

PROGRAMMATIC AGREEMENT

FHWA'S STATEWIDE PA FOR THE FEDERAL-AID HIGHWAY PROGRAM IN THE STATE OF WASHINGTON

DESCRIPTION OF PROGRAM:

This 2nd Amended Programmatic Agreement (PA) for Washington State was updated in July 2012. The PA streamlines consultation in two ways: It delegates most of the Section 106 review process to the WSDOT, and it eliminates FHWA, SHPO, and ACHP review for specific actions that have minimal potential to cause effects to historic properties. The original PA was executed in June 2000 and amended in 2007. A draft of this 2nd amended PA was submitted to Indian tribes that ascribe traditional cultural and religious significance to historic properties in the state and FHWA met with tribes to discuss the amendment.

The PA includes the following key provisions:

- It applies to all Federal-aid Highway projects, including when a local government is the applicant, except for undertakings occurring on federal lands or tribal lands.
- Section 106 is delegated to the Washington State Department of Transportation (WSDOT) through the resolution of "adverse effects."
- The DOT is required to employ staff that meets the professional qualifications standards in the Secretary of the Interior's Standards.
- FHWA retains responsibility for overseeing implementation of the PA, signing agreements for the resolution of adverse effects, and for resolving disputes or objections raised by SHPO or a consulting party for individual undertakings carried out under the PA.
- Streamlined Review: Exhibit B includes categories of actions considered to have minimal potential to cause effects to historic properties. For the listed actions, the PA waives all requirements for outside review -- by FHWA, SHPO, and the ACHP -- provided that the action is not a part of a larger undertaking. Each project proposed for streamlined review under this provision must be screened by a WSDOT Cultural Resource Specialist. If at any time information becomes available that indicates one of these undertakings may affect historic properties, WSDOT will initiate S.106 consultation with SHPO and others.
- SHPO review is required for all findings and determinations except activities in Exhibit B.
- Guidelines for (1) determination of the Area of Potential Effects (APE) and (2) documentation of the cultural resources survey are included as attachments to the PA.
- WSDOT must document undertakings carried out under Exhibit B on a quarterly basis, making the list available to the public, and distributing it to all consulting parties, including Indian tribes. Annual Review meetings will be held with WSDOT, FHWA and SHPO on an as-needed basis.

PROVISIONS FOR CONSULTATION WITH INDIAN TRIBES

To address the government-to-government relationship between FHWA and Indian tribes, FHWA incorporated into the PA language specifying conditions under which WSDOT may initiate consultation with Indian tribes. Upon execution of the PA and annually thereafter, FHWA will send a letter to each Indian tribe in Washington State, as well as to Indian tribes outside the State but with interests in historic properties in the State, notifying them of the execution of the Agreement, transmitting a copy of the Agreement, and giving Indian tribes the option of consulting directly with FHWA. Upon receipt of a written request from an Indian tribe to consult with FHWA in lieu of or in addition to WSDOT, FHWA shall consult with that Indian tribe for the particular undertaking or program.

July 11, 2013