

Draft

DEVELOPMENT OF A STATEWIDE CURATION POLICY FOR THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Prepared for

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Washington State Department of
Transportation



Photo courtesy Washington State Department of Transportation

Development of a Statewide Curation Policy for the
Washington State Department of Transportation

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EXECUTIVE SUMMARY

In March 2012, the Washington State Legislature through Section 218(6) of the 2012 Supplemental Transportation Budget law directed the Washington State Department of Transportation (WSDOT) in consultation with the Department of Archaeology and Historic Preservation to develop a policy to guide curation of artifacts encountered as part of operating and improving the state's transportation system and the use of museums and information centers as potential mitigation when developing transportation projects and to report on the development of such a policy to the Legislature by September 1, 2012. Specifically, the Legislative proviso stated that:

Within existing resources, [WSDOT] shall work with the department of archaeology and historic preservation to develop a statewide policy regarding the curation of artifacts and the use of museums and information centers as potential mitigation under the national environmental policy act. This policy must address the following issues:

- *How to minimize costs associated with information centers and museums;*
- *When to use existing facilities to preserve and display artifacts;*
- *How to minimize the time that stand-alone facilities are needed; and*
- *How to transfer artifacts and other items to facilities that are not owned or rented by the department.*

This report summarizes relevant federal and state laws and regulations requiring curation and includes a review of WSDOT's current and future need for curation facilities and other supporting information to address the four issues stipulated in the proviso. Appendix D of this report is the draft statewide policy to address these issues.

Curation

Unlike other states, Washington does not have a designated curation repository for archaeological or historical objects. As a result WSDOT must base decisions on where to curate archaeological collections on two main factors: who owns the land where the materials were collected and the regulation under which the archaeological collection was made; under state and federal laws recovered artifacts legally belong to the owner of the property at the time of excavation. Additional factors also can influence the selection of a repository. In some cases the curation facility has been selected as part of negotiations for a large or complex project that may be subject to a legally binding agreement.

To date, WSDOT projects have generated over 3,000 cubic feet of archaeological collections. Current mega projects are anticipated to generate an additional 1,450 cubic feet of collections by 2020. WSDOT is responsible for curation fees for collections generated during its projects, regardless of the ownership of the collection.

Mitigation

Because Section 106 of the National Historic Preservation Act of 1966, as amended and the National Environmental Policy Act of 1969 do not mandate any limits on potential mitigation measures, and because the Centennial Accord requires WSDOT to implement effective government-to-government relations with Washington State Tribes, WSDOT must evaluate the appropriateness of mitigation measures on a case-by-case basis.

Mitigation measures developed by WSDOT are similar to those undertaken in other states. WSDOT's mitigation measures have received national, state, and local awards.

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DRAFT

1.0 INTRODUCTION

1.1 Purpose

Environmental Science Associates (ESA) was retained by the Washington State Department of Transportation (WSDOT) to assist with developing a Draft Statewide Curation Policy for existing and future archaeological and historical collections generated by WSDOT Architectural & Engineering projects. This report presents the contextual framework for the draft policy.

A “WSDOT collection” is defined as archaeological artifacts, samples, and records generated during the planning and construction of a WSDOT project, irrespective of ownership of the objects.

Definitions of technical terms used throughout this document are provided in **Appendix A**. Commonly used acronyms are listed in **Appendix B**.

1.2 Project Description

On March 8, 2012 the Washington State Legislature (Legislature) passed Engrossed Substitute House Bill No. 2190 (ESHB 2190) which included Section 218(6) (budget proviso) directing WSDOT as follows:

(6) Within existing resources, the department shall work with the department of archaeology and historic preservation to develop a statewide policy regarding the curation of artifacts and the use of museums and information centers as potential mitigation under the national environmental policy act. This policy must address the following issues: How to minimize costs associated with information centers and museums; when to use existing facilities to preserve and display artifacts; how to minimize the time that stand-alone facilities are needed; and how to transfer artifacts and other items to facilities that are not owned or rented by the department. A report regarding this policy must be submitted to the joint transportation committee by September 1, 2012.

ESA was retained to consult with WSDOT and the Washington State Department of Archaeology and Historic Preservation (DAHP) in order to prepare this report and assist with developing this Draft Statewide Curation Policy.

2.0 WHAT LAWS RELATE TO CURATION OF ARCHAEOLOGICAL COLLECTIONS?

There are several federal regulations and state laws requiring WSDOT to curate archaeological and historical materials collected during their projects, including the National Environmental Policy Act of 1969 (NEPA), the National Historic Preservation

Act of 1966, as amended (NHPA), the Archaeological Resources Protection Act of 1979 (ARPA), RCW 27.44, and RCW 27.53. Each is briefly summarized for context.

See also: <http://www.wsdot.wa.gov/Environment/CulRes/Compliance.htm> and <http://www.wsdot.wa.gov/publications/manuals/fulltext/M31-11/456.pdf>

2.1 Federal Laws

2.1.1 National Environmental Policy Act of 1969

The National Environmental Policy Act of 1969 (NEPA) requires that all major actions sponsored, funded, permitted, or approved by federal agencies undergo planning to ensure that environmental considerations such as impacts on historic and cultural resources are given due weight in decision making (WSDOT 2012:456-12). NEPA does not directly reference curation of archaeological collections. Importantly, NEPA allows the use of studies prepared under Section 106 of the National Historic Preservation Act regulations to meet NEPA requirements.

2.1.2 National Historic Preservation Act of 1966

Section 106 of the National Historic Preservation Act of 1966, as amended, requires federal agencies to consider the effects of their undertakings (including providing funds or permits) on historic properties (including buildings and sites). §800.3(b) encourages coordination of Section 106 with reviews required under other regulations such as NEPA, NAGPRA or ARPA.

If a significant archaeological site will be adversely affected by an undertaking, the most common mitigation measure is data recovery, or excavation of the site. Archaeological Data Recovery excavations involve the recovery of that important information which is contained in the artifacts 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 dollars and it is important that these collections be preserved for the public benefit.

2.1.3 ARPA

The Archaeological Resources Protection Act of 1979 applies to archaeological resources from federal and tribal lands. Under this legislation, WSDOT must apply for and obtain a permit from the federal landowner when such resources could be impacted by a project (WSDOT 2012:456-15). An ARPA permit application requires a written agreement between the federal agency and the appropriate repository for curation of collections made under the permit.

2.1.4 NAGPRA

Subpart B of the Native American Graves Protection and Repatriation Act 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 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.

2.1.5 36 CFR Part 79

36 CFR Part 79 Curation of Federally Owned and Administered Archaeological Collections (“Part 79”) outlines the standards for curation of archaeological collections made under NHPA, ARPA and NAGPRA among other laws. Part 79 applies to both new and pre-existing collections. Part 79 defines “collections” as including both the artifacts and the associated records. Part 79 also includes terms and conditions for federal agencies (such as FHWA) to include in contracts with non-federal repositories to store the collections.

2.2 Washington State Laws

2.2.1 Cultural Resources RCWs

Several state regulations protect cultural resources including Archaeological Sites and Resources (RCW 27.53), Abandoned and Historic Cemeteries Act (RCW 68.04.050), and Indian Graves and Records Act (RCW 27.44). The regulations require an archaeological excavation and removal permit (WAC 25-48) to excavate within the boundaries of an archaeological site on public and private lands in Washington State, unless a federal nexus exists for the project, in which case the MOA generated at the end of the Section 106 review and consultation process would stand in lieu of the DAHP permit. If the project is on public lands, permit applicants must identify the curation facility that will store the collections. This facility must meet Part 79 standards. If the project is on private land, the records must be stored at a curation facility even if the private landowner wishes to retain custody. Applicants may temporarily store collections in a repository that meets Part 79 standards until the appropriate tribe has facilities that meet Part 79 standards.

In order to identify repositories that meet Part 79 standards, DAHP has developed a list of repositories that have been determined to meet the qualification standards for long-term management and preservation of archaeological collections; application to be included on the list is through a questionnaire process. As of July 2012, there are five repositories included on the list.

2.2.2 Governor’s Executive Order 05-05

Governor’s Executive Order 05-05 (GEO 05-05) requires all state agencies with capital improvement projects that do not have a federal nexus to integrate the Department of Archaeology and Historic Preservation (DAHP) and Governor’s Office of Indian Affairs (GOIA) and concerned tribes into their capital planning process. If the project involves

federal funding, permits or licenses, then Section 106 would apply. GEO 05-05 is administered by DAHP. If a site is identified, an excavation permit would be required.

3.0 WHEN ARE ARCHAEOLOGICAL COLLECTIONS GENERATED?

Archaeological collections are typically the result of archaeological testing or data recovery effort carried out to comply with state or federal regulations; while less common artifacts also may be collected during archaeological survey projects or during construction monitoring. WSDOT conducts some of these services with in-house staff, but a majority is performed by cultural resource management consulting firms under contract with WSDOT.

4.0 WHO OWNS ARCHAEOLOGICAL COLLECTIONS IN WASHINGTON?

Under Washington State law, recovered artifacts legally belong to the owner of the property at the time of excavation. Therefore archaeological collections can be owned by the state, local governments, private citizens, the federal government, or tribes.

There are no laws or regulations requiring a private landowner to curate archaeological artifacts. Private property owners and local governments can legally transfer ownership of archaeological collections to a repository. Federal agencies retain ownership of archaeological collections even if they are held by a repository.

5.0 WHERE ARE ARCHAEOLOGICAL COLLECTIONS CURATED?

Unlike many other states, Washington does not have a designated repository to curate archaeological collections and state funds have not been allocated specifically to support curation of archaeological collections. Instead, archaeological collections are curated in various facilities which vary in their size of staff, budgets, and storage capacity, as well as technical knowledge base. These facilities are managed by universities, tribes, non-profits, federal agencies, and local governments.

In recent years, the Burke Museum has been increasingly relied on for curation because it is one of the few repositories that accept historical archaeological collections.

Further, there is no centralized database tracking the location, condition, or volume of archaeological collections removed from sites within Washington¹. As of July 2012, anecdotal information suggests that archaeological materials from sites throughout the state are curated by over a dozen tribes, all six state universities, numerous public utilities, State Parks, multiple federal agencies, and local historical societies. Collections generated during WSDOT projects are curated at more than 10 of these repositories (see also Section 7.0 of this report).

DAHP maintains a list of repositories that have completed a questionnaire demonstrating their ability to meet 36 CFR 79 standards; currently five repositories are on this list². For collections generated under a State-issued excavation permit, DAHP requires curation at a repository on this list.

6.0 HOW DOES WSDOT MITIGATE ADVERSE EFFECTS TO HISTORIC PROPERTIES?

For projects which will have adverse effects to historic properties, Section 106 requires resolution of the adverse effects. Resolution of the adverse effects is decided through a process of consultation with appropriate parties (such as tribes, other federal and state agencies, historical societies, or the public) to “develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties” (36 CFR 800.6(a)). Therefore resolving adverse effects is conducted on a case-by-case basis and must be developed to address the concerns raised by stakeholders, taking into account how the significant elements of the historic properties would be adversely impacted. Once stakeholders agree on how the adverse effects will be resolved, a Memorandum of Agreement is generally executed.

6.1 Examples of WSDOT’s Mitigation

6.1.1 Typical Mitigation Measures

Often, for archaeological sites the impacts to the site are mitigated through “data recovery” (archaeological excavation) and curation of archaeological resources. The artifacts are curated to retain and preserve their information for future researchers.

¹ Efforts to create a centralized statewide database are underway by a committee spearheaded by the Burke Museum, using Burke collections as the data set for a pilot project called the “Collections Locator.” Currently it only includes collections held at the Burke Museum.

² These include the Burke Museum (Seattle), Ft. Vancouver National Historic Site (Vancouver), Hibulb Cultural Center & Natural History Preserve (Tulalip), Spokane Indian Tribe (Wellpinit), and the Wanapum Heritage Center Repository (Beverly).

Archaeological data recovery can involve a significant expenditure of public dollars and it is important that these collections be preserved for the public benefit.

Other mitigation measures might include public interpretation (information centers, exhibits, interpretive signage, websites, videos, books, pamphlets, etc.), documenting and recording historic properties, developing historic context statements, or relocating historic properties such as bridges or structures.

As a project proponent, WSDOT is responsible for the curation costs associated with their projects, even in cases where WSDOT does not own the artifacts.

6.1.2 Sample Mitigation Measures

In order to mitigate the replacement of the Manette Bridge which was built in 1930 and replaced in 2011, WSDOT produced a video documentary about the history of the 1930 bridge which is available on WSDOT's website. The documentary was produced by WSDOT staff with a \$5,000 budget.

The MOA for the Alaskan Way Viaduct Replacement Project included an avoidance measure in a stipulation to "avoid potential indirect effects" on the Pioneer Square Historic District. To do this, WSDOT developed a project information center which addresses concerns raised by neighborhood groups and local business regarding impacts of a large construction project. The Milepost 31 information center opened in December 2011. Milepost 31 has received national and state recognition including the 2012 John D. Spellman Award for Exemplary Achievement in Historic Preservation, the Washington Museum Association Award of Project Excellence, and both the American Association of State and Local History (AASLH) Award of Merit and History in Progress Award. The AASLH Award of Merit is awarded to 60 projects throughout the nation; Milepost 31 was one of three projects to receive the History in Progress Award nationwide.

Other mitigation measures that WSDOT will conduct under the AWVRP MOA include monitoring and protecting historic buildings during SR 99 tunnel construction and enacting a traffic management plan for Pioneer Square.

7.0 HOW DOES WSDOT CURRENTLY ADDRESS CURATION?

7.1 Policy and Authority

WSDOT does not have a curation policy guiding the selection of a repository. Instead, WSDOT approaches curation decisions on a case-by-case basis. 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 state and federal laws recovered artifacts legally belong to the owner of the property at the time of excavation³. The second is the regulation under which the archaeological collection was made.

Additional factors that also can influence the selection of the curation facility include: whether the collection is historic, whether the artifact collection is complete, whether there have been previous archaeological investigations at the same site, the volume of the collections, the location of the curation facility relative to the location of the archaeological site (i.e., house the collection near the descendant community). In some cases the curation facility has been selected as part of negotiations for a large or complex project.

Currently, the authority to approve curation-related decisions is not assigned to any specific WSDOT personnel. WSDOT Cultural Resources Specialists are involved in MOA negotiations and ensure curation is specified within an MOA when necessary, however the ultimate selection of a repository is determined by various project-specific factors. MOA signature authority is spread amongst WSDOT Regional and Divisional Administrators.

7.2 Meeting the Requirements of 36 CFR 79

7.2.1 Collection Removed Under Federal Regulation

Collections excavated or removed under Section 110 of the NHPA, ARPA, Antiquities Act, or NAGPRA are subject to Part 79 regulations and must be curated at a facility that meets the requirements of Part 79. Key requirements of Part 79 are ensuring availability of collections for research access and meeting specific standards of care. Standards outlined in §79.9 include, but are not limited to, the need for regular inventories, appropriate environmental conditions, using appropriate archival materials, and ensuring repository staff meets professional qualification requirements.

Each federal agency must determine that a repository has the capability to provide adequate long-term curatorial services (§79.9).

³ Note that human remains and funerary objects are not considered property; any human remains or funerary object identified must be reported to the county coroner and local law enforcement pursuant to state law.

7.2.2 Collections Removed Under State Regulation

Further, collections removed from public lands managed by the State of Washington or its political subdivisions and generated under a Washington State Excavation Permit must go to a repository which complies with Part 79 (WAC 25-48-060). DAHP, as the agency issuing these permits, requires materials removed from a permitted project be curated at specific facilities that have demonstrated their ability to meet the minimum standards required by Part 79.

To identify which facilities meet these minimum standards, DAHP created a questionnaire for facilities to complete; this functions as an application for inclusion on the DAHP Repository List. Participation is voluntary. Facilities demonstrate their compliance with Part 79 through the questionnaire which is reviewed for approval by DAHP and members of the Washington State Curation Summit Group. Currently, there is no expiration/renewal process in place. As of July 2012, there are five approved facilities on the DAHP Repository List: the University of Washington's Burke Museum of Natural History and Culture, the National Park Service's Ft. Vancouver National Historic Site, The Tulalip Tribe's Hibulb Cultural Center & Natural History Preserve, the Spokane Tribe of Indians, and the Wanapum Heritage Center Repository.

7.3 Selecting a Repository

Generally, the current process for WSDOT to select a repository is somewhat unsystematic. The following statements encapsulate the current process:

- When collections are generated from tribally-owned or federally-owned lands or under a federal regulation or state excavation permit, the existing regulations clearly guide WSDOT's selection of a curation facility.
- WSDOT evaluates on a case-by-case basis when a project extends over multiple jurisdictions, or if the collections are removed from private lands.
- Generally, if there is no regulatory requirement designating the repository, WSDOT has selected a repository in the following order of preference: tribal repository, Burke Museum, or other repository such as a local historical society. Over the last five years, WSDOT has decreased the use of historical societies for curation of systematic archaeological collections as local historical societies typically do not tend to have either the space or staff that meet Part 79 standards.
- WSDOT has recently entered into curation agreements with the Burke Museum and Fort Vancouver for curation of artifacts generated during Mega Projects.
- WSDOT negotiates more complex projects on a case-by-case basis; decisions are formalized within MOAs.

- Generally speaking, repositories in Washington State are not equally interested in accepting collections of historic artifacts (typically mass produced items such as glass bottles, bricks, food tins, or machine cut wire nails).
- If multiple tribes express interest in receiving a collection for curation, WSDOT seeks resolution through consultation. In one case, this conflict was resolved by rotating the collection between consulting tribes through a cycle of temporary loans.

7.3.1 Special Concerns on Private Lands

If WSDOT encounters archaeological materials on private land during survey or testing, they will typically ask the landowner to deed the artifacts to a repository. There is no legal requirement for the landowner to do this and WSDOT has no title to the archaeological materials. If a private landowner donates a collection, WSDOT is responsible for the curation costs under Part 79. WSDOT retains title to any documentation of the privately-owned artifacts and records associated with the project; these records must be curated at a repository even if they are not accompanied by the artifacts.

If a project will have temporary construction easements on private property, WSDOT does not typically negotiate in advance about the ownership of potential archaeological resources within the easement.

7.4 Existing Collections from WSDOT Projects

As of the time of this report, there are at minimum 3,097 cubic feet of collections generated by WSDOT projects being curated across Washington State. The collections include both those that were collected under current laws and “legacy” collections (excavated prior to 1990).

WSDOT has never been funded to identify the locations of archaeological collections generated from the department’s projects. As a result, WSDOT does not have basic information such as volume of materials or condition of the collections, much less the location of the collections. Overall, WSDOT staff members typically rely on anecdotal information and institutional knowledge regarding the curation situation of collections generated outside of a formal MOA or other agreement.

WSDOT origins reach back to 1905 when it was founded as the State Highway Board. Over the next century the construction of transportation infrastructure grew significantly and WSDOT now manages 18,600 state highway lane-miles, over 3,600 bridge structures, 47 rest areas, 23 ferry vessels, and 20 ferry terminals. While WSDOT has existed for 107 years and has undertaken major construction projects during this time, many of today’s laws protecting cultural resources and requiring curation of archaeological collections were not passed until the 1960s. As a result, the majority of existing collections were generated after the passage of the NHPA in 1966 although some

pre-1960s collections exist. It was not until 1990 with the passage of 36 CFR 79 that agencies were required to provide funding for curation of archaeological collections.

Since at least the 1950s it was not uncommon for WSDOT to contract with anthropology departments at universities to conduct archaeological work on WSDOT projects. WSDOT collections from these early efforts are held at the University of Washington (UW), Washington State University (WSU), and Eastern Washington University (EWU).

Of the WSDOT collections at WSU, all were generated before 1990 on projects conducted for WSDOT by WSU faculty or WSU's contracting program, the Washington Archaeological Research Center (WARC). WSDOT's responsibility for these collections has not been researched, although they are likely state property; WSDOT has never provided any financial support for the collections.

Ft. Vancouver National Historic Park has clarified title issues with legacy WSDOT collections curated at its facility. The UW underwent similar title issues regarding pre-1990 collections from WSDOT projects. Some of these projects were further complicated by being road relocation projects along the Columbia River where the jurisdiction was either WSDOT or the USACE. To resolve this matter, in 2003 the Burke Museum requested WSDOT and the USACE relinquish their interests in these collections and transfer ownership to the Burke Museum. After necessary legal review by involved parties and the Attorney General, title to these collections was officially transferred to the Burke Museum. No funding was provided to the Burke Museum. Collections are being rehabilitated by the Museum as funding is available⁴.

7.5 Repositories Curating Collections from WSDOT Projects

Based on anecdotal information and institutional knowledge among WSDOT staff members, collections generated during WSDOT projects are being curated at multiple facilities across Washington State; representatives of these repositories were contacted to confirm the presence and volume of these collections (**Appendix C**). Repositories holding WSDOT collections are listed in Table 1.

⁴ A recent example of this is the Mellon Site collection. Rehabilitation was funded by WSDOT as part of a modern road project impacting the recorded archaeological site.

Table 1. Known WSDOT Collections in Repositories, ranked by collection volume.

Repository	Location	Estimated Volume of Collections (cubic feet)
Ft. Vancouver National Historic Site, National Park Service	Vancouver	1,700 cf 17 linear feet
Burke Museum of Natural History and Culture, University of Washington	Seattle	925 cf Held-In-Trust (<i>Tse-Whit-Zen</i>)
		200 cf Deeded (estimated)
Museum of Anthropology, Washington State University	Pullman	170 cf
Archaeological and Historical Services, Eastern Washington University	Cheney	100 cf
Confederated Tribes of the Colville Reservation	Nespelem	2 cf
Quinault Indian Tribe	Taholah	250 Oversize Items (Fish Weir Stakes)
Confederated Tribes and Bands of the Yakama Nation	Toppenish	Unknown
Muckleshoot Indian Tribe	Auburn	Unknown
Local Historical Societies	Statewide	Unknown
ESTIMATED TOTAL VOLUME		3,097cubic feet
Estimated Future Collections from Mega Projects (AWVRP, SR520, and CRC)		1,450 cubic feet
ESTIMATED TOTAL VOLUME FUTURE VOLUME		4,547 cubic feet

7.6 Curation Costs

WSDOT is responsible for curation fees for collections generated during its projects, regardless of the ownership of the collection. Currently, funds for curation must be set aside by WSDOT at the project-level and funding for curation typically terminates with the completion of the project. WSDOT has negotiated specific curation agreements with two repositories.

Curation fees vary by repository. Rates are typically charged based on volume measured by the cubic foot for artifacts and the linear inch for associated records. Some facilities also charge processing fees if a collection is not submitted according to its preparation guidelines for incoming collections. To avoid these fees and minimize curation costs, WSDOT strives to identify the repository early in the project planning so collections can be prepared appropriately. WSDOT endeavors to have each collection “study-ready” before it is submitted to a repository.

Typically fees will be based on whether or not the legal title to the collection is transferred to the repository. If a landowner transfers legal ownership to the repository, curation fees are usually one-time costs.

If the owner cannot transfer title to the repository, a collection is considered to be “held-in-trust” at the repository for the collection’s owner. Held-in-trust curation services are offered for a defined period of time under signed contracts. Fees for this type of curation are often assessed on an annual cycle or short term multi-year cycle such as two years or five years. The Federal government cannot transfer title of collections removed from Federal lands.

7.6.1 Costs Associated with “Legacy” (Pre-1990⁵) Collections

Consistent, defined national standards for the curation of archaeological collections did not exist before Part 79 was passed in 1990. Many collections excavated prior to 1990 are not stored according to today’s best practices and do not meet current standards. Many legacy collections are still stored in their original field bags. This jeopardizes collections in two irreversible ways. First, chemicals from non-archival bags cause long-term damage to the fragile objects inside such as bone tools or basketry. Secondly, as bags disintegrate important information written on them is in danger of being lost or separated from the object. Upgrading storage conditions from their original field bags is commonly known as “collections rehabilitation” and is an ongoing effort by repositories subject to available funding. Currently, WSDOT has no funding mechanism to provide financial support for rehabilitation of legacy collections, unless these costs can be linked to completion of a current project.

The WSU Museum of Anthropology holds WSDOT legacy collections excavated between the 1950s and 1980s. In 2010, Museum staff estimated the rehabilitation costs for these collections to be approximately \$94,500. Other legacy WSDOT collections are known to exist at the Ft. Vancouver National Historic Site, the UW’s Burke Museum, and at EWU’s Archaeological and Historical Services department.

7.6.2 Costs Associated with Post-1990 Collections

Collections generated after 1990 are typically subject to an MOA or other formal agreement outlining where the collection will be curated and how the curation fee will be paid.

⁵ Before Part 79 was passed.

(1) One-Time Fees (Deeded/Transferred Collections)

For the majority of WSDOT collections, a one-time lump-sum fee is paid by WSDOT to the repository for curation of the collection *in perpetuity*⁶. In most situations collections are deeded to the repository by the landowner which transfers title to the collection to the repository; WSDOT assumes no further responsibility for that collection. WSDOT also considers the transfer of collections from public lands to the Burke Museum to fall into the same category. The actual amount of the one-time fee varies among repositories. WSDOT has negotiated a lower rate with the Burke Museum (see Section 9.7.1)

(2) Recurring Fees (Held-in-Trust Collections)

In rare situations, WSDOT pays recurring fees to curate collections. Paying a recurring fee gives WSDOT flexibility in situations where the final disposition of a collection is undetermined. An example of this is the *Tse-Whit-Zen* collection from Port Angeles. Undertaken in 2003, the Port Angeles Graving Dock project in Clallam County resulted in the identification of *Tse-Whit-Zen*, a former Native American village and cemetery. The resulting collection is approximately 925 cubic feet in volume, including associated records. In 2007 WSDOT signed a 5-year agreement with the Burke Museum to curate the *Tse-Whit-Zen* artifacts and records as a held-in-trust collection, pending the Lower Elwha Klallam Tribe's construction of a repository. The curation agreement included a full inventory of the collections and five years of curation at the cost of \$265,000. As of the time of this report a tribal repository has still not yet been constructed; in 2011 the curation agreement was extended for an additional five years at the cost of \$147,701.

(3) Future Costs

WSDOT has attempted to address future costs of curation for Mega projects however these costs are merely best guesses. It is likely there will be additional curation costs associated with smaller-scale projects. For example, WSDOT recently signed a PA with the US Forest Service (USFS). Under the terms of the PA, WSDOT will collect any artifacts identified on USFS lands during survey (which is not WSDOT's standard practice), the artifacts will be curated at a facility approved by the USFS, and WSDOT will bear the cost of curation.

7.7 How Has WSDOT Secured Curation Space for the Future?

WSDOT anticipated that the AWVRP and SR 520 Mega projects would generate between 750 and 1,250 cubic feet of collections. WSDOT could not identify a facility with enough space to store this volume of materials and curate artifacts from historic

⁶ In perpetuity is defined in this context as continuing indefinitely.

archaeological sites. Similarly, WSDOT anticipated a large volume of materials would be generated during the CRC project. To address the lack of curation space and to negotiate a more cost-effective solution, WSDOT has secured space for WSDOT collections at the Burke Museum and at Fort Vancouver under separate negotiated agreements.

7.7.1 University of Washington - Burke Museum of Natural History and Culture

WSDOT provided funding to the University of Washington for expansions to the University's Burke Museum off-site repository to accommodate the anticipated collections volumes under a formal Participation Agreement signed May 2011 (Agreement GCA-6616). WSDOT provided approximately \$342,000 towards the expansion; this resulted in an additional 4,644 cubic feet of available curation space.

In exchange for funding the expansion, the Burke lowered the curation fee⁷ charged to WSDOT from \$1500/cubic foot to \$500/cubic foot through December 31, 2020; this is a 66% savings from the standard rate and will result in a cost savings of \$4,644,000 to the state if the space is fully utilized.

As part of this agreement, the Burke Museum guarantees WSDOT the first right of refusal for use of the 4,644 cubic feet until December 31, 2020. The Participation Agreement does not restrict the Burke Museum from storing non-WSDOT collections in this portion of the repository. The Burke Museum will provide annual Space Available Reports to WSDOT for use in curation planning.

The volume of existing WSDOT collections at the Burke Museum is approximately 1,125 cubic feet. Remaining curation space for WSDOT collections is approximately 3,519 cubic feet.

7.7.2 National Park Service - Fort Vancouver National Historic Site

As part of the MOA for the Columbia River Crossing project, WSDOT will provide financial support to the NPS for the design and renovations of a building to serve as a repository. This repository will house the anticipated 200 cubic feet of Washington collections from the CRC project and create space for other NPS collections. This is part of a stipulation in the MOA for mitigation of adverse effects to Vancouver National Historic Reserve, a listed National Register Historic District. Funding is not to exceed \$16.9 million. The new repository will be the property of the NPS who has also agreed to waive curation fees for the CRC collection. Apart from accepting the CRC collection,

⁷ Rates at the Burke Museum reflect a 56% indirect costs fee charged by the University of Washington; the Burke is not involved in setting this fee.

there is no formal agreement with NPS to reserve additional storage space for future WSDOT collections from future projects. In other words, while funding these renovations has secured storage space for the anticipated large CRC collection, it does not provide WSDOT with first right of refusal for additional dedicated space as was negotiated with the Burke Museum.

8.0 WHAT ARE OTHER STATES AND AGENCIES DOING?

8.1 Transportation Departments in Other States

In preparing this Draft Statewide Curation Policy, the curation policies of state transportation departments in Idaho, Oregon, New Mexico, and North Dakota were reviewed. Idaho and Oregon were selected for their proximity to Washington and regional similarities in archaeological issues. New Mexico and North Dakota were selected for their existing state laws on curation and for each department's creative approaches to mitigation. A representative of each transportation department was consulted for anecdotal information on departmental policies in conjunction with a review of the department's cultural resources website and any published curation policies.

8.1.1 Idaho

The Idaho Transportation Department (ITD) does not have a curation policy or its own repository, but Idaho state laws dictate where most archaeological collections must be curated (Marc Münch, personal communication June 8, 2012). The Archaeological Survey of Idaho (ASI) and its dedicated fund known as the Archaeological Survey Account were established by the Idaho State Legislature in 1992 (Title 33, Chapter 39). The ASI established three regional repositories for archaeological collections: Idaho State Historical Society in Boise, University of Idaho in Moscow, and Idaho State University in Pocatello. Archaeological collections removed from public lands in Idaho are curated at these regional repositories, with each county assigned to a repository.

In 2005 the ITD Cultural Resources Program underwent a large project to prepare 101 cubic feet of legacy collections still housed at the department's offices for curation at the appropriate ASI repository (Smith 2006). These collections were removed from 86 different archaeological sites across Idaho between 1976 and 2001.

ITD has engaged in alternative mitigation for historic architectural resources, but has not yet applied these approaches to archaeological resources.

8.1.2 Oregon

The Oregon Department of Transportation (ODOT) does not have an agency curation policy because all archaeological collections generated by ODOT projects are curated in one repository due to the Oregon SHPO excavation permit system and Oregon Revised Statutes 390.235 (1)(a) (Carolyn Holthoff, personal communication May 24, 2012).

The repository used by ODOT is the Oregon Museum of Natural and Cultural History (MNCH) at the University of Oregon. Previously known as the Oregon State Museum of Anthropology, it was established in 1935 by the Oregon state legislature and housed the University's existing anthropology collections. ODOT has partially funded expansions to MNCH in the past.

In Oregon, the SHPO requires an excavation permit for any exploratory excavation on public lands as well as for work in known archaeological sites. MNCH is the state-designated repository for archaeological collections removed from private and state lands under such excavation permits. While the excavation permit does allow collections to be deposited at other repositories, this must be approved by MNCH. Based on a 2011 report tracking excavation permits and the repository selected to curate the collection, curation at MNCH appears to be the dominant choice (Oregon SHPO 2011).

When possible, ODOT projects incorporate mitigation measures such as field schools or interpretive kiosks. One example of recent mitigation measures are those for the Columbia River Crossing project, for which the Section 106 MOA includes many stipulations such as the distribution of information to the general public about the history and meaning of the adversely affected cultural resources via interpretive programs and a project website.

8.1.3 New Mexico

In 1954 the New Mexico Department of Transportation (NMDOT) established the first archaeology program within a state transportation department (Laurel Wallace, personal communication May 23, 2012). When it was established, it was a partnership between the Museum of Indian Arts and Culture/Laboratory of Anthropology (MIAC/LOA), the Bureau of Public Roads (now FHWA), and the New Mexico Highway Department (now NMDOT). New Mexico Administrative Code (NMAC 4.10) requires all archaeological collections be curated at MIAC/LOA unless otherwise stipulated in a Memorandum of Agreement (MOA) or similar formal agreement. NMDOT curates the majority of its collections at the MIAC/LOA; these constitute the majority of material in the state collection. NMDOT makes transportation enhancement grants available to the repository for ongoing collections care duties. Due to the high volume of NMDOT projects that require SHPO review, NMDOT also funds a staff position at the Archaeological Records Management Section (ARMS), a division of the SHPO.

For each of its data recovery projects, NMDOT prepares an MOA which discusses the treatment of any generated archaeological collections. The MOAs are developed in consultation with tribal and SHPO representatives and sometimes contain "creative" mitigation stipulations. Examples of this include museum exhibits or outreach brochures specific to the local community where the project is located.

A recent project demonstrating such stipulations is a bridge improvement project in Luna County subject to Section 106 of the NHPA. An MOA between FHWA, NMDOT, the Bureau of Land Management (BLM), and New Mexico's SHPO included the following mitigation measures within its stipulations (FHWA and NMDOT 2011):

The NMDOT will also prepare a detailed research study, including:

E. The history of railroad grade crossings nationally and in New Mexico, including a list of the songs, movies, and other popular culture responses to the federal grade separation program; the impacts to New Mexico and the local community as the older alignment was abandoned and the newer road (then, US 80 and US 70) was built, traced through intensive research of historic local newspaper on the Cambray townsite and associated historic district features.

F. Copies of all documentation will be provided to the New Mexico Historic Preservation Division and the New Mexico State Archives.

G. A copy of this detailed research study will be posted on the NMDOT website.

In addition, the NMDOT will prepare:

H. A brochure (double sided, tri-fold) of highlights of the history of Bridge 1705 and the national grade separation program in New Mexico, and the history of US 80 through the Cambray townsite. An electronic version of the brochure will be prepared to various outlets in Deming (historic society and City of Deming) for community outreach. A copy of the brochure will also be posted on the NMDOT website.

I. A poster exhibit for use by the City of Deming, or the Luna County Museum in Deming, of the same issues described in the brochure, but with more detail. An electronic version of this exhibit will be given to the City of Deming or the Luna County Museum. A copy of this poster will also be posted on the NMDOT website.

The study in Stipulation E will contribute to the greater historical context for New Mexico as a whole and improve understanding for similar railroad projects in the State. Further, the brochure and poster exhibit are efficient ways to disseminate the historical context of the project to the public in the impacted community.

8.1.4 North Dakota

North Dakota Century Code (NDCC) 55-02-07 establishes the State's ownership of all collections removed from lands owned by the State or its political subdivisions under a state-issued permit and requires these collections be curated at the State Historical Society of North Dakota (SHSND), the State's designated repository. In addition, the State has title to all artifacts above or below the surface of lands sold, transferred, or otherwise conveyed by the State or its municipal subdivision after July 1, 1939 (NDCC 55-03-06). Archaeological materials removed from private lands are the property of the landowner, according to State law (NDCC 55-03-05). Archaeological collections removed from private lands by contracted archaeologists or private individuals are not required to be curated at the SHSND, but if the landowner transfers title to the State by signing a deed of gift, curation at SHSND is possible.

North Dakota SHPO requires arrangements be made prior to field investigation for the curation of generated archaeological collections or the return of these collections to their rightful owner, if from private lands, after field investigations are concluded (SHSND 2012a:32). The North Dakota Department of Transportation (NDDOT) has a curation

agreement with the SHSND for archaeological collections generated by the agency's projects (Robert Christensen, personal communication April 27, 2012).

An example of creative mitigation measures undertaken by NDDOT occurred during a 1997 street improvement project where a pre-contact earthlodge village known as "Scattered Village" was identified in downtown Mandan. Mitigation included data recovery with additional post-project mitigation funded via Transportation Enhancement grants. The TE grants funded the state-wide development of curricula related to the site, developed in consultation with tribal representatives from the descendant tribes and archaeologists, for use in 4th and 8th grade North Dakota Studies; the lessons are also available through the NDDOT website. An exhibit was also prepared for display at the Morton Mandan Public Library; the exhibit won the Cultural and Historical Resources category of the FHWA Environmental Excellence Award.

8.2 Federal Agencies & Regional Transit Authorities

8.2.1 US Army Corps of Engineers

The US Army Corps of Engineers (USACE) has three USACE Districts (Seattle, Portland, and Walla Walla) with jurisdiction on lands throughout Washington State. None of the Districts maintain their own repository; instead collections are curated at repositories such as the Burke Museum at the University of Washington (Seattle), the Laboratory of Anthropology at the University of Idaho (Moscow), the Oregon Museum of Natural Culture and History (Eugene) and the Museum of Anthropology at the Washington State University (Pullman). Curation services are typically negotiated as multi-year contracts, such as at the Walla Walla District which signs 5-year agreements with WSU for curation services. Because of the long history of changing land ownership by USACE and the numerous investigations, USACE may manage collections from lands that they no longer own.

Nationally, since the passage of Part 79 in 1990, USACE has taken a lead role in curation of archaeological collections; in the Pacific Northwest this has resulted in consolidation of collections into regional repositories and attempts to reunite and/or locate missing collections.

USACE is also involved in curation via the permits it issues on non-USACE lands. For these projects the permit applicants bear the costs of curation, not the USACE (Chris Jenkins [Seattle District], personal communication June 19, 2012). Part 79 requires that these collections be curated to specific standards; however the USACE has no system in place to determine if the facility meets these standards.

8.2.2 Federal Highway Administration

In 2007 the Federal Highway Administration (FHWA) delegated its Section 106 responsibilities in Washington State to WSDOT under the terms of a Statewide Programmatic Agreement, including curation decisions for any archaeological collections generated by FHWA projects.

8.2.3 Federal Transit Administration

Projects conducted or funded by the Federal Transit Administration (FTA) are subject to compliance with Section 106. In Washington State, FTA typically delegates the project proponent with securing curation on a case-by-case basis.

8.2.4 Sound Transit

Sound Transit, a regional transit authority in Snohomish, King, and Pierce counties, conducts many projects that result in archaeological collections; most of these are subject to Section 106. Until 2012, curation was addressed on a case-by-case basis, depending on where the site was identified. Sound Transit and the Burke Museum have negotiated “Terms of Acceptance” (in lieu of a curation agreement) for the transfer of future collections.

8.3 Other Washington State Agencies

Washington State agencies which own lands that contain archaeological sites include the Washington State Department of Natural Resources, Washington State Department of Corrections, Washington Department of Fish & Wildlife, and Washington State Parks and Recreation Commission (WSPRC). Several of these agencies have transferred collections to the Burke Museum as a State agency-to-State agency transfer of custody.

WSPRC is the only state agency that actively manages a collections facility and the collections generated from its lands as part of the agency’s mission and core values. WSPRC’s comprehensive stewardship and capital programs include cultural and natural resource management teams. WSPRC has 117 developed parks and oversees 33 heritage sites, which includes interpretive centers and house museums and manages over 700 historic properties statewide (including historic sites and historic buildings) as well as nearly 400 archaeological sites. WSPRC curates over 75% of their collections at their central curation facility in Olympia; historic objects predominate. Approximately 2,000 cubic feet of archaeological material is held at the central curation facility. Other non-archaeological collections are on display in park offices or stored in secure storage at interpretive centers. In cases where WSPRC conducts an excavation under a state permit, the collection is curated at the Burke Museum to meet the requirements of the permit.

9.0 HOW IS MITIGATION CONDUCTED FOR MEGA PROJECTS?

Washington is among many states to undertake “mega” transportation projects in recent years. These projects are generally large and complex, spanning across multiple jurisdictions in urban areas, with many stakeholders. These large projects are often subject to Section 106 and typically an MOA or PA will be prepared to address the resolution of adverse effects and negotiated mitigation efforts. These projects commonly result in data recovery which can generate high volumes of archaeological material (hundreds of cubic feet) that then require curation.

9.1 WSDOT Mega Projects

Current mega projects in Washington State include the Columbia River Crossing Project (CRC), North Spokane Corridor, AWVRRP, and the State Route 520 Bridge Replacement Project (SR520). WSDOT has negotiated agreements with multiple stakeholders that mitigate or avoid adverse effects to historic properties for each of these three mega projects.

The CRC project includes replacing the existing historic Interstate 5 bridges that connect Washington and Oregon; this project involves multiple jurisdictions and stakeholders. The MOA for this project includes stipulations for mitigating adverse effects to specific historic properties such as conducting Historic American Engineering Record (HAER) documentation, developing interpretive programs, developing a website to provide historical context and interpretation, and developing a visual management plan for specific historic properties.

The North Spokane Corridor project involves a multi-modal freeway connecting I-90 and US 395. Stipulations in the MOA for this project include documentation of adversely affected historic properties.

The AWVRRP involves replacing an elevated segment of State Route 99 along the Seattle waterfront with a bored tunnel. The MOA for this project includes numerous measures to minimize direct adverse effects such as condition monitoring of all historic buildings within the project boundaries and avoidance measures for potential indirect adverse effects to the Pioneer Square Historic District.

The SR520 project involves replacing the historic floating concrete pontoon bridge spanning Lake Washington. A Programmatic Agreement for the project includes stipulations to avoid or minimize adverse effects to historic properties through means such as HAER documentation, development of an interpretive website, development of Treatment Plans for sensitive areas, sympathetic design, and preparation of NRHP Multiple Property Documentation Forms.

9.2 US Route 95 Sand Creek Byway Project, Sandpoint, Idaho

The ongoing US Route 95 Sand Creek Byway Project in Sandpoint, Idaho is one of the state's largest single transportation projects in its history. It includes a large archaeological data recovery project with nearly 600,000 artifacts collected from a ¾mile section of the road corridor. Funded by FHWA, the project is subject to compliance with Section 106 (ITD 2012). According to state law, the collection will be curated at the University of Idaho ASI repository in Moscow; costs for curation are currently being negotiated.

An MOA for the project outlined the steps to resolve the adverse effects on historic properties posed by this project. Mitigation efforts included data recovery at selected areas within historic Sandpoint including particular focus on a blacksmith and machine shop, a Chinese-occupied home and business, part of the "Red Light District" and a

boarding house. Other measures included conducting historical research and documentation of the historic Humbird Mill in order to develop a publication that can be used for public outreach. This project does not have a public information center discussing the archaeological components of the project. Informal public outreach efforts included a weekly series of local newspaper articles on the “Artifact of the Week” from the project. There is a possibility ITD will develop exhibits about the project at the local Bonner County Historical Society. Future plans include developing an audio walking tour, teaching trunks for lending to schools, a coffee-table book, and community lectures (IAS 2012).

9.3 I-95/I-495 Woodrow Wilson Memorial Bridge Project, Virginia and Maryland

The Interstate-95/Interstate-495 Woodrow Wilson Memorial Bridge crosses the Potomac River and connects Alexandria, Virginia with Oxon Hill, Maryland. The construction of this mega project has been phased and once fully completed will replace the existing bridge, widen the Capital Beltway (I-495), and reconstruct four major interchanges; it will also have an effect on the Mount Vernon Memorial Highway/George Washington Memorial Parkway which is listed on the National Register of Historic Places. Other cultural resources impacted by this project are both aboveground and submerged sites. The project has won seven awards for its engineering and environmental compliance. It involves multiple jurisdictions and agencies including the FHWA, Virginia Department of Transportation, Maryland State Highway Administration, District of Columbia Department of Public Works, and the National Park Service (NPS). It is subject to Section 106 and generated archaeological collections must be curated in accordance with Part 79.

An MOA was developed for the project in 1997 as part of the Section 106 process (FHWA et al. 1997). Stipulations for the mitigation of adverse effects include treatment plans with educational or interpretive programs about the significance, preservation, and public interpretation of archaeological resources. Possible methods for achieving this include a “brochure for public distribution, publication of scholarly articles, interpretive displays, site interpretation, museum exhibits, videos, or other interpretive/educational materials” (FHWA et al. 1997: III-C).

Selection of curation facilities for archaeological materials from this project are detailed in the MOA (FHWA et al. 1997: VIII-C). Materials from lands under NPS jurisdiction in both states will be curated at the NPS National Capital Region Museum Resource Center in Glenn Dale, Maryland in accordance with Part 79 and the NPS’s published guidelines. Materials from non-NPS lands or waters in Maryland will be curated by the Maryland SHPO in accordance with Part 79 and the SHPO’s published standards. Materials removed from non-NPS lands and waters in Virginia will be curated in accordance with Part 79 and the Virginia SHPO’s published guidelines. The FHWA will consult with the Virginia SHPO and the City of Alexandria to determine the appropriate repository for materials.

9.4 I-95 Project, Philadelphia, Pennsylvania

The Pennsylvania Department of Transportation (PennDOT) I-95 project in Philadelphia is a large on-going interstate corridor project with multiple data recovery projects. PennDOT typically curates its archaeological collections at the State Museum of Pennsylvania which is the official repository for archaeological collections generated during state and federal projects conducted in the Commonwealth. The State Museum charges a one-time fee per cubic foot for incoming collections; the fee is based upon the year the collection was excavated. The current fee is \$350/cubic foot⁸.

PennDOT appears to be unique among other states for having PennDOT Publication 689 “Cultural Resources Handbook” (PennDOT 2010). Publication 689 includes detailed policies for the resolution of adverse effects and curation specific to PennDOT projects.

Resolution of adverse effects is discussed separately for above ground historic properties and below ground archaeological resources and there is an emphasis on measures benefiting the public. Examples of appropriate public outreach methods include: archaeological site tours, books and brochures/pamphlets written for the general public, exhibits, films, informational kiosks, lesson plans, nominations to the National Register or National Historic Landmarks, posters, public lectures/presentations, roadside signage and markers/commemorative plaques, websites, and workshops/classes (PennDOT 2010:IX). For archaeological sites, data recovery is presented as the traditional mitigation measure but other “alternative mitigation concepts” are also presented. Examples include a “synthesis of archaeological information for a watershed or region, creation of a permanent exhibit, or analysis of local archaeological collections to answer particular research questions” (PennDOT 2010:IX).

10.0 WHAT CURATION ISSUES MUST WSDOT STILL ADDRESS?

There are several issues surrounding curation that WSDOT must address in order to ensure its compliance with state laws, responsibility for legacy collections, and to streamline internal processes.

1. Finalize and adopt the Draft Statewide Curation Policy (Appendix D).
2. Assign authority to approve or review curation decisions to a specific WSDOT position.

⁸ There are no curation fees for collections generated before 1991. The museum does not charge annual maintenances fees.

3. Create a comprehensive list of collections generated during WSDOT projects including legacy collections.
4. Develop a funding/grants program to assist repositories with the rehabilitation of legacy WSDOT collections. Explore Transportation Enhancement Grants as a funding source.
5. Consider the appropriateness of developing a system to determine if a repository meets Part 79 standards rather than relying on third-party determinations.
6. Consider developing a brief set of minimum curation standards for use when a repository does not have written curation standards.

11.0 BIBLIOGRAPHY

Federal Highway Administration (FHWA) and New Mexico Department of Transportation (NMDOT)

- 2011 *Environmental Assessment, Cambray Bridge Improvements, Luna County, New Mexico*. Electronic document, http://dot.state.nm.us/D1/NM549Cambray_EA.pdf, accessed May 25, 2012.

Federal Highway Administration, National Park Service, Advisory Council on Historic Preservation, District of Columbia State Historic Preservation Officer, Maryland State Historic Preservation Officer, and Virginia State Historic Preservation Officer

- 1997 *Woodrow Wilson Memorial Bridge Project Memorandum of Agreement*. Electronic document, <http://www.wilsonbridge.com/images/stories/pdf/rodReport/Attachment%201%20-%20Memorandum%20of%20Agreement.pdf>, accessed July 2, 2012.

Idaho Archaeological Society (IAS)

- 2012 *Sand Creek Archaeology*. Electronic document, <http://idahoarchaeology.org/projects/sandcreekarchaeology/>, accessed July 24, 2012.

Idaho Transportation Department (ITD)

- 2012 *U.S. 95 – Sand Creek Byway*. Electronic document, <http://itd.idaho.gov/projects/d1/SandCreekByway/>, accessed May 22, 2012.

Oregon State Historic Preservation Office (Oregon SHPO)

- 2011 *Oregon Archaeological Permits – Curation of Collections*. Electronic document, http://www.oregon.gov/OPRD/HCD/ARCH/docs/Oregon_Archaeological_Curation_Reports.pdf, accessed May 24, 2012.

Pennsylvania Department of Transportation (PennDOT)

- 2010 *The Transportation Project Development Process: Cultural Resources Handbook*. Electronic document, <ftp://ftp.dot.state.pa.us/public/PubsForms/Publications/PUB%20689.pdf>, accessed June 13, 2012.

Smith, RuthAnn

- 2006 *What's In Your Closet? The Transporter*. Electronic document, http://www.itd.idaho.gov/Transporter/2006/022406_Trans/022406_Archaeology.html, accessed May 21, 2012.

State Historical Society of North Dakota (SHSND)

2012a *North Dakota SHPO Guidelines Manual for Cultural Resource Inventory Projects*. Revised Edition. Electronic document, <http://www.history.nd.gov/hp/PDFinfo/NDSHPO%20Guidelines%202012.pdf>, accessed May 25, 2012.

Washington State Department of Transportation (WSDOT)

2012 Chapter 456 – Historic, Cultural, and Archaeological Resources. In *WSDOT Environmental Procedures Manual*. Electronic document, <http://www.wsdot.wa.gov/publications/manuals/fulltext/M31-11/456.pdf>, accessed July 16, 2012.

APPENDIX A: DEFINITIONS OF TECHNICAL TERMS

APPENDIX A: DEFINITIONS

Adverse Effects

As defined in the National Historic Preservation Act (36 CFR 800.5(2)) to include, but not be limited to: “physical destruction of or damage to all or part of the property; alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is not consistent with the Secretary [of Interior]’s Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines; removal of the property from its historic location, change of the character of the property’s use or of physical features within the property’s setting that contribute to its historic significance; introduction of visual, atmospheric or audible elements that diminish the integrity of the property’s significant historic features; neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property’s historic significance.”

Archaeological Collection

As defined in 36 CFR 79.4(a) to be: “material remains that are excavated or removed during a survey, excavation or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation or other study.”

Archaeological Survey

Unsystematic fieldwalking, i.e. scanning the ground along one’s path and recording the location of artifacts and surface features, or implementing a systematic grid system, such that the survey area is divided into sectors and these are walked systematically, thus making the recording of finds more accurate.

Archaeology Site

A distinct spatial clustering of artifacts, features, structures, and organic and environmental remains, as the residue of human activity.

Associated Records

As defined in 36 CFR 79.4(2) to be: “original records (or copies thereof) that are prepared, assembled and document efforts to locate, evaluate, record, study, preserve, or recover a prehistoric or historic resource.”

Collection Rehabilitation

To restore collections to good condition, often considered to be the standards set forth by 36 CFR 79.

Cultural Patrimony

As defined in NAGPRA to be “an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.”

Cultural Resources

A building, structure, district, site, or object that is historically significant.

Curation Agreement

A formal document or contract between two parties (one usually being a repository) detailing the curation of a collection. It includes details on the state of the collection when given to the repository, work to be done at the repository, responsibilities to the collection for both parties, costs, ownership, and issues/details on access and use of the collection (Childs and Corcoran 2000: Glossary).

Curation

As defined by 36 CFR 79.4(b) to be the process of “managing and preserving a collection according to professional museum and archival practices”.

Curation Facility/Repository

As defined by 36 CFR 79.4(j) to be “a facility such as a museum, archaeological center, laboratory or storage facility managed by a university, college, museum, other educational or scientific institution, a federal, state or local government agency that can provide professional, systematic and accountable curatorial services on a long-term basis.”

Data Recovery/Excavation

The principal method of data acquisition in archaeology, involving the systematic uncovering of archaeological remains through the removal of the deposits of soil and the other material covering them and accompanying them.

Descendant Community/Tribe

As defined in NAGPRA to be a community or tribe able to trace their ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descentance to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed under these regulations.

Excavation Permit

A permit from a state agency that must be obtained prior to any excavation that will alter, dig into, deface, or remove archaeological resources, Native Indian graves, cairns, or glyptic records.

Funerary Object

Items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later (Childs and Corcoran 2000: Glossary).

Historic Properties

As defined in the National Historic preservation Act to be any “district, site, building, structure, or object included in or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource.”

Inventory

An itemized listing of objects in a repository. It may also be the process of physically locating objects through several different types of inventory: complete, sectional, and spot (Childs and Corcoran 2000: Glossary).

Legacy Collection

An archaeological collection excavated and deposited at a repository prior to 1990 and the passage of 36 CFR 79.

Material Remains

As defined in 36 CFR 79.4(1) to be “artifacts, objects, specimens and other physical evidence that are excavated or removed in connection with efforts to locate, evaluate, document, study, preserve or recover a prehistoric or historic resource.”

Memorandum of Agreement (MOA)

A legally binding cooperative agreement written between parties establishing agreed upon methodologies, stipulations, and actions. The purpose of an MOA is to have a written understanding of the agreements between multiple parties.

National Historic Landmark

Nationally significant historic places designated by the Secretary of the Interior because they possess exceptional value or quality in illustrating or interpreting the heritage of the United States.

National Register of Historic Places (NRHP)

The official list of nation-wide historic places worthy of preservation and overseen by the Keeper.

In Perpetuity

Literally means continuing forever. Used in reference to the duration of time that material remains and documents will be curated by a repository (Childs and Corcoran 2000: Glossary).

Pre-contact/Pre-Historic

Generally defined as archaeological materials associated with periods of time prior to any influence by non-Native American cultures.

Programmatic Agreement (PA)

A document that spells out the terms of a formal, legally binding agreement between parties such as a state Department of Transportation (DOT) and other state and/or federal agencies. A PA establishes a process for consultation, review, and compliance with one or more federal laws.

Provenience

In archaeology, the specific geographic or spatial location (either in two-dimensional or three-dimensional space) where an object was found (Child and Corcoran 2000: Glossary).

Sacred Object

Specific ceremonial objects which are needed by traditional religious leaders for the practice of traditional religions by their present-day adherents (Childs and Corcoran 2000:Glossary).

Sources

Childs, S. Terry and Eileen P. Corcoran
2000 *Managing Archeological Collections*. Archeology Program, National Park Service, Washington, D.C.

APPENDIX B: ACRONYMS COMMONLY USED

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APPENDIX B: Acronyms

AASHTO	American Association of State Highway and Transportation Officials
ACHP	Advisory Council on Historic Preservation
APE	Area of Potential Effects
ARMS	Archaeological Records Management Section
ARPA	Archaeological Resources and Protection Act of 1979
ASI	Archaeological Survey of Idaho
AWVRP	Alaskan Way Viaduct Replacement Project
BLM	Bureau of Land Management
CFR	Code of Federal Regulations
CRC	Columbia River Crossing
CRM	Cultural Resources Management
CWU	Central Washington University
DAHP	Department of Archaeology and Historic Preservation
EIS	Environmental Impact Statement
EWU	Eastern Washington University
FHWA	Federal Highways Administration
FTA	Federal Transit Administration
GEO 05-05	Governor's Executive Order 05-05 of 2005
HAER	Historic American Engineering Record
HPIF	Historic Property Inventory Form
ITD	Idaho Transportation Department
MIAC/LOA	Museum of Indian Arts and Culture/Laboratory of Anthropology
MNCH	Oregon Museum of Natural Culture and History
MOA	Memorandum of Agreement
NAGPRA	Native American Graves Protection and Repatriation Act
NDDOT	North Dakota Department of Transportation
NEPA	National Environmental Policy Act of 1969
NHPA	National Historic Preservation Act of 1966
NMDOT	New Mexico Department of Transportation
NPS	National Park Service
NR	National Register
NRHP	National Register of Historic Places
ODOT	Oregon Department of Transportation
OSMA	Oregon State Museum of Anthropology
PA	Programmatic Agreement
PennDOT	Pennsylvania Department of Transportation
RCW	Revised Code of Washington
ROW	Right-of-Way
SEPA	State Environmental Policy Act
SHPO	State Historic Preservation Office
TE	Transportation Enhancement
USACE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
USFS	United States Forest Service
UW	University of Washington
VDOT	Virginia Department of Transportation

WAC	Washington Administrative Code
WARC	Washington Archaeological Research Center
WSDOT	Washington State Department of Transportation
WSU	Washington State University
WWU	Western Washington University

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APPENDIX C: REPOSITORIES CONTACTED

APPENDIX C: Repositories/Individuals Contacted

Repository	Contact	Response Received	Any WSDOT Collections?
Central Washington University	<ul style="list-style-type: none"> • Lynn Bethke, Collections Manager, Museum of Culture and Environment • Shane Scott, Archaeologist, Central Washington Anthropological Survey • Pat Lubinski, Professor, Anthropology Department 	Yes	No
Chehalis Tribe	<ul style="list-style-type: none"> • Richard Bellon, Cultural Resources 	No	Unknown
Confederated Tribes and Bands of the Yakama Nation	<ul style="list-style-type: none"> • Kate Valdez, Tribal Historic Preservation Officer 	No	Unknown
Confederated Tribes of the Colville Indian Reservation	<ul style="list-style-type: none"> • Guy Moura, Tribal Historic Preservation Officer • Jackie Cook, Collections Manager 	Yes	Yes
Confederated Tribes of the Umatilla Indian Reservation	<ul style="list-style-type: none"> • Teara Farrow Ferman, Cultural Resources Protection Program Manager 	Yes	No
Eastern Washington University, Archaeological and Historical Services	<ul style="list-style-type: none"> • Stan Gough, Director 	Yes	Yes
Muckleshoot Indian Tribe	<ul style="list-style-type: none"> • Laura Murphy, Archaeologist • Donna Hogerhuis, Collections Manager 	Yes	No
National Park Service, Ft. Vancouver National Historic Site	<ul style="list-style-type: none"> • Theresa Langford, Curator 	Yes	Yes
Quinault Indian Tribe	<ul style="list-style-type: none"> • Justine James, Cultural Resource Specialist 	Yes	Yes
Squaxin Island Tribe, Museum Library and Research Center	<ul style="list-style-type: none"> • Charlene Krise, Museum Director • Mandy McCullough, Curator 	Yes	No
Suquamish Tribe	<ul style="list-style-type: none"> • Dennis Lewarch, Tribal Historic Preservation Officer 	Yes	No
Tulalip Tribes, Hibulb Cultural Center & Natural History Preserve	<ul style="list-style-type: none"> • Melissa Parr, Senior Curator 	No	Unknown
University of Washington, Burke Museum of Natural History and Culture	<ul style="list-style-type: none"> • Steve Denton, Archaeology Held-in-Trust Program Manager • Kelly Meyers, Archaeology Collections Coordinator 	Yes	Yes
Washington State University, Museum of Anthropology	<ul style="list-style-type: none"> • Mary Collins, Museum Director 	Yes	Yes
Western Washington University, Anthropology Department	<ul style="list-style-type: none"> • Sarah Campbell, Professor • Erin Bilyeu, Collections Manager 	Yes	No

APPENDIX D: DRAFT STATEWIDE CURATION POLICY

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I. DRAFT 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) of 1966 as amended (“Section 106”) or Washington State Archaeological Resources and Sites (RCW 27.53). 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 guidance¹ 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.

¹ *Recommended Approach for Consultation on Recovery of Significant Information From Archaeological Sites*, effective June 17, 1999

Curation must be in accordance with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation 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 objects 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 (RCW 27.53)

The Washington State Archaeological Sites and Resources Act (RCW 27.53) requires an archaeological excavation and removal permit (WAC 25-48) 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 meeting Part 79 standards 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.

In order to identify repositories that meet Part 79 standards, DAHP has developed a list of repositories that they have determined meet the qualification standards for long-term management

and preservation of archaeological collections. As of July 2012, there are five repositories included on the list².

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

The Washington State Indian Graves and Records Act (RCW 27.44) 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 investigations at a site identified during survey continue 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.

² University of Washington’s Burke Museum of Natural History and Culture, the National Park Service’s Ft. Vancouver National Historic Site, The Tulalip Tribe’s Hibulb Cultural Center & Natural History Preserve, the Spokane Tribe of Indians, and the Wanapum Heritage Center Repository.

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 or the private landowner as appropriate.

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 dollars 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 investigation WSDOT conducts. Typically a monitoring plan outlines the types of artifacts that would be considered significant if 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 or owns an easement for highway purposes 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 Burke Museum or at a tribal repository, 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 requirements³, 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 belongs to the tribe. Over a dozen Washington State and neighboring tribes 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 must discuss the issue of archaeological collections and their disposition with the landowner in advance of the fieldwork. This includes temporary easements.

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

When 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.

³ As of July 2012, the only programmatic agreement WSDOT has entered into with a land owning federal agency is the US Forest Service.

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 museum 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 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 or PA including designating the repository to house the archaeological collections. In some cases, it may not be feasible to select a curation facility at the time a MOA/PA is negotiated, and would instead be identified within an archaeological resource management or treatment plan.

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 their 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 in order 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 the National Environmental Policy Act (NEPA) of 1969 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 carefully considers the issues and concerns raised during consultation and develops mitigation measures to address the specific adverse effects of a particular project.

Consistent with Section 106, WSDOT shall 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. Other mitigation options besides the following will be considered on a project-by-project basis.

A. Exhibits/Displays

WSDOT has prepared exhibits/displays and other types of public information, such as documentaries, for mitigation. WSDOT encourages the repositories that hold collections generated during WSDOT projects to exhibit or display those collections in a manner which is publically accessible. However, decisions on whether to exhibit or display collections are made by the repository as it deems appropriate based on the nature of the collection and the capacity of the repository to be open to the public.

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.