

APPENDIX A

PROGRAMMATIC AGREEMENT (2019)

This page intentionally left blank

NORTHERN COLUMBIA BASIN RAILROAD PROJECT

AMENDED PROGRAMMATIC AGREEMENT

AMONG

THE SURFACE TRANSPORTATION BOARD,

THE FEDERAL RAILROAD ADMINISTRATION,

**THE WASHINGTON DEPARTMENT OF ARCHAEOLOGY AND HISTORIC
PRESERVATION, AND**

THE PORT OF MOSES LAKE

**REGARDING STB FINANCE DOCKET NO. 34936, PORT OF MOSES LAKE —
CONSTRUCTION EXEMPTION — MOSES LAKE, WASHINGTON**

AND

**STB FINANCE DOCKET NO. 34936 (SUB-NO. 1), PORT OF MOSES LAKE —
ACQUISITION EXEMPTION — MOSES LAKE, WASHINGTON**

AND

**STB FINANCE DOCKET NO. 34936 (SUB-NO. 2), NORTHERN COLUMBIA BASIN
RAILROAD — OPERATION EXEMPTION — MOSES LAKE, WASHINGTON**

AND

**FRA'S ADMINISTRATION OF FY17 INFRASTRUCTURE FOR REBUILDING
AMERICA GRANT FUNDS**

WHEREAS, the Port of Moses Lake (Port) is proposing the Northern Columbia Basin Rail Project located in Grant County, Washington (hereinafter, "the Project"), which is an undertaking as defined in 36 C.F.R. § 800.16(y) with the potential to adversely affect historic properties; and

WHEREAS, on August 27, 2009, the Surface Transportation Board (STB) issued a decision authorizing construction of two segments of rail line and acquisition of a third segment of rail for the Project that was then proposed by the Port, subject to environmental mitigation measures, including compliance with Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C § 306108; and

WHEREAS, the Port is now seeking authorization from STB for modifications to the route of the rail construction previously authorized as part of the Project; and

WHEREAS, the Port applied for and is receiving funding from the US Department of Transportation under its Fiscal Year 2017 Infrastructure for Rebuilding America (INFRA) Grant Program for the Project and the USDOT's Federal Railroad Administration (FRA) is administering the INFRA grant and the Port intends to use INFRA funds to pay for right-of-way (ROW) acquisition, final design, and construction of the Project; and

WHEREAS, STB is preparing a Supplemental Environmental Assessment (Supplemental EA) in accordance with the National Environmental Policy Act (NEPA) for the proposed modified route for the Project and FRA is participating in the preparation of the Supplemental EA as a cooperating agency; and

WHEREAS, a Programmatic Agreement (hereinafter Agreement) to govern compliance with Section 106 of the NHPA for the Project was previously executed among STB, the Washington Department of Archaeology and Historic Preservation (which serves as the State Historic Preservation Officer (SHPO)), the Port, the Washington State Department of Transportation (WSDOT), and the Columbia Basin Railroad Company, Inc. (CBRW) on June 10, 2009 and due to modifications to the Project, the Agreement is being amended to (1) extend the time period set forth in the Duration Clause (Section X), (2) to add FRA as a Signatory, (3) to update the Agreement to align with guidance and policies issued by the Advisory Council on Historic Preservation (ACHP) since 2014, and (4) address additional Section 106 compliance requirements that are necessary as a result of the proposed route modifications. This executed version shall supersede the June 10, 2009 version; and

WHEREAS, the Project, with the proposed modifications and as illustrated in Appendix A, consists of the following three segments and associated activities: acquire ROW through purchase, design, and construct approximately 4.5 miles of new rail line along the Wheeler Industrial Corridor, between the area known as Wheeler and Parker Horn, and reroute rail traffic from the existing aging rail infrastructure to this new route (Segment 1); acquire ROW through purchase, design, and construct approximately 3.1 miles of new rail line to access industrial lands adjacent to the Grant County International Airport (Segment 2); and acquire existing rail line through donation from CBRW and rehabilitate approximately three miles of existing track between Parker Horn and the Airport, restoring rail service to the Port and Airport and connecting Segments 1 and 2 (Segment 3); and

WHEREAS, STB, as the lead federal agency responsible for compliance with Section 106 for the Project, has consulted with SHPO, pursuant to 36 C.F.R. Part 800; and

WHEREAS, pursuant to 36 C.F.R. § 800.2(a)(2), FRA, in correspondence dated July 25, 2018, designated STB to serve as the lead federal agency to fulfill the agencies' collective Section 106 compliance responsibilities and participated in the preparation of this Agreement and is a Signatory; and

WHEREAS, the Port as the Project Applicant is an Invited Signatory to this Agreement; and

WHEREAS, STB consulted with the following federally-recognized Native American tribes and invited them to participate in this Agreement: the Confederated Tribes and Bands of the Yakama Nation; the Colville Confederated Tribes; and the Confederated Tribes of the Warm Springs Reservation of Oregon. However, those Tribes have not elected to participate; and

WHEREAS, STB consulted with the non-federally recognized Wanapum Tribe and invited it to participate in this Agreement, and the Wanapum Tribe has not elected to participate; and

WHEREAS, STB has consulted with the WSDOT Rail, Freight, and Ports Division and invited WSDOT to sign this Agreement as a concurring party, and WSDOT has agreed; and

WHEREAS, once the Project has been constructed, CBRW shall operate service over the line, and was invited by STB to sign this Agreement as a concurring party, and CBRW has agreed; and

WHEREAS, on December 8, 2008, STB invited the ACHP to participate in the development of this Agreement, and the ACHP declined to participate; and

WHEREAS, STB, pursuant to 36 C.F.R. § 800.4(a)(1), established the Area of Potential Effects (APE) for the Project as it was originally proposed by the Port in 2009 (Original APE), which encompassed a 200-acre area extending 50 feet on either side of the proposed rail corridor centerline. Analysis of potential noise and vibration impacts considered historic buildings or structures within this 100-foot-wide corridor. SHPO concurred with the Original APE in a November 2, 2007 letter; and

WHEREAS, the APE has been adjusted to cover the proposed modified route for the Project (Modified APE). Generally, the Modified APE for the proposed alignment modifications is 100-feet-wide (50 feet on either side of the proposed track centerline). The Modified APE for Segment 1 has been expanded at certain locations, ranging from 90 feet to 120 feet on either side of the modified track centerline, to accommodate construction, staging, and/or laydown areas. Likewise, the Modified APE for Segment 2 has been expanded to include review of two alternative modifications to the originally proposed route, and ranges from 100 feet wide to approximately 325 feet wide, including a staging area at the north end of the alignment. STB's Office of Environmental Assessment (OEA), FRA, and SHPO approved the Modified APE in August 2018¹ and November 2018²; and

¹ August 22, 2018 letter from SHPO to OEA

² November 6, 2018 letter from SHPO to OEA

WHEREAS, a cultural resource survey to identify historic properties in the APE and evaluate whether the historic properties are eligible for listing in the National Register of Historic Places (NRHP) was conducted in 2008³; and

WHEREAS, a supplemental resource survey was conducted in 2019 to investigate the surface and subsurface of the Modified APE that included previously unsurveyed parcels⁴; and

WHEREAS, STB has determined that some areas within the APE are not currently accessible and cannot be adequately investigated prior to the Port's acquisition of the ROW, and may contain NRHP-eligible historic properties; and

WHEREAS, a phased process for compliance with Section 106, as provided for in 36 C.F.R. § 800.4(b)(2), is appropriate because historic and archaeological investigations are still in process and cannot be completed on all land within the APE until the Port acquires the property for the Project; and

NOW, THEREFORE, STB, FRA, the Port, and SHPO (collectively referred to as the Signatory Parties or Signatories) agree that the Project is subject to the following stipulations in order to take into account the effects of the Project on historic properties and further agree that these stipulations shall govern the Undertaking and all of its parts until this Agreement expires or is terminated.

STIPULATIONS

I. GENERAL REQUIREMENTS AND STANDARDS

- A. All work carried out under this Agreement shall be conducted by or under the direct supervision of a person or persons meeting, at a minimum, the *Secretary of the Interior's Professional Qualification Standards* (36 C.F.R. Part 61).
- B. All work carried out under this Agreement shall meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 Fed. Reg. 44716) as well as standards and guidelines for historic preservation activities as established by SHPO.
- C. Timeframes and Notification
 - 1. All time designations in this Agreement are in calendar days unless otherwise stipulated. If a review period ends on a Saturday, Sunday or Federal holiday,

³ HDR Engineering, Inc. 2008. Northern Columbia Basin Railroad Project Draft Cultural Resources Report

⁴ Jacobs. 2019. Port of Moses Lake Northern Columbia Basin Railroad Project Supplemental Cultural Resources Investigations for Draft Supplemental Environmental Assessment. Historic canals in the original and modified APE were also looked at further and are discussed in Jacobs. 2017. Historic Canals Effects Assessment for the Northern Columbia Basin Railroad Project.

the review period shall be extended until the first business day following the Saturday, Sunday, or Federal holiday.

2. All review periods stipulated by this Agreement start on the day the documents are sent to the relevant parties which constitutes notification unless otherwise stipulated in this Agreement.
3. All notifications required by this Agreement shall be sent by email and/or other electronic means unless a recipient requests a hard copy notification.

D. Document Review

1. Where required under this Agreement, STB, in coordination with the Port, shall submit documentation to the Signatory Parties, any interested or affected Native American tribes, and other consulting parties for review, comment and/or concurrence.
2. If the appropriate parties do not provide written comments to STB as specified during the specified review period, it is understood that the non-responding parties have no comments on the submittal, and STB shall proceed to the next step of the consultation process.
3. If the Signatory Parties, any interested or affected Native American tribes, or other consulting party objects or recommends extensive revisions to submissions, STB, in coordination with the Port, shall work expeditiously to respond to objections and resolve disputes. STB may elect to follow the dispute resolution process identified in Stipulation VI to resolve any such dispute.

II. ADDITIONAL MODIFICATIONS TO THE APPROVED APE

- A. The Port shall notify STB of any changes in Project plans and the following shall occur if those changes are not major changes to the Project that require reopening F.D. 34936 for new or additional authorization from STB:
 1. STB, in consultation with FRA, shall review the changes in Project plans to determine if they necessitate revisions to the approved APE.
 2. If the APE requires revision, the Port, in coordination with STB, shall prepare a written justification with accompanying graphics, as appropriate, for the proposed revised APE, which STB shall submit to SHPO for review.
 3. Following SHPO concurrence on the revised APE, STB shall promptly notify the Signatories, any interested or affected Native American tribes, and other consulting parties of the revised APE.

4. As appropriate, the Port shall update or perform additional cultural resources work in accordance with Stipulation III or IV of this Agreement. The Port shall not commence ground disturbing and/or construction activities within the revised APE prior to the completion of the Section 106 process required by this Agreement until such time as Approval to Proceed is received in accordance with Stipulation V.

III. PHASED SECTION 106 IDENTIFICATION, EVALUATION, AND ASSESSMENT OF EFFECTS

- A. The Port shall conduct cultural resource survey work on parcels contained within the Modified APE that were not part of previous investigations, and any previously inaccessible parcels that are included in the Supplemental EA.
- B. Once access to a previously inaccessible area within the Modified APE has been obtained, the Port shall:
 1. Provide written notification to STB, Signatories, interested and affected Native American tribes, and other consulting parties of the survey methodology and Project schedule at least fourteen (14) calendar days prior to initiating the cultural resources survey.
 2. Conduct a cultural resources survey and produce a Draft Survey Report with associated Historic Property Inventory (HPI) forms to identify archaeological resources and historic structures that are 45 years old or older. Any identified resources shall be inventoried per Stipulation I.B and evaluated for their eligibility for inclusion in the National Register of Historic Places (NRHP). The Draft Survey Report shall: a) summarize the findings; b) make recommendations regarding any resources' eligibility for listing in the NRHP; and c) assess effects to historic properties applying the criteria for adverse effects (36 C.F.R. §§ 800.5 (a)(1) and (2)) as a result of the Project.
 3. Specify any resources within the Draft Survey Report that were not fully identified, evaluated, and/or assessed for effects and the reasons why, and provide recommended actions for further investigation of those resources.
- C. The Port shall provide the Draft Survey Report and any associated HPI forms to STB. The STB shall review and provide written comment to the Port on the Draft Survey Report and HPI forms within fourteen (14) calendar days. The Port shall revise the Draft Survey Report consistent with STB's comments and submit the revised Draft Survey Report to STB within fourteen (14) calendar days of the receipt of comments for finalization.
- D. The STB shall consult with the Signatories, any interested or affected Native American tribe, and other consulting parties on the findings by providing the Draft

Survey Report to them for review and comment. All parties shall review and provide written comments within thirty (30) calendar days.

- E. Once STB receives concurrence from SHPO and FRA on the Draft Survey Report's sufficiency, the Survey Report shall be finalized by the Port, taking any comments received into account, and submitted to STB, SHPO, FRA, and any interested or affected Native American tribe and/or consulting parties that requested a copy during the comment period.
- F. The STB, in consultation with the Signatories, any interested or affected Native American tribes, and other consulting parties, may determine that further investigation is necessary. The STB may require the Port to conduct additional fieldwork, including a pedestrian survey and/or subsurface testing, as necessary. All subsequent work shall be reported in additional Survey Reports following the processes outlined in this Stipulation.

IV. RESOLUTION OF ADVERSE EFFECTS - TREATMENT OF HISTORIC PROPERTIES

- A. If STB determines, through the process laid out in Stipulation III, that the Project shall adversely affect a historic property(ies), it shall address the effects through the development of a treatment plan(s), rather than through the development of a Memorandum of Agreement or other Section 106 agreement document. A treatment plan may address one or multiple historic properties in the same plan.
- B. After taking into consideration the significance of the historic property(ies) affected and the severity of the adverse effect(s), STB shall develop a treatment plan that proposes to avoid, minimize, or mitigate adverse effects to the historic property(ies). The treatment plan shall include a curation plan for any artifacts that are recovered, as applicable.
- C. The treatment plan, and all associated treatment measures, shall be developed and implemented by cultural resource professionals that meet the Secretary of the Interior's Standards as referenced in Stipulation I.A.
- D. The STB shall submit the proposed treatment plan to the Signatories, any interested or affected Native American tribe, and other consulting parties in writing for review and comment. All parties shall review and provide written comments within thirty (30) calendar days.
- E. If STB receives an objection to the proposed treatment plan, it shall notify all the Signatories, any interested or affected Native American tribe, and other consulting parties within fifteen (15) calendar days. STB, in consultation with SHPO and the objecting party, shall work expeditiously to address the objection. The final version of the treatment plan requires SHPO concurrence prior to implementation.

- F. Unless SHPO, the Signatories, any interested or affected Native American tribe, or another consulting party objects within thirty (30) calendar days of receipt of the proposed treatment plan, STB shall take into account any comments timely submitted. STB shall summarize the comments, provide written notification to the Signatories, any interested or affected Native American tribe, or other consulting parties, and proceed with the implementation of the treatment plan.
- G. The Port shall implement the treatment plan.

V. APPROVAL TO PROCEED

The Port shall not proceed with construction of any portion or segment of the Project until notified in writing by STB's OEA that all Section 106 requirements are satisfied for that specific segment of the Project. This includes all identification, evaluation, assessment of effects, and resolution of adverse effects to any identified historic properties within the Modified APE for each segment.

VI. DISPUTE RESOLUTION

- A. Any party to this Agreement or any tribe or other consulting party may object to any proposed action(s) or the manner in which the terms of this Agreement are implemented by submitting its objection in writing to STB. If STB receives an objection, it shall notify the Signatories of the objection and consult with the Signatories and objecting party to resolve the objection. If STB determines that the objection cannot be resolved through consultation, STB shall:
 - 1. Forward all documentation relevant to the dispute to the ACHP (with a copy to the Signatories). Such documentation shall include STB's proposed resolution to the objection. STB shall request that the ACHP provide STB with its comment on the resolution of the objection within thirty (30) calendar days of receiving documentation. STB shall take into account any timely comments received regarding the dispute from the ACHP and the Signatories when making its final decision on the dispute.
 - 2. If the ACHP does not provide comment regarding the dispute within thirty (30) calendar days, STB shall make the final decision on the dispute and proceed accordingly.
 - 3. STB shall document this decision in a written response that and provide ACHP and the Signatories with a copy of the response.
 - 4. STB shall then proceed according to its final decision.
- B. Any recommendation or comment provided by the ACHP shall be understood to pertain only to the subject of the dispute, and STB's responsibility regarding

actions outside the dispute shall remain unchanged. The parties may continue all actions under this Agreement that are not the subject of the dispute.

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

VII. AMENDMENTS

Any signatory to this Agreement may propose that it be amended, whereupon the parties shall confer and consider the amendment. Any resulting amendment requires the agreement of all Signatory Parties and shall be executed in writing.

VIII. UNANTICIPATED DISCOVERIES

In the event that any unanticipated historic or cultural properties, archaeological sites, human remains, funerary items, or assorted artifacts are discovered during Project construction, the Port shall immediately cease all work and notify STB, the Signatories, interested federally-recognized Indian tribes, and other consulting parties, to determine if additional consultation and/or mitigation is necessary. In the event that human remains are discovered, the Port shall also notify appropriate law enforcement agencies. (See the Plan and Procedures for the Unanticipated Discovery of Cultural Resources and Human Skeletal Remains in Appendix B).

IX. TERMINATION AND WITHDRAWAL

- A. Should STB find that the terms of this Agreement shall not or cannot be carried out, STB shall immediately consult with the other Signatories to develop an amendment per Stipulation VII. If within thirty (30) calendar days (or another time period agreed upon by all Signatories) an amendment cannot be reached, any Signatory may terminate this Agreement upon written notification to the other Signatories.
 - 1. Any discovery of historic or cultural properties, archaeological sites, human remains, funerary items, or assorted artifacts in process under the terms of this Agreement at the time of the termination shall be processed to its completion by the Port.
- B. If at any time, FRA disagrees with the manner in which the terms of the Agreement are carried out, FRA may object in writing to STB. STB shall follow Stipulation VI in resolving the objection. If STB and FRA are unable to come to agreement, FRA may withdraw its participation in this Agreement entirely upon 30-days written notification to all Signatories, leaving the Agreement in full force and effect with respect to STB's Section 106 compliance responsibilities. If FRA withdraws from this Agreement, FRA shall be responsible for satisfying its own Section 106 compliance responsibilities.

- C. In the event of termination of this Agreement or FRA withdrawal under paragraph B of this stipulation, the Port cannot continue work on the Project until STB and/or FRA, as appropriate, executes a new agreement pursuant to 36 C.F.R. § 800.14(b); requests, takes into account, and responds to comments of the ACHP under 36 C.F.R. § 800.7; or otherwise complies with Section 106 per 36 C.F.R. Part 800. The STB and FRA shall provide written notice to the other Signatories as to the course of action pursued.
- D. If the Port withdraws from participation in this Agreement, then the Agreement is terminated.

X. DURATION

Unless terminated pursuant to Stipulation IX, this Agreement shall terminate automatically within ten (10) years after the date of any STB decision authorizing or declining to authorize the proposed modifications to the Project in Grant County, Washington.

XI. EFFECTIVE DATE

This Agreement shall be effective on the date of the last signature by the Signatories. Pursuant to 36 C.F.R. § 800.6(c)(2), the effective date of this document is not contingent upon the signature of Concurring Parties.

XII. EXECUTION AND IMPLEMENTATION

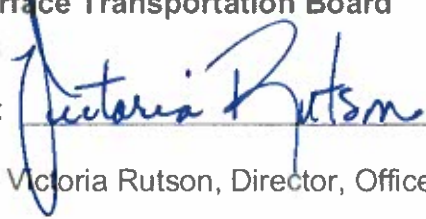
Execution and implementation of this Agreement evidences that STB and FRA have taken into account the effects of this undertaking on historic properties, have afforded the ACHP a reasonable opportunity to comment, and STB and FRA have satisfied their responsibilities under Section 106 of the NHPA and its implementing regulations.

ACCEPTED AND AGREED

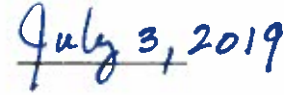
SIGNATORY PARTIES

Surface Transportation Board

By: _____

A handwritten signature in blue ink, appearing to read "Victoria Rutson", is written over a horizontal line.

Date: _____

A handwritten date "July 3, 2019" in blue ink is written over a horizontal line.

Victoria Rutson, Director, Office of Environmental Analysis

Federal Railroad Administration

By: *Dawn A. Smith*

Date: *July 3, 2019*

for

Marlys Osterhues, Chief, Environment and Project Engineering Division, Office of
Railroad Policy and Development

Washington Department of Archaeology and Historic Preservation

By: _____



Date: _____

6/25/19

Dr. Allyson Brooks, Washington State Historic Preservation Officer

The Port of Moses Lake

By:  _____

Jeffrey Bishop, Executive Director

Date: 07/03/19

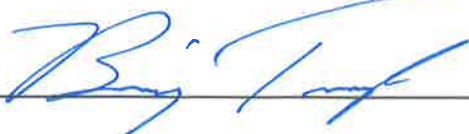
CONCURRING PARTIES

Washington State Department of Transportation

By: _____ Date: _____

Ron Pate, Director, Rail, Freight, and Ports Division

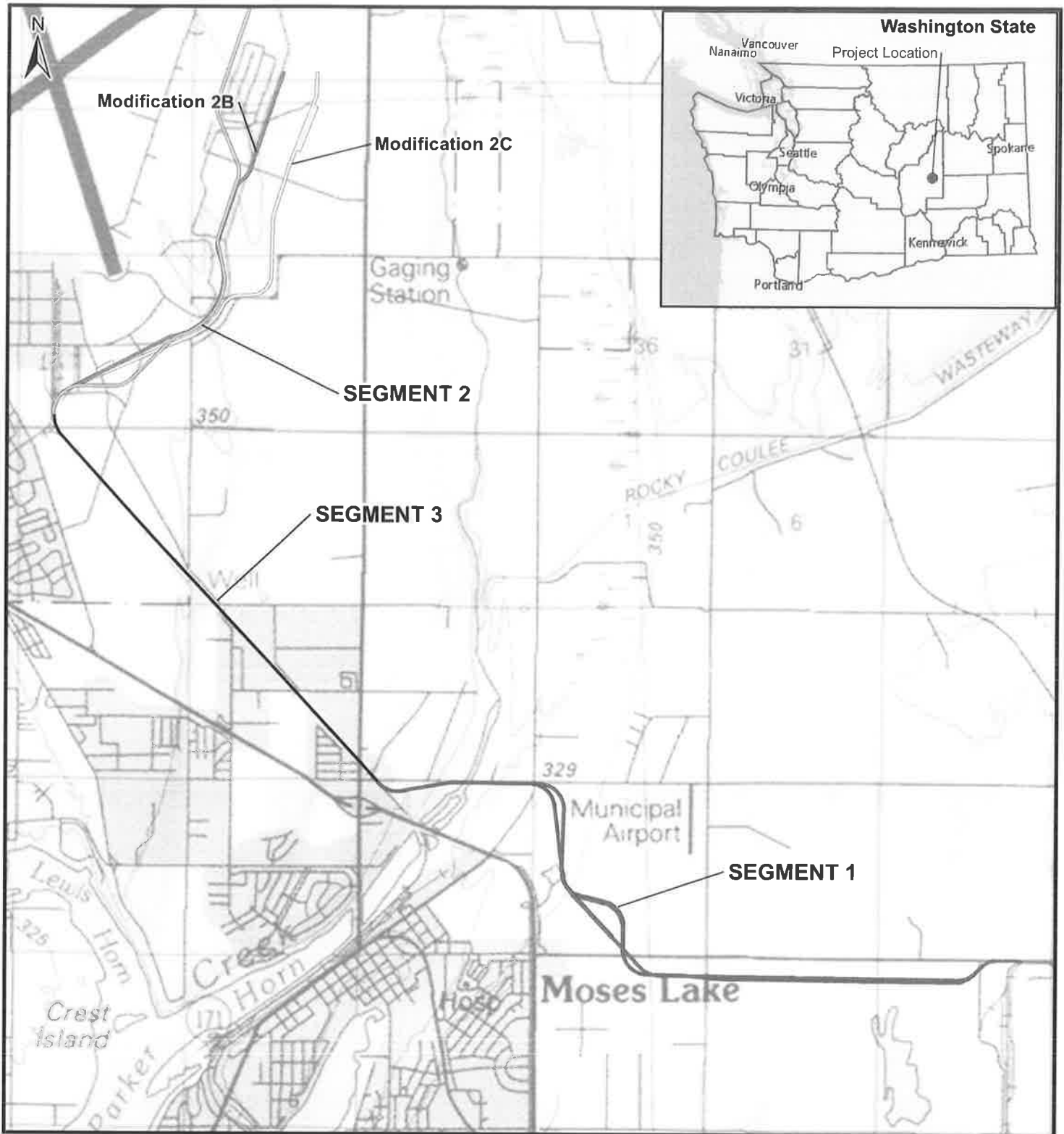
Columbia Basin Railroad Company, Inc.

By: 
Brig Temple, President

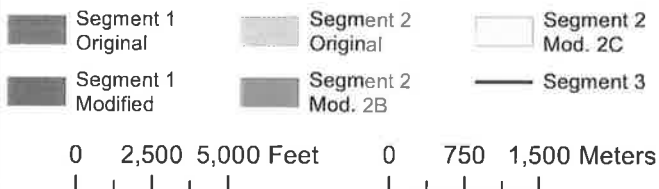
Date: 6/23/19

APPENDIX A

This page intentionally left blank



Vicinity Map



PROJECT: Northern Columbia Basin Railroad Project
CLIENT: Port of Moses Lake (POML)
LOCATION: Moses Lake, Washington
COUNTY: Grant
PLSS: Segment 1: T19N R28E S14, 13, 24 and T19N R29 E S19, 20
 Segment 2: T20N R38E S 22, 27, 33, 34
QUADRANGLE: Moses Lake North and Wheeler
BASE MAP: ESRI USA Topo Maps 2018
DATE OF FIGURE: 04/24/19
FIGURE BY: M. Indrebo



JACOBS



Segment 1 APE Overview

-  Original Alignment APE
-  Historic Canal Segments
-  Modification 1B APE
-  Segment 3

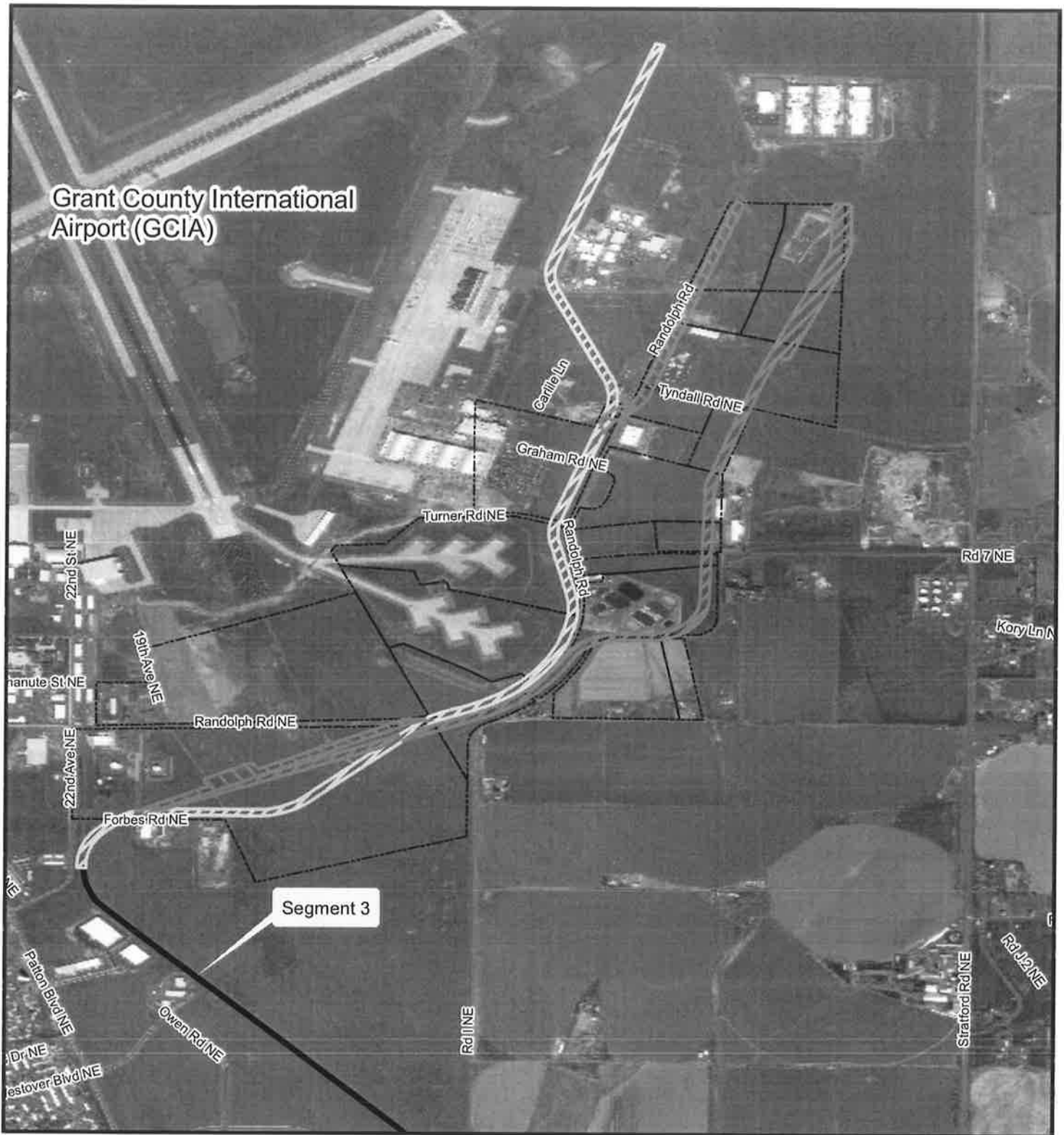
PROJECT: Northern Columbia Basin Railroad Project
 CLIENT: Port of Moses Lake (POML)
 LOCATION: Moses Lake
 STATE: Washington
 COUNTY: Grant
 PLSS: T19N R28E S14, 13, 24 and T19N R29 E S19, 20
 QUADRANGLE: Moses Lake North and Wheeler
 BASE MAP: ESRI Digital Globe 2018
 DATE OF FIGURE: 4/30/19
 FIGURE BY: M. Indrebo



0 1,300 2,600 5,200 Feet

0 375 750 1,500 Meters

JACOBS



Segment 2 - APE Overview

-  Original Alignment APE
-  Modification 2B APE
-  Modification 2C APE
-  Segment 3

0 1,000 2,000 Feet 0 350 700 Meters

PROJECT: Northern Columbia Basin Railroad Project
CLIENT: Port of Moses Lake (POML)
LOCATION: Moses Lake
STATE: Washington
COUNTY: Grant
PLSS: T20N R38E S 22, 27, 33, 34
QUADRANGLE: Moses Lake North
BASE MAP: ESRI Digital Globe 2018
DATE OF FIGURE: 4/30/19
FIGURE BY: M. Indrebo



JACOBS

APPENDIX B

This page intentionally left blank

PLAN AND PROCEDURES FOR THE UNANTICIPATED DISCOVERY OF CULTURAL RESOURCES AND HUMAN SKELETAL REMAINS

NORTHERN COLUMBIA BASIN RAILROAD PROJECT, IN GRANT COUNTY, WASHINGTON

1. INTRODUCTION

The following Unanticipated Discovery Plan (UDP) outlines procedures for the Port of Moses Lake (Port) to follow, in accordance with state and federal laws, if archaeological materials or human remains are discovered.

2. RECOGNIZING CULTURAL RESOURCES

A cultural resource discovery could be prehistoric or historic. Examples include:

- An accumulation of shell, burned rocks, or other food related materials,
- Bones or small pieces of bone,
- An area of charcoal or very dark stained soil with artifacts,
- Stone tools or waste flakes (i.e. an arrowhead, or stone chips),
- Clusters of tin cans or bottles, logging or agricultural equipment that appears to be older than 50 years,
- Buried railroad tracks, decking, or other industrial materials.

When in doubt, assume the material is a cultural resource.

3. ON-SITE RESPONSIBILITIES

STEP 1: STOP WORK. If any Port employee, contractor, or subcontractor conducting ground-disturbing activities encounters human skeletal remains during construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State Historic Preservation Officer (SHPO) provides notice to proceed. If human remains are encountered, treat them with dignity and respect at all times. Cover the remains with a tarp or other materials (not soil or rocks) for temporary protection in place and to shield them from being photographed. Do not speak with the media.

STEP 2: NOTIFY ON-SITE RESPONSIBLE PARTY. If there is an archaeological monitor for the project on-site, notify that person, otherwise notify the Project Manager, Foreman, Chief Engineer, or whomever is supervising on-site activities. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that

finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains."

STEP 3: NOTIFY THE FEDERAL AGENCY. Contact the Surface Transportation Board's Office of Environmental Analysis (OEA) and the Federal Railroad Administration (FRA).

Contact Information for OEA:

Victoria Rutson
Director, Office of Environmental Protection
Federal Preservation Officer
202-245-0295

Adam Assenza
Environmental Protection Specialist
202-245-0301
Adam.Assenza@STB.gov

Contact Information for FRA:

Katherine Zeringue, FRA Federal Preservation Officer
202-578-4115
katherine.zeringue@dot.gov

4. FURTHER CONTACTS AND CONSULTATION

A. Project Manager's Responsibilities: Stop Work In the Area of the Discovery

- **Protect Find:** The Port is responsible for taking appropriate steps to protect the discovery site. All work will stop in an area adequate to provide for the total security, protection, and integrity of the resource. Vehicles, equipment, and unauthorized personnel will not be permitted to traverse the discovery site. Work in the immediate area will not resume until treatment of the discovery has been completed following provisions for treating archaeological/cultural material as set forth in this document.
- **Direct Construction Elsewhere On-site:** The Port may direct construction away from cultural resources to work in other areas prior to contacting the concerned parties.

B. Identification and Consultation

- **Identify Find:** The Port will ensure that a qualified professional archaeologist examines the find to determine if it is archaeological and will provide findings to SEA.
 - If it is determined not to be archaeological, work may proceed with no further delay.

- If it is determined to be archaeological, the Port and OEA will continue with notification.
- If the find may be human remains or funerary objects, the Port will ensure that a qualified physical anthropologist examines the find. If it is determined to be human remains, the procedure described in Section 5 will be followed.
- Notify DAHP: OEA will contact the Department of Archaeology and Historic Preservation (DAHP).
- Notify Tribes: If the discovery may relate to Native American interests, OEA will also contact any federally-recognized tribes with ancestral connection to the area.

Contact Information for DAHP:

Dr. Allyson Brooks
State Historic Preservation Officer
360-586-3066 or

Dennis Wardlaw
Transportation Archaeologist
360-586-3085
Dennis.Wardlaw@DAHP.WA.GOV

C. Further Activities

- Archaeological discoveries will be documented as described in Section 6.
- Construction in the discovery area may resume as described in Section 7.

5. SPECIAL PROCEDURES FOR THE DISCOVERY OF HUMAN SKELETAL MATERIAL

Any human skeletal remains, regardless of antiquity or ethnic origin, will at all times be treated with dignity and respect.

The Port will comply with applicable state and federal laws, and the following procedure:

A. Notify Law Enforcement Agency or Coroner's Office:

In addition to the actions described in Sections 3 and 4, the Port will immediately notify the local law enforcement agency or coroner's office.

The coroner (with assistance of law enforcement personnel) will determine if the remains are human, whether the discovery site constitutes a crime scene, and will notify DAHP of its determination.

B. Participate in Consultation:

Per RCW 27.53.030, RCW 68.50, and RCW 68.60, DAHP will have jurisdiction over non-forensic human remains. Port personnel, as well as OEA and the Federal Railroad Administration (FRA), will participate in consultation.

C. Further Activities:

- Documentation of human skeletal remains and funerary objects will be agreed upon through the consultation process described in RCW 27.53.030, RCW 68.50, and RCW 68.60.
- When consultation and documentation activities are complete, construction in the discovery area may resume as described in Section 7.

6. DOCUMENTATION OF ARCHAEOLOGICAL MATERIALS

Archaeological deposits discovered during construction will be assumed eligible for inclusion in the National Register of Historic Places under Criterion D.

The Port will ensure the proper documentation and assessment of any discovered cultural resources in cooperation with OEA, DAHP, affected tribes, and a contracted consultant (if any).

All prehistoric and historic cultural material discovered during project construction will be recorded by a professional archaeologist using standard techniques. Site overviews, features, and artifacts will be photographed; stratigraphic profiles and soil/sediment descriptions will be prepared for subsurface exposures. Discovery locations will be documented on scaled site plans and site location maps.

Cultural features, horizons and artifacts detected in buried sediments may require further evaluation using hand-dug test units. Units may be dug in controlled fashion to expose features, collect samples from undisturbed contexts, or interpret complex stratigraphy. A test excavation unit or small trench might also be used to determine if an intact occupation surface is present. Test units will be used only when necessary to gather information on the nature, extent, and integrity of subsurface cultural deposits to evaluate the site's significance. Excavations will be conducted using state-of-the-art techniques for controlling provenience.

Spatial information, depth of excavation levels, natural and cultural stratigraphy, presence or absence of cultural material, and depth to sterile soil, regolith, or bedrock will be recorded for each probe on a standard form. Test excavation units will be recorded on unit-level forms, which include plan maps for each excavated level, and material type, number, and vertical provenience (depth below surface and stratum association where applicable) for all artifacts recovered from the level. A stratigraphic profile will be drawn for at least one wall of each test excavation unit.

Sediments excavated for purposes of cultural resources investigation will be screened through 1/8-inch mesh, unless soil conditions warrant 1/4-inch mesh.

All prehistoric and historic artifacts collected from the surface and from probes and excavation units will be analyzed, catalogued, and temporarily curated. Ultimate disposition of cultural materials will be determined in consultation with OEA, DAHP, and any affected tribes.

Within 90 days of concluding fieldwork, a technical report describing any and all resultant archaeological excavations will be provided to OEA, DAHP, and any affected tribes.

If assessment activity exposes human remains (burials, isolated teeth, or bones), the process described in Section 5 above will be followed.

7. PROCEEDING WITH CONSTRUCTION

Project construction outside the discovery location may continue while documentation and assessment of the cultural resources proceed. A qualified professional, or a person who meets, at a minimum, the *Secretary of the Interior's Professional Qualification Standards* (36 C.F.R. Part 61), must determine the boundaries of the discovery location. In consultation with DAHP, FRA, and any affected tribes, OEA will determine the appropriate level of documentation and treatment of the resource. OEA will make the final determinations about treatment and documentation. Construction may continue at the discovery location only after the process outlined in this plan is followed and OEA and FRA determine that compliance with state and federal laws is complete.

This page intentionally left blank