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## Chapter Six

## Consultation and Coordination

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This chapter presents a summary of the public involvement process conducted for the Interstate 90 (I-90) environmental impact analysis process. This chapter also summarizes agency consultation and coordination. The chapter concludes with a table identifying all applicable regulations considered in this Environmental Impact Statement (EIS).

### 6.1 How is the public involved in this project?

The Washington State Department of Transportation (WSDOT) is committed to including the public in the environmental impact analysis process. This section describes the range of public involvement efforts.

#### 6.1.1 Public Involvement Plan

WSDOT prepared a *Draft Public Involvement Plan for the Snoqualmie Pass East I-90 Improvements* (WSDOT 20021). The plan outlines the project, public involvement goals and objectives, target audiences, emerging issues, public involvement tools and techniques, and public involvement strategies and opportunities.

#### 6.1.2 Project Committees

*Interdisciplinary Team (IDT)* – The National Environmental Policy Act (NEPA) requires public involvement and an interdisciplinary approach to environmental analysis. WSDOT/FHWA’s approach is to establish an IDT (23 Code of Federal Regulations [CFR] 771.105[c]) to guide and direct EIS preparation. The purpose of such a team(s) is to 1) encourage public involvement, and 2) ensure that a systematic interdisciplinary approach is an essential part of the project’s development process.

The WSDOT created the IDT to provide guidance and direction to the WSDOT in preparing the *I-90 Snoqualmie Pass East Environmental Impact Statement (EIS)*. Typically, IDT membership on WSDOT projects is composed of WSDOT staff. However, membership on the I-90 Snoqualmie Pass East IDT is balanced between WSDOT staff and representatives from the Federal Highway Administration (FHWA), United States Fish and Wildlife Service (USFWS), United States Forest Service (USFS), United States Army Corps of Engineers, Washington Department of Fish and Wildlife (WDFW), and Washington State Parks and Recreation Commission (WSPRC). The United States Environmental Protection Agency (USEPA) participates occasionally. The Washington Department of Ecology (WDOE) was invited, but declined to participate.

The IDT has helped WSDOT determine the screening criteria to be used to evaluate alternatives, the different routes or alignments the project could take, and in selecting the different alternatives. The IDT’s role on the project is ongoing, and they will review advance copies of the project’s environmental documents.

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**Mitigation Development Team (MDT)** – The WSDOT Project Management team invited multi-agency professionals with experience in the fields of biology and hydrology to participate on the MDT. The balance of the MDT was made up of other professionals from their agencies and WSDOT's experts. The MDT's focus was specifically on ecological connectivity issues within the project area.

### 6.1.3 Scoping

This section summarizes the scoping meeting schedule, notification, and attendance at the scoping meetings. Chapter 1 contains a summary of the primary issues and concerns raised during the scoping comment period.

The formal scoping period for the EIS began at the time the Notice of Intent to prepare an EIS was published in the *Federal Register* (December 28, 1999). However, WSDOT also held two pre-scoping meetings for the public in the spring of 1999; one was held on April 27 at the Hal Holmes Center in Ellensburg, and another was held on April 29 at the Mt. Si Senior Center in North Bend. The purpose of those meetings was to collect public input to aid in the alternatives development process.

A pre-scoping partnering workshop was also held in Yakima on October 12, 1999, and was attended by representatives from the Yakama Nation, USFS, WDOE, United States Army Corps of Engineers, USEPA, United States Bureau of Reclamation (USBR), WDFW, and the USFWS.

In February 2000, two scoping meetings were held. A scoping meeting for public agencies was held on February 1, 2000, at the USFS Cle Elum Ranger District Conference Room. Representatives from the following agencies were present: USEPA, USFWS, USFS, WDFW, and the Kittitas County Planning Department. The second scoping meeting for the public was held on February 23, 2000, at the Cle Elum Senior Center. The majority of the people attending the public scoping meeting were residents of Hyak.

Following a WSDOT presentation at each meeting, public and agency participants were given the opportunity to ask questions about the proposal or environmental process, and were encouraged to provide comments. In addition to the comments received at the scoping meetings, 50 emails, 21 letters, and 6 phone messages were received from the public during the scoping period. Between March 2000 and May 2000, 91 emails, 17 letters, and 15 phone messages were received.

In addition to the scoping meetings, a public open house was held at the Snoqualmie Pass Inn on September 25, 2001. Approximately 50 people attended the meeting, most of them residents of Hyak.

Table 1-1 provides a summary of the substantive scoping issues and concerns received through May 2000. In addition to substantive comments, requests for additional information, to be added to the mailing list, or for an extension of the scoping period were also received.

#### **6.1.4 Other Public Involvement Tools**

Prior to and during the public meetings, important information about the project will be communicated to the public. Methods of communication will include but are not limited to the following:

- Web site
- 1-800 telephone number
- Community calendars
- Press releases
- Newsletters
- Fact sheets and displays
- Presentations at various conferences and state fairs
- Presentations to local service clubs

#### **6.1.5 Public Hearings and Open Houses**

Public hearings to provide information and accept comments on the Draft EIS will be held in Ellensburg, Hyak, and Seattle at the times and locations described below. Fact sheets and displays will be available. A public hearing plan and summary report will also be prepared.

- June 29 – Ellensburg Inn, Ellensburg, Washington from 4-8 p.m.
- June 30 – Summit Inn, Hyak, Washington from 4-8 p.m.
- July 7 – South Lake Union Naval Reserve, Seattle, Washington from 4-8 p.m.

#### **6.1.6 Public Comment Period**

This Draft EIS has been distributed to agencies, numerous libraries, and members of the public who have requested to be on the mailing list. WSDOT placed official public notices and invitations to comment in local and regional newspapers of record. In addition, public meetings will also be announced in community calendars/newsletters, on the project web site, and in the project newsletter. In this manner, comprehensive notification regarding the availability of the document will be ensured.

The public comment period begins when the Notice of Availability for this Draft EIS is published in the *Federal Register*. Notice is anticipated to take place on June 10, 2005, and the comment period is expected to run through August 5, 2005. The objective of this public comment period is for WSDOT to receive oral and written comments on the content of the Draft EIS.

Public meetings, conducted in an informal open house format, provide for the exchange of information between the public and project team members on their

oral and written comments submitted to WSDOT. All of the comments received during the public comment period will be addressed in the Final EIS.

## 6.2 Has agency coordination and consultation occurred?

WSDOT has been **informally consulting** with other agencies from the beginning of this project. Informal consultation has consisted of staff-to-staff contacts between the agencies. Some of the ways WSDOT has been informally consulting with other agencies are as follows:

**Project Committees** – As described in Section 6.1.2, WSDOT has actively engaged both the IDT and the MDT in the environmental impact analysis process.

**Agency Participation in Discipline Reports** -- WSDOT has prepared a total of 20 discipline reports for this project. WSDOT has forwarded final and, in most instances, draft reports to federal and state agency representatives in order to provide these agencies with an opportunity to comment on these discipline reports. Table 6-1 shows which discipline report(s) agency representatives have asked for and been given the opportunity to review. In addition, USEPA has been provided specific discipline reports for their records.

**Table 6-1. Agency Discipline Report Review**

<i>Discipline</i>	AGENCY					
	<i>USACE</i>	<i>NMFS</i>	<i>USFS</i>	<i>USFWS</i>	<i>WDFW</i>	<i>SHPO</i>
Air Quality			X			
Aquatic Habitat & Species	X	X	X	X	X	
Archaeological & Cultural Resources			X			X
Energy			X			
Environmental Justice			X			
Geology & Soils			X	X		
Hazardous, Toxic, and Radiological Waste			X			
Land Use			X	X		
Noise			X			
Public Services			X			
Recreation/4(f)			X		X	
4(f)						
Right-of-Way <sup>1</sup>						
Socioeconomics			X			
Terrestrial Habitat and Species	X		X	X	X	
Traffic and Transportation			X			
Utilities			X	X		
Visual Quality & Aesthetics			X			
Water Resources	X		X	X	X	
Wetlands	X		X		X	

Note: 1. This report has not yet been completed.

WSDOT has also been **formally consulting** with other agencies during the life of this project. Some of the ways WSDOT has been and will continue formally consulting with other agencies are as follows:

**Signatory Agency Committee** [formerly NEPA/Washington State Environmental Policy Act (SEPA)/404 merger agreement] – Signatory Agency Committee Agreement applies to all transportation construction projects within the State of Washington that require a United States Army Corps of Engineers 404 individual permit, and action under NEPA and/or SEPA. The signatory agencies under this agreement are FHWA, National Marine Fisheries Service, United States Army Corps of Engineers, USEPA, WDOE, WDFW, and WSDOT.

The Signatory Agency Committee Agreement process includes three concurrence points where FHWA or WSDOT requests formal concurrence, and the signatory agencies provide either concurrence, concurrence with advisory comments, or non-concurrence, or they elect to waive participation at that stage. The intent of the concurrence process is to preclude revisiting decisions upon which agreement has been recorded. Concurrence is requested on the following three points:

1. Purpose and need, and the screening process for the alternatives selection process.
2. Project alternatives to be evaluated in the Draft EIS.
3. The preferred alternative, the Least Environmentally Damaging Practical Alternative, and mitigation plan.

WSDOT has completed Concurrence Point 1 (completed February 2001) and Concurrence Point 2 (completed August 2002) for this project. Concurrence Point 3 will be completed when the preferred alternative is identified in the summer of 2005.

**USFWS** – Under Section 7 of the Endangered Species Act (ESA), WSDOT is preparing two Biological Assessments, one for terrestrial species and one for aquatic species. These Biological Assessments will be submitted to the agencies once a preferred alternative has been chosen. ESA consultation is expected to be completed by fall 2006.

**State Historic Preservation Office (SHPO)/Native American Groups** – Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects of their undertakings on historic properties. This process includes consultation with the SHPO and interested Native American groups regarding the potential effects of an action on historic properties. Agency compliance with Section 106 can take place prior to, during, or after the NEPA process. The Section 106 compliance process includes SHPO and Native American consultation, identification of resources, evaluation of resources, assessing effects to historic properties, and resolving adverse effects.

WSDOT has initiated the consultation process and has completed resource identification. Evaluation of some of the resources, effects assessment, and resolution of adverse effects remain to be completed. Section 106 compliance,

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including SHPO and Native American consultation, will be completed by WSDOT prior to the implementation of the preferred alternative.

### 6.3 What are the Native American Treaty Rights and Trust Responsibilities?

The United States obtained most public domain land in the lower 48 states by signing treaties with Indian tribes. Approximately 60 of these tribes have treaties that contain some rights to off-reservation lands and resources (USFS 1997). The Marshall Trilogy (three Supreme Court decisions made between 1823 and 1831) established that (a) only the federal government has the pre-emptive right to procure Indian land; (b) the federal government has trust responsibilities toward American Indian tribes; and (c) treaties take precedence over state laws. NEPA implementing regulations require federal agencies to invite Indian tribes to participate in the scoping process on projects or activities that affect them. Tribes with treaty rights on National Forest lands may also meet with the USFS in advance of the formal planning processes about their reserved rights (USFS 1997).

**Treaty Rights.** The United States government negotiated treaties with Indian tribal governments for the purposes of western expansion, to keep the peace, and to add new states to the union, thereby obtaining the vast majority of public domain land in the lower 48 states (USFS 1997). Approximately 60 tribes negotiated treaties that contain some rights to off-reservation lands and resources. Off-reservation treaty rights on national forest lands may include grazing rights, hunting and fishing rights, gathering rights and interests, water rights, and subsistence rights (USFS 1997). In some treaties, the United States government must protect the tribes' right to access usual and accustomed fishing places, and open and unclaimed lands, and must ensure that USFS actions protect treaty resources, and do not prevent tribes or their members from accessing such locations to exercise tribal rights (USFS 1997).

**Trust Responsibilities.** Trust responsibility is the United States government's legal obligation to protect tribal lands, assets, resources, and treaty rights, and to carry out federal law with regard to American Indian tribes. USFS trust responsibilities relate to the reserved rights and privileges of federally recognized Indian tribes found in treaties, executive orders, laws, and court decisions that apply to the national forests and grasslands. USFS policy (Forest Service Manual 1563.03) is to (a) maintain a governmental relationship with federally recognized tribal governments; (b) implement Forest Service programs and activities honoring Indian treaty rights, and fulfill legally mandated trust responsibilities to the extent they are determined applicable to national forest lands; (c) administer Forest Service programs and activities to address and be sensitive to traditional native religious beliefs and practices; and (d) provide research, transfer of technology, and technical assistance to tribal governments.

**Treaty of 1855.** On June 9, 1855, at Camp Stevens in the Walla Walla Valley, Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of

Washington, negotiated a treaty on behalf of the U.S. with the Yakama, Palouse, Piquouse, Wenatshapam, Klikatat, Klinquit, Kow-was-say-ee, Li-ay-was, Skinpah, Wish-ham, Shyiks, Ochechotes, Kah-milt-pay, and Se-ap-cat, confederated tribes and bands of Indians, who occupied the Washington Territory (Columbia River Inter-Tribal Fish Commission 1997). For the purposes of the treaty, they were considered one nation, under the name Yakama. The treaty resulted in land cessions of 10.8 million acres and removal to a reservation. The new Yakama Indian Nation was allotted a reservation of 1.2 million acres set aside in Lower Yakama territory. Article 3 of this treaty states that the tribes have the following right:

The exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places in common with citizens of the Territory; and of erecting temporary buildings for curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.

**Taylor v. Yakama Tribe.** In 1887, in the first United States fishing rights case, the Supreme Court ruled in favor of the tribe's treaty rights to fish at accustomed places, regardless of the settler's fence, which blocked access (Flores 2004).

**U.S. v. Washington.** In 1974, Judge George Boldt ruled that Native Americans were entitled to "fair and equitable" share of the fishing catch, which meant 50 percent of the fish that swam in traditional fishing places (Flores 2004).

**Treaty of Point Elliott.** In 1855, the Snoqualmies and other native groups (Dwamish, Suquamish, Sk-tahl-mish, Sam-ahmish, Smalh-kamish, Skope-ahmish, St-kah-mish, Skal-wha-mish, N'Quentl-ma-mish, Sk-tah-le-jum, Stoluck-wha-mish, Sno-ho-mish Skagit, Kik i-allus, Swin-a-mish, Squin-ah-mish, Sah-ku-mehu, Noo-wha-ha, Nook-wa-chah-mish, Mee-see-qua-quilch, Che-bah-ah-bish) signed the Treaty of Point Elliott at Muckl-te-oh, with Governor Stevens, representing the United States. In this treaty, the Tribe ceded to the United States government all of its land between Snoqualmie Pass and Marysville, while retaining the right to take fish at usual and accustomed places, as well as hunting and gathering roots and berries on open and unclaimed lands. The Snoqualmie people were to move to the Tulalip Reservation (Governor's Office of Indian Affairs 2004).

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