

**Timber/Fish/Wildlife Cultural Resources Roundtable Meeting  
May 20, 2014**

**Host: Department of Archaeology and Historic Preservation  
1063 South Capital Way, Suite 106  
Olympia, WA 98501  
Phone: (360) 586-3065**

**Directions: <http://www.dahp.wa.gov/about-us/office%20locator>**

Attendees:

Jeffrey Thomas, Co-Chair (on phone)	Puyallup Tribe of Indians
Karen Terwilleger, Co-Chair	Washington Forest Protection Association
David Powell	Yakama Nation
dAVe burlingame	Cowlitz Indian Tribe
Chad McCrea	Spokane Tribe of Indians
Gideon Cauffman	Jamestown S’Klallam Tribe
Lee Stilson	Dept. of Natural Resources - Lands
Sherri Felix	Dept. of Natural Resources – Forest Practices
Gretchen Kaehler	Dept. of Archaeology and Historic Preservation
Marty Acker	U.S. Fish and Wildlife Service

**FINAL NOTES**

**1. Introductions**

Everyone introduced them selves. We all welcomed Marty Acker with U. S. Fish and Wildlife Service.

**2. Agenda**

Jeff Thomas provided an agenda prior to the meeting: 1) Introductions, 2) Agenda review, 3) Discuss approved March 18, 2014 Notes, 4) Co-Chairs opening remarks, 5) Tribal Reserved Treaty rights, 6) WAC 222-20-120 FPA Conditioning, 7) Update topics: SEPA Advisory Committee & Logo, 8) Work Groups: Tips and Tools, 9) Report on May 13, 2014 FPB meeting, 10) CRPMP & WAC 222-20-120 Survey Planning, 11) Action Item List, and 12) Agenda for July 15, 2014 meeting. The agenda was accepted as modified.

**3. Notes for March 18, 2014 meeting**

There was no discussion. March Notes were approved and posted on the Forest Practices Board website.

**4. Co-Chair Opening Remarks**

Karen did not have any comments.

Jeff said he was sorry he had to be at school but was glad he could participate by phone.

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**5. Tribal Reserved Treaty Rights**

David said he thought it was important that everyone understood Reserved Treaty rights of Tribes. Many people hear the term but don't really understand the meaning.

David's presentation is from the Yakama Nation perspective but there are many similarities to all Federally recognized Tribes. Treaties are federal laws. The Yakama's treaty is 12 Stat. 951. Whatever rights were not explicitly granted to the United States in the Treaty of 1855 were reserved for tribal members and their descendants.

In US vs. Washington, 1974 (384 F.Supp.312) Judge Boldt found "that the following statements are now well established in fact and law:

1. All Treaties made under the authority of the United States are the Supreme law of the land. Anything in state law contrary to the Treaties is unconstitutional. (Article VI of the US Constitution).
2. "The Treaty must be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which the Indians would naturally understand them. How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.
3. **"The Treaty was not a grant of rights to the Indians but a grant of rights from them – a reservation of those not granted."**
4. Tribal people did not give up rights to the artifacts of their ancestors, burial grounds or funerary objects. State laws saying otherwise are unconstitutional.
5. "The Treaty negotiations were with the tribe. They reserved rights, however, to every individual Indian, as though named therein . . . And the right was intended to be continuing against the United States and its grantees as well as against the State and its grantees. That those rights are also reserved to the descendants of Treaty Indians, without limitation in time . . ."

The Supreme Court upheld Judge Bolt's decision in the 384 F.Supp.312 in 1979.

Tribes whose lands were taken by the United States without compensation, without a Treaty, have even greater rights. All Federally recognized tribes are Sovereign nations.

There are international laws recognizing the rights of indigenous people. Those international laws apply to the indigenous peoples of the Pacific Northwest.

Jeff asked what brought people to the Roundtable? What strategy are we pursuing? The TFW Cultural/Archaeological goals mean the treaty provisions have meaning in TFW. Tribes can raise issues important to them. How does the voluntary – cooperative management – watershed based approaches – predictive models – forest and fish negotiations - reach cultural resources protection?

**6. WAC 222-20-120 FPA Conditioning**

This issue continues from the March meeting when the Yakama Nation brought their recent experiences of trying to get Yakama-landowner agreed to plans made a condition of the FPA and DNR Forest Practices started saying they do not have the authority to condition applications with cultural resources protection plans.

David spoke about two recent FPAs. An FPA by Goldendale included an archaeological site but SE Region Forest Practices ignored information from the Yakamas and classified it a class III instead of a class IV-special. David worked with the landowner, agreed on a plan including Yakama access to the property, and SE Region would not make the plan a condition of the FPA even though there was 10 feet of snow. The region also failed to disapprove the FPA even though seasonal field conditions prevented a proper review. In

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Skamania County, National Register Historic features were in the project. David did not have the time to locate them and write a protection plan for the consultant. The consultant hired an archaeologist and got an excellent protection plan written. The Yakama Nation still needed to approve it. David did, informed Pacific Cascade Region, and asked that it be made a condition of the FPA. The Yakamas did not receive a response. DAHP asked about ten minutes later and the region immediately responded to DAHP saying it would be a condition of the application. Apparently information and requests from the Yakamas are ignored. Karen mentioned there are two new FPA questions about unstable slopes: Are there any unstable slopes within or adjacent to the project? There is a one-page form if either answer is yes. Landforms are defined. If they are present, it is a class IV-special. This should apply to cultural resources too.

Sherri said, "In the past there was blanket conditioning of plans. When something is appealed, changes are made".

David said he could not believe a landowner who agreed with a Tribe on a plan would turn around and appeal the conditioning of the plan. Sherri explained conditioning for wildlife species that are not protected under state or federal laws: FPAs cannot be conditioned for this protection without a specifically written request from Department of Fish and Wildlife headquarters in Olympia.

David said Tribes have no recourse if a plan is not followed when it is not a condition of an application. He asked "Do we have to go to binding contractual language to get cultural resources protection?"

Jeff said he still thinks the information about an archaeological resource is a public resource. It is protected from public disclosure. There is public resource value in archaeological sites so they should be included as a public resource in statute.

dAVE said DAHP usually agrees with Tribes on cultural resources protection measures. And do not forget: natural resources are also cultural resources.

Jeff said we need to accommodate culturally significant plants and animals.

Karen said she would like to know when regions altered how they condition applications with plans. It is enforcement that is the problem. Forest Practices will report back to the Roundtable once we give them our questions about conditioning FPAs.

Gretchen said opening up the laws for change can bring unanticipated problems. DAHP has the authority to require an archaeological permit and an archaeologist.

Gideon and Chad both said they have not had problems with landowners. They buffer significant resources.

Lee provided a draft "Tips and Tools" flow chart on how forest practices are processed with and without cultural resources. There were suggested edits.

At the March meeting, Forest Practices asked if the Roundtable would provide questions about how WAC 222-20-120(4) is implemented and the Roundtable agreed. The work group in April drafted some questions.

At today's meeting, the questions were revised, and we composed a cover letter. Karen sent the letter and questions from the Roundtable to Chris Hanlon-Meyer, Forest Practices Division Manager.

7. **Roundtable Logo**

dAVE reported there had been minimal work on the logo because his other duties as assigned had consumed most of his time. Each tiny part of the design is a separate image so it has been tedious to modify but he has overcome that obstacle.

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dAVe hopes to send out a new version before July.

**8. SEPA Advisory Committee**

Gretchen reported the SEPA exemption rule is in effect but only for Counties that raised their exemptions. There is also a new SEPA checklist in effect which includes a rewrite of *Question 13. Historic and Cultural Preservation* that is superior to the old one (DAHP wrote it). The attributes include data sharing and management plans and the assumption that other cultural resources protection laws are being followed.

The rule language and supporting documentation are available at:

<http://www.ecy.wa.gov/programs/sea/sepa/rulemaking2013.html>

**9. Tips and Tools (previously “Guidance Documents”)**

The Roundtable has adopted “Tips and Tools” as a good name that covers the intent of the cultural resources educational information we plan to post on the web. Sherri wrote an introductory paragraph and came up with a new organizational format so sections that are both regulatory and voluntary would not be repeated.

Sherri will resend the updated format.

Gretchen will insert each topic in the new sections and plans to turn the documents into third person and correct the typos.

David wrote a new section for what to expect from a voluntary landowner-tribal meeting.

**10. Forest Practices Board meeting May 13, 2014**

Karen provided an updated memo to cover the Action Item List as the quarterly report to the forest Practices Board. The meeting agenda focused on unstable slopes and there were no questions of the co-chairs concerning the Roundtable.

**11. CRPMP & WAC 222-20-120 survey**

A work group will get together on May 29<sup>th</sup> and June 17<sup>th</sup> to work on the survey, propose questions and try to determine a way to get more tribal involvement.

**12. Next Meeting**

The next regular meeting is scheduled for: **July 15, 2014 at DAHP in Olympia from 9 a.m. – 2 p.m.** The agenda will include: 1) Introductions 2) Approve agenda, 3) Discuss approved March 18th Notes, 4) Co-chair remarks, 5) FPA conditioning w/ Forest Practices, 6) CRPMP Survey Review, 7) Forest Practices Board Annual Report on CRPMP and WAC 222-20-120, 8) Update on Logo, 9) Action Item List and 10) Agenda for September 16, 2014 meeting.

**Note:**

**Beginning January 2014 the Timber/Fish/Wildlife Cultural Resources Roundtable meets every other month on the third Tuesday of January, March, May, July, September and November at the Department of Archaeology and Historic Preservation unless otherwise noted. Additional work groups are scheduled as needed in other months.**

**Meeting agendas, notes and action item lists are on the [Forest Practices Board](#) website. Scheduled meetings through 2014 are: 7/15, 9/16, and 11/18.**