federal laws require courts and other government bodies at all levels to take the interests of future generations into account when they make decisions that affect the long-term health of the environment. Government bodies are also beginning to express interest in doing so, not because they are specifically required to by law, but because it is the right thing to do.

Because the interests of future generations are so important, we encourage government bodies to designate a Legal Guardian for Future Generations. What follows is an outline of one example of how a Legal Guardianship might be structured. This outline is intended to identify the essential requirements of such a consultation, though a more detailed structure could be developed for a specific government body or project.

Government Body Consultation with Legal Guardian For Future Generations

When a government body requests the assistance of a Legal Guardian for Future Generations in evaluating a proposed action that may affect the environment, the responsibilities and obligations of the government body and the Legal Guardian shall be as follows.

I. Definitions

A “**legal guardian for future generations**” (Legal Guardian) is a person representing a community who has the duty to ensure that a proposed government action will provide ecologically healthy land, water and air for the benefit of future generations of members of the community.

Land, water and air are “**ecologically healthy**” when they retain their capacity for stable self-renewal and recycling of nutrients; retain and support the health, integrity and diversity of their interdependent species including plants, animals and people; and retain their natural beauty.

II. Conduct of the Consultation

A. Initiation

1. The government body shall engage the assistance of the Legal Guardian at the outset of the process of evaluating a proposed action.
2. The government body shall identify all legal authorities that specify any legal obligation toward future generations that the government body must adhere to.
3. The government body shall identify and fully describe the proposed action and provide the Legal Guardian with all materials that are necessary or helpful to the Legal Guardian's evaluation.

B. The Legal Guardian's Evaluation of the Proposed Action

1. The Legal Guardian shall prepare a Report on the Effects on Future Generations evaluating (i) the potential impacts of the proposed action on the ecological health of the community's land, water and air and (ii) any potential effects these impacts may have on future generations of the community. The Report shall:
 - (a) Describe these impacts and effects in terms of ecological and human health, and need not make any attempt to monetize or otherwise quantify them in economic terms;
 - (b) Consider these impacts and effects in the context of all anticipated cumulative impacts on the ecological health of the community's land, water and air;
 - (c) Identify any violations of any legal obligations toward future generations that the proposed action may cause; and
 - (d) Recommend alternatives to the proposed action, including modifications to it that could reduce or eliminate any potential adverse effects on future generations.
2. The Legal Guardian may request that a public hearing be held specifically devoted to the Report. The Legal Guardian may revise the Report in response.

- C. Accounting for the Interests of Future Generations by the Government Body
1. The government body shall consider the Legal Guardian's Report on the Effects on Future Generations when it evaluates the proposed action.
 2. The government body may not take or approve any action that violates any legal obligation to future generations.
 3. If the government body decides to approve the action, either as proposed or as modified, it shall prepare a written Response to the Legal Guardian's Report on the Effects on Future Generations. The Response:
 - (a) shall establish that any approved action meets all legal obligations to future generations; and
 - (b) if the approved action may cause any adverse effects on the interests of future generations, shall establish that those effects are permitted by law and set forth the government body's reasons for allowing such adverse effects to occur.
 4. The Legal Guardian shall have a reasonable opportunity to prepare a reply to the government body's Response.