

MEMORANDUM OF AGREEMENT

Between

The Department of Veterans Affairs

The Oregon State Historic Preservation Office

and

The Advisory Council on Historic Preservation

Regarding the Demolition of Building Numbers: 203, 205-208, 213-214, 219-220, 222-224, 225, 227-229, 231, 233-235, 236, 238, 239-242, 245, 248, 250 (two-story section only), 259, 261, 262, 270, 273-274, For the Purpose of Providing Safe and State-of-the-Art Veteran Care within a Modern Facility, at the

Southern Oregon Rehabilitation Center and Clinics,

White City, Oregon

WHEREAS, the Southern Oregon Rehabilitation Center and Clinics (SORCC), part of the Department of Veterans Affairs (VA), plans to demolish 35 buildings (203, 205-208, 213-214, 219-220, 222-224, 225, 227-229, 231, 233-235, 236, 238, 239-242, 245, 248, 250 (two-story section only), 259, 261, 262, 270, 273-274) as outlined in the attachment Strategic Capital Improvement Plan (SCIP) site plan, current version, FY13, and the associated corridor structure in White City, Oregon, along with allocating land location(s) for Enhanced Use Lease potential, in order to construct new facilities to provide veterans and medical center staff with safe and modern facilities; and

WHEREAS, the SORCC plans to fund the demolition and new construction pursuant to the Capital Asset Realignment for Enhanced Services (CARES) Decision by Secretary Nicholson, in July 2006, supported through the VHA Minor Construction Program; and

WHEREAS, SORCC has determined that the proposed demolition, development and lease are undertakings under the National Historic Preservation Act; and

WHEREAS, SORCC has defined the undertaking's area of potential effect as shown in Attachment A: List of Buildings; Attachment B: "Exhibit "B" NEW LEGAL DESCRIPTION OF THE U.S. VETERAN'S ADMINISTRATION DOMICILIARY TRACT; Attachment C: "SCIP 13 Plan 2013-2022"; and Attachment D: "SCIP 13 NRM Plan 2013-2015", Attachment E "Inadvertent Discovery Information".

WHEREAS, the VHA SORCC at 8495 Crater Lake Hwy, White City, Oregon, has determined that the undertaking will have an adverse effect on the Camp White Historic District, as described in the 2006 Camp White Station Hospital: Historic Resource Survey Project. The plan that includes the buildings and associated corridor structures, which are contributing properties to the Camp White Station Hospital Historic District, which is eligible for listing in the National Register of Historic Places, and has been reviewed with the Oregon State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800; and

WHEREAS, SORCC has performed a survey to document all buildings and structures extent at SORCC including historical plans and photographs. The *Camp White Station Hospital: Historic Resources Survey* (2007) identified forty-six (46) contributing buildings and structures. All documentation has been reviewed and concurred with by the SHPO and ACHP; and

WHEREAS, SORCC has an interpretive exhibit and website of the original Camp White at the Camp White Museum in Building 200 at SORCC and receives approximately 3600 visitors per year. It is currently the most visited museum in the Rogue Valley area. This exhibit consists of display panels illustrating the history of the Camp White Army Hospital through the use of photographs, site plans and text; and

WHEREAS, SORCC has completed a "Manual for Built Resources" for the proper repair and renovation of these contributing buildings and structures. All documentation has been reviewed and concurred with by the SHPO and ACHP. This manual will be used for all historic buildings to remain; and

WHEREAS, SORCC has made a good faith effort to identify and contact Native American Indian tribes that may attach religious and cultural significance to the property SORCC currently occupies to invite them to consult, but was unable to identify such Native American Indian tribes interested in participating; and

WHEREAS, in accordance with 36 CFR Part 800.6(a)(1), SORCC has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation, and the ACHP has chosen to participate in the consultation process pursuant to 36 CFR Part 800(a)(1)(iii) as an invited signatory; and

WHEREAS, all parties realize that buildings 204, 215, 216, 217, 218 and 221 were all demolished previously under the either original Memorandum of Agreement or the Programmatic Agreement.

NOW, THEREFORE, SORCC, the SHPO, and the ACHP agree that the undertakings shall be implemented in accordance with the following stipulations in order to take into account their effect on the Camp White Station Hospital Historic District:

Stipulations

The SORCC will ensure that the following measures are carried out:

1. Identification, Evaluation, and Treatment of Individually Eligible Resources

A. Identification of Structures

The SORCC has completed and submitted to the signatories a historic building survey of the facility in 2006. This study recommends that the SORCC campus as an entire entity is eligible for listing in the National Register of Historic Places as a historic district and that future construction and demolition plans will adversely impact the site as a whole. This survey was sufficient to eliminate the requirement for any unanticipated effects on historic buildings, structures and/or objects found during the implementation of the MOA.

In order to identify buildings individually eligible for listing and to evaluate the effect of the project, the SORCC will complete a formal Determination of Eligibility (DOE) for all existing facility buildings within 12 months of the final signature date on this document. Buildings 203, 205, 245, 236, 238, 248, 261, 273, and 274 are exempt from this requirement as the VA previously meet its responsibilities for these undertakings under Section 106 of the Historic Preservation Act either through a previous MOA or the Programmatic Agreement (PA), which was mutually terminated by the VA, OR SHPO, and the ACHP in May 2011. Within 18 months from the final signature date of this document, a Finding of Effect (FOE) will be prepared for those specific buildings found to be individually eligible for listing through the DOE process and that are also scheduled for demolition or modification. DOEs and FOEs will be submitted to the Oregon SHPO for concurrence following the established Section 106 process.

A Memorandum of Agreement, for work considered to have an adverse effect for buildings that are deemed individually eligible, will be prepared to mitigate adverse effects in cases where the proposed work will adversely affect eligible resources. The facility will be re-evaluated to determine if it is eligible for listing in the National Register as a historic district within the effective period of this document and before any future agreements are signed between the SORCC and the Oregon SHPO, whichever occurs first.

B. Archaeological Resources

In the event that a previously unidentified archaeological resource(s) is discovered during ground disturbing activities, SORCC will stop ground disturbing activities at the location until the find can be documented and assessed by a professional archaeologist. The archaeologist will conduct a field assessment of the site to determine the site's National Registry eligibility and the project's potential effects on the site. The government may need to hire an archaeological consultant if additional information is necessary to determine significance, site boundaries, and National Register eligibility. The concurrence of all eligibility determinations should be sought from the Oregon SHPO. If the site meets the National Register criteria, the preferred treatment is avoidance and protection in place if possible. Site significance and treatment options based upon the nature of the site and the situation should be discussed and documented with the appropriate interested public parties. Where site avoidance of a

significant site is not possible, then archaeological data recovery of the site may need to be completed if other treatment options are not more appropriate. Since Federal Section 106 jurisdiction applies, the construction in the site area will not proceed until it has been reviewed and documented in accordance with 36 CFR 800.11 and 800.13. All data recovery plans should be coordinated federal's archaeologist and the Oregon SHPO as needed. See Section C. "Human Remains" (below) if burials are discovered.

C. Human Remains

SORCC will ensure that human remains and associated funerary objects encountered during the course of actions taken as a result of this MOA shall be treated in a manner consistent with the provisions of the *Native American Graves Protection and Repatriation Act* (25 U.S.C. 3001) and the *ACHP Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* (2007). (Appendix E: Inadvertent Discoveries on Federal Lands After November 16, 1990.) The SORCC shall notify the Police immediately and then the coroner. Thereafter, the SORCC shall notify the SHPO, including the State Archaeologist and the ACHP within two (2) working days of discovery and no action that involves the transportation, manipulation or disturbance from the original location will occur until an action plan consistent with the aforementioned provisions, applicable laws, statutes and regulations that have been reviewed by all parties has been completed.

2. Historic American Buildings Survey (HABS) Documentation

Since the effect of the undertaking will result in the demolition of an additional 34 buildings and the associated connecting corridor that were not a part of any other agreement and are eligible for listing on the National Register, the SORCC shall ensure that required documentation is carried out prior to demolition. The SORCC has performed a survey to document (historical plans and photographs). The survey included all 58 buildings and structures that currently exist on-site. All documentation has been reviewed and approved by the SHPO prior to further demolition.

The SORCC shall obtain a stipulation letter from National Park Service (NPS) that will describe all requirements, such as, but not limited to: description, history, photos, and copies of archival documents including old plans. No new drawings will be required. The documentation will be sent to NPS and copies provided to the University of Oregon, Southern Oregon Historical Society and/or Oregon Historical Society, and a double-sided paper copy (photos on copy paper) provided to the SHPO for review. CDs of all materials should be provided to all parties except NPS. While all parties understand that some demolition will occur during this timeframe, the HABS documentation shall be completed within three years of execution of this MOA.

All parties are aware that some demolition has occurred prior to completion of this documentation related to buildings that were approved for removal based upon a previous MOA or within a mutually terminated PA as discussed in Stipulation 1.A.

3. Reporting of Scope Change

Annual reports will be completed by the SORCC until the aforementioned documentation is completed. Thereafter, no reporting will be required. The documentation shall include a summary of the building number of buildings that have been demolished, and a details description of the agency's progress in completing the provisions of stipulation 1 and 2 of this agreement.

4. Dispute Resolution

Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, SORCC shall consult with such party to resolve the objection. If SORCC determines that such objection cannot be resolved, SORCC will:

- a. Forward all documentation relevant to the dispute, including the SORCC's proposed resolution, to the ACHP. The ACHP shall provide SORCC with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, SORCC shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and provide them with a copy of this written response. SORCC will then proceed according to its final decision.
- b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day period, SORCC may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, SORCC shall prepare a written response that takes into account any timely comments regarding the dispute from the signatory parties to the MOA, and provide them and the ACHP with a copy of such written response.
- c. SORCC's responsibilities to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

5. Amendments

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

6. Duration

This MOA will be null and void in ten years (10) from the date of its execution. At such time, and prior to work continuing on the undertaking, SORCC shall either (a) execute a agreement document pursuant to 36 CFR Part 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR Part 800.7. Prior to such time, SORCC may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation 5 above. SORCC shall notify the signatories as to the course of action it will pursue.

7. Termination

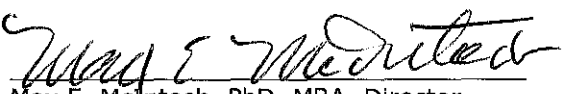
If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation 7, above. If within thirty (30) calendar days an amendment cannot be reached, any signatory may terminate the agreement document upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, SORCC must either (a) execute an MOA pursuant to 36 CFR Part 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR Part 800.7. SORCC shall notify the signatories as the course of action it will pursue.

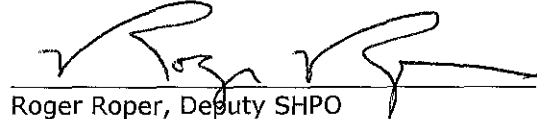
Execution of this MOA by the SORCC, the SHPO, and the ACHP and implementation of its terms evidences that SORCC has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:


SOUTHERN OREGON REHABILITATION CENTER AND CLINICS

 Date 12/22/11
Max E. McIntosh, PhD, MBA, Director

OREGON STATE HISTORIC PRESERVATION OFFICER

 Date 1.3.12
Roger Roper, Deputy SHPO

ADVISORY COUNCIL ON HISTORIC PRESERVATION:

 Date 1/13/12
John M. Fowler, Executive Director

Attachment A - List of Buildings

Building Number	*Eligible, Y or N	Demolish, Y or N?	Remaining Eligible for Listing	Comments
200	Y	N	Y	Will be renovated from the inside
201	Y	N		Sections will be renovated from the inside.
201A	N	N		Proposed new buildings to attach to building 201
201B	N	N		Proposed new buildings to attach to building 201A
201C	N	N		Proposed new buildings to attach to building 201B
202	Y	N	Y	Sections will be renovated from the inside.
203	Y	Y		
204A	N			This one has been removed via PA. SHPO reviewed 2010
205	Y	Y		
206	Y	Y		
207	Y	Y		
208	Y	Y		
209	Y	N		
210	Y	N		
211	Y	N		
211A	N	N		May have additional story constructed in future but not within plans at this time
212	Y	N		
213	Y	Y		
214	Y	Y		
215A	N	N		
216A	N	N		
217A	N	N		
218A	N	N		
219	Y	Y		
220	Y	Y		
221A	N	N		
222	Y	Y		
223	Y	Y		
224	Y	Y		
225	Y	Y		
226	Y	N		May be determined to need to demolition also on future plans
227	Y	Y		
228	Y	Y		
229	Y	Y		
230	Y	Y		
231	Y	Y		
232	Y	N		Exterior has been reinforced/changed. SHPO reviewed via PA in 2009
233	Y	Y		
234	Y	Y		
235	Y	Y		
236	Y	Y		SHPO reviewed demolition and replacement in FY11 via PA
238	Y	Y		
239	Y	Y		
240	Y	Y		
241	Y	Y		
242	Y	Y		
243	Y	N	Y	Renovation planned from interior. Side porches have been removed over the years
245	Y	Y		Part of Expand Amb Care project to remove
248	Y	Y		
249	Y	N		SHPO reviewed this renovation work in FY10
250	Y	Y/N		Single story (to remain) renovated in 2010 (reviewed by SHPO via PA). Two-story structure to be removed
251	N	N		
259	N	Y		
261	Y	Y		
262	N	N		
264	N	N		
266	N	N		
269	N	N		
270	N	Y		
271	N	N		
272	N	N		
273	N	Y		
274	N	Y		

* per Historic Resource Survey

97-36056

EXHIBIT "B"

NEW LEGAL DESCRIPTION OF THE U. S. VETERAN'S
ADMINISTRATION DOMICILLARY TRACT

Commencing at the corner common to Sections 8, 9, 16 and 17, Township 36 South, Range 1 West of the Willamette Meridian in Jackson County, Oregon; thence South 77° 31' 20" West, 510.44 feet (Record - South 77° 31' 45" West, 510.45 feet) to a concrete monument with bronze disk found for the true point of beginning; thence South 45° 08' 20" East, 2092.08 feet (Record - South 45° 08' 15" East, 2092.05 feet) to intersect the Northwesternly right-of-way line of the Crater Lake Highway (State Highway 62); thence along said Highway line, South 44° 51' 45" West, 2491.48 feet to the most-Easterly corner of tract described in Volume 420, Page 112 of the Deed Records of said County; thence along the Northeastly boundary of said tract, North 45° 08' 15" West, 270.13 feet (Record - North 45° 08' 15" West, 240 feet, more or less) to a concrete monument with bronze disk located on the centerline of Avenue 'H' (as said Avenue was monumented for the Camp White Military Reservation) and being South 0° 12' West, 150.00 feet from the centerline of Avenue 'J'; thence along the said centerline of Avenue 'H', North 83° 48' West, 1543.65 feet to the Westerly right-of-way line of Eighteenth Street; thence parallel with the monumented centerline of Eighteenth Street and being 30.00 feet Westerly at right angles therefrom, North 0° 12' East, 1030.17 feet; thence North 44° 51' 55" East, 3843.80 feet (Record - North 44° 52' 15" East, 2844.15 feet) to the true point of beginning, containing 145.28 acres, more or less.

Also easements for domestic water mains, military sewer mains and for other purposes as set forth in Deeds of Record.

EXHIBIT B
PAGE 1071

OK
[Signature]
4/17/97

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ATTACHMENT C - PLAN

(MINOR CONST. PROJECTS - EXPAND OUTPATIENT PC AND SPECIALTY CARE CLINICS (PHASE 1, 2 and 3 (PACT)) - (S) (O)
 PHASE 1 692-331 - FY 10 (D) AWARDED
 PHASE 2 692-XXX - FY11 (C) APPROVED OS
 PHASE 3 692-XXX - FY13 (D) PLANNED
 FY14 (C) PLANNED

FY16 (D) PLANNED
 FY17 (C) PLANNED
 REPLACE SEISMICALLY DEFICIENT BUILDINGS 214 (EHR) AND REPLACE BUILDING 213 (EHR) OUTPT MH AND SPD (C) (S) (E)

FY13 (D) PLANNED
 FY14 (C) PLANNED
 CONSTRUCT NEW NA SPIRITUAL CENTER

FY18 (D) PLANNED
 FY19 (C) PLANNED
 REPLACE SEISMICALLY DEFICIENT BLDG 219 # 692-XXX (C) (S) (E)

FY15/16 (D) PLANNED
 FY16/17 (C) PLANNED
 REPLACE SEISMICALLY DEFICIENT BUILDINGS 239 (EHR) AND 240 (OUTPT MH) WITH NEW. PHASE 1, B239; PHASE 2, B240 (C) (S) (E)



FY17 (D) PLANNED
 FY18 (C) PLANNED
 RECREATION FIELD HOUSE # 692-XXX
 DECONSTRUCT BUILDINGS 241 AND 242 AND CONSTRUCT FIELD HOUSE (C) (S) (E)

FY11 (D) AWARDED
 FY12 (C) PLANNED
 REPLACE KITCHEN # 692-338

ENHANCED USE LEASE
 FY11/12

FY19 (D) AWARDED
 FY20 (C) PLANNED
 REPLACE SEISMICALLY DEFICIENT THEATER # 692-XXX (C) (E)

LEGEND:

-  REMOVAL PLANNED
- (D) DESIGN
- (C) CONSTRUCTION
-  INDICATES NEW BLDG VIA MINOR COMPLETED
- GAP- SPACE (S); CONDITION (C); ENERGY (E); ACCESS (A); UTILIZATION (U); OTHER (O); AND OTHER ITEMS (OI)

FY13 (D) PLANNED
 FY14 (C) PLANNED
 REPLACE SEISMICALLY DEFICIENT BLDG 248 # 692-336 (C) (S) (E)

FY13 (D) PLANNED
 FY14 (C) PLANNED
 REPLACE SEISMICALLY DEFICIENT BLDG 208 # 692-341 (EHR) (INPT MH) (C) (S) (E)

FY14 (D) PLANNED
 FY15 (C) PLANNED
 REPLACE SEISMICALLY DEFICIENT BLDG 207 # 692-340 (EHR) (INPT MH) (C) (S) (E)

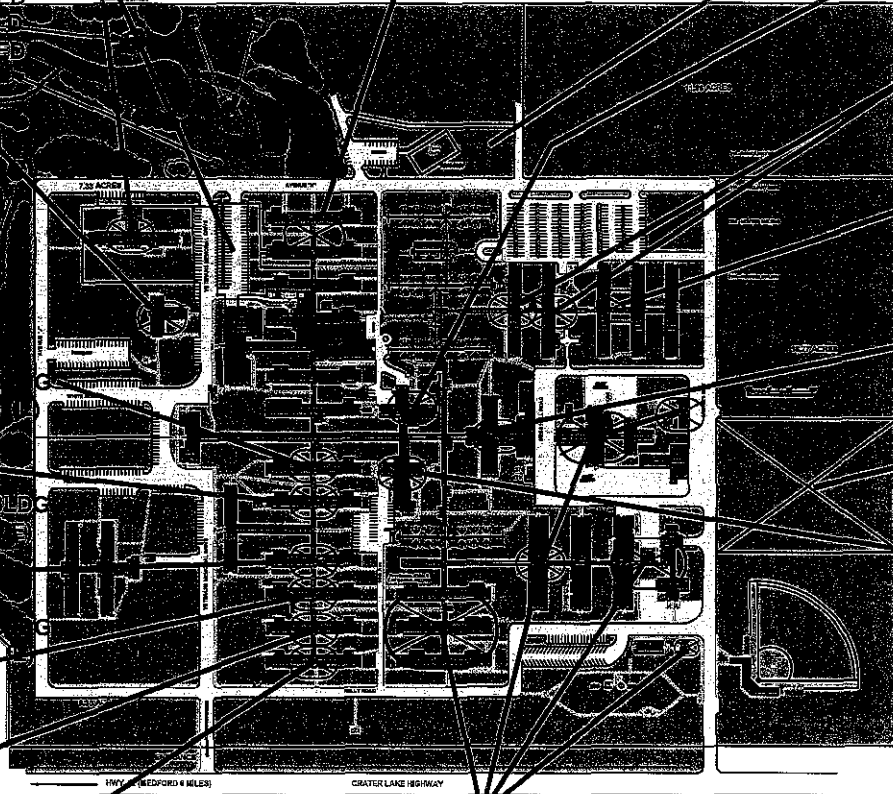
FY15 (D) PLANNED
 FY16 (C) PLANNED
 REPLACE SEISMICALLY DEFICIENT BLDG 206 # 692-339 (EHR) (INPT MH) (C) (S) (E)

FY11 (D) APPROVED
 FY11 (C) APPROVED
 REPLACE DOM BED BLDG 205 # 692-337 (EHR) (C) (S) (E)

FY10 (D) COMPLETED
 FY11 (C) IN PROCESS
 REPLACE DOM BED BLDG 204 # 692-336 (EHR) (C) (S) (E)

FY13 (D) PLANNED
 FY14 (C) PLANNED
 REPLACE DOM BED BLDG 203 # 692-34X (C) (S) (E)

FY 16/17 (D) PLANNED
 FY 17/18 (C) PLANNED
 REPLACE SEISMICALLY DEFICIENT BUILDINGS (INFRASTRUCTURE SUPPORT GROUPS) PHASE 1 AND 2 (SOME EHR) (C) (S) (E)



SCIP 13 PLAN 2013-2022



ATTACHMENT D - NRM PLAN

FY14 RETROFIT EXAM ROOMS B212S
 FY15 RETROFIT B212N, EDUCATION AND OPT
 (C) (MF-II)

FY13 RENOVATE B201, VARIOUS LOCATIONS
 (C) (MF-II)

FY15 RETROFIT B243W
 (C) (MF-II)

PROJECT INFORMATION FOR PROJECTS ON VARIOUS LOCATIONS:

1. ENHANCE CORRIDORS, PHASES 2-4, VARIOUS LOCATIONS (AROUND 211, 211A, 210, 209, AND 200 (BOTH STORIES) (FY13-15) (MF-II)(C)
2. INFRASTRUCTURE WORK: WATER, SEWER, STORM, ELECTRICAL. PHASES 1-2.(FY 13-14) (MF-II) (C)
3. IT INFRASTRUCTURE - VARIOUS LOCATIONS (FY14) (MF-II)(O)
4. RE-ROOFING VARIOUS BUILDINGS AND REPLACE SIDEWALKS (FY14)(MF-II) (C)
5. RETROFIT SYSTEMS FOR ENERGY EFFICIENCY (FY13) (MF-GM) (E)
6. CONSTRUCT EMERGENCY WELL (FY 13) (MF-II) (OI)
7. SECURITY UPGRADES (FY15) (MF-SUS) (OI)

FY15 RENOVATE EXAM ROOMS, B211LS
 FY 2015 RETROFIT B211 CLINICAL AREAS
 (C) (MF-II)

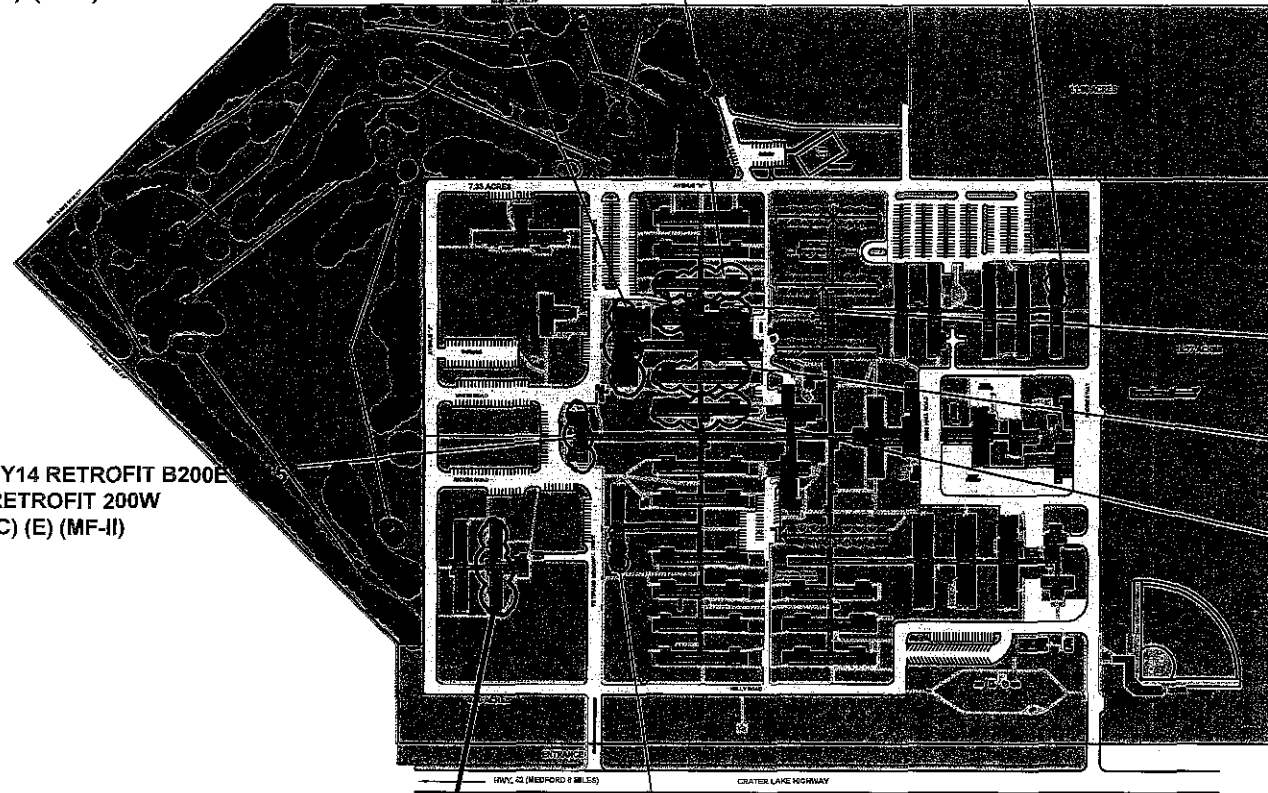
FY13 RENOVATE BUILDING 210US (C) (MF-II)
 FY14 RETROFIT IT SPACE AND LIBRARY, B210
 (C) (MF-II)

FY13 RENOVATE BUILDING 209US
 FY14 SEISMICALLY RETROFIT OFFICES, B209UN
 FY15 RENOVATE GYM (C) (MF-II)

FY14 RETROFIT B200E
 RETROFIT 200W
 (C) (E) (MF-II)

FY13 DEMOLISH B250, 2-STORY SECTION,
 AND CONSTRUCT SURFACE PARKING LOT
 (C) (S) (MF-II)

FY13 RETROFIT B202E
 (C) (S) (MF-II)



LEGEND:

○ AREA OF WORK PLANNED
 (FY XX) FISCAL YEAR START

GAP- SPACE (S); CONDITION (C); ENERGY (E);
 ACCESS (A); UTILIZATION (U); OTHER (O);
 AND OTHER ITEMS (OI)

SCIP 13 NRM PLAN 2013-2015
 MF II, SUS, AND GM



Inadvertent Discoveries on Federal Lands After November 16, 1990

An *inadvertent* discovery is one for which no plan of action was developed prior to the discovery.

Notification

The person who makes the discovery must **immediately notify the responsible Federal official** by telephone and provide written confirmation to the responsible Federal official.

Stop Work

If the inadvertent discovery occurred in connection with an on-going activity, the person must **cease the activity** in the area of the inadvertent discovery and **make a reasonable effort to protect the human remains and other cultural items**.

Initiating Consultation

No later than three working days after receiving written confirmation of the notification, the responsible Federal agency official must **certify receipt of the notification**, and take immediate steps, if necessary, to **further secure and protect the human remains and other cultural items**. **NOTE:** activity that resulted in the discovery may resume thirty days after the Federal agency official certifies receipt of the notification.

The responsible Federal agency official must also **notify by telephone** (with written confirmation) and **initiate consultation** with any known lineal descendant and the Indian tribes and Native Hawaiian organizations –

- who are or are likely to be culturally affiliated with the human remains and other cultural items;
- on whose aboriginal lands the remains and cultural items were discovered; and
- who are reasonably known to have a cultural relationship to the human remains and other cultural items.

Consultation is initiated with a written notification. The written notification must propose a time and place for meetings or consultation.

During Consultation

The **purpose** of consultation is to **help the Federal agency determine who is entitled to custody** of the human remains and other cultural items under NAGPRA so that the disposition process can be completed, and to **discuss the Federal agency's proposed treatment** of the human remains and other cultural items pending disposition.

The Federal agency official must **provide in writing** –

- a list of all lineal descendants, Indian tribes, or Native Hawaiian organizations that are being, or have been, consulted; and
- an indication that additional documentation will be provided on request.

The Federal agency official **must request, as appropriate** –

- names and addresses of the Indian tribe official who will act as the tribe's representative in consultation;
- names and appropriate methods to contact lineal descendants;
- recommendations on how consultation should be conducted; and
- the kinds of cultural items that are considered to be unassociated funerary objects, sacred objects, or objects of cultural patrimony.

After Consultation – Written Plan of Action

The Federal agency official must prepare, approve, and sign a written plan of action. The plan of action must document the kinds of objects to be considered as cultural items; the planned treatment, care, and handling, including traditional treatment, of human remains and other cultural items; the planned archeological recording of the human remains and other cultural items; the kinds of analysis planned for each kind of object; and the nature of reports to be prepared.

The written plan of action must also include --

- the **specific information used to determine custody** of the human remains and other cultural items; and
- the **planned disposition** of the human remains and other cultural items.

Custody must be determined in accordance with 25 USC 3002 (a), "Priority of Ownership," and 43 CFR 10.6, "Priority of Custody."

Attachment E Inadvertent Discovery Information

Will the human remains and other cultural items be left in place?

Yes

The Federal agency secures the site of discovery, and the disposition process does not continue further.

OR

No

Excavation or removal of the human remains and other cultural items must take place following the requirements of the Archeological Resources Protection Act (ARPA) (16 U.S.C. 470aa et seq.) and its implementation regulations. This includes issuance of an excavation permit by the cognizant Federal agency where required by ARPA.

Prior to Disposition – Notice of Intended Disposition

At least 30 days prior to transferring the human remains and other cultural items to the claimant entitled to custody, the responsible Federal agency must first publish a **Notice of Intended Disposition**. The Notice must –

- be published two times (at least a week apart) in a newspaper of general circulation in the area in which the human remains and other cultural items were discovered;
- be published two times (at least a week apart) in a newspaper of general circulation in the area or areas in which the affiliated Indian tribes or Native Hawaiian organization members now reside;
- provide information as to the nature and affiliation of the human remains and other cultural items; and
- solicit further claims to custody.

The Federal agency official must send a copy of the notice and information on when and where it was published to the National NAGPRA program.

Disposition

Disposition is the formal transfer of Native American human remains and other cultural items excavated or inadvertently discovered on Federal or tribal lands after November 16, 1990, to the lineal descendants, Indian Tribes, or Native Hawaiian organizations that have been determined to be the legitimate claimants.

In completing the disposition, the claimant formally accepts custody (ownership). Disposition should be documented, must be consistent with 25 USC 3002 (a), "Priority of Ownership," and 43 CFR 10.6, "Priority of Custody." Physical transfer may take place 30 days after the publication of the second Notice of Intended Disposition, as agreed upon by the claimant and the Federal agency official.

Some Disposition Options

Claimant Takes Physical Custody

The legitimate claimant takes physical possession of the human remains and other cultural items. Where allowable, and upon agreement with the claimant, the Federal agency may provide temporary care until the claimant is able to take physical custody.

Reburial on Federal Land

The human remains and other cultural items may be reburied on Federal land, if the agency's policies and procedures permit such activities.

Relinquishment

Under NAGPRA [25 USC 3002(e)], the governing body of an Indian tribe or Native Hawaiian organization may expressly relinquish control over any Native American human remains, or title to or control over any funerary object or sacred object.

Intentional Excavation on Federal and Tribal Lands after November 16, 1990

<p>Federal Lands: Initiating Consultation</p> <p>The Federal agency official must take reasonable steps to determine whether a planned activity may result in the excavation of Native American human remains and other cultural items. The Federal agency official must notify in writing and initiate consultation with any known lineal descendant and the Indian tribes and Native Hawaiian organizations –</p> <ul style="list-style-type: none">• who are or are likely to be culturally affiliated with the human remains and other cultural items that are expected to be found;• on whose aboriginal lands the planned activity will take place; and• who the Federal official reasonably believes to have a cultural relationship to the human remains and other cultural items that are expected to be found. <p>The written notification must –</p> <ul style="list-style-type: none">• describe the planned activity, its general location, and the basis on which it was determined that human remains and other cultural items may be excavated;• describe the basis for determining likely custody	<p>Tribal Lands: Obtaining Consent</p> <p>NAGPRA allows the intentional excavation of Native American human remains and other cultural items on tribal lands only with the consent of the appropriate Indian tribe or Native Hawaiian organization.</p> <p>Prior to excavation or removal, an ARPA permit must be obtained as follows –</p> <ul style="list-style-type: none">• for private lands within the exterior boundaries of any Indian reservation, the Bureau of Indian Affairs will serve as the permit issuing agency; or• for lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, the Department of Hawaiian Home Lands will serve as the permit issuing agency, with the Hawaii State Historic Preservation Division of the Department of Land and Natural Resources acting in an advisory capacity. <p>Final custody and disposition must be consistent with 25 USC 3002 (a), "Priority of Ownership," and 43 CFR 10.6, "Priority of Custody."</p>
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<p>During Consultation</p> <p>The purpose of consultation is to help the Federal agency determine who is entitled to custody of the human remains and other cultural items under NAGPRA so that the disposition process can occur smoothly during the project, and to discuss the Federal agency's proposed treatment of the human remains and other cultural items.</p> <p>The Federal agency official must provide in writing to the parties to consultation –</p> <ul style="list-style-type: none">• a list of all lineal descendants, Indian tribes, or Native Hawaiian organizations that are being, or have been, consulted; and• provide additional documentation on the project as needed and requested to facilitate consultation. <p>The Federal agency official must request, as appropriate –</p> <ul style="list-style-type: none">• names and addresses of the Indian tribe official who will act as the tribe's representative in consultation;• names and appropriate methods to contact lineal descendants;• recommendations on how consultation should be conducted; and• the kinds of cultural items that are considered to be unassociated funerary objects, sacred objects, or objects of cultural patrimony. <p>If the planned activity also requires consultation under section 106 of the National Historic Preservation Act (NHPA), the Federal agency should coordinate any consultation and agreements under NHPA with the requirements of NAGPRA.</p>

<p>After Consultation – Written Plan of Action</p> <p>The Federal agency official must prepare, approve, and sign a written plan of action. The plan of action must document the kinds of objects to be considered as cultural items; the planned treatment, care, and handling, including traditional treatment, of human remains and other cultural items; the planned archeological recording of the human remains and other cultural items; the kinds of analysis planned for each kind of object; and the nature of reports to be prepared. It will include—</p> <ul style="list-style-type: none">• the specific information used to determine custody of the human remains and other cultural items; and• the planned disposition of the human remains and other cultural items. <p>Custody must determined in accordance with 25 USC 3002 (a), "Priority of Ownership," and 43 CFR 10.6, "Priority of Custody."</p> <p>When Native American human remains and cultural items are discovered during a project in the absence of a Plan of Action, all work must cease for 30 days while the above consultation process is initiated. Stoppages repeat as necessary.</p>
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Prior to Disposition – Notice of Intended Disposition

At least 30 days prior to transferring the human remains and other cultural items to the claimant entitled to custody, the responsible Federal agency must first publish a **Notice of Intended Disposition**. The Notice must –

- be published two times (at least a week apart) in a newspaper of general circulation in the area in which the human remains and other cultural items were discovered;
- be published two times (at least a week apart) in a newspaper of general circulation in the area or areas in which the affiliated Indian tribes or Native Hawaiian organization members now reside;
- provide information as to the nature and affiliation of the human remains and other cultural items; and
- solicit further claims to custody to be received within the 30 day period.

The Federal agency official must send a copy of the notice and information on when and where it was published to the National NAGPRA program.



Disposition

Disposition is the transfer of Native American human remains and other cultural items excavated or removed on Federal or tribal lands after November 16, 1990, to the lineal descendants, Indian Tribes, or Native Hawaiian organizations that have been determined as claimants in the priority of custody.

In completing the disposition, the claimant accepts custody (ownership). Disposition should be documented, must be consistent with 25 USC 3002 (a), "Priority of Ownership," and 43 CFR 10.6, "Priority of Custody." The claimant having custody has the authority to direct further disposition.



Further Disposition Options

Take Physical Custody-- The claimant takes physical possession of the human remains and other cultural items. Where allowable, and upon agreement with the claimant, the Federal agency may provide temporary care until the claimant is able to take physical custody.

Reburial on Federal Land-- The human remains and other cultural items may be reburied on Federal land, if the agency's policies and procedures permit such activities.

Relinquishment-- Under NAGPRA [25 USC 3002(e)], the governing body of an Indian tribe or Native Hawaiian organization may expressly relinquish control over any Native American human remains, or title to or control over any funerary object or sacred object.

National Park Service
U.S. Department of the Interior



National Center for Cultural Resources
National NAGPRA

Determining Cultural Affiliation Within NAGPRA

25 U.S.C. 3001 (2)

"Cultural affiliation" means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

43 C.F.R. 10.2 (d)(1)

For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony, as defined below, must be considered as part of that item.

43 C.F.R. 10.2 (e)

What is cultural affiliation? Cultural affiliation means that there is a relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. Cultural affiliation is established when the preponderance of the evidence -- based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion -- reasonably leads to such a conclusion.

43 C.F.R. 10.14: Lineal Descent and Cultural Affiliation

(a) General. This section identifies procedures for determining lineal descent and cultural affiliation between present-day individuals and Indian tribes or Native Hawaiian organizations and human remains, funerary objects, sacred objects, or objects of cultural patrimony in museum or Federal agency collections or excavated intentionally or discovered inadvertently from Federal lands. They may also be used by Indian tribes and Native Hawaiian organizations with respect to tribal lands.

(b) Criteria for determining lineal descent. A lineal descendant is an individual tracing his or her 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 descent to a known Native American individual whose remains, funerary objects, or sacred objects are being requested under these regulations. This standard requires that the earlier person be identified as an individual whose descendants can be traced.

(c) Criteria for determining cultural affiliation. Cultural affiliation means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. All of the following requirements must be met to determine cultural affiliation between a present-day Indian tribe or Native Hawaiian organization and the human remains, funerary objects, sacred objects, or objects of cultural patrimony of an earlier group:

- (1) Existence of an identifiable present-day Indian tribe or Native Hawaiian organization with standing under these regulations and the Act; and
- (2) Evidence of the existence of an identifiable earlier group. Support for this requirement may include, but is not necessarily limited to evidence sufficient to:
 - (i) Establish the identity and cultural characteristics of the earlier group,
 - (ii) Document distinct patterns of material culture manufacture and distribution methods for the earlier group, or
 - (iii) Establish the existence of the earlier group as a biologically distinct population; and

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(3) Evidence of the existence of a shared group identity that can be reasonably traced between the present-day Indian tribe or Native Hawaiian organization and the earlier group. Evidence to support this requirement must establish that a present-day Indian tribe or Native Hawaiian organization has been identified from prehistoric or historic times to the present as descending from the earlier group.

(d) A finding of cultural affiliation should be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of some gaps in the record.

(e) Evidence. Evidence of a kin or cultural affiliation between a present-day individual, Indian tribe, or Native Hawaiian organization and human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by using the following types of evidence: Geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion.

(f) Standard of proof. Lineal descent of a present-day individual from an earlier individual and cultural affiliation of a present-day Indian tribe or Native Hawaiian organization to human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by a **preponderance of the evidence**. Claimants do not have to establish cultural affiliation with scientific certainty.

Cultural Affiliation FAQ

Who is responsible for determining cultural affiliation?

The museum or Federal agency that has control of Native American human remains and other cultural items is responsible for determining their cultural affiliation.

What is the role of consultation in determining cultural affiliation?

Museums and Federal agencies must determine the cultural affiliation of Native American human remains and associated funerary objects when they complete their inventories. NAGPRA requires that the inventory be prepared in consultation with lineal descendants, Indian tribe officials, and traditional religious leaders (43 C.F.R. 10.9 (b)). For unassociated funerary objects, sacred objects, and objects of cultural patrimony, museums and Federal agencies must initiate consultation with lineal descendants, Indian tribe officials, and traditional religious leaders not later than the completion of the summary, and must document information and evidence related to cultural affiliation (43 C.F.R. 10.8 (d) and (e)).

Must a claimant prove cultural affiliation beyond a reasonable doubt?

No. Claimants must be given the opportunity to present information during consultation, and museums and Federal agencies must consider this information when making determinations of cultural affiliation. The standard for determining cultural affiliation is the preponderance of the evidence, not scientific certainty.

What does 'preponderance of the evidence' mean?

"As standard of proof in civil cases, is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is **more probable than not.**" (Black's Law Dictionary, 6th Edition)



National NAGPRA

NAGPRA Section 3: Plan of Action Checklist

The written plan of action is an integral part of the consultation process mandated by 43 CFR 10.5 whenever there is activity affecting or likely to affect Native American cultural items on Federal or tribal lands. The plan of action must document compliance with ARPA, especially 43 CFR 7.7 – 7.9, regarding requirements for permits on Indian lands.

- Information on the kinds of objects that are considered to be –**
 - Funerary objects**
 - Sacred objects**
 - Objects of cultural patrimony**
- Specific information used to determine custody/ownership under 43 CFR 10.6**
- Planned treatment, care, and handling of –**
 - Human remains**
 - Funerary objects**
 - Sacred objects**
 - Objects of cultural patrimony**
- The planned archeological recording of –**
 - Human remains**
 - Funerary objects**
 - Sacred objects**
 - Objects of cultural patrimony**
- The kinds of analysis planned for –**
 - Human remains**
 - Funerary objects**
 - Sacred objects**
 - Objects of cultural patrimony**
- Steps to be followed to contact Indian tribe officials at the time of excavation or inadvertent discovery of specific –**
 - Human remains**
 - Funerary objects**
 - Sacred objects**
 - Objects of cultural patrimony**
- The kind of traditional treatment, if any, to be used for –**
 - Human remains**
 - Funerary objects**
 - Sacred objects**
 - Objects of cultural patrimony**
- The nature of reports to be prepared**
- The planned disposition of human remains, funerary objects, sacred objects, and objects of cultural patrimony following 43 CFR 10.6 [NOTE: a Notice of Intended Disposition is still required prior to disposition.]**
- The plan of action complies with 43 CFR 10.3 (b)(1) and follows the**

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requirements of ARPA. The plan of action is signed by the Federal agency official.

.A copy of the plan of action is provided to the consulting lineal descendants, Indian tribes, and Native Hawaiian organizations.