PROGRAMMATIC OF AGREEMENT
BETWEEN THE U.S. ARMY CORPS OF ENGINEERS, THE WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, WASHINGTON DEPARTMENT OF TRANSPORTATION, AND THE LUMMI NATION
FOR THE PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT LOCATED IN WASHINGTON STATE

INTRODUCTION

In order to address continuing degradation of nearshore ecosystems, the U.S. Army Corps of Engineers (Corps) in Partnership with Washington Department of Fish and Wildlife (WDFW) as the Non-Federal Sponsor plans to carry out the Puget Sound Nearshore Ecosystem Restoration Project (PSNERP or Project). The current PSNERP general investigation is authorized under Section 209 of the River and Harbor Act of 1962 (Pub. L. 87–874). The purpose of the Project is to restore the natural functional processes (e.g. sediment movement and tidal hydrodynamics) of coastal wetlands and embayment areas.

The potential for historic properties to be affected by the Project has been acknowledged and preliminary steps have been taken to identify and evaluate properties that may be eligible for listing in the National Register of Historic Places (NRHP). In 2011, WDFW, through U.S. Fish and Wildlife Service (USFWS), funded and conducted cultural resource investigations for the Project as part of a larger study designed to provide baseline environmental information for 36 potential restoration sites with significant ecosystem degradation issues. These studies included a literature review, a reconnaissance inventory limited to public lands of 15 of the 36 potential restoration areas, and the development of a historic context for agricultural levees.[1] Of the 36 sites originally evaluated in early planning stages, three are now being recommended for construction authorization under the current Project. The remaining 33 sites will undergo their own Section 106 review at a future date under their respective restoration authorities and when appropriations have been secured, as applicable.

The Corps will seek Congressional authorization and appropriation necessary for the Project to move forward in the Corps Pre-Construction Engineering and Design phase (PED), where coordination of land access by WDFW, project design work, and engineering studies will occur. Based on feasibility level design, the following types of ecosystem restoration actions may occur, but are not limited to: removal of shoreline stabilization structures (such as existing levees) so that natural erosion can occur, construction of new setback levees, removal of standing structures that obstruct the natural conveyance of water, realignment of roads, removal of fill, and excavation of tidal channels. The Corps has concluded that a phased identification[2] is appropriate and necessary for the agency to comply with the National Historic Preservation Act (NHPA), and will therefore phase analysis, identification, and evaluation of historic properties until Congressional authorization and appropriations are received and further engineering studies and investigations are possible. A successful NHPA review of the Project will include careful

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[1] *A Cultural Resource Assessment of the Puget Sound Nearshore Ecosystem Restoration Projects (PSNERP) Area, NW Washington Task 1: Literature and Data Review and Synthesis.* 2011. Dave Iversen, Shelby Gunderman and Nicholas Hanten; *A Cultural Resources Assessment of the Puget Sound Nearshore Ecosystem Restoration Project (PSNERP) Area, NW Washington, Task 2: Historic Context of Agricultural Dikes.* 2011 Sarah Stringer-Bowsher, Dan Killoren, Shannon Davis and Dave Iversen; *Cultural Resources Field Inventory for 15 Action Areas within the Puget Sound Nearshore Ecosystem Restoration Projects (PSNERP) Area, NW Washington.* 2011. David Iversen, Sarah Stringer-Bowsher, Shannon Davis, Jennifer Krintz, Nicholas Smith and Alicia Sawyer

[2] Phased identification: Section 106 regulations provide for phased identification of historic properties when circumstances may impede the completion of identification and evaluation prior to project approval. For PSNERP, the PA is the agreement document that is allowing Section 106 compliance during the feasibility phase with agreed-upon procedures for consideration of historic properties that will occur after Congressional approval and authorization but prior to construction

consideration of environmental, historic, cultural, economic, and social concerns. The Corps will work to avoid and/or minimize adverse effects to cultural resources to the greatest extent possible.

WHEREAS, the three restoration sites in the Project are the Duckabush River Estuary in Jefferson County, North Fork Skagit River Delta in Skagit County, and Nooksack River Delta in Whatcom County (Appendix A); and

WHEREAS, PSNERP will have the following acreage in restored wetland function, Duckabush River Estuary restoration site is approximately 38 acres in size and is located in Section 16 and 21 of Township 25 North, Range 2 West; the North Fork Skagit River Delta is approximately 256 acres in size and is located in Sections 8, 9, and 10 of Township 33 North, Range 3 East; and the Nooksack Delta is approximately 1807 acres in size and is located in Sections 1, 2, 3, 4, 5, 6, 7, 8, 10 and 11 in Township 38 North; Range 2 East and Section 31 and 32 of Township 39 North; Range 2 East; and

WHEREAS, the Corps has determined that the Project is a Federal Undertaking, consisting of one project with three restoration sites as described above, subject to review under Section 106 of the NHPA, 54 U.S.C. § 306108, and its implementing regulations under 36CFR § 800 (2004); and

WHEREAS, the Corps has concluded phased identification and evaluation that could take a number of years to complete is an appropriate and necessary approach for the agency to meet the requirements of Section 106 of the NHPA under 36 CFR § 800.4 (b) (2) and 36 CFR § 800.14 (b); and

WHEREAS, the Corps has determined the Area of Potential Effect (APE) for the Undertaking to be the Project boundary for each restoration site, plus any visual, direct, and indirect effects considered as documented in Appendix A; and

WHEREAS, The Corps and WDFW recognize that the Duckabush Bridge is a resource listed on the NRHP that will be affected by the proposed project, and the Corps and WDFW will continue to work through the Section 106 process outlined in the PA to resolve effects as they move through PED; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1)(i)(C), the Corps has invited the Advisory Council on Historic Preservation (ACHP), to participate in the development of this Programmatic Agreement (PA); and per their letter dated March 22, 2013 the ACHP will participate in the development of a PA; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1)(i)(C), the Corps has consulted with the Washington State Historic Preservation Officer (SHPO) about the agency's intent to implement the Project and has invited them to participate in the development of the PA by letter dated March 5, 2013. The SHPO agreed to participate in the development of a PA; and, responded by letter on April 3, 2013 stating that the SHPO would be working with the Corps and WDFW on development of this PA. The Corps followed up with a letter on September 30, 2015 to re-engage the SHPO; and

WHEREAS, the Lummi Nation through their Tribal Historic Preservation Officer (THPO), who has assumed the responsibilities of a SHPO per 36 CFR § 800.2(c)(2), is the official representative for purposes of Section 106 consultation and this PA as approximately 200 acres[3] of the Nooksack Delta site are located within Lummi Nation Tribal lands; and

[3] This number is based on the project footprint as of March 31, 2016. The acreage may increase or decrease depending on project footprint and real estate plan.

WHEREAS, WDFW is the Non-Federal Sponsor for the Project and has been consulted regarding potential historic properties and effects, and has been invited to participate in this Agreement as an Invited Signatory; and

WHEREAS, the Corps has invited the Washington State Department of Transportation (WSDOT) to participate in consultation regarding potential historic properties and effects at the Duckabush River Estuary site and has invited the agency to participate in this Agreement as an Invited Signatory; and

WHEREAS, the Corps has consulted with the following Tribes and offered them the opportunity to participate in this agreement as concurring parties: Jamestown S'Klallam Indian Tribe, Lower Elwha Klallam, Muckleshoot Tribe of Indians, Nisqually Indian Tribe, Nooksack Indian Tribe, Port Gamble S'Klallam Tribe, Puyallup Indian Tribe, Samish Indian Nation, Sauk-Suiattle Indian Tribe, Skokomish Tribe, Snoqualmie Tribe, Stillaguamish Tribe, Suquamish Tribe, Squaxin Island Tribe, Swinomish Indian Tribe, the Tulalip Tribe, the Upper Skagit Indian Tribe; and

WHEREAS, the Corps has notified the following entities, and offered them the opportunity to participate in this agreement as concurring parties: City of Bellingham Planning Division, Historic Bridge Foundation, Jefferson County Historical Society, Jefferson County Planning Department, National Trust for Historic Preservation, Quilcene Museum, Skagit County Historical Museum, Town of La Conner, Washington Trust for Historic Preservation, and Whatcom County Historical Society; and

WHEREAS, the Corps and the project stakeholders have used many public outreach tools including newspaper articles, speaking at conferences, hosting workshops for the public, and developing and maintaining a website (*www.pugetsoundnearshore.org*); all of these efforts will be enumerated in the final Environmental Impact Statement[4] for the project; and

WHEREAS, the Corps has determined that although the prior cultural resources work provides baseline data, additional research, field survey, and evaluation will be necessary; and

NOW, THEREFORE, the Corps, the SHPO, the ACHP, the WSDOT, the WDFW, and Lummi Nation agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties.

STIPULATIONS

The Corps shall ensure that the following measures are carried out:

I. GENERAL

A. Applicability

1. A Consulting Party will be recognized by the Corps as a Signatory, Invited Signatory, or a Concurring Party starting on the date the Consulting Party signs this PA as a Signatory,

[4] *Puget Sound Nearshore Ecosystem Restoration Study: Integrated Feasibility Report and Environmental Impact Statement*, USACE Seattle District, 2016. A copy of the EIS is accessible at *www.pugetsoundnearshore.org*.

Invited Signatory, or Concurring Party[5] and provides the Corps with a record of this signature.

a) In accordance with 36 CFR § 800.6(c)(1), a signatory has the sole authority to execute, amend, or terminate the agreement.
b) In accordance with 36 CFR § 800.6(c)(3), an invited signatory or a concurring party is a consulting party invited to concur in the agreement document but who does not have the authority to amend or terminate the agreement.
c) In accordance with 36 CFR § 800.6(a)(5), if any party requests that specific information shared with Corps be kept confidential, the Corps will comply to the extent allowed by law.

B. Notices

1. The Signatories, Invited Signatories, and Concurring Parties may send and accept official notices, comments, requests for further information and documentation, and other communications required by this PA by e-mail. If the size of an e-mail message is unusually large or an e-mail is returned to a Sender because its size prevents delivery, the Sender will contact the recipient(s) and determine alternative methods to deliver the message and/or its attachments.

2. Time sensitive information that is not sent by e-mail should be sent by overnight mail, courier, or be hand-delivered. The time frame for its review will be measured by the date the delivery is signed for by the individual recipient, the agency or organization representing the Signatory, Invited Signatory, or Concurring Party.

3. All references to time periods in this PA are in calendar days. If a review period included in this PA ends on a Saturday, Sunday, or Federal holiday, the review period will be extended until the first business day following the Saturday, Sunday, or Federal holiday.

4. If a Signatory, Invited Signatory, or Concurring Party does not comment during the time frames set out in this PA, the Corps will consider absence of comment as non-objection, and the Corps may proceed to the next step in the process without taking additional steps to seek comments from that party. In requesting comments, the Corps will include the calendar date for when the comments are due back, and relay the importance of responding within the timeframe.

5. It is the responsibility of each Signatory, Invited Signatory, and Concurring Party to immediately inform the Corps of any changes in the name, address, e-mail address or phone number of the point-of-contact for the Signatory, Invited Signatory, or Concurring Party. The Corps will forward this information to the Signatories, Invited Signatories, and Concurring Parties by e-mail. The failure by any party to this PA to notify the Corps of changes to their point-of-contact's information shall not be grounds for asserting that notice of a proposed action was not received.

[5] The following definitions are provided from 36 CFR § 800.6. All parties implementing this Programmatic Agreement will use the authority provided under 36 CFR § 800.14(b)(3); the definitions from 36 CFR § 800.6 provide sound regulatory framework.

6. If the Undertaking is located within their traditional lands and territories, the affected Tribes will be notified regarding proposed work at the three restoration sites.

7. Consulting parties will be notified of all activities (at all three of the restoration sites) within the Undertaking unless they have identified areas/sites they want to opt out of as per Appendix B which outlines the opt out procedures.

C. Roles and Responsibilities for the Corps, SHPO, Lummi Nation, WDFW, WSDOT, and ACHP

1. The Corps:

   a) Will be responsible for identifying historic properties located within the APEs of the three restoration sites.

   b) Will ensure Cultural Resources (CR) review is conducted by qualified professional staff as outlined in Stipulation I.D.1below.

   c) Will send out quarterly reports. Beginning at the start of PED and the construction phase, and every three months thereafter until completion of all mitigation treatments for any adverse effects, the Corps will send a project status via email to all consulting parties once every three months. This email will contain:

      (1) The project APE (with maps) if it has been altered;
      (2) Which activities under the Undertaking are under identification and evaluation by any party;
      (3) Which activities under the Undertaking are under consultation and resolution of adverse effects.

   d) Will coordinate cultural resource reports to send to SHPO and THPOs.

   e) Will conduct all project consultation with interested Tribes.

   f) Will ensure that all documentation generated as part of the NHPA process resulting from the Undertaking reviewed pursuant to this Agreement shall be consistent with applicable SHPO and Tribal guidelines and the confidentiality provisions of 36 CFR § 800.11(c).

   g) Recognizes that levees cannot be fully assessed until the prism is exposed during the construction phase. As such, the Corps will make a determination of eligibility (DOE) during the PED phase, and if needed, the Corps will re-consult with SHPO and THPOs, and will amend the determination during construction phase if additional information is uncovered, in accordance with 36 CFR § 800.13.

   h) Will notify all parties of contact and address changes pursuant to Stipulation I.B.5. above.

   i) Will ensure documents or studies prepared by a non-Federal party meet applicable standards and guidelines when making identifications of historic properties, determinations of eligibility, and determinations of effects.

j) Will ensure that Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), will be followed if Native American human remains and/or funerary items are discovered on federal land.

k) Will ensure that human remains and/or funerary objects discovered on state or private land will follow applicable Washington State laws.

2. The SHPO and THPO:

a) Will notify the Corps of contact and address changes pursuant to Stipulation I.B.5. above.

b) Will review the Corps' determination of the Areas of Potential Effect (APE), National Register eligibility determinations, and the Corps' effect findings and provide comments within timeframes required by this Agreement.

c) Will be available as a resource and for consultation through site visits, email requests, telephone conversations, or electronic media. In those instances where consultation with SHPO and THPO has occurred, the Corps will provide written notice to SHPO and THPO to confirm any decisions that were reached.

d) Will coordinate with the Corps to identify consulting parties, including any communities, organizations, or individuals that may have an interest in the Undertaking and effects on historic properties.

e) Will inform the Corps and WDFW of any changes to their documentation standards.

f) Will perform project review tasks within 30 days of receipt.

3. WDFW:

a) Will notify the Corps of contact and address changes pursuant to Stipulation I.B.5. above.

b) Will be responsible for coordinating land access to the project lands for each restoration site. Currently, the three sites are comprised of a mixture of private, state and tribal land ownership.

c) Will coordinate temporary access for CR personnel to complete all necessary field survey work in coordination with the Corps' requests.

d) Ensure CR review is conducted by qualified professional staff as outlined in Stipulation I.D.1below.

e) Will perform project review tasks within 30 days of receipt.

f) Will coordinate with landowner(s) regarding cultural resources located on privately owned land on a case-by-case basis. After the Federal interest period ends, landowner(s) retain ownership of cultural resources found on their land. WDFW will work with the

landowner(s) to ensure the landowner(s) know what options they have for donating any collected artifacts to interested museums, and can help coordinate the curation of items should a landowner choose to donate items to a museum.

4. WSDOT:

   a) Will notify the Corps of contact and address changes pursuant to Stipulation I.B.5. above.

   b) Will perform project review tasks within 30 days of receipt.

   c) Will identify WSDOT partnerships such as the Scenic Byways Program or other entities and parties that may have interest or authority in participating in the consultation of the Project.

   d) Will as early as possible as an invited signatory, inform the Corps and WDFW of any changes in construction implementation approach that would require Federal Highways Administration (FHWA) to become involved in the project and that would necessitate an amendment to this PA to include FHWA as an Invited Signatory to an amended PA.

   e) Will coordinate safe access to WSDOT owned structures and properties that may require investigation during cultural resource identification and evaluation efforts.

5. ACHP:

   a) Will review any Adverse Effect (AE) determination as required in CFR § 800.6(a)(1).

   b) Will participate in dispute resolution as required by Stipulation IV.B of this agreement.

D. Administrative Standards

1. Qualified Staff: All archaeological and historic survey, testing efforts, and evaluations will be conducted by or performed under the direct supervision of individuals whose qualifications meet the Secretary of the Interior's Professional Qualifications Standards (Professional Qualifications) set forth in Appendix A of 36 CFR § 61.

2. The Corps and WDFW may contract out all or parts of the work to a qualified professional consultant(s) as set forth in Appendix A of 36 CFR § 61. The Corps and WDFW are responsible for the work products prepared by consultants.

E. Documentation Standards

1. All documents generated as part of the NHPA process will be prepared using *Washington State Standards for Cultural Resources Reporting, 2015* or the most current version located on the SHPO website. These Documents will be uploaded and transmitted using Washington Information System for Architectural and Archaeological Records Data (WISAARD), or current version.

II. PRE-CONSTRUCTION SECTION 106 PROJECT REVIEW PROCESS

A. As Congress appropriates funding for PSNERP, the Corps will continue working through the Section 106 process for the project elements.

1. Define the Area of Potential Effect (APE):

   a) The Undertaking contains three sites with three separate APEs which are located at Duckabush River Estuary, North Fork Skagit River Delta, and Nooksack River Delta. The APEs are recorded and mapped in Appendix A.

   b) The current APEs for the project are conceptual; the Corps acknowledges that the APEs could change as further design is completed.

      (1) If the APEs grows to an area not previously identified, the Corps will include this area in Standard Project Review, as outlined in Stipulation II.A.2-3.

      (2) If the APEs are reduced to a degree that it no longer includes an area that was previously identified, the Corps will notify all consulting parties of the change of the APE. No further identification and evaluation will be conducted on the cultural resources that were located in the portion of the APE that was eliminated.

   c) The Corps will notify all parties of the proposed APEs before any fieldwork takes place. This notification will be an email with a narrative boundary description, and a map showing the APEs for each of the sites. Within 30 days, SHPO and THPO will provide comments on the proposed APEs as defined under Stipulation I.C.2.b.

2. Identification of Archaeological Resources:

   a) As of the date of this PA, a records search in WISAARD identified previously recorded archaeological sites and standing structures in and/or adjacent to the project footprints of the three restoration sites. Please see Appendix D for a list of previously recorded cultural resources identified in each of the three restoration sites. The previously recorded cultural resource information will be incorporated into the identification stage of fieldwork, if they are a part of the project APEs.

   b) Before fieldwork begins, the Corps will conduct a new records search in the WISAARD database to check if any additional archaeological sites and standing structures have been recorded since this PA was executed, and if any of these resources exist in any newly identified sections of the APE. If any of the APEs grow, the Corps will ensure that the SHPO and THPO are notified and given the chance to comment as defined under Stipulation I.C.2.b.

   c) Identification of Archaeological Resources:

(1) Background Research:
Prior to the onset of archaeological field work at a restoration site, the Corps will ensure that the results from the WISAARD records search will be reviewed to determine what additional, if any, work may be needed at each restoration site. Additional background research will incorporate and expand on the background research compiled thus far. The focus of the effort will be to collect and synthesize information regarding the environmental history and cultural history of the site and to aid in developing prehistoric and historic contexts against which the significance of potential archaeological resources may be measured. Environmental background research will entail a review of primary and secondary sources relevant to the environmental and geological processes that have shaped a restoration site, and a review of historic maps providing documentation of land use changes. The background research results will be used to determine the probability for the presence of archaeological resources within the APEs. Historic and Archaeological Context statements will be developed prior to fieldwork in order to develop research questions and guide fieldwork. See Appendix C for research parameters.

(2) Archaeological Fieldwork:
Prior to the survey, the Corps will ensure that existing fieldwork and background information will be reviewed in conjunction with project designs to guide the level of field efforts necessary at each restoration site. The archaeologist will attempt to locate all previously recorded archaeological sites and determine what (if any) additional fieldwork is necessary.

(3) Archaeological Phase I (Reconnaissance) Survey:
The Corps will ensure that surveys include pedestrian transects, at minimum, and presence/absence subsurface testing, as appropriate.

a. Transect intervals for the pedestrian survey and subsurface testing will be determined based on the probability for the presence of archaeological remains.
b. All pedestrian survey transects and presence/absence subsurface testing locations will be recorded using a GIS-based system.
c. No artifacts will be collected during the pedestrian survey or the presence/absence testing; instead, artifacts will be recorded and mapped in place and left in their original location.

(4) Archaeological Phase II (Intensive) Survey:
The Corps will ensure that if any additional testing is necessary to gain sufficient information on any archaeological site, a research design plan will be prepared that addresses the field methodology to be used, including a treatment plan to address inadvertent discoveries. The intent of Phase II Archaeological Testing is to determine

the eligibility of a site to the NRHP utilizing the least amount of ground disturbance to obtain the necessary information.

a. The field methodology will be designed to obtain the necessary information needed to make a DOE. This may provide details necessary to determine a site's limits/boundaries, function, structure, and/or integrity.

b. The site form will be updated to incorporate all new information.

c. Subsurface testing may include but is not limited to: auger probes, shovel probes, backhoe test pits, and/or 50x50 cm test units.

(5) Photographs:
The Corps will ensure that photos will be taken at each restoration site and will include, at a minimum, overview photographs of the area, representative photographs of site conditions, representative photographs of subsurface test units; and representative photographs of any artifacts that may be identified. If human remains are discovered, no photographs of the remains will be taken.

(6) Inventory Forms:
The Corps will ensure that Washington State Archaeological Inventory Site forms will be completed for newly identified archaeological sites. Forms for previously recorded sites will be updated. A Washington State Isolate form will be completed for identified isolates.

(7) Artifact Collection/Curation:
In general, artifact collection will be specified on a case-by-case basis. Should artifact collection be necessary during the Phase II (Intensive) survey or as part of a data recovery for mitigation (see appendix E), the Corps will ensure that artifact collection and curation will be included as part of the research plan and/or data recovery plan. Artifact curation will only occur during the Federal interest period of this project; all artifacts will be curated pursuant to 36 CFR § 79. When the Federal interest ends, the artifacts are the responsibility of the land owner. Any records generated by artifact collections are the property of the Federal government.

3. Identification of Built Environment Resources:

a) Prior to construction, the Corps will ensure that the historic context statement for levees is revised and expanded. Please see Appendix C for research requirements and report parameters.

b) For the purposes of this PA, the Corps will consider all structures over 45 years of age within the APEs in the identification process, along with structures that may possess

exceptional significance. A 45-year threshold anticipates that ecosystem restoration actions will commence no more than five years after an inventory's completion.

c) Before fieldwork begins, the Corps will re-check the WISAARD database to identify whether additional inventories have been added since this PA was executed, and to identify resources that may exist in any newly expanded APE. If any of the APEs grow, the Corps will ensure that the SHPO and THPO are notified and given the chance to comment as defined under Stipulation I.C.2.b.

d) All above-ground structures meeting the age criteria above will be surveyed and documented to a level sufficient to make a DOE.

e) Culverts not listed or determined eligible for listing in the NRHP, or located adjacent to or within a NRHP historic district, including linear historic properties such as historic roads and highways or dikes, built after 1945 will not be surveyed and evaluated per the ACHP "Program Comment for Common Post-1945 Concrete and Steel Bridges" provided the culverts fall within the scope of the Program Comment, i.e., are of the following types: 1) reinforced concrete boxes; 2) concrete box culverts; 3) concrete pipe culverts; or 4) steel pipe culverts.

f) Culverts built in 1945 or earlier will be surveyed to a level sufficient to make a DOE.

g) All submissions will utilize the SHPO's Historic Property Inventory Form (HPIF) system.

4. Evaluation and Eligibility:

a) The Corps will ensure that all elements of the built environment that are surveyed will be evaluated according to guidelines set forth in 36 CFR § 800.4(c)(1), as well as additional guidance provided in *National Register Bulletin 15; How to Apply the National Register Criteria for Evaluation.*

b) In addition to the above, the Corps will ensure that determinations of eligibility for levees will utilize the context developed in Stipulation II.A.3.a. of this PA.

5. Determination of Eligibility and Effects:

a) Findings of No Historic Properties Affected:

(1) The Corps will make a finding of "no historic properties affected" under the following circumstances:

(a) If no eligible or listed historic properties are present in the APEs;

(b) The Project is designed to avoid historic properties, including archaeological sites or properties of religious or cultural significance.

(2) The Corps will consult with SHPO, THPO, and copy WDFW, and participating consulting parties of this finding and provide supporting documentation in accordance with 36 CFR § 800.11(d) and applicable documentation standards. Unless any party objects to the finding pursuant to the appropriate timeframe outlined in Stipulation I.C. Roles and Responsibilities, the Section 106 review of the Undertaking will have concluded.

(3) If any party objects to the determination of eligibility:
(a) The Corps will consult with the objecting part to resolve the disagreement.

(b) If the objection cannot be resolved, the Corps will consult with the Keeper of the Register to make a DOE as outlined is 36 CFR § 63.

(4) If any party objects to a finding of "no historic properties affected":

(a) The Corps will consult with the objecting party to resolve the disagreement.

(b) If the objection is resolved, the Corps may proceed with the action in accordance with the resolution. The Corps may instead reconsider effects on the historic property by applying the criteria of adverse effect pursuant to Stipulation II.A.5.c.3., Resolution of Adverse Effect.

(c) If the Corps is unable to resolve the disagreement, it will forward the finding and supporting documentation to the ACHP and request that the ACHP review the Corps finding in accordance with 36 CFR § 800.4(d)(1)(iv)(A) through 36 CFR § 800.4(d)(1)(iv)(C). The Corps will consider the ACHP's recommendation in making its final determination. If the Corps final determination is to reaffirm its "no historic properties affected" finding, the Section 106 review of the Undertaking will have concluded. Otherwise, the Corps will proceed to Stipulation II.A.5.c.3., Resolution of Adverse Effect.

b) Findings of No Adverse Effect:

(1) The Corps will make a finding of "no adverse effect" under the following circumstances:

(a) If there are historic properties present in the APEs; and the Undertaking is designed to avoid any adverse effects to historic properties, including buildings, structures, objects, archaeological sites, or properties of religious or cultural significance to interested Tribes; or

(b) The Undertaking does not affect the character defining features of a historic property; or

(c) For an Undertaking with a low potential of affect to archaeological resources, the Corps may determine "no adverse effect", and may require archaeological monitoring. In these instances, an archaeological monitoring plan will be developed prior to construction.

(2) The Corps will consult with, SHPO/THPO, and copy WDFW, and participating consulting parties of this finding and provide supporting documentation in accordance with 36 CFR § 800.11(d) and applicable documentation standards. Unless any party objects to the finding pursuant to the appropriate timeframe outlined in Stipulation I.C. Roles and Responsibilities, the Section 106 review of the Undertaking will have concluded.

(3) If any party objects to the determination of eligibility:

(a) The Corps will consult with the objecting party to resolve the disagreement.

(b) If the objection cannot be resolved, the Corps will consult with the Keeper of the Register to make a DOE as outlined is 36 CFR § 63.

(4) If a party objects to a finding of "no adverse effect":

(a) The Corps will consult with the objecting party to resolve the disagreement.

(b) If the objection is resolved, the Corps may proceed with the action in accordance with the resolution. The Corps may instead reconsider effects on the historic property by applying the criteria of adverse effect pursuant to Stipulation II.A.5.c.3, Resolution of Adverse Effect.

(c) If the Parties are unable to resolve the disagreement, it will forward the finding and supporting documentation to the ACHP and request that the ACHP review the Corps' finding in accordance with 36 CFR § 800.4(d)(l)(iv)(C) and 36 CFR § 800.5(c)(3)(i-ii). The Corps will consider the ACHP's recommendation in making its final determination. If the Corps' final determination is to reaffirm its "no adverse effect" finding, the Section 106 review of the Undertaking will have concluded. Otherwise, the Corps will proceed to Stipulation II.A.5.c.3, Resolution of Adverse Effect.

c) Finding of Adverse Effect:

(1) The Corps will make a finding of "adverse effect" under the following circumstances:

(a) The Undertaking will adversely affect identified historic properties in the APEs, including properties of religious or cultural significance; and

(b) The Corps has tried to avoid or minimize the impact to the historic property through working with the design team and WDFW, but a successful alternative has not been identified as feasible to achieve the ecosystem restoration objectives at the site.

(2) The Corps will consult with SHPO/THPO, and copy WDFW, and participating consulting parties of this finding and provide supporting documentation in accordance with 36 CFR § 800.11(e) and applicable documentation standards. Unless any party objects to the finding pursuant to the appropriate timeframe outlined in Stipulation I.C. Roles and Responsibilities, the Section 106 process will proceed to the Resolution of Adverse Effects.

(3) Resolution of Adverse Effects: if the Corps determines that an Undertaking will adversely affect a historic property, it shall resolve the effects of the Undertaking in consultation with SHPO/THPO, and copy WDFW, participating consulting parties, and ACHP (if participating, once invited per 36 CFR § 800.6(a)(1)), by one of the following methods depending upon the nature and scale of the adverse effects as well as the determination of the historic property's significance on a local, state or national level.

(a) Abbreviated Consultation Process: After taking into consideration the nature of the historic properties affected and the severity of the adverse effect(s), the Corps may propose to resolve the adverse effect(s) of the Undertaking through the application of Treatment Measures outlined in Appendix E as negotiated with the consulting parties. The Corps will not propose to use the Abbreviated Consultation process if the Undertaking may affect a National Historic Landmark. The application of these Treatment Measures will not require the execution of a Memorandum of Agreement (MOA) or Programmatic Agreement.

(i) The Corps will notify the consulting parties in writing of its proposed use of a specific Treatment Measure, or combination of Treatment Measures with the intent of expediting the resolution of adverse effects and provide documentation as required by 36 CFR § 800.11(e) and subject to the confidentiality provisions of 36 CFR § 800.11(c), as well as provide the ACHP with an adverse effect notice in accordance with 36 CFR § 800.6(a)(l) and notify them of the Corps' intent to apply the Treatment Measure(s). Unless a consulting party or the ACHP objects within thirty (30) days of receipt of the Corp's proposal, the Corps will proceed with the use of Treatment Measure(s) and will complete Section 106 review.

(ii) If any of the consulting parties or the ACHP objects within the 15 day review and comment period to the resolution of adverse effects through the application of the Abbreviated Consultation Process, the Corps will consult further with the consulting parties to explore options for resolution of the adverse effect(s). If consultation is not successful after an additional 15 day period, the Corps will request the ACHP to join consultation (if they are not already participating), as outlined in 36 CFR § 800.6(b)(v). If no consensus is reached, the Corps will resolve the adverse effect(s) using procedures outlined below in Stipulation II.A.5.c.3.b, Memorandum of Agreement.

(iii) Because funding and implementation details of Treatment Measure(s) for specific activities within the Undertaking may vary, the Corps will provide written notice to the consulting parties within sixty (60) days of the completion of the Treatment Measure(s). This written notice will serve as confirmation that the Treatment Measure(s) for specific Undertaking have been implemented.

(b) Memorandum of Agreement (MOA): If the Abbreviated Consultation Process is determined infeasible or is objected to by any of the consulting parties, the Corps, in consultation with the other consulting parties, will develop an MOA in accordance with 36 CFR § 800.6(c) to stipulate treatment measures to avoid, minimize, and/or mitigate adverse effects on historic properties. If the ACHP was not previously notified of the adverse effect, the Corps will provide the documentation outlined in 36 CFR § 800.11(e) and the ACHP will have 15 days to review the documentation and determine if its participation is necessary to complete the consultation process. The MOA may also include feasible treatment measures that serve an equal or greater public benefit in promoting the preservation of historic properties in lieu of more traditional treatment measures that are not enumerated in Appendix E.

III. OTHER CONSIDERATIONS

A. Design Review for new structures:

Designs for new or replacement structures proposed in the vicinity of eligible historic structures or archaeological sites, planned as part of PSNERP (e.g. bridge, levee, etc.) will be submitted at the 35% level of completion to the SHPO/THPO and interested consulting parties. Updated drawings will be provided if the project footprint changes after development of the 35% design.

B. Implementation of the Undertaking:

The Corps may authorize construction activities including, but not limited to, those listed below, to proceed in specific geographic areas where there has been an Agency determination that there

is no potential to cause effects, as outlined in 36 CFR § 800.3(a)(1). Such construction activities may include:

1. Demarcation, set up, and use of staging areas for construction of the Undertaking.
2. Conduct geotechnical boring investigations or other geophysical and engineering activities.
3. Grading, staging areas, and any other project specific construction element.

C. Post-Review Discoveries

If properties are discovered during the construction phase that may be historically significant or unanticipated effects on historic properties are found, the Corps shall implement measures identified in a discovery plan that will be developed prior to construction. The discovery plan is outlined in Appendix C.

IV. IMPLEMENTATION OF THE AGREEMENT

A. Amendments:

1. The PA may be amended by Signatories in the following manner:

   a) Upon receipt of a request to amend this Agreement, the Corps will immediately notify the all consulting parties and initiate a 30 day period to consult on the proposed amendment, whereupon all the signatories shall consult to consider such amendments.

   b) If agreement to the amendment cannot be reached within the 30 day period, resolution of the issue may proceed by following the dispute resolution process in Stipulation IV.B. below.

   c) This Agreement may be amended when such an amendment is agreed to in writing by all Signatories.

   d) Amendments to this Agreement shall take effect on the date that they are fully executed by the Signatories.

   e) Modifications, additions, or deletions to the appendices made as a result of continuing consultation among the consulting parties do not require the Agreement to be amended.

2. Modifications, additions, or deletions to the appendices may be made in the following manner:

   a) The Corps, on its own behalf or on behalf of another Signatory or Invited Signatory, will notify all Signatory and invited Signatory parties to this Agreement of the intent to add to or modify the current Appendix or Appendices and shall provide a draft of the updated Appendix or Appendices to all Signatory and Invited Signatory parties.

b) If no Signatory party objects in writing within 15 days of receipt of the Corps' proposed addition or modification, the Corps will date and sign the amended Appendix and provide a copy of the amended Appendix to all Signatory and Invited Signatory parties.

B. Dispute Resolution:

1. Should any party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the Corps will consult with such party to resolve the objection.

2. If the Corps determines that such objection cannot be resolved, the Corps will forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP.

3. The ACHP shall provide the Corps with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Corps will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, invited signatories, and concurring parties, and provide them with a copy of this written response. The Corps will then proceed according to its final decision.

4. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps will prepare a written response that takes into account any timely comments regarding the dispute from the signatories, invited signatories, and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.

5. The Corps is responsible for implementing all other actions subject to the terms of this PA that are not the subject of the dispute.

C. Severability, Termination and Suspension:

1. In the event any provision of this Agreement shall be deemed contrary to, or in violation of, any applicable existing law or regulation of the United States of America and/or Washington State, only the conflicting provision(s) shall be deemed null and void, and the remaining provisions of the Agreement shall remain in effect.

2. Any Signatory may terminate this Agreement by providing 30 days' written notice to the other signatories and invited signatories, provided that the parties consult during this period to seek amendments or other actions that would prevent termination. If this Agreement is terminated, the Corps will comply with 36 CFR § 800. Upon such determination, the Corps

will provide all other signatories and invited signatories with written notice of the termination of this Agreement.

3. Any concurring party may notify the other Signatories and Invited Signatories that it is fully withdrawing from participation in the Agreement. Following such a withdrawal, the Corps will review the activities within the Undertaking that may affect historic properties of religious and cultural significance to any Tribe in accordance with 36 CFR § 800. Withdrawal from this Agreement by a concurring party does not terminate the Agreement. A concurring party that has withdrawn from the Agreement may at any time notify the Corps, SHPO, THPO, and WDFW, in writing, that it has rescinded its notice to withdraw from participation in the Agreement.

4. This Agreement may be terminated by the implementation of a subsequent Agreement that explicitly terminates or supersedes this Agreement, or by the Corps' implementation of Alternate Procedures, pursuant to 36 CFR § 800.14(a).

D. Duration and Extension:

1. The Agreement shall remain in effect from the date of final signature for a period not to exceed 20 years unless otherwise extended pursuant to Stipulation IV.D.2., or terminated pursuant to Stipulation IV.C.2. or IV.C.4. Severability, Termination and Suspension.

2. The Signatories may collectively agree in writing to execute this Agreement to cover additional calendar years, or portions thereof, provided that the original agreement has not expired or if the Agreement has expired while a new agreement is in preparation.

3. The Corps will communicate quarterly with all consulting parties as stated in Stipulation I.C.1.c.

E. Parties to this Agreement:

1. Should conditions of the Undertaking change such that other federal agencies, state agencies, Indian tribes, tribal organizations or other organizations or individuals not already party to this Agreement request in writing to participate, the Corps will notify the other consulting parties and consider the request to participate in the Agreement. If the Corps determines that the party should be invited to participate in this Agreement, the Corps will notify the requesting party in writing and the Agreement will be amended following the procedures in Stipulation IV.A. Amendments.

2. Should conditions of the Undertaking change such that a Signatory or Invited Signatory to this Agreement determines that its participation in the Undertaking is no longer required the party may withdraw from participation by informing the Corps. The Corps will inform the other parties to this Agreement of the withdrawal. Withdrawal of a Signatory or Invited

Signatory to the Agreement where its participation is no longer required for purposes of section 106 does not terminate the Agreement as described in Stipulation IV.C.2. Severability, Termination and Suspension.

3. Should a Concurring Party determine that its participation in the Undertaking and this Agreement is no longer warranted, the party may withdraw from participation by informing the Corps. The Corps will inform the other parties to this Agreement of the withdrawal. Withdrawal of a Concurring Party to the Agreement does not require an amendment of the Agreement.

Execution of this PA by the Corps and the SHPO and the THPO, and implementation of its terms evidence that the Corps has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORY PAGE

**PROGRAMMATIC OF AGREEMENT
BETWEEN THE U.S. ARMY CORPS OF ENGINEERS, THE WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, WASHINGTON DEPARTMENT OF TRANSPORTATION, AND THE LUMMI NATION
FOR THE PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT
LOCATED IN WASHINGTON STATE**

U.S. Army Corps of Engineers, Seattle District (Signatory)

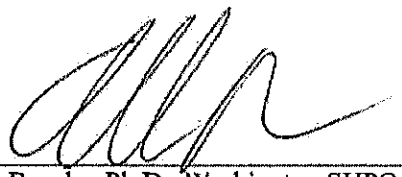
John M. Buck Date 7 Jun 16

John G. Buck, Colonel, Corps of Engineers, District Commander

SIGNATORY PAGE

**PROGRAMMATIC OF AGREEMENT
BETWEEN THE U.S. ARMY CORPS OF ENGINEERS, THE WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, WASHINGTON DEPARTMENT OF TRANSPORTATION, AND THE LUMMI NATION
FOR THE PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT
LOCATED IN WASHINGTON STATE**

Washington State Department of Archaeology and Historic Preservation (Signatory)



Date 5/26/16

Allyson Brooks, Ph.D., Washington SHPO

SIGNATORY PAGE

**PROGRAMMATIC OF AGREEMENT
BETWEEN THE U.S. ARMY CORPS OF ENGINEERS, THE WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, WASHINGTON DEPARTMENT OF TRANSPORTATION, AND THE LUMMI NATION
FOR THE PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT
LOCATED IN WASHINGTON STATE**

Lummi Nation (Signatory)

Date 6/3/16

Honorable Timothy Ballew II, Chairman

SIGNATORY PAGE

**PROGRAMMATIC OF AGREEMENT
BETWEEN THE U.S. ARMY CORPS OF ENGINEERS, THE WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, WASHINGTON DEPARTMENT OF TRANSPORTATION, AND THE LUMMI NATION
FOR THE PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT
LOCATED IN WASHINGTON STATE**

Advisory Council on Historic Preservation (Signatory)

John M. Fowler Date 6/16/16

John M. Fowler, Executive Director

INVITED SIGNATORY PARTIES

Washington Department of Fish & Wildlife
Washington State Department of Transportation
(Individual signature pages on succeeding pages)

SIGNATORY PAGE

PROGRAMMATIC OF AGREEMENT

BETWEEN THE U.S. ARMY CORPS OF ENGINEERS, THE WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, WASHINGTON DEPARTMENT OF TRANSPORTATION, AND THE LUMMI NATION

FOR THE PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT LOCATED IN WASHINGTON STATE

Washington Department of Fish & Wildlife (Invited Signatory)

_____ Date 5/26/16

James Unsworth, Ph.D., Director

SIGNATORY PAGE

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FOR THE PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT
LOCATED IN WASHINGTON STATE

Washington State Department of Transportation (Invited Signatory)

Date May 31, 2016

Kevin Dayton, Olympic Region Administrator

CONCURRING PARTIES

Historic Bridge Foundation
Samish Indian Nation
Stillaguamish Tribe
Washington Trust for Historic Preservation
(Individual signature pages on succeeding pages)

SIGNATORY PAGE

**PROGRAMMATIC OF AGREEMENT
BETWEEN THE U.S. ARMY CORPS OF ENGINEERS, THE WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, WASHINGTON DEPARTMENT OF TRANSPORTATION, AND THE LUMMI NATION
FOR THE PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT
LOCATED IN WASHINGTON STATE**

Historic Bridge Foundation (Concurring Party)

_____ Date 5/27/16

Kitty Henderson, Executive Director

SIGNATORY PAGE

PROGRAMMATIC OF AGREEMENT

BETWEEN THE U.S. ARMY CORPS OF ENGINEERS, THE WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, WASHINGTON DEPARTMENT OF TRANSPORTATION, AND THE LUMMI NATION

FOR THE PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT LOCATED IN WASHINGTON STATE

Washington Trust for Historic Preservation (Concurring Party)

Chris Moore, Executive Director Date 6/6/16

SIGNATORY PAGE

PROGRAMMATIC OF AGREEMENT

BETWEEN THE U.S. ARMY CORPS OF ENGINEERS, THE WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, WASHINGTON DEPARTMENT OF TRANSPORTATION, AND THE LUMMI NATION

FOR THE PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT LOCATED IN WASHINGTON STATE

Samish Indian Nation (Concurring Party)

_____ Date_____

Thomas D. Wooten, Samish Tribal Chairman

SIGNATORY PAGE

PROGRAMMATIC OF AGREEMENT

BETWEEN THE U.S. ARMY CORPS OF ENGINEERS, THE WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, WASHINGTON DEPARTMENT OF TRANSPORTATION, AND THE LUMMI NATION

FOR THE PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT LOCATED IN WASHINGTON STATE

Stillaguamish Tribe (Concurring Party)

_____ Date_____

Shawn Yanity, Stillaguamish Tribal Chairman

APPENDIX A

Area of Potential Effects for Duckabush River Estuary, North Fork Skagit River Delta and Nooksack River Delta

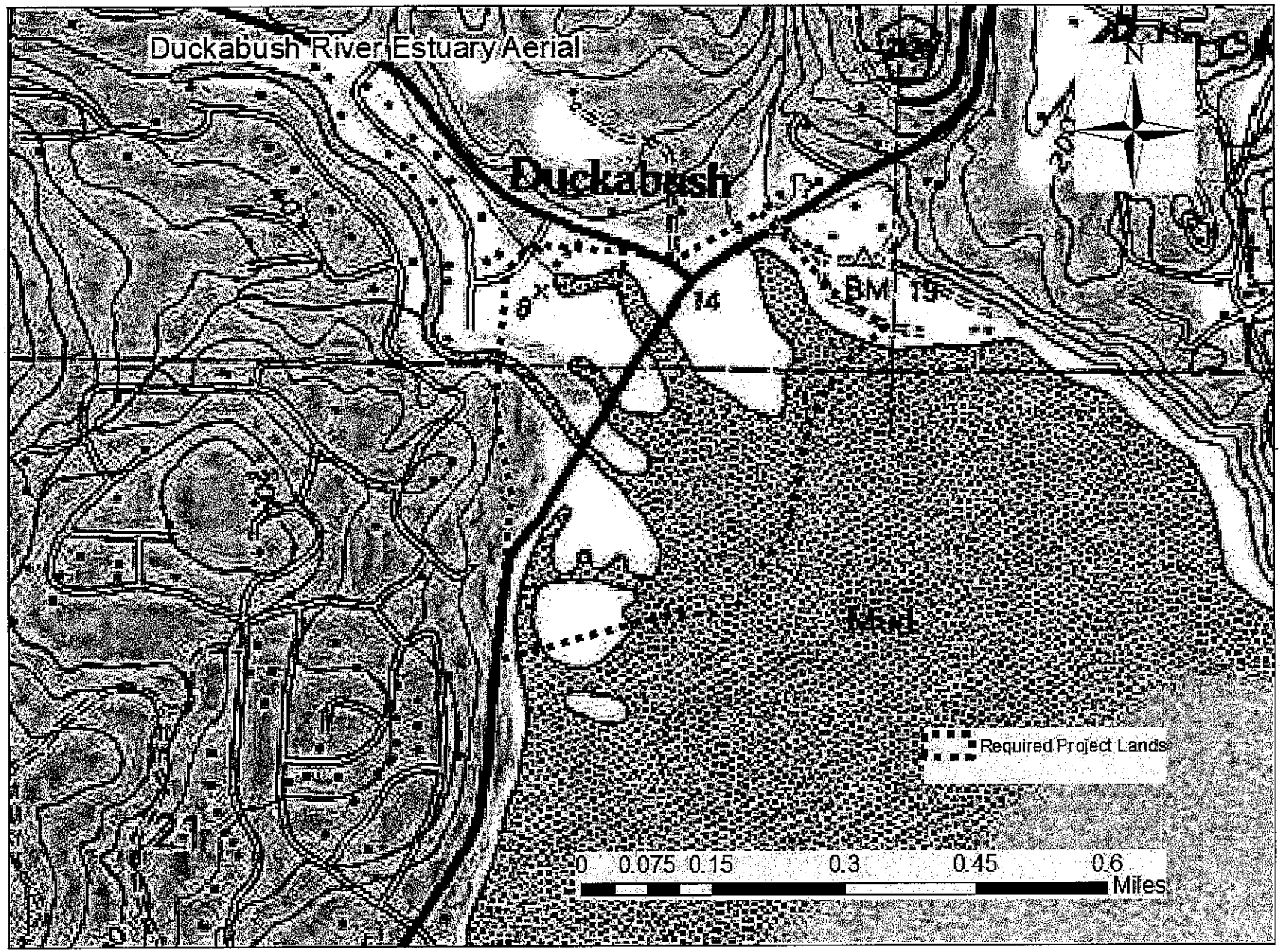
As of the date of this PA, the three restoration sites associated with the current Project each have an APE that was drawn to take into account the direct, indirect, and visual effects, as well as Traditional Cultural Properties (TCPs). To date no TCPs are known to be located in or adjacent to the APEs for each restoration site. Additional work is necessary to determine if TCPs are present. The current APEs are as follows:

(1) Duckabush River Estuary Site, Jefferson County: is approximately 38 acres in size and is located is Section 16 and 21 of Township 25 North, Range 2 West;

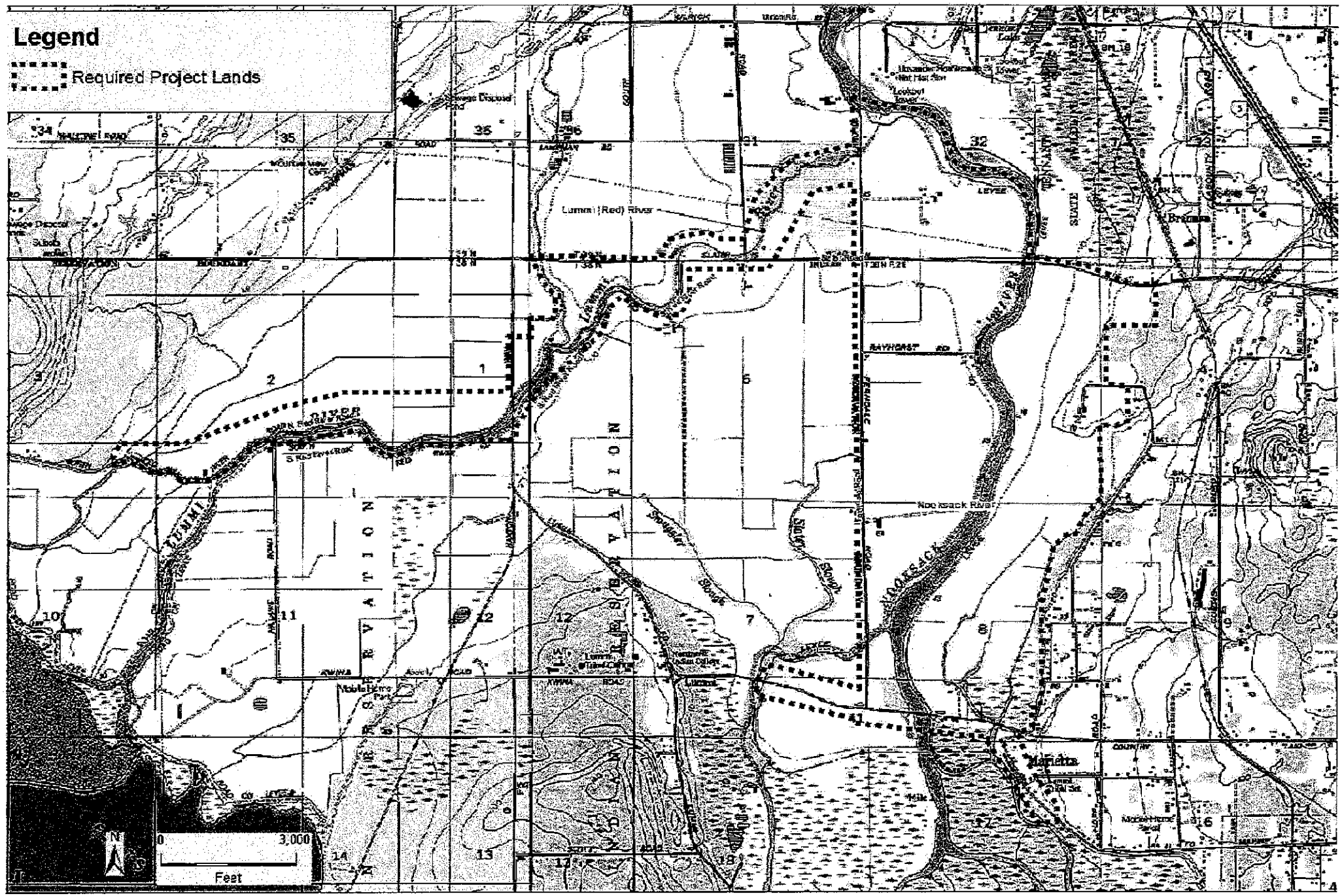
(2) North Fork Skagit River Delta Site, Skagit County: is approximately 256 acres in size and is located Sections 8, 9, and 10 of Township 33 North, Range 3 East;

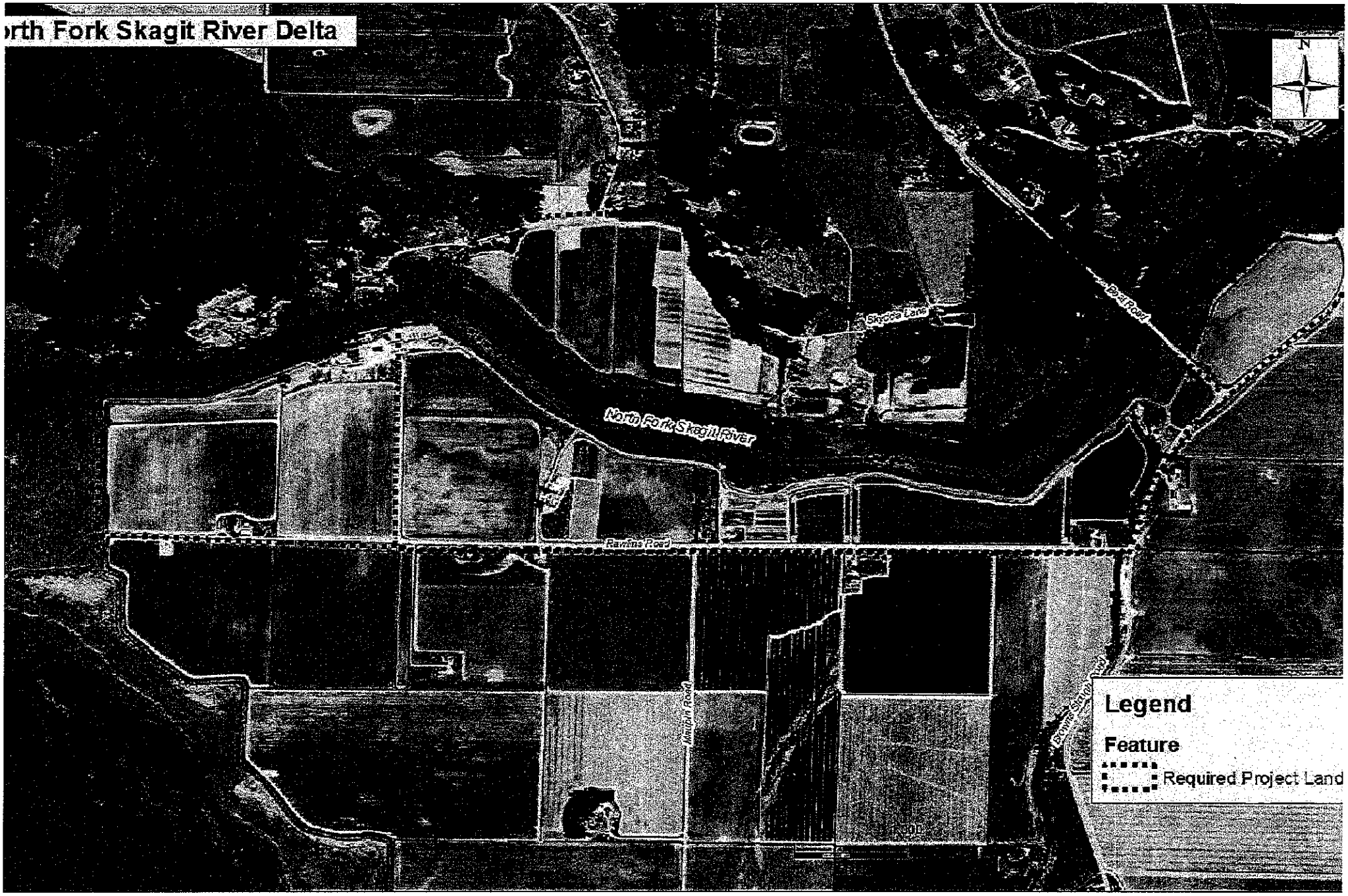
(3) Nooksack River Delta Site, Whatcom County: is approximately 1807 acres in size and is located in Sections 1, 2, 3, 4, 5, 6, 7, 8, 10 and 11 in Township 38 North; Range 2 East and Section 31 and 32 of Township 39 North; Range 2 East; Sections 1, 2, 3, 4, 5, 6, 7, 8, 10 and 11 in Township 38 North; Range 2 East and Section 31 and 32 of Township 39 North; Range 2 East.

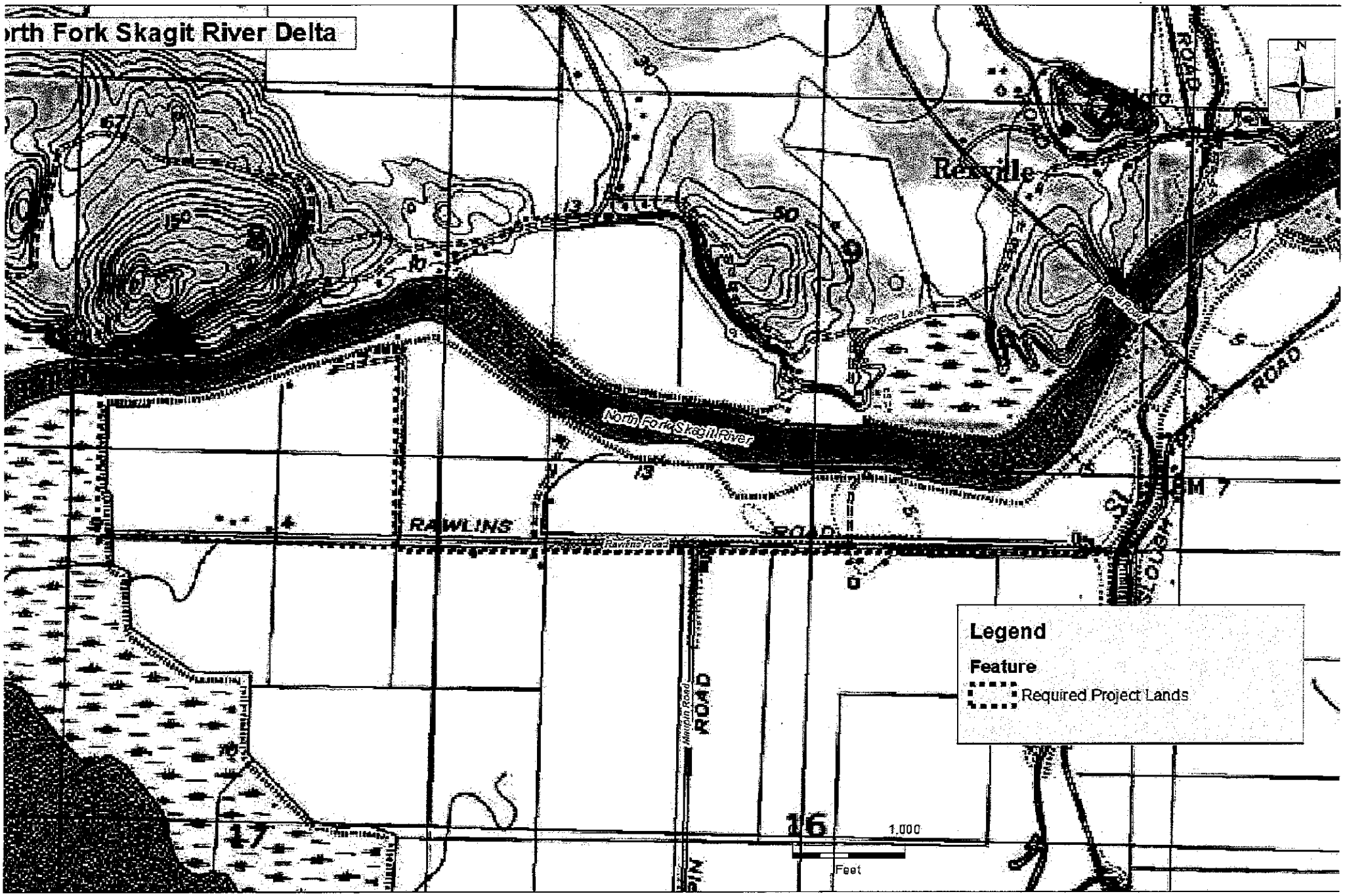
Duckabush River Estuary Aerial
N
Required Project Lands
0 0.075 0.15 0.3 0.45 0.6
Miles


Duckabush River Estuary Aerial
Duckabush
BM 19
14
N
Required Project Lands
0 0.075 0.15 0.3 0.45 0.6
Miles

Nooksack River Delta
Legend
Required Project Lands
Lummi (Red) River
Nooksack River
N
0
2,600
Feet


Legend
Required Project Lands
Lummi (Red) River
Nooksack River
Marietta
0
3,000
Feet
N


rth Fork Skagit River Delta
N
Skagit Lane
Dell Road
North Fork Skagit River
Rawlins Road
Minkler Road
Legend
Feature
Required Project Land


rth Fork Skagit River Delta
Rexville
North Fork Skagit River
RAWLINS
ROAD
Rawlins Road
Meridian Road
Legend
Feature
Required Project Lands
1,000
Feet

APPENDIX B
Interested Parties

Introduction
Because the PA covers three restoration areas located in three different counties within Washington State, not all of the signatories, invited signatories, and concurring parties have an interest in all three of the restoration sites. For example, the Lummi Nation is a Signatory to the PA due to the Nooksack River Delta restoration project extending onto Tribal lands; however, the Lummi Nation may not have an interest in either the North Fork Skagit River Delta or the Duckabush River Estuary restoration sites. Also, the Historic Bridge Foundation is a concurring party for their interest in the Duckabush Bridge at the Duckabush River Estuary site, but they may not have an interest in reviewing the Updated Levee Context Statement.

As such, the Corps has created a way for all consulting parties to opt-out of parts of the consultation. This would mean that if a party opts-out of a site or a feature, they would not be notified of any survey reports, context statements, field report, SHPO consultations, SHPO concurrences, and resolutions of adverse effects, UNLESS an issue arises that would require them to participate. Parties that have not opted out are deemed "interested parties".

Any party who opts-out can opt back in by notifying the Corps. The below list was compiled by contacting all the consulting parties in February 2016. This list can be updated by using Stipulation IV.A.2 of the PA.

Consulting Parties who have opted out of the Duckabush River Estuary Site:
- Jamestown S'Klallam Tribe
- Samish Indian Nation

Consulting Parties who have opted out of specific elements for the Duckabush River Estuary Site (i.e. Buildings, Bridges, Levees, Archaeology, etc.)
- None at this time

Consulting Parties who have opted out of the North Fork Skagit River Delta Site:
- Jamestown S'Klallam Tribe

Consulting Parties who have opted out of specific elements for the North Fork Skagit River Delta Site (i.e. Buildings, Bridges, Levees, Archaeology, etc.)
- None at this time

Consulting Parties who have opted out of the Nooksack Delta Site:
- Jamestown S'Klallam Tribe
- Samish Indian Nation

Consulting Parties who have opted out of specific elements for the Nooksack Delta Site (i.e. Buildings, Bridges, Levees, Archaeology, etc.)
- None at this time

APPENDIX C
Research Parameters

Introduction:
This section is intended to give research parameters for larger research questions and for the development of field methodologies for survey work contained within the PSNERP area. This appendix may be amended in accordance with Stipulation IV.A.2. (Amendments) of this Agreement.

I. Levee Context Statement:

A. The Corps will ensure work to revise and expand the historic context statement and registration requirements developed for levees by the USFWS in, *A Cultural Resources Assessment of the Puget Sound Nearshore Ecosystem Restoration Project (PSNERP) Area, NW Washington, Task 2: Historic Context of Agricultural Dikes.*[6]

B. The Levee Historic Context shall be placed in the National Park Service Multiple Property Documentation (MPD) format as described in NPS Bulletin 16B. The revised context will address nineteenth and twentieth century periods of levee construction and identify appropriate historic periods of significance in Puget Sound with regard to settlement and development, commerce, agriculture, and flood protection. Specific attention will be given to the evolution of levee engineering to include private and public ventures, federal projects of the Depression era, the role of the Corps' various levee projects and repair efforts, and changes to the region's hydrology and landscape. Associated infrastructure and buildings such as pump houses and other levee related property types should also be addressed. Corps reports and maps on file at the Seattle District office will be consulted.

C. The updated levee report will be completed in advance of construction at any of the restoration sites. A draft document will be provided to SHPO and the signatories for review and comment. The Corps will submit the completed document to SHPO prior to the onset of construction, and in advance of any Section 106 consultations that might affect levees. Significance and integrity requirements for determining the National Register eligibility of levees will be based upon the findings of the updated historic context, and following established guidelines provided in *"Historic Structures Advisory #2: Flood Control Systems and Structures," Technical Center of Expertise, Preservation of Historic Structures and Buildings, U.S. Army Corps of Engineers, Seattle District.*

II. Development of Historic and Archaeological Context Statements: As defined by the National Park Service, "historic contexts are those patterns or trends in history by which a specific occurrence, property, or site is understood and its meaning (and ultimately its significance) within history or prehistory is made" (National Register Bulletin 1990). Historic contexts also aim to define property types, take stock of sites (known and projected), pose research questions, provide evaluation criteria, and discuss key bibliographic material. Historic and archaeological context statements should:

A. Identify regional historic trends in settlement and development and archaeological research questions.

B. Identify regional precontact themes and archaeological research questions.

C. Develop a field methodology appropriate to the level work to be done in the restoration sites.

D. The context statements will be completed in advance of construction at any of the restoration sites. A draft document will be provided to SHPO and THPO and the signatories for review and comment.

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[6] Sarah Stringer, Bowsher, Dan Killoren, Shannon Davis and Dave Iversen, *A Cultural Resources Assessment of the Puget Sound Nearshore Ecosystem Restoration Project (PSNERP) Area, NW Washington, Task 2: Historic Context of Agricultural Dikes*, 2011.

III. Research Methodology: Archival research and survey activities should be designed to gather the information necessary to achieve defined preservation goals. Researchers must:

A. Be aware of, understand, and correctly employ those recognized research methods and techniques that are necessary to produce a credible scientific analysis, opinion, or conclusion;
B. Not commit an error of omission or commission that significantly affects an analysis, opinion, or conclusion;
C. Not make a series of errors that, considered individually, may not significantly affect the result of an analysis, opinion, or conclusion but which, when considered in the aggregate, establish that professional investigations are being rendered in a careless or negligent manner; and
D. Identify and consider the appropriate procedures and best practices required to perform the investigation.
E. Include in each written or oral report of communication concerning the results of the appraisal sufficient information to enable WDFW and the Corps to rely on the report or communication and to understand it properly, and must clearly and accurately disclose any extraordinary assumption or limiting condition that directly affects the analysis, opinion, or conclusion.
F. Communicate each analysis, opinion and conclusion resulting from investigations in a manner that is not misleading.
G. The research methodology will be completed in advance of construction at any of the restoration sites. A draft document will be provided to SHPO and THPO and the signatories for review and comment.

IV. Post-Review Discovery Plan: Prior to the construction phase, the Corps, in consultation with SHPO/THPO, WDFW, and interested parties, will develop a post-review discovery plan.

APPENDIX D

Previously Recorded Cultural Resource Sites for each Project Restoration Area

Introduction

The tables below contain previously recorded archaeological sites and built environment resources in and/or adjacent to the project footprints of the three restoration areas. The below information was obtained from a records search in the Washington Information System for Architectural and Archaeological Records Data (WISAARD). Once the Pre-Construction, Engineering and Design phase of the project begins additional research will be performed including a new record search in WISAARD, and other sources.

Table 1. Known archaeological sites located in the Nooksack River Delta, North Fork Skagit River Delta, and Duckabush Estuary proposed restoration sites.

Site Number*	Description	NRHP Eligibility	Location	Potential Effect to Resource Based on Current Design**
Nooksack River Delta Archaeological Sites				
45SH27	Pre-contact shell midden; Pre-Contact burial	Unevaluated	In project area	Appears that there will be no effect based on current project design
45WH170	Pre-contact shell midden; Historic trash scatter	Unevaluated	In project area	Unknown at this time
45WH526	Pre contact shell midden- possible village	Unevaluated	In project area	Appears that there will be no effect based on current project design
45WH723	Pre-contact shell midden; pre contact burial	Unevaluated	In project area	Appears that there will be no effect based on current project design
45WH734	Pre-contact lithic scatter	Unevaluated	In project area	Appears that there will be no effect based on current project design
45WH742	Pre-contact isolate	Unevaluated	In project area	Appears that there will be no effect based on current project design
45WH847	Pre-contact shell midden	Unevaluated	In project area	Appears that there will be no effect based on current project design
45WH848	Pre-contact shell midden	Unevaluated	In project area	Appears that there will be no effect based on current project design
45WH862	Pre-contact shell midden; Historic trash scatter	Unevaluated	In project area	Appears that there will be no effect based on current project design
45WH863	Pre-contact lithic scatter	Unevaluated	In project area	Appears that there will be no effect based on current project design
45WH896	Pre-contact shell midden	Unevaluated	In project area	Appears that there will be no effect based on current project design

45WH907	Pre-contact shell midden	Unevaluated	In project area	Appears that there will be no effect based on current project design
45WH908	Pre-contact shell midden	Unevaluated	In project area	Appears that there will be no effect based on current project design
North Fork Skagit River Delta Archaeological Sites				
Fishtown Archaeological District 11	*Sqwikwikwab,* ethnohistoric village and historic town site	Eligible	Adjacent to project area	Appears that it will be affected based on current project design
45SK34	Pre-contact habitation site	Eligible: Part of the archaeological district (DT11)	Extends into project area	Appears that it will be affected based on current project design
45SK35	Pre-contact shell midden site	Unevaluated	In project area	Appears that it will be affected based on current project design
45SK78	Pre-contact shell midden site	Unevaluated	Just outside of project area	Appears that there will be no effect based on current project design
45SK80	Cave with pile of shell	Unevaluated	Adjacent to project area	Appears that there will be no effect based on current project design
45SK87	Pre-contact shell midden site	Unevaluated	In project area	Appears that it will be affected based on current project design
Duckabush Estuary Archaeological Sites				
45JE362	Duckabush Orchard	Unevaluated	In project area	Potentially effected

*Location of sites is based on information from the DAHP database and site form data. Note existing site boundaries have not been field verified for this project.

** Project designs could change in PED. The effect or lack of effect to the resources is based on the current information to date and is subject to change if project designs change.

Table 2. Known built environment resources located in the Nooksack River Delta, North Fork Skagit River Delta, and Duckabush Estuary proposed restoration sites.

Description*	Date Constructed	NRHP Eligibility	Location	Potential Effect to Resource Based on Current Design**
Nooksack River Delta Structures				
Janet's House-1816 Bayon Road, Bellingham	1930-1950	Unevaluated-WISAARD states undetermined-SHPO	In project area	Appears that it will be affected based on current project design
Wylanoux House (Howell House)	1912	Unevaluated	On border of project area	Appears that there will be no effect based on current project design
Kwina Slough Levee	1927	Unevaluated	In project area	Appears that it will be affected based on current project design
Nooksack River Levee	1900, 1935, 1955	Unevaluated	In project area	Appears that it will be affected based on current project design

Lummi River Levee	1900	Unevaluated	In project area	Appears that it will be affected based on current project design
Jones House-1880 Marine Drive, Bellingham	ca. 2000	Not eligible	In side project area	No effect as house has been determined not eligible
1850 Shady Lane-Historic single family residence	1950	Unevaluated	On border of project area	Appears that there will be no effect based on current project design
Scarborough-1857 Marine Drive, Marietta	1920	Not Eligible	In project area	No effect as house has been determined not eligible
White-1853 Marine Drive, Marietta	1915	Not Eligible	In project area	No effect as house has been determined not eligible
Marietta/Custer Grange Hall	1920	Eligible	Just outside project area	Appears that there will be no effect based on current project design
1835 Marine Drive-Historic single family residence	1925	Not Eligible	In project area	No effect as house has been determined not eligible
1801 Marine Drive Historic single family residence	1949	Not Eligible	In project area	No effect as house has been determined not eligible
WH207-Boundary marker	1861	Listed on NRHP	In project area	Appears that there will be no effect based on current project design
North Fork Skagit River Delta Structures				
North Fork Skagit River Levee	1935	Not Evaluated	In project area	Appears that it will be affected based on current project design
45SK337	Summers Farm Barn 1885	Washington Heritage Barn Register (WHBR)	In project area	Appears that it will be affected based on current project design
Duckabush Estuary Structures				
Duckabush River Bridge	1934	Listed on NRHP	In project area	Adverse effect with proposed removal
Northern Distributary Channel Bridge	1934	Unevaluated	In project area	Adverse effect with proposed removal

*Location of sites is based on information from the DAHP database and site form data. Note existing site boundaries have not been field verified for this project.

** Project designs could change in PED. The effect or lack of effect to the resources is based on the current information to date and is subject to change if project designs change

APPENDIX E

Treatment Measures for Mitigation of Adverse Effects

Introduction

If historic properties are found within with the area of potential effects (APE) for the Nooksack River Delta, North Fork Skagit River Delta, and the Duckabush River Estuary restoration sites, the Corps, in consultation with interested parties (see definition in Stipulation I.A. Applicability), will assess adverse effects to the historic properties in accordance with 36 CFR 800.5(a)(1). Should adverse effects be identified, the Corps in coordination with interested parties will resolve the adverse effect following Stipulation II.A.5.c.3. The Corps will first attempt to resolve adverse effects to a historic property by determining if avoidance of the historic property is feasible through redesign of the project and/or specific project elements that areas causing the adverse effect. If avoidance is not possible, the Corps then will look for ways to minimize the adverse effect to a historic property. Minimizing the adverse effect could include shifting specific project elements away from the historic property to lessen the adverse effect. Avoidance and minimization of adverse effects will be dependent on the type of historic property (archaeological site vs. historic structure) and the type of adverse effect (i.e. construction related, visual, noise, etc.). Should avoidance or minimization of adverse effect not be feasible or if the adverse effect is unavoidable and determined to be in the best interest of the public, the following treatment measures outlined below are suggested for the resolution of adverse effects.

Because adverse effects cannot be determined at this point in time, the below treatment measures are written in such a way to allow flexibility to appropriately mitigate adverse effects that may occur to historic properties at each of the three restoration locations. One or more of the following Treatment Measures may be appropriate, depending on the nature of historic properties affected and the severity of adverse effects. In addition, the resolution of adverse effect(s) is highly dependent on the type of historic property, and the type(s) of adverse effect(s). The term "designated responsible party" is used below and refers to either the Corps or WDFW who will be responsible for overseeing the successful implementation of the treatment measures.

As this PA is executed for a 20-year duration, it is possible that new treatment measures may become available as the field of cultural resources continues. If new practices or ideas for resolving adverse effects become available and are desired to be used by interested parties, this Appendix may be amended in accordance with Stipulation IV.A.2. of this Agreement, Amendments.

I. **Public Interpretation:** The designated responsible party will work with the SHPO/THPO and interested parties to develop an educational interpretive plan. The plan may include signs, displays, educational pamphlets, websites, articles, lectures, workshops, new and emerging technologies and other similar mechanisms to educate the public about historic properties within the local community, state, or region. Once an interpretive plan has been agreed upon by the interested parties, SHPO/THPO, and the designated responsible party will continue to consult throughout implementation of the plan until all agreed upon actions have been completed by the designated responsible party.

II. **Historic Context Statements and Narratives:**

A. This treatment measure differs from the Levee Context statements and Historic and Archaeological context statements that are discussed in the PA. Those context statements are intended to help guide the field work.
B. These Historic Context Statements and Narratives are to be used for mitigation. This treatment measure will focus on an individual property or site, a historic or archaeological district, a set of

related properties or sites, relevant themes as identified in the statewide preservation plan and/or research questions generated for this project.

C. Prior to project construction, the designated responsible party will work with the SHPO and Interested Parties to determine the topic and framework of a historic context statement or narrative the designated responsible party shall be responsible for completing.
D. Any context statements shall be placed in the National Park Service Multiple Property Documentation (MPD) format as described in NPS Bulletin 16B.
E. Once the topic of the historic context statement or narrative has been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and Interested Parties through the drafting of the document and delivery of a final product. The Corps shall have final approval on the quality of the documentation provided by the designated responsible party. The designated responsible party will use staff or contractors that meet the Professional Qualifications for the appropriate discipline.

III. Oral History Documentation: Prior to project construction the designated responsible party will work with the SHPO/THPO and Interested Parties to identify oral history documentation needs and agree upon a topic and list of interview candidates. Oral history documentation can focus on a wide range of topics including but not limited to: local communities' connection to the restoration area, settlement/development of the area; collection of recollections/memories of elders/community members'/landowners regarding past events that occurred within the restoration area. Once the parameters of the oral history project have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and Interested Parties through the data collection, drafting of the document, and delivery of a final product. The SHPO/THPO and the Corps shall have final approval on the quality of the documentation provided by the designated responsible party. The designated responsible party will use staff or contractors that meet the Professional Qualifications for the appropriate discipline.

IV. Structural and Archaeological Site Inventory:

A. This treatment measure differs from the historic and archaeological site fieldwork that will occur prior to construction.
B. Historic and Archaeological Site inventory to be used as treatment measures for mitigation purposes where efforts may be directed toward the re-survey of previously recorded historic and archaeological sites, designated historic properties and/or districts which have undergone change or lack sufficient documentation, or the survey of new historic properties and/or districts that lack formal designation.
C. This could be for historic properties that are located within the APEs but would not be affected by the Undertaking; for historic properties and/or districts that may extend into or be located on the boundary of the APEs.
D. Prior to project construction, designated party will work with the SHPO/THPO and participating parties to establish the appropriate level of effort to accomplish a historic or archaeological site inventory.
E. Once the boundaries of the survey area have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO/THPO and participating parties through the data collection process.
F. The designated responsible party will use SHPO/THPO standards for the survey of historic properties and SHPO/THPO forms as appropriate.
G. The designated responsible party will prepare a draft inventory report, according to SHPO/THPO templates and guidelines, and work with the SHPO/THPO until a final property inventory is approved. The designated responsible party will use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

V. Archaeological Data Recovery

A. Prior to project construction, the designated responsible party will work with the SHPO/THPO and interested participating parties on an archaeological data recovery plan for archaeological sites where it has been determined that data recovery is the appropriate mitigation for the resolution of adverse effects to the historic property.

B. Data recovery will be used to recover important information that would be lost as a result of the project and/or project elements.

C. The data recovery plan will include (but is not limited to):

1. Discussion of the National Register significance of the property.
2. Research questions that are directly pertinent to the Historic Property undergoing data recovery.
3. Results of previous research relevant to the site.
4. Background research relevant to the site (geological, prehistory, history, etc.).
5. Proposed field methodology and techniques.
6. Proposed artifact collection methodology.
7. Proposed laboratory processing and analysis.
8. Methods and techniques used in artifact, data, and other records management.
9. Artifact curation during the Federal interest of the project and how artifacts will be returned to land owners after the Federal interest of the project is over.
10. Plan for public outreach as part of the data recovery and/or results from the data recovery.

D. Each data recovery plan will be tailored to the specific site undergoing data recovery.

E. A draft data recovery plan will be reviewed by SHPO/THPO, WDFW and all interested parties prior to being finalized.

F. The SHPO/THPO and the Corps shall have final approval on the quality of the data recovery plan provided by the designated responsible party.

VI. Geo-References of Historic Maps and Aerial Photographs:

A. Prior to project construction, the designated responsible party will work with the SHPO/THPO and interested participating parties to identify the historic maps and/or aerial photographs for scanning and geo-referencing.

B. Once a list of maps and/or aerial photographs have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and interested participating parties through the scanning and geo-referencing process and shall submit drafts of paper maps and electronic files to them for review.

C. The SHPO/THPO and the Corps shall have final approval on the quality of the documentation provided by the designated responsible party. The final deliverable shall include a paper copy of each scanned image, a geo-referenced copy of each scanned image, and the metadata relating to both the original creation of the paper maps and the digitization process.

VII. Design Review by SHPO/THPO and Interested Parties: Prior to project construction, the Corps and WDFW shall work with the SHPO/THPO and interested parties to develop a design that preserves and protects historic values. Plans and specifications will, to the greatest extent feasible, preserve the basic character of the affected historic property. Primary emphasis shall be given to significant view sheds, and significant character-defining features (e.g. design, massing, cladding, windows, doors, porches) that will be repaired or replaced with either in-kind materials or materials that approximate the originals in appearance. Aesthetic camouflaging treatments such as use of veneers, paints, texture compounds and other surface treatments and/or use of sympathetic infill panels and landscaping features will be employed to the greatest extent feasible. Final construction

drawings used in the bidding process will be submitted to the SHPO/THPO for review and comment prior to the award of a construction contract and the initiation of construction activities.

VIII. **Marketing Plan for Relocation:** Prior to project construction, the Corps and WDFW shall work with the SHPO/THPO and interested parties will make a good faith and reasonable effort to identify a party or parties willing to purchase and relocate the historic structure(s). A good faith and reasonable effort should include publicizing and advertising the property in newspapers, magazines, and/or websites of record for a specific period of time. The purchaser must be willing to use a professional structures mover that follows the recommendations in Moving Historic Buildings by John Obed Curtis (1975, Reprinted 1991 by W. Patram for the International Association of Structural Movers) or other similar updated brochure. This marketing plan will be used in conjunction with Treatment Measure X., Recordation Package. If the good faith and reasonable effort does not result in the identification of a party or parties willing to relocate the property, the property may be demolished following the completion of the recordation package. Timeframes and specifics regarding this marketing plan will be developed in the consultation package to SHPO/THPO.

IX. **Salvage:** Prior to project construction, elements of the affected structure shall be offered for salvage to a responsible party, at the salvaging party's expense. The salvaged elements may be re-used in new construction, rehabilitation of existing structures, or in displays for educational purposes. Additionally, the activities shall not occur at or below grade in order to avoid affecting unevaluated archaeological resources. The salvage treatment measure will be used in conjunction with Treatment Measure X., Recordation Package. Timeframes and specifics regarding the salvage will be developed in the consultation package to SHPO/THPO.

X. **Recordation Package:** This treatment measure provides documentation of either the subject property or other properties as agreed upon by the interested parties. Prior to project construction, the designated responsible party shall oversee the successful delivery of the recordation package prepared by staff or contractors that meet the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate.

A. DAHP Mitigation Options and Documentation Standards, 2010 or subsequent revisions, will be used. These requirements are outlined at http://www.dahp.wa.gov/sites/default/files/MitigationDocumentationStandards.pdf
B. These documentation standards are tiered from Level I, II, and III. Interested parties will agree to a level appropriate and commensurate with the level of adverse effect.
C. The designated responsible party will submit the recordation package to the SHPO and interested parties for review. Once accepted by SHPO, the designated responsible party will notify the interested parties of the submission.

XI. **Photography of Collections:** This treatment measure may be appropriate for the following circumstances including but not limited to: private collection(s) held by local landowners consisting of artifacts the landowner found on their land that is located in the project footprint, a collection held in museums that were recovered from project lands in the past.

A. Prior to project construction the designated responsible party shall submit the collection photograph package digitally to the Corps for review and approval. Once approved by the Corps, the designated responsible party shall submit full copies of the approved Digital Photography Package to an identified repository(ies) for permanent retention. Repositories will be identified on a case-by-case basis and may include the SHPO, the Washington State Archives, local museums or historical societies. Photographs shall be taken in accordance with curation standards and the

package will include both digital photographs and copies printed on archival paper. The repository shall dictate any additional requirements such as file type (TIFF, JPEG).

B. The package shall also include a narrative describing the collection. At a minimum the narrative should include a description of the collection contents; how the collection was obtained, and the ability of the collection to inform about past use and occupation of area.

APPENDIX F
List of Contacts

Introduction
As per Stipulation I.B.5., every party included in this PA will provide their contact information to ensure timely coordination and correspondence. This list should include all the relevant information for those who want to be notified of Undertaking addressed in this PA. This list will be updated as-needed using Stipulation IV.A.2., and shared with all parties as part of the quarterly reports, or on an as-needed basis.

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Advisory Council on Historic Preservation

Lummi Nation

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