

PROGRAMMATIC AGREEMENT BETWEEN
KING COUNTY,
FEDERAL HIGHWAY ADMINISTRATION,
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,
THE WASHINGTON STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING DEVELOPMENT OF THE EAST LAKE SAMMAMISH MASTER PLAN
TRAIL

WHEREAS, King County (County) proposes to construct the East Lake Sammamish Master Plan Trail (Project) within the County, and the Project is requesting funding from the Federal Highway Administration (FHWA) in the form of Transportation Efficiency Act (TEA) Grants; and

WHEREAS, in providing funding, FHWA must consider the effects of this undertaking by complying with Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations in 36 CFR 800; and

WHEREAS, FHWA has determined that it is the lead Federal agency and agreed to serve as the Agency Official who shall act on behalf of all other agencies in compliance with the NHPA; and

WHEREAS, FHWA has delegated portions of its responsibilities for compliance with Section 106 of the NHPA to the Washington State Department of Transportation (WSDOT); and

WHEREAS, FHWA has consulted with the Washington State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (Council), King County, and the Snoqualmie Tribe, Tulalip Tribes, and Muckleshoot Indian Tribe (Affected Tribes) pursuant to Section 106 of the NHPA; and

WHEREAS, FHWA has defined an initial Area of Potential Effects (APE); and

WHEREAS, the County will conduct its own review of the project design under provisions of the King County Code (K.C.C.) regulating cultural resources (K.C.C. 20.62); and

WHEREAS, WSDOT on behalf of FHWA, has initiated consultation with the SHPO and the Affected Tribes;

NOW, THEREFORE, FHWA, WSDOT, the SHPO, King County, and the Council agree that the Project will be administered and developed in accordance with the following stipulations to satisfy FHWA's Section 106 responsibilities for the Project, and that FHWA shall require that the following terms and conditions, including the Archaeological Resources Monitoring Plan and preliminary Treatment Plan, will be implemented in a timely manner and with adequate resources in compliance with NHPA.

I. Stipulations

FHWA, as lead federal agency, shall require that the following measures and stipulations be carried out.

A. Continue to define the Area of Potential Effects

An area of potential effects (APE) was defined for the initial project, which included construction of the trail. Subsequently, additional elements such as off-site mitigation areas have been or will be added to the project. Since the undertaking being funded includes these off-site mitigation areas, the County will ensure that as new elements of the Project are added and defined, revisions to the APE will be made in consultation with the SHPO, the Council, WSDOT, FHWA, and the Affected Tribes following the procedures outlined in Stipulation I (B-E) below.

B. Complete the Cultural Resource Inventory

An archaeologist meeting the Secretary of the Interior's Standards for a Professional Archaeologist has completed a background literature search, partial field inventory, and partial evaluation of archaeological resources in the APE of the Project in a manner consistent with 36 CFR § 800.4. A technical report describing the results of these initial inquiries is attached herein. Remaining to be inventoried are parking and restroom facilities. These locations are within the APE for the Project, and were identified as being archaeologically sensitive, but are not accessible to date. Also remaining to be inventoried are mitigation areas whose locations have not been identified at this point.

In order to complete the cultural resource inventory of the APE, the County will ensure that archaeological survey and testing of these locations is completed, and that formal determinations of eligibility are made for any cultural resources identified in these locations. A second technical report describing the results of these investigations, including evaluations of eligibility for all archaeological resources identified and recommendations of determinations of effect, will be produced for each separate effort. Should archaeological resources eligible for listing in the National Register of Historic Places (NRHP) or the King County Landmarks Register (KCLR) be identified within the proposed restroom, parking locations, or mitigation areas, every effort to avoid these resources will be made. Should avoidance not be possible, and FHWA makes a determination of Adverse Effect, then a Memorandum of Agreement (MOA) will be developed through consultation between FHWA, WSDOT, the SHPO, the County, the Council, and the Affected Tribes to mitigate the adverse effect.

C. Provide Cultural Resource Training to Construction Crews

Because of the high probability for encountering cultural resources in the project area, particularly in areas outside the existing railbed, cultural resources training will be conducted with all construction crews, field supervisors, and inspectors. Training will include information about the possibility of encountering cultural resources, recognition of cultural resources, and proper procedures following any discovery of cultural resources. Contracts for construction will include clauses addressing cultural

resource discovery to encourage reports of discoveries without fear of penalty.

D. Archaeological Resource Monitoring Plan

If artifacts, features, or buried A horizons are identified as a result of actions carried out in accordance with Stipulation I(B) above, monitoring for archaeological resources during construction may be necessary. The Archaeological Resources Monitoring Plan (ARMP) outlined herein is consistent with the US Secretary of the Interior's *Standards for Archaeological Documentation* (48 FR 44734-44737), Council's *Treatment of Archaeological Properties* (Advisory Council on Historic Preservation, draft 1980), and applicable Washington and King County regulations, and will be responsive to contemporary professional standards.

1. If necessary and as agreed to by all signatory parties, the County shall ensure that all ground-disturbing activities conducted in areas designated in the Master Plan Environmental Impact Statement (EIS) as "High Sensitivity" (see Section 3.13.3) shall be monitored by an archaeologist to ensure that no NRHP- or KCLR-eligible properties are impacted by development of the East Lake Sammamish Trail project without resolving these adverse effects.
2. Upon discovery of archaeological resources within the APE, work adjacent to the discovery shall cease. The archaeological monitor will immediately notify the King County Roads Services Division (RSD) Archaeologist and the DNRP Project Engineer. The RSD archaeologist will immediately notify the WSDOT H&LP Archaeologist who will notify the SHPO, FHWA, and the Affected Tribes and inform them of the unanticipated discovery. Construction will be halted within the immediate area of the discovery and the scene will be protected until consultation to determine the appropriate course of action has been conducted.
3. In order to protect the integrity of a discovery, the King County Project Engineer will take appropriate steps to protect the discovery site by ceasing all work in an area of at least 50 feet to provide for the total security, protection, and integrity of the resource. Vehicles, equipment, and unauthorized personnel will not be permitted to traverse the discovery site. Work in the immediate 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. All communications between King County DNRP and any other agency on cultural resource issues will go through the RSD archaeologist first.
4. Archaeological deposits discovered during construction will be assumed eligible under Criterion D for inclusion in the NRHP for the purposes of Section 106 compliance, in accordance with 36 CFR 800.13(c).
5. Where cultural resources are encountered during construction, but additional project effects to the resources are not anticipated, project construction may continue while documentation and assessment of the cultural resources proceeds. Continued construction will be conducted

to the extent that no additional impacts to resources should take place. The total area of work stoppage will be adequate to provide for the security, protection, and integrity of the discovery in accordance with Washington State Law. Construction may continue at the discovery location only after the process outlined in this plan is followed and FHWA is satisfied the caveats of Section 106 have been met.

6. Routine documentation of newly discovered cultural material should not impact construction schedules. Where complex or extensive cultural deposits are encountered, the project manager, RSD archaeologist, and qualified archaeological personnel will determine the appropriate level of documentation and treatment of the resource after consultation with SHPO, WSDOT, FHWA, and Affected Tribes.
7. WSDOT H&LP Archaeologist will ensure the proper documentation and assessment of any discovered cultural resources in cooperation with a contracted consultant, the SHPO, FHWA, and the Affected Tribes. Except for human remains, all prehistoric and historic cultural material discovered during project construction will be recorded by a professional archaeologist on State of Washington archaeological site or isolate form using standard techniques, except as noted in Stipulation I (E) (1-5) below. Site overviews, features, and artifacts will be photographed; stratigraphic profiles and soil/sediment descriptions will be prepared for any subsurface exposures. Discovery locations will be documented on scaled site plans and site location maps.
8. Cultural features, horizons, and artifacts detected in buried sediments may require further evaluation using hand-dug test units to clarify aspects of integrity, stratigraphic context, or feature function. Units may be dug in controlled fashion to expose features, collect radiocarbon or animal/plant macrofossil samples from undisturbed contexts, or interpret complex stratigraphy. A test excavation unit or small trench might also be used to cross-section a feature 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 potential to address significant research domains. Excavations will be conducted using techniques for controlling provenience of recovered artifacts and samples.
9. Sediments excavated for purposes of cultural resources investigation will be screened through 1/8-inch mesh. Spatial information, depth of excavation levels, natural and cultural stratigraphy, presence or absence of cultural material, and depth to sterile soil, maximum projected project disturbance, or bedrock will be recorded 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. Radiocarbon samples will be taken from intact subsurface features exposed by shovel/auger probes or test units. A stratigraphic profile will be drawn

for at least two walls of each test excavation unit.

10. All prehistoric and historic artifacts collected from the surface and from probes and excavation units will be analyzed, catalogued, and temporarily curated by King County to standards in 36 CFR Part 79 (*Curation of Federally Owned and Associated Archaeological Collections*).
11. Ultimate disposition of cultural materials will be determined in consultation between FHWA, WSDOT, the SHPO, and the Affected Tribes.
12. Within 90 days of concluding fieldwork, a management summary describing any and all monitoring and resultant archaeological excavations will be provided to King County. The summary will also provide recommendations for both the eligibility of the resource identified, and the adverse effect determination. The project manager will forward the report to the WSDOT H&LP Archaeologist for review and delivery to FHWA, SHPO, and the Affected Tribes.
13. If assessment activity exposes human remains (burials, isolated teeth, or bones) all defined procedures outlined in Stipulation I (E) (1-5) below will be followed.
14. FHWA, WSDOT, SHPO, the County, and the Affected Tribes shall develop a MOA for the mitigation of adverse effects on eligible properties identified.

E. Special Procedure For The Unanticipated Discovery Of Human Skeletal Remains

Any human skeletal remains regardless of ethnic origin, which may be discovered during this project, will at all times be treated with dignity and respect.

1. During the construction of the East Lake Sammamish Trail, if any King County employee or any of the contractors or subcontractors believes that he or she has made an unanticipated discovery of human skeletal remains, all excavation adjacent to the discovery shall cease. A work stoppage area of no less than 50 feet will be maintained around the discovery to provide for the total security, protection, and integrity of the human skeletal remains, in accordance with Washington State Law. The project supervisor will immediately contact the appropriate Law Enforcement officials – municipal police or King County Sheriff's Office, depending on the location of the discovery – as well as the King County RSD and Historic Preservation Program (HPP) archaeologists, the WSDOT H&LP Archaeologist, and the County DNRP Project Manager.
2. No persons other than the proper law enforcement personnel (including but not limited to representatives from the King County Medical Examiner's Office), King County RSD and HPP archaeologists, WSDOT archaeologists, DNRP Project Manager, and State Historic Preservation Officer (SHPO)'s staff will be authorized direct access to the discovery location after the area is secured.
3. Under procedures outlined in HB 2624:
 - a. the King County Medical Examiner will determine whether the skeletal human

remains are forensic or nonforensic within five business days of receiving notification of a finding of human remains. If forensic, the Medical Examiner will retain jurisdiction.

b. If the human skeletal remains are determined to be nonforensic, the Medical Examiner must notify DAHP within two business days. DAHP will have jurisdiction over the remains until provenance of the remains is established. A determination that the remains are nonforensic does not create a presumption of removal or nonremoval.

c. After the remains are determined to be nonforensic DAHP will make all notifications as required under HB2624.

d. The state physical anthropologist must make an initial determination of whether nonforensic skeletal human remains are Indian or non-Indian to the extent possible based the remains within two business days of notification of a finding of nonforensic remains.

e. The affected tribes have five business days to respond via telephone or writing to DAHP as to their interest in the remains.

4. The participating parties will consult to determine what treatment is appropriate for the human remains. No Native American human remains will be removed from a site without the explicit consent and concurrence of the Affected Tribe(s), FHWA, WSDOT, and the SHPO.

5. If disinterment of Native American human remains becomes necessary; the consulting parties will jointly determine the final custodian of the human skeletal remains for reinterment.

II. Changes in the Area of Potential Effects

If during the course of Project planning or construction, a need arises to make changes to construction alignments or ancillary areas, including mitigation sites, WSDOT, on behalf of FHWA, shall take the following steps.

- A. Notify SHPO of the Project change.
- B. Require that the new APE is inventoried and evaluated in a manner consistent with 36 CFR § 800.4 (Stipulation I.A and B. above).
- C. Distribute all inventory reports to SHPO for 30-day review and comment.
- D. If WSDOT and SHPO do not agree on NRHP eligibility of any properties, WSDOT will obtain a formal determination of eligibility from the Secretary for the Interior pursuant to 36 CFR § 63.
- E. WSDOT will apply the Criteria of Adverse Effect in a manner consistent with 36 CFR § 800.5 to all properties determined to be eligible for inclusion in the NRHP.
- F. If archaeological resources will be affected, a MOA will be prepared in consultation between WSDOT, FHWA, SHPO, the County, and the Affected Tribes in a manner consistent with Stipulation I.D.

III. Professional Qualifications

FHWA shall require that all archaeological resources work performed by King County or by consultants on their behalf pursuant to this Agreement shall be accomplished by or under the direct supervision of a person or persons who meet(s) or exceed(s) the pertinent qualifications standard set out in the Secretary of the Interior's *Professional Qualifications Standards* (48 FR 44738-44739).

IV. Dispute Resolution

- A. Unless otherwise specified in this agreement, should any signatory to this Agreement object in writing within 30 days to any plans provided for review, specifications provided, or action or finding proposed pursuant to this Agreement, FHWA shall consult with the objecting party to resolve the objection. Upon receiving the written objections:
 1. FHWA will notify SHPO as to the nature of the dispute.
 2. FHWA will attempt to informally resolve the objection.
 3. In the event informal attempts are unsuccessful, FHWA will invite the objecting party to a reconciliation meeting for the purpose of discussing and resolving the objection. FHWA will issue such invitation no later than five working days after receipt of the written objection and will schedule a meeting to be held within 10 working days following receipt of the invitation. The time frames specified herein may be expedited by mutual, written agreement.
- B. Should the Affected Tribe(s) object to any proposed plan, curation procedures, or handling of Native American human remains, FHWA shall consult with the tribal government to seek to resolve the objection under Stipulation IV (A 1-3).
- C. If FHWA, in consultation with SHPO, determines that an objection cannot be resolved through Stipulation IV (A 1-3) FHWA will forward all documentation relevant to the dispute to Council. Within 15 days of receipt of all documentation, Council shall either:
 1. Provide FHWA with recommendations, which FHWA shall take into consideration in reaching a final decision regarding the dispute; or
 2. Notify FHWA that it will comment within 45 days in accordance with 36 CFR § 800.7(c)(2). Any Council comment provided in response to such a request will be taken into account by FHWA in accordance with 36 CFR § 800.7(c)(4) with reference to the subject of the dispute.
- D. Any recommendation or comment provided by Council will be understood to pertain only to the subject of the dispute; FHWA's responsibilities to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

V. Amendment

The signatories to this Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR § 800.6 to consider such amendment.

VI. Termination

Any signatory to this Agreement may terminate it by providing 30 days written notice to the other parties, provided that the signatories will consult during this 30-day waiting period to seek agreement on amendments or other actions that would avoid termination. In the event of termination, FHWA will comply with 36 CFR § 800.3 - § 800.13 with regard to individual undertakings of the Project covered by this Agreement.

VII. Failure to Carry Out the Terms of the Agreement

If Council determines that the terms of this Agreement are not being carried out, FHWA will comply with 36 CFR § 800.3 - § 800.13 with regard to individual undertakings of the Project covered by this Agreement.

VIII. Scope of Agreement

This Programmatic Agreement is limited in scope to the East Lake Sammamish Master Plan Trail within King County and is entered into solely for that purpose.

IX. Effective End Date

This Programmatic Agreement will continue in full force and effect until December 2013. At any time in the six-month period prior to this date, FHWA may request Council and SHPO in writing to review the Project and consider an extension or modification of this Programmatic Agreement. No extension or modification will be effective unless all signatories to the Programmatic Agreement have agreed to it in writing.

X. Satisfaction of Section 106 Responsibilities

Execution and implementation of this Programmatic Agreement evidences that FHWA has satisfied its Section 106 responsibilities for all individual actions of this undertaking.

FEDERAL HIGHWAY ADMINISTRATION

By: *Travis P. Lore* Date: 9-16-08
(Name) *for Daniel Mathis, Division Administrator*
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

By: *Kathleen B Davis* Date: 9-11-08
(Name) *Kathleen B Davis*
Director

WASHINGTON STATE HISTORIC PRESERVATION OFFICER

By: *Allyson Brooks* Date: 9/15/08
Allyson Brooks, State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: *Ralston Cox* Date: 12/12/08
(Name) *Ralston Cox, for John M. Fowler, Executive Director*

KING COUNTY

By: *Kathy Brown* Date: 9/5/08
Kathy Brown, Director of Facilities Management Division