456.01 Cultural Resources Overview

It is federal and Washington State policy to avoid, minimize, or mitigate adverse impacts to historical, archaeological, and cultural resources. It is WSDOT policy to avoid adverse effects to such resources in planning, constructing, operating, or maintaining the state’s transportation system, or to minimize and mitigate such effects if it is not practical to avoid them.

Cultural resources may include but are not limited to surface, buried, or underwater archaeological sites and materials; historic structures or objects such as buildings, highways, roads, bridges, vessels, wrecks, pilings, culverts, or guardrails 50 or more years old; and sites such as certain natural landscape features considered important or special by native Americans or community groups, such as waterfalls, rock formations, mountains, or ridges. Archaeological sites and materials can be prehistoric or historic with respect to the age of the resources.

Many WSDOT projects and activities may impact cultural resources and are therefore subject to state and federal regulations. There are multiple federal and state laws that regulate cultural resources and how they are treated. These regulations apply to all WSDOT activities, modes and divisions, not just highways.

Compliance requirements for cultural resources follow different regulatory and compliance paths based on project funding, permitting, and/or project location, but all follow the same general process:

a. Contact the region Cultural Resources Specialist (CRS) early in the project planning stages. If the region or division does not have a CRS, contact the Cultural Resources Program in the Headquarters Environmental Services Office.

b. Provide the CRS information on project location, land ownership, funding, scope of work, and any required permits, and he/she will assist in determining which compliance path and regulations apply.

c. Once the CRS conducts the initial project review, he/she will work with project staff to document that compliance has been completed or to establish the regulatory path and develop a schedule to complete cultural resources compliance.
d. Regardless of which compliance path the project follows, the CRS will initiate consultation with the state Department of Archaeology and Historic Preservation (DAHP), unless the project is exempted from further compliance review under the terms of the Statewide Section 106 Programmatic Agreement. Exhibit 456-1 illustrates this process.

1. Only a WSDOT CRS can exempt a project under the terms of the Statewide Section 106 Programmatic Agreement.

2. Undertakings on Indian/tribal lands cannot be exempted per provisions of the Statewide Section 106 Programmatic Agreement.

3. Cooperating Federal Agencies may exempt undertakings on federal lands per provisions of the Statewide Section 106 Programmatic Agreement under Stipulation G.

4. Certain common post-1945 concrete and steel bridges and culverts can be exempted from review under Section 106 per the FHWA Program Comment for Common Post 1945 Concrete and Steel Bridges (see Section 455.07).

5. Features of the Federal Interstate Highway System of national and exceptional significance cannot be exempted per provisions of the Statewide Section 106 Programmatic Agreement. The Final List of Nationally and Exceptionally Significant Features of the Federal Interstate Highway System is available at www.environment.fhwa.dot.gov/histpres/highways.asp.

Exhibit 456-1  Exempting Projects From Further Section 106 or Governor’s Executive Order 05-05 Review

Project Exemptions
- Federal and State funded projects may be exempted from further cultural resource review under Section 106 and GEO 05-05.
- A CRS must review the project to determine if the project can be exempted per provisions of the Statewide Section 106 Programmatic Agreement.

CRS determines project activities may be exempted per provisions of the Statewide Section 106 Programmatic Agreement

If project is exempt from further cultural resources review under GEO 05-05 or Section 106, CRS notifies Project Manager and adds to the exempted projects list online.

Section 106 and GEO 05-05 review complete.

Send project description to CRS for review.

e. Consultation with DAHP and other stakeholders will continue until the project is determined not to have adverse effects to cultural resources, or agreements are made to avoid, minimize, or mitigate any adverse effects.
456.02 Section 106 Review and Compliance: FHWA

Projects that use federal funds, or require permits from federal agencies, or take place on federal (including Indian/tribal) land, will be reviewed under Section 106 of the National Historic Preservation Act (implementing regulations 36 CFR 800, see below). The majority of WSDOT projects are subject to Section 106 review due to funding (e.g., federal aid projects) or permits (e.g., Corps of Engineers permits). For projects that undergo Section 106 review, be aware that:

a. Documentation of compliance with the National Environmental Policy Act (NEPA) may also be required. Note that projects that are categorical exclusions under NEPA are not exempt from Section 106.

b. If the federal nexus involves a federal transportation agency (US DOT), then Section 4(f) of the Transportation Act applies in addition to Section 106 (see Chapter 457).

c. Projects that are FHWA or FTA funded or permitted use the Section 106 alternative procedures presented in the Statewide Section 106 Programmatic Agreement.

d. Cooperating Federal Agencies who recognize FHWA or FTA as the lead Federal agency may adopt the Section 106 alternative procedures presented in the Statewide Section 106 Programmatic Agreement to fulfill their obligations under Section 106.

e. Compliance and consultation activities, which WSDOT conducts for federal aid projects, are done so on behalf of FHWA and FTA, and pursuant to Statewide Section 106 Programmatic Agreement.

The first step is to contact the assigned CRS as early in the project planning stages as possible, and he/she will determine if the project can be exempted from further review under the Statewide Section 106 Programmatic Agreement.

If the activity cannot be exempted, as stipulated under these agreements, the CRS will work with the project office to determine the Area of Potential Effects (APE) and identify consulting parties for the proposed undertaking. If the project has FHWA or FTA funding or approval, the Section 106 compliance process outlined in the Statewide Section 106 Programmatic Agreement will be followed (Exhibit 456-2). If the project occurs on federal land and meets criteria under Stipulation G, the Section 106 compliance process defined under the Statewide Section 106 Programmatic Agreement will be followed. If the project requires a Corp of Engineers permit (i.e., §10 or 404) and does not have FHWA or FTA funding, the Seattle District Corps of Engineers Memorandum for Record will apply.
Chapter 456 Cultural Resources

Exhibit 456-2  Section 106 Process Per the Statewide Section 106 Programmatic Agreement

WSDOT Cultural Resources
Compliance Process-
Section 106 of the National
Historic Preservation Act
Per the Statewide Section 106
Programmatic Agreement

Screened Undertaking, No Potential to affect historic properties

1) Contact a CRS, Establish the Undertaking

Undertaking Will Occur On or Affect Lands Held in Trust by Indian Tribes

Follow 36 CFR 800

Document Finding to File

Historic Properties May Be Affected

Indian Tribe Request Government-to-Government Consultation

FHWA or FTA Consults with Tribe

Section 106 Complete

Minimal Potential to Cause Effects to Historic Properties

2) Determine the Area of Potential Effect (APE)

Submit Documentation to SHPO for Concurrence

Concurrent Submittal to FHWA or FTA, Notify Tribes if Applicable

Undertaking Exempted From Further Section 106 Review Per Stipulation V and Exhibit B

3) Identify Historic Properties within the APE

SHPO Objects

Notify FHWA or FTA, FHWA or FTA Consult with SHPO

Document Exemption Online in the Monthly Exempted Projects Report

4) Evaluate Historic Properties for National Register Eligibility

SHPO Concurs

Objection Resolved

Objection Not Resolved

No Historic Properties Affected

Section 106 Complete

No Historic Properties Affected-

SHPO or Consulting Party disagrees

Resolve Disagreements per Stipulation X.D

5) Assess Adverse Effects

Adverse Effect

Notify FHWA or FTA, WA SHPO, Consulting Parties and Provide Documentation

No Adverse Effect

Submit Finding to FHWA or FTA, FHWA or FTA consults SHPO and WSDOT notifies consulting parties and the public

SHPO or Consulting Party Disagrees

SHPO Concurs, No Consulting Party Disagrees

6) Resolve Adverse Effects

Adverse Effects Not Resolved, FHWA or FTA, SHPO or ACHP Terminates Consultation

Follow 36 CFR 800.7

Section 106 Complete

FHWA or FTA, and WSDOT Consult SHPO and Other Consulting Parties, Prepare Agreement Document(s)

Follow 36 CFR 800.7

Section 106 Complete

FHWA or FTA, and WSDOT Consult SHPO and Other Consulting Parties, Prepare Agreement Document(s)

Follow 36 CFR 800.7

Section 106 Complete

FHWA or FTA, and WSDOT Consult SHPO and Other Consulting Parties, Prepare Agreement Document(s)

Follow 36 CFR 800.7

Section 106 Complete

FHWA or FTA, and WSDOT Consult SHPO and Other Consulting Parties, Prepare Agreement Document(s)
456.03 Section 106 Review and Compliance: Federal Lands

Projects taking place on federal lands are subject to Section 106 review regardless of funding source. If a project has FHWA or FTA funding, and the cooperating Federal agency recognize FHWA or FTA as the lead Federal agency per Stipulation G, they may fulfill their obligations under Section 106 per the process outlined in the Statewide Section 106 Programmatic Agreement (see Exhibit 456-2).

In the case of state funded projects within national forests, the USFS is responsible for Section 106 compliance and does not delegate this responsibility to WSDOT. Maintenance activities must comply with provisions outlined in the Maintenance MOU with the USFS.

A CRS must work with the project team to provide the USFS Forest Archaeologist project information. The USFS will initiate the Section 106 process. In either case, Section 106 compliance begins with notifying a CRS of the project, including scope and schedule. The CRS will then inform the USFS Forest Archaeologist about the project.

456.04 Section 106 Review and Compliance: COE

WSDOT and the Seattle District COE utilize a Memorandum for Record (MFR) signed in 2008 that outlines the Section 106 compliance process for transportation projects with COE involvement. This process applies to projects where the COE is lead federal agency for Section 106. If other federal agencies are involved (typically, agencies of the U.S. DOT-FHWA, FRA and FTA), the COE may defer lead agency status and adopt their Section 106 process per Stipulation G of the Statewide Section 106 Programmatic Agreement. For FHWA projects with COE involvement, the MFR designates lead federal agency status to FHWA for Section 106 compliance.

The MFR requires that a WSDOT CRS review all projects with COE involvement to determine if the proposed activity has potential to impact cultural resources. If the WSDOT CRS determines that the undertaking will have no impact to cultural resources, the CRS will document that determination for the record. If the CRS determines the project has the potential to impact cultural resources, the CRS will work with the project team to implement Section 106 compliance per the terms of the MFR.

456.05 Section 106 Review and Compliance: Other Federal Agencies

If a federal agency other than FHWA, FTA, or the COE is involved in funding or permitting the project, that agency’s Section 106 compliance process will be followed. For FHWA funded activities involving other federal agencies (including USFS, FRA, BLM, etc.), that agency may utilize the Statewide Section 106 Programmatic Agreement per Stipulation G to fulfill their Section 106 obligations. Exhibit 456-2 illustrates the process.

Exhibit 456-1 illustrates the typical Section 106 compliance process adopted by most federal agencies. Section 106 of the National Historic Preservation Act is a federal responsibility, and while federal agencies can delegate authority to WSDOT for certain steps in the 106 process, they are ultimately responsible for compliance. Project teams need to be aware that different federal agencies have different schedules and processes for complying with Section 106, and these may have schedule impacts for project planning.
Exhibit 456-3 Section 106 Identifying and Assessing Effects

Initiate Section 106 Process
- Establish undertaking
- Identify appropriate SHPO/THPO
- Plan to involve the public
- Identify other consulting parties

Undertaking is type that might affect historic properties

Identify Historic Properties
- Determine scope of efforts
- Identify historic properties
- Evaluate historic significance

Historic Properties are affected

Assess Adverse Effects
- Apply criteria of adverse affect

Historic properties are adversely affected

Mitigate Adverse Effects
- Continue consultation with SHPO/THPO

FAILURE TO AGREE

Outcome
- No Undertaking/No Potential to Cause Effects
- No Historic Properties Affected
- No Historic Properties Adversely Affected
- Memorandum of Agreement
- Advisory Council on Historic Preservation Comment
456.06 Governor’s Executive Order 05-05 Review and Compliance

State funded projects go through the Governor’s Executive Order 05-05 process and are subject to the requirements of SEPA and state archaeological statutes (RCW 27.34, RCW 27.44, and RCW 27.53) and their implementing regulations (WAC 25-48). Exhibit 456-5 illustrates the process.

The first step is to contact the assigned CRS as early in the project planning stages as possible, and he/she will determine if the project can be exempted from further review per provisions of the Statewide Section 106 Programmatic Agreement for state funded projects as agreed upon by DAHP. If the activity cannot be exempted, the CRS will work with the project office to determine the area of impact (aka Area of Potential Effect per Section 106) and to prepare consultation letters with DAHP and interested tribes.

Consultation with DAHP and other stakeholders will continue until the project is determined not to adversely impact cultural resources, or agreements Memorandum of Understanding (MOU) are made to avoid, minimize, or mitigate impacts.

State funded highway maintenance activities (on non-federal lands), are not subject to GEO 05-05 review. The WSDOT Maintenance Program Cultural Resources Checklist (see Exhibit 456-4) provides guidance on notification procedures for review of maintenance work with potential to impact cultural resources. Contact a CRS to consult on cultural resource concerns for maintenance activities.

The most current information on cultural resources policy and compliance is available from the designated regional or modal CRS or the WSDOT Cultural Resources Program in the Environmental Services Office.
WSDOT Maintenance Program Guidance
For
Avoiding Impacts to Cultural Resources

This checklist applies to state funded highway maintenance to clarify Cultural Resource notification procedures for maintenance work. RCW 27-44 and 27-53, and WSDOT Executive Order 1025.01 (2/19/09), and the Section 106 Programmatic Agreement have special considerations relating to impacts to cultural resources and tribal consultation. Executive Order 05-05 does not apply to highway maintenance.

*If you answer Yes, to any boxes under the YES column, you need to consult with your Region Maintenance Environmental Coordinator (RMEC). RMEC will notify the appropriate cultural resource staff accordingly – see contact information on page 2.

### FOR ARCHAEOLOGICAL RESOURCES:

<table>
<thead>
<tr>
<th></th>
<th>YES</th>
<th>NO</th>
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<tbody>
<tr>
<td>1. Are you excavating below the previously constructed grade of the roadway profile (including pavement, shoulder, drainage features and embankment)? OR Outside of this area (e.g. previously undisturbed soil) are you digging anything greater than 18 inches in diameter (e.g. sign post)?</td>
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<td>If YES, notify RMEC. RMEC will work with the DOT Cultural Resources Specialists to insure no impacts.</td>
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<td>2. Is the work being performed on a Tribal Reservation?</td>
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<td>If YES, follow any region specific tribal agreement that covers the proposed work or notify the RMEC and the RMEC will work with DOT and Tribes Cultural Resources Specialists to insure no impacts.</td>
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<td>3. Is the work being performed on Federal Lands (National Park, National Forest, etc) outside our R/W or roadway easement?</td>
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<td>If YES, notify RMEC. RMEC will work with the DOT and Federal Cultural Resources Specialist for that area to identify the potential of impacts or follow any applicable region specific agreement.</td>
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<td>4. If the work involves the use of a Corps Nationwide Permit?</td>
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<td>If YES, notify RMEC. RMEC will review the work and determine if it is listed in Exhibit A (page 3). If not, RMEC will notify the DOT Cultural Resources Specialist.</td>
<td></td>
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</tbody>
</table>
FOR HISTORIC STRUCTURES:

(1) Are you working on a structure (bridge or building) 50 years or more old - Will the work modify or add anything that may change the existing historical elements?

- If NO, no review is required and work may proceed.
- If YES, notify RMEC. RMEC will contact DOT’s Cultural Resource Specialist before proceeding. *See contact below

IMPORTANT NOTES

If you encounter any objects that are historic in nature or Native American, or any human skeletal remains you must STOP WORK and immediately contact your region RMEC and Cultural Resources Specialist or the Headquarters Cultural Resource Program.

You will need to document the process you went through for determining if there was the potential for cultural resource impacts associated with your project and keep that information on file.

CONTACT INFORMATION

WSDOT Cultural Resource Program
Scott Williams Cultural Resource Manager (HQ)
360-570-6651

Dean Weaver, Archaeologist (ER, NCR, and SCR)
509-324-6509

Jason Cooper, Archaeologist (NWR)
206-440-4525

Roger Kiers, Archaeologist (OR and SWR)
360-570-6638

Historic Bridge Structures
Stephen Austin, Historian (HQ)
360-570-6657
ADDITIONAL INFORMATION

Additional information on the Section 106 Programmatic Agreement, and a list of inventoried bridge structures is available online at http://www.wsdot.wa.gov/environment/technical/disciplines/cultural-resources.

SECTION 106 PROGRAMMATIC AGREEMENT

The Seattle District Corps of Engineers has established a streamlined process to address Sec. 106 compliance for state-funded only projects and activities with no potential to cause effects, which can apply to WSDOT maintenance activities that require a COE §404 permit. The process is documented in a Memorandum for Record dated 6 November 2008. The Cultural Resources Program or your region’s Cultural Resources Specialist can help you determine the applicability of this process to your activity or project.

Exempted Activities- If the proposed maintenance falls under the “A” category exemptions included under Exhibit B of the Statewide Section 106 Programmatic Agreement (http://www.wsdot.wa.gov/sites/default/files/2017/08/08/Env-CultRes-Section106PA.pdf), the activity is presumed to have minimal impact to cultural resources and no review is required.
456.07 Bridge Compliance

Highway bridges built through 1970 have been evaluated for National Register eligibility. Some of those bridges have been listed or determined eligible for listing in the NRHP; whereas others have been nominated or recommended eligible for listing. Those bridges appear on the NRHP Washington State Historic Highway Bridges table.

The table linked above is updated frequently to reflect changes in NRHP eligibility status following evaluation under Section 106 or Executive Order 05-05. Bridges may be added or removed from the list as a result of demolition, or re-evaluation due to changes in contexts or length of time since the last evaluation. Exhibit 456-5 Illustrates the process for review of proposed activities to bridges 40 years of age or older.

Undertakings presumed to have minimal potential to affect NRHP eligible or listed historic bridges can be exempted per stipulations of the Statewide Section 106 Programmatic Agreement, unless on Tribal land. Exemptions may also apply to projects lacking a federal nexus and subject to GEO 05-05. Contact a CRS to determine if a bridge or structure meets criteria for exemption.
Exhibit 456-5  Governor's Executive Order 05-05 Process

WSDOT Cultural Resources Compliance Process-
Governor's Executive Order (GEO) 05-05

RCW 27.53 Archaeological Sites and Resources Protection Act protects archaeological resources from disturbance without a permit obtained from DAHP, regardless of land ownership. This includes all precontact archaeological resources, and historic sites eligible for listing on the National Register of Historic Places.
Common post 1945 concrete and steel bridges may also be exempted from Section 106 and Section 4(f) review per ACHP’s Program Comment of Common Post-1945 Concrete and Steel Bridges Exemption. Undertakings involving Interstate bridges are typically exempted from Section 106 and Section 4(f) review unless the bridge is identified on FHWA’s List of Nationally and Exceptionally Significance Features of the Federal Interstate System. The ACHP’s Program Comment does not apply to bridges or structures identified by FHWA as significant highway features, and may not be exempted from Section 106 and Section 4(f) review.

a. **Reinforced Concrete Slab Bridges**
   2. Reinforced concrete pre-cast slabs.
   3. Pre-stressed concrete slabs.

b. **Reinforced Concrete Beam and Girder Bridges**
   1. Reinforced concrete tee beams.
   2. Reinforced concrete channel beams.
   3. Pre-stressed concrete I-beams and bulb tees.
   4. Pre-stressed concrete box beams.

c. **Steel Multi-Beam or Multi-Girder Bridges**
   1. Steel-rolled multi-beams.
   2. Steel fabricated (built up) girders.

d. **Culverts and Reinforced Concrete Boxes**
   1. Reinforced concrete boxes.
   2. Concrete box culverts.
   3. Concrete pipe culverts.
   4. Steel pipe culverts.

Undertakings with potential to adversely affect NRHP eligible or listed historic bridges obligate WSDOT to develop, in consultation with SHPO/THPO and consulting parties, alternatives that could avoid, minimize or mitigate adverse effects (36 CFR 800.6(a)), see Exhibit 456-6. These alternatives may include preservation in-place, re-purposing the bridge under different ownership, marketing the bridge and relocating the bridge to where it could be preserved. Contact a CRS for guidance in developing alternatives and determining appropriate consulting parties before proceeding with undertakings that could adversely affect a historic bridge.
456.08 Artifact Collection and Disposition (Curation)

An archaeological collection is defined as all artifacts, field notes, maps, photographs and other records generated or recovered during an archaeological investigation. Federal regulations establish standards for the preparation, disposition and curation of archaeological collections from federal lands. WSDOT has policy requirements for the curation of artifacts and records recovered during archaeological investigations to comply with Federal (36 CFR 800) and State regulations (RCW 27.53).

456.08(1) Factors in Determining a Curation Facility

In Washington State, there are two factors considered in determining where archaeological collections will be curated: (1) land ownership, as under federal and state law recovered artifacts legally belong to the owner of the property at the time of excavation; and (2) the regulation under which the archaeological collection was made.

Additional factors that can influence the selection of the curation facility include whether the collection contains artifacts from the historic-era, whether there have been previous archaeological investigations at the same site, the volume of the collections, and the location of the curation facility relative to the location of the archaeological site. In some cases, the curation facility has been selected as part of negotiations for a large or complex project that may be subject to negotiated agreements such as a Memorandum of Agreement (MOA) or a Programmatic Agreement (PA).

456.08(2) Disposition of Archaeological Artifacts and Records From State Land, Federal Land, or Tribal Land

When archaeological sites are identified during cultural resource studies for federal aid or state funded projects, WSDOT is responsible for the disposition of the artifacts and records at the conclusion of the project. The status of property ownership at the time of the archaeological excavations will determine whether artifacts are curated in a repository or returned to a private property owner. Archaeological collections are not to be permanently stored at an agency or consultant office. It is the responsibility of the WSDOT Project Engineer with assistance from the CRS to ensure that archaeological collections are curated at a facility that meets the standards of 36 CFR 79 at the conclusion of the project. WSDOT is responsible for including language regarding curation in contracts with cultural resource consultants.

a. Collections From State Property – When WSDOT owns fee title to a property at the time archaeological testing is conducted, or when artifacts are recovered from property owned by another state agency, WSDOT will curate the collections at the University of Washington’s Burke Museum (per the terms of Participation Agreement GCA-6616), unless otherwise negotiated as a specific mitigation measure.

b. Collections From Federal Land – When artifacts are recovered from federal land the collection is the property and responsibility of that federal agency responsible for managing the land. Unless there is an existing programmatic agreement with the federal agency specifying curation requirements*, WSDOT will submit the collection to the federal agency or their designated repository at the conclusion of the project.

*As of July 2012, the only programmatic agreement WSDOT has entered into with a land owning federal agency is the U.S. Forest Service.
c. **Collections From Tribal Land** – When artifacts are recovered from tribal land, the decision on where to curate the collection is made by the tribe. Over a dozen tribes in Washington and in neighboring states have curation facilities. Some tribes without curation facilities have built relationships with third party curation facilities such as the Burke Museum.

d. **Disposition of Collections from Private Property** – When WSDOT will conduct an archaeological investigation on private property, the WSDOT CRS must discuss the issue of archaeological collections and their disposition with the landowner in advance of the fieldwork. This includes temporary easements on private property.

When artifacts could be recovered from privately owned land, the WSDOT CRS will suggest that the landowner donate the artifacts to a facility that complies with the Part 79 standards. If the landowner agrees to donate the artifacts, the WSDOT CRS should ask the owner to sign a letter of intent to donate (if the collections have not been excavated yet) or the selected museum’s deed of gift agreement (if the collections have been excavated). The deed of gift agreement allows the museum to acquire legal title to the artifacts.

When property owners express a desire to have artifacts returned to them, the WSDOT CRS should determine whether the owner wishes to retain the entire artifact assemblage or is only interested in certain artifacts. If the owner is only interested in keeping a selection of artifacts, the WSDOT CRS should ask the owner to donate the remainder to a museum that meets Part 79 standards. If the property owner declines to sign a letter of intent to donate or a deed of gift agreement, then the artifacts must be returned to the landowner.

If possible, the artifacts should not be returned until all consultation is completed, the required analyses are completed, and a final report is accepted by WSDOT. It is important to note that records and documentation from the archaeological studies do not belong to the property owner and must be submitted to a curation facility that meets Part 79 Standards. WSDOT will submit the records to the Burke Museum unless a tribal museum meeting Part 79 Standards requests to curate the documentation. The PE and Real Estate Services shall ensure that the above issues are addressed in the legal agreement or right-of-entry negotiated with the property owner.

e. **Disposition of Artifacts Collected under a MOA or PA** – For large or complex projects, WSDOT will typically enter into an MOA or PA to address cultural resources. Because the consultation process to develop an agreement document must weigh numerous factors, and because addressing curation issues could be a mitigation measure, development of the MOA will be negotiated among consulting parties in order to address specific concerns. Curation should be addressed within the MOA including designating the repository, or creating one, to house the archaeological collections.
456.08(3)  Submitting Collections to the Selected Curation Facility

Collections should be submitted to the selected repository as soon as is practical after approval of the final report by WSDOT, unless otherwise stated in an MOA or other formal agreement. It is not acceptable for collections to remain in the care of consultants or WSDOT.

a. Facility-Specific Curation Guidelines – Once the curation facility is selected and before data recovery is undertaken, WSDOT will request the facility’s curation guidelines for the preparation of an incoming collection. WSDOT or its consultant will prepare the collection to meet these guidelines prior to delivering the collection to the facility.

If the selected facility does not have any specific guidelines for the preparation of incoming collections, WSDOT or its consultant will follow minimum curation guidelines developed by WSDOT that are consistent with Part 79.

b. Documentation Accompanying the Collection – WSDOT or its consultant should prepare a packing inventory listing the contents of each box and a collections transmittal form (which will be provided by the repository). The selected repository will also likely have a deed of gift or similar document to transfer title of the collection to the museum.

c. Payment of Curation Fees – Curation fees are considered part of the project compliance or mitigation cost and must be included in project budgets.

456.09 Use of Museums and Information Centers as Potential Mitigation

Because Section 106 of the NHPA and NEPA do not provide limits on potential mitigation measures, and because both Section 106 and the Centennial Accord require WSDOT to conduct good-faith consultation and implement effective government-to-government relations with tribes with lands or resources affected by WSDOT’s projects, WSDOT must evaluate the appropriateness of mitigation measures on a case-by-case basis.

WSDOT will carefully consider the issues and concerns raised during consultation and develop mitigation measures to address the specific adverse effects of a particular project.

Consistent with Section 106, WSDOT will take into account “the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking” (§800.6(a)(4)) when considering appropriate resolution of adverse effects.

456.09(1)  Exhibits/Displays

WSDOT may prepare exhibits, displays, and other types of public information such as books and documentaries, on cultural resources, as mitigation for impacts to those cultural resources. In addition, WSDOT will encourage the repositories that hold collections generated during WSDOT projects to exhibit or display those collections as the repository deems appropriate; although decisions on whether to exhibit or display are made by the repository in consultation with the WSDOT Cultural Resources Program Manager and affected Tribes.
**456.09(2) Stand-Alone Facilities**

In cases where a WSDOT project may have long-term adverse effects on a community or neighborhood, WSDOT will consider development of stand-alone facilities such as information centers as a mitigation measure if this type of measure is identified in the consultation process as an appropriate or necessary component of mitigation. The time that a stand-alone facility is needed will be determined through consultation for each project.

**456.10 Additional Cultural Resource Regulatory Guidance**

The general policy is to avoid impacts from transportation projects on cultural resources. If impacts cannot be avoided, the policy is to minimize or mitigate the effects of such impacts to cultural resources. Specific guidance depends on the regulatory path the project must follow and the scope of work of the project, and is available from the WSDOT Cultural Resources Program or the region CRS.

**456.10(1) Federal**

- **National Historic Preservation Act, Section 106** – The Section 106 process is codified in 36 CFR 800.

- **National Environmental Policy Act** – The National Environmental Policy Act (NEPA), 42 USC Section 4321, requires that all major actions sponsored, funded, permitted, or approved by federal agencies undergo planning to ensure that environmental considerations including impacts on historic and cultural resources are given due weight in decision-making. Federal implementing regulations are at 23 CFR 771 (FHWA) and 40 CFR 1500-1508 (CEQ). For details on NEPA procedures (see Chapter 400).

- **Department of Transportation Act, Section 4(f)** – Protection of certain public lands and National Register eligible or listed historic properties was originally mandated in Section 4(f) of the 1966 Department of Transportation Act. This section was later codified without substantive changes as 49 USC 303. However, it is still referred to as Section 4(f) in the FHWA/FTA regulations dealing with Section 4(f) properties, including Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (23 CFR 771 and 774) (see Chapter 457 and Chapter 459 for further details).

- **Archaeological Resources Protection Act** – The Archaeological Resources Protection Act of 1979 (ARPA) (43 CFR 7.6-7.11) applies to archaeological resources on tribal lands and lands under federal jurisdiction. WSDOT consultants must apply for and obtain an ARPA permit when such resources could be impacted by a project.

- **Curation of Federally Owned and Administered Archaeological Collections** – The U.S. Department of the Interior has set minimum standards for the curation of federally owned archaeological collections in 36 CFR 79, and these standards are followed by Washington State for collections from public lands. Artifacts recovered from private lands remain in private ownership until or unless agreement is made with the owner(s) for public curation.

- **Section 106 exemption regarding Effects to the Interstate Highway System** – This exemption effectively excludes the majority of the 46,700-mile Interstate System from consideration as a historic property under Section 106 of the National Historic Preservation Act (NHPA). In addition the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Public Law 109-59, Aug. 10, 2005) includes a provision (Section 6007) that exempts the bulk of the Interstate Highway System from consideration as a resource under Section 4(f) of the Department
of Transportation Act unless on federal or Indian land or is affected by a USACOE permit. With these two exemptions in place, federal agencies are no longer required to consider the vast majority of the Interstate Highway System as historic property under Section 106 and Section 4(f) requirements. Excluded from these respective exemptions are elements of the Interstate System that are exceptional in some way or meet a national level of significance under the criteria for the National Register of Historic Places. The Final List of Nationally and Exceptionally Significant Features of the Federal Interstate Highway System identifies those elements that are not covered by the exemptions discussed above and will therefore continue to be subject to consideration under the Section 106 and Section 4(f) processes.

- **Related Federal Statutes** – Additional federal statutes relating to historic, cultural, and archaeological resources:
  - American Indian Religious Freedom Act (1978)
  - Antiquities Act of 1906
  - Archaeological and Historic Preservation Act (1974)
  - Native American Graves Protection and Repatriation Act (1990)

456.10(2) **State**

- **Archaeological Sites and Resources** (RCW 27.53) – Protects archaeological resources, making disturbance of known archaeological sites without a permit obtained from DAHP a misdemeanor. Information on Archaeological Excavation and Removal Permits may be obtained from the WSDOT DAHP webpage.

- **State Environmental Policy Act** – Requires that all major actions sponsored, funded, permitted, or approved by state and/or local agencies undergo planning to ensure environmental considerations such as impacts on historic and cultural resources are given due weight in decision-making. State implementing regulations are in WAC 197-11 and WAC 468-12 (WSDOT). For details on SEPA procedures (see Chapter 400).

- **Governor’s Executive Order 05-05** – Executive Order 05-05 Archaeological and Cultural Resources.

- **Abandoned and Historic Cemeteries Act** (RCW 68.60) – Protects graves and historic cemeteries, making disturbance of such sites, without a permit, a Class C felony.

- **Indian Graves and Records Act** (RCW 27.44) – Protects Indian graves, cairns, and visual records such as rock art, making disturbance of such sites without a permit a Class C felony.

- **Archaeology and Historic Preservation – Legislative Declaration** (RCW 27.34.200) – The legislature declares it to be the public policy and in the public interest of the state to designate, preserve, protect, enhance, and perpetuate those structures, sites, districts, buildings, and objects which reflect outstanding elements of the state’s historic, archaeological, architectural, or cultural heritage, for the inspiration and enrichment of the citizens of the state.
456.11 Acronyms and Abbreviations

ACHP  Advisory Council on Historic Preservation (federal)
BLM  Bureau of Land Management, U.S. Department of the Interior
Corps or COE  US Army Corps of Engineers
CRS  Cultural Resources Specialist
DAHP  Department of Archaeology and Historic Preservation
FHWA  Federal Highway Administration
FRA  Federal Railroad Administration
FTA  Federal Transit Administration
GOIA  Governor’s Office of Indian Affairs
NHPA  National Historic Preservation Act
NRHP  National Register of Historic Places
SHPO  State Historic Preservation Officer
TCP  Traditional Cultural Property
THPO  Tribal Historic Preservation Officer
USFS  U.S. Forest Service

456.12 Glossary

Adverse Effect – Occurs when an effect on an historic property diminishes the integrity of the property’s aspects of integrity (see below). See also Determination of Effect (Criteria of adverse Effect: 36 CFR 800.9(b)).

Advisory Council on Historic Preservation – An independent federal agency, established under the NHPA, which: (1) advises the President and Congress on matters of historic preservation; (2) carries out Section 106 reviews; and (3) provides technical assistance in historic preservation actions.

Affect (Verb) – Action that may change the character of an historic property.

Area of Potential Effect (APE) – The geographic area or areas which an undertaking may directly or indirectly cause alterations in the character or use of historic properties. The APE is three dimensional including auditory, visual and ground disturbing activities. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking. The APE should be defined before historic properties are identified and not on land ownership (36 CFR 800.2(c)).

Building – A construction created to shelter any form of human activity, including animal husbandry.

Centennial Accord – The Centennial Accord Plan was created in accordance with the 1989 Centennial Accord and the 1999 Centennial Accord Implementation Guidelines. The Centennial Accord mandated that each state agency must have a procedure to implement effective government-to-government relations.

Consulting Party – In the Section 106 process, consulting parties include the State Historic Preservation Officer (SHPO), Indian Tribes, representatives of local governments, applicants for federal assistant or approvals, and organizations and individuals with legal or economic relation to the undertaking, or who have concerns with the undertaking’s effect on historic properties.

Cultural Resource – A place, object, location or site of an event that is important to a community or region’s history, traditions, beliefs, customs, or social institutions.

Cultural Resource Specialist (CRS) – A WSDOT employee meeting the Secretary of the Interior’s Professional Qualification Standards (per 36 CFR 61) who advises department staff on policies relating to items of historic/archaeology significance that may be affected by a project and who conducts regulatory compliance procedures.

Cultural Resources Management – The body of laws and regulations pertaining to historic, archaeological, and cultural properties, and the manner in which those directives are implemented.

Department of Archaeology and Historic Preservation (DAHP) – This agency houses the Washington State Historic Preservation Officer (SHPO) who serves as SHPO and director of the agency. SHPO locations in state governments are unique to each state.

Determination of Effect – A finding, by a federal agency in consultation with SHPO and consulting parties, pursuant to compliance with Section 106 (see definition) that a proposed undertaking will have an effect on historic properties. If an effect is identified, the Criteria of Adverse Effect is applied to determine potential Adverse Effect (see definition). Other possibilities are determinations of No Effect and No Adverse Effect.

Determination of Eligibility – Per Section 106 of the NHPA, formal recognition of a property’s eligibility for inclusion, but not actual listing, in the National Register of Historic Places. Determinations of Eligibility may be prepared on National Register Registration Forms (NPS 10-900).

District – A significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. May be an archaeological or historic district, or may contain elements of both.

Effect – Occurs when an undertaking may alter characteristics that qualify a property for inclusion in the National Register (Criteria of Effect: 36 CFR 800.9(a)).

Eligible – A property is eligible for inclusion in the National Register of Historic Places if it meets the National Register Criteria (see Criteria for Evaluation).

Historic Preservation – Identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance and reconstruction, or any combination of the foregoing activities relating to historic properties.

Historic Property – A property or cultural resource that is listed in or eligible for listing in the National Register of Historic Places, and, under SEPA, in state and local historic registers, including eligible properties that have not yet been discovered or evaluated (such as archaeological sites). Historic properties may be buildings or other structures, objects, sites, districts, archaeological resources, and traditional cultural properties (landscapes).
Historic Site (Section 4(f)) – Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization that are included in, or are eligible for inclusions in, the National Register.

Memorandum of Agreement (MOA) – A formalization of the means of resolving adverse effects agreed upon by the consulting parties, serving to specify mitigation, identify responsibility, render Advisory Council on Historic Preservation comment, and acknowledge effects of the undertaking on historic properties. See also Programmatic Agreement (PA).

Mitigation Measures – Actions required to mitigate adverse effects to historic properties. Usually stipulated in an MOA/PA.

National Register of Historic Places – The nation’s official listing of properties significant in national, state and/or local history, meeting one or more criteria for evaluation (36 CFR 60.4). Listing is commemorative, but may require compliance by property owners with federal/state/local laws and regulations. May also provide private property owners with opportunities to take advantage of preservation incentives, such as easements and tax relief.

Nomination – Official request to have a property listed in the National Register. Documentation is placed on a National Register of Historic Places Registration Form (NPS 10-900) and submitted to the CLG (if appropriate), the SHPO, and the Keeper of the National Register (see definitions). See National Register Bulletin 16A.

Object – A construction primarily artistic in nature or relatively small in scale.

Programmatic Agreement (PA) – A formal, legally binding agreement typically for a large or complex project or types of undertakings developed under Section 106 that would otherwise require a number of individual actions (i.e., when effects cannot be fully determined prior to project approval). The agreement is between WSDOT and other state and/or federal agencies. Management Plans (see definition) are often stipulated in PAs (36 CFR 800.13(a)). There are two basic kinds of programmatic agreements:

- A PA that describes the actions that will be taken by the parties in order to meet their Section 106 compliance responsibilities for a specific transportation project, called here a project-specific PA.
- A PA that establishes a process through which the parties will meet their Section 106 responsibilities for an agency program, a category of projects, or a particular type of resource, called here a procedural PA.

Site – The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archaeological value regardless of the value of any existing structure.

State Historic Preservation Officer (SHPO) – Coordinates cultural resource preservation activities in each state; one SHPO per state, usually appointed by the governor. SHPO is charged with reflecting the interests of the state and its citizens in preserving their cultural heritage, which involves a variety of responsibilities (36 CFR 61.4(b)). In Washington State, the SHPO is a governor appointed position housed in the Department of Archaeology and Historic Preservation (DAHP), which reviews projects for compliance with Section 106 of the National Historic Preservation Act.
Structure – Functional constructions made usually for purposes other than creating shelter.

Traditional Cultural Property – A place eligible for inclusion in the National Register of Historic Places because of its association with cultural practices or beliefs of a living community that are (a) rooted in that community’s history, and (b) important in maintaining the cultural identity of the community. The concept is based upon the introductory section of the National Historic Preservation Act, which states that “the historical and cultural foundations of the Nation should be preserved as a living part of our community life in order to give a sense of orientation to the American people.”

Tribal Historic Preservation Officer (THPO) – Authorized by the 1992 Amendments to the National Historic Preservation Act. When approved by NPS, THPO replaces SHPO in compliance process on “tribal” lands (Section 101(d)(2)).

Undertaking – Any activity that can result in changes in the character or use of historic properties. The activity must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency (36 CFR 800.2(o)).