

SECTION 106 PROGRAMMATIC AGREEMENT

PROGRAMMATIC AGREEMENT**Pursuant to Section 106 of the National Historic Preservation Act of 1966****Among the Federal Highway Administration and the Washington State Historic Preservation Officer, Pursuant to 36 CFR Part 800.14(b), Regarding the Joint Base Lewis-McChord Vicinity I-5 Improvement Project, Pierce County, Washington**

WHEREAS, the U.S. Department of Transportation, Federal Highway Administration (FHWA) has approval authority for the Joint Base Lewis-McChord Vicinity I-5 Improvement Project (the Project) in Pierce County, Washington; and

WHEREAS, the Washington State Department of Transportation (WSDOT) and FHWA are conducting tiered environmental review under the National Environmental Policy Act (NEPA) and within the Project corridor have identified two areas of study known as the North and South study areas; and

WHEREAS, FHWA and WSDOT have completed a corridor level or tier 1 environmental review for the South Study Area and have completed a project specific or tier 2 environmental review for the North Study Area under NEPA; and

WHEREAS, the North Study Area proposal includes widening of I-5 between Thorne Lane and the vicinity of the DuPont-Steilacoom Interchange (Exit 119), as well as reconstruction of the Thorne Lane and Berkeley Street Interchanges, and other improvements, while the South Study Area may propose improvements between Mounts Road (Exit 116) and the DuPont-Steilacoom Interchange; and

WHEREAS, FHWA and WSDOT have determined, in consultation with SHPO, that the area of potential effects (APE) for the Project is defined as (1) a direct effect area, which includes the horizontal and vertical limits of construction, staging, and laydown areas, (2) an indirect effect area in DuPont and Lakewood, which consists of tax parcels adjacent to the project limits, and (3) an indirect effect area on Camp Murray and Joint Base Lewis-McChord (JBLM), which consists of a 200-foot buffer beyond the direct effect area; and

WHEREAS, cultural resources surveys have been completed in the APE, resulting in the identification of 17 historic properties (two archaeological sites and 15 above-ground resources, including an historic district) eligible for or listed on the National Register of Historic Places (NRHP); and

WHEREAS, FHWA and WSDOT have determined, and SHPO has concurred, that no historic properties will be adversely affected by the North Study Area proposal; and

WHEREAS, the APE incorporates areas that may potentially be directly or indirectly affected by a South Study Area proposal but due to phased design development and tiered environmental review of the Project, specific improvements within the South Study Area remain unknown at the time of this agreement and effects on historic properties cannot be evaluated; and

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

WHEREAS, the following parties have been consulted and invited to concur with this Agreement: the Nisqually Indian Tribe, Puyallup Tribe of Indians, Squaxin Island Tribe, and Yakama Nation; and

WHEREAS, the Nisqually Indian Tribe and Squaxin Island Tribe have agreed to be concurring parties to this Agreement, and

WHEREAS, pursuant to 36 CFR § 800.13, FHWA, WSDOT, and SHPO have developed procedures in this Agreement to ensure that the identification and evaluation of historic properties, assessment of effects, and development of treatment and mitigation plans for unforeseen effects to historic properties are properly coordinated with all phases of the design and construction of the Project, and

NOW, THEREFORE, FHWA, SHPO, and WSDOT agree that the Project will be implemented in accordance with the following stipulations in order to take into account foreseen and unforeseen effects to historic properties.

STIPULATIONS

FHWA, in coordination with WSDOT, will ensure that the following measures are carried out:

I. General Requirements

A. Professional Qualifications

FHWA and WSDOT will ensure that all work under this Agreement is performed under the direct supervision of a qualified individual(s) in the appropriate historic preservation discipline who meets, at a minimum, the Secretary of Interior's Professional Qualification Standards as set forth in 36 CFR § 61.

B. Consultation Efforts

FHWA and WSDOT will ensure that interested and affected Indian tribes (hereinafter, "tribes") will be consulted as described in this Agreement regardless of whether they are concurring parties to this Agreement.

C. Review of Cultural Resource Documents

SHPO and consulting parties will have a review period of thirty (30) calendar days for commenting on all documents, NRHP evaluations, survey and testing plans produced under the terms of this Agreement. If multiple historic properties are involved, the review time may be extended, as appropriate, by FHWA. Documents will be submitted for review electronically unless a consulting party requests a paper copy. All project correspondence, data, and reports will be submitted to SHPO

through the Washington Information System for Architectural and Archaeological Records Data (WISAARD).

- II. Process for Consideration of Historic Properties within the South Study Area
 - A. Once sufficient design detail is available, FHWA and WSDOT, in consultation with SHPO, JBLM, affected tribes, and other interested parties, will identify the APE within which historic properties may potentially be directly or indirectly affected by a South Study Area proposal, in accordance with 36 CFR § 800.4(a)(1). The APE will be of sufficient size to account for potential physical alteration or damage to historic properties resulting from project construction, as well as potential indirect effects such as introduction of visual, atmospheric or audible elements that diminish the integrity of a property's significant historic features.
 - B. FHWA and WSDOT, in consultation with SHPO, JBLM, and tribes, will determine the scope of identification efforts within the APE for the South Study Area. Based on the results of the corridor study, future cultural resource assessments of the South Study Area are likely to include assessment of impacts to the NRHP-eligible Northern Pacific Railroad, Fort Lewis Garrison Historic District, the Quartermaster Gasoline Filling Station, Warehouses 4079 and 4170, the Red Cross Field Office, and archaeological site 45PI01316. Other future work in the South Study Area will likely include additional archaeological investigations, depending on the project footprint. Any permits necessary under the Archaeological Resources Protection Act (ARPA) will be obtained from JBLM prior to archaeological fieldwork, as appropriate. Additional efforts will include a review of existing ethnographic literature, as well as tribal consultation, in order to identify places within the APE of traditional cultural importance to Indian tribes. The SHPO, JBLM, and tribes will be invited to review scopes of work for all future cultural resource assessments.
 - C. FHWA and WSDOT will invite the SHPO, JBLM, tribes, and other consulting parties as appropriate to review the results of the cultural resources assessment for South End Construction. If FHWA and WSDOT finds that there are historic properties which may be affected by the undertaking, WSDOT will notify all consulting parties, invite their views on the effects and assess adverse effects, if any, in accordance with 36 CFR § 800.5.
 - D. If an adverse effect is found, FHWA and WSDOT will consult further to develop and evaluate alternatives or modifications to the undertaking that could avoid or minimize adverse effects on historic properties. If adverse effects cannot be avoided and the agency official and the SHPO agree on how the adverse effects will be resolved, a memorandum of agreement will be executed in accordance with 36 CFR § 800.6(b). Mitigation of effects to historic properties will be conducted according to Secretary of Interior Standards, and generated materials (e.g. forms, documents, exhibits) will be made available through WISAARD.

III. Unanticipated Discovery Plan

An archaeological monitoring and unanticipated discovery plan will be prepared, in consultation with the SHPO and other consulting parties, prior to commencement of project construction in the North and South Study Areas. The document will describe the monitoring plan for areas identified for archaeological monitoring, and will outline procedures to be followed if any unanticipated cultural resources are discovered during project construction.

IV. Cultural Resources Training

Prior to construction, the contractor(s) construction staff will be provided with cultural resources training that describes the project's unanticipated discovery plan, provides information regarding the types of cultural resources that might be encountered, and explains any monitoring or other cultural resources commitments that arise during the Section 106 review process.

V. Dispute Resolution

- A. If a dispute arises regarding implementation of this Agreement, the signatory parties will consult with the objecting party to resolve the dispute. If FHWA determines that the dispute cannot be resolved, FHWA will forward all documentation relevant to the dispute to the Council and request Council comment, which will be provided pursuant to 36 CFR § 800.6(b).
- B. If the ACHP does not provide comment regarding the dispute within the thirty (30) day time period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA will prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the Agreement, and provide them and the ACHP with a copy of such written response. FHWA's responsibilities to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

VI. Amendment of the Agreement

- A. If any of the signatories to this Agreement determine that the terms of the Agreement cannot be met or believe a change is necessary, that party will provide a written explanation for such a determination to all signatories and immediately consult with the other signatories to develop an amendment to this agreement, which will be executed in the same manner as the original Agreement. A copy of the amended Agreement will be filed with the Council, pursuant to 36 CFR § 800.6(c)(7).
- B. If the signatories cannot agree to appropriate terms to amend this Agreement, any one of these parties unilaterally may terminate the agreement in accordance with Stipulation VII.

VII. Duration & Termination

- A. This Agreement will take effect immediately upon execution by the signatory parties. Unless terminated, this Agreement will be in effect until FHWA, in consultation with signatory and consulting parties, determines that all of its terms have been satisfactorily fulfilled.
- B. If a signatory proposes to terminate this Agreement, the terminating party will promptly notify all other parties in writing of the proposed termination and will include in its notification the reasons for proposing termination and affording at least thirty (30) days to consult and seek alternatives to termination. If the Agreement is terminated pursuant to this stipulation and FHWA determines that its undertaking will nonetheless proceed, FHWA will either:
 - 1. Consult in accordance with 36 CFR § 800.6 to develop a new Agreement; or
 - 2. Request the comments of the Council pursuant to 36 CFR § 800.7 and take into account such comments in accordance with § 800.7 prior to continuing the Project.

SIGNATORY PARTY


Federal Highway Administration

By: *Daniel Mathis*
Daniel Mathis
Division Administrator

Date: 05/17/2017

SIGNATORY PARTY


Washington Department of Archaeology and Historic Preservation

By: 
Allyson Brooks, Ph.D.
State Historic Preservation Officer

Date: 5/17/17

INVITED SIGNATORY PARTY

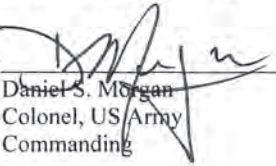
Washington State Department of Transportation

By: 
John Wynands
Regional Administrator

Date: 4/20/17

INVITED SIGNATORY PARTY

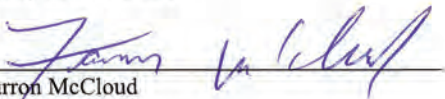
Joint Base Lewis-McChord

By:  _____
Daniel S. Morgan
Colonel, US Army
Commanding

Date: 12 MAY 2017

CONCURRING PARTY

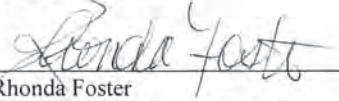
Nisqually Indian Tribe

By: 
Farron McCloud
Chairman

Date: 5/4/17

CONCURRING PARTY

Sqauxin Island Tribe

By: 
Rhonda Foster
Tribal Historic Preservation Officer

Date: 5-4-17

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Washington State
Department of Transportation



U.S. Department of Transportation
Federal Highway
Administration