

F | Tribal Consultation Plan and Log

This page intentionally left blank.

Tribal Consultation Plan and Log

Introduction

The following plan will guide the SR 502 Corridor Widening Project through government-to-government tribal consultation during the period of scoping through National Environmental Policy Act determination (record of decision). An addendum to this plan, to be produced at a later date will include specific tribal consultation activities during permitting and construction of the project.

This plan is designed to encourage early and continued feedback from, and involvement by, tribes potentially affected by the SR 502 Corridor Widening Project, and to ensure that their input will be incorporated into the decision making process. The processes and commitments outlined below apply to all interaction between the SR 502 Corridor Widening Project and tribes. Although tribal coordination and government-to-government tribal consultation is being undertaken as a distinct outreach effort, tribal involvement will also occur during agency coordination and public involvement.

Overview

Project team structure

The Federal Highway Administration is the federal lead agency for this project. Washington State Department of Transportation, Clark County, and the City of Battle Ground are the project sponsors. Staff from Washington State Department of Transportation is the lead and contact for government-to-government consultation for the SR 502 Corridor Widening Project.

The Federal Highway Administration is the lead federal agency. By terms of agreement, the Federal Highway Administration defers implementation of the Section 106 consultation process to Washington State Department of Transportation, but the Federal Highway Administration retains ultimate responsibility for compliance with consultation requirements. The Federal Highway Administration will be notified of all tribal contact, be invited to all meetings with the tribes and be closely involved while commitments take place with the tribes. A tribe may request to directly consult with the Federal Highway Administration.

The SR 502 Corridor Widening Project does not have a designated tribal liaison for this project. Other Washington State Department

of Transportation team members may participate in the on-going government-to-government dialogue, but consultants will not. Consultants will assist in preparing for meetings with the tribes, but all contact will be through Washington State Department of Transportation staff on the project. All communication with tribes will be coordinated with the Southwest Region Environmental Coordinator to ensure that information is managed internally and integrated into the government-to-government dialogue with the tribes. All tribal consultation and the results from these efforts will be documented in the project's administrative record.

Legal guidance

The project team will engage in early and continuous consultation with affected tribes throughout the process in accordance with the following documents and regulations:

Federal:

- United States Constitution Article VI, Section II on Treaties
- The National Environmental Policy Act
- Section 106 of the National Historic Preservation Act
- Presidential Executive Order 13175 Government to Government Relationship with Tribal Governments
- Executive Order 5201.1 on Department of Transportation Programs, Policies and Procedures Affecting American Indians, Alaska Native and Tribes.

Washington State:

- The Washington Centennial Accord and Millennium Agreement
- Washington State Department of Transportation Executive Order E 1025.00 Tribal Consultation
- Executive Order 05-05 Archaeological and Cultural Resources
- Revised Code of Washington 27.44 Indian Graves and Records
- Revised Code of Washington 27.53 Archaeological Sites and Resources
- Revised Code of Washington 68.60 Abandoned and Historic Cemeteries and Historic Graves
- Revised Code of Washington 42.56.30 Archaeological Site Public Disclosure Exemption
- Washington Administrative Code 25-48 Archaeological Excavation and Removal Permit

Goals and desired outcomes

Goals:

- To achieve a respectful engagement between the needs of the tribes and states as supported by numerous federal and state agreements and executive orders including: Presidential Executive Order 13175 Consultation and Coordination with Indian Tribal Governments, Washington State Centennial Accord, and Washington State Department of Transportation Executive Order 1025 Tribal Consultation among others.
- To achieve compliance with legally required steps under the National Environmental Policy Act, Section 106 of National Historic Preservation Act and other applicable state and federal laws.
- To achieve a richer and lasting understanding of the area and build durable relationships between Washington State Department of Transportation and the affected tribes who are or will be engaged in consultation for other projects.
- For the SR 502 Corridor Widening Project team and tribes to engage in an open exchange of information about the project, its potential effects, and appropriate mitigation.

Desired outcomes

There are multiple tribes and federal and state agencies involved in this consultation process. In some cases, these parties have specific responsibilities and desired outcomes for the process. Exhibit F-1 below briefly outlines these outcomes:

Exhibit F-1: Desired outcomes of consultation by agency and tribe

Agency / Tribe	Desired outcomes of consultation
Chinook Tribe	<ul style="list-style-type: none"> • Protection of natural, cultural, and spiritual resources of significance to the tribe. • Locate any cultural resources, artifacts, and burials prior to project construction in order to avoid disturbing them. • Respectful treatment and immediate reburial of any human remains disturbed by the project.
Cowlitz Indian Tribe	<ul style="list-style-type: none"> • Protection of natural, cultural, and spiritual resources of significance to the tribe. • Locate any cultural resources and burials prior to project construction in order to avoid disturbing them. • Respectful treatment and immediate reburial of any human remains disturbed by the project. • Fulfill their responsibilities under the Washington Centennial Accord
Federal Highway Administration	<ul style="list-style-type: none"> • Make decisions in accordance with their responsibilities to tribes. • Fulfill its responsibilities under Executive Order 13175 Consultation and Coordination with Indian Tribal Governments; Executive Order 5201.1 on Department of Transportation Programs, Policies and Procedures Affecting American Indians, Alaska Native and Tribes. • Fulfill their responsibilities under the National Environmental Policy Act, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, and Section 106 of the National Historic Preservation Act, so they can issue the appropriate documentation based on effects of an environmental impact statement.

Agency / Tribe	Desired outcomes of consultation
National Marine Fisheries Service	<ul style="list-style-type: none"> • Make decisions in accordance with their trust responsibilities to tribes. • Make sure project is in compliance with consultation responsibilities so they may issue concurrence and biological opinion under the Endangered Species Act.
US Army Corps of Engineers	<ul style="list-style-type: none"> • Meet or ensure the project meets legal requirements under Section 106 so they can issue a Section 404 water quality permit • Make decisions in accordance with their trust responsibilities to tribes. Ensure any unavoidable effects to treaty rights are resolved so that they can issue a Section 404 Water quality permit
US Fish and Wildlife Service	<ul style="list-style-type: none"> • Make decisions in accordance with their trust responsibilities to tribes. • Make sure the project is in compliance with consultation responsibilities so they may issue concurrence and biological opinion under the Endangered Species Act.
Washington State Department of Archaeology and Historic Preservation	<ul style="list-style-type: none"> • Fulfill their responsibilities under Section 106 of National Historic Preservation Act, the Washington Centennial Accord and Executive Order 05-05 • Ensure the project complies with Washington State laws including: RCW 27.44 Indian Graves and Records Act, 27.53 Archaeological Sites and Resources, WAC 25-48 Archaeological Excavation and Removal Permits, and RCW 68.60 Abandoned and Historic Cemeteries and Historic Graves. • Ensure the project complies with the Section 106 programmatic agreement between FHWA, DAHP, and WSDOT.
Washington State Department of Transportation	<ul style="list-style-type: none"> • Fulfill their responsibilities under the Washington Centennial Accord and Millennium Agreement, Washington State Department of Transportation Executive Order 1025 on Tribal Consultation and Centennial Accord Plan, Section 106 programmatic Agreement between Federal Highway Administration, Washington State Department of Transportation and Washington State Department of Archaeology and Historic Preservation. • Achieve compliance with applicable federal laws including the National Environmental Policy Act, the National Historic Preservation Act, and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users among others.

Consultation approach

Affected Tribes

The SR 502 Corridor Widening Project team initiated formal consultation with the following tribes:

- Cowlitz Indian Tribe
- Chinook Tribe (non-federally recognized)

The Grande Ronde Tribe was also invited to participate in the consultation process; however the Tribe determined that the SR 502 Corridor Widening Project is outside of their area of interest and verbally declined to participate in the consultation process.

How we will consult

Meet with representatives of affected tribes to review broad issues.

Project staff will meet with interested tribes early in the environmental review process in order to establish the following information:

- An understanding of the aspects of the SR 502 Corridor Widening Project that are likely to interest the tribes
- Preliminary information about the potential for the project to affect historical or cultural resources, fishing, and other aquatic resources, or any other issues of tribal concern

- An initial agreement regarding the process for the government-to-government consultations

Engage in technical consultation with tribal staff. At the request of the tribes, project staff will meet with cultural and natural technical staff in working group meetings concerning applicable issues (e.g., identification of fish and wildlife habitat).

- At the request of interested tribes, the project team will be available to meet with the Tribal Council and appropriate committees at major project milestones.

Seek to resolve issues in parallel with project planning and permitting activities. Project staff will keep the interested tribes fully informed throughout the project planning, permitting and development process. In acknowledgement that SR 502 Corridor Widening Project must afford the interested tribes with more than the opportunity to participate as members of the general public in the planning and permitting process, SR 502 Corridor Widening Project will take the following actions to ensure there is effective government-to-government consultation:

- Seek tribal comment throughout the project's environmental review, permitting and regulatory review processes.

When we will consult

The SR 502 Corridor Widening Project team will engage in consultation any time the tribes request. Exhibit F-2 identifies major project milestones for which we will seek tribal review and input, and attempt to resolve tribal concerns. The consultation process for these will include document review and face-to-face meetings. The project schedule was shared with both tribes early on in the coordination process and again during the SAFETEA-LU process. The project schedule has recently been further refined and will be shared with the tribes again for further input.

Tribal Consultation Log

Exhibit F-3 shows the log of tribal consultation activities to date.

Exhibit F-2: Major project milestones

Milestone	Approximate timeframe	Completed
Scoping	Winter 2006 – Fall 2007	Yes
Purpose and Need	Fall 2006 – Spring 2007	Yes
Alternative Screening	Spring 2006-Winter 2007	Yes
Methods of Analysis	Spring 2006 – Winter 2007	Yes
Criteria for Alternatives Selection	Spring 2007	Yes
Range of Alternatives	Summer 2007	Yes
Area of Potential Effects and Update	Summer 2007 – Spring 2008	Yes
Scope of Work Review for Cultural Resource Investigation	Fall 2007	Yes
Preparation of Draft Discipline Reports	Fall 2007 – Fall 2008	Yes
Determination of Effects Under Section 106 of the National Historic Preservation Act	Winter 2008 – Spring 2009	Yes
Notice of Intent in Federal Register	Spring 2008	Yes
Preparation of Draft Environmental Impact Statement	Fall 2008 – Spring 2009	Yes
Resolution of Any Unresolved Effects to Tribes	Fall 2008 – Winter 2009	
Environmental Documentation Complete	Winter 2009- Spring 2010	
Right of Way Acquisition Complete	Fall 2011	
Inadvertent Discovery Plan for Ground Disturbing Testing	Fall 2011 - Spring 2012	
Pre-Construction Meeting	2012	
Lessons Learned	Post-construction	

Exhibit F-3: Log of tribal consultation activities to date

Date	Tribe (and staff level)	Agency staff	Purpose	Outcome
1/15/06	Cowlitz Indian Tribe natural and cultural resources staff	Annual Section 106 coordination	Meet with the tribe to introduce the project to the tribe and hear initial concerns about cultural and natural resources in the study area.	Concerns were expressed by the tribe about unanticipated discovery during construction.
1/5/06	Chinook Tribe, Chairman and cultural resources specialist	Annual Section 106 coordination	Meet with the tribe to introduce the project to the tribe and hear initial concerns about cultural and natural resources in the study area.	No comments received from the tribe.
6/7/07	Cowlitz Indian Tribe, Chairman and cultural resources staff	Environmental Manager	Correspondence to initiate Section 106 and send a project vicinity map, alternatives, and aerial photos.	Telephone contact and no comments received.
6/7/07	Chinook Tribe, Chairman and cultural resources specialist	Environmental Manager	Correspondence to initiate Section 106 tribal consultation and report alignment alternatives being studied.	Telephone contact and no comments received.
6/28/07	Grand Ronde Tribe of Oregon, cultural resources specialist	Annual Section 106 coordination, Tribal Liaison, Environmental Coordinator	Meet with the tribe to introduce the project.	Grand Ronde verbally declined consultation.
9/19/07	Chinook Tribe, Chairman and cultural resources specialist	Environmental Manager	Correspondence to invite comment on the project Area of Potential Effect (APE)	No comments received from the tribe.
9/20/07	Cowlitz Indian Tribe, Chairman and cultural resources staff	Environmental Manager	Correspondence to invite comment on the project Area of Potential Effect (APE)	No comments received from the tribe.

Date	Tribe (and staff level)	Agency staff	Purpose	Outcome
5/1/08	Chinook Tribe, Chairman	Regional Administrator, Design/Construction Engineer, Asst. Environmental Manager	Meeting to discuss the Draft Tribal Consultation Plan and National Environmental Policy Act environmental impact statement. Invite the tribe to be a Participating Agency. Present the Draft Tribal Consultation Plan.	WSDOT will correspond with both the Chairman and cultural resource specialist. Chinook accepted invitation to be a Participating Agency.
5/2/08	Cowlitz Indian Tribe natural and cultural resources staff	Cultural Resources Specialist, Environmental Coordinator	Meeting to discuss the Draft Tribal Consultation Plan and National Environmental Policy Act environmental impact statement. Invite the tribe to be a Participating Agency.	WSDOT will invite the tribe on-site during the site survey of the N. Fork Lewis River mitigation site and prairie wetlands. Cowlitz Indian Tribe accepted invitation to be a Participating Agency.
5/5/08	Cowlitz Indian Tribe natural and cultural resources staff	Ecologist	Meeting to discuss coordination of field survey of native plants.	On-site field review with natural resources consultant and tribal naturalist.
5/12/08	Cowlitz Indian Tribe, Chairman and cultural resources staff	Environmental Coordinator	Correspondence and conference call to send the updated area of potential effect plans for tribal review and comment.	No comments received from the tribe.
5/12/08	Chinook Tribe, Chairman; cultural resources staff	Environmental Manager	Correspondence to send the updated area of potential effects plans for tribal review and comment.	No comments received from the tribe.
5/30/08	Chinook Tribe, Chair, Chinook Tribal Council Member, and Chinook Tribe Cultural Education Specialist.	Designer, Environmental Coordinator, WSDOT Cultural Resources Specialist	Teleconference call to discuss the proposed design, updated area of potential effects, Draft Cultural Resources Report, and National Environmental Policy Act environmental impact statement.	Tribe expressed concern about contaminated soils.
6/3/08	Cowlitz Indian Tribe natural and cultural resources staff	Cultural Resources Specialist, Environmental Coordinator, Project Engineer	Meeting to discuss the Draft Cultural Resources Report and listen to comments on survey methodology on a proposed mitigation site of the report. The cultural significance of prairie wetlands to Cowlitz Indian Tribe was discussed. Historical clarification.	WSDOT will invite the tribe to attend on-site surveys. Technical historical clarification was noted.
7/24/08	Cowlitz Indian Tribe cultural resources staff	Environmental Coordinator	Correspondence to transmit the Final Cultural Resources Report No. 2092 for tribal review.	Hand delivery of Cultural Resources Report to a Cowlitz Indian Tribe cultural resources specialist during a site visit. No comments received from the tribe.
7/24/08	Chinook Tribe Chairman and cultural resources Education Specialist	Environmental Coordinator	Transmittal of the Final Cultural Resources Report No. 2092 for tribal review and comment.	No comments received from the tribe.
8/25/08	Cowlitz Indian Tribe cultural resources staff	Environmental Coordinator	Telephone call to listen to comments on the Final Cultural Resources Report.	No comments received from the tribe.
8/25/08	Chinook Tribe Chairman and cultural resources staff	Environmental Coordinator	Telephone call to listen to comments on the Final Cultural Resources Report.	No comments received from the tribe.
10/31/08	Cowlitz Indian Tribe cultural resource specialists	Environmental Coordinator, WSDOT Cultural Resources Specialist	Email to invite the tribe to attend the cultural resources survey in progress.	Cowlitz Indian Tribe cultural and natural resources specialists, and consultant attended the site visit.

Date	Tribe (and staff level)	Agency staff	Purpose	Outcome
10/31/08	Chinook Tribe Chairman and cultural resources specialist	Environmental Coordinator, WSDOT Cultural Resources Specialist	Email to invite the tribe to attend the cultural resources survey in progress.	No comments received. The Chinook Tribe did not attend the site visit.
1/12/09	Cowlitz Indian Tribe cultural resource specialists	Environmental Coordinator, Tribal Cultural Resources Staff, WSDOT Cultural Resources Specialist, consultant	Email to invite the tribe to attend the cultural resources survey in progress at a mitigation site.	Three Cowlitz Indian Tribe cultural and natural resources specialists, WSDOT cultural resources specialist, and consultant attended the site visit to the mitigation site on 1/16/09. No comments received from the tribe.
1/12/09	Chinook Tribe Chairman and cultural resources specialist	Environmental Coordinator	Email to invite the tribe to attend the cultural resources survey in progress at a mitigation site.	No comments received. The Chinook Tribe did not attend the site visit.
1/28/09	Grand Ronde Tribe of Oregon, cultural resources specialist	Environmental Coordinator, Tribal Cultural Resources Staff, WSDOT Cultural Resources Specialist, consultant	Email correspondence to clarify tribal area of interest.	Transmitted the Cultural Resources Report No. 2092 on 1/30/09 for review.
1/29/09; 1/30/09	Grand Ronde Tribe of Oregon, cultural resources specialist	Environmental Coordinator, Tribal Cultural Resources Staff, WSDOT Cultural Resources Specialist, consultant	Email to clarify whether the Tribe has an interest in the project. Transmit Cultural Resources Report No. 2092 for review.	The Tribal Cultural Resources Specialist said that a determination of interest would occur after review of the Cultural Resources Report.
2/2/09	Grand Ronde Tribe of Oregon, cultural resources specialist	Environmental Coordinator	Email correspondence regarding the transmittal letter dated 1/30/09.	Response from the Grand Ronde Tribe is pending their review of the Cultural Resource Report.
3/9/09	Cowlitz Indian Tribe, Chairman and cultural resources staff	Environmental Coordinator	Correspondence to invite comment on the revised Area of Potential Effect (APE)	No comments received .
3/9/09	Chinook Tribe Chairman and cultural resources specialist	Environmental Coordinator	Correspondence to invite comment on the revised Area of Potential Effect (APE)	No comments received.
4/29/09	Cowlitz Indian Tribe, Chairman and cultural resources staff	Environmental Coordinator	Transmittal of the Final Supplemental Cultural Resources Report No. 2275 for tribal review and comment.	No comments received.
4/29/09	Chinook Tribe Chairman and cultural resources specialist	Environmental Coordinator	Transmittal of the Final Supplemental Cultural Resources Report No. 2275 for tribal review and comment	Requested government-to-government meeting with Regional Administrator.
5/4/09	Grand Ronde Tribe of Oregon, cultural resources specialist	Environmental Coordinator	Transmittal of the Final Supplemental Cultural Resources Report No. 2275 for tribal review and comment	No comments received.
6/4/09	Cowlitz Indian Tribe cultural resources staff	Environmental Coordinator	Email correspondence regarding comments on Final Supplemental Cultural Resources Report No. 2275	Email response received 6/5/09, no comments received.
6/5/09	Chinook Tribe Chairman and cultural resources specialist	Environmental Manager	Transmittal of draft environmental impact statement and draft Section 4(f) evaluation for review and comment.	No comments received.

Date	Tribe (and staff level)	Agency staff	Purpose	Outcome
6/5/09	Cowlitz Indian Tribe Chairman, cultural resources staff, and ecologist	Environmental Manager	Transmittal of draft environmental impact statement and draft Section 4(f) evaluation for review and comment.	Letter received 7/23/09.
6/5/09	Grande Ronde Tribe of Oregon, cultural resources specialist	Environmental Manager	Transmittal of draft environmental impact statement and draft Section 4(f) evaluation for review and comment.	No comments received.
7/23/09	Cowlitz Indian Tribe ecologist	Project Manager	Letter from the Tribe regarding comments on the draft environmental impact statement	No comments on draft environmental impact statement.
7/24/09	Cowlitz Indian Tribe, Chairman and cultural resources staff	Environmental Manager	Correspondence to invite comment on the revised Area of Potential Effect (APE)	No comments received.
7/24/09	Chinook Tribe Chairman and cultural resources specialist	Environmental Manager	Correspondence to invite comment on the revised Area of Potential Effect (APE)	No comments received.
8/26/09	Chinook Tribe Chairman	Southwest Region Administrator and Southwest Region Tribal Coordinator	Meeting to discuss Final Supplemental Cultural Resources Report No. 2275	Comments received regarding potential soil contamination near Dollars Corner.
9/15/09	Cowlitz Indian Tribe, Chairman and cultural resources staff	Cultural Resources Specialist and Consulting archaeologist on behalf of WSDOT	Correspondence to invite tribe to attend cultural resource survey in progress at revised Pond 7 location.	Attendance of cultural resource survey field work conducted September 21 - 23, 2009.
9/15/09	Chinook Tribe Chairman	Cultural Resources Specialist	Correspondence to invite tribe to attend cultural resource survey in progress at revised Pond 7 location.	Did not attend survey field work.
10/2/09	Chinook Tribe Chairman	Cultural Resources Specialist	Correspondence to invite comment on the draft Memorandum of Agreement	No comments received.
10/2/09	Cowlitz Indian Tribe, Chairman and cultural resources staff	Cultural Resources Specialist	Correspondence to invite comment on the draft Memorandum of Agreement	No comments received.
12/17/09	Cowlitz Indian Tribe, Chairman and cultural resources staff	Environmental Manager	Transmittal of Cultural Resources Survey and Archaeological Investigation for Pond 7 for review and comment	No comments received.
12/17/09	Cowlitz Indian Tribe Chairman and cultural resources staff	Environmental Manager	Transmittal of Cultural Resources Survey and Archaeological Investigation for Pond 7 for review and comment	No comments received.
12/17/09	Grande Ronde Tribe of Oregon, cultural resources specialist	Environmental Manager	Transmittal of Cultural Resources Survey and Archaeological Investigation for Pond 7 for review and comment	No comments received.
12/22/09	Chinook Tribe Chairman	Environmental Coordinator	Meeting for signature of Memorandum of Agreement	Memorandum of Agreement signed.
1/8/10	Cowlitz Indian Tribe Chairman	Environmental Coordinator	Meeting for signature of Memorandum of Agreement	Memorandum of Agreement signed.

This page intentionally left blank.