

Existing Wa State Dept of Ecology/Whatcom County Approved SMP

Archaeological, Historical and Cultural Resources provisions

[Element Section] – Goals and Objectives

23.20.080 Archaeological, historical and cultural resources. The archaeological-historical-cultural element provides for protection, preservation and/or restoration of buildings, sites, and areas having archaeological, historical, cultural, or scientific value or significance.

A. Goal. Protect shoreline features of historic, cultural, archeological, or scientific value or significance to prevent damage or destruction through coordination and consultation with the appropriate local, state and federal authorities, including affected Indian tribes.

B. Objectives.

1. Protect sites in collaboration with appropriate tribal, state, federal and local governments. Encourage public agencies and private parties to cooperate in the identification, protection and management of cultural resources.
2. Where appropriate, make access to such sites available to parties of interest; provided, that access to such sites must be designed and managed in a manner that gives maximum protection to the resource.
3. Provide opportunities for education related to archaeological, historical and cultural features where appropriate and incorporated into public and private programs and development. (Ord. 2009-13 § 1 (Exh. 1)).

Ch 23.60 Shoreline Permits and Exemptions

23.60.080 Notice of application.

A. Upon receipt of a completed shoreline substantial development permit, shoreline variance, or shoreline conditional use permit application, the county shall issue a notice of application for a proposed land use action in the manner set forth in WCC 22.05.070.

B. The rights of treaty tribes to resources within their usual and accustomed areas shall be accommodated through the notification and comment provisions of the permit review process. Tribal treaty rights may be addressed through specific permit conditions. Direct coordination between tribes and the applicant/proponent is encouraged. (Ord. 2018-032 § 1 (Exh. C); Ord. 2009-13 § 1 (Exh. 1); Ord. 2008-034 § 1 (Exh. 1)).

Chapter 23.90 GENERAL POLICIES AND REGULATIONS

23.90.070 Archaeological, historic and cultural resources.

A. Policies.

1. The county should work with tribal, state, federal and local governments as appropriate to maintain an inventory of all known significant local historic, cultural and archaeological sites in observance of

applicable state and federal laws protecting such information from general public disclosure. As appropriate, such sites should be protected, preserved and/or restored for study, education and/or public enjoyment to the maximum possible extent.

2. Site development plans should incorporate provisions for historic, cultural and archaeological site preservation, restoration and education with open space or recreation areas whenever compatible and possible.

3. Cooperation among involved private and public parties is encouraged to achieve the archaeological, historical and cultural element goals and objectives of this program.

4. Owners of property containing identified historic, cultural or archaeological sites are encouraged to make development plans known well in advance of application, so that appropriate agencies such as the Lummi Nation, Nooksack Tribe, Washington State Department of Archaeology and Historic Preservation, and others may have ample time to assess the site and make arrangements to preserve historical, cultural and archaeological values as applicable.

5. Private and public owners of historic sites should be encouraged to provide public access and educational opportunities in a manner consistent with long-term protection of both historic values and shoreline ecological functions.

6. Historic, cultural and archaeological site development should be planned and carried out so as to prevent impacts to the resource. Impacts to neighboring properties and other shore uses should be limited to temporary or reasonable levels.

7. If development is proposed adjacent to an identified historic, cultural or archaeological site, then the proposed development should be designed and operated so as to be compatible with continued protection of the historic, cultural or archaeological site.

8. The cultural resource provisions of this program are consistent with Chapters 27.44 and 27.53 RCW and WAC 25-48-060. In accordance with state law, all applicants are subject to these requirements.

B. Regulations.

1. Known Archaeological, Historic and Cultural Resources.

a. Upon receipt of application for a shoreline permit or request for a statement of exemption for development on properties within 500 feet of a site known to contain an historic, cultural or archaeological resource(s), the county shall require a cultural resource site assessment; provided, that the provisions of this section may be waived if the administrator determines that the proposed development activities do not include any ground disturbing activities and will not impact a known historic, cultural or archaeological site. The site assessment shall be conducted by a professional archaeologist or historic preservation professional, as applicable, to determine the presence of significant historic or archaeological resources. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible party. The applicant shall submit a minimum of five copies of the site assessment to the administrator for distribution to the applicable parties for review.

b. If the cultural resource site assessment identifies the presence of significant historic or archaeological resources, a cultural resource management plan (CRMP) shall be prepared by a professional archaeologist or historic preservation professional, as applicable. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible party. In the preparation of such plans, the professional archaeologist or historic preservation professional shall solicit comments from the Washington State Department of Archaeology and Historic Preservation, the Lummi Nation Tribal Historic Preservation Office and Nooksack Tribe. Comments received shall be incorporated into the conclusions and recommended conditions of the CRMP to the maximum extent practicable. The applicant shall submit a minimum of five copies of the CRMP to the administrator for distribution to the applicable parties for review.

i. A CRMP shall contain the following minimum elements:

(A) The purpose of the project; and

(B) A site plan for proposed on-site development; and

(C) Depth and location of all ground disturbing activities including, but not limited to, utilities, driveways, clearing and grading; and

(D) An examination of project on-site design alternatives; and

(E) An explanation of why the proposed activity requires a location on, or access across and/or through, a significant historic or archaeological resource; and

(F) A description of the historic/archaeological resources affected by the proposal; and

(G) An assessment of the historic/archaeological resource and an analysis of the potential adverse impacts as a result of the activity; and

(H) An analysis of how these impacts have been avoided; or

(I) Where avoidance is not possible, how these impacts have been mitigated/minimized; and

(J) A recommendation of appropriate mitigation measures, which may include but are not limited to the following:

(1) Recording the site with the State Department of Archaeology and Historic Preservation, or listing the site in the National Register of Historic Places, Washington Heritage Register, as applicable, or any locally developed historic registry formally adopted by the Whatcom County council;

(2) Preservation in place;

(3) Reinterment in the case of grave sites;

(4) Covering an archaeological site with a nonstructural surface to discourage pilferage (e.g., maintained grass or pavement);

(5) Excavation and recovery of archaeological resources;

(6) Inventorying prior to covering of archaeological resources with structures or development; and

(7) Monitoring of construction excavation.

(K) An outline of actions to be taken by the property owner, developer, archaeologist, or historic preservation professional, as applicable, in the event that an inadvertent discovery of historic, cultural or archaeological sites or artifacts occurs during site development, which includes the following:

(1) A statement that work on that portion of the development site shall be stopped immediately and the find reported as soon as possible to the administrator and other appropriate governments and agencies.

(2) Contact information for applicable parties, agencies and governments including the county administrator, the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, Nooksack Tribe, professional archaeologist or historic preservation professional; and in the event of inadvertent discovery of human remains, additional contact information for the Whatcom County sheriff's office, Whatcom County medical examiner, and/or Lummi Repatriation Office.

(3) Proposed measures to stabilize, contain or otherwise protect the area of inadvertent discovery until a site investigation and/or site assessment is conducted.

(L) Where provision of public access for the purpose of public education related to a private or publicly owned building or structure of historic significance is desired by the property owner, a public access management plan shall be developed in consultation with the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, Nooksack Tribe and/or other agencies, as appropriate, to address the following:

(1) The type and/or level of public access that is consistent with the long-term protection of both historic resource values and shoreline ecological functions and processes; and

(2) Site- and resource-specific conditions and/or improvements including the following, as applicable:

(a) Hours of operation,

(b) Interpretive and/or directional signage,

(c) Lighting,

(d) Pedestrian access, and/or

(e) Traffic and parking.

(M) Where provision of public access for purposes of public education related to an archaeological or cultural resource site is desired by the property owner, the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, Nooksack Tribe and/or other agencies, as appropriate, shall be in agreement prior to providing public access to the site. An access and resource management plan shall be developed in consultation with the Washington State Department of Archaeology and Historic Preservation, the Lummi Nation Tribal Historic Preservation Office, and the Nooksack Tribe.

ii. The recommendations and conclusions of the CRMP shall be used to assist the administrator in making final administrative decisions concerning the presence and extent of historic/archaeological resources and appropriate mitigating measures. The administrator shall consult with the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe prior to approval of the CRMP.

iii. The administrator may reject or request revision of the conclusions reached in a CRMP when the administrator can demonstrate that the assessment is inaccurate or does not fully address the historic/archaeological resource management concerns involved.

c. Upon receipt of a complete development permit application in an area of known historic/archaeological resources, the county shall notify and request a recommendation from appropriate agencies such as the Washington State Department of Archaeology and Historic Preservation, the Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe. Recommendations of such agencies and other affected persons shall be duly considered and adhered to whenever possible and reasonable. Notification shall include the following information:

- i. The date of application, the date of notice of completion for the application, and the date of the notice of application;
- ii. A site map including the street address, tax parcel number, township, range, and section of the proposed project area;
- iii. A description of the proposed project action and a list of the project permits included in the application, and, if applicable, a list of any studies requested by the county;
- iv. The identification of other permits not included in the application to the extent known by the county;
- v. The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;
- vi. Any other information determined appropriate by the county;

- vii. A statement indicating those development regulations that will be used for project mitigation or a determination of consistency if they have been identified at the time of notice;
- viii. A statement of the limits of the comment period and the right of each agency to comment on the application within a 15-day time period, request a copy of the decision once made, and to appeal a decision when allowed by law.

d. In granting shoreline permits or statements of exemption for such development, the county may attach conditions to provide sufficient time and/or conditions for consultation with the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office and Nooksack Tribe, and to assure that historic/archaeological resources are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long-term arrangements. Provision for the protection and preservation of historic/archaeological sites shall be incorporated to the maximum extent practicable. Permit or other requirements administered by the Washington State Department of Archaeology and Historic Preservation pursuant to Chapters 27.44 and 27.53 RCW may apply in addition.

2. Inadvertent Discovery.

a. Whenever historic, cultural or archaeological sites or artifacts are discovered in the process of development on shorelines, work on that portion of the development site shall be stopped immediately, the site secured and the find reported as soon as possible to the administrator. Upon notification of such find, the property owner shall notify the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe, and the administrator shall conduct a site investigation to determine the significance of the discovery. Based upon the findings of the site investigation and consultation with the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe, the administrator may require that an immediate site assessment be conducted or may allow stopped work to resume.

b. If a site assessment is required, the area of inadvertent discovery shall be stabilized, contained or otherwise protected until the site assessment and/or CRMP is completed. The site assessment shall be prepared pursuant to subsection (B)(1)(a) of this section to determine the significance of the discovery and the extent of damage to the resource and shall be distributed to the Washington State Department of Archaeology and Historic Preservation, the Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe for a 15-day review period or, in the case of inadvertent discovery of human remains, a 30-day review period to determine the significance of the discovery. If the site has been determined not to be significant by the above-listed agencies or governments, or if the above-listed agencies or governments have failed to respond within the applicable review period following receipt of the site assessment, such stopped work may resume.

c. Upon receipt of a positive determination of a site's significance, the administrator may invoke the provisions of subsections (B)(1)(b) through (d) of this section for a cultural resource

management plan, if such action is reasonable and necessary to implement related SMP objectives.

3. The requirements of subsection (B)(1) of this section do not apply where an applicant/project proponent has obtained an approved archeological excavation and removal permit from the Washington State Department of Archaeology and Historic Preservation pursuant to WAC 25-48-060; provided, that the applicant must adhere to the requirements of said approved permit. (Ord. 2009-13 § 1 (Exh. 1)).

23.110.010 A - Definitions

21. "Archaeological resource/site" means a geographic locality in Washington, including, but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

"Significant" is that quality in American history, architecture, archaeology, engineering, and culture that is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- a. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- b. That are associated with the lives of significant persons in our past; or
- c. That embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- d. That have yielded or may be likely to yield information important in history or prehistory.

22. "Archaeologist" means a person who has designed and executed an archaeological study as evidenced by a thesis or dissertation and has been awarded an advanced degree such as an M.A., M.S. or Ph.D. from an accredited institution of higher education in archaeology, anthropology, or history or other germane discipline with a specialization in archaeology; has a minimum of one year of field experience with at least 24 weeks of field work under the supervision of a professional archaeologist, including no less than 12 weeks of survey or reconnaissance work, and at least eight weeks of supervised laboratory experience. Twenty weeks of field work in a supervisory capacity must be documentable with a report produced by the individual on the field work.

23. "Archaeology" means systematic, scientific study of the human past through material remains.