

## Chapter 456 Cultural resources

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### 456.01 Introduction

It is WSDOT policy to avoid, minimize or mitigate adverse impacts to cultural resources in planning, constructing, operating, or maintaining the state's transportation system. The term *cultural resources* refers to sites, buildings, structures, districts, and objects fifty-years of age or older. Archaeological sites include precontact and historic-era surfaces, buried or underwater features, and artifacts. Historic properties consist of buildings and structures such as buildings, roads, bridges, railways, vessels, canals, ditches, geological features, and other features of the landscape.

Transportation projects and maintenance activities sponsored or performed by WSDOT Regions and Modes have potential to impact cultural resources. These actions are subject to compliance with state and federal regulations that govern the treatment of archaeological, historical, and cultural resources.

### 456.02 Applicable statutes, regulations, and executive orders

#### 456.02(1) Federal

- Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, and its implementing regulations 36 CFR 800
- Section 4(f) of the Department of Transportation Act 49 USC 303
- Historic Bridge Program 12 U.S.C 144(g)
- National Environmental Policy Act (NEPA) of 1969 42 US 4321
- Archaeological Resources Protection Act 43 CFR 7.6-7.11
- Curation of Federally Owned and Administered Archaeological Collections 36 CFR 79

#### 456.02(2) State

- Centennial Accord
- Governor's Executive Order (GEO) [21-02 Archeological and Cultural Resources](#)
- State Environmental Policy Act [WAC 197-11](#) and [WAC 468-12](#)
- Abandoned and Historic Cemeteries Act [RCW 68.60](#)
- Indian Graves and Records Act [RCW 27.44](#)
- Archaeological Sites and Resources Protection Act [RCW 27.53](#)
- Archaeology and Historic Preservation [RCW 27.34.200](#)

**456.02(3) Local**

Some local jurisdictions have local landmark or cultural resources ordinances.

**456.03 Cultural resources considerations during project development****456.03(1) Planning**

[Chapter 200](#) explains how planning projects (any pre-NEPA plan) can consider environmental issues. Project teams should check to see if a planning study has been done in their project area, and if so, refer to any cultural resources documented in that study.

Cultural resources compliance begins with notifying the Region, Division, or Mode [WSDOT Cultural Resources Specialist](#) (CRS) of the proposed activity. This notification must include the project location, scope and extent of planned work, and funding sources and required permits.

**456.03(2) 456.03(2) Scoping**

Consideration of project impacts to cultural resources (i.e., archaeological sites, buildings, historic highway bridges, or cultural places) early in the planning process will help identify potential scope and scheduling impacts.

Coordinate with the Region, Division, or Mode [CRS](#) to identify the appropriate regulatory environment and compliance process for the proposed activity. State ([GEO 21-02](#)) and federal (Section 106 of the National Historic Preservation Act (NHPA) 36 CFR 800) regulations follow similar steps in the compliance process: (1) define the project's Area of Potential Effect (APE), (2) initiate consultation with interested and affected parties, (3) identify cultural resources in the project area, and determine project impacts, and (4) work with consulting parties to avoid, minimize or mitigate adverse impacts to cultural resources. Mitigation to resolve adverse effects is achieved through consultation and formalized in an agreement. All these steps are done by or under the direct supervision of the Region,

Division, or Mode Cultural Resources Specialist in coordination with the Project Engineer and Environmental Manager.

**456.03(3) Design**

The Region, Division, or Mode CRS will work with the project office to define the project area, identify consulting parties, and initiate consultation under [GEO 21-02](#) or Section 106 (36CFR800). The majority of WSDOT projects are subject to review under Section 106, and primarily follow the alternative compliance process illustrated in [Exhibit 400-1](#) and defined in the [Statewide Programmatic Agreement](#) with the Department of Archaeology and Historic Preservation (DAHP), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). A CRS will exempt certain activities presumed to have minimal or no potential to affect cultural resources from Section 106 review per Stipulation VII and Appendix B of the [Statewide Programmatic Agreement](#).

**456.03(4) Construction**

Consult the Region, Division, or Mode CRS to develop a project specific Inadvertent Discovery Plan (IDP) for the unanticipated discovery of cultural resources or human skeletal remains during construction. An IDP is required for all projects as stipulated in Sections [1-07.16\(4\) Archaeological and Historical Objects](#) and [1-07.16\(4\) Inadvertent Discovery of](#)

[Human Skeletal Remains](#) of the *Standards Specifications* manual. The IDP must be kept on site and provides guidance for the treatment of cultural resources if encountered during project activities. The IDP must be provided to the construction inspectors, the Project Engineer, and the construction contractor Project Manager and Foreman.

Archaeological monitoring may be required if results of the cultural resources survey indicate resources are likely to be encountered in the project area during construction (see General Special Provisions 071604.GR1 - Construction Procedures for Discovery of Archaeological and Historic Objects).

### **456.03(5) Maintenance and Operations**

Notify the Region CRS of highway maintenance activities that include ground disturbing activities. The WSDOT Maintenance Program Cultural Resources Checklist provides a mechanism to review ground disturbing maintenance work for potential impacts to cultural resources. In the case of maintenance activities that occur on tribal reservations, or federal lands, WSDOT must comply with provisions of Maintenance agreements with the affected tribes or federal land-owning agencies (USFS, NPS, BLM, BIA, USFWS, etc.). Certain maintenance activities may also be subject to review under [GEO 21-02](#).

## **456.04 Analysis and documentation requirements**

Section 106 is a separate regulatory process from NEPA, however, Section 106 compliance must be documented prior to NEPA completion (regardless of NEPA classification). The level of detail that is needed for compliance with Section 106 and state requirements depends on the scale and scope of the project. The size of the area of potential effect and the project activities are the key factors.

### **456.04(1) Analysis and Methodology**

#### **Federal**

Section 106 of the NHPA (36 CFR 800): Federally funded projects or permitted activities, or projects that occur on federal (including Indian/tribal) land are subject to review under Section 106 of the NHPA (implementing regulations 36 CFR 800, see below). Section 106 is a consultative process and federal requirement to avoid, minimize or mitigate impacts to historic properties. Historic properties consist of sites, districts, traditional cultural properties, buildings and structures such as roads, bridges, railways, vessels, and other features of the landscape. WSDOT recognizes the historical significance of roads and highways in Washington State and considers project impacts to roadways at least 50 years of age and deemed significant according to the National Register criteria as determined by the CRS-Historian. The evaluation methods developed by WSDOT and described in the [Guidelines for Identifying and Evaluating the Historic Significance of Washington State Highways](#) (PDF 57KB) focus on engineered features. This approach takes into consideration the original alignment, road prism and site distance that reflect the historic character of a roadway.

Projects impacting historic highway bridges must also comply with stipulations of the Historic Bridge Program (23 U.S.C. 144(g)) requiring that WSDOT provide an opportunity for the sale or donation of National Register eligible or listed bridges proposed for demolition as part of a replacement project. The [WSDOT Cultural Resources Compliance Guidance for Historic Bridge Projects](#) (PDF 113KB) provides a step-by-step guide to the Section 106 and Section 4(f) review process for highway bridges, as illustrated in [Exhibit 400-3](#).

The majority of WSDOT projects are reviewed under Section 106 and primarily follow the alternative compliance process illustrated in [Exhibit 400-1](#) and defined in the [Statewide Programmatic Agreement](#) with DAHP, FHWA, and the US Forest Service (USFS). WSDOT, on behalf of FHWA or USFS, will (1) define the area of potential effect (APE), (2) initiate consultation with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), Tribes and other interested and affected parties, (3) identify historic properties with potential to be impacted by project activities within the APE or oversee and review work done by consultants hired to identify historic properties, (4) determine NRHP eligibility of resources and project effects, and (5) work with the Region and consulting parties to develop ways to avoid, minimize or mitigate adverse impacts to cultural resources. Mitigation to resolve adverse effects is achieved through consultation and formalized in a legally binding agreement, either a Memorandum of Agreement (MOA) or Programmatic Agreement (PA).

If there is no FHWA or USFS nexus for the project but there is another federal agency involved (e.g., FRA, FAA, BLM, NPS, etc.), the WSDOT CRS will work with that agency's cultural resources staff to determine how the Section 106 process will be done and who will do the consultation; some federal agencies are willing to adopt the terms of the [FHWA Statewide Programmatic Agreement](#) and others are not.

If the Corps of Engineers (Corps) is the only federal agency nexus (e.g., a state-funded project that needs a Corps permit), the project follows one of the Track processes in the Memorandum For Agreement between the Corps and WSDOT. The WSDOT CRS will work with the Corps cultural resources staff to determine which Track (A, B, or C) the project falls under. The MFA allows WSDOT to initiate Section 106 consultation for the project prior to the permit request being processed by the Corps.

Section 106 is a separate regulatory process from NEPA and must be completed for projects that are Categorical Exemptions under NEPA. While both NEPA and NHPA require federal agencies to consider project impacts to historic properties, projects that are categorical exclusions under NEPA are not exempt from Section 106 review.

Section 106 is a procedural law whereas Section 4(f) of the US Department of Transportation Act is a substantive law that requires avoidance to use of NRHP eligible or listed historic properties, if prudent and feasible. Section 4(f) applies only to agencies within the US DOT. Requirements for documentation of the Section 4(f) resource (historic property) differ by level of use or impact (see [Section 4\(f\) Evaluation Guidance](#)). A prescribed list of activities presumed to have minimal or no potential to affect cultural resources may be exempted from Section 106 and GEO 21-02 review per stipulations of the [Statewide Programmatic Agreement](#) and GEO 21-02 Memorandum of Understanding (MOU). The Region, Division, or Mode CRS will determine if a project meets criteria for exemption. If the activity cannot be exempted, the region, Division, or Mode CRS will provide guidance on Section 106 or GEO 21-02 consultation for the proposed project.

The [Program Comment for Common Post-1945 Concrete and Steel Bridges](#) issued by the ACHP in 2012 exempts common (mass produced) post-1945 concrete and steel bridges and culverts from Section 106 review. The intent of the Program Comment is to streamline the review process for those structures lacking distinction; that have not previously been listed or determined eligible for listing on the National Register; and that are not located in or adjacent to historic districts. A list of exceptions to the Program Comment ([Bridge Program Comment Excepted Bridges List](#)), identify structures of exceptional quality that remain subject to Section 106 review.

The 2005 [Section 106 Exemption Regarding Effects to the Interstate Highway System](#) by the Advisory Council of Historic Preservation (ACHP) excludes the majority of Interstate Highway Features from consideration as historic properties under Section 106 of the NHPA. FHWA maintains a list (by state) of [Nationally and Exceptionally Significant Features of the Federal Interstate Highway System](#) that identify interstate highway bridges and segments of highway containing bridges determined by the FHWA to be of exceptional national significance in Washington State. These properties are subject to review under Section 106.

### **State (No federal nexus)**

State funded activities are subject to review under [GEO 21-02](#) and will follow the process outlined in the MOU with DAHP. The MOU will be developed with DAHP and Tribes regarding state funded transportation projects reviewed under GEO 21-02. GEO 21-02 is in effect however we are still developing a review process. Our existing process under GEO 05-05 will be followed until a new agreement is in place.

Projects reviewed under Section 106 are not required to undergo a separate State level review for compliance with [GEO 21-02](#). State funded projects with no federal permit or nexus undergo a similar review process to Section 106, as illustrated in [Exhibit 400-2](#). The Region, Division, or Mode CRS will work with the project office to determine the area of impact and initiate consultation with DAHP and interested tribes subject to GEO 21-02. Certain projects with minimal or no potential to effect cultural resources may be exempted from review per provisions of the GEO 21-02 MOU. The Region, Division, or Mode CRS will determine if the project meets the criteria for exemption.

The GEO 21-02 compliance process is ongoing until project impacts are determined and an approach to avoid, minimize, or mitigate any impacts is developed and formalized through an MOU with DAHP.

### **Required Documentation**

Cultural resources study documents shall be prepared by the Region, Division, or Mode CRS or by consultants under the direction of the WSDOT CRS for compliance with GEO 21-02 and Section 106. The survey report will conform to the DAHP reporting guidelines and provide substantive information on each archaeological site or historic structure within the study area, including a physical description, recommendation on significance (NRHP eligibility), and justification for the findings. Properties recommended eligible for NRHP listing must possess significance under the National Register Criteria and possess integrity necessary to convey that significance.

Cultural resources consultants may recommend eligibility determinations, but the formal determination of eligibility must be made by the Region, Division, or Mode CRS. A general historical context and ethnographic background should be provided and supported by maps and photographs of the project area. Survey results will also address the potential for resources to be encountered during construction and the need for archaeological monitoring. The Environmental Coordinator will develop a project specific Inadvertent Discovery Plan (IDP) using [WSDOT IDP template](#) (DOCX 62.5KB) to provide guidance for the unanticipated discovery of resources during construction. If archaeological monitoring is required, a monitoring report will be submitted to consulting parties for review by the Region, Division, or Mode CRS.

If an adverse impact to cultural resources will occur because of project activities and avoidance is not feasible, mitigation will be required. Mitigation measures to resolve the adverse impact will be developed through consultation and formalized in an agreement (MOU for GEO 21-02, or MOA for Section 106).

Section 4(f) documentation to comply with the US Department of Transportation Act may be required to address project impacts to NRHP eligible or listed cultural resources, if no feasible or prudent alternative is possible to minimize harm (see [Section 4\(f\) Evaluation Guidance](#)).

## 456.05 External engagement

Section 106 of the NHPA is a consultative process that requires input from interested and affected parties and the public on federally funded or permitted projects or those on federal land. Section 106 consultation is initiated by the Region Environmental Manager with consulting parties, including the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), Tribes, partner agencies and the public when a proposed project has potential to affect historic properties. Consultation is an iterative process and provides an opportunity for interested parties and the public to weigh in on decision making throughout the Section 106 review process.

Federally recognized tribes have a specific role in the Section 106 process, per the implementing regulations in 36 CFR 800. Federally recognized tribes maintain the right to ask for government-to-government consultation with federal agencies, and the level of tribal participation in technical consultation is decided by the tribes, not by WSDOT. Federally recognized tribes are not considered the “public” and can request separate meetings outside of and in addition to public meetings.

Stipulations of the Historic Bridge Program ([23 U.S.C. 144\(g\)\(5\)](#)) require WSDOT to provide an opportunity for the adoption or reuse of historic highway bridges proposed for demolition as part of a replacement project. Proposals are welcome from the public and must demonstrate the recipient can successfully (a) relocate or preserve the bridge in place, and (b) maintain its historic character.

## 456.06 Internal Roles and responsibilities

### 456.06(1) *Region/Mode Environmental Manager*

Consult with Tribes annually on proposed transportation projects and maintenance activities planned for the Region, Division, or Mode, as required per stipulations of the [Statewide Programmatic Agreement](#) and GEO 21-02 MOU.

Coordinate with the Region, Division, or Mode CRS to develop mitigation measures and consult on formal agreements (MOU per GEO 21-02, or MOA per Section 106).

### 456.06(2) *Project Engineer*

Coordinate with the Region, Division, or Mode CRS assigned to the project to identify potential cultural resource concerns during project planning and scoping and develop the project APE.

Work with CRS to avoid or minimize impacts to cultural resources impacted by project design, or to develop potential mitigation to resolve adverse effects. Mitigation costs are the responsibility of the project and come from project funds.

**456.06(3) Environmental Coordinator**

Work with the Region, Division, or Mode CRS to determine appropriate state or federal regulatory environment for projects and determine exemptions, if applicable. Work with the CRS and Project Engineer to develop the project APE, identify consulting parties and participate in consultation under the applicable state or federal regulation.

If a cultural resources survey is required, work with the CRS to develop a Scope of Work for consultants. Cultural resources work must be reviewed by the Region, Division, or Mode CRS for compliance and quality, prior to submission to consulting parties.

Work with the project CRS to develop mitigation strategies to resolve adverse impacts to cultural resources, assist in consultation, and draft agreement documents.

Review with Region CRS maintenance activities (see checklist for cultural resources for maintenance activities) for potential impacts to cultural resources.

Consult CRS to identify environmental commitments for construction, including archaeological monitoring and curation requirements. The WSDOT project office, with the aid of the project CRS, is responsible to address curation of archaeological collections in contracts with cultural resource consultants.

The Environmental Coordinator, with input from the project CRS, will develop a project specific IDP to address the unanticipated discovery of cultural resources during project activities.

**456.06(4) Cultural Resources Specialist**

Each WSDOT Region, Mode, and Division has an assigned [Cultural Resources Specialist](#), either place-based in the Region or Mode or within the Cultural Resources Program at Headquarters. The CRS reviews all Region, Mode, and Division projects for their potential to impact cultural resources, determines if exemptions from the Section 106 [Statewide Programmatic Agreement](#) can be applied. If the project can be exempted, the CRS documents the exemption and notifies the Project Manager. If the project cannot be exempted, the CRS works with the Project Manager to develop an Area of Potential Effects description and map, and coordinates consultation with DAHP, federal agencies, tribes, and the public to complete the steps of the Section 106 process.

The ESO Cultural Resources Program Manager will be notified by either the Region, Division, or Mode CRS or the Environmental Manager when issues arise with consulting parties that might have agency-wide implications for WSDOT, or that might set a precedent for other WSDOT projects. The Cultural Resources Program Manager is responsible for developing statewide WSDOT policies regarding cultural resources, and provides expert technical assistance for any Region, Division, or Mode project that encounters difficulties in cultural resources compliance.

## 456.07 Mitigation

If cultural resources cannot be avoided during project planning or construction, mitigation is required to resolve adverse effects to NRHP eligible or listed resources. Mitigation will be determined through consultation and formalized in an agreement (MOU per GEO 21-02, or MOA per Section 106). The [Statewide Programmatic Agreement](#) provides guidance for mitigating project impacts. Mitigation efforts must always be commensurate to the scope of the project, be reasonable, cost effective and designed to address the actual effects of the project on historic properties. Standard mitigation measures are often applied, but development of creative mitigation measures is encouraged. Common mitigation measures include excavation, relocation, rehabilitation, recordation, screening, signage and public interpretation. Consult the Region, Division, or Mode CRS and the ESO Cultural Resources Program Manager to develop appropriate mitigation measures.

## 456.08 Applicable permits and approval process

State funded projects subject to review under [GEO 21-02](#) may require an [Archaeological Site Alteration & Excavation Permit](#) issued by DAHP for alterations to sites (as defined under [RCW 27.53.030\(3\)](#)). Precontact sites, regardless of NRHP eligibility status, and NRHP eligible or listed historic- era sites require a permit for alterations or disturbance. Alterations are defined as any level of disturbance that would change or potentially impact a site but primarily include archaeological excavation, removal and collection of artifacts.

The Section 106 compliance process fulfills obligations for the DAHP permit. Archaeological investigations or disturbance of sites, including excavation or removal of archaeological resources from federal lands require a permit issued under the [Archaeological Resources Protection Act \(ARPA\) 16 U.S.C 470](#). ARPA permits are completed by a WSDOT CRS (qualified applicant) and outline the nature and location of the archaeological investigation or research, and arrangements for curation of artifacts and records.

## 456.09 Abbreviations and acronyms

ACHP	Advisory Council on Historic Preservation (federal)
BLM	Bureau of Land Management, U.S. Department of the Interior
Corps/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

## 456.10 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 assistance 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.

**Criteria for Evaluation (National Register Eligibility Criteria)** – Standards used for determining the eligibility of properties for inclusion in the National Register of Historic Places (36 CFR 60.4(a-d)). See National Register Bulletin 15, pp. 11-24.

**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 several 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)).

## 456.11 Exhibit

[Exhibit 456-1](#) WSDOT Curation Policy

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## **Exhibit 456-1      WSDOT Curation Policy**

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### **I.      WSDOT POLICY ON THE CURATION OF ARCHAEOLOGICAL COLLECTIONS**

This document outlines WSDOT’s policy on the curation of artifacts and records recovered during investigations undertaken in compliance with either Section 106 of the National Historic Preservation Act (NHPA) as amended (“Section 106”) or the Washington State Archaeological Resources and Sites Act ([Chapter 27.53 RCW](#)). Federal regulations establish standards for the preparation and curation of archaeological collections. An archaeological collection is defined as all artifacts, field notes, maps, photographs and other records generated or recovered during an archaeological investigation.

Nothing in this policy shall be construed as to preclude consultation with Tribes per the Centennial Accord, or other agreements establishing the rights of Tribes to government-to-government consultation.

#### **A.      Factors in Determining a Curation Facility**

In Washington State, there are two main factors that must be considered in determining where archaeological collections will be curated. The first factor is land ownership, as under federal and state law recovered artifacts legally belong to the owner of the property at the time of excavation. The second factor is 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).

#### **B.      Federal and State Laws, Regulations and Guidance**

##### **1.      36 CFR 79 and the National Historic Preservation Act**

Federal regulations (36 CFR 79, “Part 79” herein) establish standards for federal agencies to preserve archaeological collections recovered under the authority of Section 110 of the NHPA (16 U.S.C. 470h-2). The mandates under Section 110 are largely applicable to federally owned or controlled properties, however, 36 CFR 79.4(a)(2)(v) states that records and documents relating to Section 106 compliance are subject to the 36 CFR 79 regulation. Under the implementing regulations for Section 106 of the NHPA (36 CFR 800), the Advisory Council on Historic Preservation (ACHP) has issued guidance\* regarding the treatment of archaeological sites and artifacts. When data recovery is undertaken as a resolution of adverse effects, the ACHP guidance specifies that “appropriate arrangements for curation of archaeological materials and records should be made.” A MOA or PA should include a provision for curation of archaeological artifacts and records at an appropriate facility, if archaeological investigations are undertaken. Curation

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\* *Recommended Approach for Consultation on Recovery of Significant Information From Archaeological Sites, effective June 17, 1999*

must be in accordance with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, which defines proper curation standards as including the following four criteria:

- Curation facilities have adequate space, facilities and professional personnel.
- Archaeological specimens are maintained so that their information values are not lost through deterioration and records are maintained to a professional archival standard.
- Curated collections are accessible to qualified researchers within a reasonable time of having been requested.
- Collections are available for interpretive purposes, subject to reasonable security precautions.

## **2. Native American Graves Protection and Repatriation Act (NAGPRA)**

The Native American Graves Protection and Repatriation Act (NAGPRA 1990) protects Native American graves and sacred objects on Federal and tribal lands. Subpart B of NAGPRA applies to the discovery of human remains, funerary objects, sacred object or objects of cultural patrimony on federal or tribal land after November 16, 1990. The law regulates discoveries made during intentional archaeological investigations as well as inadvertent discoveries. If human remains are identified, §10.6 outlines the preferred custody of the human remains and associated objects; tribal custody is preferred, however it is possible that a tribe may request a third-party repository temporarily house NAGPRA items. Consultation is required throughout the process; §10.5 outlines the consultation requirements.

If burials or sacred objects are found on federal land during an archaeological survey conducted under Section 106, the federal agency landowner is required to consult with the Tribe concerning treatment of the remains or sacred objects.

## **3. Archaeological Sites and Resources Act (Chapter 27.53 RCW)**

The Washington State Archaeological Sites and Resources Act ([Chapter 27.53 RCW](#)) requires an archaeological excavation and removal permit, pursuant to [Chapter 25-48 WAC](#), in order to excavate within the boundaries of an archaeological site on public and private lands in Washington State, unless there is a federal nexus for the project which would require compliance with Section 106. If the project is on public lands, permit applicants must identify the curation facility that will receive the collections from the project. This facility must meet Part 79 standards. If the project is conducted on private land, the records must be stored at a curation facility even if the private landowner wishes to retain custody of the artifacts. Excavation permit applicants may temporarily store collections in a repository that meets Part 79 standards until the appropriate Tribe establishes facilities that meet Part 79 standards.

## 4. Indian Graves and Records Act (Chapter 27.44 RCW) and Historic Cemeteries and Graves (Chapter 68.60 RCW)

The Washington State Indian Graves and Records Act ([Chapter 27.44 RCW](#)) allows “examination” of Native American graves or cairns on non-federal or non-tribal lands within the State of Washington as long as the collected material is “destined for reburial or perpetual preservation in a duly recognized archaeological repository” ([RCW 27.44.020](#)).

If human remains are identified on non-federal or non-tribal lands within the state of Washington, several laws outline the process that must be followed ([RCWs 68.50.645](#), [27.44.055](#), and [68.60.055](#)). There is no expectation that these human remains will be curated.

### C. Expectations for Collecting Artifacts during Archaeological Investigations

There are generally three types of archaeological investigations conducted for WSDOT projects: survey (during which a site would be identified); testing (during which a site would be evaluated); and data recovery (during which unavoidable impacts to a site would be mitigated).

Normally, WSDOT will not have purchased right-of-way (ROW) when survey and testing studies are conducted for proposed projects. It is more likely that WSDOT would have purchased the required ROW before undertaking data recovery (excavation), although this is not always the case. Therefore, it is important that the status of property ownership during each phase of archaeological investigation be known. Recovered artifacts legally belong to the owner of the property at the time of excavation. A private landowner’s consent will be required to curate artifacts at the selected repository.

#### 1. Survey

Generally, no artifacts are collected during survey. Exceptions would include unique or rare artifacts (such as a pre-contact fluted projectile point) or artifacts that would be in danger of being destroyed if not collected from the site.

If investigations at a site identified during survey continue and change into testing, the associated field records generated by WSDOT or its consultants during the survey (maps, photographs, field notes) are expected to be curated with the subsequent testing collections.

#### 2. Testing

Testing of an archaeological site is usually carried out under a site-specific testing plan which will be approved by WSDOT in advance of the fieldwork. The testing plan should outline the research design including artifact analysis. It is generally expected that artifacts and samples will be collected during testing efforts. The resulting collections would be curated at a repository that would be identified prior to fieldwork.

If testing will be conducted prior to WSDOT purchasing the required ROW, WSDOT will attempt to determine before testing is initiated whether the property owner intends to donate the collection to a repository that meets Part 79 Standards. The property owner may be asked to sign a letter of intent to donate the collections prior to the start of testing. A deed of gift would be signed by the landowner at the time of transfer of custody.

If investigations at a site will continue from testing into a data recovery phase, WSDOT will typically retain the artifacts recovered during testing until the data recovery report is completed. The repository should be consulted at this point to discuss whether the materials from the testing phase and data recovery phase should be treated as separate collections or one large, multi-phase collection; particularly if there is a significant amount of time between phases of archaeological investigation.

If no further investigation will be conducted or if another consultant will conduct the next investigation, WSDOT shall direct the transfer of the testing collection to the selected repository.

### **3. Data Recovery**

Archaeological sites determined to be eligible for the National Register of Historic Places are usually eligible under Criterion D for their ability to yield information important in history or prehistory. Archaeological data recovery excavations involve the recovery of that important information, which is contained in the artifacts, identified features, and associated records. The purpose of curation is to retain and preserve this information for future researchers. Archaeological data recovery generally involves a large expenditure of public funds, and it is important that these collections be preserved for the public benefit.

When data recovery excavations will be conducted prior to WSDOT purchasing the required ROW, WSDOT will attempt to determine before excavations are initiated whether the property owner intends to donate the collection to a repository that meets Part 79 Standards. The property owner may be asked to sign a letter of intent to donate the collections prior to the start of excavation. A deed of gift would be signed at the time of transfer of custody.

### **4. Monitoring**

Archaeological monitoring during active construction projects is another type of activity WSDOT conducts. Typically, a monitoring plan outlines the types of artifacts that would be considered significant if discovered and identified during the project, and designates a curation facility. If an archaeological site is identified during monitoring but it is not considered a significant site, the artifacts will not be collected.

In rare cases a unique isolated artifact may be identified during monitoring and selected for collection. Disposition of these artifacts would be on a case-by-case basis.

## **D. 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 a consultant's office. It is the responsibility of the WSDOT Project Engineer with assistance from the Cultural Resources Specialist to ensure that archaeological collections are curated at a facility that meets the standards of Part 79 at the conclusion of the project. WSDOT is responsible for including language regarding curation in contracts with cultural resource consultants.

### **1. 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.

### **2. Collections from Federal Land**

When artifacts are recovered from federally owned land the collection is the property and responsibility of that federal agency. Unless there is an existing programmatic agreement with the federal agency specifying curation requirements<sup>†</sup>, WSDOT will submit the collection to the federal agency or their designated repository at the conclusion of the project.

### **3. 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.

## **E. Disposition of Collections from Private Property**

When WSDOT will conduct an archaeological investigation on private property, the WSDOT Cultural Resources Specialist (CRS) must discuss the issue of archaeological collections and their disposition with the landowner in advance of the fieldwork. This includes temporary easements.

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.

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<sup>†</sup> As of July 2012, the only programmatic agreement WSDOT has entered into with a land-owning federal agency is the US Forest Service.

When a property owner expresses a desire to have artifacts returned, 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 requested 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.

## **F. Disposition of Collections Collected under an MOA or PA**

For large or complex projects, WSDOT will typically enter into a 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.

## **G. 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 indefinitely.

### **1. 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.

### **2. 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.

### **3. Payment of Curation Fees**

Curation fees are to be considered part of the project compliance or mitigation cost and must be included in project budgets.

## H. Curation of Legacy Collections

Legacy collections are those archaeological collections made prior to the passage of Part 79 in 1990. WSDOT's legacy collections date to the 1950s.

The WSDOT will consider the appropriateness of integrating the study of legacy collections in cases where WSDOT will be investigating or otherwise impacting a site that has been previously excavated. If feasible, the WSDOT CRS will identify the location of the legacy collections (including records). If the legacy collections are not stored at a facility that meets Part 79 standards, then WSDOT will determine if the collection should be transferred to another repository.

If data recovery will be conducted at a site with legacy collections, WSDOT shall consider the feasibility of incorporating review and/or analysis of the legacy collections as part of the data recovery effort. The review/analysis should be conducted prior to data recovery to provide context for current investigation and to potentially reduce the sampling that will be required. It is anticipated that this approach will reduce the overall cost of data recovery efforts to WSDOT.

## II. WSDOT POLICY ON THE 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.

### A. Exhibits/Displays

WSDOT has prepared 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; decisions on whether to exhibit or display are made by the repository.

### B. 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. The time that a stand-alone facility is needed will be determined through consultation for each project.