



## Technical Appendix 9- Archaeological investigations and cultural resource management

## ARCHAEOLOGICAL INVESTIGATIONS AND CULTURAL RESOURCE MANAGEMENT

The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470 aa-mm  
The Antiquities Act of 1906, 16 U.S.C. 431-433  
The Organic Act of 1897, 16 U.S.C. 551

The USFS has responsibilities for the protection and preservation of cultural resources located on its lands, and cultural resources that may be affected by projects or activities under its direct or indirect jurisdiction, under the National Historic Preservation Act of 1966, as amended (hereinafter NHPA). Section 106 of the NHPA states that potential effects to historic properties must be considered before any federal undertaking. FHWA has issued an easement to WSDOT for SR 542, but the easement does not identify an agency official responsible for compliance with Section 106 for the subsequent activities or projects within the easement. Therefore, the USFS retains certain responsibilities for compliance with Section 106, unless another lead federal agency is identified. Other applicable laws include those identified in the easement (above) the Native American Graves Protection and Repatriation Act and Section 110 of the NHPA on federal lands.

WSDOT projects on SR542 will be given consideration under the Section 106 process. If more than one federal agency is involved in an undertaking (e.g projects located on USFS lands implemented with FHWA Federal-aid Highway Program funding), the agencies may designate a lead federal agency. Where the USFS has lead federal agency responsibilities, the USFS will follow the 1997 Programmatic Agreement among the USFS Region 6, the Advisory Council on Historic Preservation and the Washington State Historic Preservation Officer (SHPO) Regarding Cultural Resource Management on National Forests in the State of Washington (1997 PA, copy attached).

Under this SR542 Plan, the USFS designates WSDOT to initiate certain steps of the 106 Process in order to further fulfill the USFS responsibilities under the NHPA. Generally, these activities include initiating consultation with Indian Tribes, the SHPO and other consulting parties, identifying the Area of Potential Effect (APE), carrying out appropriate identification efforts (including pedestrian transect surveys, shovel probes (utilizing 1/8-inch mesh), surface scrapes) and evaluation (including historic contexts and statements of significance applying the National Register Criteria, not including archaeological site testing), and assessments of effect (applying the Criteria of Adverse Effect). Generally, any identification efforts will follow the terms of the 1997 PA and the Mt. Baker-Snoqualmie Survey Strategy (Hearne and Hollenbeck 1996). Consideration of all potential historic property types will be expected (including but not limited to traditional cultural properties, cultural modified trees, historic structures including bridges, archaeological sites, pre-contact isolates, rock features, rock art, USFS administrative sites and structures, and historic logging, mining and railroad sites and features). WSDOT will assign a staff Cultural Specialist to coordinate with the USFS Heritage Specialist. The USFS Heritage Specialist will review and provide comments on each phase of the Section 106 process as soon as possible after receipt, in coordination with other USFS program reviews and approvals for the undertaking.

If FHWA is identified as the lead federal agency, and delegates responsibilities to WSDOT<sup>1</sup>, WSDOT will assign a staff Cultural Specialist to coordinate with the USFS Heritage Specialist. WSDOT (as FHWA's representative) will consult with the FS to determine the level of field inspection, monitoring or other identification necessary. WSDOT Cultural Specialist will coordinate each phase of the Section 106 process with the USFS Heritage Specialist.

Heritage review will be included in the coordination with the USFS for all WSDOT Maintenance activities. Consistent with the processes identified in the Maintenance and Operations Management Plan, the USFS Heritage Specialist will expedite review of maintenance projects and provide comments on the various steps of the Section 106 process within 30 days of receipt of the required documentation (e.g. description and scale map to review and determine or approve the APE). To the extent possible, the USFS Heritage Specialist will review and approve an annual maintenance plan.

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<sup>1</sup> First Amended Programmatic Agreement for Federal-aid Highway Program in Washington administered by the Federal Highway Administration 3/19/2007)

Cultural Resources project design, literature review, development of regional historical contexts, site evaluation, conservation and protection measures, and recommendations for subsequent investigations shall be developed with direct involvement of an individual who meets the Secretary of the Interior's Standards for Archaeology and Historic Preservation. Fieldwork shall be overseen by an individual who meets the Secretary of the Interior's Standards. WSDOT shall utilize staff or contractors who meet these qualifications and who shall be referred to as Cultural Resource Specialists. WSDOT will provide the USFS Heritage Specialist with resumes for WSDOT cultural specialists that will be conducting field work, including experience for the kind of work proposed and the role proposed. Contractors working for WSDOT will apply for a permit from the USFS to conduct archaeological studies on USFS lands. USFS will work with WSDOT to issue a blanket permit for recurring activities (e.g. maintenance activities) and/or planned Capital Projects over a specified period based on an annual or biannual program of work.

Cultural resource reporting completed by WSDOT staff or contractors will follow the Washington State Standards (Department of Archaeology and Historic Preservation, October 2008) unless otherwise specified. Reports will be submitted to the USFS Heritage Specialist for review and comment or review and approval prior to submittal to SHPO or other consulting parties. The compliance review for Capital Projects will be coordinated with other program reviews to ensure that USFS Section 106 responsibilities are met prior to implementation of the project.

Survey records and associated documentation will be held at the Mt. Baker-Snoqualmie National Forest in the 2360 Heritage files. If any artifact collections (historic or prehistoric, not subject to NAGPRA) result, WSDOT will consult with the Forest Service and a facility for collections, data, records, photographs and other documents will be selected and approved by the USFS. WSDOT will be responsible for any curation costs associated with collections that result from its projects. All collections from National Forest System lands shall remain the property of the United States.

**Inadvertent discovery:** If an unidentified resource is discovered during project implementation, WSDOT shall immediately cease work in the area of the discovery and shall make a reasonable effort to protect and secure the find. WSDOT shall immediately notify the USFS Heritage Specialist and coordinate with the USFS to ensure that federal (USFS or FHWA) responsibilities are fulfilled.

**Native American Graves Protection and Repatriation Act (NAGPRA):** If human remains, funerary objects, sacred objects and objects of cultural patrimony are discovered on National Forest System Lands, WSDOT shall immediately cease work in the area of the discovery and shall make reasonable effort to protect and preserve it. WSDOT shall immediately notify the USFS Heritage Specialist or Agency Official by telephone and shall follow up with written confirmation of the discovery, and shall coordinate with the USFS to follow the procedures of the 1997 PA and NAGPRA regarding discovery and treatment.

## PROJECT REVIEW

The following are generally considered to be non-undertakings under the Programmatic Agreement and do not need to be reported:

1. Maintenance, rehabilitation and snow removal confined to an existing roadway, parking lot, or turnout and historic properties are not involved (repair to pavement, cleaning drainage structures, repair of fill slopes and drainage structures, repair of guardrail, bridge work, etc.)
2. Recurrent brushing activities to control vegetation within the existing clearing limits of roads, parking lots, and turnouts.
3. Modification of existing fences.
4. Re-introduction of endemic or native species into their historical habitats.

5. Installation of devices to protect human or animal life.
6. Placement or replacement of bulletin boards or information signs, barrier posts, visitor registers and portable sanitation devices.
7. Hazard abatement, including elimination of toxic waste sites and drug labs.
8. Removal of log jams and debris jams using hand labor or small mechanical devices.
9. Aerial or hand vegetative spraying, fertilization or grass seeding.
10. Noxious weed eradication through the application of herbicides and hand removal (including use of hand tools).

Appendix A of the Programmatic Agreement includes the type of undertakings excluded from case by case review and WSDOT shall report these activities annually to the USFS.

Ecology, Range and Watersheds:

1. Fence construction and maintenance.
2. Watershed restoration activities such as planting, seeding, mulching, and revegetating bare erosion prone surfaces such as cuts and fills.

Engineering/Transportation:

1. Installation of routine signs or markers within or along side existing roadways or trailways.

Appendix B of the Programmatic Agreement includes the types of undertakings excluded from case by case review based on inspection or monitoring. A Cultural Resource Specialist will make the determination of whether an undertaking meets the conditions, will examine any previous inventories, and will determine whether pre-inspection and/or monitoring during the activities is appropriate for the undertaking. These activities will be documented and reported annually to the USFS.

Ecology, Range and Watersheds:

3. Watershed restoration activities that address road erosion and sedimentation with road upgrading (replacement or extension of culverts and other drainage structures).
4. Watershed restoration activities that address road erosion and sedimentation with road decommissioning.

All other undertakings shall be reviewed on a case by case basis. WSDOT shall submit a preliminary report to the USFS within 30 days of completion of the first stage of fieldwork. The preliminary report shall enumerate what was done during the first stage of fieldwork, how it was done, by whom, where, and with what results, including maps, global positioning satellite data, an approved site form for each newly recorded archaeological site, and professional recommendations regarding resource significance, as appropriate. Depending on the scope, duration, and nature of the work, the USFS may require progress reports periodically for the duration of the authorized activities.

Within 10 weeks of completion of fieldwork, WSDOT shall submit an edited draft final report to the USFS for review to ensure conformance with applicable laws, regulations, policies, and procedures. WSDOT shall submit the original final report and at least two copies to the USFS within 4 months after completion of fieldwork. For undertaking where an appropriate inventory of the APE has been conducted and no historic properties have been located, the USFS may find the results as "No Historic Properties" and WSDOT may proceed with the undertaking. For undertakings where properties are identified but avoidance of all potentially eligible properties is achieved, then the USFS may find the results as "No Effect" and WSDOT may proceed with the undertaking. USFS shall submit these reports to the Washington State Historic Preservation

Officer (SHPO) on a quarterly basis.

For undertakings where an inventory has been conducted and historic properties will be affected then further consultation with SHPO will be conducted in accordance with the Programmatic Agreement.

Within 90 days of the date the final report is submitted to the USFS, WSDOT shall deposit all artifacts, samples, and collections and original or clear copies of all records, data, photographs, and other documents resulting from activities authorized by this permit with the curatorial facility. WSDOT shall provide the USFS with a catalogue and evaluation of all materials deposited with the curatorial facility named, including the facility's accession or catalogue numbers, and confirmation, signed by an authorized curatorial facility official, that artifacts, samples, and collections were deposited with the approved curatorial facility. The confirmation shall include the date the materials were deposited and the type, number, and condition of the deposited materials.

WSDOT agrees to keep the specific location of sensitive resources confidential. Sensitive resources include but are not limited to threatened, endangered, and rare species; archaeological sites; caves; fossil sites; minerals; commercially valuable resources; and traditional cultural properties. Without USFS prior written approval, WSDOT shall not publish any locational or other information identifying archaeological sites that could compromise their protection and management by the federal government. Any published article, paper, or book containing results of work conducted shall specify that the work was performed in the Mt. Baker-Snoqualmie National Forest. WSDOT shall submit a copy of any published or unpublished report, article, paper, or book resulting from the authorized activities to the USFS and the appropriate official of the curatorial facility.

## Appendix A

## TYPES OF UNDERTAKINGS EXCLUDED FROM CASE-BY-CASE REVIEW

Included below are Forest Service undertakings that will be excluded from case-by-case review because they have little or no potential to affect historic properties. The Specialist (Stipulation I.A.) will make the determination whether an undertaking meets the conditions of one or more of the following actions and can be excluded from case-by-case review.

The Specialist will document the decision that an undertaking is excluded from case-by-case review. The documentation will be kept on file at the Forest Supervisor's Office. A summary of the number and types of undertakings excluded from case-by-case review will be included in the annual monitoring report prepared by the Forest Service for the SHPO and the Council.

The Specialist, at their discretion, may decide to follow standard review procedures under Stipulation III.B, or require an inspection or monitoring following procedures in Appendix B for any undertaking.

## ECOLOGY, RANGE, AND WATERSHEDS

1. Fence construction and maintenance which does not require blading of the fence line.
2. Watershed restoration activities:
  - a. Planting on streamside landslides.
  - b. Planting on flood deposit "high-bars" near streams and rivers.
  - c. Planting or seeding in disturbed areas such as harvest units, skid trails, landings, hot-burned streamside areas, degraded meadows, and cable corridors.
  - d. Interplanting appropriate conifer species among even-aged riparian hardwoods (such as alder and willow).
  - e. Aerial seeding of inaccessible areas, such as landslide surfaces and riparian areas.
  - f. Precommercial thinning with understory plantings to promote growth, vigor, and diversity.
  - g. Creation of snags.
  - h. Mulching and revegetating bare, erosion-prone surfaces such as cuts and fills, wherever derived sediments have access to the stream system.

## ENGINEERING/TRANSPORTATION

Installation of routine signs or markers within or alongside existing roadways or trailways.

#### FISH AND WILDLIFE

Encroachment thinning using hand methods to lop branches and cut small trees, and leaving debris on the ground.

#### LANDS AND MINERALS

1. Special-use permits which would add another user and related electronic equipment to an approved communication facility or structure, not requiring the expansion of the facilities permit area.
2. Seismic operations on maintained roads or trails, including the controlled placement or subsurface use of explosive charges, where no blading, or other land modifications are necessary.
3. Use of existing material source sites where no expansion of the source will occur.

#### RECREATION

1. Issuance of recreation special-use permits where the potential to cause ground disturbance or affect historic properties is negligible, including but not limited to:
  - a. Along rivers, well-established trails, and other specified areas where use is similar to previous permits for which environmental documents have been prepared, and which would not substantially increase the level of use or continue unsatisfactory environmental conditions.
  - b. Where uses are consistent with planning decisions or land allocations, as applicable, and where there will be no surface disturbance.
2. River use permits where campsite locations are restricted to areas along the river that have been previously surveyed and historic properties are not located.
3. Campground, Recreation Residence, and Resort operation and maintenance when no new ground disturbance occurs (i.e., repair of existing buried utilities, tables, and fire rings) and no alterations to historic properties.
4. Trail reconstruction within existing trail right-of-way.

## TIMBER MANAGEMENT

1. Nonmechanized\* post and pole harvesting or precommercial thinning.
2. Reforestation planting by hand, excluding site preparation that involves surface disturbance or ripping.
3. Nonmechanized\* firewood cutting.

## OTHER

1. Special land use designations which do not authorize surface-disturbing projects (wilderness study areas, environmental education areas, Research Natural Areas, etc.).
2. Placement of monitoring stations where no ground disturbance is involved (e.g., stream gauges).
3. Routine or preventive operation and maintenance activities on Forest Service facilities that do not affect historic structures or previously undisturbed ground.

\* Nonmechanized refers to the absence of conventional logging equipment. projects such as post and pole, precommercial thinning and firewood cutting could involve the use of a pick-up truck and a chainsaw.

## APPENDIX B

TYPES OF UNDERTAKINGS EXCLUDED FROM CASE-BY-CASE REVIEW  
BASED ON INSPECTION OR MONITORING

Included below are Forest Service undertakings that may be excluded from case-by-case review based on inspection or monitoring. A Specialist will make the determination whether an undertaking meets the conditions of one or more of the following actions listed below, will examine any previous inventories to determine whether they meet current inventory standards and are adequate for the current undertaking, and will determine whether pre-inspection and/or monitoring during the activities is appropriate for the undertaking.

The Specialist will document the decision that the undertaking is excluded from case-by-case review and whether any inspection or monitoring is required. The pre-inspection or concurrent monitoring may be performed by the District cultural resource specialist or cultural resource technician with current REC-7 training, if approved by the Specialist. Following inspection and/or monitoring, a report will be submitted to the Specialist within thirty (30) days of the last day of inspection and/or monitoring. The Specialist will review the report and certify the completion of the inspection and/or monitoring. The report will be kept on file with the decision document at the Supervisor's Office.

In the event that properties are located, the project will be redesigned to ensure that the properties will be avoided as determined by the Specialist in accordance with the avoidance procedures at III.B.2. Documentation of all located properties will be sent to SHPO. If avoidance procedures are not possible, or if any question exists as to the effectiveness of avoidance, the project shall cease immediately, and the Forest shall consult with the SHPO and ACHP pursuant to 36 CFR Section 800.11 to consider the discovery.

A summary of the number and types of these inspected or monitored undertakings will be included in the annual monitoring report prepared by the Forest Service for the SHPO and the Council.

The Specialist may determine that special circumstances require a normally excluded undertaking to follow stipulation III.B.

## ECOLOGY, RANGE AND WATERSHEDS

1. Enclosures (i.e., riparian enclosures) constructed for protective purposes and small study areas.
2. Construction of corrals and other fence structures that lead to the concentration of livestock in a confined area.

3. Watershed restoration activities that address road erosion and sedimentation with road upgrading.
  - a. Relieving inboard ditchlines more frequently (to prevent critical amounts of drainage water discharge).
  - b. Rocking non-native road surfaces (to armor against road surface erosion and maintain design drainage configuration against traffic impacts, especially where roads must remain open during wet periods).
4. Watershed restoration activities that address road erosion and sedimentation with road decommissioning:
  - a. Removing culverts.
  - b. Decompacting road surfaces (ripping).
  - c. Outsloping.
  - d. Waterbarring.
  - e. Stabilizing (following analysis) potentially unstable fills.
  - f. Seeding and planting native vegetation, and mulching if needed.
5. Range improvements or/maintenance (e.g., pipelines and reservoirs).

#### ENGINEERING/TRANSPORTATION

1. Designated road or trail closures accomplished with gates, barricades, berms, and waterbars.
2. Seeding and planting, blading, or the ripping of native- or nonnative-surfaced roadways or trailways.

#### FISH AND WILDLIFE

Installation of wildlife feeding, salting, and watering stations.

#### LANDS AND MINERALS

1. Approval of minor modifications to or minor variances from activities described in an approved mineral exploration plan that could not affect historic properties.
2. Approval of minor modifications to, or minor variances from activities described in an approved mine operations plan that could not affect historic properties.

## RECREATION

1. Campground, recreation residence, and resort operation and maintenance when there may be new ground disturbance but no alterations to historic properties.
2. Relocation of trail segments.
3. Off-highway vehicle (OHV) trail designations which utilize existing roadways and trailways provided that no properties have been recorded within or adjacent to the roadways or trailways.
4. Issuance of recreation special use permits when the event is utilizing existing roads, recreation trails, or well-established livestock trails, and which would not increase the level of use or continue unsatisfactory environmental conditions.

## TIMBER

Mechanized single tree salvage, post and pole harvesting, precommercial thinning and superior tree clearing and maintenance.

## OTHER

Removal of previously determined noneligible and noncontributing structures and reclamation of the same previously surveyed site.

PROGRAMMATIC AGREEMENT

AMONG

THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE,  
PACIFIC NORTHWEST REGION (REGION 6),  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE WASHINGTON STATE HISTORIC PRESERVATION OFFICER  
REGARDING  
CULTURAL RESOURCES MANAGEMENT ON NATIONAL FORESTS  
IN THE STATE OF WASHINGTON

WHEREAS, the United States Department of Agriculture, Forest Service (Forest Service) manages the resources of the National Forests of the Pacific Northwest Region; and

WHEREAS, the Forest Service has determined that management of these resources may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (NRHP); and

WHEREAS, the Forest Service has consulted with the Advisory Council on Historic Preservation (Council) and the State Historic Preservation Officer (SHPO) of the State of Washington pursuant to section 800.13 of the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC 470f) (NHPA); and

WHEREAS, the Forest Service recognizes the importance that properties with traditional religious or cultural values have to Federally-recognized Indian Tribes (Tribes), and have invited affected Tribes to comment on this PA.

NOW, THEREFORE, the Forest Service, the Council, and the SHPO agree that the Forest Service shall administer its activities subject to Sections 106 and 110 of the National Historic Preservation Act, in accordance with the following stipulations:

STIPULATIONS

The Forest Service shall ensure that the following measures are carried out:

I. Qualified Programs.

All National Forests (Forests) in the State of Washington who participate in the current Agreement covering Section 106 compliance may participate under the terms of this agreement for 3 years, after which time their continued participation is contingent on their meeting the following qualifications. Any Forests which do not meet these qualifications 3 years after execution of this agreement must comply with 36 CFR Part 800 until such time as their programs meet these qualifications as agreed by the Regional Office of the Forest Service, SHPO, and Council. The Forests shall:

- A. Employ a professional in Historic Preservation (Specialist) at the Forest program level. This Specialist shall meet the qualifications as defined in the Secretary of Interior's Professional Qualifications Standards (48 FR 44738-9).
- B. Have completed and follow an inventory design that has been written or reviewed, and agreed to by the SHPO within the last 5 years.
- C. Maintain and utilize an electronic records system that contains, at a minimum, mutually agreed upon data fields for information sharing. The Forest Service will supply the SHPO with a copy of the Forest files in a compatible electronic form after mutual agreement on the comparable records systems. The Forest Service and SHPO will be mutually responsible for accuracy of the records system.

## II. Tribal and Public Participation

- A. The Forest Service shall elicit the views of interested persons (36 CFR 800.2(h)) with regard to the identification and evaluation of properties, and assessment of effects of undertakings on historic properties during the earliest feasible steps of project planning. They will further ensure access to decisions made pursuant to this Agreement and will consider comments or objections by interested persons in a timely manner consistent with the procedures established in this agreement.
- B. The Forest Service shall elicit the views of appropriate Tribes (36 CFR 800.2(g)) with regard to the identification and evaluation of properties, and assessment of effects of undertakings on historic properties during the earliest feasible steps of project planning. They will further ensure access to decisions made pursuant to this Agreement and will consider comments or objections by appropriate Tribes in a timely manner consistent with the procedures established in this agreement. Each Forest shall integrate Tribal notification and involvement requirements following established protocols for Government-to-Government consultation. Forests shall develop consultation procedures with appropriate Tribes that are sensitive to their modes of communication, cultural values and systems of interaction, and the views of their traditional cultural authorities.
- C. II.A. and B. may be used to integrate Tribal and public participation conducted during environmental review pursuant to the provisions of the National Environmental Policy Act (NEPA) with NHPA.

## III. Project Review

The Specialist shall determine if the proposed action is an "undertaking" pursuant to the definition provided at Section 301(7) of the NHPA. If the proposed action meets the definition of an undertaking, the "area of potential effect" (APE), shall be determined by the Specialist pursuant to the definition provided at 36 CFR Part 800.2(c). Comments received during Tribal and Public participation shall also be considered when determining the APE, identifying properties, determining eligibility and assessing

effects. The Specialist shall assess information needs to determine whether field inventory is required, shall ensure any required inventory follows the current forest inventory design, and ensure that all properties within the APE are identified. "Property," for the purposes of this programmatic agreement, is defined as any prehistoric, historic, or cultural resource. The Specialist is responsible for the review of and determining the finding of effect for all undertakings subject to the following:

A. Programmatic Review

Some undertakings have little or no potential to affect historic properties because of their nature or size and, therefore, will be reviewed in accordance with Appendices A and B. The streamlined procedures in Appendices A and B are designed to reduce unnecessary identification, documentation and review efforts by the parties to this agreement, while still providing adequate protection of historic properties and qualities that could contribute to their eligibility.

If, at any time, a property that may be eligible for the NRHP could possibly be affected by the undertaking, then the undertaking must be redesigned under the Specialist's direction to avoid the property(s). If this is not possible then consultation will take place under III.B. below.

The Specialist shall make the determination as to whether an undertaking qualifies for review under Appendices A or B, or merits standard review pursuant to Stipulation III.B., below.

1. Appendix A contains a list of those undertakings which, by definition, would be considered undertakings, but have negligible potential to affect historic properties.
2. Appendix B contains a list of those undertakings which, also by definition, would be considered undertakings, but have some limited potential to affect historic properties. The Specialist shall determine the level of inspection, monitoring, or other identification, as necessary.
3. Any party to this Programmatic Agreement may propose to modify, add to, or delete from the classes of undertakings in Appendices A and B. The proponent will provide written notification to the other parties of the proposed change. Upon agreement by all parties, the changes will be implemented.
4. All Forests shall report applications of Appendices A and B annually pursuant to Stipulation VIII.

B. Standard Case-by-Case Review

All other undertakings not meeting one of the conditions in Appendix A or B will be subject to the stipulations below:

1. For undertakings where an appropriate inventory of the APE has been conducted in accordance with an approved inventory design, and no property(s) which could possibly meet the criteria for the NRHP (36 CFR 60.4) are found within an undertaking's APE, the Specialist may find the results of such inventory efforts as "No Historic Properties," and the Forest may proceed with the undertaking after making the information available to the public.
  
2. Where a Forest causes an undertaking's APE to be inventoried in accordance with an approved inventory design, or an intensive inventory resulting in 100 percent coverage of the APE, and when such inventory results in the identification of properties which may qualify for the NRHP, the Specialist may find that the undertaking will have "No Effect" and the Forest may proceed with the undertaking in lieu of a consensus determination of eligibility pursuant to 36 CFR 800.4, provided that avoidance of all potentially eligible properties is achieved in accordance with the following identification and avoidance procedures:
  - a. The Forest shall consult with the appropriate Tribe(s) and interested persons to identify and determine the presence of traditional cultural properties within an undertaking's APE. Where consultation or an inventory of an APE has revealed the presence of a traditional cultural property, the Specialist shall consult pursuant to 36 CFR 800.4 through 800.6.
  - b. A property discovered during identification activities will be documented following the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-3), including a record of the precise location of the property with its surface and subsurface boundaries adequately identified, to ensure that the qualities which may make the property significant will be avoided. Documentation must also include sufficient information on the appearance, association, and integrity of the property to make a preliminary determination of its significance.
  - c. The Heritage Specialist will determine, in consultation with other Forest resource specialists, what avoidance procedures should be implemented based on the attributes of each identified property and the nature of the undertaking. The Specialist will take into account potential visual, audible, and atmospheric intrusions and will decide if they are pertinent to the qualities that may make the property eligible. If the Specialist determines that they are, the Specialist will impose a buffer zone around the property that will ensure avoidance of those qualities.
  - d. The Forest Service and SHPO may agree that certain classes of unevaluated properties are eligible or not eligible through one or more memoranda of agreement. These

agreements will be attached to this programmatic agreement and provided to the Council.

3. For actions taken in 1 and 2 above, the Specialist will provide documentation to the SHPO quarterly of the Specialist's finding of "No Historic Properties" or "No Effect." The Forest shall notify immediately interested Tribes and persons, as appropriate, of these findings and shall make the findings available to the public.
4. The Forest, in consultation with the SHPO, shall evaluate properties which may be affected by an undertaking in accordance with 36 CFR 800.4(c).
  - a. The Forest may request SHPO's comments on eligibility and effect concurrently, with the Forest's submittal to the SHPO of all pertinent documentation including any comments offered by affected Tribes and interested persons. The SHPO shall review the Forest's determinations within thirty (30) calendar days of receipt of the request, or request an extension of the comment period; whereupon the Forest shall grant an additional 15 days for SHPO review.
  - b. If the SHPO does not respond within 30 days of receipt of the Forest's request, the Forest may assume SHPO's concurrence in its findings and proceed accordingly.
  - c. If the SHPO and Forest disagree on the eligibility of a property, or the Keeper or Council so request, the Forest shall seek a formal determination of eligibility from the Keeper. The Keeper's determination shall be final in matters pertaining to questions of eligibility.
5. For undertakings where an inventory of the project area has been conducted in accordance with an approved inventory design, and where historic property(s) will be affected by the proposed undertaking the Specialist will then apply the criteria of effect (36 CFR Part 800.9) to determine whether the effect is "No Adverse" or "Adverse" and notify interested persons of its findings.
  - a. If the Forest determines that the proposed undertaking will have "No Adverse Effect" on historic property(s), the Specialist will then document that decision to the SHPO following 36 CFR Part 800.8(a)(1)-(4), including an eligibility statement (if not previously determined), data recovery plans, rehabilitation plans, or covenants and protection measures, as appropriate, and including the views of Tribes and other interested persons. The SHPO shall have thirty (30) calendar days to comment on the determination(s) of eligibility and to object to the finding of "No Adverse Effect." If there is no objection, the Forest will make the summary documentation available for public inspection and then proceed with the undertaking in accordance with

whatever conditions, if any, have been reached with the SHPO.

- b. If the SHPO objects to the finding of "No Adverse Effect," or the Forest and the SHPO agree that the effect is "Adverse," the ACHP will be notified of the findings of adverse effect and the Forest shall consult following 36 CFR Part 800.5(e)-800.6.
- 6. Any party to this agreement may request that consultation procedures follow 36 CFR Part 800.4 through 800.6 for a specific project whereupon the Forest shall consult pursuant to 36 CFR 800.4 through 800.6.
- 7. In the event that any party to this agreement determines that a project specific programmatic agreement is necessary or in the event of an emergency, the Forest shall follow the procedures at 36 CFR 800.13.
- C. If a previously unidentified property is discovered during project implementation, the Forest Service shall fulfill its consultation requirement in accordance with 36 CFR Part 800.11.
- D. Consultation and coordination among the Forest Service, the SHPO, the Council, the appropriate Tribes and other interested parties, pursuant to this Agreement, shall be the responsibility of the Regional Forester or Forest Supervisors, as delegated.

#### IV. Current Agreements

- A. This Agreement supersedes and replaces the Memorandum of Agreement Between the USDA Forest Service, Pacific Northwest Region and the Washington State Office of Archaeology and Historic Preservation signed June 1988.
- B. This Agreement incorporates signed agreements and signed management plans for the treatment of specific classes of historic properties among the Forest Service, ACHP, and SHPO. The application of these agreements ranges from Forest-specific to Region-wide in scope. The Forest Service, SHPO, and the ACHP shall review each agreement within 1 year of the last signature to this Agreement for application State-wide. Each agreement will be implemented if deemed applicable by all parties. The agreements to be reviewed include, but are not limited to:
  - 1. Programmatic Memorandum of Agreement for Management of Depression-Era Administrative Structures on National Forest Lands in Washington and Oregon, signed December 1983 (Internal Management Guidelines, USDA Forest Service, Pacific Northwest Region, 1989).
  - 2. Programmatic Memorandum of Agreement for Historic Transportation Ditches, Wallowa-Whitman, (Forest Service) published in the Federal Register October 22, 1985.

3. Programmatic Memorandum of Agreement for Historic Railroad Systems, United States Department of Agriculture, Forest Service, Wallowa-Whitman National Forest, signed September 1986.
4. Programmatic Agreement Regarding Management of Peeled Cedar Trees, Gifford Pinchot National Forest, signed by ACHP 12/20/89.

#### V. Heritage Preservation Program

The Heritage Preservation Program of the Forest Service shall meet the requirements of Section 110. As part of this program, the Forest Service shall continue or initiate, as appropriate, the following measures in partnership with SHPO:

- A. Establish ongoing monitoring programs on all Forests to ensure that the terms of this programmatic agreement are being upheld. Such programs should include, but not be limited to, site revisitations during and after undertakings, and Regional Office reviews of Forest programs to ensure that the resources provided to the Forests are being expended in the most effective manner.
- B. Establish an ongoing monitoring program to evaluate the effectiveness of the avoidance procedures established at Stipulation III.B.2. of this agreement. The results of the evaluations will be reported in the Annual Monitoring Report (VIII.D.). If needed, revisions will be addressed at the annual review meeting (IX).
- C. Establish a program for ongoing determinations of eligibility of previously unevaluated properties on lands currently managed by the Forest Service. The program shall be designed to eliminate the backlog within a period of 10 years and thus it shall provide mechanisms for at least ten percent (10 percent) of all properties on a given forest to be subjected to formal determinations of eligibility.
- D. Utilize Geographic Information Systems and data base technologies to track and analyze site locations and develop historic properties locational models to guide future inventories and evaluations. The Forest Service will supply the SHPO with Arcinfo geographic files if at all possible.
- E. Develop management plans or agreements covering specific repetitive or emergency Forest Service activities as per 36 CFR 800.13.
- F. Integrate management and enhancement of historic properties with watershed analysis.
- G. Develop context statements and historic property preservation plans for classes and types of properties managed by the Forest Service.
- H. Conduct nonproject related inventory in specially designated areas to improve the veracity of survey designs to locate historic properties and promote more informed management decisions.

- I. Participate in Public outreach programs such as Windows on the Past (including interpretation, enhancement, public education, etc.), Passport in Time projects and Archeology Week activities.

## VI. Training

### A. Agreement Training

The Forest Service, with the SHPO and Council's assistance, shall design and administer training to implement this Agreement. The training will include detailed explanation of the procedures in the Agreement and the roles of the consulting parties. Training will be aimed at Forest Service and SHPO management and staff.

### B. Specialist Training

The Forest Service, in cooperation with SHPO, other Federal agencies, and institutions of higher learning shall provide Historic Preservation training opportunities to Forest and District Specialists under the provisions of the National Heritage Training Task Force guidelines.

## VII. Dispute Resolution

- A. Should the SHPO or Council object to the adequacy of any plans, specifications, or actions proposed pursuant to this Agreement, the Forest Service shall consult with the objecting party to resolve the objection. If the Forest Service or objecting party determine that the objection cannot be resolved, the Forest Service shall forward all documentation relevant to the dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council will either:

1. Provide the Forest Service with recommendations which the Forest Service will take into account in reaching a final decision regarding the dispute; or
2. Notify the Forest Service that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the Forest Service in accordance with 36 CFR 800.6(c)(2) with reference to the subject of the dispute.

Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; the Forest Service's responsibility to carry out all actions under this agreement that are not the subjects of the dispute will remain unchanged.

- B. At any time during the implementation of the measures stipulated in this agreement, should an objection to any such measure or its manner of implementation be raised by a Tribe or any member of the public, the Forest Service shall take the objection into account and consult as needed with the objecting party, the SHPO, or the Council to resolve the objection.

### VIII. Annual Monitoring Report

The Forest Service shall prepare an annual monitoring report for the SHPO and the Council that describes Forest Service actions pursuant to this Agreement during the previous fiscal year. This report will be the baseline for discussions at the annual review stipulated in IX below. The reporting year shall be the Federal fiscal year. All items will be due to the SHPO and the Council on or before January 1 of each new fiscal year, beginning with January 1, 1998. The information may be coordinated with the data reported for the annual Forest Service Heritage Program Accomplishment Report. The following information will be included in the annual monitoring report:

- A. Total of all actions and acres surveyed by Forest for each consultation stipulation, including undertakings that qualified for review by the Specialist under Appendices A and B.
- B. Total number and type of undertakings for which an objection was issued or dispute arose and the manner by which each objection was resolved.
- C. Status of achieving measures identified at Stipulation I.
- D. Evaluation of effectiveness of avoidance measures selected at Stipulation III.B.2.
- E. Detailed account of activities accomplished pursuant to Stipulations V. and VI.
- F. Forest Service comments, findings, observations or recommendations relevant to the implementation of this Agreement. These comments will include Forest Service accomplishments that were noteworthy, problems that need to be addressed, program activities which may need further attention and visions and goals of the Forest Service Heritage Program for the coming Federal fiscal year.
- G. Other reasonable information requested by SHPO or Council relevant to implementation of this Agreement and identified to the Forest Service before the beginning of the Federal fiscal year to be reported.

### IX. Review

The Forest Service, SHPO, and the Council, if it chooses to attend, shall agree to meet for the purpose of reviewing the terms of this agreement each year in April to determine whether amendment or other action is appropriate. The Forest Service shall invite the ACHP to attend this meeting. Additional meetings may be requested by any party to this agreement for the purpose of addressing specific concerns. The SHPO will schedule a program or activity review at least biannually with each Forest and shall be available for a meeting with the Forest Archeologists at the annual Northwest Anthropological Conference.

X. Amendments

Any party to this Agreement may request that it be amended, whereupon, the parties will consult in accordance with 36 CFR Part 800.13 to consider the amendment.

XI. Suspension for Cause

Upon determination by any party to this Agreement, of a documented pattern of failure to comply with the terms of this Agreement, the party may request in writing to the Forest Service that a Forest be excluded from the terms of this agreement. Upon receipt of such a request, the Forest Service shall consult with the parties to seek agreement or other actions that would avoid suspension. If a mutually acceptable solution to avoid suspension is not reached within 60 days of the objecting party's request to the Forest Service Regional Office, the suspension shall take effect. Suspension from this Agreement requires the pertinent Forest to comply with 36 CFR Parts 800.4 through 800.6 with regard to all undertakings that otherwise would be reviewed under this Agreement. Suspension of a National Forest from the terms of this Agreement may be lifted with unanimous consent of the Forest Service, SHPO, and the Council.

## XII. Termination

Any party to this Agreement may terminate it by providing sixty (60) days written notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Termination of this Agreement, or failure to abide by its terms shall require the Forest Service to comply with 36 CFR Parts 800.4 through 800.6 with respect to undertakings that otherwise would be reviewed under this Agreement.

## XIII. Execution

Execution and implementation of this Programmatic Agreement satisfies the Forest Service Section 106 responsibilities for all individual undertakings throughout the Pacific Northwest Region National Forest Lands within Washington.

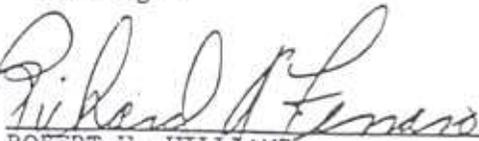
## XIV. Implementation

This Agreement becomes effective on the date of the last signature below and will be implemented immediately.



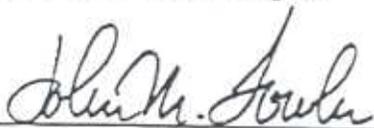
\_\_\_\_\_  
DAVID M. HANSEN  
Acting State Historic Preservation Officer,  
Washington

3.7.97  
Date



\_\_\_\_\_  
ROBERT W. WILLIAMS  
Regional Forester  
Pacific Northwest Region

2/26/97  
Date



\_\_\_\_\_  
JOHN M. FOWLER  
Advisory Council on Historic Preservation

4/15/97  
Date