

Working with Oregon Tribes



Jason Robison

Land, Resources, and Tribal Programs Officer

Cow Creek Band of Umpqua Tribe of Indians

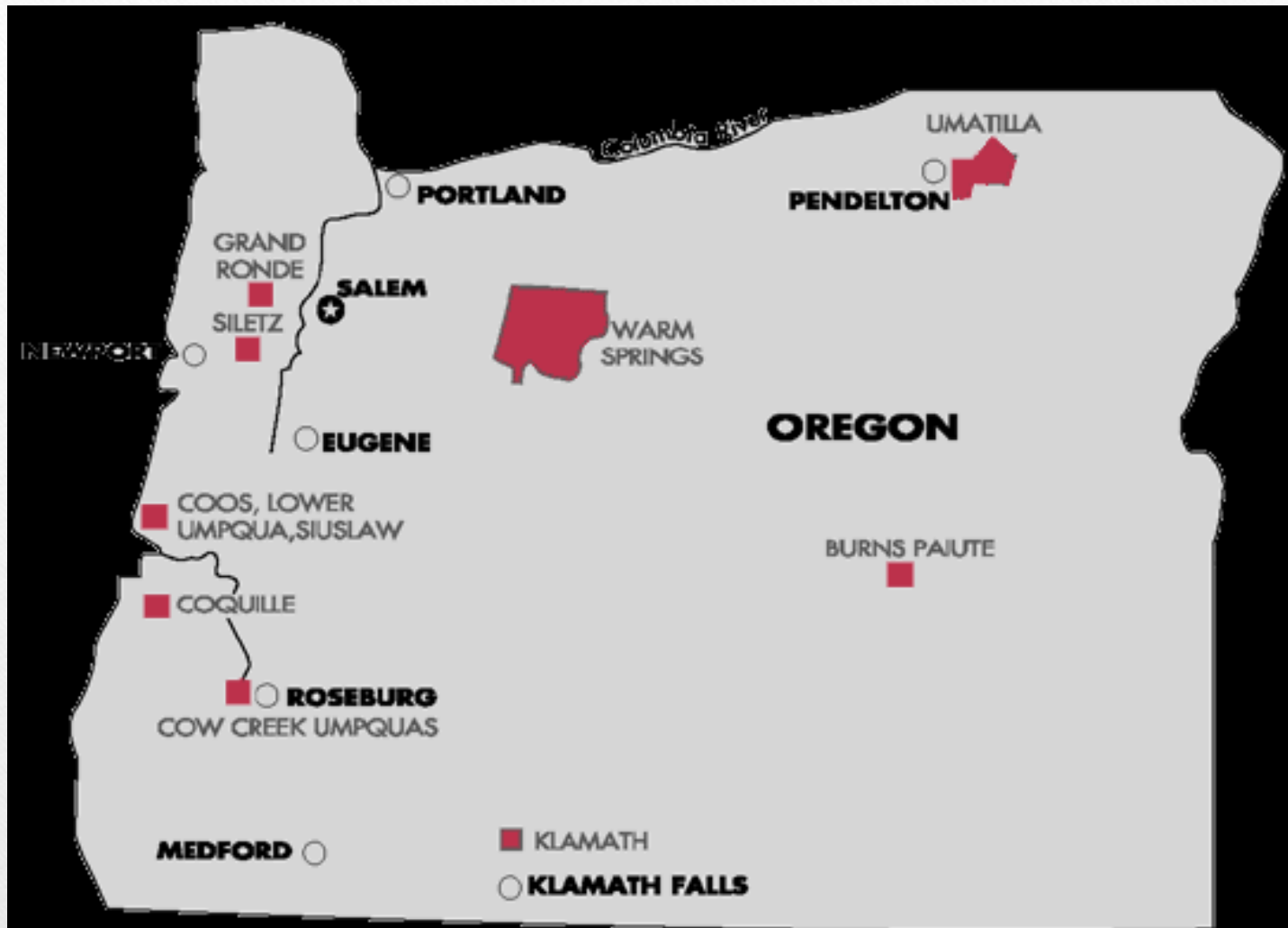
E-mail: jrobison@cowcreek.com, Off: 541-677-5516

Outline

- I. The Nine Federally Recognized Tribes In Oregon
- II. Key Terms To Understand
- III. Tribal Connection To Their Lands
- IV. Tribal Involvement
- V. Consultation
- VI. Process Example
- VII. Recognition Of Cultural Resource Laws
- VIII. Best Management Practices For Working With Tribes

Oregon's Nine Federally Recognized Tribes

1. Burns Paiute
2. Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians
3. Confederated Tribes of Grand Ronde
4. Confederated Tribes of Siletz
5. Confederated Tribes of Umatilla Reservation
6. Confederated Tribes of Warm Springs
7. Cow Creek Band of Umpqua Indians
8. Coquille Indian Tribe
9. Klamath Tribes



MEDFORD ○

■ KLAMATH

○ KLAMATH FALLS

Terms

- **Sovereignty.** For many tribes, sovereignty means the ability to manage their own affairs and exist as nations that are recognized as having control over their own destinies. It means to live **unencumbered** by the yoke of an outside power determining and re-determining their fate.
- For the federal government, U.S. tribal sovereignty means that Native American tribes are “**domestic dependent nations**” that exist within the boundaries of the U.S. and that they are wards of the U.S., even though they may operate and manage some internal tribal affairs.

Terms

Indian Reservation. Usually created by treaty document, proclamation, or an executive order, this term refers to lands set aside for occupants' use, and benefit of American Indians and for other purposes.

Fee Title (Fee Simple Title). Absolute ownership of a land area unencumbered

Trust Land. Any land in collective tribal holding or individual ownership for which the **Secretary of the Interior** has a continuing **trust responsibility** to manage in a manner to **benefit the respective tribe** or individual.

Terms

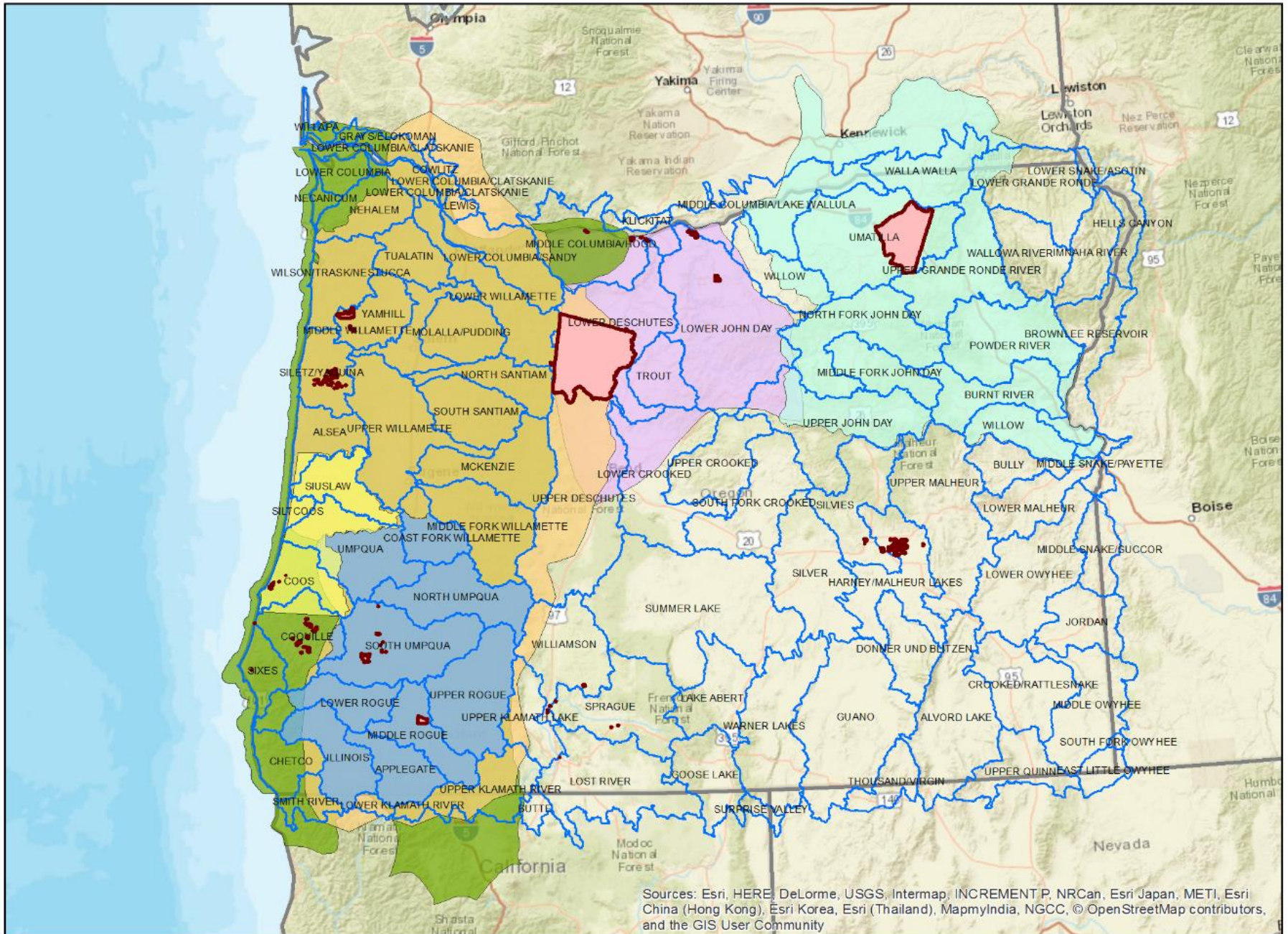
Usual and Accustomed Grounds and Stations (or Areas). This treaty term was used by I.I. Stevens in 12 treaties in the Northwestern United States. It describes lands adjacent to streams, rivers, or shorelines to which a tribe(s) usually traveled or was accustomed to travel for the purpose of taking fish and/or other resources. These areas are outside reservation boundaries. Western Federal courts have either referred to or defined the term when deciding lawsuits about the extent of a tribe's off-reservation treaty rights.

Terms

- **Aboriginal Areas/Ancestral Territories or Use Areas.** This term is used today to describe the historic and prehistoric lands where a tribe(s) carried out food gathering or seasonal activities or traded with other Indian peoples. These areas may be extensive depending on the geographic terrain.
- **Ceded Lands.** Many treaties have referred to land cessions made by tribes to the United States. Most Federal agencies and Indian tribes prefer to use the term “ceded lands” when describing areas where a tribe did... “cede, relinquish, and convey to the U.S. all their right, title, and interest in the lands and country occupied by them”...at treaty signing or when reservations were established.

Connection to Their Lands and Resources

- Tribal peoples live with the consequences of their actions.
- Tribal peoples face the direct and often disproportionate impacts of environmental degradation, contamination, climate change, and others.
- Tribal peoples have been here since time immemorial and they will be for many generations to come (7 Generation Planning).
- Tribal culture is deeply tied to the land and resources.



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, NGCC, © OpenStreetMap contributors, and the GIS User Community

Why should Tribes be involved in non-tribal projects, programs, and activities?

- The foundation of their government and leadership is to serve their membership and ensure that their culture and way of life persist into the future.
- Tribes have never relinquished interest and/or use in their ancestral territories.
- In order to restore their culture, Tribes must restore the resources their culture is based on.
- Tribal management practices are inherently sustainable and practical.
- Tribes understand the impacts of mismanagement and the challenges associated with restoration.
- Tribes now have the economic ability to be substantial contributors to many types of programs and activities.
- Tribes provide cultural/traditional knowledge.

What do Tribes Have to Offer?

- Strong Leadership History
- Determination and Perseverance
- Strong Connection To the Land and Community (*Healthy Communities → Healthy Tribe, Healthy Tribe → Healthy Communities*)
- Ability to Spread Influence Across Jurisdictional Boundaries
- Technical and Policy Level Resources

What is Consultation

- Consultation is the **formal process** of **negotiation**, **cooperation** and policy-level **decision-making** between a Tribe and another entity.
 - Federal***
 - State
 - Local Government
 - Private
 - Nonprofit

*** Trust responsibility



Consultation

- It is critical to understand that consultation is not just a process or a means to an end. Rather, consultation is the process that ultimately leads up to and includes a **decision**. The most important component of consultation is the ultimate **decision**.



DECISIONS,
DECISIONS,
DECISIONS...

Consultation is Not

- It is equally important to understand what consultation is not.
- Consultation is not **notifying** a Tribal government that an action will occur, requesting written comments on that prospective action, and then proceeding with the action. In this scenario the **decision** is not affected. This is not consultation.



Objectives of Consultation

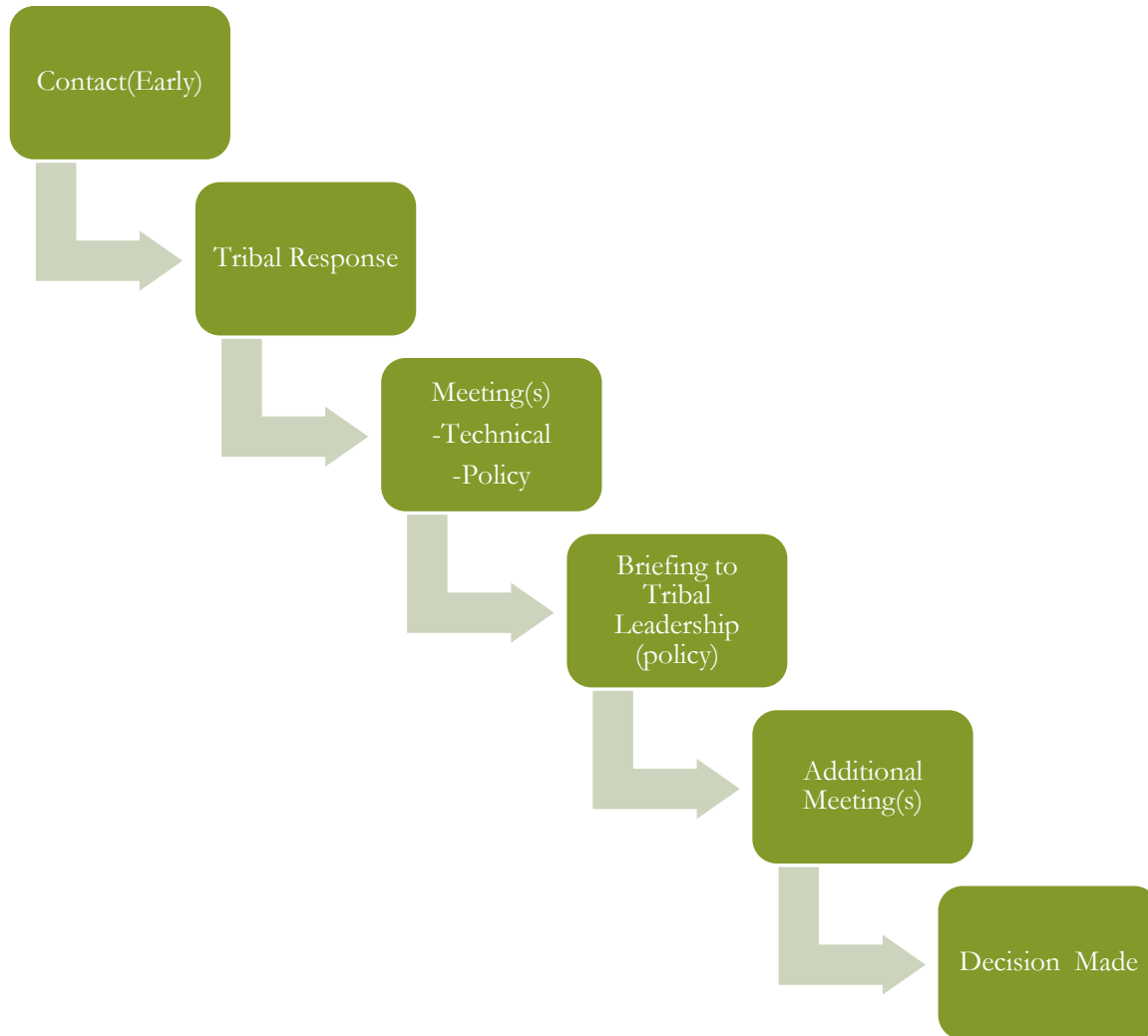
- Assure that the Tribe understands the technical and legal issues necessary to make an **informed policy decision**.
- Improved **policy-level decision making** of both the Tribe and the consulting entity
- Bi-lateral **decision making** (co-management).
- **Protection** of the Tribes lifestyle, culture, religion, economy.
- **Compliance** with Tribal laws.
- **Compliance** with federal and State Indian law; federal/state statutes; federal/state policy.
- Develop and achieve **mutual decisions**.
- Improve the integrity and longevity of **decisions**.

How Does Consultation Work

- Consultation works through the same procedures and steps that are common-place for most agencies and organizations: **technical meetings** and **policy meetings**.
- From a practical standpoint, consultation requires an ability to differentiate between technical and policy issues; this allows for proper technical level staff consultation and then policy-level consultation for those issues that remain unresolved or for those issues that are clearly only resolvable at the policy level.
- Consultation is the **process** of coming to common understanding of the technical and legal issues that affect or are affected by a **decision**.
- Consultation is using this **common understanding** to make **a decision**.

Process Example

1. Entity contacts Tribal government to advise of an impending project proposal or to conduct an activity that may or may not impact a tribal resource or issue.
2. Tribe responds back that this issue is important and that it would like to initiate consultation.
3. Consultation has been initiated. Technical staffs meet. Technical and legal issues are discussed; the result is that Tribal staff understand the proposal and the entity understands at technical level why this proposed activity is of concern. This allows respective technical staff to brief respective policy entities and to provide informed opinions and recommendations.
4. If needed technical staff brief the proper Tribal policy entity.
5. Additional meetings are held, if necessary, leading up to the decision.
6. Entity and Tribe formulate a decision. Ultimately and optimistically this decision is consistent with applicable laws and policies. This means the decision is consistent with applicable natural and cultural resource laws and policies. For the Tribe specifically, it means the decision protects or supports the resources to which the Tribe has specific aboriginal and treaty reserved rights, protects the unique culture and world view and enables continued practice of the Tribal religion.



Cultural Resources and Historic Properties

- Preservation and protection of Native American historic resources, at least archeological resources, dates back to at least the Antiquities Act of 1906, usually seen as the first federal historic preservation law in the United States.
- Native American Graves Protection and Repatriation Act (NAGPRA), passed in 1990
- Archeological Resources Protection Act (ARPA) , passed in 1979
- American Indian Religious Freedom Act (AIRFA) , passed in 1978
- National Environmental Policy Act (NEPA) , passed in 1969
- National Historic Preservation Act (NHPA) of 1966, as amended in 1992

Best Management Practices when working with Tribes

- Know where you are working (Location, Geography and Cultural History)
- Create relationship with the local Tribe or Tribes and learn about them
- Don't ask for support of a projects if the Tribe is not involved
- Consult with THPO on specific projects
 - with or without permit requirements

When Consulting

- Start early and meet as often as necessary prior to any decision being made.
- Be prepared to think about other options or alternatives.
- Don't move forward with a decision until adequate consultation has occurred.
- Provide adequate time for the decision making process.
- Include tribal staff in implementation of projects and programs where appropriate.

Questions

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