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530.01 WSDOT Policy for Working with Tribes

WSDOT has a unique relationship with tribes due to their legal status, rights reserved through treaties, and cultural interests throughout the state. Tribes retain many sovereign rights that are guaranteed under treaties and federal laws. WSDOT maintains government-to-government relationship with 35 federally recognized Tribes. We recognize that each federally recognized Tribe is a distinctly sovereign nation. WSDOT employees will consult with Tribes on all decisions that affect their rights and interests. Consultation is independent from the public involvement process. Our goal is to create durable intergovernmental relationships with 35 federally recognized Tribes. Twenty-nine federally recognized tribes with reservations in Washington; six tribes have reservations located outside of the state but have traditional homelands, treaty rights or other interests in Washington State. We recognize that each federally recognized Tribe is a distinctly sovereign nation. WSDOT will consult with Tribes on all decisions that affect their rights and interests and consultation is independent from the public involvement process. Our goal is to create durable intergovernmental relationships that promote coordinated transportation partnerships in service to all of our citizens. Each reservation in the state constitutes a bordering jurisdiction for state agencies and projects may be subject to various Tribal permits or approvals.

530.02 Treaty Rights

Between 1853 and 1856, treaties were negotiated with tribes in the Washington Territory. In these treaties, tribes reserved a number of rights, including the “right of taking fish, at all usual and accustomed grounds and stations,” which was “further secured to said Indians, in common with all citizens of the Territory.” This phrase is at the heart of the tribal treaty fishing rights, and has given rise to the important concept of “usual and accustomed areas” of the treaty tribes, or “U&A areas.” These areas may extend beyond a tribe’s reservation land and also apply to landless tribes. Supreme Court decisions and federal law have affirmed the continued validity of treaties. Federal agencies are bound by their trust responsibility and may require a project to address impacts to tribal treaty rights before issuing a permit. Early consultation with affected tribes is recommended to identify and resolve issues and thereby avoid delays in permitting.

It is important to note, however that tribal areas of interest for consultation are not limited U&A areas. Tribal Consultation Area maps are available on the GIS Workbench. A summary of court adjudicated tribal fishing areas is available in the [WSDOT Model Comprehensive Tribal Consultation Process for the National Environmental Policy Act](#).

530.03 Section 401 Water Quality Certification by Tribes

In Washington State, two agencies (EPA and Ecology) and twelve tribes have Section 401 certification authority. The EPA has Section 401 certification authority in Indian country on behalf of Tribes who do not have “treatment in a similar manner” as a state and on Federal lands with exclusive jurisdiction within the state of Washington. Indian country includes lands within reservation boundaries, trust lands exterior to reservation boundaries, Indian allotment lands, and dependent Indian communities (see [18 U.S.C. 1151](#) for a full definition of Indian country). Find tribes with Section 401 certification authority and Water Quality Certification (WQC) determinations on the Governor’s Office of Regulatory Innovation and Assistance (ORIA) [Section 401 Water Quality Certification webpage](#). Ecology is authorized to make Section 401 certification decisions for activities on all other federal, public (non-federal) and private lands in the state. See [Chapter 430](#) for background on surface water quality standards and documentation and the WSDOT [Stormwater and water quality](#) webpage for Section 401 certification. [Stormwater and water quality](#) webpage for Section 401 certification.

Similar to the Department of Ecology, tribes may provide “granted,” “waived” or “denied” determinations for activities covered by all, none or certain Nationwide permits (NWP) within their jurisdiction. See the tribal directory on the Governor’s Office of Indian Affairs (GOIA) [Federally Recognized Indian Tribes in Washington State](#) webpage and contact the tribe for more information on Water Quality Certifications. Contact MAPP team for more information on WQC determinations and the rule in effect.

530.04 Section 106 Consultation

Tribes have a consultation role under Section 101 and 106 of the National Historic Preservation Act (NHPA). A Tribal Historic Preservation Office (THPO) can be established by the tribe pursuant to the NHPA and assert jurisdiction otherwise exercised by the SHPO on Indian lands. The following tribes have certified THPOs: Confederated Tribes of Colville, Confederated Tribes of Chehalis, Cowlitz Indian Tribe, Hoh Indian Tribe, Jamestown S’Klallam Tribe, Lummi Nation, Makah Nation, Nisqually Indian Tribe, Nooksack Tribe, Port Gamble S’Klallam Tribe, Quinault Indian Nation, Samish Indian Nation, Sauk Suiattle Indian Tribe, Skokomish Indian Tribe, Spokane Tribe of Indians, Squaxin Island Tribe, Stillaguamish Tribe of Indians, Suquamish Tribe, Swinomish Indian Tribal Community, and Confederated Tribes and Bands of Yakama Nation.

WSDOT and the Federal Lead Agency must consult with tribes on projects located within a tribe’s Consultation Area. Section 106 consultation usually occurs during the design/ environmental review phase of a project; see [Chapter 456](#) for background on Section 106.

530.05 Archaeological Resources Protection Act Permit

Under federal statute, tribal governments approve this permit when the project or activity is on tribal trust land. The Bureau of Indian Affairs issues the permit. See [Chapter 456](#) for background on cultural resources and the WSDOT Federal, State, and Local Permits webpage for details on this permit and statutory authority. Contact Bureau of Indian Affairs, Portland Office, and the affected tribe(s) for details on how to apply.

530.06 Hydraulic Project Approval

The Washington State Department of Fish and Wildlife (WDFW) requires a Hydraulic Project Approval (HPA) for all non-tribal entities performing HPA activities on tribal trust lands and reservations. Several Tribes, such as the Yakama Nation, also issue approvals similar to an HPA. If you have a project on tribal trust lands or reservation, contact the Tribe's natural resources office and WDFW's biologist assigned to the project to determine whether an HPA and/or similar tribal approval applies. We recommend you coordinate with WDFW and the Tribe to ensure that any permit conditions are not in conflict with one another. Because of the complicated nuances of state, tribal, and federal law and jurisdiction, we recommend you discuss any questions of jurisdiction with ESO's Assistant Attorney General.

530.07 Tribal Law

On reservation land, tribal laws may require permits and approvals similar to those required by counties and cities. These permits and approval are required when WSDOT works outside of the highway right of way on the adjacent reservation land. In cases where WSDOT has an easement rather than ownership, the tribe may retain jurisdiction to issue permits and approvals. Examples of permits that may apply include Tribal Environmental Policy Act (TEPA) determinations; critical areas approvals; clearing, grading, and building permits; land use approvals; noise variances; and utility permits. Contact the WSDOT Tribal Liaison for assistance in coordinating tribal permits on reservation land.

530.08 Permit Assistance

WSDOT's Tribal Liaison is a central resource for tribal access and problem solving on natural or cultural resource issues relating to tribes for regions and offices that do not have a dedicated Tribal Liaison position. Consultation area maps for tribes are available on the GIS Environmental Workbench.

See the WSDOT [Tribal contacts](#) webpage for tribal contacts, links to tribal treaties, relevant statutes, and [Centennial Accord Plan](#) and [Communication and Consultation Protocols](#) and includes WSDOT's Executive Order Protocols. The WSDOT Centennial Accord Plan includes WSDOT's Executive Order [E 1025.01](#) on Tribal Consultation. Contact tribal government for assistance with permits or approvals on projects that may affect tribal lands.

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