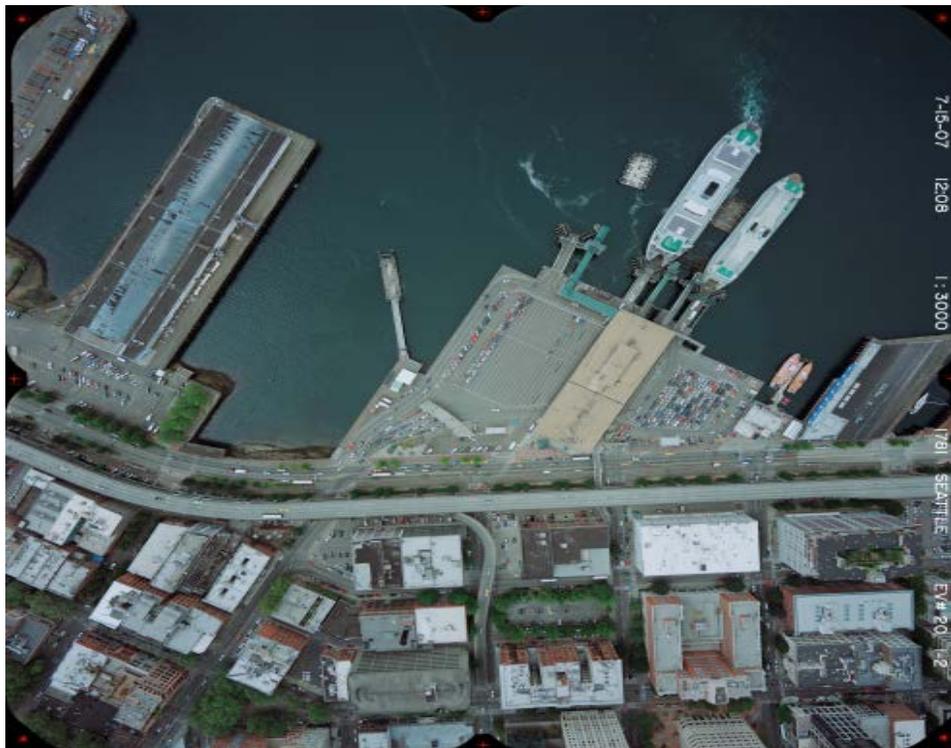




## Seattle Multimodal Terminal at Colman Dock Project

### Government-to-Government Tribal Consultation Plan



Updated: Spring 2014

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# 1. Introduction

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The following plan will guide the Seattle Multimodal Terminal at Colman Dock Project (Seattle Multimodal Project) through government-to-government tribal consultation from scoping through a NEPA decision. This plan may be modified to reflect specific tribal consultation activities during permitting and construction of the project.

This plan is designed to encourage early and continued feedback from, and involvement by, tribes potentially affected by the Seattle Multimodal Project, and to ensure that their input will be incorporated into the decision making process. The processes and commitments outlined below apply to all interaction between the Seattle Multimodal Project and federally recognized tribes. While tribes will also be invited to participate during agency coordination and public involvement, tribal coordination and government-to-government tribal consultation are being undertaken as distinct efforts.

Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) will only conduct government to government consultation with federally recognized sovereign tribes. However, while the project team recognizes its responsibility to consult with non-federally recognized tribes on specific areas of interest, as it consults with other interested organizations and members of the public, this Consultation Plan concerns the co-lead agencies' government-to-government responsibilities.

## 2. Overview

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### 2.1 Project Team Structure

The FTA and the FHWA are the federal co-lead agencies for this project. Washington State Department of Transportation (WSDOT) Marine Division, known as Washington State Ferries (WSF), is the project proponent. FTA and FHWA retain responsibility for compliance with consultation requirements. Any contact with the tribes will be initiated by FTA and FHWA, or at their request through the WSF. FTA and FHWA are the lead agencies for meetings and negotiations for the tribal consultation process under the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act.

The Seattle Multimodal project will have a designated tribal liaison (WSF Tribal Liaison) for this project. The WSDOT HQ Tribal Liaison will assist FTA, FHWA, and the WSF Tribal Liaison in tribal coordination efforts as necessary. With the concurrence of the federal co-leads and tribal participants, other WSDOT and WSF team members may participate in the on-going government-to-government dialogue. Consultants will not participate in any government-to-government dialogue without the consent of the federal co-leads and all tribal participants. Consultants will assist in preparing for meetings with the tribes, but all contact will be through FTA and FHWA or their WSDOT/WSF staff designee, if appropriate, on the Project. Communication with tribes will ordinarily be coordinated through the FTA, FHWA, and the WSF Tribal Liaison to ensure that information is managed internally and integrated into the

government-to-government dialogue with the tribes. All tribal consultation will be documented in the project's administrative record.

## 2.2 Legal Guidance

The FTA and FHWA will engage in early and continuous consultation with affected tribes throughout the process in accordance with the following authorities:

- **“Presidential Memorandum to the Heads of Executive Agencies on Tribal Consultation” (2009)** implementing Executive Order 13175 (2009) (Consultation and Coordination with Indian Tribal Governments), requires federal agencies to engage in regular and meaningful consultations with federally recognized tribal governments.
- **Section 106 of the National Historic Preservation Act** requires federal agencies to consult with Native American tribes and the State Historic Preservation Officer regarding potential effects on historic and cultural properties before making decisions that could affect those properties. Under Section 106, the federal leads initiate consultation, identify resources, determine the effect of the project, and avoid, minimize, and then mitigate any impacts.
- **The Native American Graves Protection and Repatriation Act (NAGPRA)** sets forth procedures regarding the inadvertent and unintentional discovery of Native American objects of cultural patrimony on Federal lands.
- **The National Environmental Policy Act (NEPA)** directs federal agencies to invite affected Native American tribes to participate in the environmental review process.
- **“Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes” (DOT Order 5301.1)** (1999), directs US Department of Transportation agencies to consult with Indian tribes before taking any actions that may significantly or uniquely affect them, and work with federally recognized tribes and their designated representatives on a government-to-government basis respecting their rights to represent their respective interests.
- **The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)** requires federal agencies to coordinate with tribal governments by inviting them to be “participating agencies” for projects analyzed by an environmental impact statement (EIS). This gives tribal governments an additional method to engage in the environmental review process, but it does not supersede government-to-government or Section 106 consultation. As participating agencies, the tribes have an opportunity to comment at specific project milestones outlined in SAFETEA-LU. Although the Seattle Multimodal Project will likely be analyzed under a NEPA environmental assessment (EA) rather than an EIS, FTA and FHWA will honor the participating agency process at the request of an interested tribal government.

### 3. Goals and Objectives

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Goals for the tribal consultation process and objectives for meeting them are listed below.

- Goal: Honor the commitments of FTA and FHWA to engage in effective government-to-government consultation consistent with the aforementioned authorities.
  - Objective: Ensure FTA, FHWA, and Seattle Multimodal Project staff and tribes engage in an open exchange of information about the project, its potential impacts, and appropriate mitigation.
- Goal: Design and develop the Seattle Multimodal Project, including appropriate mitigation, if applicable, in a manner that protects cultural and natural resources of tribal concern.
  - Objective: Reach agreement in accordance with the NEPA process that reflects the mutual interests of the tribes, FTA, FHWA, and WSF.
  - Objective: Address potential impacts to cultural resources, through appropriate pre-construction surveys and analysis.
  - Objective: Develop an “Inadvertent Discovery Plan” to describe the appropriate protocols in the event of an unanticipated cultural or archaeological discovery.
  - Objective: Address potential impacts to natural resources the environmental review process, permit and approval process, and construction planning.
- Goal: Consider tribal feedback and address tribal concerns during project planning, design and mitigation.
  - Objective: Engage tribes in project decision-making, including decisions regarding environmental review, schedule, scoping of effects to be evaluated, alternatives to be considered, and project design and mitigation.
- Goal: Coordinate communications between the project team and tribes.
  - Objective: Establish a process for FTA, FHWA, and the project team to receive and respond to tribal input.
  - Objective: Ensure all communication between the project team and tribes is coordinated with the FTA, FHWA, and WSF Tribal Liaison.
- Goal: Create durable intergovernmental relationships that promote coordinated transportation partnerships.
  - Objective: Build constructive relationships between FTA, FHWA, WSF, and affected tribes with whom FTA, FHWA, and WSF are or will be engaged in consultations for other projects.

## 4. Consultation Approach

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The general approach to government-to-government consultation for the Seattle Multimodal Project at Colman Dock is as follows:

- *Identify potentially interested tribes.* The Seattle Multimodal Project team, in consultation with FTA, FHWA, and WSDOT headquarters staff, will assess the following factors that may indicate a tribe's interest in the project (completed):
  - Potential for the tribe to have culturally or historically significant property or items in the area of the project.
  - Potential for the tribe to have a resource or cultural interest in the area of the project.
  - Tribal jurisdiction and control of land that may be affected by the project.
  - Tribal interest as expressed through "consultation area maps" that a tribe has provided to WSF.
- *Invite potentially interested tribes to formally consult on the project.* The FTA and FHWA, working with the WSF Tribal Liaison, will formally contact potentially affected tribes to determine whether they are interested in further contact with the project team.
- *Engage in both formal and technical consultation with tribal staff.* At the request of the tribes, the FTA and FHWA will formally meet with cultural and natural resource committees or tribal staff, and could involve Seattle Multimodal technical staff in working group meetings concerning applicable issues (e.g., identification of fish and wildlife habitat).
  - FTA, FHWA, and the project team will offer to meet with Tribal Governments (Tribal Councils, Business Committees, Board of Directors, etc.) at major project milestones.
  - Tribal technical staff will be invited to all working group meetings that the tribe may have an interest or expertise in.
  - The consultation process will integrate both formal and informal contact with the Tribal Government and tribal staff, respectively.
- *Meet with representatives of interested tribes to review broad issues.* FTA, FHWA, and the Seattle Multimodal Project staff will meet with interested tribes early in the NEPA review process in order to establish:
  - A mutual understanding of the aspects of the Seattle Multimodal Project which are likely to be of interest to the tribes.
  - Preliminary information about the potential for the Project to affect tribal land, historical or cultural resources, fishing and other aquatic resources, or any other issues of tribal concern.
- *Seek to resolve issues in parallel with project planning and permitting activities.* FTA, FHWA, and the Seattle Multimodal Project staff will keep the interested tribes fully informed throughout the project environmental process. FTA, FHWA, and the Seattle

Multimodal Project staff will take the following actions to ensure an effective government-to-government consultation:

- Seek tribal input regarding alternatives and opportunities to avoid, reduce, or otherwise mitigate the effects of the Seattle Multimodal Project on tribal interests.
- Seek tribal input throughout the project's environmental review, permitting and regulatory review processes.

The tribal contacts of federally recognized tribes who have expressed an interest in the project and are as follows:

### **Federally Recognized Tribes**

Muckleshoot Indian Tribe of the Muckleshoot Reservation 39015 172 <sup>nd</sup> Ave SE Auburn, WA 98092	The Honorable Virginia Cross, Chair Laura Murphy, Cultural Resources Karen Walter, Natural Resources Glen St. Amant, Fisheries Habitat Mgr.
Suquamish Indian Tribe of the Port Madison Reservation P.O. Box 498 Suquamish, WA 98392-0498	The Honorable Leonard Forsman, Chair Dennis Lewarch, THPO Michelle Hanson, Tribal Attorney Richard Brooks, Natural Resources
Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation P. O. Box 151 Toppenish, WA 98948	The Honorable Harry Smishkin, Chair Johnson Meninick, Cultural Resources
Tulalip Tribes of the Tulalip Reservation 6406 Marine Drive Tulalip, WA 98271	The Honorable Herman Williams, Sr., Chair Richard Young, Cultural Resources Daryl Williams, Environmental Liaison
Snoqualmie Tribe of Washington P. O. Box 969 Snoqualmie, WA 98065	The Honorable Carolyn Lebenau, Chair Steven Mullen-Moses, Cultural Resources
Stillaguamish Tribe of Washington P.O. Box 277 Arlington, WA 98223	The Honorable Shawn Yanity, Chair Kerry Lyste, Cultural Resources

The following table identifies key points in the NEPA review process where FTA, FHWA, and the Seattle Multimodal Project team will seek tribal review and input. During this consultation, we will strive to resolve tribal concerns on an ongoing basis.

<b>Event</b>	<b>Approximate Timeframe</b>	<b>Consultation Activity</b>	<b>Desired Outcome</b>
Project Scoping	February 2012	Share detailed information regarding the project scope, purpose and need, draft alternatives, anticipated environmental effects, and schedule	Feedback identifying issues associated with the project scope.
Build alternative review	Feb. – Oct. 2012	Discuss the build alternative, potential effects, and mitigation (meetings)	Understanding of the potential build alternative impacts and agreement on potential mitigation
Preparation of discipline studies	Sept. 2012 – Dec. 2013	Solicit review and comment on selected discipline studies (meetings and document review)	Early identification of issues associated with environmental analysis
Preparation of EA	Feb. 2013 – March 2014	Preview selected EA text per interest prior to circulation. (meetings and document review)	Resolution of any issues identified
FONSI	June. 2014	Discuss results of environmental review and final resolution of Section 106 and government-to-government issues (meetings)	Agreement on project's concept and approach as set forth in the environmental decision document; agreement on approach and timeline for resolving any issues
Negotiation of Treaty Fishing Protocols or Coordination Plan	Dec 2013 – June 2014	Continue government-to-government coordination and develop a Treaty Fishing protocol plan.	Treaty Fishing protocol plan
Permits and Approvals	July. 2014 – July 2015	To be determined	To be addressed in amendment to consultation plan
Construction	Aug. 2015 – June 2021	To be determined	To be addressed in amendment to consultation plan

## 5. ATTACHMENT

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The basic Unanticipated Discovery Plan for the Seattle Multimodal Project to be modified as required.

### **PLAN AND PROCEDURES FOR THE UNANTICIPATED DISCOVERY OF CULTURAL RESOURCES AND HUMAN SKELETAL REMAINS**

#### **SEATTLE MULTIMODAL TERMINAL AT COLMAN DOCK PROJECT**

#### **KING COUNTY WASHINGTON**

**2014**

### **1. INTRODUCTION**

The Washington State Department of Transportation - Ferries Division (WSF) is currently designing structures for a future project to preserve the existing Colman Dock ferry terminal in Seattle, WA. Additional geotechnical information in the form of core borings is required to complete the design. Geotechnical and environmental information will be assessed from the borings.

The following Unanticipated Discovery Plan (UDP) outlines procedures to follow, in accordance with state and federal laws, if archaeological materials or human remains are discovered.

### **2. RECOGNIZING CULTURAL RESOURCES**

A cultural resource discovery could be prehistoric or historic. Examples include:

- An accumulation of shell, burned rocks, or other food related materials
- Bones or small pieces of bone,
- An area of charcoal or very dark stained soil with artifacts,
- Stone tools or waste flakes (i.e. an arrowhead, or stone chips),
- Clusters of tin cans or bottles, logging or agricultural equipment that appears to be older than 50 years,
- Buried railroad tracks, decking, or other industrial materials.

When in doubt, assume the material is a cultural resource.

### 3. ON-SITE RESPONSIBILITIES

**STEP 1: STOP WORK.** If any WSF employee, contractor or subcontractor believes that he or she has uncovered any cultural resource at any point in the project, all work in areas that have the potential to impact the discovery must stop. The discovery location should not be left unsecured at any time.

**STEP 2: NOTIFY MONITOR.** If there is an archaeological monitor for the project, notify that person. If there is a monitoring plan in place, the monitor will implement its provisions.

**STEP 3: NOTIFY WSF PROJECT MANAGEMENT AND CULTURAL RESOURCES (CR) PROGRAM MANAGER.** Contact the WSF Project Manager and the CR Program Manager:

WSDOT Project Manager:

Genevieve Rucki  
206-515-3461  
ruckig@wsdot.wa.gov

CR Program Manager:

Scott Williams  
360-570-6651  
Cell: 360-628-3219  
willias@wsdot.wa.gov

If you can't reach the CR Program manager, contact your project's assigned Cultural Resources Specialist:

Assigned CR Specialist:

Kevin Bartoy  
NWR Archaeologist  
206- 440-4525 (office)  
206- 491-9242(cell)  
bartoyk@wsdot.wa.gov

The Project Manager or the Cultural Resources Program Manager will make all other calls and notifications.

If human remains are encountered, treat them with dignity and respect at all times. Cover the remains with a tarp or other materials (not soil or rocks) for temporary protection in place and to shield them from being photographed. Do not call 911 or speak with the media.

### 4. FURTHER CONTACTS AND CONSULTATION

#### A. Project Manager's Responsibilities:

- **Protect Find:** The WSF Project Manager is responsible for taking appropriate steps to protect the discovery site. All work will stop in an area adequate to provide for the total security, protection, and integrity of the resource not less than 30 feet. Vehicles, equipment, and unauthorized personnel will not be permitted to traverse the discovery site. Work in the protected area will not resume until treatment of the discovery has

been completed following provisions for treating archaeological/cultural material as set forth in this document.

- Direct Construction Elsewhere On-site: The WSF Project Manager may direct construction away from cultural resources to work in other areas prior to contacting FTA, FHWA, DAHP, and the tribes listed in Part 4.B of this plan.
- Contact CR Manager: If the CR Program Manager has not yet been contacted, the Project Manager will do so.

B. CR Program Manager's Responsibilities:

- Identify Find: The CR Program Manager (or a CR Specialist if so delegated), will ensure that a qualified individual (that is, someone who meets the Secretary of the Interior Standards) examines the find to determine if it is archaeological.
  - If the qualified individual determines the find is not archaeological, work may proceed with no further delay.
  - If it is determined to be archaeological, the Manager or Specialist will continue with notification.
  - If the find may be human remains or funerary objects, the Manager or Specialist will ensure that a qualified individual, as described above, examines the find. If it is determined to be human remains, the procedure described in Section 5 will be followed.
- Notify DAHP: The CR Program Manager (or a CR Specialist if so delegated) will contact the Department of Archaeology and Historic Preservation (DAHP). Either the CR Program Manager or the Coroner will relay the Coroners' determination to DAHP.
- Notify federal agencies: The CR Program Manager (or CR specialist if so delegated) will contact the involved federal agencies.
- Notify Tribes: If the discovery may relate to Native American interests, the Manager or Specialist will also contact the project's Tribal Liaison, or, if the project is not assigned a Liaison, the Executive Tribal Liaison. If requested by one or more tribes, the federal agencies may assume all authority over tribal consultation.

Federal Agencies:

Federal Transit Administration  
Daniel G. Drais  
Environmental Protection Specialist  
206-220-4465  
Daniel.Drais@dot.gov

Federal Highway Administration  
Lindsey Handel  
Urban Transportation Engineer  
360-753-9550  
Lindsey.Handel@dot.gov

Department of Archaeology and Historic Preservation:

Dr. Allyson Brooks

or

Washington State Historic  
Preservation Officer  
360-586-3066

Matthew Sterner  
Transportation Archaeologist  
360-586-3082

Tribal Liaisons:

Project Tribal Liaison  
Phillip Narte  
206-389-8563  
Nartep@wsdot.wa.gov

Government Relations Tribal Liaison  
Megan Cotton  
360-705-7025  
cottonm@wsdot.wa.gov

The Tribal Liaison, or CR Program Manager or Specialist, will contact the interested and affected Tribes.

**Federally Recognized Tribes**

Muckleshoot Indian Tribe of the Muckleshoot  
Reservation

Laura Murphy, Cultural Resources  
253-876-3312

[laura.murphy@muckleshoot.nsn.us](mailto:laura.murphy@muckleshoot.nsn.us)

Suquamish Indian Tribe of the Port Madison  
Reservation

Dennis Lewarch, THPO  
360-394-8529

[dlewarch@suquamish.nsn.us](mailto:dlewarch@suquamish.nsn.us)

Confederated Tribes and Bands of the Yakama  
Indian Nation of the Yakama Reservation

Johnson Meninick, Cultural Resources  
509-865-5121, ext 4737

[johnson@yakama.com](mailto:johnson@yakama.com)

Tulalip Tribes of the Tulalip Reservation

Richard Young, Cultural Resources  
360-716-2652

[ryoung@tulaliptribes-nsn.gov](mailto:ryoung@tulaliptribes-nsn.gov)

Snoqualmie Tribe of Washington

Steve Mullen-Moses, Cultural Resources  
425-531-0120 (cell)

[steve@snoqualmienation.com](mailto:steve@snoqualmienation.com)

Stillaguamish Tribe of Washington

Kerry Lyste, Cultural Resources

[klyste@stillaguamish.com](mailto:klyste@stillaguamish.com)

360-652-7362

### **Non-Federally Recognized Tribe**

Duwamish Indian Tribe

The Honorable Cecile Hansen, Chairwoman

206-431-1582

[DTS@qwestoffice.net](mailto:DTS@qwestoffice.net)

## **5. SPECIAL PROCEDURES FOR THE DISCOVERY OF HUMAN SKELETAL MATERIAL**

Any human skeletal remains, regardless of ethnic origin, will at all times be treated with dignity and respect.

If the project occurs on federal lands (e.g., national forest or park, military reservation) the provisions of the Native American Graves Protection and Repatriation Act of 1990 apply, and the responsible federal agency will follow its provisions. Note that state highways that cross federal lands are on an easement and are not owned by the state.

If the project occurs on non-federal lands, WSDOT will comply with applicable state and federal laws, and the following procedure:

### **A. Notify Law Enforcement Agency or Coroner's Office:**

In addition to the actions described in Sections 3 and 4, the Project Manager will immediately notify the local law enforcement agency or coroner's office.

The coroner (with assistance of law enforcement personnel) will determine if the remains are human, and whether the discovery site constitutes a crime scene, and will notify the CR Program Manager or DAHP of its determinations.

If the human remains are determined to be non-forensic, the State Anthropologist will determine if the remains are tribal and report that finding to any appropriate cemeteries and affected tribes.

**Seattle Police Department, 206-625-5011**

**Dr. Guy Tasa**

**State Physical Anthropologist**

**Department of Archaeology and Historic Preservation**

**360-586-3534**

### **B. Participate in Consultation:**

Per RCW 27.53.030, RCW 68.50, and RCW 68.60, DAHP will have jurisdiction over non-forensic human remains. WSDOT personnel will participate with the federal agencies in consultation with tribes unless a tribe objects.

## **6. DOCUMENTATION OF ARCHAEOLOGICAL MATERIALS**

Archaeological deposits discovered during construction will be assumed eligible for inclusion in the National Register of Historic Places under Criterion D unless determined otherwise by DAHP.

Cultural Resources Program staff will ensure the proper documentation and assessment of any discovered cultural resources in cooperation with the federal agencies, DAHP, affected tribes, and a contracted consultant (if any). The procedures below are assumed appropriate to inadvertent finds, but different procedures may be used consistent with the best professional judgment of the archaeologists and consulting parties.

All prehistoric and historic cultural material discovered during project construction will be recorded by a professional archaeologist on State of Washington cultural resource site or isolate form using standard techniques. Site overviews, features, and artifacts will be photographed; stratigraphic profiles and soil/sediment descriptions will be prepared for subsurface exposures. Discovery locations will be documented on scaled site plans and site location maps.

Cultural features, horizons and artifacts detected in buried sediments may require further evaluation using hand-dug test units. Units may be dug in controlled fashion to expose features, collect samples from undisturbed contexts, or interpret complex stratigraphy. A test excavation unit or small trench might also be used to determine if an intact occupation surface is present. Test units will be used only when necessary to gather information on the nature, extent, and integrity of subsurface cultural deposits to evaluate the site's significance. Excavations will be conducted using state-of-the-art techniques for controlling provenience.

Spatial information, depth of excavation levels, natural and cultural stratigraphy, presence or absence of cultural material, and depth to sterile soil, regolith, or bedrock will be recorded for each probe on a standard form. Test excavation units will be recorded on unit-level forms, which include plan maps for each excavated level, and material type, number, and vertical provenience (depth below surface and stratum association where applicable) for all artifacts recovered from the level. A stratigraphic profile will be drawn for at least one wall of each test excavation unit.

Sediments excavated for purposes of cultural resources investigation will be screened through 1/8-inch mesh, unless soil conditions warrant 1/4-inch mesh.

All prehistoric and historic artifacts collected from the surface and from probes and excavation units will be analyzed, catalogued, and temporarily curated. Ultimate disposition of cultural materials will be determined in consultation with the federal agencies (if any), DAHP, and the affected tribes. WSDOT will be responsible for the decisions and fees associated with appropriate long-term curation or donation of prehistoric, ethnohistoric, and historic artifacts, data samples, and records resulting from the project investigation.

Within 90 days of concluding fieldwork, a technical report describing all monitoring and resultant archaeological excavations will be provided to the Project Manager, who will

forward the report to the WSDOT Cultural Resources Program for review and delivery to the federal agencies, DAHP, and the affected tribe(s).

If assessment activity exposes human remains (burials, isolated teeth, or bones), the process described in Section 7 below will be followed.

## **7. PROCEEDING WITH CONSTRUCTION**

Project construction outside the discovery location may continue while documentation and assessment of the cultural resources proceed. A WSDOT CR Specialist must determine the boundaries of the discovery location. In consultation with the federal agencies, DAHP and affected tribes, Project Manager and Cultural Resources Program staff will determine the appropriate level of documentation and treatment of the resource. If federal agencies are involved, the agencies will make the final determinations about treatment and documentation.

Construction may continue at the discovery location only after the process outlined in this plan is followed and WSDOT the federal agencies, and DAHP determine that compliance with state and federal laws is complete.

## **8. CONTRACTS FOR CONSTRUCTION AND FIELD DISTURBING WORK**

WSDOT will include provisions in any contracts for construction or field-disturbing work that provide the ability of WSDOT and federal, state and local government agencies to implement the requirements of this Plan.