

## SECTION 14.800 Indian Tribal Treaty Rights and Consultation (GMA Only)

### A. Purpose

Ensure that the Scenic Area Act, the Management Plan, and these implementing ordinances do not affect or modify any treaty or other rights of any Indian tribe.

### B. Tribal Government Notice and Comment Period

1. The County shall send a notice to the four tribal governments when new uses are:
  - a. proposed on public lands, or
  - b. proposed in or adjacent to the Columbia River or its tributaries that support anadromous or resident fish.

Public lands include lands owned by cities, counties, states, and the United States. Lands adjacent to the Columbia River or its fish-bearing tributaries are those lands that are situated directly between the Columbia River or its fish-bearing tributaries and the closest public access point. Public access points include state highways and parks. The wildlife inventory in the "Streams, Ponds, Lakes and Riparian Areas" section of the Management Plan for the Columbia River Gorge National Scenic Area identifies all tributaries in the Scenic Area that support anadromous and resident fish.

2. Notices sent to the Indian tribal governments shall include a site plan. As specified in standards 3 and 4 below, the notices also may require supplemental information and treaty rights protection plans.
3. New uses located in, or providing recreation river access to, the Columbia River or its fish-bearing tributaries, shall include supplemental information:
  - a. The site plan map also shall show adjacent river areas at least one-half mile upstream and downstream from the project site, the locations at which river access is planned, and the locations of all tribal fishing sites known to the project applicant.
  - b. The site plan text also shall include an assessment of the potential effects that new uses may have on Indian treaty rights. The assessment shall:
    - (1) Describe the type of river access and uses proposed, estimated period when the development would be used, and anticipated levels of use--people, boats, and other uses--during peak use periods.

- (2) List tribal commercial fishing seasons in the project vicinity, as established by the four treaty tribes.
  - (3) List tribal ceremonial fishing seasons in the project vicinity.
  - (4) Assess, based on the above factors the potential effects that the proposed uses may have on Indian treaty rights.
4. Notices also shall include a treaty rights protection plan if new uses may affect Indian treaty rights.
    - a. The protection plan shall specify measures that will be used to avoid effects to Indian treaty rights.
    - b. These measures may include reducing the size and modifying the location or design of the proposed uses, seasonal closures, stringent on-site monitoring, information signs, and highly visible buoys or other markers delineating fishing net locations.
  5. Indian tribal governments shall have 20 calendar days from the date a notice is mailed to submit substantive written comments to the County Planning Office. Indian tribal governments must identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the new uses.

#### C. Tribal Government Consultation

1. When substantive written comments are submitted to the County Planning Office in a timely manner, the project applicant shall offer to meet with the County Planning Office and the Indian tribal government that submitted comments within 10 calendar days. The 10 day consultation period may be extended upon agreement between the project applicant and the Indian tribal government.

Consultation meetings should provide an opportunity for the project applicant and tribal representatives to identify potential conflicts and explore options to eliminate them. The project applicant must demonstrate this his/her proposed use would not affect or modify treaty or other rights of any Indian tribe.
2. Any substantive comments, recommendations, or concerns expressed by Indian tribal governments during the consultation meeting shall be recorded and addressed by the project applicant in a treaty rights protection plan. The protection plan shall include measures to avoid treaty and other rights of any Indian tribe.
3. The County shall submit all protection plans to the Indian tribal governments. Indian tribal governments shall have 30 calendar days from the date a protection plan is mailed to submit written comments to the County Planning Office.

**D. Conclusion of the Treaty Rights Protection Process**

1. The County will decide whether the proposed uses would affect or modify any treaty or other rights of any Indian tribe.
  - a. The final decision shall integrate findings of fact that address any substantive comments, recommendations, or concerns expressed by Indian tribal governments.
  - b. If the final decision contradicts the comments, recommendations or concerns of Indian tribal governments, the County must justify how it reached an opposing conclusion.
2. The treaty rights protection process may conclude if the County determines that the proposed uses would not affect or modify treaty or other rights of any Indian tribe. Uses that would affect or modify such rights shall be prohibited.
3. A finding by the County that the proposed uses would not affect or modify treaty or other rights, or a failure of an Indian tribe to comment or consult on the proposed uses as provided in these guidelines, in no way shall be interpreted as a waiver by the Indian tribe of a claim that such uses adversely affect or modify treaty or other tribal rights.