

**PROGRAMMATIC AGREEMENT
BETWEEN
THE DEPARTMENT OF VETERANS AFFAIRS AND
THE WASHINGTON STATE HISTORIC PRESERVATION OFFICER
REGARDING
SEISMIC UPGRADES AND RENOVATIONS TO THE UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS PUGET SOUND HEALTH CARE
SYSTEM AMERICAN LAKE DIVISION, AMERICAN LAKE, WASHINGTON**

WHEREAS, the U.S. Department of Veterans Affairs (VA) proposes to implement a phased program consisting of seismic upgrades and renovations over several years to address seismic deficiencies and make renovations in accordance with VA Handbook H-18-8, *Seismic Design Requirements*, VA Directive 7512, *Seismic Safety of VA Buildings*, and Executive Order 13717, *Establishing a Federal Earthquake Risk Management Standard* at the VA Puget Sound Health Care System (VAPSHCS) American Lake Division Campus, located at 9600 Veterans Drive Southwest, American Lake, Washington, and within the American Lake Veterans Hospital Historic District (District), which is listed on the National Register of Historic Places (National Register); and

WHEREAS, implementation of the proposed phased program will include seismic upgrades and renovations on and near buildings at the VAPSHCS American Lake Division Campus, listed in Appendix A, that contribute to the National Register eligibility of the District (contributing properties), as well as improvements to existing campus roads, pathways, intersections, and curbs; installation of physical security elements, canopies, and walkways; and opportunistic installation of rooftop-mounted photovoltaic solar array(s) on existing structure(s) or over existing parking area(s); installation of a screening vestibule, canopies, and covered walkways (Undertaking); and

WHEREAS, VA has determined that this Undertaking has the potential to cause effects on historic properties and is therefore subject to 54 USC § 306108 of the National Historic Preservation Act (NHPA) and its implementing regulations, 36 CFR Part 800, as amended (collectively referred to here as "Section 106"); and

WHEREAS, VA has consulted with the State Historic Preservation Officer (SHPO) in the Washington State Department of Archaeology and Historic Preservation (DAHP) and has established the undertaking's area of potential effects (APE) to be the area as shown in Appendix B, pursuant to 36 CFR § 800.4(a)(1); and

WHEREAS, VA has determined that it is appropriate to develop a programmatic agreement (PA) in accordance with 36 CFR 800.14(b), including §800.14(b)(1)(ii), which recognizes that a PA may be used when effects on historic properties cannot be fully determined prior to approval of an undertaking; and

WHEREAS, pursuant to 36 CFR § 800.6(a)(1)(i)(C), VA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination in accordance with Section 106 of the NHPA and its implementing regulations, with a request for ACHP participation to resolve the adverse effects, the ACHP has elected to participate; and

WHEREAS, VA has invited the Muckleshoot Indian Tribe, Nisqually Indian Tribe, Puyallup Tribe of Indians, Samish Indian Nation, Snoqualmie Indian Tribe, Squaxin Island Tribe, Steilacoom Tribe, and Suquamish Tribe to consult regarding the project, in accordance with Section 106 of the NHPA and its implementing regulations, and none have elected to participate; and

WHEREAS, VA has invited the Pierce County, Washington, Executive to consult regarding the project, in accordance with Section 106 of the NHPA and its implementing regulations, and the Pierce County Executive has elected not to participate; and

WHEREAS, to assess potential effects to archeological resources during the undertaking's implementation, VA has referred to both the DAHP archaeological predictive model and the VAPSHCS American Lake Division Campus specific predictive model developed in consultation with the SHPO and Tribes and finalized in 2009, which indicates that the APE is within a moderate sensitivity area for historic archaeological materials and a low sensitivity area for pre-contact archaeological materials;

NOW, THEREFORE, VA, the SHPO, and ACHP agree that undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

STIPULATIONS

VA shall ensure that the following measures are carried out:

I. APPLICABILITY

- a. The VA's obligations under this Programmatic Agreement are subject to the availability of appropriated funds, and the stipulations of this Programmatic Agreement are subject to the provisions of the Anti-Deficiency Act. The VA shall make reasonable and good faith efforts to secure the necessary funds to implement this Programmatic Agreement in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the VA's ability to implement the stipulations of this agreement, the VA shall consult in accordance with the amendment and termination procedures found at Stipulations IX and X of this agreement.
- b. All references in the Stipulations below to "consulting parties" refer specifically to parties that have participated in consultation and are a signatory, invited signatory, or concurring party.

II. GENERAL

- a. Consulting parties shall send and accept official notices, comments, requests for additional information and/or documentation, and all other communications required by this PA via email with VA.
- b. Time designations shall be in calendar days.
- c. For the purposes of this PA, the definitions provided in 36 CFR 800.16(a) through (z) shall apply.
- d. VA shall ensure that federal or contractor staff who meet the applicable Secretary of the Interior's (SOI's) Professional Qualification Standards for architectural history, history, archaeology, architecture, and historic architecture (36 CFR 61) participate in the review and implementation of the treatment measures required as part of this PA. In addition, where individual reviews are performed and require adherence to the Professional Qualifications Standards, VA shall ensure that a staff member or contractor who meets the appropriate standard is included in the design process.
- e. Annually, within two weeks of the anniversary of the execution of this PA, until it is closed out, expires, or is terminated, VA shall provide all parties to this PA a summary report detailing work undertaken pursuant to its terms. The report shall include any scheduling changes proposed, any problems encountered, and any disputes or objections received in VA's efforts to carry out the terms of this PA.

III. DETERMINATION OF ADVERSE EFFECTS

- a. For project actions within the APE, VA shall assess adverse effects of the proposed design on historic properties in accordance with 36 CFR § 800.5. The design may be for the overall reconfiguration undertaking, a single component or multiple components. Pursuant to 800.5(a)(3), VA shall use a phased process in applying the criteria of adverse effect should designs be submitted as separate components.
- b. VA shall submit a 60 % design concept documentation package to all Consulting Parties including its finding of effect.
 - i. This package shall include maps, design drawings, photographs, and/or projections sufficient to support VA's finding of effect.
- c. Submittal will be via electronic format unless file size is prohibitive. VA will seek measures in project design to avoid and/or minimize any adverse effect on historic properties. This will include complying with the Secretary of the Interior's Standards for Rehabilitation, 36 CFR 67.7, to the extent practicable.
- d. If VA determines the Undertaking will not adversely affect historic properties in accordance with 36 CFR § 800.5(b) and the SHPO concurs, VA shall have no further obligations under this PA regarding the built environment.
- e. If VA determines the Undertaking will adversely affect historic properties in accordance with 36 CFR § 800.5(d)(2), VA shall consult with Consulting Parties regarding adverse effects to historic properties and measures to avoid, minimize, or mitigate effects in accordance with 36 CFR § 800.6.
 - i. Consultation may proceed via exchange of emails, letters, discussions over webinar/conference call, and/or in-person at the discretion of VA.

- ii. The measures to resolve adverse effects shall include specific timelines to ensure VA's construction schedule can proceed effectively.
 - iii. A timeline will be developed by VA and Consulting Parties for each of the agreed upon measures to resolve adverse effects.
- f. Information about the implementation of measures to resolve adverse effects shall be included in the annual summary report as described in Stipulation II.e.

IV. POTENTIAL MITIGATION MEASURES

- a. For project actions within the District for which adverse effects on contributing properties cannot be avoided as described in Stipulation III.e, VA will follow guidance in the American Lake Veterans Hospital Preservation Plan (Preservation Plan) to propose potential mitigation measures as described below:
- i. VA may complete full Historic American Building Survey/Historic American Engineering Record (HABS/HAER) documentation and the acceptable levels of documentation outlined in VA Directive 7545.
 - ii. The VA may also determine, in consultation with SHPO and concurring parties, that interpretive activities that engage the public, research that offers new understanding of remaining properties, and/or off-site mitigation that proactively protects other endangered historic properties will be conducted.
- b. VA will notify consulting parties of their proposed mitigation measure(s) either at the time of submittal of 60% design concepts or at a later date and will provide a 30-day period for comment.
- c. Should no comments be received within 30 days that result in changes to the mitigation measure(s), no further consultation will be required, and VA will proceed with the proposed action and mitigation measure(s).
- d. If VA elects to make changes to the mitigation measure(s) as a result of consulting party comments, VA will notify the consulting parties of the revised measure(s) and allow another 10 days for comment.
- e. If the SHPO responds within designated comment periods and does not concur with the mitigation measure(s) that VA proposes for a project action, all parties shall proceed in accordance with Stipulation VIII.

V. INADVERTENT DISCOVERY PLAN

- a. Prior to any project-related ground disturbance associated with the undertaking, which may consist of completing new utility connections, repairs, and maintenance within previously disturbed soils, VA shall create a project-specific inadvertent discovery plan, to be distributed to construction personnel, and signed by a professional archaeologist meeting the secretary of the Interior Professional Standards for Archaeology (36 CFR 61).
- b. During demolition and construction activities, should inadvertent or unknown archaeological resources be discovered or unanticipated effects identified, work in the impacted area shall cease and an archaeologist meeting the SOI Professional Qualification Standards (Federal Register Volume 61, No. 119, pg.

33713, 33719, 1977) (SOI qualified archaeologist) will evaluate the finding. If appropriate, Native American tribes and the SHPO will be consulted.

- c. If unanticipated or archaeological resources are discovered, VA will:
 - i. Ensure the discovery is confirmed, assessed, and recorded by a SOI qualified archaeologist.
 - ii. Determine eligibility for listing in the NRHP, following the criteria of 36 CFR 60.4 and consult with the SHPO on that determination. The SHPO shall have ten (10) calendar days from receipt to provide comments on VA's determination.
- d. If VA in consultation with the SHPO, determines that the discovered site is not eligible for listing in the NRHP, then no further action will be required.
- e. If VA, in consultation with the SHPO, determines that the discovered site is eligible for listing in the NRHP, then VA shall further consult with the SHPO on measures to resolve any adverse effects to the historic property.

VI. POST-REVIEW DISCOVERIES

- a. Buildings, Structures, and/or Objects
 - i. In the event that unanticipated effects on buildings, structures, and/or objects are found during the implementation of the PA, VA will stop any work that may adversely affect the historic property or that may foreclose opportunities to avoid such adverse effects. VA shall notify the SHPO and make efforts to avoid, minimize or mitigate adverse effects to such properties. VA and the SHPO shall be guided by the steps established in 36 CFR § 800.13(b).
- b. Archaeological Resources
 - i. If deposits are discovered where no on-site monitor is present, VA shall follow the procedures at Stipulation V.a. through V.e. and ensure that these procedures are carried out by or under the direct supervision of a person or persons meeting the Professional Qualification Standards for archeology as described in Stipulation V.b.
- c. Human Remains
 - i. If potential human remains and/or potential funerary objects are identified, VA shall stop construction work within 50 feet of the discovery and:
 - 1. Contact local law enforcement to determine whether the human remains may be involved in a legal investigation or not, consistent with Revised Code of Washington Chapter 68.50.
 - 2. Treat non-Native American remains and objects in a manner consistent with applicable state statutes.
 - 3. Treat discoveries related to Native Americans and Native American lifeways in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA) (Public Law 101-601, 25 USC 3001 et seq., 104 Stat. 3048).

VII. DURATION

- a. This PA shall remain in effect for a period of five (5) years from the date of execution, unless it is closed out, amended or terminated in accordance with VII prior to that date. This PA also provides the option for renewal every five (5) years subject to agreement by all parties. No later than 6 months prior to expiration of the PA, VA may initiate consultation to determine if the PA should be allowed to expire or whether it should be extended for an additional term, with or without amendments. Unless the Signatories unanimously agree on an extension, this PA shall automatically expire and have no further force or effect in accordance with the stipulated timetable.

VIII. DISPUTE RESOLUTIONS

- a. Should a party or parties to this agreement object at any time to any actions proposed or the manner in which the terms of this PA are implemented, VA shall consult with the objecting party(ies) to resolve the objections. If VA determines, within 30 days of initiating that consultation, that such objection(s) cannot be resolved, the VA will:
 - i. Forward all documentation relevant to the dispute to the ACHP. Upon receipt of adequate documentation, the ACHP shall review and advise VA on the resolution of the objection within 30 days. Any comment provided by the ACHP and all comments from the signatories to the PA will be taken into account by VA in reaching a final decision regarding the dispute.
 - ii. If the ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, VA will give consideration to comments from consulting parties and make a final decision.
- b. VA's responsibilities to carry out all other actions subject to the terms of this PA that are not the subject of the dispute will remain unchanged. VA will notify all consulting parties of its decision in writing before implementing that disputed portion of the undertaking. VA's decision will be final.

IX. AMENDMENTS

- a. This PA 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.

X. TERMINATION

- a. If any signatory to this PA determines that the terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per the "Amendment" stipulation, above. If with 30 calendar days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

Programmatic Agreement for Seismic Upgrades and Renovations at the
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- b. Once the PA is terminated, and prior to work continuing on the undertaking, the VA must either (a) execute an agreement document pursuant to 36 CFR 800.6, or (b) request to take into account, and respond to the comments of the SHPO under 36 CFR 800.7.

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SYSTEM AMERICAN LAKE DIVISION, AMERICAN LAKE, WASHINGTON**

Signatories:

U.S. Department of Veterans Affairs:

By: **THOMAS BUNDT**
Thomas Bundt, PhD., FACHE
Director, VA Puget Sound Health Care System


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THOMAS BUNDT
Date: 2022.11.23
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Date: _____

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Washington State Historic Preservation Officer:

By: 
Allyson Brooks (Nov 28, 2022 10:44 PST)


Date: 11/28/22

Dr. Alyson Brooks, Ph.D.
State Historic Preservation Officer, Washington State Department of Archaeology and Historic
Preservation

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Advisory Council on Historic Preservation:

By: 

Mr. Reid Nelson
Executive Director, Acting

Date: December 8, 2022







VA_American Lake_Final PA_17NOV2022

Final Audit Report

2022-11-28

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