

# CULTURAL RESOURCES REPORT COVER SHEET

Author: Kelly R. Bush M.A.

Title of Report: Archaeological Letter Report: Overview of Pedestrian Facilities project along Haxton Way, Gooseberry Point, Whatcom County, Washington

Date of Report: September 25, 2012

County(ies): Whatcom Section: 23Township: 38 NRange: 1E

Quad: Lummi Bay Acres: <10

PDF of report submitted (REQUIRED)  Yes

Historic Property Inventory Forms to be Approved Online?  Yes  No

Archaeological Site(s)/Isolate(s) Found or Amended?  Yes  No

TCP(s) found?  Yes  No

Replace a draft?  Yes  No

Satisfy a DAHP Archaeological Excavation Permit requirement?  Yes #  No

Were Human Remains Found?  Yes DAHP Case #  No

DAHP Archaeological Site #:

WH00043

WH00045

WH00114

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- Submission of PDFs is required.
- Please be sure that any PDF submitted to DAHP has its cover sheet, figures, graphics, appendices, attachments, correspondence, etc., compiled into one single PDF file.
- Please check that the PDF displays correctly when opened.



41507 South Skagit Hwy Concrete, WA 98237 Tel.360-826-4930 Fax. 360-826-4830 [www.equinoxerci.com](http://www.equinoxerci.com)

September 27, 2012

Tim Osborne, P.E.  
Gray & Osborne, Inc.  
701 Dexter Ave N. Suite 200  
Seattle WA, 98109

Re: Preliminary Overview of Cultural Resources for Pedestrian Facilities along Haxton Way,  
Whatcom County, Washington

Dear Mr. Osborne:

Kelly R. Bush of ERCI was contacted in July of 2012 to conduct an archival overview of the above referenced project (Figure 1) which includes a pre-design evaluation of various types of pedestrian facilities (porous HMA, concrete, boardwalks, etc.) in and along a section of Haxton Way, more particularly, between Mackenzie Road and Balch Road, all as located on the Lummi Nation. The proposed pedestrian facilities are proposed to be located within existing rights of way of Haxton Way with the exception of the ferry terminal where pedestrian facilities will likely extend to/near the ferry dock. As this is a pre-design analysis, the exact location is unknown at this time.

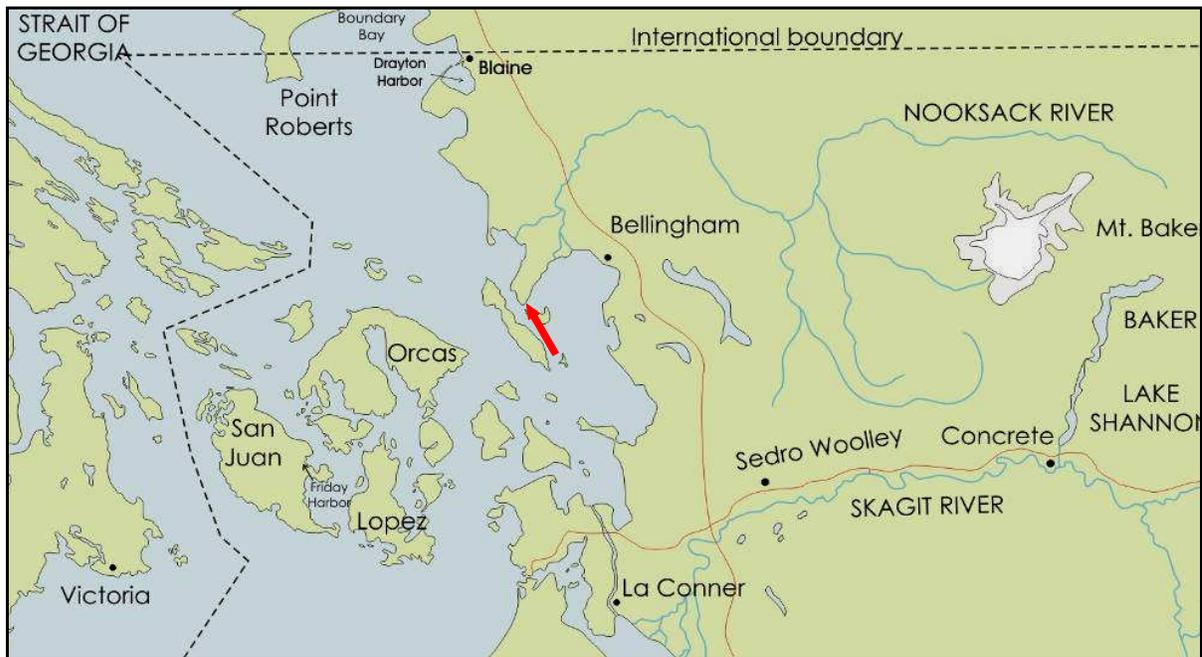


Figure 1: Regional map showing the location of the property.

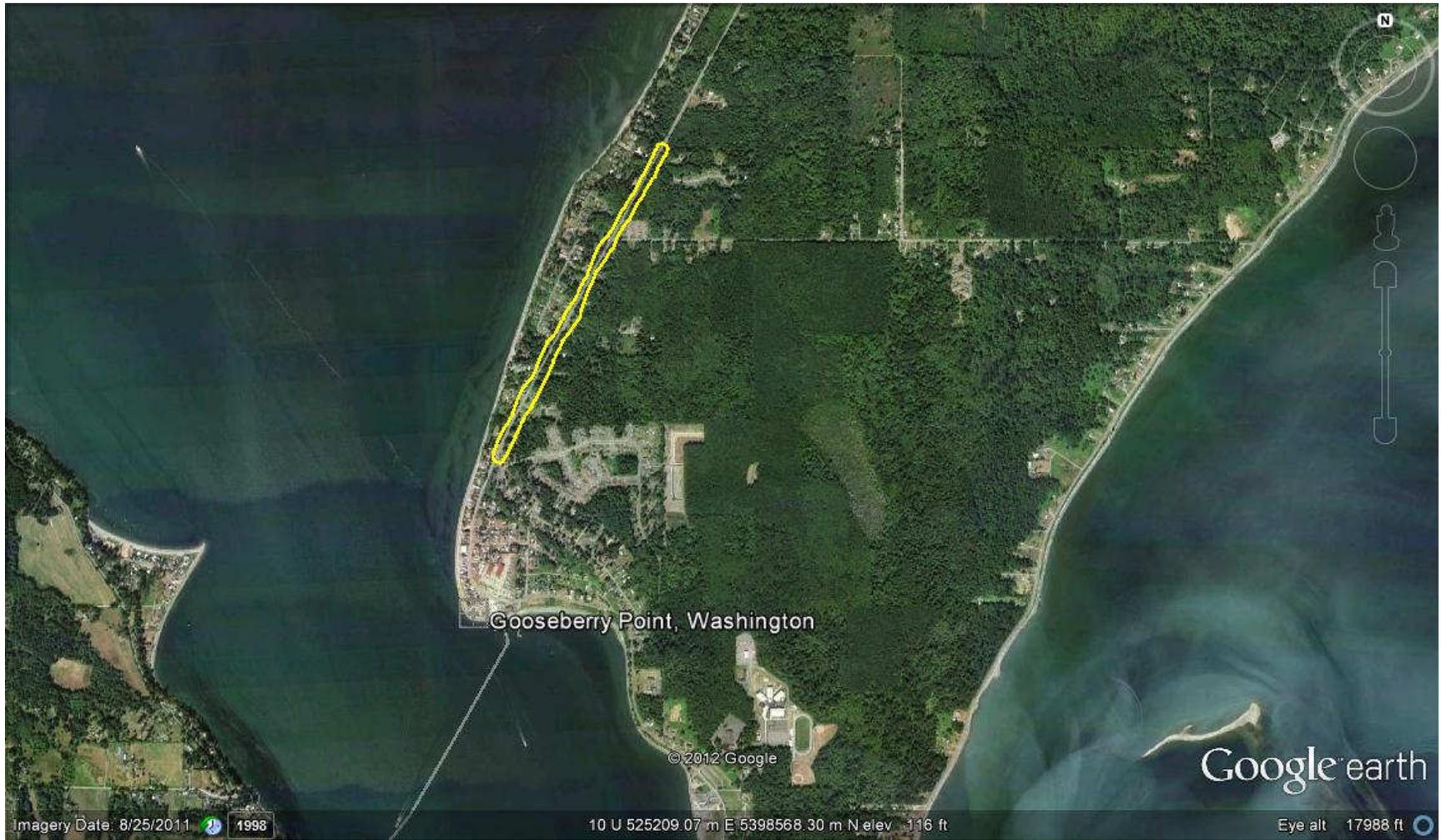


Figure 2: Aerial image with Lummi Island on the bottom left and Gooseberry Point in the Center.

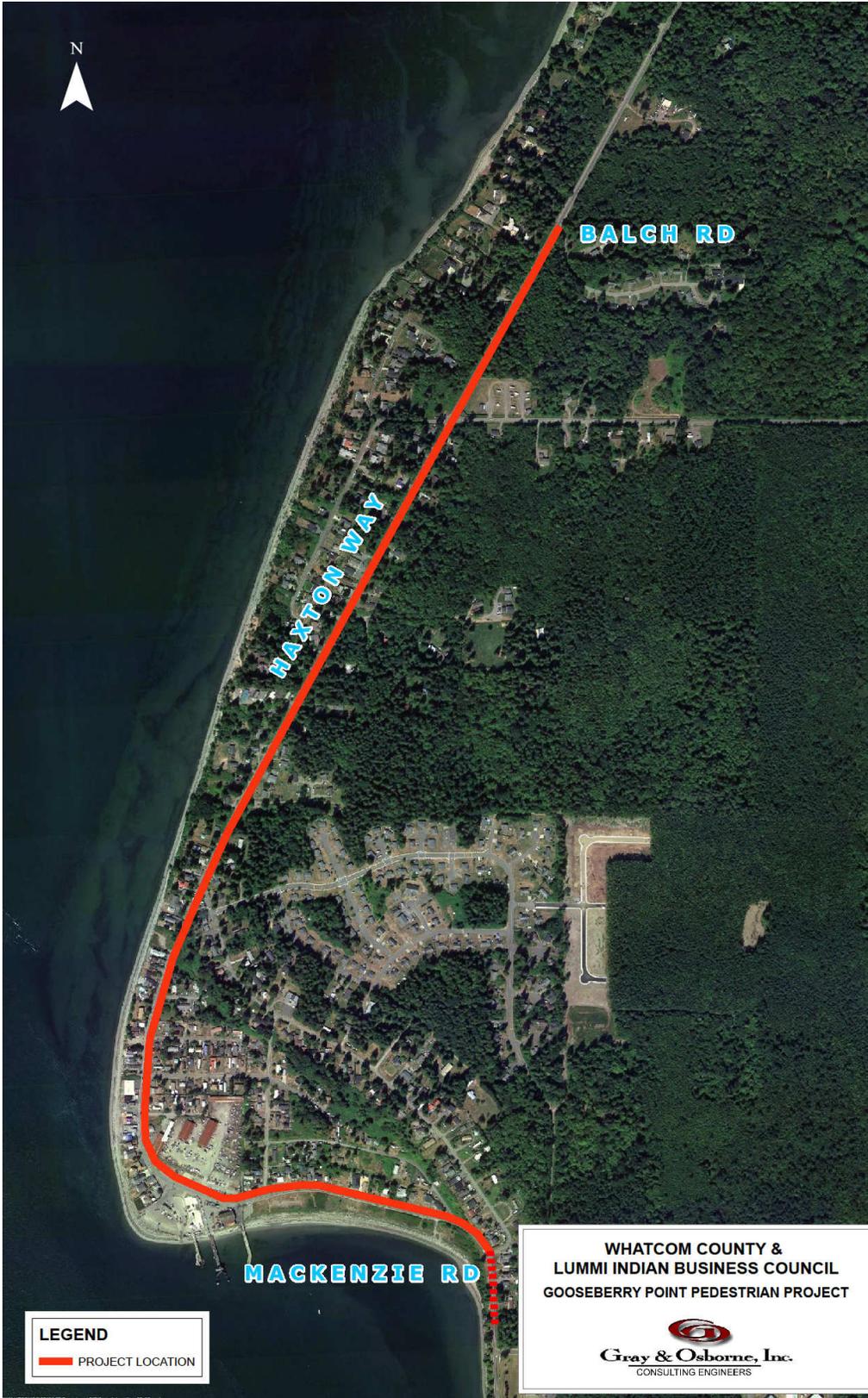


Figure 3: Project area in red.

### **Environmental Setting**

It is outside the scope of this project to describe in detail the landform processes which sculpted the current Puget Sound environment however we are providing a general background for the geomorphic setting as it is critical to understanding the land use and settlement patterns for the peopling of the north Puget Sound.

### **Geographic Setting**

The project area is located west of the town of Bellingham in northern Puget Sound. Gooseberry Point is situated on the westernmost point of the Lummi Peninsula. This peninsula extends for approximately 5 miles from the mainland and is oriented in the southwest-northeast direction in between Lummi Bay and Bellingham. Hale Passage separates the Lummi Peninsula from Lummi Island, which is located less than one mile offshore from Gooseberry Point. Portage Island lies at the southeast end of the peninsula in the western part of Bellingham Bay. The Lummi Peninsula is generally considered to be within the Fraser-Nooksack Lowland region.

The Nooksack River connects the northern Puget Lowland to the North Cascade Range. On its eastern boundary, the North Cascades are confined by the Okanogan and Columbia Rivers. To the north and south they are bounded by the Fraser River and the Skykomish River, respectively. The northeast-southwest trending Sumas Valley stretches across the U.S.-Canada boundary and connects to the Fraser River Valley to the north. The Fraser River Gap is an important topographic feature because it provides a passage for cold, high pressure air masses from the inland plateaus. The positioning of the gap combined with the ability of the North Cascades to intercept moisture-laden air, make this mountain range uniquely situated to receive copious amounts of snowfall.

The North Fork Nooksack River descends from a small glacier-containing cirque that is situated on the northeastern slope of Mt Shuksan. The Middle Fork Nooksack River travels down from the southern, alpine slopes of Mount Baker. The confluence of the North and Middle forks is located about 4.5 km (2.8 mi) east of the town of Deming and the South Fork joins the upper branches less than 5 km (3.1 m) further downstream. From Deming, the Nooksack River continues to the northwest before making its way through the low glacial plains in a sinuous fashion past Ferndale, situated at the head of the delta, and then eventually emptying into Bellingham Bay northeast of the project area. Although the mouth of the Nooksack River is currently located on Bellingham Bay, the river path has varied widely throughout historic times. The Lummi River, for examples, is the current name for the 19th Century, main outflow channel of the Nooksack River. Today the Lummi River is fed by the Nooksack only during high water flows.

### **Quaternary History**

The landscape of the Puget Lowland has been sculpted by the repeated advances of the Cordilleran Ice Sheet over the past 100,000 years. During intervals when the climate was wetter and/or cooler than present, alpine glaciers accumulated mass until they began to advance downvalley, or until the ice thickened and the mountain ranges were overtopped. Interglacial periods had a climate that was characterized by comparatively warm and dry conditions that confined glaciers to their upland basins (Clague and James 2002). Puget Sound is a north-south trending glacial trough that was largely excavated by the Puget Lobe, a southward extension of the Cordilleran Ice Sheet that once inundated the region in between the Olympic and Cascade Mountains (Bretz 1913) with about one thousand meters of ice (Thorson 1980). The vast majority of these glacial deposits were laid down during the most recent phase, known regionally as the Fraser Glaciation (Armstrong et al 1965).

## **Pleistocene**

Glacial activity during the late Pleistocene has been divided into three geologic-climatic episodes based on stratigraphic evidence from northwestern Washington and southwestern British Columbia. Fraser Glaciation lasted from about 25.0 to 10.0 ka (Armstrong et al 1965) and includes several previously described episodes; in chronological order these include an alpine stage of Vashon Glaciation (Crandell 1963), Vashon Glaciation (Willis 1898), and Sumas Glaciation (Armstrong 1957). Armstrong et al (1965) have since revised the terminology by referring to them as stades, and subdividing Fraser Glaciation into 4 episodes of alternative advancing and retreating phases– Evans Creek Stade, Vashon Stade, Everson Interstade, and Sumas Stade.

The Puget Lobe extended to a point 25 km south of Olympia during the Vashon Stade of Fraser Glaciation, which lasted from 15 to 13 ka (Thorson 1980). At this time, the glacier completely blocked the Juan de Fuca outlet to the Pacific Ocean and covered central Whidbey Island with 1.4-1.2 km of ice (Thorson 1980; Porter and Swanson 1998). During the Vashon Stade both the land surface and sea level were substantially lower in elevation than today (Porter and Swanson 1998). Lambeck et al estimates that the sea level was about 130-120 m lower than present at this time (2002). In the final stages of the Vashon Stade, around 16.0 ka, the ice front began to retreat to the north and exposed a landscape dominated by large proglacial lakes and grounded ice masses (Thorson 1980; Porter and Swanson 1998; Booth et al 2004).

Following the Vashon Stade, marine waters flooded the Strait of Georgia around 13.0 ka, marking the transition to an interval of glaciomarine conditions known as the Everson Interstade (Armstrong et al 1965). Glaciomarine drift deposits from the Everson Interstade are prevalent in the Bellingham area and date to about 11.3-13.5 ka (Lapen 2000). These glaciomarine deposits have been exposed in terraces by the apparently rapid rates of isostatic rebound following disintegration of the ice-sheet (Thorson 1980).

A readvance of the Cordilleran Ice-sheet, termed the Sumas Stade, when ice once again dipped south of the international boundary (Armstrong et al 1965). Sumas Drift overlies the glaciomarine deposits laid down during the Everson Interstade in the Sumas Valley (Armstrong et al 1965). Moraines in the Sumas Valley were first mapped by Easterbrook (1962), but evidence collected by Kovanen and Easterbrook, was used to further subdivide the Sumas Stade into four distinct phases based on ice-contact deposits that were dated in between 10,000 and 11,600 14C yr B.P (2002). Sumas outwash is common in the Whatcom basin and Sumas River area and pervasive in the Columbia Valley (Lapen 2000).

## **Holocene**

Following the Everson Interstade marine waters filled deep troughs below the sheet resulting in dramatic sea level fluctuations. Sea water initially inundated western Whatcom County but later receded, allowing for the development of the Nooksack River Delta later in the Holocene. Dugas and Larson (1999) suggest that following a trend to warmer and drier climatic conditions after 10,000 years ago, terrestrial resources such as deer, elk, and bear would have supported hunter-fisher-gatherers in the Bellingham area (Gillis and Larson 2004). Cooler and wetter climatic regimes similar to modern conditions were in place by 6000 years ago, and when coupled with the stabilization of relative sea levels after 5000 BP, which allowed intertidal and estuarine habitats to flourish (Hutchings 2004).

Two models for Nooksack River Delta development have thus far been proposed for the Holocene. Easterbrook (1962; 1971) hypothesized that the Lower Nooksack River has occupied its present channel since at least 9,000 yrs B.P, therefore implying gradual progradation

throughout the Holocene. In contrast, Cameron (1989), Pittman et al (2003), and Hutchings (2004) have all found geomorphic evidence in support of the view that the Nooksack River took a northward flowing course, via the Sumas Valley, to the Canadian Fraser River for most the Holocene.

According to the latter view, at some point in the late-Holocene, the Lower Nooksack River changed course to occupy its current channel, which was originally a conduit for glacial outwash (Pittman et al 2003). Cameron (1989) also found bedload sediment from a volcanic source that could only have been Mount Baker in the Sumas Valley. Also supporting this interpretation, is the wide distribution of relict channels and oxbows in the Sumas valley near the town of Everson that are consistent with the size expected for a watershed as large as the Nooksack River (Pittman et al 2003). The Sumas River and Johnson Creek presently occupy these channels, draining north to the Fraser Valley (Linneman et al 2007). This view implies that the Nooksack River Delta accumulated sediment rapidly during the late-Holocene. This chronology is further supported by archaeological evidence at the Ferndale site (45WH34), which suggests a stable shoreline existed from 5,000 to 4,000 yrs BP (Hutchings 2004).

The growth of the Nooksack delta appears to be very rapid, despite its initial appearance of being undersized for the area of the watershed. Delta progradation has been punctuated by catastrophic events like mudflows, floods, and landslides, all of which deliver voluminous amounts of sediment to the area. At the head of the delta, just downstream of the Ferndale Bridge, Hutchings (2004) determined that the upper 6 m of sand and gravel has been deposited within the last 420 to 240 years. Since the late 1800s there has been one more of lateral delta progradation, an increase of approximately 20 % in total surface area (Linneman et al 2007).

### **Geologic Units**

Surficial deposits in Whatcom County are dominated by glacial deposits from the Everson Interstade and to a lesser extent the Sumas Stade. The following descriptions have been taken directly from Lapen (2000) and are presented in order of youngest to oldest.

Alluvium (Holocene) is described as well-sorted and stratified cobbly gravel, gravel, sandy gravel, gravelly sand, sand, silty sand, silt, clay, and peat. A variety of rock types compose the clasts in this deposit, including both local and foreign sources. The clasts are subrounded in shape. The color of this unit depends on the lithology and oxidation state, but it is usually gray and brown. Holocene alluvium has accumulated in stream and river channels, modern deltas, floodplains, and alluvial fans to a depth of 85 meters in some places. This deposits lines the lower Nooksack and Lummi Rivers north of the Lummi Peninsula.

Beach Deposits (Holocene) consist of moderately to well-sorted coarse sand and gravel and, locally, sand, silt, and clay in tidal-flat deposits. These sediments usually have planar and channel cross-stratified bedding. The clasts are well rounded and are derived from reworked glacial deposits. The color varies depending on the dominant clast lithology. The thickness of the beach deposits changes greatly, but is generally greater than 2.5 m. Beach deposits compose the spit extending from the northwestern tip of Portage Island.

Glacial Outwash, Sumas Stade (Pleistocene) is loose, moderately to well-sorted gravel with local boulders, sandy gravel, minor gravelly medium to coarse sand, and rare sand to silt. Clasts are generally subrounded to rounded and derived from the Coast Plutonic Complex in British Columbia and nearby sources. Bedding is massive to well-stratified; stratified sections are generally planar with bedding thickness ranging from a few centimeters to a few meters, depending on clast size; beds are rarely cross-stratified. Color is brown to gray, depending on

oxidation state. Thickness is highly variable across the Bellingham quadrangle, ranging from 3 to 280 m, and is thickest in the Columbia Valley near Sumas Mountain. The unit is at least 10.0 ka in the Bellingham Quadrangle and is probably the same age as wood recovered from Sumas deposits in BC that dated to 11.7-10.95 radiocarbon years before present. Outcrops of Sumas outwash are pervasive in the Columbia Valley and common in the Whatcom basin and Sumas River area. These deposits line the outer edges of the Nooksack River Delta and on northern part of the Lummi Peninsula.

Emergence (beach) deposits, Everson Interstade (Pleistocene) are loose, moderately to well-sorted gravel and sand and local boulders and fine to medium sand. Clasts are subrounded to rounded. Bedding is massive, laminated, or cross-stratified and locally fills channels cut into underlying deposits. Deposits are typically reworked Everson glaciomarine drift. The unit unconformably overlies older deposits and usually lies beneath or grades upward into eolian deposits rich in organic material. It also occurs as topographic benches interpreted as wave-cut terraces (strandlines). Color is variable and depends on lithologic content and local iron-oxide staining. Thickness is from less than 1 to 7.5 m. The inferred age of the unit in the western San Juan Islands is between 12.8 and 12.3 ka with a minimum date of radiocarbon age of  $11,700 \pm 110$  yr B.P. These deposits were formed by wave action as glaciomarine deposits emerged above sea level in Everson time. Emergence deposits are distributed on the surface at on the southern end of the Lummi Peninsula.

Glaciomarine drift, Everson Interstade (Pleistocene) is moderately to poorly indurated, moderately to unsorted diamicton with lenses and discontinuous beds of moderately to well-sorted gravel, sand, silt, and clay. Dropstone content is variable, and they are commonly polished, striated, and (or) faceted. Bedding is massive to poorly stratified (planar beds) in marine sediments and locally cross-bedded in sandy interbeds. The unit varies from nonfossiliferous to highly fossiliferous. Provenance data indicates local sources as well as the Coast Plutonic Complex of British Columbia. Color is gray to blue-gray to olive-gray to brown, depending upon oxidation state. Thickness ranges from a few meters to as much as 90 m. The age of this unit is roughly 11.3-13.5 ka. Glaciomarine drift is the most prevalent deposit on the Lummi Peninsula.

### **Soils**

Soil data for this project was obtained from the Web Soil Survey (WSS), which provides soil data and information produced by the National Cooperative Soil Survey. It is operated by the USDA Natural Resources Conservation Service (NRCS) and provides access to the largest natural resource information system in the world. The site is updated and maintained online as the single authoritative source of soil survey information. According to the WSS, Gooseberry Point is entirely composed of Neptune very gravelly sandy loam.

Neptune very gravelly sandy loam covers 0 to 3 percent slopes in between the elevations of 0 and 20 ft. The unit present on the spit is composed of 85 percent Neptune and similar soils and 3 percent minor components. This soil is associated with spits and marine terraces and is derived from fluvimarine deposits. Neptune soil is somewhat excessively well drained with the depth to a restrictive feature or water table of more than 80 inches. A typical profile includes 0 to 10 inches: very gravelly sandy loam, 10 to 27 inches: extremely gravelly loamy sand, and 27 to 60 inches: extremely gravelly sand.

## Previous Archaeology

There are 10 previously recorded sites on file with the Department of Archaeology and Historic Preservation (DAHP) within approximately one mile of the project area and they are provided in Table 1. Five of the previously recorded sites are within approximately half a mile of the project area and they are discussed in more detail below.

There are no cultural resource reports on file with DAHP for northern two thirds of the project area. However, there are 35 reports within approximately one mile of the southern extent of the project area. This makes the northern portion of the project area someone unknown and supports the recommendation that a sub surface survey be carried out to determine the existence and extent of any buried cultural resources.

45WH114 is a pre contact camp and pre contact shell midden site located within or adjacent to portions of the project area. This site was first recorded in 1980 and was revisited twice in 2009. “The culture rich deposits observed in 2009 consist of an historic and pre contact component shell midden containing dark organic soil, charcoal, fire modified rock, fish and mammal bone” (Rollins 2009). Disturbed shell midden was observed both on the grounds surface and within subsurface shovel tests (Rollins 2009).

45WH113 is a pre contact camp and pre contact shell midden site located within or adjacent to the project area. This site was first recorded in 1980 and was revisited twice in 2004. The cultural deposits encountered in 2004 were a black, greasy, compact organic matrix with highly fragmented shell (predominately Pacific Blue Mussel), fish, bird and mammal bone and charcoal (Alvis 2004).

45WH773 is a pre contact lithic material site located within or adjacent to the project area. This site was recorded in 2008. This site consists of several flaked cobbles found over a 60 meter (NW/SE) by 20 meter (NE/SW) area (Warbus and Kaiser 2008).

45WH45 is a pre contact and historic components, pre contact shell midden, pre contact village, traditional cultural properties site located within or adjacent to the project area. This site was first recorded in 1980 and was revisited in 2003 and again several times in 2004. Cultural materials recorded at the site include worked bone, antler and stone tools as well as cultural rich shell midden with fish, bird and mammal bone (Alvis et al 2004).

45WH112 is a pre contact camp, pre contact isolate, pre contact shell midden site located within or adjacent to the project area. This site was recorded in 1980. Cultural materials recorded at this site include, “one quartzite cobble tool... dark humic stained soil, both whole and crushed clam shell, fire broken rock” ( Pflanzner 1980).

Table 1: Previously recorded Archaeological Sites on file with DAHP within one mile of the project area.

Number and Name	Type
45WH114	Pre Contact Camp, Pre Contact Shell Midden
45WH113	Pre Contact Camp, Pre Contact Shell Midden
45WH773	Pre Contact Lithic Material
45WH45	Pre Contact and Historic Components, Pre Contact Shell Midden, Pre Contact Village, Traditional Cultural Properties

Number and Name	Type
45WH112	Pre Contact Camp, Pre Contact Isolate, Pre Contact Shell Midden
45WH43	Pre Contact Burial, Pre Contact Shell Midden
45WH109	Pre Contact Shell Midden
45WH689	Pre Contact Isolate, Pre Contact Lithic Material
45WH521	Pre Contact Camp, Pre Contact Feature, Pre Contact Lithic Material, Pre Contact Shell Midden
45WH533	Pre Contact Shell Midden

The project area has buried archaeological material throughout the proposed work areas. The highest probability of complex management issues related to buried archaeological sites are within the southern third of the project area and anywhere near the ferry terminal and where the project activities come within 200 feet of the shoreline, or within 700 feet of the intersection of Mackenzie Road and Lummi View Drive.

There are previously recorded burial sites within or adjacent to the project area and we believe that any survey strategy should consider that this resource type is highly probable in this project area.

At least one previously recorded historic building is recorded adjacent to the project area and the project could have any effect on surrounding building then an historic building survey would be prudent during the planning phase of this project.

### Management Recommendations

**The Gooseberry Point neighbourhood is a cultural landscape. There are recorded archaeological sites below and above ground within the project area.** We believe that:

1. A thorough and inclusive sub surface testing archaeological survey should be carried out for all project activities including staging areas.
2. As a group with specialized information the Lummi Nation should be consulted on the effects of this proposed project on traditional cultural properties and other proprietary cultural resources that may be protected by state or federal law.
3. A management plan for the project area should be developed based on findings from an intensive sub surface investigation and a review of all prior archaeological investigations of the entire project area. The investigation should clearly identify where there are disturbed and intact archaeological deposits and where there are currently sterile fill deposits.

The plan developed from this testing program should provide a clear map that identifies areas where proposed surface disturbance would take place and include:

- an Unanticipated Discoveries Protocol,
- an approved archaeological monitoring plan or
- an archaeological excavation permit from the Washington State Department of Archaeology and Historic Preservation (RCW 27.44 and RCW 27.53). Or a Memorandum of Agreement based on the data from the preliminary field

investigation should be crafted if the proposed project will have any effect on recorded cultural resources.

4. In the event that any ground-disturbing activities uncover protected cultural material (e.g., bones, shell, stone or antler tools), all work in the immediate vicinity should stop, the area should be secured, and any equipment moved to a safe distance away from the location. The on-site project manager should then contact the following:
  - The project manager;
  - Lummi Nation, THPO (Lena Tso, 360-384-2298);
  - The Department of Archaeology and Historic Preservation (DAHP) (Stephenie Kramer, 360-586-3083);
  - A professional archaeologist.
  
5. In the event that any ground-disturbing activities uncover human remains, all work in the immediate vicinity should stop, the area should be secured, and any equipment moved to a safe distance away from the location. The on-site project manager should then contact the following:
  - The Whatcom County Sheriff's Department (360-676-6650 or 911) and the Whatcom County Medical Examiner (Dr. Gary Goldfogel, 360-738-4557) to determine if the remains are forensic in nature;
  - If the remains are not forensic in nature the Department of Archaeology and Historic Preservation (DAHP) (Guy Tasa 360-586-3534); will take lead on managing the remains and will consult with the affected tribes; and
  - The project manager

Regards,

A handwritten signature in black ink, appearing to read 'Kelly R. Bush', with a long horizontal flourish extending to the right.

Kelly R. Bush  
Equinox Research and Consulting International Inc. (ERCI)

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## Appendix 1: Selected Washington State Laws Regarding Archaeological Material

27.44.030

The legislature hereby declares that:

1. Native Indian burial grounds and historic graves are acknowledged to be a finite, irreplaceable, and nonrenewable cultural resource, and are an intrinsic part of the cultural heritage of the people of Washington. The legislature recognizes the value and importance of respecting all graves, and the spiritual significance of such sites to the people of this state;
2. There have been reports and incidents of deliberate interference with native Indian and historic graves for profit-making motives;
3. There has been careless indifference in cases of accidental disturbance of sites, graves, and burial grounds;
4. Indian burial sites, cairns, glyptic markings, and historic graves located on public and private land are to be protected and it is therefore the legislature's intent to encourage voluntary reporting and respectful handling in cases of accidental disturbance and provide enhanced penalties for deliberate desecration.

27.44.040

Protection of Indian graves — Penalty.

1. Any person who knowingly removes, mutilates, defaces, injures, or destroys any cairn or grave of any native Indian, or any glyptic or painted record of any tribe or peoples is guilty of a class C felony punishable under chapter [9A.20](#) RCW. Persons disturbing native Indian graves through inadvertence, including disturbance through construction, mining, logging, agricultural activity, or any other activity, shall reinter the human remains under the supervision of the appropriate Indian tribe. The expenses of reinterment are to be paid by the \*office of archaeology and historic preservation pursuant to RCW [27.34.220](#).
2. Any person who sells any native Indian artifacts or any human remains that are known to have been taken from an Indian cairn or grave, is guilty of a class C felony punishable under chapter [9A.20](#) RCW.
3. This section does not apply to:
  - a. The possession or sale of native Indian artifacts discovered in or taken from locations other than native Indian cairns or graves, or artifacts that were removed from cairns or graves as may be authorized by RCW [27.53.060](#) or by other than human action; or
  - b. Actions taken in the performance of official law enforcement duties.
4. It shall be a complete defense in the prosecution under this section if the defendant can prove by a preponderance of evidence that the alleged acts were accidental or inadvertent and that reasonable efforts were made to preserve the remains, glyptic, or painted records, or artifacts accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported.

27.44.055

Skeletal human remains — Duty to notify — Ground disturbing activities — Coroner determination — Definitions.

1. Any person who discovers skeletal human remains must notify the coroner and local law enforcement in the most expeditious manner possible. Any person knowing of the existence of human remains and not having good reason to believe that the coroner and local law enforcement has notice thereof and who fails to give notice thereof is guilty of a misdemeanor.
2. Any person engaged in ground disturbing activity and who encounters or discovers skeletal human remains in or on the ground shall:
  - a. Immediately cease any activity which may cause further disturbance;

- b. Make a reasonable effort to protect the area from further disturbance;
  - c. Report the presence and location of the remains to the coroner and local law enforcement in the most expeditious manner possible; and
  - d. Be held harmless from criminal and civil liability arising under the provisions of this section provided the following criteria are met:
    - i. The finding of the remains was based on inadvertent discovery;
    - ii. The requirements of the subsection are otherwise met; and
    - iii. The person is otherwise in compliance with applicable law.
3. The coroner must make a determination whether the skeletal human remains are forensic or nonforensic within five business days of receiving notification of a finding of such remains provided that there is sufficient evidence to make such a determination within that time period. The coroner will retain jurisdiction over forensic remains.
- a. Upon determination that the remains are nonforensic, the coroner must notify the department of archaeology and historic preservation within two business days. The department will have jurisdiction over such remains until provenance of the remains is established. A determination that remains are nonforensic does not create a presumption of removal or nonremoval.
  - b. Upon receiving notice from a coroner of a finding of nonforensic skeletal human remains, the department must notify the appropriate local cemeteries, and all affected Indian tribes via certified mail to the head of the appropriate tribal government, and contact the appropriate tribal cultural resources staff within two business days of the finding. The determination of what are appropriate local cemeteries to be notified is at the discretion of the department. A notification to tribes of a finding of nonforensic skeletal human remains does not create a presumption that the remains are Indian.
  - c. The state physical anthropologist must make an initial determination of whether nonforensic skeletal human remains are Indian or non-Indian to the extent possible based on the remains within two business days of notification of a finding of such nonforensic remains. If the remains are determined to be Indian, the department must notify all affected Indian tribes via certified mail to the head of the appropriate tribal government within two business days and contact the appropriate tribal cultural resources staff.
  - d. The affected tribes have five business days to respond via telephone or writing to the department as to their interest in the remains.
4. For the purposes of this section:
- a. "Affected tribes" are:
    - i. Those federally recognized tribes with usual and accustomed areas in the jurisdiction where the remains were found;
    - ii. Those federally recognized tribes that submit to the department maps that reflect the tribe's geographical area of cultural affiliation; and
    - iii. Other tribes with historical and cultural affiliation in the jurisdiction where the remains were found.
  - b. "Forensic remains" are those that come under the jurisdiction of the coroner pursuant to RCW [68.50.010](#).
  - c. "Inadvertent discovery" has the same meaning as used in RCW [27.44.040](#).
5. Nothing in this section constitutes, advocates, or otherwise grants, confers, or implies federal or state recognition of those tribes that are not federally recognized pursuant to 25 C.F.R. part 83, procedures for establishing that an American Indian group exists as an Indian tribe.

27.53.010

The legislature hereby declares that the public has an interest in the conservation, preservation, and

protection of the state's archaeological resources, and the knowledge to be derived and gained from the scientific study of these resources.

#### 27.53.040

Archaeological resources — Declaration.

All sites, objects, structures, artifacts, implements, and locations of prehistorical or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to, those pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls and grinding stones, knives, scrapers, rock carvings and paintings, and other implements and artifacts of any material that are located in, on, or under the surface of any lands or waters owned by or under the possession, custody, or control of the state of Washington or any county, city, or political subdivision of the state are hereby declared to be archaeological resources.

#### 27.53.060

Disturbing archaeological resource or site — Permit required — Conditions — Exceptions — Penalty.

1. On the private and public lands of this state it shall be unlawful for any person, firm, corporation, or any agency or institution of the state or a political subdivision thereof to knowingly remove, alter, dig into, or excavate by use of any mechanical, hydraulic, or other means, or to damage, deface, or destroy any historic or prehistoric archaeological resource or site, or remove any archaeological object from such site, except for Indian graves or cairns, or any glyptic or painted record of any tribe or peoples, or historic graves as defined in chapter [68.05](#) RCW, disturbances of which shall be a class C felony punishable under chapter [9A.20](#) RCW, without having obtained a written permit from the director for such activities.
2. The director must obtain the consent of the private or public property owner or agency responsible for the management thereof, prior to issuance of the permit. The property owner or agency responsible for the management of such land may condition its consent on the execution of a separate agreement, lease, or other real property conveyance with the applicant as may be necessary to carry out the legal rights or duties of the public property landowner or agency.
3. The director, in consultation with the affected tribes, shall develop guidelines for the issuance and processing of permits.
4. Such written permit and any agreement or lease or other conveyance required by any public property owner or agency responsible for management of such land shall be physically present while any such activity is being conducted.
5. The provisions of this section shall not apply to the removal of artifacts found exposed on the surface of the ground which are not historic archaeological resources or sites.
6. When determining whether to grant or condition a permit, the director may give great weight to the final record of previous civil or criminal penalties against either the applicant, the parties responsible for conducting the work, or the parties responsible for carrying out the terms and conditions of the permit, either under this chapter or under comparable federal laws. If the director denies a permit, the applicant may request a hearing as provided for in chapter [34.05](#) RCW.

#### 27.53.090

Violations — Penalty.

Any person, firm, or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor. Each day of continued violation of any provision of this chapter shall constitute a

distinct and separate offense. Offenses shall be reported to the appropriate law enforcement agency or to the director.

#### 27.53.095

Knowing and willful failure to obtain or comply with permit — Penalties.

1. Persons found to have violated this chapter, either by a knowing and willful failure to obtain a permit where required under RCW [27.53.060](#) or by a knowing and willful failure to comply with the provisions of a permit issued by the director where required under RCW [27.53.060](#), in addition to other remedies as provided for by law, may be subject to one or more of the following:
  - a. Reasonable investigative costs incurred by a mutually agreed upon independent professional archaeologist investigating the alleged violation;
  - b. Reasonable site restoration costs; and
  - c. Civil penalties, as determined by the director, in an amount of not more than five thousand dollars per violation.
2. Any person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter [34.05](#) RCW and applicable rules of the department.
3. Any penalty imposed by final order following an adjudicative proceeding becomes due and payable upon service of the final order.
4. The attorney general may bring an action in the name of the department in the superior court of Thurston county or of any county in which the violator may do business to collect any penalty imposed under this chapter and to enforce subsection (5) of this section.
5. Any and all artifacts in possession of a violator shall become the property of the state until proper identification of artifact ownership may be determined by the director.
6. Penalties overturned on appeal entitle the appealing party to fees and other expenses, including reasonable attorneys' fees, as provided in RCW [4.84.350](#).

#### 68.60.010

Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

1. "Abandoned cemetery" means a burial ground of the human dead in [for] which the county assessor can find no record of an owner; or where the last known owner is deceased and lawful conveyance of the title has not been made; or in which a cemetery company, cemetery association, corporation, or other organization formed for the purposes of burying the human dead has either disbanded, been administratively dissolved by the secretary of state, or otherwise ceased to exist, and for which title has not been conveyed.
2. "Historical cemetery" means any burial site or grounds which contain within them human remains buried prior to November 11, 1889; except that (a) cemeteries holding a valid certificate of authority to operate granted under RCW [68.05.115](#) and [68.05.215](#), (b) cemeteries owned or operated by any recognized religious denomination that qualifies for an exemption from real estate taxation under RCW [84.36.020](#) on any of its churches or the ground upon which any of its churches are or will be built, and (c) cemeteries controlled or operated by a coroner, county, city, town, or cemetery district shall not be considered historical cemeteries.
3. "Historic grave" means a grave or graves that were placed outside a cemetery dedicated pursuant to this chapter and to chapter [68.24](#) RCW, prior to June 7, 1990, except Indian graves and burial cairns protected under chapter [27.44](#) RCW.
4. "Cemetery" has the meaning provided in RCW [68.04.040](#)(2).

68.60.040

Protection of cemeteries — Penalties.

1. Every person who in a cemetery unlawfully or without right willfully destroys, cuts, mutilates, effaces, or otherwise injures, tears down or removes, any tomb, plot, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post, or railing, or any enclosure for the protection of a cemetery or any property in a cemetery is guilty of a class C felony punishable under chapter [9A.20](#) RCW.
2. Every person who in a cemetery unlawfully or without right willfully destroys, cuts, breaks, removes, or injures any building, statuary, ornamentation, tree, shrub, flower, or plant within the limits of a cemetery is guilty of a gross misdemeanor punishable under chapter [9A.20](#) RCW.
3. Every person who in a cemetery unlawfully or without right willfully opens a grave; removes personal effects of the decedent; removes all or portions of human remains; removes or damages caskets, surrounds, outer burial containers, or any other device used in making the original burial; transports unlawfully removed human remains from the cemetery; or knowingly receives unlawfully removed human remains from the cemetery is guilty of a class C felony punishable under chapter [9A.20](#) RCW.

68.60.050

Protection of historic graves — Penalty.

1. Any person who knowingly removes, mutilates, defaces, injures, or destroys any historic grave shall be guilty of a class C felony punishable under chapter [9A.20](#) RCW. Persons disturbing historic graves through inadvertence, including disturbance through construction, shall reinter the human remains under the supervision of the department of archaeology and historic preservation. Expenses to reinter such human remains are to be provided by the department of archaeology and historic preservation to the extent that funds for this purpose are appropriated by the legislature.
2. This section does not apply to actions taken in the performance of official law enforcement duties.
3. It shall be a complete defense in a prosecution under subsection (1) of this section if the defendant can prove by a preponderance of evidence that the alleged acts were accidental or inadvertent and that reasonable efforts were made to preserve the remains accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported.

68.60.055

Skeletal human remains — Duty to notify — Ground disturbing activities — Coroner determination — Definitions.

1. Any person who discovers skeletal human remains shall notify the coroner and local law enforcement in the most expeditious manner possible. Any person knowing of the existence of skeletal human remains and not having good reason to believe that the coroner and local law enforcement has notice thereof and who fails to give notice thereof is guilty of a misdemeanor.
2. Any person engaged in ground disturbing activity and who encounters or discovers skeletal human remains in or on the ground shall:
  - a. Immediately cease any activity which may cause further disturbance;
  - b. Make a reasonable effort to protect the area from further disturbance;
  - c. Report the presence and location of the remains to the coroner and local law enforcement in the most expeditious manner possible; and
  - d. Be held harmless from criminal and civil liability arising under the provisions of this section provided the following criteria are met:
    - i. The finding of the remains was based on inadvertent discovery;
    - ii. The requirements of the subsection are otherwise met; and

- iii. The person is otherwise in compliance with applicable law.
- 3. The coroner must make a determination whether the skeletal human remains are forensic or nonforensic within five business days of receiving notification of a finding of such remains provided that there is sufficient evidence to make such a determination within that time period. The coroner will retain jurisdiction over forensic remains,
  - a. Upon determination that the remains are nonforensic, the coroner must notify the department of archaeology and historic preservation within two business days. The department will have jurisdiction over such remains until provenance of the remains is established. A determination that remains are nonforensic does not create a presumption of removal or nonremoval.
  - b. Upon receiving notice from a coroner of a finding of nonforensic skeletal human remains, the department must notify the appropriate local cemeteries, and all affected Indian tribes via certified mail to the head of the appropriate tribal government, and contact the appropriate tribal cultural resources staff within two business days of the finding. The determination of what are appropriate local cemeteries to be notified is at the discretion of the department. A notification to tribes of a finding of such nonforensic skeletal human remains does not create a presumption that the remains are Indian.
  - c. The state physical anthropologist must make an initial determination of whether nonforensic skeletal human remains are Indian or non-Indian to the extent possible based on the remains within two business days of notification of a finding of such nonforensic remains. If the remains are determined to be Indian, the department must notify all affected Indian tribes via certified mail to the head of the appropriate tribal government within two business days and contact the appropriate tribal cultural resources staff.
  - d. The affected tribes have five business days to respond via telephone or writing to the department as to their interest in the remains.
- 4. For the purposes of this section:
  - a. "Affected tribes" are:
    - i. Those federally recognized tribes with usual and accustomed areas in the jurisdiction where the remains were found;
    - ii. Those federally recognized tribes that submit to the department maps that reflect the tribe's geographical area of cultural affiliation; and
    - iii. Other tribes with historical and cultural affiliation in the jurisdiction where the remains were found.
  - b. "Forensic remains" are those that come under the jurisdiction of the coroner pursuant to RCW [68.50.010](#).
  - c. "Inadvertent discovery" has the same meaning as used in RCW [27.44.040](#).
- 5. Nothing in this section constitutes, advocates, or otherwise grants, confers, or implies federal or state recognition of those tribes that are not federally recognized pursuant to 25 C.F.R. part 83, procedures for establishing that an American Indian group exists as an Indian tribe.

68.60.060

Violations — Civil liability.

Any person who violates any provision of this chapter is liable in a civil action by and in the name of the department of archaeology and historic preservation to pay all damages occasioned by their unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed and to the care fund if one is established.