



MEMO TO: City Council
FROM: John Marchione, Mayor
DATE: May 15, 2012
SUBJECT: **APPROVAL OF MEMORANDUM OF AGREEMENT FOR THE BEAR CREEK REHABILITATION, PROJECT NO. 20029622**

I. RECOMMENDED ACTION:

Approve a Memorandum of Agreement between U.S. Army Corps of Engineers, Washington State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) regarding treatment of adverse effects to the Bear Creek Site (45KI839) associated with the Bear Creek Rehabilitation project, and authorize the Mayor to sign the Agreement.

II. DEPARTMENT CONTACTS:

Ron Grant, Acting Director of Public Works	425-556-2742
Mike Paul, Construction Division Manager	425-556-2721
Mike Haley, Project Manager	425-556-2843

III. DESCRIPTION:

Background

The Bear Creek Rehabilitation project will rehabilitate the lower, channelized portion of Bear Creek starting at the Sammamish River and going upstream to the Bear Creek enhancement work previously completed. About 3,000 feet of Bear Creek will be completely relocated from the mostly straight, channelized "stream" to a meandering, reshaped, and re-planted channel in the existing open space. The rehabilitation of the creek will greatly improve access to habitat for the endangered fish species and wild life throughout the corridor.

The project construction will establish stream buffers consistent with the City's Critical Areas Ordinance with allowance for the Washington State Department of Transportation (WSDOT) "Stage 3" widening of the SR520 freeway adjacent to Bear Creek. The existing asphalt path will be relocated and augmented with a soft-surface parallel path and "side-routes" that will allow people to walk over to the stream and to view and interact with (a much improved) Bear Creek. In addition, the rehabilitated overbank areas will address flood conveyance issues and will provide other habitat improvements.

History

Rehabilitation of lower Bear Creek was identified in the Bear Creek Basin Plan, jointly completed by the City and King County in 1990. The rehabilitated stream was identified to greatly improve fish habitat for endangered or threatened Salmon species. Funding was not available at that time; however, this work has been pursued as funding opportunities have become available.

Approximately 1996 through 1999, the City worked together with WSDOT when that agency agreed to provide funding to enhance part of Bear Creek in the vicinity of the former Larry's Market. This project has been successfully completed and is to be a model in many ways for the remaining work to be addressed by the attached contract.

In approximately 1996, the City began to work with US Army Corps of Engineers (the Corps) to undertake rehabilitation of the remaining lower Bear Creek (which is the subject of the attached contract). Unfortunately, the Corp's rehabilitation program (designated 1135) stresses minimum stream improvements, requires an agency agreement which presented legal issues, and presented very strict and difficult real property issues. While the Corps would provide 75 percent of the funding for eligible costs, the overall quality of the Corps' design and accompanying legal and property issues led to mutual agreement to terminate this joint project effort.

In September 2008, the City of Redmond and WSDOT entered into an agreement to fully fund the design and construction of Bear Creek Rehabilitation in coordination with the "Stage 3" widening of the SR520 freeway adjacent to the creek.

The City of Redmond made application for all necessary federal and state permits to construct the Bear Creek Rehabilitation project in January 2009.

In May 2010, the Corps requested that the City of Redmond provide alternative Creek alignment designs that would avoid or minimize impacts to cultural resources discovered on site during the archeological investigation effort in July 2009.

After numerous iterations and negotiations Redmond's alternative analysis was accepted by the Corps in October 2011. The alternative analysis looked to balance the need to avoid the cultural resource while still maintaining the highest environmental benefit in the creek relocation. The City of Redmond was then asked by the Corps to revise permit

application documents to reflect a revised creek alignment. The Corps provided guidance to Redmond to develop an artifact recovery plan, which would allow the Corps to initiate a formal consultation process with the Federal, State, and Tribal Officials concerned with the impacts to the affected cultural resources and the mitigation associated with the recovery effort. Redmond delivered the draft recovery plan to the Corps for comment in January 2012. The Corps requested comments from the consulting parties and other professional archeologists through the end of January 2012. In late April 2012, the Corps delivered to Redmond final comments on the recovery plan and the attached Memorandum of Agreement (MOA) to formalize and complete the Corps 106 permit process.

Memorandum of Agreement

The MOA defines Redmond's obligations concerning the mitigation of adverse effects to the cultural resource site known as the Bear Creek Site 45KI839 (Site). The MOA stipulates that the Corps will ensure that Redmond implements Ten (10) different items to adequately mitigate the adverse effect to the Site:

- Stipulation 1 requires that Redmond follow the final data recovery plan.
- Stipulation 1a requires that Redmond develop a plan to analyze the artifacts that are recovered during the implementation of the recovery plan.
- Stipulation 1b requires that Redmond educate the construction workforce to avoid inadvertent damage the Site.
- Stipulation 1c requires that Redmond develop a work plan to monitor the excavation after the recovery effort to ensure that specific soil layers can be examined after the excavation occurs.
- Stipulation 1d requires that Redmond develop a plan to allow an opportunity for the Muckleshoot Tribe to screen the excavated material under the supervision of professional Archeologist.
- Stipulation 1e requires that Redmond develop a plan to curate the artifacts at a recognized museum.
- Stipulation 2 requires Redmond to develop a plan to monitor and preserve the remaining intact site for a period of 10 years.
- Stipulation 3 requires Redmond to allow tribal access to the site during ground disturbing activities.
- Stipulation 4 requires Redmond to prepare final reports generated from the implementation of the MOA and deliver these to the Corps.
- Stipulation 5 requires Redmond to follow the administrative procedures to resolve disputes arising from implementation of the stipulations within the MOA.

IV. IMPACT:

A. Service Delivery: This agreement will result in the completion of the permit process associated with the Bear Creek Rehabilitation project.

B. Fiscal:

Estimated Project Costs:

Preliminary Design (Completed in 1999)	\$ 341,895
Design and Permitting (DEA Sept. 2006)	511,465
Design and Permitting Supplement 1 (DEA June 2009)	324,765
Design and Permitting Supplement 2 (DEA Nov 2011)	24,991
Design and Permitting Supplement 3 (DEA Feb 2012)	48,415
Artifact Recovery and Rough Grading per MOA	1,185,000
City Administration, Design and Permitting	150,000
Property Acquisition	260,000
Construction Estimate	7,284,000
City Administration, Construction	300,000
Monitoring per MOA and Corp permit requirements	200,000
Contingency	<u>500,469</u>
Total Costs	\$11,131,000

Project Funding:

Stormwater CIP (28%)	\$ 3,131,000
Washington State Dept. of Transportation Funding (WSDOT)	<u>8,000,000</u>
Total	\$11,131,000

V. ALTERNATIVES:

The City Council could choose not to approve the Memorandum of Agreement; however, this action would delay the Bear Creek Rehabilitation project.

VI. TIME CONSTRAINTS:

Returned signed Memorandum of Agreement	May 2012
Obtain Corps Permit	June 2012
Artifact Recovery and Construction Period	Summer 2012

The final design is projected to be complete in June 2012, with artifact recovery and preliminary construction beginning in the summer 2012, and complete by the end of 2012. Two more subsequent phases of construction will be required in 2013 and 2014 to complete the Bear Creek Rehabilitation project.


VII. LIST OF ATTACHMENTS:

- A. Vicinity Map
- B. Memorandum of Agreement



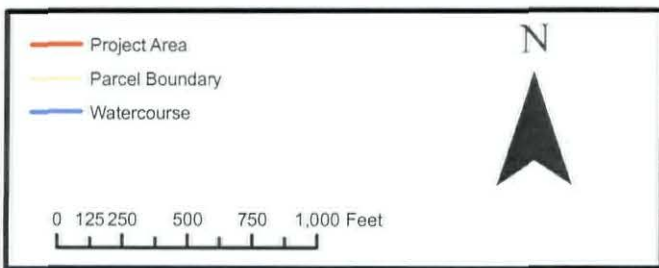
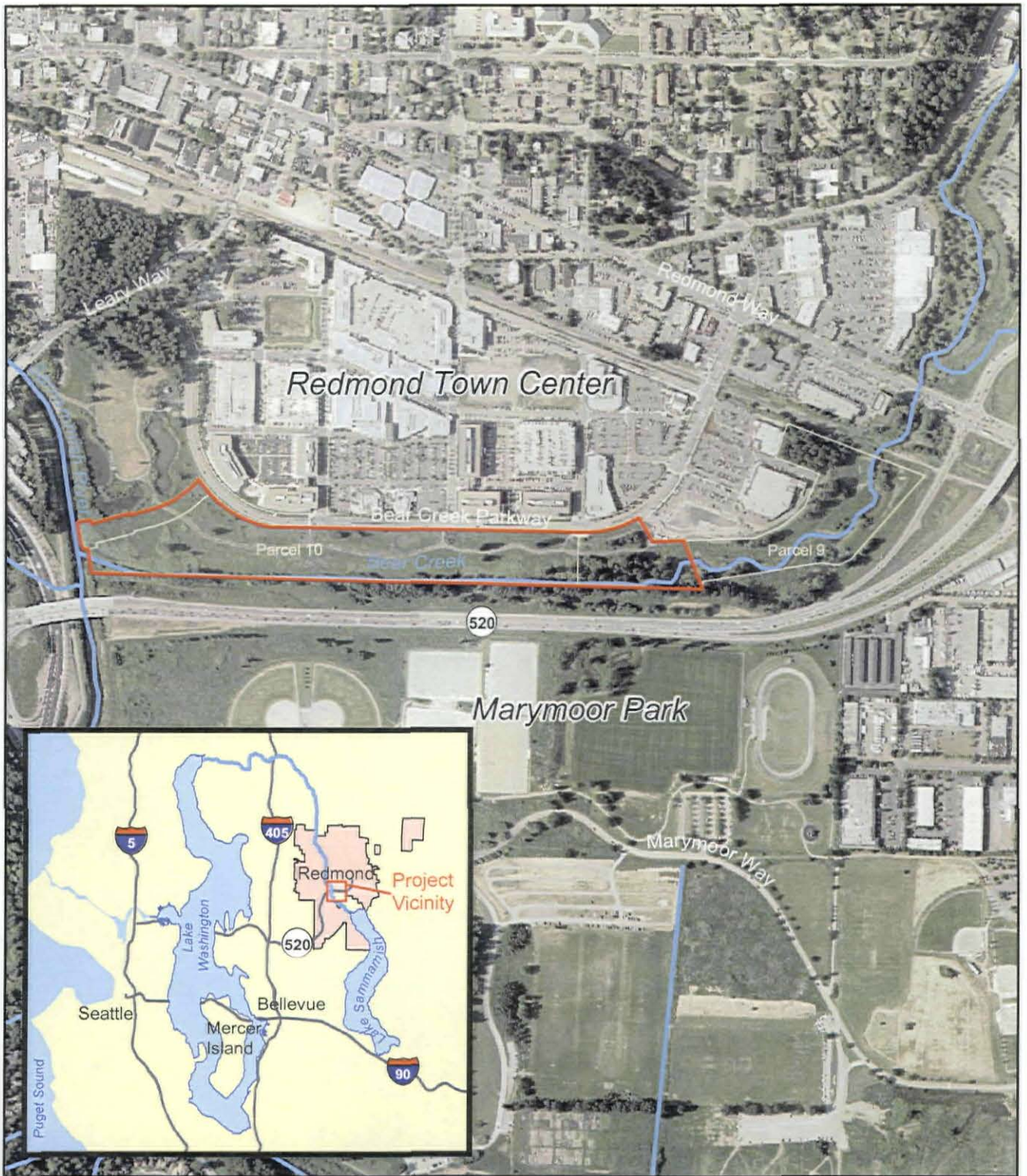
Ronald D. Grant, Acting Director of Public Works


5/2/12
Date

Approved for Council Agenda 

John Marchione, Mayor

5/4/12
Date



Vicinity Map		 <small>DCI ASSOCIATES, INC.</small>
City of Redmond		
RMDX0000-0043	January 2009	
<i>Figure 1</i>		

Source: King County GIS data

Township 25N, Range 5E, Sections 11 and 12

ATTACHMENT B

MEMORANDUM OF AGREEMENT

AMONG THE U.S. ARMY CORPS OF ENGINEERS,
THE WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY & HISTORIC
PRESERVATION, THE CITY OF REDMOND, AND THE ADVISORY COUNCIL ON
HISTORIC PRESERVATION REGARDING TREATMENT OF ADVERSE EFFECTS TO
THE BEAR CREEK SITE (45KI839), REDMOND, KING COUNTY, WASHINGTON

1. WHEREAS, U.S. Army Corps of Engineers, Seattle District Regulatory Branch (Corps) received a Department of the Army (DA) permit application (DA Permit No. NWS-2009-0242; the Undertaking) from the City of Redmond (Redmond) for a fisheries habitat restoration project located at the lower reach of Bear Creek just south of the Redmond Town Center, T25N, R5E, sec12, W.M., Bellevue North USGS 7.5' quadrangle, King County, Washington; and
2. WHEREAS, the Corps' issuance of such a permit is subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C. (NHPA), and its implementing regulations (36 CFR Part 800 and 33 CFR 325, Appendix C); and
3. WHEREAS, prior to seeking a Corps permit Redmond contracted with Northwest Archaeological Associates/SWCA (SWCA) to conduct a cultural resources assessment of the project area, as reported in the January 9, 2009 report titled *Cultural Resources Assessment for the Lower Bear Creek Rehabilitation Project, King County, Washington*, and as a result of its assessment SWCA recorded the approximately 10,000-year-old Bear Creek archaeological site (Site No. 45KI839), a site recognized by SWCA to be highly significant; and
4. WHEREAS, prior to seeking a Corps permit Redmond contracted with SWCA to conduct large-scale archaeological testing at the Bear Creek site, including stripping of approximately one meter of sterile overburden, excavation of 150 meters of backhoe trenches, and archaeological excavation of 43.86 cubic meters of sediment, as reported in the January 6, 2010 report titled *Results of Testing at the Bear Creek Site, 45-KI-839, Redmond, King County, Washington*; and
5. WHEREAS, after test excavation Redmond applied for a DA permit, and upon review of the work completed associated with the Undertaking the Corps requested that Redmond halt all ground disturbance associated with the Undertaking until the Section 106 process could be completed; and
6. WHEREAS, the Corps established the Undertaking's permit area and the Area of Potential Effect (APE) as all areas of project-related ground-disturbing activities plus access and staging areas associated with the DA permit; and

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7. WHEREAS, based on the results of survey and testing, the Corps determined that the Bear Creek site is eligible for listing on the National Register of Historic Places (NRHP) for its demonstrated criterion d information potential, and the Washington State Department of Archaeology & Historic Preservation (DAHP) also known as Washington State Historic Preservation Officer (SHPO) concurs with this determination; and

8. WHEREAS, the Corps afforded the Chehalis Tribe, the Cowlitz Indian Tribe, the Lower Elwha Klallam Tribe, the Lummi Nation, the Muckleshoot Tribe of Indians (Muckleshoot), the Nisqually Tribe, the Nooksack Tribe, the Port Gamble S'Klallam Tribe, the Puyallup Tribe, the Samish Tribe (Samish), the Sauk-Suiattle Indian Tribe, the Skokomish Tribe, the Snoqualmie Tribe of Indians (Snoqualmie), the Squaxin Island Tribe, the Stillaguamish Tribe (Stillaguamish), the Suquamish Tribe, the Swinomish Indian Tribal Community, the Tulalip Tribes (Tulalip), the Upper Skagit Indian Tribes, and the Yakama Nation the opportunity to participate in this process, and Samish has asked to be kept informed about the project and Muckleshoot, Snoqualmie, Stillaguamish, and Tulalip have asked to participate as consulting parties in the Section 106 process; and

9. WHEREAS, the Washington State Department of Transportation (WSDOT) has provided funding for the Bear Creek Restoration Project, which serves as aquatic habitat mitigation for the SR 520, I-5 to Medina Project, a federal undertaking for which the Federal Highway Administration (FHWA) is the lead agency; and

10. WHEREAS, for the purpose of Section 106, the FHWA has acknowledged the Corps as the lead federal agency for the Bear Creek Restoration Project; and

11. WHEREAS, the King County Historic Preservation Program (KCHPP) has requested consulting party status as an interested public entity; and

12. WHEREAS, the Corps has notified the Advisory Council on Historic Preservation (Council) about the Undertaking and the Council has advised the Corps that it will participate in the Section 106 process; and

13. WHEREAS, the Corps held a meeting on August 24, 2011 to solicit Public, Tribal, and consulting party comments on ways to avoid, minimize, and mitigate adverse effects to the Bear Creek Site, and has allowed the Public, Tribes, and consulting parties the opportunity to comment on these issues through various forums, and

14. WHEREAS, Redmond has determined that portions of the Bear Creek site can be preserved in place, and based on Corps and consulting party review, Redmond has modified their proposed construction to minimize effects to the Bear Creek site, as shown in the final drawings under modified Alternate 2A dated April 12, 2012 (Attachement 1); and

15. WHEREAS, the Corps has consulted with DAHP, Council, Redmond, Muckleshoot, Snoqualmie, Stillaguamish, Tulalip, WSDOT, FHWA, and KCHPP in accordance with Section

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106 of the National Historic Preservation Act, 16 U.S.C. §470 (NHPA), to resolve the adverse effects of the undertaking on the Bear Creek site; and

16. WHEREAS, pursuant to 36 CFR Part 800.6(c)(2), and because of their role as the applicant for the DA permit, the Corps has invited Redmond to sign this Memorandum of Agreement (MOA) as a signatory; and

17. WHEREAS, pursuant to 36 CFR Part 800.6(c)(3), and based on their stated interest, the Corps has invited Muckleshoot, Snoqualmie, Stillaguamish, Tulalip, and KCHPP to sign this MOA as concurring parties; and

18. WHEREAS, pursuant to 36 CFR Part 800.6(c)(3), the FHWA and WSDOT have asked to sign this MOA as concurring parties, and the Corps granted this request; and

NOW, THEREFORE, the Corps, DAHP, Council, and Redmond agree that should the Undertaking move forward to construction, that the following Corps-enforced stipulations resolve adverse effects to historic properties associated with the Undertaking, and that these stipulations shall govern the Project and all of its parts until this MOA expires or is terminated.

STIPULATIONS

The Corps shall ensure that the following stipulations are implemented:

1. Archaeological Data Recovery of 45KI839. Redmond will adhere to the site mitigation plan (Plan) dated [insert date] and titled *Cultural Resources Mitigation Plan for the City of Redmond's Bear Creek Restoration Project*. No ground-disturbing work associated with this project is permitted within 50 feet of the Bear Creek site boundary until the Plan has been accepted by the Corps and SHPO.

This project is constrained by a tight work window due to endangered species concerns and a funding deadline. Some requirements were not finalized in time to be included in the Plan, but are of such a nature that they can be reasonably finalized after data recovery activities are underway. In addition to the requirements detailed in the Plan, and in consideration of the work window and funding deadline, Redmond will adhere to the following:

- a. Lithic Artifact Analysis. Redmond will conduct a lithic artifact analysis as part of the mitigation efforts for the Bear Creek site. The lithic analysis must incorporate the following:
 - (1) Separate cultural artifacts from geofacts (non-cultural material). Compare gravels beneath Strat V (i.e., the non-cultural layer) with those in the assemblage as a source of data.
 - (2) Comparability of data between projects and between analysts is a crucial prerequisite for drawing broad conclusions about cultural behavior above the level of a single site

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or single project. Therefore, the present analysis will begin with the development of a standard set of debitage attributes. This set of attributes will be designed to constitute minimum recording standards for this and future Seattle District Corps projects.

The attributes chosen must strike a balance between those that are (a) analytically useful, and (b) reliably and replicably recognized by different analysts, particularly those with varying levels of experience. Replicability shall be determined in conjunction with the inter-observer study outlined in Stipulation 1.a.(3).

Suggested attributes that should be considered for this standard attribute set include:

- Weight, measured to the nearest 0.1 gram
- Size, defined as the artifact's maximum dimension, in one-centimeter increments (e.g. 0-1 cm, 1-2 cm, 2-3 cm, 3-4 cm, etc.)
- Platform type
- Material type (general rock categories)
- Completeness (complete flake, broken flake, flake fragment, debris; see Sullivan and Rozen 1985)
- Exterior cortex (monitored separately from platform cortex)

Additional attributes beyond this minimum data set may be used (and may be required, depending on the research questions posed) in the Bear Creek analysis.

- (3) Inter-observer study. For Stipulation 1.a.(1) and 1.a.(2), prepare and conduct an inter-observer study. The goal of this study will be to develop an attribute set that can achieve 95 percent agreement in identification of attributes among four lithic analysts. For Stipulation 1.a.(2), the Corps recommends the selection of lithic analysts of varying skill levels, to ensure that the lithic recording protocol is robust enough to minimize error resulting from different experience levels and backgrounds. This inter-observer study will iteratively inform on and refine the development of the lithic recording protocol outlined in 1.a.(2).
- (4) Analyze the Bear Creek lithic artifact assemblage using results and methodology from Stipulation 1.a.(1) and 1.a.(2) to guide site use questions. Individually analyze all lithic artifacts (i.e., record all attributes for each individual artifact). The analysis should be designed to address questions such as "what can the lithic artifact assemblage tell us about what the occupants were doing at the site?" Analyze and consider artifacts from Strat V and Strat III separately.
- (5) Contextualize the Bear Creek site with other sites of comparable age. Directly compare the artifact assemblage (at the individual artifact level) from Bear Creek with at least one Paleoindian-period and one Olcott-period lithic artifact assemblage to determine what tradition, if any previously defined, the Bear Creek site belongs to and how it is similar or different to contemporaneous sites in the area. This will

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require analysis using existing data sets (if directly comparable) or re-analysis using museum collections.

- (6) The lithic artifact analysis will be incorporated into and published with the data recovery report detailed in the Plan.
 - (7) Redmond will prepare a plan that incorporates the above considerations for submission to the Corps no later than 30 days after this MOA is executed. Redmond will work closely with Seattle District Corps' archaeologists to develop this plan. Prior to implementation, the plan will be subject to review by consulting parties and approval by the Corps and DAHP.
- b. Workforce Education. Redmond will educate the workforce prior to construction with the goal of avoiding inadvertent damage to the Bear Creek site. Education will apply to all Redmond employees, contractors, and subcontractors working within the project APE that are conducting work that has the potential to adversely affect the site for tasks related to this MOA.
- c. Archaeological Monitoring. After archaeological data recovery is complete within the Bear Creek Site (45KI839) site, Redmond will use heavy equipment to strip all potentially artifact and feature-bearing sediment layers that would otherwise be destroyed by construction with the purpose of finding, excavating, and analyzing archaeological features (i.e., not isolated artifacts).
- (1) All earth-moving will be monitored by archaeologists meeting the Secretary of the Interior's Professional Qualification Standards for Archaeology and Historic Preservation.
 - (2) All potential artifact-bearing sediment layers from this phase will be placed on the preserved portion of the Bear Creek Site (45KI839) in piles that will facilitate archaeological screening of the material (see Stipulation 1.d.)
 - (3) Any features (except human remains) discovered during monitoring will be archaeologically excavated, analyzed, and documented. If human remains are found, procedures in the Plan under the section "Discovery of Human Remains" will be followed. Construction work shall be restricted as necessary to allow reasonable opportunity to perform such excavation and documentation.
 - (5) The results of monitoring will be incorporated into and published with the data recovery report detailed in Stipulation 1., unless a significant time lag between data recovery and monitoring make it more practical to publish the monitoring results separately.
 - (6) Work Plan. Redmond will prepare a plan that incorporates the above considerations for submission to the Corps and DAHP no later than 30 days after this MOA is

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executed. Prior to implementation, the plan will be subject to review and approval by the Corps and DAHP.

- d. Archaeological Screening of Backdirt. The Muckleshoot tribe asked that artifact-bearing sediments be made available for screening and collection of artifacts, and that artifact-bearing sediments would preferably not leave the site boundary. Stipulation 1.c.(2) provides for on-site preservation of artifact-bearing backdirt. Archaeological screening also provides an opportunity for public outreach. This stipulation will incorporate the following:
- (1) The Muckleshoot tribe (and other interested tribes) will be provided reasonable access and opportunity to screen the backdirt for artifacts.
 - (2) Public outreach will be subject to further consultation and consideration in the work plan developed for Stipulation 1.d.(6), with the purpose of taking into consideration potential tribal concerns and consideration of its value for public outreach. If it is determined by the Corps in consultation with SHPO, Redmond, and Muckleshoot that it would be meaningful and appropriate mitigation, Redmond will make available archaeologists and sufficient screens to host at least two 8-hour days of public screening of the artifact-bearing backdirt from Stipulation 1.c.(2), with the goal of providing the public a hands-on opportunity to learn about archaeology, and an explanation of what we hope to learn from excavation of the Bear Creek site.
 - (3) Redmond is responsible for curating all artifacts recovered as part of this Stipulation per Stipulation 1.e.
 - (4) Redmond will document the results of screening in the data recovery report detailed in Stipulation 1. Documentation will minimally include a catalog of artifacts by material and artifact type (e.g., debitage, projectile point, hammerstone, etc.). If the data recovery report is already published, the information that would have gone into the data recovery report will be added as an update to the archaeological site form.
 - (5) Post-screening construction. After providing a reasonable opportunity to screen for and recover artifacts (one month, unless otherwise agreed to in the work plan in Stipulation 1.d.(6)), Redmond will complete project work within the boundaries of the Bear Creek archaeological site. As part of construction Redmond will likely need to move unscreened piles of potentially artifact-bearing fill (if 100 percent screening has not been achieved) around to achieve the desired final construction grade and slope. Redmond will document the location and movement of such fill in a site update form, which will be turned into the Corps and DAHP within 90 days of completion of this work. Redmond can update this form in conjunction with the site update form that will be required for the overall excavation, or update as a separate addition.

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- (6) **Work Plan.** Redmond will prepare a plan that incorporates the above considerations for submission to the Corps no later than 45 days after this MOA is executed. Prior to implementation, the plan will be subject to review and approval by the Corps, DAHP, and the Muckleshoot tribe (and other tribes that so request).
- e. **Curation.** Per request of the Muckleshoot tribe, the curation of artifacts and records will be subject to further consultation. Currently the Burke Museum has been designated as the curation facility of choice by Redmond. This stipulation will incorporate the following:
 - (1) Redmond will curate all artifacts and records from the Bear Creek excavations undertaken by Redmond (survey, testing, and any work completed under this MOA) at a single facility that meets or exceeds federal curation standards as described in 36 CFR 79 and that provides reasonable access to the collection consistent with 36 CFR 79.
 - (2) Redmond will consult with the Muckleshoot tribe regarding curation of the Bear Creek materials at the Muckleshoot museum facility. If feasible and practicable for both parties and in consideration of Stipulation 1.e.(1), Redmond will curate the materials at the Muckleshoot facility.
 - (3) If, after six months of execution of this MOA, no decision has been finalized on use of the Muckleshoot curation facility, the curation facility will default to the Burke Museum. Redmond will so notify the Corps and the Muckleshoot tribe. The Corps will consider a time extension on this requirement if so requested in writing by either party.
 - (4) Redmond will curate all artifacts and records detailed in Stipulation 1.e.(1) at the facility selected in Stipulation 1.e.(3) within six months of final acceptance any report prepared per Stipulation 4.
 - (5) Redmond will document the name of the curation facility in the final data recovery report and in the site form such that future researchers can locate the materials.
2. **Site Protection.** The unexcavated remainder of the site will require long-term monitoring and protection. This stipulation will incorporate the following:
 - a. **Site monitoring.** Redmond will have an archaeologist meeting the Secretary of the Interior's Professional Qualification Standards for Archaeology and Historic Preservation monitor the site for damage at least once annually for at least 10 years. Redmond will provide the Corps and DAHP a yearly report, due on the anniversary of the execution of this MOA. If intact portions of the site have been damaged, Redmond will prepare an archaeological damage assessment. The report will include the results of monitoring, actions taken (if any), and recommendations. After 10 years, the Corps and Redmond will re-evaluate the need for continued archaeological site monitoring.

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- b. Design parameters. The project is designed to have the stream channel and flood plain survive a 100-year flood event. If the design parameters of the project fail (i.e., it does not withstand a 100-year flood event), Redmond, in consultation with the Corps, will restore the system such that the project performs within design parameters and provides protection for the remaining portion of the site. In the case of fundamental failure of the system, measured by at least 750 square meters of the remaining site area being destroyed, Redmond will inform the Corps and the Corps will consult with signatories on the best course of action. Redmond shall not be responsible for mitigating adverse effects to the Bear Creek site associated with exceptional natural events (i.e., events outside the project's design parameters, such as damage caused by earthquakes or 500-year flood events).
 - c. Redmond will create and implement protocols to prevent future damage to the Bear Creek Site. Redmond will provide an archaeologist meeting the Secretary of the Interior's Professional Qualification Standards for Archaeology and Historic Preservation to monitor any future ground disturbing work within 50' of the post-data recovery delineated site boundary. These protocols will include provisions for tribal notification and tribal participation (if a tribe so requests) in any activity that would require archaeological monitoring.
 - d. Monies. Redmond shall bear the expense for the site protection described above, and will set up a \$50,000 fund for this purpose. Redmond shall bear the expense for all costs beyond the amount allocated in this paragraph.
 - e. Work Plan. Redmond will prepare a plan that incorporates the above considerations for submission to the Corps no later than 30 days after this MOA is executed. Prior to implementation, the plan will be subject to review by consulting parties and approval by the Corps and DAHP. Redmond will implement the plan in full, following timelines detailed in the plan.
 - f. Report. Redmond shall prepare a professional report on the implementation measures and provide to the Corps and DAHP documenting the successful implementations of all site protection measures stipulated in this section. Redmond shall distribute copies of the report to consulting parties per Stipulation 4.
3. Tribal Access and Notification. Redmond will facilitate tribal access for those tribes that wish to have tribal monitors present during ground disturbing activities within the area of the Bear Creek site. Redmond will notify consulting tribes at the staff level at least one week prior to any ground disturbing activity at the site, and will provide reasonable access for tribal monitoring of any ground-disturbing activity that could affect intact portions of the site.
 4. Reporting. Redmond will provide all consulting parties to this MOA two hard copies and one electronic copy of any final report Redmond prepares as required under this MOA. In addition, Redmond will provide the Corps 10 hard copies and 10 electronic copies of any final report or volume. The electronic copy will include copies of field notes, pictures of the

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excavation, photo logs, pictures of artifacts with associated logs, and raw data from any analysis. For the lithic artifact analysis, the electronic version will include a Microsoft Excel file that contains unique attribute information (i.e., each artifact will be on its own row in the Excel spreadsheet). For any report produced under this MOA, Redmond will provide the Corps and DAHP a draft version of the electronic material to review and approve. Redmond will revise the electronic version if so requested by the Corps or DAHP.

5. Administrative Stipulations

a. Disputes arising about the implementation of the stipulations of this MOA that cannot be resolved informally will be resolved in the following manner:

(1) The Corps shall notify all other signatories in writing of any instance where a signatory to this MOA objects to the manner in which any of the above stipulations are implemented. The Corps shall consult to resolve the objection. If the Corps determines that the objection cannot be resolved, the Corps shall forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the Council. Within fifteen (15) business days after receipt of adequate documentation, the Council shall either:

a) provide written recommendations relative to the dispute, or

b) notify the Corps that it will comment in accordance with 36 CFR Part 800.7(c).

(2) Any comment provided by the Council in response to such a request shall be taken into account by the Corps in accordance with 36 CFR Part 800 with reference to the subject of the dispute. The Corps' responsibility to ensure that all other actions under this MOA that are not the subject of the dispute are carried out shall remain unchanged. The Corps shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Council and signatories and consulting parties, and provide them with a copy of this written response. The Corps will then proceed according to its final decision.

(3) If the Council does not provide its advice regarding the dispute within the fifteen (15) day time period, the Corps may make a final decision on the dispute and proceed accordingly. The Corps shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and consulting parties to the MOA, and provide them and the Council with a copy of such written response. The Corps will then proceed according to its final decision.

(4) At any time during implementation of the measures stipulated in this MOA, should an objection to any such measure or its manner of implementation be raised by a member of the public regarding historic preservation, the Corps shall take the objection into account and consult as needed with the objecting party to resolve the

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objection. Each party reserves any and all rights it may otherwise have to enforce its rights or seek resolution of the dispute under applicable law.

- b. If the terms of this agreement have not been implemented within ten years of execution of the MOA, this agreement shall be considered null and void, unless the signatories agree in writing to an extension for carrying out its terms. If this agreement is considered null and void, the Corps shall so notify the parties to this agreement, and if Redmond chooses to continue with the undertaking, shall re-initiate review of the undertaking in accordance with 36 CFR Part 800.
- c. Any signatory to this agreement may propose to the Corps that the agreement be amended, whereupon the Corps shall consult with the signatories to this agreement to consider such an amendment. This MOA will be amended when such an amendment is agreed to in writing by all signatories. The amendment will be filed with the Council and go into effect on the date of the last signature from signatories.
- d. If the Corps determines that it cannot implement the terms of this agreement, or if any signatory determines that the agreement is not being properly implemented, such party may propose to the other parties to this agreement that it be terminated.

The party proposing to terminate this agreement shall so notify all parties to this agreement, explaining the reasons for termination and affording them at least 30 days to consult and seek alternatives to termination. The parties shall then consult.

Should such consultation fail, the Corps or other signatory party may terminate the agreement by so notifying all parties.

Should this agreement be terminated, the Corps shall either:

(1) Consult in accordance with 36 CFR Part 800.6 to develop a new MOA; or

(2) Request the comments of the Council pursuant to 36 CFR Part 800.7.

- f. Execution of this MOA by the Corps, DAHP, Council, and Redmond, and implementation of its terms, is evidence that the Corps has afforded the Council an opportunity to comment on the undertaking and its effects on historic properties, and that Corps has taken into account the effects of the undertaking on historic properties.

SUBJECT: MOA Regarding Treatment of Adverse Effects to the Bear Creek Site (45KI839),
Redmond, King County, Washington (DA Permit No. NWS-2009-0242).

SIGNATORY PARTY:

U.S. ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT

Date: _____

Bruce A. Estok
Colonel, Corps of Engineers
District Commander

Note: Signatures continued on next page.

SUBJECT: MOA Regarding Treatment of Adverse Effects to the Bear Creek Site (45K1839),
Redmond, King County, Washington (DA Permit No. NWS-2009-0242).

SIGNATORY PARTY:

THE WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY & HISTORIC
PRESERVATION

By: _____ Date: _____

Title: _____

Note: Signatures continued on next page.

SUBJECT: MOA Regarding Treatment of Adverse Effects to the Bear Creek Site (45KI839),
Redmond, King County, Washington (DA Permit No. NWS-2009-0242).

SIGNATORY PARTY:

THE CITY OF REDMOND

By: _____ Date: _____

Title: _____

Note: Signatures continued on next page.

SUBJECT: MOA Regarding Treatment of Adverse Effects to the Bear Creek Site (45KI839),
Redmond, King County, Washington (DA Permit No. NWS-2009-0242).

SIGNATORY PARTY:

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

Title: _____

Note: Signatures continued on next page.

SUBJECT: MOA Regarding Treatment of Adverse Effects to the Bear Creek Site (45K1839),
Redmond, King County, Washington (DA Permit No. NWS-2009-0242).

CONCURRING PARTY:

MUCKLESHOOT TRIBE OF INDIANS

By: _____ Date: _____

Title: _____

Note: Signatures continued on next page.

SUBJECT: MOA Regarding Treatment of Adverse Effects to the Bear Creek Site (45K1839),
Redmond, King County, Washington (DA Permit No. NWS-2009-0242).

CONCURRING PARTY:

SNOQUALMIE TRIBE OF INDIANS

By: _____ Date: _____

Title: _____

Note: Signatures continued on next page.

SUBJECT: MOA Regarding Treatment of Adverse Effects to the Bear Creek Site (45KI839),
Redmond, King County, Washington (DA Permit No. NWS-2009-0242).

CONCURRING PARTY:

STILLAGUAMISH TRIBE

By: _____ Date: _____

Title: _____

Note: Signatures continued on next page.

SUBJECT: MOA Regarding Treatment of Adverse Effects to the Bear Creek Site (45K1839),
Redmond, King County, Washington (DA Permit No. NWS-2009-0242).

CONCURRING PARTY:

TULALIP TRIBES

By: _____ Date: _____

Title: _____

Note: Signatures continued on next page.

SUBJECT: MOA Regarding Treatment of Adverse Effects to the Bear Creek Site (45KI839),
Redmond, King County, Washington (DA Permit No. NWS-2009-0242).

CONCURRING PARTY:

THE FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: _____

Title: _____

Note: Signatures continued on next page.

SUBJECT: MOA Regarding Treatment of Adverse Effects to the Bear Creek Site (45KI839),
Redmond, King County, Washington (DA Permit No. NWS-2009-0242).

CONCURRING PARTY:

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Title: _____

Note: Signatures continued on next page.

SUBJECT: MOA Regarding Treatment of Adverse Effects to the Bear Creek Site (45K1839),
Redmond, King County, Washington (DA Permit No. NWS-2009-0242).

CONCURRING PARTY:

KING COUNTY HISTORIC PRESERVATION PROGRAM

By: _____ Date: _____

Title: _____

Note: End of signature pages.