

**APPENDIX C      DRAFT PROGRAMMATIC AGREEMENT**

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SR 520, MEDINA TO SR 202: EASTSIDE TRANSIT AND HOV PROJECT  
ENVIRONMENTAL ASSESSMENT

**PROGRAMMATIC AGREEMENT**  
**Pursuant to Section 106 of the National Historic Preservation Act of 1966**

**Among**

**The Federal Highway Administration,  
The Washington State Historic Preservation Officer,  
The Washington State Department of Transportation,  
The US Army Corps of Engineers,  
The King County Historic Preservation Program,  
The Muckleshoot Indian Tribe,  
The Snoqualmie Tribe,  
The Suquamish Tribe,  
The Tulalip Tribes,  
The Confederated Bands and Tribes of the Yakama Nation, and  
The Duwamish Tribal Services**

**For the State Route (SR) 520 Bridge Replacement and HOV Program's  
Medina to SR 202: Eastside Transit and HOV Project,  
King County, Washington**

THIS PROGRAMMATIC AGREEMENT (Agreement) by and among the signatories to this Agreement, namely the Washington State Department of Transportation, hereinafter referred to as "WSDOT," the Federal Highway Administration, United States Department of Transportation, hereinafter referred to as "FHWA," and the Washington State Historic Preservation Officer, hereinafter referred to as "SHPO," hereby provides as follows:

WHEREAS, FHWA is providing assistance to WSDOT to make improvements to the SR 520 Corridor in King County, Washington, to replace the existing Evergreen Point Floating Bridge, the western and eastern Lake Washington approaches, and enhance and expand multi-modal transportation east of Lake Washington; and

WHEREAS, the improvements within the SR 520 Corridor consist of several individual projects that have independent utility, and construction of each of these projects is needed independently of the others; and

WHEREAS, this Agreement covers improvements associated with the SR 520 Bridge Replacement Program's Medina to SR 202: Eastside Transit and HOV Project (Project); and

WHEREAS, this Project attempts to substantially improve mobility options for all travel modes and to provide and enhance a high capacity transit system along the corridor from the eastern shore of Lake Washington to SR 202 in Redmond, as described in the final Environmental Assessment (EA) to be issued by FHWA as **FHWA-WA-EA-xx-xx-x** on or around **Month Day, 20xx**; and

WHEREAS, according to 36 CFR § 800.16 (l) of the Advisory Council on Historic Preservation's (Council) regulations, historic property "means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria;" and

WHEREAS, under Sections 101 and 106 of the National Historic Preservation Act (NHPA), FHWA must take into account the effects of the Project on any historic property, including properties of traditional religious and cultural importance to any Indian tribe; and

WHEREAS, under Section 101(d)(6)(B) of the NHPA, FHWA shall consult with Indian tribes who may have properties of traditional religious and cultural importance affected by the Project; and

WHEREAS, FHWA and WSDOT, in consultation with the SHPO and affected Indian tribes and other interested consulting parties, have conducted and will continue to conduct cultural resource studies to identify and evaluate historic properties located within the Project's Area of Potential Effects (APE); and

WHEREAS, under 36 CFR 800.8, FHWA may use the process and environmental documentation required for the National Environmental Policy Act (NEPA) to comply with Section 106 so long as the process meets the standards set forth in 36 CFR 800.3(f), 36 CFR 800.4, 36 CFR 800.5 and 36 CFR 800.8; and

WHEREAS, the Project will include an off-site stormwater facility and a conveyance system of unknown locations with a required detention of approximately 3.5 acre feet (AC/FT); and

WHEREAS, the Project is not yet fully funded, and consequently some privately owned parcels that are planned to be purchased are not currently accessible for archaeological investigation; and

WHEREAS, the Project may be implemented using a design-build procurement process, which integrates the final design and construction phases; and

WHEREAS, FHWA and WSDOT have determined that the potential phased funding, the unknown locations of anticipated project elements, and the design-build process for the Project means that some of the identification and evaluation of historic properties and determination of Project effects upon those properties can not occur until property is acquired, specific locations for off-site stormwater facilities are identified, and/or the design is completed by the design-build contractor, and that this Agreement is authorized by 36 CFR § 800.14(b)(1)(ii); and

WHEREAS, FHWA and WSDOT, in consultation with SHPO and tribes, have made a determination that the APE for the Project as defined in 36 CFR § 800.16(d), includes (1) all areas where ground disturbance (including the depth dimension) is planned, including but not limited to: clearing and grubbing, grading, bridge foundations, retaining walls, noise walls,

detention ponds, conveyances, compost-amended vegetative filter strips, creation or enhancement of wetland mitigation sites, and staging and stockpiling areas, and (2) historic properties located either one tax lot on each side of the affected right-of-way or other agreed upon distance from the right-of-way, and the APE received SHPO concurrence on March 3, 2009; and

WHEREAS, the Council has been invited to participate in the development of this Agreement and has declined to participate; and

WHEREAS, this Project anticipates a Section 404 permit from the U.S. Army Corps of Engineers (USACE), and USACE has been invited to be a signatory to this Agreement and they have/have not chosen to participate; and

WHEREAS, the following Indian Tribes have been identified as consulting parties for this Project and are invited to concur with this Agreement: Muckleshoot Indian Tribe, Snoqualmie Tribe, Suquamish Tribe, Tulalip Tribes and Confederated Bands and Tribes of the Yakama Nation; and

WHEREAS, the King County Historic Preservation Program and Duwamish Tribal Services have been identified as consulting parties and have been invited to concur with this Agreement; and

WHEREAS, pursuant to 36 CFR § 800.2(c)(4) FHWA has authorized WSDOT to initiate consultation with SHPO, but still retains legal responsibility for all findings and determinations of eligibility and effect; and

WHEREAS, pursuant to 36 CFR § 800.13, FHWA, WSDOT, and SHPO have developed procedures in this Agreement to ensure that the identification and evaluation of historic properties, assessment of effects, and development of treatment and mitigation plans for unforeseen effects to previously identified historic properties and/or historic properties discovered during implementation of the Project is properly coordinated with all phases of the design and construction of the Project; and

WHEREAS, “signatories” means the required and invited signatories (FHWA, SHPO, and WSDOT), “concurring parties” means consulting parties that have signed the Agreement, and “consulting parties” means signatories, concurring parties, all interested and affected Indian tribes, and other interested parties consulted on the Project, regardless of whether they agreed to sign the Agreement;

NOW, THEREFORE, FHWA, WSDOT and SHPO agree that the Project shall be implemented in accordance with the following stipulations in order to take into account foreseen and unforeseen future effects to historic properties.

## STIPULATIONS

FHWA, in coordination with WSDOT, will ensure that the following measures are carried out:

### I. GENERAL PROCESS FOR CONSIDERATION OF HISTORIC PROPERTIES

A. In compliance with Section 106 and as part of the project-specific NEPA process, FHWA and WSDOT have taken (see Appendix A) and will continue to take the following steps to identify and evaluate historic properties:

1. Identify APE

FHWA and WSDOT have actively sought input from consulting parties, including Indian tribes, by requesting their review and comments on the Project's proposed APE, and will seek such review and comments on revisions to the APE that arise due to changes to the Project boundary related to private property acquisition, location determinations for the stormwater detention facility and associated conveyances, and the design and construction footprint during the design-build phase.

2. Identify Historic Properties

FHWA and WSDOT have identified (see Appendix A) and may continue to identify historic properties and properties of traditional religious and cultural importance within the Project's APE through cultural resource survey (survey) as follows:

- a. Gather and review information from consulting parties and others who may have knowledge or expertise in identifying historic properties in the Project's APE.
- b. All potentially historic above-ground properties were evaluated. If the APE is revised due to changes in the Project boundary, all additional potentially historic above-ground properties will be evaluated. Level of evaluation may vary and will be determined in consultation with SHPO and all consulting parties as necessary.
- c. Pursuant to consultation with Indian tribes, WSDOT conducted archaeological survey in known and accessible areas of proposed ground disturbance within funded portions of the Project, and will conduct archaeological survey in additional areas of potential ground disturbance as they are identified, as necessary.
- d. Consult with Indian tribes and other consulting parties on any archaeological finds, seeking comment on evaluation methods and providing opportunities to observe fieldwork.
- e. Survey(s) and identification of historic properties will be phased as necessary for the Project pursuant to 36 CFR 800.4(b)(2) as further delineated in Section III below.

- f. For surveys that have been completed for this Project, results were evaluated, National Register criteria were applied, and determinations of eligibility for the National Register were made. For any future survey(s), FHWA and WSDOT will evaluate results, apply National Register criteria, and determine whether there are properties that are eligible for the National Register. All consulting parties will be afforded the opportunity to review and comment on the results of the survey and on the historic property determinations made by FHWA, per 36 CFR § 800.4.

3. Assess Adverse Effects

After FHWA and WSDOT identify historic properties that will be affected by the Project (see Appendix A), they will:

- a. Apply the criteria for adverse effect in 36 CFR 800.5 in consultation with the consulting parties (including affected Indian tribes) and SHPO.
- b. Develop in consultation with consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the Project on historic properties, and where feasible describe them in the EA pursuant to 36 CFR 800.8(c)(1)(v).
- c. Continue a phased identification of historic properties and assessment of adverse effects anticipated to occur after completion of the NEPA process due to private property acquisition, confirmation of the locations of stormwater detention and conveyance systems, and the completion of the design-build process. FHWA and WSDOT will prepare supplemental NEPA documents or alternatively follow the procedures in 36 CFR 800.3 through 800.6 as necessary.

B. FHWA and WSDOT will ensure that all work under this Agreement is performed by or under the direct supervision of a qualified individual(s) in the appropriate historic preservation discipline who meets, at a minimum, the Secretary of Interior's Professional Qualification Standards as set forth in 36 CFR § 61. Under certain circumstances it may be appropriate to have a tribal monitor involved in the work being performed, who is not required to meet the Secretary of Interior's Professional Qualification Standards.

C. FHWA and WSDOT will ensure that the design-build contractor is aware of, understands, and complies with the requirements of this Agreement. The design-build contractor shall ensure that its sub-contractors comply with the requirements of this Agreement. Compliance with this Agreement shall be required as part of the Project contract and will be included in the Project contract.

## **II. PUBLIC PARTICIPATION**

- A. FHWA and WSDOT will ensure opportunities for public participation for Section 106-related activities conducted after the project-specific NEPA process is complete. Modified versions of reports on historic properties (resource location information removed as appropriate, in accordance with state and federal laws) will be made available for review to the general public at the SR 520 Program Office, on the WSDOT website, or through other reasonable means. The views of interested parties and the general public will be considered by FHWA and WSDOT with respect to the terms of this Agreement.
- B. To the extent required by Section 304 of the NHPA, the signatories and concurring parties to this Agreement will withhold from disclosure to the public information about the location, character, or ownership of a historic property until the Secretary of the Interior can determine whether disclosure may (1) cause a significant invasion of privacy, (2) risk harm to a historic property, or (3) impact the significance or use of a traditional religious site by practitioners. To the extent authorized by state and federal law, information will also be withheld from disclosure at the owner's request.

## **III. PHASED SECTION 106 REVIEW – ALTERNATIVE PROCEDURES**

- A. Some elements of the Project design will not be completed during the main Section 106 and NEPA processes. These may include new or revised design-build elements, storm water treatment facility and conveyance locations, and possible late private property acquisition. The exact locations and size of ground disturbing activities for these elements will be unknown until later phases of the Project, necessitating phased Section 106 review as allowed under 36 CFR 800.8(c)(1)(ii) and 36 CFR 800.14(b).
- B. The interval between the acquisition of property or the design/redesign of an element and its construction may be too short to perform standard Section 106 identification, evaluation, and assessment of effects on an historic property. Later phases of the Section 106 process will require more streamlined Section 106 evaluation and consultation.
- C. Adverse effects on historic properties will be prevented or minimized by development of a streamlined protocol for identification of historic properties, the assessment of Project effects, and resolution of adverse effects to those historic properties.
- D. FHWA and WSDOT will initiate Section 106 evaluation and consultation immediately upon property acquisition and/or determination of the locations of new or revised design-build Project elements and the stormwater facility and conveyances as follows:
  - 1. A WSDOT Cultural Resources Specialist (CRS) will review the Project element description and/or property location.
  - 2. The CRS will make a preliminary determination of whether a survey is necessary, and consult with FHWA, the affected Indian tribes, identified interested parties,

and SHPO on the determination. A survey will be necessary if the area has not been adequately investigated or characterized.

3. Staging, parking, material storage areas, or temporary buildings (hereafter, “staging areas”) may be located on any paved or prepared gravel surface, provided that the use will not require penetrating the pavement or gravel surface. These staging areas will not require survey. For staging areas not on paved or prepared gravel surfaces or where subsurface excavation or other ground surface modification is necessary, both within and outside of the SR 520 right-of-way, the CRS must be notified to determine if a survey is necessary.
4. If a survey is necessary, WSDOT will notify the design-build contractor, if under contract. The maximum extent of construction-related ground disturbance will be defined and flagged by the design-build contractor, if under contract, or by WSDOT for the survey area.
5. WSDOT will arrange to have the survey conducted by qualified professionals.
6. The survey will provide an assessment of whether any historic property is located within the construction area and whether any historic property would be adversely affected by the Project.
7. FHWA and WSDOT will review the survey. Where the survey identifies a historic property that might be adversely affected by the Project, FHWA and WSDOT will develop methods to resolve adverse effects (proposed resolution) including alternatives or modifications to the Project that could avoid, minimize or mitigate adverse effects on any historic property.
8. FHWA and WSDOT will provide the survey results and any proposed resolution of adverse effects to SHPO, affected Indian tribes, and other interested consulting parties for consultation.
9. SHPO will have ten (10) calendar days to review the survey results and any proposed resolution, and either concur with the findings or notify WSDOT and FHWA that SHPO does not concur.
10. FHWA and WSDOT will actively seek input on the survey results and any proposed resolution from affected Indian tribes and other consulting parties during a shortened consultation period of ten (10) calendar days.
11. After consultation, FHWA and WSDOT will make a final determination on historic property location and resolution of adverse effects based upon the input of the affected Indian tribes and other consulting parties and the concurrence of the SHPO, and will provide that determination in writing to all consulting parties.

12. WSDOT will ensure that no more than two (2) Project elements are under review at any time by SHPO and the affected Indian tribes.
13. Work will not proceed until any required survey has been completed, Indian tribes and other consulting parties have been consulted, and SHPO has concurred with the findings of the survey and proposed resolution, per provisions of 36 CFR § 800.

#### IV. COORDINATION OF REVIEWS

- A. Consulting parties and SHPO will have a review period of thirty (30) calendar days for commenting on all documents, resource evaluations of significance, treatment plans, and specifications under the terms of this Agreement, except as described in Stipulations III and V. If multiple historic properties are involved, the review time may be extended, as appropriate, by FHWA.
- B. SHPO and the other consulting parties recognize the time-sensitive nature of the Project work and will attempt to expedite comments or concurrence when requested, if possible. If SHPO or other consulting parties fail to provide comments within the designated review period, FHWA will assume their concurrence and proceed with the proposed action or activity.

#### V. POST-REVIEW UNANTICIPATED DISCOVERIES

- A. If previously unidentified archaeological resources are identified during ground-disturbing activities during the construction or during post-construction maintenance or improvement, such activities shall cease in the immediate area of the discovery and the WSDOT SR 520 Program's Environmental Manager will follow the procedures outlined in the **SR 520 Corridor Unanticipated Archaeological Discovery Plan (Appendix B)**.
- B. If FHWA, in consultation with the affected Indian tribes and identified interested parties and with the concurrence of SHPO, determines that an archaeological resource is not eligible for listing in the National Register, construction may proceed without any further cultural resources investigation. SHPO must concur in writing with the "Not Eligible" determination prior to continuation of construction.

#### VI. TRIBAL CONSULTATION

In addition to the above mentioned communications in Stipulations I to IV, WSDOT will meet with interested and affected Indian tribes individually upon request, or will facilitate a meeting with multiple Indian tribes when so requested. SHPO and FHWA will be invited to all meetings between WSDOT and the affected Indian tribes.

#### VII. DISPUTE RESOLUTION

- A. Should any consulting party object, in writing, within five (5) calendar days to the implementation of the terms of this Agreement, FHWA and WSDOT shall work with the disputing party to resolve the dispute. If FHWA determines that the objection cannot be resolved, FHWA shall forward all documentation relevant to the dispute to the Council and request that the Council comment.
- B. Any Council comment provided in response to such request shall be taken into account by FHWA in accordance with 36 CFR § 800.7(c)(4) with reference only to the subject of the dispute. FHWA responsibility remains unchanged to carry out all other actions and activities that are not the subject of the dispute under this Agreement.

#### VIII. AMENDMENTS AND NONCOMPLIANCE.

- A. If FHWA, WSDOT, or SHPO determines that the terms of this Agreement will not or cannot be carried out or that an amendment to its terms must be made, that party shall provide a written explanation for such a determination to all signatories and immediately consult with the other signatories to develop an amendment to this Agreement. The amendment will be effective on the date a copy is signed by FHWA, SHPO, and WSDOT.
- B. If the signatories cannot agree to appropriate terms to amend this Agreement, any one of these parties unilaterally may terminate the agreement in accordance with Stipulation X, below.

#### IX. EMERGENCY SITUATIONS

Should an emergency situation occur which represents an imminent threat to public health or safety, or creates a hazardous condition, FHWA and WSDOT shall immediately notify SHPO and consulting parties of the situation and the measures to be taken to respond to the emergency or hazardous condition. Should SHPO or consulting parties desire to comment or provide technical assistance to WSDOT, they shall immediately notify WSDOT via email and telephone of their intent to submit comments and shall submit the comments within five (5) calendar days of WSDOT's initial notification, if the nature of the emergency or hazardous condition allows for such coordination.

#### X. TERMINATION

- A. If FHWA or WSDOT determines that it cannot implement the terms of this Agreement, or if SHPO determines that this Agreement is not being properly implemented, FHWA, WSDOT, or SHPO may propose to the other parties that the Agreement be terminated.

- B. The party proposing to terminate this Agreement shall notify all parties to this Agreement accordingly in writing, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination.
- C. Should such consultation fail and this Agreement is terminated, the FHWA shall either:
1. Consult in accordance with 36 CFR § 800.6 to develop a new Agreement; or
  2. Request the comments of the Council pursuant to 36 CFR § 800.7 and take into account such comments in accordance with such section prior to continuing the Project.

DRAFT

**By:**

Federal Highway Administration, Division Administrator

\_\_\_\_\_  
Daniel M. Mathis

\_\_\_\_\_  
Date

Washington State Department of Transportation, Tolling Division Administrator

\_\_\_\_\_  
Craig Stone

\_\_\_\_\_  
Date

Washington State Historic Preservation Officer

\_\_\_\_\_  
Allyson Brooks

\_\_\_\_\_  
Date

**Concur:**

US Army Corps of Engineers, Chief, Regulatory Branch

\_\_\_\_\_  
Michelle Walker

\_\_\_\_\_  
Date

US Army Corps of Engineers, Chief, Environmental Resources Section

\_\_\_\_\_  
Deborah Johnston

\_\_\_\_\_  
Date

King County Historic Preservation Program, Preservation Officer

\_\_\_\_\_  
Julie Koler

\_\_\_\_\_  
Date

Muckleshoot Indian Tribe, Chairperson

\_\_\_\_\_  
Charlotte Williams

\_\_\_\_\_  
Date

Snoqualmie Tribe, Chairperson

\_\_\_\_\_  
Joseph Mullen

\_\_\_\_\_  
Date

Suquamish Tribe, Chairperson

\_\_\_\_\_  
Leonard Forsman

\_\_\_\_\_  
Date

Tulalip Tribes of Washington, Chairperson

\_\_\_\_\_  
Melvin Sheldon, Jr.

\_\_\_\_\_  
Date

Confederated Bands and Tribes of the Yakama Nation, Chairperson

\_\_\_\_\_  
Ralph Sampson

\_\_\_\_\_  
Date

Duwamish Tribal Services, Chairperson

\_\_\_\_\_  
Cecile Hansen

\_\_\_\_\_  
Date

Appendix A: Section 106 Consultation Milestones

Appendix B: SR 520 Corridor Program Unanticipated Discovery Plan

Appendix A:  
 SR 520 Program, Medina to SR 202 Eastside Transit and HOV Project  
 Section 106 Consultation Milestones

On behalf of FHWA, WSDOT has been consulting with the following federally recognized tribes: Muckleshoot Indian Tribe, Snoqualmie Tribe, Suquamish Tribe, Tulalip Tribes, and Yakama Nation. WSDOT has also been coordinating with the non-federally recognized Duwamish Tribal Services as a consulting party. Other consulting parties include SHPO, King County, and USACE.

Sent initial consultation letters to tribes	November 2008
Met with Muckleshoot Indian Tribe, Snoqualmie Tribe, Suquamish Tribe, Tulalip Tribes, and Duwamish Tribal Services to introduce project and obtain initial feedback	November and December 2008
Yakama Nation deferred to more local tribes via phone.	December 2008
Sent APE letters to tribes and SHPO	February 2009
SHPO accepted APE	March 2009
Sent Historic Property Inventory forms for historic built environment properties to SHPO	March 2009
Sent revised APE letters and notification of upcoming archaeological investigations to tribes and SHPO	May 2009
Received concurrence from SHPO on eligibility of historic built environment properties	May 2009
Muckleshoot Indian Tribe accepted APE	June 2009
Met with Muckleshoot Indian Tribe, Snoqualmie Tribe, Suquamish Tribe, Tulalip Tribes, and Duwamish Tribal Services to provide project updates, discuss archaeological investigations, and obtain feedback	July and August 2009
Sent cultural resources technical memorandum and Historic Property Inventory Forms to tribes, SHPO, King County, and USACE	September 2009

## **Appendix B:**

# **SR 520, MEDINA TO SR 202: EASTSIDE TRANSIT AND HOV PROJECT Unanticipated Discovery Plan OCTOBER 30, 2009**

## **Plan and Procedures for Dealing with an Unanticipated Archaeological Resource or Human Skeletal Remains Discovery during Construction**

### **1.0 INTRODUCTION**

The SR 520, Medina to SR 202: Eastside Transit and HOV Project upgrades existing interchanges to improve flow and adds and modifies mass transit facilities and HOV lanes on the east side of Lake Washington, in King County.

The Washington State Department of Transportation (WSDOT) has analyzed the effects of this project under the National Environmental Policy Act (NEPA). This project is identified as a Federal undertaking and therefore must adhere to provisions of the National Historic Preservation Act of 1966, as amended (NHPA). The Federal Highway Administration (FHWA) is the Federal lead agency for further consultation under the NHPA. Identified consulting parties include: FHWA, WSDOT, the State Historic Preservation Officer (SHPO) within the Department of Archaeology and Historic Preservation (DAHP), the King County preservation Program, the U.S. Army Corps of Engineers, and the following Indian Tribes: Muckleshoot Indian Tribe, Snoqualmie Tribe, Tulalip Tribes, the Suquamish Tribe, and the Confederate Tribes and Bands of the Yakama Nation, and the non-federally recognized Duwamish Tribal Services. During the course of the design, document preparation, and construction, WSDOT consulted with these groups and will continue to do so in accordance with 36 CFR 800.2(a)(4).

WSDOT has an official media communications policy that explicitly identifies all cultural resources, including human skeletal remains, as strictly confidential and exempt from Freedom of Information Act (FOIA) requests for disclosure. Project Managers and/or Cultural Resources Specialists will contact the Communications Office as and when necessary to inform them of any and all finds in order to provide information based on first-hand knowledge. All inquiries by the media about discoveries are to be referred to the WSDOT Communications Office, who will respond by stating that all cultural resource discoveries are strictly confidential and that all employees treat discoveries in a respectful manner and are required to follow all State and Federal laws pertaining to the resource.

This document serves as the plan for dealing with any unanticipated discoveries of human skeletal remains, artifacts, sites, or any other cultural resources eligible for listing in the National Register of Historic Places (NRHP). This plan is intended to provide guidance to WSDOT personnel and the construction team so they can:

- Comply with applicable Federal and State laws and regulations, particularly 36 CFR 800 (as amended January 11, 2001), the regulations that implement Section 106 of the NHPA of 1966; and the following sections of the Revised Code of Washington (RCW): 27.44 Human Remains Identification, Preservation, Excavation, and Repatriation; 27.53 Archaeological Sites and Resources; and 68.50 and 68.60 Cemeteries, Morgues, and Human Remains;
- Describe to regulatory and review agencies the procedures the construction team and WSDOT will follow to prepare for and deal with unanticipated discoveries of archaeological and human skeletal remains; and
- Provide direction and guidance to project personnel on the proper procedures to be followed should an unanticipated discovery occur.

This document also includes Attachment A: Contact Information.

## **2.0 PROCEDURES FOR THE DISCOVERY OF HUMAN SKELETAL REMAINS**

Washington State law requires immediate notification of known or suspected human remains to county and/or municipal law enforcement agencies, county medical examiner or coroner's offices, and federal, state, and local agencies involved directly with the project or having jurisdiction over the subject property whenever they are uncovered by investigation or construction activities. This document outlines the procedures to be followed by WSDOT personnel and their contractors in the event human skeletal remains (suspected or certain) are discovered or exposed in core extrusions or samples, or in backhoe trench spoils or sidewalls. Importantly, a WSDOT Cultural Resource Specialist will make the determination that the skeletal remains are human. Below is a list of key individuals who must be contacted. Any human skeletal remains discovered during this project will at all times be treated with dignity and respect.

The required actions include:

- A. If any member of the construction team, contractors or subcontractors believes that he or she has encountered skeletal remains of any kind, all work at and adjacent to the discovery shall immediately cease. The area of work stoppage will be adequate to provide for the security, protection, and integrity of the skeletal remains, in accordance with Washington State law. He or she will immediately inform the WSDOT Project Inspector, who will immediately inform the WSDOT Project Engineer and the WSDOT ESO Mega Projects Environmental Manager.
- B. Representatives of WSDOT will be responsible for taking appropriate steps to protect the discovery. At a minimum, the immediate area will be secured to a distance of thirty (30) feet from the discovery. Vehicles, equipment, and unauthorized personnel will not be permitted to traverse the discovery site.
- C. The WSDOT ESO Mega Projects Environmental Manager will contact the WSDOT ESO Mega Projects Cultural Resources Specialist (CRS) Ken Juell. The CRS will visit the site of the discovery, make an identification of the remains, and notify the WSDOT ESO Mega Projects Environmental Manager of his findings and the basis for the identification. If the Environmental Manager is unavailable to reach the CRS, the Environmental Manager will contact a Cultural Resources Program Manager (CRPM) or other CRS listed in Attachment A, starting with Scott Williams and continuing down the list until personal contact is made.
- D. If the remains are determined to be human, the Environmental Manager will follow step E, below. If the remains are non-human bones, but appear to be associated with archaeological human activity, the procedures described in Section 3.0 will be followed.
- E. The WSDOT CRS, Project Engineer, or Environmental Manager will immediately call the King County Sheriff's Office and the State Physical Anthropologist in the DAHP. WSDOT acknowledges that any find of human skeletal remains may be a burial of Native American ancestry. It is further acknowledged that the concerned Indian Tribes are extremely sensitive about ancestral burials, and that the find must be treated confidentially. The Sheriff's Office will arrange for a representative of the Medical Examiner's Office to examine the discovery. The Medical Examiner, or his or her representative, assisted by the State Physical Anthropologist will determine whether the discovery should be treated as a crime scene, a historic grave of a person or persons of nonnative ancestry in accordance with State law, or as a human burial of Native American ancestry.

- F. WSDOT will notify the SHPO and DAHP, FHWA, and the concerned Indian Tribes of the inadvertent discovery of human remains. If the remains are not determined to be associated with a crime scene, DAHP will assume custody of the remains and SHPO and WSDOT will initiate consultation with appropriate parties to develop a treatment plan. If remains are historic and non-Native American in origin, the Tribes may choose to exit consultations. The remains will be protected from further disturbance until WSDOT, FHWA, DAHP, and concerned Indian Tribes (if still participating) have determined appropriate treatments and ultimate disposition of the remains. No additional excavation will be undertaken prior to tribal consultation, and no exposed human remains will be left unattended during work hours. Concerned Indian Tribes will be given the opportunity to visit the site, and conduct ceremonies they deem necessary.
- G. If disinterment of Native American remains becomes necessary, the consulting parties, which will include the SHPO, FHWA, concerned Indian Tribes, and WSDOT, will jointly determine the final custodian of the human skeletal remains for re-interment.

### **3.0 PROCEDURES FOR THE DISCOVERY OF ARCHAEOLOGICAL RESOURCES**

- A. If any member of the construction team, contractors or subcontractors, believes he or she has inadvertently uncovered any archaeological resource, all work at or adjacent to the discovery shall immediately cease. He or she will inform the WSDOT Project Inspector, who will immediately notify the WSDOT Project Engineer and the WSDOT ESO Mega Projects Environmental Manager, who will notify the WSDOT ESO Mega Projects CRS. The area of work stoppage will be adequate to provide for the security, protection, and integrity of the archaeological discovery. A resource discovery could be prehistoric-period or historic-period in age and consist of (but not limited to):
- areas of charcoal or charcoal-stained soil and stones;
  - stone tools or waste flakes (i.e., an arrowhead or stone chips);
  - animal bones, burned rocks, or mollusk shell, whether or not seen in association with stone tools or chips; and
  - clusters of tin cans, ceramics, flat glass or bottles, concentrations of brick, or logging or agricultural equipment.
- B. The WSDOT ESO Mega Projects CRS will visit the work site and determine if the resource is potentially eligible for listing in the NHRP. Any newly discovered

archaeological resource will be considered eligible for the NRHP under Criterion D (a property or resource that has yielded, or may be likely to yield, information important for the understanding of history or pre-history) for the purposes of Section 106 compliance, in accordance with 36 CFR 800.13(c) until determined otherwise by WSDOT, SHPO, DAHP, and FHWA. The Environmental Manager, CRS, or CRPM will notify the affected Tribe(s), DAHP, and the FHWA of any unanticipated discovery. If the discovery is determined to be historic or archaeological in nature, or consists of Native American human remains, DAHP, FHWA, and Tribe(s) will be consulted as appropriate to determine the course of action.

- C. Construction will be halted within the immediate area of the discovery and the scene will be protected until the WSDOT Project Engineer has arranged for the discovery to be identified by the WSDOT CRS and/or CRPM, as necessary. Steps will be taken to protect the discovery site. At a minimum, subsurface disturbances will stop and the area adjacent to the discovery will be secured. Vehicles, equipment, and unauthorized personnel will not be permitted to traverse the discovery site. Work in the immediate area will not resume until treatment of the discovery has been completed following the provisions of this section.
- D. A WSDOT ESO Mega Projects CRS will ensure proper documentation and assessment of any discovered cultural resources. All prehistoric and historic cultural material discovered during project construction will be recorded by the professional archaeologist using standard techniques and in the format requested by DAHP. Site overviews, features, and artifacts will be photographed; stratigraphic profiles and soil/sediment descriptions will be prepared for subsurface exposure. Discovery locations will be documented on scaled site plans and site location maps.
- E. If the federal and state agency representatives determine that the discovery is an eligible cultural resource, they and the concerned Indian Tribe(s), as appropriate, will consult to determine appropriate treatment to be presented and agreed upon in a Memorandum of Agreement (MOA) or other appropriate documentation. Mitigation measures will be developed in consultation with DAHP, FHWA, and the affected Tribes (where appropriate), which could include avoidance through redesign, conducting data recovery and/or relocating materials or remains. Treatment measures performed by WSDOT may include protecting in place or data recovery such as mapping, photography, limited probing, and sample collection, or other activity deemed appropriate through a MOA or other appropriate documentation.
- F. Where complex or extensive cultural remains are encountered, WSDOT, DAHP, and FHWA will determine the appropriate level of documentation and treatment of the resources after consultation with the concerned Tribal representatives.

- G. WSDOT, DAHP, and FHWA will decide when construction may continue at the discovery location. Where cultural resources are encountered during construction, but additional project effects to the resources are not anticipated, project construction may continue while assessment and documentation of the cultural resources proceed. If continued construction is likely to cause additional impacts to such resources, project activities within a radius of 30 feet of the discovery will cease until the CRS has documented the site, evaluated its significance, and assessed potential effects to the site.
- H. Cultural features, horizons, and artifacts detected in buried sediments may require further evaluation using hand-dug test units to clarify aspects of integrity, stratigraphic context, or feature function. Units may be dug in controlled fashion to expose features, collect radiocarbon or animal/plant macrofossil samples from undisturbed contexts, or interpret complex stratigraphy. A test excavation unit or small trench might also be used to cross-section a feature to determine if an intact occupation surface is present. Test units will be used only when necessary to gather information on the nature, extent, and integrity of subsurface cultural deposits to evaluate the site's potential to address significant research domains. Excavations will be conducted using state-of-the-art techniques for controlling provenience of recovered remains.
- I. Sediments excavated for purposes of cultural resources investigations will be screened through wire mesh. Spatial information, depth of excavation levels, natural and cultural stratigraphy, and presence or absence of cultural material will be recorded for each probe on a standard form. Test excavation units will be recorded on unit-level forms, which include plan maps for each excavated level, and material type, number and vertical provenience for all artifacts recovered from the level. Radiocarbon and macrofossil samples will be taken from intact subsurface features exposed by shovel/auger probes or test units. A stratigraphic profile will be drawn for at least one wall of each test excavation unit.
- J. All prehistoric and historic artifacts collected from the surface and from probes and excavation units will be analyzed, catalogued, and temporarily curated. Ultimate disposition of cultural materials will be determined in consultation with DAHP, FHWA, and concerned Tribes.
- K. Within 90 days of conclusion of fieldwork, a management summary describing any and all monitoring activities and resultant archaeological excavations will be provided to the WSDOT ESO Mega Projects CRS, who will forward the report to the WSDOT CRPM for review and delivery to DAHP, FHWA, and concerned Tribes.
- L. If construction activity exposes human remains (burials, or isolated teeth or bones), construction in the immediate vicinity of the find will be halted. See Section 2.0 Procedures for the Discovery of Human Skeletal Remains.

## **ATTACHMENT A Contact Information**

### **1. Primary Field Contacts**

WSDOT ESO Mega Projects Environmental Manager	Allison Hanson 206.382-5279 (office) 206.714-1548 (cell)
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### **2. Cultural Resources Contacts (Call first to last until personally reaching one)**

WSDOT ESO Mega Projects Cultural Resource Specialist	Ken Juell 206.464.1236 (office) 206.498.0508 (cell)
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WSDOT Cultural Resource Contact #2 Cultural Resources Program Manager	Scott Williams 360.570.6651 (office) 360.628.3219 (cell)
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WSDOT Cultural Resource Contact #3	Michael Chidley 206.440.4525 (office) 206.947.0919 (cell)
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WSDOT Cultural Resource Contact #4	Kevin Bartoy 206.716-1121 (office) 206.491-9242 (cell)
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### **3. Agencies to be notified by WSDOT only.**

Federal Highway Administration	Randy Everett 206.220-7538 (office) 206.437.5892 (cell)
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State Historic Preservation Officer (SHPO)	Dr. Allyson Brooks 360.586.3066 (office)
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Department of Archaeology and Historic Preservation  
State Physical Anthropologist

Dr. Guy Tasa  
360.586.3534

Transportation Archaeologist

Matthew Sterner  
360.586.3082 (office)  
360.280.7563 (cell)

King County Sheriff's Office (Non-emergency)

206.296.4155

King County Medical Examiner

206.731.3232

**4. Appropriate Tribal Staff to be notified by WSDOT only.**

Muckleshoot Indian Tribe Contacts:

Laura Murphy  
253.876.3272

Warren KingGeorge  
(human remains)  
253.876.3269

Snoqualmie Tribe Contacts:

Ray Mullen  
425.888.6551 (office)  
425.531.0120 (cell)

Andrea Rodgers  
425.888.6551 (office)

Suquamish Tribe Contact:

Dennis Lewarch  
360.394.8529

Tulalip Tribes Contact:

Hank Gobin  
360.651.3310

Yakama Nation Contact:

Johnson Meninick  
509.856.5121 (ext. 4737)

Duwamish Tribal Services Contact:

Honorable Cecile Hansen  
206.431.7582

SR 520, MEDINA TO SR 202: EASTSIDE TRANSIT AND HOV PROJECT  
ENVIRONMENTAL ASSESSMENT