

Attachment 6. Memorandum of Agreement

MEMORANDUM OF AGREEMENT
Between
The Federal Highway Administration, and
The Washington State Historic Preservation Officer

Implementing Section 106 of the National Historic Preservation Act for
the S. Holgate Street to S. King Street Viaduct Replacement Project,
City of Seattle, King County, Washington

WHEREAS, The Washington State Department of Transportation (WSDOT) plans to construct the South Holgate Street to South King Street Viaduct Replacement Project (hereinafter “the Project”), which is one a component of the SR 99 Alaskan Way Viaduct and Seawall Replacement Program (hereinafter, “the Program”); and

WHEREAS, U.S. Department of Transportation, Federal Highway Administration (FHWA) plans to provide assistance to the Project pursuant to the Federal-Aid Highway Program as described in Title 23 USC § 101 et seq.; and

WHEREAS, FHWA has determined that the Project is an undertaking, as defined in 36 CFR § 800.16(y), subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f and its implementing regulations, 36 CFR § 800; and

WHEREAS, FHWA will be lead federal agency for this undertaking; and

WHEREAS, FHWA has requested that WSDOT initiate consultation with the Washington State Historic Preservation Officer (SHPO) and interested and affected Indian tribes pursuant to 36 CFR § 800.14, on the behalf of FHWA; and,

WHEREAS, FHWA and WSDOT, in consultation with the SHPO, interested and affected Indian tribes, and other interested parties, have conducted preliminary cultural resource studies to identify and evaluate the effects upon historic properties located within the Area of Potential Effects (APE) to the extent possible; and

WHEREAS, FHWA has determined that the Project will have an adverse effect on Alaskan Way Viaduct and Battery Street Tunnel (hereinafter, “AWV”) and the Bemis Building built-environment historic properties, which are eligible for listing in the National Register of Historic Places; and

WHEREAS, FHWA has determined that the Project has the potential to adversely affect previously unidentified or potentially identified archaeological sites; but due to conditions including extensive deep fill, engineering constraints, and safety concerns within an urban context, further investigation and mitigation actions, if needed, shall be integrated into the construction program; and

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

WHEREAS, pursuant to 36 CFR § 800.14(b)(3) the Muckleshoot Indian Tribe, the Snoqualmie Indian Tribe, the Suquamish Tribe, the Tulalip Tribes, and the Confederated Bands and Tribes of the Yakama Nation (federally recognized Indian tribes that may attach religious and cultural significance to historic properties potentially affected by the project) have been consulted regarding this Agreement and invited to concur in the Agreement; and

WHEREAS, the Duwamish Tribe (a non-federally recognized tribe), the City of Seattle Historic Preservation Officer (HPO) and the Historic Bridge Foundation have been consulted regarding this Agreement and invited to concur in the Agreement; and

WHEREAS, the Confederated Bands and Tribes of the Yakama Nation, the Duwamish Tribe, and the Historic Bridge Foundation declined to concur in this Agreement, or did not respond to the invitation to concur in this Agreement; 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 tribes, and other interested parties consulted on the Project, regardless of whether they agreed to sign the Agreement; and

WHEREAS, additional federal undertakings related to the Alaskan Way Viaduct and Seawall Replacement Program shall go through the Section 106 process independently and, other than measures to address the AWV historic property over its entire length, will be mitigated separately from this agreement.

NOW, THEREFORE, FHWA, WSDOT, and the SHPO agree that the project shall be implemented with the following stipulations in order to take into account and mitigate the effects of the undertaking on historic properties:

STIPULATIONS

The FHWA will ensure that the following measures are carried out:

I. GENERAL REQUIREMENTS AND STANDARDS

- A. As a condition of its award of any assistance under the Federal-Aid Highway Program to WSDOT, FHWA shall require that WSDOT carry out the requirements of this Agreement, and all applicable laws.
- B. Signatories shall keep sensitive cultural resources information confidential to the extent allowed by state and federal law.

- C. Activities carried out pursuant to this Agreement shall meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716 as revised) as well as existing standards and guidelines for historic preservation activities established by SHPO.
- D. FHWA and WSDOT will ensure that all work carried out under this Agreement is conducted by or under the direct supervision of a person or persons meeting the *Secretary of the Interior's Professional Qualification Standards* (36 CFR 61).
- E. All resource management documents as specified under this Agreement (the Archaeological Treatment Plan and elements of the Unanticipated Discovery Plan) will be completed prior to any construction and within two months of the release of the 90% design documents for the Project. Nothing in this MOA shall be construed as indicating acceptance by the consulting parties of the resource management documents, which have yet to be developed. WSDOT shall in good faith attempt to reach a consensus on the contents of the resource management documents with the consulting parties.

II. MITIGATION OF ADVERSE EFFECTS TO HISTORIC BUILDINGS AND STRUCTURES

A. Alaskan Way Viaduct and Battery Street Tunnel Historic Property Mitigation

Mitigation for the AWW as described in this section shall constitute complete mitigation of adverse effects to the AWW historic property, namely the loss of the entire structure. The measures will address requirements specific to the AWW property for all future undertakings associated with the Program. This does not apply to any other historic properties that may be affected by future activity associated with the Program.

1. WSDOT shall complete and make available for public use a Level II HAER documentation for the entire length of the AWW to include the following.
 - (i) HAER documentation consisting of a context statement; a minimum of 50 large format photographs that address both the nature of the overall structure and unique or representative details; aerial perspective photographs; and narrative documentation of distinctive attributes. The HAER package will also include digital copies of all available historic photographs, construction design plans, and as-built construction plan sheets held by WSDOT and the Seattle Municipal Archives.
 - (ii) HAER documentation, including photographs and narrative, shall be filed at the following institutions:
 - Library of Congress
 - Department of Archaeology and Historic Preservation,
 - Museum of History and Industry,

- Seattle Public Library,
- University of Washington Libraries, and
- Seattle Municipal Archives

(iii) WSDOT, in consultation with SHPO, shall offer the large-format HAER photographs and narrative essays for display and interpretation at one or more of the following local museums, repositories, and public venues:

- Seattle Public Library
- Museum of History and Industry
- University of Washington
- Seattle City Hall
- Seattle-Tacoma Airport
- The Washington State Library in Olympia
- The Washington State Archives in Olympia

2. WSDOT shall develop a Public Education and Outreach program specifically for the AWW to include the following:

(i) A Public Website

(a) WSDOT in conjunction with HistoryLink.org, and in consultation with SHPO and the City of Seattle HPO, shall create and maintain a website that will provide an historical interpretation of the role played by the AWW in Seattle including display photographs, essays, interviews, maps, and background materials highlighting the significance of the AWW. The website will include a selection of the following:

- Explanatory materials about the Alaskan Way Viaduct and its context within Seattle waterfront history that will be compatible with the HistoryLink.org website;
- Selected HAER photographs, essays derived from the HAER narrative report;
- Videotaped interviews of people involved in construction or early use of the Viaduct;
- Visual simulation or animation videos using existing LiDAR and other electronic media; and
- A webpage dedicated to educational materials and activities for children.

The website will be designed to accommodate new information that may be prepared as mitigation for future adverse effects to historic properties other than the AWW that may result from other projects in the SR 99 Alaskan Way Viaduct and Seawall Replacement Program. WSDOT shall maintain the website for the duration of the Program,

and will offer it to the Washington State Archives' digital library and/or HistoryLink.org for subsequent continued display.

- (b) WSDOT shall contact educational, public and non-profit organizations interested in Seattle history and historic preservation, including, but not limited to, the City of Seattle, King County, the Washington Trust of Historic Preservation, and Historic Seattle, and shall inform them of the ability to link to this website.

(ii) Educational Materials

WSDOT, in consultation with SHPO, shall develop professionally printed materials to be distributed at local museums and heritage organizations for the duration of the Project. This information will highlight local engineering and architecture, including the AWW, as well as the social, economic, and cultural trends of mid-20th century Seattle. The types of materials that will be prepared include:

- Contemporary photographs from the HAER documentation and historic photographs;
- Quotations derived from the HAER research and oral history interviews; and
- A map of mid-20th century attractions, including historic structures and important places.

B. Bemis Building

Mitigation for the Bemis Building shall address potential economic effects tenants and specify actions to avoid possible structural damage through the following measures. WSDOT shall:

1. Document the building meeting the intent of standards for architectural documentation using a Light Detection and Radar (LiDAR) recordation process;
2. Develop a vibration and settlement management and monitoring plan to determine if the historic building is at risk, and protect from damage due to vibration or subsidence;
3. Develop a Communications Plan that identifies a process to maintain regular communication with affected residents and businesses in the Bemis Building (through building management) about construction issues and maintain adequate access to the property, including loading dock access, so that businesses can continue to operate;
4. Develop an air pollution and noise management plan that establishes maximum noise limits and air quality parameters; specifies certain hours for

noisier construction activities; recommends use of quieter equipment, and uses Best Management Practices (BMPs) for both issues;

5. Encourage construction management scheduling to minimize impacts from increased traffic; and
6. Ensure continued utility service throughout construction; or if there are possible brief intervals of utility service disruption, WSDOT shall provide advance notice of a minimum of two business days to building management.

III. ARCHAEOLOGICAL RESOURCES

The project lies within the historical Seattle Tideflats, which were part of the Duwamish River delta until filled during the late-19th and early-20th centuries. Fill materials range from depths of 20 to more than 42 feet within the project area. Studies conducted for the Project and the Program have developed an overall Research Design for the Seattle waterfront as well as site-specific testing programs for the Project. The studies have identified nexus or target areas relating to the historical development of the City that may represent archaeological assemblages that meet NRHP criteria. The study programs, however, have not identified archaeological resources representing Native American use of the tideflats area. It is possible that significant historical archaeological resources may be encountered within identified target areas; it is also possible that unanticipated archaeological resources including Native American sites (based on ethnographic and other studies) and unanticipated historic resources could occur beneath the Project corridor. Based on the design parameters, buried conditions, and construction methods, it is possible that some resources may not be accessible for data recovery mitigation measures. All plans as specified below will be reviewed by consulting parties prior to any construction activity. Consideration of significant resources shall be addressed by the following actions.

A. WSDOT shall prepare an Archaeological Resources Treatment Plan (hereinafter, "Treatment Plan").

The Treatment Plan will guide the actions of cultural resources professionals during its implementation. WSDOT shall develop the plan in consultation with SHPO, interested and affected tribes, and other consulting parties. The plan shall:

1. Describe Project actions based on review of the 90% design plans and discussions with Project engineers (to clarify the extent of ground-disturbing actions and design parameters that would affect archaeological resources);
2. Summarize the environmental setting with an emphasis on the historic intertidal zone and based on and with reference to the prior Program Research Design and area-specific subsurface testing reports to include:

- (i) Discussion of the natural setting including geomorphology, paying attention to the location and extent of Pleistocene and Holocene deposits, and historical filling sequences within the APE;
 - (ii) An overview of the cultural setting as directly related to the use and development of the intertidal and subtidal areas of the project area;
 - (iii) Discussion of previous pre-contact and historical archaeological investigations within the Puget Sound area that relate directly to anticipated conditions within the APE; and
 - (iv) An analysis of potential site types that may be encountered within fill, at the stabilized surfaces of fill events, and at the Holocene contact, including consideration and the potential for encountering human remains within fill deposits;
3. Identify relevant research domains that pertain directly to the history and prehistory of the Project area based on those already developed under the Program Research Design;
4. Discuss the nature and extent of “known” archaeological resources and conditions that have been identified through the subsurface testing program including:
- (i) Identification of probability zones:
 - (a) High-potential areas where presumed-eligible resources are located;
 - (b) Moderate-potential areas where data show the presence of cultural materials; and
 - (c) Low-potential areas where data do not show the presence of cultural materials;
 - (ii) An analysis of anticipated historical archaeological resources based on correlation with the Sanborn Fire Insurance maps and the relationship between the types of expected artifact assemblages and the historical activity that will contribute to an enhanced understanding of history through research domains; and
 - (iii) An analysis of anticipated pre-contact or Native American archaeological resources that may occur within the Project APE and their relationship to research domains.
5. Evaluate and describe the location-specific Project actions that have a potential to affect significant archaeological resources including:
- (i) The nature of the actions (excavation, cast piles, etc.); and

- (ii) Probable effects relative to resource potentials;
6. Discuss in detail appropriate treatments (possibly including integrated rapid data recovery, monitoring, alternative mitigation measures, or other measures) and how they will be applied to the identified Project actions. This discussion will include specific proposals and methods for an integrated rapid data recovery for areas where construction activity will encounter previously identified cultural deposits;
 7. Establish criteria that trigger further consultation by WSDOT with SHPO, interested and affected tribes, and other consulting parties, and evaluation of archaeological resources identified during construction (including, for example, intact features and artifacts related to Native American use; high density historical artifact assemblages or features that relate directly to a known activity area or relevant discrete historical activities);
 8. Describe methods that will be used to recover and process archaeological materials and information that are deemed NRHP-eligible including:
 - (i) The different methods proposed to recover different types of site assemblages (for example, appropriate methods for Native American sites vs. historic sites)
 - (ii) Potential specialty or analytical methods that may be applied to recovered resources (e.g., C-14 dating, faunal analysis, flotation, trademark identification and dating, etc.);
 - (iii) Artifact processing parameters and laboratory procedures that will permit relevant study and reporting;
 9. Outline anticipated reporting requirements, while fully realizing that reporting specifics are dependent on the nature of the resources that are recovered by Project actions. An appropriate timeframe for analysis and reporting will be negotiated with consulting parties after completion of fieldwork activities and will be dependent on the nature and extent of recovered archaeological information;
 10. Identify requirements and process approaches for final curation of artifacts and information associated with any data recovery actions; and
 11. Discuss measures that will be taken to disseminate findings to the general public.
- B. WSDOT, in consultation with SHPO, interested and affected tribes, and other consulting parties, shall prepare an Unanticipated Discovery Plan (UDP) that addresses resources other than those identified by previous studies that are found during construction activities.

The UDP will consist of two stand-alone parts that are attached to the Treatment Plan. These plans will address: 1) archaeological resources not previously identified in the Treatment Plan; and 2) treatment of human remains, if discovered. Their primary purpose is to provide procedural guidance to Project supervisors and contractors regarding actions associated with construction, and to establish the formal process and notification responsibilities of relevant parties.

1. Archaeological Resources Not Previously Identified in the Treatment Plan.

This part will describe procedures to be followed by the construction contractors and Project engineers, which ensure appropriate consideration of archaeological resources if encountered during construction. The part shall:

- (i) Discuss pre-construction requirements, including:
 - (a) Educational briefings by professional archaeologists;
 - (b) Briefing materials for construction contractor personnel and WSDOT engineers and inspectors; and
- (ii) Provide background information on the context of anticipated resources within the Project to the construction contractor;
- (iii) Identify in lay terms the nature of primary archaeological resources indicators (for example, high densities of fire modified rock; shell middens; high density historical municipal or industrial middens, etc.) that may represent a significant resource and which require consideration by professional archaeologist and consideration by consulting parties;
- (iv) Identify relevant procedures and contractor responsibilities for initial site protection and evaluation.

2. Treatment of Human Remains.

This part will describe actions that shall be taken in the event that human skeletal remains are discovered during construction. The plan will inform Project Personnel about the requirements implementing the State law relating to the inadvertent discovery of Human Skeletal Remains under RCW 27.44.055 and RCW 68.60.55 and will provide Project personnel with a clear understanding of the subsequent process. The plan shall:

- (i) Discuss the potentials for encountering human remains including the possibility of location within imported fill materials;
- (ii) Discuss the immediate area work-site actions that will be taken to secure and protect the area of discovery including immediate notification of the local coroner and law enforcement agency; and

- (iii) Provide information on the steps that will be taken by either the coroner or DAHP subsequent to the discovery as specified under the Laws.

C. Additional Mitigation Measures and Public Education

Some of the engineering requirements for the Project are likely to exclude the potential for data recovery of previously-identified archaeological resources. In addition, the Secretary of the Interior's Standards for Archaeological Documentation mandates that "the results of archaeological documentation are reported and made available to the public" (48 CFR 44734).

1. WSDOT shall disseminate the findings of the archaeological investigations as developed under the Treatment Plan and in consultation with SHPO, interested and affected tribes, and other consulting parties. Methods shall include one or more of the following:
 - (i) A reader-friendly summary of information gleaned on history and/or prehistory through the data recovery process;
 - (ii) A museum-quality display or displays that could be showcased at one of the WSDOT facilities (for example, the Colman Dock terminal) or offered to local museums on a rotating basis;
 - (iii) Use of historical non-Native American artifacts to develop a traveling informational toolkit for use in public and private schools.
2. WSDOT shall develop an audio walking tour for locations of historical significance along the Program corridor to be offered as a podcast on the Program website (described in Stipulation II.A.2.i) and the iTunes podcast store. The product will be available for the duration of the Program and will be offered to other local history organizations for continued use subsequent to the Program;
3. WSDOT shall develop a guidance document for future development by others in the vicinity of the Project based on the insights gleaned from the identification and mitigation process used by the Project.

Because of its size, the Project has resulted in an increased awareness of applicable research methods, resource potentials, primary precontact and historic resource locations, and potential treatment methods within a complex urban environment. The document, which will be prepared during the analysis and reporting phase of the archaeological mitigation program, shall:

- (i) Discuss appropriate background research and analysis methods that can be applied to fulfill state and federal environmental requirements for future public or private development within the tideflats area;

- (ii) Identify appropriate target locations (for example, original intertidal surfaces and features, stabilized surfaces within monolithic fills, etc.) that have higher probabilities to contain significant resources and the types of expected resources;
- (iii) Identify specific subsurface testing methods that can provide preliminary indications of significant resources including a discussion of criteria for identification of probable intact resources warranting further consideration;
- (iv) Describe mitigation data recovery methods appropriate to treatment of properties within deep fill including approaches and procedures for mitigation during construction.

D. Tribal Monitoring

The interested and affected tribes shall be afforded opportunity to participate directly in project archaeological monitoring activities as specified in the Treatment Plan with staff paid for by WSDOT provided this is:

- 1. Approved by FHWA;
- 2. Based on work need;
- 3. Located in areas as described in the Archaeological Treatment Plan that have probable or potential association with Native American site resources; and
- 4. Shared amongst requesting tribes.

E. Consultation

- 1. WSDOT shall communicate with consulting parties at the following times:
 - (i) After draft completion of the Treatment Plan and UDP for review and comment;
 - (ii) Monthly after the date of signing of this Agreement, providing an update on archaeological work;
 - (iii) When design is finalized, if any changes to the impacts described in the Treatment Plan have been identified; and
 - (iv) At the request of a consulting party.
- 2. WSDOT shall facilitate field visits for consulting parties upon request.

3. Each communication with interested and affected tribes shall include an offer to meet individually, or to facilitate a meeting with multiple tribes. SHPO and FHWA shall be invited to all meetings between WSDOT and tribes.
4. WSDOT shall consult with interested and affected tribes prior to public outreach on the topic of tribal history or other tribal issues.

IV. DISPUTE RESOLUTION

- A. All signatories shall strive to address and resolve disagreements informally. In the event that resolution cannot be achieved within 30 days, the applicable sections of 36 CFR 800 will determine steps for notice and resolution between FHWA and the ACHP.
- B. Should a member of the public raise an objection, FHWA shall take the objection into account and consult as needed with the objecting party to resolve the objection.
- C. Each party reserves any and all rights it may otherwise have to enforce its rights or seek resolution of the dispute under applicable law.

V. AMENDMENT AND TERMINATION

- A. Any signatory to this agreement may terminate it by providing 30 calendar days written notice to the other parties, provided that the signatories will meet during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Consulting parties will be invited to any such meetings. This agreement cannot be terminated without such a meeting.
- B. In the event of termination, FHWA shall comply with 36 CFR § 800 with regard to all remaining actions under this Agreement.
- C. If FHWA or WSDOT proposes to modify this Agreement or the attachments in a manner that alters the resolution of adverse effects of historic properties, the modification will be made in consultation with consulting parties. The modified Agreement must be signed by all signatories.

SIGNATORIES

Federal Highway Administration

By: *Daniel M. Mathis* Date: 02/11/09
Daniel M. Mathis, Division Administrator

Washington State Historic Preservation Officer

By: *Allyson Brooks* Date: 2/11/09
Allyson Brooks, Ph.D.

INVITED SIGNATORIES

Washington State Department of Transportation

By: *Craig J. Stone* Date: 2/2/2009
Craig J. Stone, P.E., Urban Corridors Administrator

CONCURRING PARTIES

Muckleshoot Indian Tribe

By: _____ Date: _____
Honorable Charlotte Williams, Chair

Snoqualmie Indian Tribe

By: _____ Date: _____
Honorable Joseph Mullen, Chair

Suquamish Tribe

By: _____ Date: _____
Honorable Leonard Forsman, Chair

Tulalip Tribes

By: _____ Date: _____
Honorable Melvin Sheldon, Chair

City of Seattle

By:  Date: 2/10/09
Karen Gordon, Historic Preservation Officer