

2013-2682
19135

**MEMORANDUM OF AGREEMENT (MOA)
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION (FHWA),
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT (USACE),
NEVADA HISTORIC PRESERVATION OFFICER (SHPO)
AND THE
THE NEVADA DEPARTMENT OF TRANSPORTATION (NDOT),
REGARDING
THE DUNPHY FRONTAGE ROAD PROJECT
FEDERAL PROJECT #: BR-0011(009) AND NDOT #: 73548**

WHEREAS, FHWA proposes to provide funding to NDOT to replace two structurally deficient bridges, lengthen a box culvert, and reconstruct a 0.8 mile segment of State Route (SR) 402 located south of Dunphy in Eureka County, Nevada (Undertaking); and

WHEREAS, the FHWA, in consultation with the SHPO, has defined the area of potential effects (APE) for the Undertaking, as the term is defined in 36 CFR § 800.16(d), to be the area within a ½ mile radius centered around the 0.8 mile section of right-of-way along Frontage Road EU 02 (Appendix A, Map 2 and Map 3); and

WHEREAS, the proposed Undertaking will involve the discharge of dredged or fill material into waters of the United States and, in compliance with Section 404 of the Clean Water Act (33 U.S.C. § 1344), NDOT has applied for a permit from the United States Army Corps of Engineers, Sacramento District (USACE) whose permit area is wholly contained within the APE for the Undertaking; and

WHEREAS, the USACE has designated FHWA as the Lead Federal Agency to act on the USACE's behalf for purposes of compliance with Section 106 of the NHPA, has participated in this consultation, and is a signatory to this MOA; and

WHEREAS, the FHWA, in consultation with the SHPO, has found that G-324 (Shoshone Underpass, SHPO ID #: S582) and the B-395 Bridge (Humboldt River Bridge, SHPO ID # S505) are within the APE; and

WHEREAS, the FHWA, in consultation with the SHPO, has determined, pursuant to 36 CFR § 800.4(c), that G-324 is eligible for inclusion in the National Register of Historic Places under criteria A and C and that the B-395 Bridge is not eligible for inclusion; and

WHEREAS, FHWA has documented its findings on the B-395 Bridge in accordance with 36 CFR § 800.4(d) (1)(i) and the SHPO has not objected, however FHWA and NDOT intend to design and construct the replacement for the B-395 Bridge in a manner consistent with G-324; and

WHEREAS, the FHWA, in consultation with the SHPO, has determined pursuant to 36 CFR § 800.5(a) that the Undertaking will have an adverse effect on G-324; and

WHEREAS, the FHWA has consulted with the SHPO in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)) and its implementing regulations (36 CFR Part 800) to resolve the adverse effect on G-324; and

WHEREAS, the FHWA has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect and invited the ACHP to participate in the consultation, pursuant to 36 CFR Section 800.6(a)(1), in a letter dated October 22, 2013; and

WHEREAS, the ACHP declined to participate in the consultation in a letter dated November 7, 2013; and

WHEREAS, the FHWA, in consultation with the SHPO, has invited NDOT to participate in the consultation and to become an invited signatory to this MOA; and

NOW, THEREFORE, the FHWA, the USACE, the SHPO, and NDOT 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 historic properties.

STIPULATIONS

I. MITIGATION FOR THE UNDERTAKING

A. FHWA and NDOT will provide funds to design and build the replacement G-324 Bridge and the B-395 Bridge (Humboldt River Bridge, SHPO ID # S505) in a manner that is consistent with the Secretary of the Interior's Standards for Historic Preservation while still meeting modern safety requirements. FHWA, in consultation with SHPO, previously determined that B-395 is not eligible for listing on the NRHP. However, when the B-395 and G-324 were modified in the late 1940s, they were matching in style, which created a cohesive, unified look. It is FHWA's and NDOT's intention to design both replacement bridges in the same historically inspired style will help perpetuate the historic look and feel of the area.

1. NDOT will design the replacement G-324 and B-395 with Streamline Modern style end posts that are inspired by the historic end posts of the original G-324 and B-395 bridges; and
2. NDOT will identify the replacement G-324 and B-395 bridges as modern structures by having the year of their construction stamped into one of the end posts of each bridge; and
3. NDOT will design and install a custom concrete guardrail on the replacement bridges. The new guardrail will be solid concrete as required by safety codes, but will have recessed areas imitating the spacing and repetition pattern of the original metal guardrail on the G-324 and B-395 bridges; and
4. When the 30% design plans for the bridges are available, NDOT will submit the plans directly to the SHPO, on behalf of FHWA, and request concurrence that the designs are consistent with the Secretary of the Interior's Standards for Historic Preservation. If the SHPO concurs or does not respond to NDOT within fifteen (15) working days of receipt, FHWA and NDOT shall assume concurrence.
5. If the final plans for the bridges are substantially different from the 30% design plans, then NDOT will submit the plans directly to the SHPO, on behalf of FHWA, and request concurrence that the designs are consistent with the Secretary of the Interior's Standards for Historic Preservation. If the SHPO concurs or does not respond to NDOT within fifteen (15) working days of receipt, FHWA and NDOT shall assume concurrence.

- B. NDOT will document the original G-324 bridge in accord with Appendix B.
- C. FHWA/NDOT will develop a public exhibit, website, or publication that educates the public on Nevada's historic bridges, especially Streamline Moderne bridges. The product will be available within eight months after completion of the final report and photos in accord with Stipulation IV below.
- D. NDOT will prepare a finding aid and/or instruction manual (available to NDOT and SHPO) on how to search for plans for historic bridges or roads in the NDOT Integrated Right-of-Way Information Network (IRWIN) database system.

II. NOTICE TO PROCEED (NTP)

- A. Upon execution of this MOA, FHWA and NDOT may issue a Notice to Proceed (NTP) for the Dunphy Frontage Road Project except the segment inside the boundary of G-324 (Appendix A, Map 4. Boundary Map for G-324).
- B. NDOT shall not begin any ground disturbing activities within the boundary of G-324 until a NTP is issued for the property. NDOT will issue a NTP after the following requirements have been fulfilled:
 1. NDOT completes the photo documentation fieldwork for G-324 in accord with Appendix B; and
 2. NDOT, on behalf of FHWA, submits a draft of the photos for G-324 directly to the SHPO. If the SHPO concurs that they are adequate or does not respond NDOT within two (2) working days of receipt, FHWA and NDOT shall assume concurrence and issue the NTP for activities within the boundary of G-324.

III. POST-REVIEW DISCOVERIES AND TREATMENT OF HUMAN REMAINS

- A. If the Undertaking affects a previously unidentified potential historic property or affects a known historic property in an unanticipated manner, FHWA and NDOT shall implement additional treatment according to approved plan(s) developed in consultation with the SHPO. NDOT shall ensure that post-review discoveries are avoided until FHWA and NDOT issues a NTP.
 1. If previously unidentified archaeological or architectural properties, or unanticipated effects, are discovered after FHWA and NDOT has completed its review, NDOT will immediately cease construction in the vicinity of the property and implement all reasonable measures needed to avoid, minimize or mitigate adverse effects to the property.
 2. No further construction in the area of discovery will proceed until the requirements of 36 CFR §800.13 have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property. Within 48 hours of the discovery, FHWA and NDOT will provide initial notification of the discovery to the other signatories, the ACHP, and any Indian tribe that might attach religious or cultural significance to the

potentially affected property or any other consulting party that may have a demonstrated interest in the potentially affected property. Such notification may be provided by e-mail, fax, or telephone.

3. NDOT will consult with FHWA, the SHPO, affected federal agencies and Tribes, as appropriate, to record, document, and evaluate the NRHP eligibility of the property and the project's effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property. Should any of the notified parties respond with recommendations within 48 hours of the notification of the discovery, FHWA and NDOT shall take into account such recommendations regarding NRHP eligibility and proposed actions, and will then carry out appropriate actions.
 4. If FHWA, the SHPO, affected federal agency or a Tribe fails to file an objection within 72 hours to NDOT's plan for addressing the discovery, NDOT may carry out the requirements of 36 CFR §800.13 on behalf of FHWA, and the ACHP does not need to be notified.
 5. NDOT and FHWA will provide other signatories, concurring parties, and ACHP (if applicable) a report of the actions within 30 calendar days after they are completed.
- B. In the event that human remains, funerary items, items of cultural patrimony, and/or sacred objects are encountered during the Undertaking, FHWA and NDOT shall invite interested federally recognized Indian Tribes to participate in the development of agreements and protocols to facilitate procedures to address accidental discovery contingencies. This shall be completed prior to authorization to proceed with subsurface investigations.
1. Upon discovery of human remains, funerary items, items of cultural patrimony, and/or sacred objects, NDOT will notify the SHPO and FHWA within 24 hours.
 2. Notification may occur via email, fax, or telephone.
 3. Upon discovery of human remains on non-Federal lands, they will be treated by NDOT in accordance with NRS (Nevada Revised Statutes) 383.170.

IV. REPORTING

NDOT will implement the Stipulations and will provide FHWA and the SHPO with progress reports as each phase of the mitigation is completed. The reports shall include any scheduling changes proposed, any problems encountered, and any disputes or objections received in FHWA and NDOT's efforts to carry out the terms of this MOA.

- A. A draft report of treatment or other mitigative activities will be due to the FHWA within three (3) months after the completion of the fieldwork associated with the activity, unless otherwise negotiated.
- B. The FHWA will submit the draft treatment report to the SHPO for a 30-calendar day review period.

- C. If the SHPO fails to respond to the FHWA within 30 calendar days of the certified receipt of a submission, the FHWA will presume concurrence and proceed accordingly.
- D. The FHWA will ensure that all final reports resulting from actions pursuant to this MOA will be provided to the SHPO. All such reports will be consistent with contemporary professional standards and the requirements of Appendix B.

V. DISPUTE RESOLUTION

Disagreement about how this MOA is or is not being implemented shall be resolved in the following manner:

- A. If any signatory or invited signatory to this MOA should object in writing to the FHWA regarding any action carried out or proposed with respect to undertaking or implementation of this MOA, then the FHWA will notify the other signatories and shall consult with the objecting party to resolve this objection. If after 30 days, the FHWA determines that the objection cannot be resolved through consultation, then the FHWA shall forward all documentation relevant to the objection to the ACHP, including the FHWA's proposed response to the objection. Within forty-five (45) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
 - 1. Provide the FHWA with a staff-level recommendation, which the FHWA shall take into account in reaching a final decision regarding its response to the objection; or
 - 2. Notify the FHWA that the objection will be referred for formal comment pursuant to 36 CFR Part 800.7(c), and proceed to refer the objection and comment. The FHWA shall take into account the ACHP's comments in reaching a final decision regarding its response to the objection.
- B. If comments or recommendations from the ACHP are provided in accordance with this stipulation, then the FHWA shall take into account any ACHP comment or recommendations provided in accordance with this stipulation with reference only to the subject of the objection. The FHWA's responsibility to carry out all actions under the MOA that are not the subjects of the objection shall remain unchanged.

VI. AMENDMENTS

Any signatory to this MOA may request that it be amended, whereupon the parties shall consult to consider the proposed amendment. 36 CFR §800.6(c)(7) shall govern the execution of any such amendment. This MOA may be amended only upon written agreement of the signatories and invited signatory. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VII. CONFIDENTIALITY OF RECORDS AND INFORMATION

All parties to this MOA acknowledge that information about historic properties are or may be subject to the provisions of NHPA section 304 and 36 C.F.R. § 800.11(c) relating to the disclosure of sensitive information, and having so acknowledged, will ensure that all actions and documentation prescribed by this MOA are, where necessary, consistent with the requirements of NHPA section 304, 36 CFR § 800.11(c), and 5 U.S.C. § 552, as amended (Freedom of Information Act).

VIII. DURATION AND TERMINATION

- A. This MOA will expire if its stipulations are not carried out within five (5) years from the date of execution. FHWA may consult with all signatories prior to expiration in order to re-examine the terms of the MOA, determine if those terms remain acceptable, and renew the MOA for another period of time not to exceed five (5) years.
- B. Any signatory to the MOA may terminate it by providing thirty (30) days' notice to other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.
- C. In the event of termination or that the FHWA does not carry out the terms of this MOA, FHWA shall comply with 36 CFR Parts 800.3 to 800.7 with regard to the review of this undertaking.

IX. EXECUTION AND COMPLETION OF SECTION 106

The execution of this MOA by the FHWA, the USACE, the SHPO, and NDOT, together with implementation of its terms, evidence that FHWA has taken into account the effects of this undertaking on historic properties and fully satisfied its obligations under Section 106 of the NHPA and its implementing regulations.

X. AUTHORIZING SIGNATURES

In witness hereof, the following authorized representatives of the parties have signed their names on the dates indicated, thereby executing this MOA. This MOA may be signed by the Signatories using photocopy, facsimile, or counterpart signature pages. FHWA will distribute copies of all signed pages to the signatories once the MOA is fully executed.

SIGNATORIES:

FEDERAL HIGHWAY ADMINISTRATION

By:  Date: March 27, 2014
Susan Klekar
FHWA Division Administrator

U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

By:  Date: 18 March 2014
Michael Jewell
Chief, Regulatory Division

NEVADA STATE HISTORIC PRESERVATION OFFICER

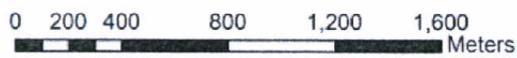
By:  Date: 27 March 2014
Rebecca Palmer,
State Historic Preservation Officer

INVITED SIGNATORY:

NEVADA DEPARTMENT OF TRANSPORTATION

By:  Date: 3/25/14
Steve M. Cooke
NDOT Environmental Service Chief

Dunphy Bridge Replacement Project Dunphy, Eureka, County



Dunphy Quadrangle, T 33N, R 48 E 1:24,000

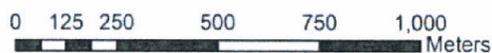
-  Potential Direct Impacts
-  Area of Potential Effect
-  Impacted Bridges/Culvert

NDOT #	SHPO ID #
G-324	S582
B-395	S505
B-494	S968



Map 2. Area of Direct and Potential Effects. Prepared by NDOT Cultural Resources Section, 2013.

Dunphy Bridge Replacement Project
 Dunphy, Eureka, County



- Potential Direct Impacts
- Area of Potential Effect
- Impacted Bridges/Culvert

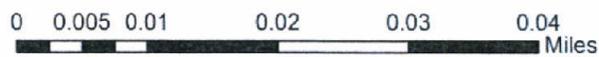
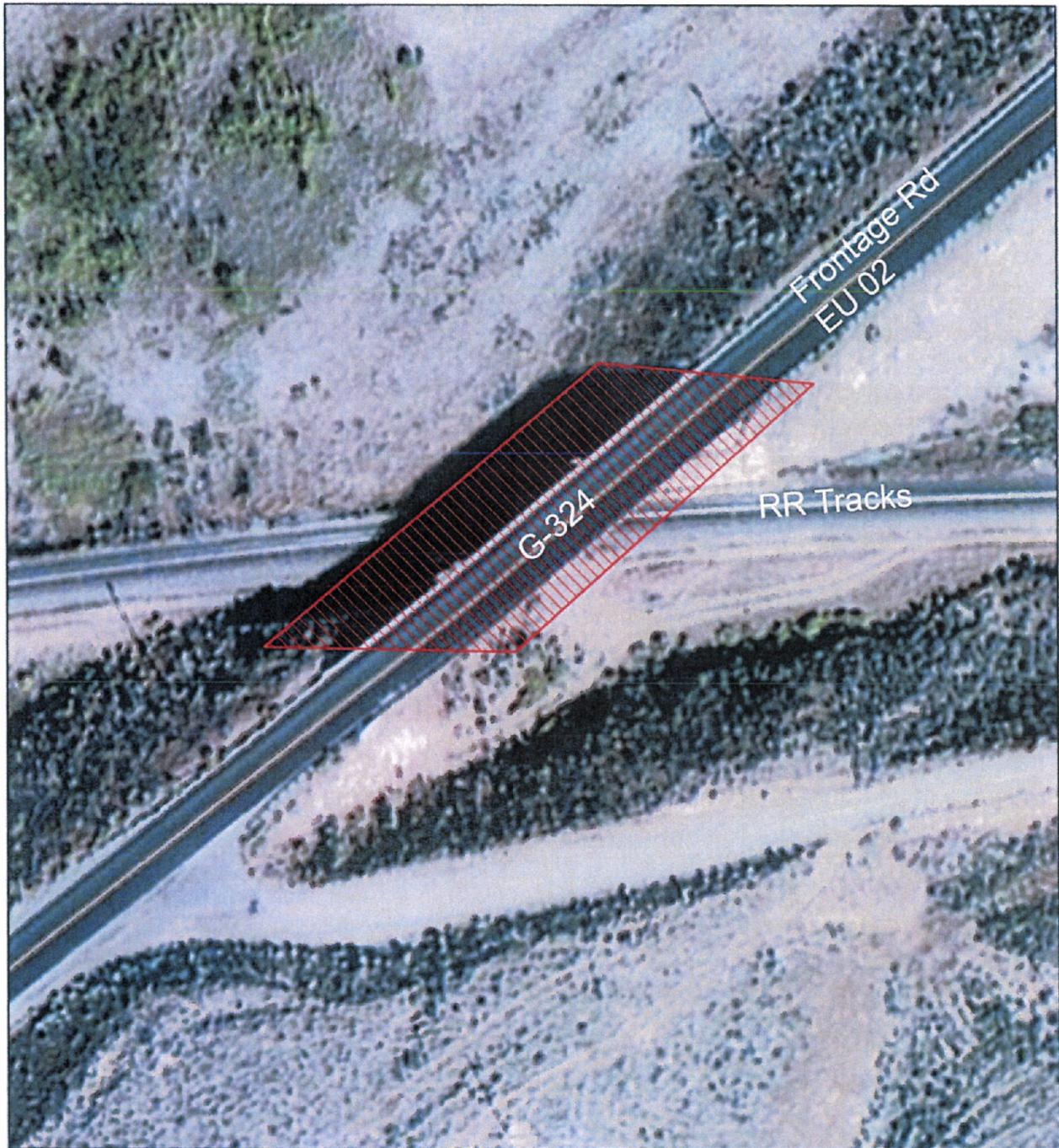
NDOT #	SHPO ID #
G-324	S582
B-395	S505
B-494	S968

1:15,000



Map 3. Detail of Area of Potential Effects. Prepared by NDOT Cultural Resources Section, 2013.

Dunphy Bridge Replacement Project
Dunphy, Eureka, County



1:800

 Boundaries of G-324



Map 4. Boundary Map for G-324. Prepared by NDOT Cultural Resources Section, 2013.

APPENDIX B: PHOTO-DOCUMENTATION STANDARDS

The photo documentation standards are based on “Appendix G: Documentation Standards for Historical Resources of Local and State Significance” from *the State Protocol Agreement between The Bureau of Land Management, Nevada and The Nevada State Historic Preservation Office for Implementing the National Historic Preservation Act, Revised January 2012*.

A report detailing the historical context and significance of the property, and architectural and engineering documentation, including plans and photographs of G-324 and B-395 will be submitted to the SHPO. The requirements for these elements are as follows:

Historical Documentation

Historical Documentation is a detailed record of the historical context and significance of a property presented in a report format. Sources will be recorded so that other researchers can verify or locate information discovered during research. Historical research to create documentation uses secondary source materials, archival materials, and primary sources, such as personal records, deed and title books, newspapers, plats, maps, atlases, photographs, vital records, censuses, historical narratives, and interviews with individuals. The historical documentation section will include the following elements:

1. Title Page--should include the title of the report, including the nature and location of the project, the author of the report, the sponsoring institution, association or agency, and the date the report was prepared.
2. Table of Contents--should list report chapters and all subdivisions, including study unit sections. Pagination must be shown in the table of contents.
3. Introduction--should summarize the purpose of the documentation, the eligibility criteria used to evaluate the resource, the level of significance the resource possesses, the reason for the treatment (i.e., impending threat to the resource), objectives for conducting the historical documentation, the scope of the project, and the agencies involved. A map showing the location of the project must be included.
4. Documentation Methodology--should include an explanation of the procedures used to execute the documentation, including the name of the researcher, date of the research, sources searched, and limitations of the project.
5. Historical Narrative--should provide a full description of the resource(s), a historical context against which significance is assessed, and a comprehensive history of the resource. The following elements should be included in this section:
 - a. Historical Context--including early settlement, historical overview, and physical development of the project area. The historical context should be guided by the thematic study units identified in the *Nevada Comprehensive Preservation Plan* (1991).