

**MEMORANDUM OF AGREEMENT BY AND AMONG THE FEDERAL ENERGY
REGULATORY COMMISSION; THE WASHINGTON STATE HISTORIC PRESERVATION
OFFICER; THE ADVISORY COUNCIL ON HISTORIC PRESERVATION; THE U.S.
FEDERALLY RECOGNIZED SAUK-SUIATTLE TRIBE, THE SWINOMISH TRIBAL
COMMUNITY, AND THE UPPER SKAGIT TRIBE; THE NLAKE'PAMUX NATION;
AND THE CITY OF SEATTLE REGARDING THE SKAGIT RIVER HYDROELECTRIC
PROJECT**

WHEREAS, the Federal Energy Regulatory Commission (the Commission), has determined that its relicensing of the Skagit River Hydroelectric Project - No. 553 (the Undertaking), will have a continuing effect on archaeological sites, traditional cultural properties, and historic sites in the Project vicinity, and has consulted with the Washington State Historic Preservation Officer (the SHPO); the Advisory Council on Historic Preservation (the Council); the Sauk-Suiattle Tribe, the Swinomish Indian Tribal Community, and the Upper Skagit Tribe (the Tribes); the Nlake'pamux Nation (the Nation); and the City of Seattle, City Light Department (the City): pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act, [16 U.S.C. §470(f)] and Section 110(f), of the same Act, [16 U.S.C. §470(h-2{f})]; and

WHEREAS, the Tribes are U.S. federally recognized tribal governments carrying out their own procedures for the preservation of and mitigation of damage to properties of traditional cultural importance, pursuant to the Indian Self-Determination Act (25 U.S.C. § 450 et seq.), the National Historic Preservation Act (16 U.S.C. § 470 et seq.), the Electric Consumers Protection Act (16 U.S.C. § 803 (a)), and other applicable federal law; and

WHEREAS, the Nation is an aboriginal tribe whose traditional territory envelops portions of the Skagit River Project, and whose members live in both Washington State and British Columbia, Canada and who is concerned and directly impacted by the effects of the Undertaking on both properties of traditional cultural importance and archaeological resources; and

WHEREAS, the Tribes and the Nation have informed the other parties to this agreement that, in their opinion, the Undertaking will irreparably and adversely alter the integrity of the location, setting, feeling and association of those archaeological sites and traditional cultural properties located in the Project's area of potential effect --the reservoirs and the area above the high water mark, as well as the downstream river corridor between the Project and the town of Concrete-- by: physically destroying, damaging or altering those properties; isolating those properties from access by traditional practitioners and altering the properties' character; introducing elements --constant or intermittent flooding, flow fluctuation,

erosion and increased recreational use-- that are out of character with the use of those properties and alter their setting; and causing neglect of those properties resulting in their deterioration; and

WHEREAS, the Tribes and the Nation have also informed the other parties to this agreement of the urgency of mitigating for adverse effects by acquiring in-lieu cultural resource lands and facilities on an expedited basis, before current opportunities to do so are compromised; and the parties to this agreement desire to implement the regulations of 36 CFR Part 800 in a flexible manner to meet the differing program requirements; and

WHEREAS, the Commission, in consultation with the Tribes and the Nation, has reviewed existing information, obtained by a literature search and oral interviews, on traditional cultural properties in the Project's area of potential effect; has requested the view of the Tribes, the Nation, the SHPO, the Council, and the City on the need for continuing identification and evaluation of those properties; and has determined, in further consultation with the Tribes and the Nation, that there is good cause to implement in-lieu mitigation for adverse effects on those properties by acquiring substitute properties as soon as practicable after the Project license is issued; and

WHEREAS, the City has negotiated a settlement agreement concerning cultural resources (archaeological and historic resources) with the Tribes; three separate settlement agreements concerning traditional cultural properties with the Sauk-Suiattle Tribe, the Swinomish Indian Tribal Community, and the Upper Skagit Tribe; and settlement agreements concerning cultural resources (archaeological resources) and traditional cultural properties with the Nlaka'pamux Nation; and is responsible for implementation of the settlement agreements; and

WHEREAS, archaeological surveying and testing has been conducted in the area of potential effect and analyses are currently underway to determine which resources will be eligible for listing on the National Register of Historic Places; upon determination of those resources eligible for listing, the Commission, in consultation with the Tribes, the Nation, the SHPO, the Council, and the City will develop an archaeological resources mitigation and management plan that is consistent with continued Project operations; and

WHEREAS, some cultural properties have been identified by a literature search and oral interviews but have not yet been located and ground-truthed by field investigations; such properties may retain sufficient integrity for traditional cultural use, substantial preservation or rehabilitation, or archaeological research; field investigations will consume a

considerable period of time because of the size and remoteness of the area; and there is no great urgency to complete the studies before license issuance; and

WHEREAS, numerous studies and surveys have been conducted and reports prepared concerning the cultural resources in the Project vicinity (which provide the documentation required by 36 CFR Part 800), including:

- Skagit River Project FERC No. 553, Cultural Resources in Diablo Lake, December 1987, U.S. Department of the Interior, National Park Service, North Cascades National Park;
- Skagit River Project FERC No. 553, Summary of Intensive Cultural Resources Survey in the Upper Skagit Basin, September 1989, U.S. Department of the Interior, National Park Service, Pacific Northwest Region;
- Traditional Cultural Properties Report, May 7, 1990, Dr. Astrida R. Blukis Onat for BOAS, Inc.;
- Survey and Documentation for the Historic American Building Survey and Historic American Engineering Record and National Register Nomination Form, October 9, 1990, U.S. Department of the Interior, National Park Service, Pacific Northwest Region;
- Final Report of Intensive and Reconnaissance-level Archaeological Surveys in the Upper Skagit River Basin, Washington, April 1991, U.S. Department of the Interior, National Park Service, Pacific Northwest Region;
- Historic Structures Report for the Gorge Inn and the Cambridge House, December 1992, Tonkin/Hoyne Architects;
- Historic Structures Maintenance Guidelines for Skagit Hydroelectric Project, December 1992, Tonkin/Hoyne Architects;
- Historic Structures Maintenance Pocket Guide for Skagit River Hydroelectric Project FERC #553, December 1992, Tonkin/Hoyne Architects;
- Historic Structures Report for Garages #1-22, Newhalem, Washington, August 1993, Tonkin/Hoyne Architects;

NOW, THEREFORE, the Commission, the SHPO, the Council, the Tribes, the Nation, and the City agree that the Undertaking shall be implemented, in accordance with the following stipulations in order to take into account the effect of the Undertaking on archaeological sites, traditional cultural properties, and historic sites.

Stipulations

The Commission shall ensure that the following measures are

carried out in accordance with 36 CFR Part 800:

1. The City and the Tribes shall fulfill the terms of the Settlement Agreement concerning Cultural Resources (Archaeological and Historic Resources). Pursuant to Section 5.3 of the Settlement Agreement concerning Cultural Resources, the SHPO and the City shall abide by the stipulations of the MOA dated April 26, 1991, which addresses implementation of the Historic Resources Mitigation and Management Plan for the Skagit River Hydroelectric Project. Also pursuant to the Settlement Agreement concerning Cultural Resources, (Section 3.2.2), once archaeological resources field testing and evaluation has been completed, the Commission shall consult with the Council, the SHPO, the Tribes, the Nation, and the City concerning determinations of eligibility for the National Register and the development of an archaeological resources mitigation and management plan.
2. The City, the Sauk-Suiattle Tribe, the Swinomish Indian Tribal Community, and the Upper Skagit Tribe shall fulfill the terms of the three separate Settlement Agreements concerning Traditional Cultural Properties.
3. The City and the Nlaka'pamux Nation shall fulfill the terms of the Settlement Agreements concerning Cultural Resources (Archaeological Resources) and Traditional Cultural Properties.
4. The City, the Tribes, and the Nation shall continue to identify, ground-truth, evaluate for nomination, and develop management plans for traditional cultural properties that are located in the area of potential effect, including those that have been identified by a literature search and oral interviews; the City shall work with the Tribes and the Nation to implement the activities and schedule described in Exhibit A.
5. The City shall work with the Tribes to implement in-lieu cultural resource mitigation including: the development of data management systems, the acquisition of traditional cultural resource lands, and the development of cultural facilities, as described in Exhibit B.
6. The City shall work with the Nation to implement both cultural resource mitigation and in-lieu cultural resource mitigation including; the development of data management systems and the development of cultural facilities pursuant to a cultural resource mitigation plan and schedule as described in Exhibit B.

7. The City shall research the relations between members of the Tribes, the Nation, and Project construction personnel during construction and early operation of the Skagit Project. If such information exists, the City shall prepare a report and an interpretive exhibit or tour describing said relations. The City shall consult with the Tribes and the Nation in its research, and may arrange to combine this work with interviews to be undertaken as part of the ongoing traditional cultural property inventories. The City shall provide study plans and schedules for completion within one year of Project license issuance.
8. If a signatory to this Memorandum of Agreement determines that it cannot meet any or all of the terms contained herein, or that a change is necessary to meet the requirements of the law, that signatory shall immediately request the other parties to consider an amendment or addendum. Any necessary amendment or addendum shall be executed as defined in 36 CFR Part 800. If a dispute arises regarding implementation of this Memorandum of Agreement, the Commission shall consult with the objecting party(ies) to resolve the dispute. If the dispute cannot be resolved, further comments shall be requested from the Advisory Council, as defined in 36 CFR Part 800.

EXECUTION OF THIS MEMORANDUM OF AGREEMENT and implementation of its terms evidences that the Commission has afforded the Council an opportunity to comment on the relicensing of the Skagit River Hydroelectric Project - No. 553 and its effects on archaeological sites, traditional cultural properties, and historic sites, and that the Commission has taken into account the effect of the Undertaking on archaeological sites, traditional cultural properties, and historic sites.

FEDERAL ENERGY REGULATORY COMMISSION

By: _____ Date: _____
Title: _____

WASHINGTON STATE HISTORIC PRESERVATION OFFICER

By: Mary M. Thompson Date: 2/17/94


Title: MARY THOMPSON, State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

Title: Executive Director

SAUK-SUIATTLE TRIBE

By:  Date: 2-18-94

Title: LAWRENCE JOSEPH, Tribal Chairperson

SWINOMISH INDIAN TRIBAL COMMUNITY

By: Robert Joe Date: 2/14/94


Title: ROBERT JOE, Tribal Chairperson

UPPER SKAGIT TRIBE

By: *Floyd Williams* Date: *Feb 14, 1994*

Title: FLOYD WILLIAMS, Tribal Chairperson

NLAKA'PAMUX NATION

By:  Date: Feb 25/94

Title: BOB PASCO, Tribal Chairperson

CITY OF SEATTLE, CITY LIGHT DEPARTMENT

By: Roberta Palm Bradley Date: 2/14/94
Title: ROBERTA PALM BRADLEY, Superintendent

EXHIBIT A

Proposed Plan to Complete Traditional Cultural Properties Evaluation¹

Tribe (or Nation)	Proposed Activity	Purpose	Proposed Schedule	Estimated Cost (1990\$)
Swinomish Sauk-Suiattle Upper Skagit	Develop field study to continue to identify, locate, and evaluate sites	To identify and ground-truth sites that may be eligible for listing	Study plan within 1 year of license issuance	\$250,000
Nlaka'pamux Nation	Develop field study to continue to identify, locate, and evaluate sites	To identify and ground-truth sites that may be eligible for listing	Study plan within 1 year of license issuance	\$100,000

¹ Exhibit A represents the current proposal, however, schedules proposed may be modified to accommodate unforeseen circumstances.

EXHIBIT B

Proposed In-Lieu Mitigation²

Tribe (or Nation)	Proposed Activity	Purpose	Proposed Schedule	Estimated Cost (1990\$) ³
Swinomish Sauk-Suiattle Upper Skagit	Develop cultural resource data management systems - includes staff and equipment for separate systems based with each Tribe	To support and enhance the Tribes' capability to better protect its cultural resources and to provide a readily accessible cultural information data system	Initiate data management system within 2 years of license issuance	\$450,000 (\$150,000 per Tribe)
Swinomish	Construct traditional cultural activity center on Swinomish Reservation	To provide facility for tribal and community members to conduct and practice cultural activities	Complete construction within 1 year of license issuance	\$550,000
Swinomish	Construct cultural education and curation facility on Swinomish Reservation	To partially fund facility to conduct cultural heritage education activities and to provide curation facilities for repatriated artifacts	Complete facility plan within 3 years of license issuance; construction dependent on other funding sources	\$250,000
Sauk-Suiattle	Acquire 10.5 acre parcel of land and cultural administration building for cultural heritage education and for the practice of cultural activities (site located adjacent to Sauk-Suiattle Reservation)	To provide facility for cultural heritage education and for tribal and community members to conduct and practice cultural activities	Complete land and building acquisition, and remodeling of building within 1 year of license issuance	\$180,000

² Exhibit B represents the currently-proposed activities that would most benefit Tribal and Nation members in furthering the goal of providing locations, facilities, and opportunities to practice and maintain cultural heritage in lieu of adversely affected sites within the area of potential effect. However, the Tribes and the Nation may decide later that other activities or acquisitions might be more appropriate.

<u>Tribe (or Nation)</u>	<u>Proposed Activity</u>	<u>Purpose</u>	<u>Proposed Schedule</u>	<u>Estimated Cost (1990\$)</u> ³
Sauk-Suiattle	Construct traditional cultural activity center (site located adjacent to Sauk-Suiattle Reservation)	To provide facility for tribal and community members to conduct and practice cultural activities	Complete construction plan and build within 3 years of license issuance	\$350,000
Sauk-Suiattle	Construct cultural heritage education facility (site located adjacent to Sauk-Suiattle Reservation)	To provide facility for cultural heritage education	Complete construction plan and build within 3 years of license issuance	\$270,000
Upper Skagit	Acquire 6.7 acre parcel of land and utility services for practice of cultural activities (site located adjacent to the Upper Skagit Reservation, near Helmick Road)	To provide site for tribal and community members to conduct and practice cultural activities	Complete land acquisition within 1 year of license issuance; complete utility service acquisition within 2 years of license issuance	\$100,000
Upper Skagit	Construct cultural heritage preservation and education facility (site located on 6.7 acre parcel adjacent to the Upper Skagit Helmick Reservation)	To partially fund facility for tribal and community members to conduct cultural preservation education and awareness activities	Complete feasibility study and facility development plan within 3 years of license issuance; construction schedule dependent on other funding sources	\$300,000
Upper Skagit	Acquire 38.5 acre, tribal-member Indian allotment containing old tribal cemetery for cultural interpretive center and cemetery protection (site located adjacent to Upper Skagit Bow-Hill Reservation)	To provide facility to enhance awareness of the Tribe's cultural heritage and to protect Indian land and cemetery from alienation	Complete land acquisition within 1 year of license issuance	\$150,000
Upper Skagit	Construct interpretive center at the 38.5 acre Bow Hill site (located adjacent to the Upper Skagit Reservation)	To partially fund facility for public awareness education on the Tribe's cultural heritage	Complete facility development plan within 4 years of license issuance; construction schedule dependent on other funding sources	\$250,000

<u>Tribe (or Nation)</u>	<u>Proposed Activity</u>	<u>Purpose</u>	<u>Proposed Schedule</u>	<u>Estimated Cost (1990\$)³</u>
Nlaka'pamux Nation	Develop cultural resource data management system - including staff and equipment	To support and enhance the Nation's capability to manage and protect traditional cultural resources and provide readily accessible information related to such resources	Initiate data management with 2 years of license issuance	\$150,000
Nlaka'pamux Nation	Construct cultural heritage education facility (site yet to be determined)	To partially fund facilities for cultural heritage education and the practice of cultural activities	Complete construction plans within 3 years of license issuance.	\$225,000

3. Each U.S. Tribe has budgeted approximately \$950,000 for proposed in-lieu mitigation, with approximately \$280,000 budgeted for changed circumstances, including additional mitigation or other acquisitions. These amounts are estimates; for actual amounts, see Skagit Settlement Agreements for Traditional Cultural Properties.

The Nlaka'pamux Nation has budgeted approximately \$375,000 for proposed mitigation, with approximately \$125,000 budgeted for changed circumstances, including additional mitigation or other acquisitions. These amounts are estimates; for actual amounts, see Nlaka'pamux Settlement Agreement for Traditional Cultural Properties.