

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE NEVADA DEPARTMENT OF TRANSPORTATION,
THE UNITED STATES ARMY CORPS OF ENGINEERS,
THE BUREAU OF LAND MANAGEMENT,
THE BUREAU OF RECLAMATION,
THE UNITED STATES FOREST SERVICE,
THE UNITED STATES FISH AND WILDLIFE SERVICE,
THE NEVADA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE STATE OF
NEVADA**

WHEREAS, the Federal Highway Administration (FHWA), under the authority of 23 U.S.C. §101 et seq., implements the Federal-aid Highway Program (Program) in the state of Nevada by funding and approving state and locally sponsored transportation projects that are administered by the Nevada Department of Transportation (NDOT); and

WHEREAS, the Nevada FHWA Division Administrator is the "Agency Official" responsible for ensuring that the Federal-aid Highway Program in the state of Nevada complies with Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. §306108, as amended, and codified in its implementing regulations, 36 Code of Federal Regulations (CFR) Part 800, as amended (August 5, 2004); and

WHEREAS, Program-funded projects are undertakings subject to Section 106 of the NHPA [54 United States Code (USC) §306108] and its implementing regulations at 36 CFR Part 800 (Section 106); and

WHEREAS, NDOT administers Program-funded projects throughout the State of Nevada as authorized by Title 23 U.S.C. §302; and

WHEREAS, NDOT has participated in the consultation and has been invited by FHWA to be a signatory to this Programmatic Agreement (Agreement); and

WHEREAS, pursuant to the consultation conducted under 36 CFR §800.14(b)(1), the signatories have developed this Agreement in order to establish an efficient and effective alternative procedure for taking into account the effects of the Program on historic properties in Nevada and for affording the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on undertakings covered by this Agreement; and

WHEREAS, the responsibilities of the Nevada State Historic Preservation Officer (SHPO) under Section 106 of the NHPA and 36 CFR Part 800 are to advise, assist, review, and consult with federal agencies as they carry out their historic preservation responsibilities and to respond to federal agencies' requests within a specified period of time; and

WHEREAS, FHWA has determined that implementation of the Program in Nevada may have an effect upon properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with the SHPO and the ACHP pursuant to 36 CFR §800.14(b); and

WHEREAS, FHWA recognizes that it has a unique legal relationship with Indian Tribes (Tribes)

set forth in the Constitution of the United States, treaties, statutes, and court decisions, and therefore, consultation with a Tribe must recognize the government-to-government relationship between the federal government and Tribes; and

WHEREAS, FHWA has consulted with Tribes, as defined in 36 CFR §800.16(m), with ancestral lands in Nevada about this Agreement and has taken into account comments from Tribes. The Tribes consulted include the Battle Mountain Band Council, the Confederated Tribes of the Goshute, Duck Valley Shoshone-Paiute Tribes, Duckwater Shoshone Tribe, Elko Band Council, Ely Shoshone Tribe, Fort McDermitt Paiute Shoshone Tribe, Fort Mojave Indian Tribe, Fallon Paiute-Shoshone Tribe, Lovelock Paiute Tribe, Las Vegas Paiute Tribe, Moapa Band of Paiutes, Pyramid Lake Paiute Tribe, Pahrump Paiute Tribe, Reno-Sparks Indian Colony, South Fork Band Council, Summit Lake Paiute Tribe, Timbisha Shoshone Tribe, Te-Moak Tribal Council, Wells Band Council, Winnemucca Indian Colony, Walker River Paiute Tribe, Washoe Tribe of Nevada and California, Yerington Paiute Tribe, and the Yomba Shoshone Tribe; and

WHEREAS, FHWA has invited the Tribes to sign this Agreement as concurring parties and the Fort Mojave Indian Tribe and Timbisha Shoshone Tribe have chosen to participate in this Agreement as a concurring party; and

WHEREAS, any undertaking involving tribal lands as defined in 36 CFR §800.16(x) shall not be governed by this Agreement, but shall be reviewed in accordance with 36 CFR Part 800; and

WHEREAS, the U.S. Army Corps of Engineers, Sacramento District (USACE) administers a Department of the Army Regulatory permit program under the authority of the Clean Water Act of 1972, Section 404 (33 U.S.C. §1344) and the Rivers and Harbors Act of 1899, Section 10 (33 U.S.C. §403), and a Section 408 permission program under the authority of the Rivers and Harbors Act of 1899, Section 14 (33 U.S.C. §408), to which Program-funded undertakings may be subject; therefore, FHWA has consulted with and invited USACE to be a signatory to this Agreement and to use this Agreement to meet their Section 106 responsibilities, and USACE has chosen to participate in this Agreement as a signatory; and

WHEREAS, Program-funded undertakings may cross lands managed by the Bureau of Land Management (BLM); therefore, FHWA has consulted with and invited the BLM to be a signatory to this Agreement and to use this Agreement to meet their Section 106 responsibilities, and the BLM has chosen to participate in this Agreement as a signatory; and

WHEREAS, Program-funded undertakings may cross lands managed by the U.S. Forest Service (USFS) Humboldt-Toiyabe National Forest and Lake Tahoe Basin Management Unit; therefore, FHWA has consulted with and invited the USFS to be a signatory to this Agreement and to use this Agreement to meet their Section 106 responsibilities, and the USFS has chosen to participate in this Agreement as a signatory; and

WHEREAS, Program-funded undertakings may cross lands managed by the Bureau of Reclamation (Reclamation) Interior Region 10 California-Great Basin and Interior Region 8 Lower Colorado Basin; therefore, FHWA has consulted with and invited Reclamation to be a signatory to this Agreement and to use this Agreement to meet their Section 106 responsibilities, and Reclamation has chosen to participate in this Agreement as a signatory; and

WHEREAS, Program-funded undertakings may cross lands managed by the U.S. Fish and Wildlife Service (USFWS) Region 8 Pacific Southwest; therefore, FHWA has consulted with and invited the USFWS to be a signatory to this Agreement and to use this Agreement to meet their Section 106 responsibilities, and the USFWS has chosen to participate in this Agreement as a signatory; and

WHEREAS, FHWA, ACHP, SHPO, NDOT, BLM, USFS, Reclamation, USFWS and USACE

are collectively referred to herein as the "signatories" or individually as "signatory"; and

WHEREAS, FHWA has solicited public participation about this Agreement, has requested their comments, and has taken any comments received into account; and

WHEREAS, FHWA and BLM have entered into a Memorandum of Understanding (MOU), as amended, Concerning Operating Procedures for Processing Federal-Aid Highway Rights-of-Ways from the BLM in the MOU (NDOT Cultural Resources Handbook Appendix C). MOU Stipulation V.B. states that FHWA is the lead Federal Agency for Program-funded projects on BLM-owned land. MOU Stipulation V.C. states that NDOT will work with FHWA to comply with Section 106 of the NHPA. This Agreement spells out the process whereby MOU Stipulations V.B and V.C. are executed. This Agreement does not apply to Mineral Material Site Exploration activities or non-Program-funded projects on BLM administered lands; and

WHEREAS, FHWA has delegated certain Section 106 responsibilities to NDOT, which are discussed below; and

NOW, THEREFORE, the signatories agree that the Program in Nevada shall be carried out in accordance with the following stipulations in order to take into account the effects of the Program on historic properties in Nevada and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires or is terminated.

STIPULATIONS

FHWA, assisted by NDOT, will ensure that the following measures are carried out:

I. PURPOSE AND APPLICABILITY

- A. This Agreement sets forth the process by which FHWA will meet its responsibilities under Section 106 of the NHPA, with the assistance of NDOT, for all FHWA undertakings implemented by NDOT. This Agreement establishes the basis for considering the effects of FHWA undertakings on historic properties and establishes alternative procedures to implement Section 106 for the review of such undertakings by FHWA, SHPO, and ACHP.
- B. This Agreement intends to make more efficient the methods by which FHWA and NDOT review individual undertakings with the potential to affect Historic Properties and to establish the process by which signatories will be involved in such reviews.
- C. Through this Agreement FHWA authorizes NDOT to initiate, and conclude, consultation with SHPO and other consulting parties for purposes of compliance with Section 106.
- D. At any point in the Section 106 process, FHWA may inquire with NDOT as to the status of any undertaking and may participate directly in consultation for any undertaking at their discretion. NDOT will process undertakings pursuant to 36 CFR §800.3 - §800.7 if FHWA, SHPO, or ACHP so request.
- E. The NDOT Cultural Resources Handbook (Handbook) describes the details of the implementation of this Agreement.
- F. Consulting federal agencies who designate FHWA as the lead Federal agency for an undertaking may fulfill their obligations under Section 106 of the NHPA pursuant to 36

CFR §800.2(a)(2) through use of this Agreement, provided that FHWA and NDOT follow the requirements of this Agreement, and the consulting federal agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and NDOT (Handbook Appendix B).

- G. This Agreement establishes the process for compliance with Section 106 of the NHPA (54 U.S.C. §306108) for undertakings covered by this Agreement. The NHPA consultation and decision-making processes set forth herein shall operate independently from, and shall not be modified, delayed, expanded, or superseded by, the requirements, findings, determinations, schedules, or priorities of other environmental or regulatory review authorities, including executive orders and agency policy directives, unless such integration is explicitly authorized within this Agreement.
- H. No determination, document, recommendation, or decision issued pursuant to another statute, executive order, regulation, or internal agency policy shall have the effect of altering the NHPA compliance responsibilities, consultation framework, or outcomes established under this Agreement.

II. RESPONSIBILITIES OF THE FHWA AND NDOT

A. FHWA

- 1. Consistent with the requirements of 36 CFR §800.2(a), FHWA remains legally responsible for ensuring that Section 106 is carried out and for all findings and determinations made pursuant to this Agreement by NDOT under the authority of FHWA notwithstanding any other provision of this Agreement, and for ensuring compliance with all other applicable federal laws and statutes.
- 2. FHWA retains the responsibility for government-to-government consultation with the Tribes as defined in 36 CFR §800.16(f) and (m). FHWA may ask NDOT to assist in consultation if a Tribe agrees to alternative procedures.
- 3. FHWA will notify ACHP of any findings of adverse effect and invite ACHP to participate in resolving the adverse effect of an undertaking in accordance with 26 CFR §800.6(a)(1).
- 4. FHWA shall be responsible for resolving disputes and objections pursuant to Stipulation X of this Agreement.

B. NDOT

- 1. NDOT, using staff meeting the *Secretary of the Interior's (SOI) Professional Qualifications Standards*, will independently perform the work and consultation described in 36 CFR §800.3 - §800.6 on behalf of FHWA. These responsibilities include carrying out the following requirements:
 - a. Determine whether the undertaking is a type of activity that has the potential to affect historic properties pursuant to 36 CFR §800.3(a).
 - b. Determine whether the undertaking may occur on or has the potential to affect historic properties on tribal lands pursuant to 36 CFR §800.3(c) and (d).

- c. Solicit public comment and involvement in accordance with 36 CFR §800.3(e).
 - d. Identify additional consulting parties as described in 36 CFR §800.3(f) and invite them to participate in the Section 106 process of an undertaking covered by this Agreement.
 - e. Determine, in consultation with SHPO, the scope of identification efforts and level of identification, including the undertaking's Area of Potential Effects (APE), pursuant to 36 CFR §800.4(a).
 - f. In consultation with SHPO and any Tribe that may attach religious and cultural significance to properties within the area of potential effects, identify historic properties within the undertaking's APE pursuant to 36 CFR §800.4(b) and evaluate the historic significance of historic properties identified within the APE pursuant to 36 CFR §800.4(c).
 - g. Determine whether an undertaking has no historic properties affected pursuant to 36 CFR §800.4(d)(1) or historic properties that may be affected pursuant to 36 CFR §800.4(d)(2). If there are historic properties that may be affected by an undertaking, determine if the undertaking will have adverse effects in accordance with 36 CFR §800.5.
 - h. In consultation with FHWA, SHPO, ACHP if participating, and any other consulting parties, resolve any adverse effects to historic properties in accordance with 36 CFR §800.6.
2. All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of cultural resources, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meets the *Secretary of the Interior's Professional Qualifications Standards* for Archaeology or History (published in 48 FR 44738-44739) and for archaeological work, such individuals must also hold a valid permit issued by the State of Nevada and comply with permit requirements of signatories or other federal agencies with jurisdiction, as applicable. However, nothing in this stipulation may be interpreted to preclude FHWA or NDOT or any agent or contractor thereof from using the services of persons who do not meet these qualifications standards, providing their activities are conducted under the direct supervision of a person who does meet the standards.
 3. NDOT shall employ personnel trained, experienced, and qualified in the fields of archaeology, history, and architectural history (as defined in 36 CFR §61 Appendix A) in the Cultural Resources Section, Environmental Division. Except on such occasions when FHWA elects to consult directly with SHPO or ACHP, all consultation with SHPO and other consulting parties under this Agreement and decisions made under Stipulation V may be performed by NDOT Cultural Resources Section. NDOT is authorized to consult with SHPO and other consulting parties in accordance with the terms of this Agreement.
 4. To facilitate historic and archaeological preservation planning and actions,

NDOT will establish and promote progressive programs and activities of mutual interest to, and in consultation with, FHWA, SHPO, or other consulting parties. In its annual meeting pursuant to Stipulation IX, NDOT will identify if special needs exist that should be addressed through such programs and activities and prepare a plan and cost estimate to address those needs.

5. NDOT shall curate archaeological materials recovered from private and State lands under this Agreement at a facility meeting the standards of 36 CFR §79 or NRS Chapter 381, which must remain in the state unless circumstances (such as exorbitant fees or shortage of curation space) render in-state curation unreasonable or not prudent. Archaeological collections from Federal lands will be curated at a facility meeting standards of 36 CFR §79 and will be removed subject to terms of an Archaeological Resources Protection Act (ARPA) permit issued by the appropriate Federal land management agency.
6. For activities on BLM, Reclamation, USFWS, and/or USFS managed lands, NDOT will apply for and receive appropriate permits for archaeological inventory as well as for any excavation or removal prior to initiating any investigations, as will any contractors or consultants engaged to work on FHWA's/NDOT's behalf. NDOT and its contractors or consultants will submit a fieldwork authorization request and obtain an approved BLM, Reclamation, USFWS, and/or USFS fieldwork authorization prior to initiating any work and will obtain and incorporate the required BLM, Reclamation, USFWS, and/or USFS site and report numbers prior to any submittals of site records or reports to SHPO. NDOT and any contractors or consultants will not initiate any excavation (including shovel testing or probing) or removal without the required prior authorization from BLM, Reclamation, USFWS, and/or USFS, which may include a separate process of permit application and Tribal notification/consultation conducted by the BLM, Reclamation, USFWS, and/or USFS. NDOT and any contractors or consultants will be subject to terms of BLM, Reclamation, USFWS, and/or USFS permits as they may be modified to reflect Tribal notification/consultation. Resulting products (e.g., reports, site records) for investigation on BLM, Reclamation, USFWS, and/or USFS Nevada lands will conform to current BLM, Reclamation, USFWS, and/or USFS inventory guidelines.

C. SHPO

1. Pursuant to Section 106 and 36 CFR Part 800, advise, assist, review, and consult with the FHWA and NDOT as delegated as they carry out their Section 106 responsibilities and respond to FHWA and NDOT requests within the time frames detailed in 36 CFR Part 800 unless otherwise specified in this Agreement.
2. Share information with NDOT and FHWA as SHPO develops or generates data and processes related to the identification, evaluation, management, and treatment of Nevada's cultural resources, including technological innovations and GIS.

D. ACHP

1. Upon notification of findings of adverse effect and an invitation to participate

in resolving the adverse effect of an undertaking in accordance with 36 CFR §800.6(a)(1) from FHWA, ACHP shall provide correspondence to FHWA to document receipt of notifications and required filings and decisions about participation in continuing consultation.

2. Participate, in accordance with Stipulation X, in the resolution of disputes that may occur through the implementation of this Agreement.

III. GOVERNMENT-TO-GOVERNMENT CONSULTATION WITH TRIBES

- A. FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with Tribes pursuant to the NHPA. Notwithstanding any other provision of this stipulation, FHWA shall honor the request of any Tribe for government-to-government consultation regarding an undertaking covered by this Agreement. Consultation with Tribes will be initiated with a letter from FHWA to the tribe(s).
- B. In accordance with 36 CFR §800.3(f)(2), any Tribes that might attach religious and cultural significance to historic properties in the Area of Potential Effects (APE) shall be identified by NDOT according to NDOT's Public Involvement/Public Hearing Procedures and invited by FHWA to be consulting parties.
- C. FHWA may ask NDOT to assist in consultation if the individual Tribes reach written agreement prior to having NDOT proceed with Tribal consultation. If the Tribe does not agree, FHWA is responsible for consultation. Consultation cannot be outsourced to contractors.
- D. FHWA and NDOT shall ensure that consultation with Tribes is initiated early in the project planning process to identify cultural, confidentiality, or other concerns and to allow adequate time for consideration.
- E. FHWA and NDOT shall ensure that consultation continues with Tribes throughout the Section 106 review process prescribed by this Agreement whenever such Tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.
- F. FHWA and NDOT will notify BLM, Reclamation, USFWS, and USFS when initiating consultation with Tribes regarding undertakings on agency lands.
- G. The BLM, Reclamation, USFWS, and/or USFS retain their separate responsibility to conduct government-to-government Tribal consultation when provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) or ARPA are involved.

IV. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. Consulting Parties

1. Consulting parties shall be identified pursuant to, and their participation in undertakings covered under this Agreement shall be governed by, 36 CFR §800.2(c)(5) and §800.3(f). Other individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties. Other parties entitled to be consulting parties shall be invited by NDOT to participate in the Section 106 process. Any land-managing agency whose land may be affected by an undertaking shall be invited by NDOT to

participate in the Section 106 process.

2. NDOT shall invite any local governments (including Certified Local Governments, or CLGs) or applicants that are entitled to be consulting parties under 36 CFR §800.2(c). NDOT shall consider all written requests of individuals and organizations to participate as consulting parties and determine which should be consulting parties for the undertaking and will consult with FHWA and SHPO prior to denying consulting party status to any party requesting such status.
3. Federal agencies involved who have Section 106 compliance responsibilities may be consulting parties, concurring parties or signatories.

B. Public Involvement

1. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by FHWA's and NDOT's environmental compliance procedures (NDOT's Public Involvement/Public Hearing Procedures). FHWA's Technical Advisory (T6640.8A, October 30, 1987) and similar and subsequent guidance documents will also be used. Public involvement and the release of information hereunder shall be consistent with 36 CFR §800.2(d)(1-2), §800.3(e), and §800.11(c)(1 and 3).
2. NDOT shall continue, through opportunities afforded by the current NDOT Public Involvement Procedures, to seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, and the likely interest of the public in the effects on historic properties, to remain consistent with the intent of 36 CFR Part 800, as amended.
3. For those actions that do not routinely require public review and comment, appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of historic properties, and the undertaking's potential impacts on them.
4. NDOT shall provide notice to FHWA and SHPO within one week of all documented public comments concerning cultural resources potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to the Tribes.

V. THE SECTION 106 PROCESS

For all undertakings reviewed pursuant to this Agreement, NDOT shall use the following process:

A. Initiation of the Section 106 Process

1. NDOT will establish the undertaking, determine if the undertaking is a type of activity that does not have the potential or has minimal potential to cause effects on historic properties (Stipulations V.B. and V.C.) and determine if the undertaking will occur on Tribal lands.
2. If NDOT determines that the undertaking qualifies as an excluded undertaking (Stipulation V.C., Appendix A), NDOT will document this

decision in the project record. This determination does not require SHPO or other Federal agency review prior to implementation.

3. NDOT will prepare and provide a Screening Form for undertakings that do not qualify as no potential to cause effect or an excluded undertaking and provide this document to SHPO and other signatories with jurisdiction (Handbook Chapter 1). SHPO shall have 5 working days from receipt to review a copy and other signatories with jurisdiction shall have 10 working days from receipt to review. If no response is received within the time period, NDOT may assume no comment and proceed.

B. No Potential to Cause Effect

1. In accordance with 36 CFR Part §800.3(a)(1) FHWA has determined that some Program-funded actions administered by NDOT would have no potential to cause effects to historic properties. As such, these program projects do not require further obligations under the Section 106 process of the NHPA. FHWA defines these actions as non-construction related activities, such as purchasing equipment, planning, and design.
2. Undertakings must be reviewed by an NDOT SOI qualified professional meeting the Secretary of the Interior's Professional Qualification Standards to determine if the undertaking has no potential to cause effect. This authority is non-transferable by NDOT to other parties.
3. If an undertaking is determined to have no potential to cause effect and therefore requires no further Section 106 review, NDOT shall document this decision internally for project files, and Section 106 is completed.

C. Excluded Undertakings

1. Undertakings identified in Appendix A, by their nature and definition, are actions or activities excluded from further Section 106 review beyond the steps outlined in Appendix A, as the potential effects of the undertakings are likely to be minimal in accordance with 36 CFR §800.14(b)(2). These undertakings require no further Section 106 review and do not require consultation with SHPO.
2. Any changes to Appendix A must be agreed upon in writing by the signatories. Such changes shall be considered an amendment subject to Stipulation XI.
3. Undertakings must be reviewed by an NDOT SOI qualified professional meeting the Secretary of the Interior's Professional Qualifications Standards to determine if the undertaking is considered excluded from further Section 106 review. This authority is non-transferable by NDOT to other parties.
4. FHWA agrees to administratively delegate procedures defined in Stipulation V.C. to actions or activities administered by NDOT, including Local Public Agency Program projects. This administrative delegation does not apply to actions or activities on properties listed on or eligible to be listed on the NRHP.
5. If an undertaking is determined to be excluded and therefore requires no

further Section 106 review beyond the steps outlined in Appendix A, NDOT shall document and retain this decision internally for project files. Documentation shall include (1) Identification of the activity from the list in Appendix A; (2) the name of the NDOT SOI qualified professional; and (3) the date the finding was made. Undertakings determined to be excluded from further Section 106 review will be reported annually in accordance with Stipulation IX.B.2 of this Agreement.

D. Identification of Historic Properties

1. NDOT shall determine the scope of identification efforts, including determining and documenting the undertaking's APE, as defined at 36 CFR §800.16(d) and Handbook Chapter 3.
2. NDOT shall identify historic properties that may be affected by an undertaking and shall gather sufficient information to evaluate the eligibility and integrity of these cultural resources for listing in the NRHP. Information may be obtained through cultural resource surveys or other appropriate methods.
3. The identification of historic properties shall follow the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23), and should be consistent with SHPO historic contexts described in Handbook Chapter 4, FHWA guidance, NDOT guidance, Stipulation II.B.5 of this Agreement, and any other guidance, methodologies, agreements, or protocols that FHWA, NDOT, and SHPO agree should be used to identify properties, including those of other signatories and/or other federal agencies with jurisdiction.

E. NRHP Evaluation

1. NDOT shall evaluate the historic significance of cultural resources identified within the APE in accordance with National Register Bulletin 15 as well as the guidance in Handbook Chapters 5 and 6. Where historic property boundaries have not previously been established, NDOT will identify recommended boundaries, following standards set forth in National Register Bulletin 21, *Defining Boundaries for National Register Properties*. FHWA, NDOT and any Federal land manager (for properties under their jurisdiction), and SHPO may jointly determine a class or classes of properties to be not eligible for listing on the NRHP and modify Handbook Chapter 6.
2. If a cultural resources survey is conducted where cultural resources are identified and evaluated on Federal lands, a draft report will be provided to the Federal land manager for review no less than 30 days prior to project implementation. The Federal land manager will have a 30-calendar day period for review and comment. If after 30 calendar days from receipt of the document, NDOT receives no response, NDOT may assume the Federal land manager has no comment on the NRHP eligibility determinations.
3. Agreements regarding the NRHP eligibility of cultural resources evaluated shall be governed by 36 CFR §800.4(c)(2). In the event of a disagreement, NDOT shall first consult with the disagreeing party to resolve the disagreement.

- a. If the disagreement cannot be resolved through informal consultation, NDOT shall notify FHWA, whereupon NDOT, FHWA, SHPO, and any consulting party (including other signatories and/or federal agencies) shall consult to resolve the disagreement in accordance with a time frame specified by FHWA.
- b. If the disagreement is not resolved, or the ACHP requests, FHWA shall refer the issue to the Keeper of the NRHP (Keeper) to obtain a determination of eligibility. The Keeper's determination will be considered final.

F. Finding of Effect

1. No Historic Properties Affected

- a. If NDOT finds that a cultural resources survey is positive, and either there are no historic properties present or there are historic properties present within the APE, and the undertaking will have no effect on them as defined in 36 CFR §800.16(i), NDOT shall make a finding of "no historic properties affected" (36 CFR §800.4(d)(1)). NDOT shall submit its finding of effect and supporting documentation (Handbook Chapters 2 and 4) to SHPO, other signatories with jurisdiction, other federal agencies with jurisdiction, and other consulting parties for a 30-calendar day review period. If NDOT receives no response within 30 calendar days of receipt, NDOT may assume concurrence and proceed.
- b. NDOT shall notify all consulting parties and make the documentation available for public inspection prior to approving the undertaking. As per 36 CFR §800.2(d)(1) the agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties. Any public involvement will be in accordance with Stipulation IV.B of this document.
- c. If NDOT finds that a cultural resources survey is negative, NDOT shall submit a letter to SHPO as notification of these results, including a finding of "no historic properties affected" (36 CFR §800.4(d)(1)). NDOT shall document this internally in project files and proceed without response from SHPO.

2. No Adverse Effect

- a. NDOT shall make a finding of "no adverse effect" if none of the undertaking's anticipated effects meet the Criteria of Adverse Effect under 36 CFR §800.5(a)(1), or if NDOT imposes conditions that will avoid adverse effects to historic properties (Handbook Chapter 7).
- b. If NDOT finds that undertaking effects can be treated by meeting the Secretary of the Interior's Standards on Treatment of Historic Properties, then the undertaking will be treated as "no adverse effect" and documented per Handbook Chapter 4 (Treated No Adverse Effect). Individuals performing this work will be qualified consistent with Stipulation II.B.1.

- c. NDOT shall submit its finding of no adverse effect and supporting documentation to SHPO, other signatories and invited signatories with jurisdiction, other federal agencies with jurisdiction, Tribes as appropriate, and all other consulting parties for review.
- d. If SHPO, a signatory, an invited signatory, a federal agency with jurisdiction, or another consulting party, objects within 30 calendar days of receipt of a NDOT finding of no adverse effect, NDOT will notify FHWA. FHWA will either consult to resolve the objection or request the ACHP to review the finding pursuant to 36 CFR §800. 5(c)(2).
- e. NDOT shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of Stipulation XIII.
- f. NDOT may simultaneously request SHPO review of identification, evaluation, and findings of effect (not including adverse effect) covered by 36 CFR §800.3 through §800.5. Provided other consulting parties and the public are afforded an adequate opportunity to express their views pursuant to 36 CFR §800.2(d) and 36 CFR §800.5(c).
- g. If NDOT receives no response within 30 calendar days from the SHPO or other consulting party, including an affected federal agency, NDOT may assume their concurrence and proceed.

3. Adverse Effect

- a. Where adverse effects, as defined by the Criteria of Adverse Effect set forth in 36 CFR §800.5(a), cannot be avoided, NDOT shall make a finding of "adverse effect".
- b. As part of its process in assessing whether adverse effects exist, FHWA and NDOT shall consult with Tribes that ascribe traditional cultural and religious significance to affected historic properties and may consult either formally or informally with SHPO regarding application of the criteria of adverse effect.
- c. NDOT shall inform consulting parties including other signatories with jurisdiction or federal agencies with jurisdiction of the finding of adverse effect.

G. Resolution of Adverse Effect

- 1. When a finding of adverse effect has been made by NDOT, NDOT shall, in consultation with FHWA, SHPO, other signatories with jurisdiction, other federal agencies with jurisdiction and other consulting parties, evaluate alternatives or modifications to the undertaking that would avoid, minimize, or mitigate adverse effects on historic properties. NDOT shall propose measures to resolve adverse effects, to be documented:
 - a. As a Standard Treatment (Stipulation V.H); or
 - b. In a Memorandum of Agreement (MOA).

2. NDOT shall make the finding available to the public, in accord with Stipulation IV.B. NDOT shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking through NDOT's Public Involvement Process (Stipulation IV).
3. When a Standard Treatment is not used to resolve adverse effects, FHWA will notify the ACHP of the finding, pursuant to 36 CFR §800.6(a) (1) and that NDOT will be preparing a MOA to resolve adverse effects. NDOT will provide supporting documentation in accordance with 36 CFR §800.11(e).
 - a. The ACHP shall advise FHWA and the consulting parties whether it will participate within 15 days of receipt of notice.
 - b. If the ACHP fails to respond within 15 days of receipt of notice, FHWA may assume the ACHP will not participate.
4. After consideration of the views of all consulting parties and the public, if NDOT, FHWA, SHPO, and ACHP (if it has chosen to participate [pursuant to 36 CFR Part 800 Appendix A]) agree on how the adverse effects will be resolved, they shall execute a MOA, pursuant to 36 CFR §800.6(c).
5. FHWA will file a copy of the signed MOA with the ACHP, and shall provide a copy to each signatory, invited signatory and concurring signatory.
6. Once finalized, the measures to resolve adverse effects shall be incorporated into the undertaking, and the undertaking may be implemented.
7. If NDOT determines that an undertaking may have a direct adverse effect on a National Historic Landmark, NDOT will notify FHWA, who shall request SHPO, ACHP, and the National Park Service (NPS), as well as any other consulting parties, to participate in consultation to resolve any adverse effects, pursuant to 36 CFR §800.10.

H. Developing Standard Treatments

1. In consultation with the signatories of this Agreement, NDOT may develop standard treatments for resolving adverse effects to certain types of properties or that are caused by specific classes of undertakings. Once the signatories have agreed, in writing, to a standard treatment, NDOT shall incorporate it into a new chapter of the Handbook and may implement it, as appropriate, to resolve adverse effects (Stipulation V.I). If a standard treatment is the sole measure to resolve adverse effects, no MOA is needed.
2. When a proposed standard treatment would apply to properties of traditional cultural and religious significance to the Tribes, NDOT and FHWA shall consult with any land management agency with jurisdiction and Tribes that ascribe value to such properties in developing the standard treatment.
3. NDOT shall consult with SHPO, FHWA, other signatories with jurisdiction, other federal agencies with jurisdiction, the Tribes, and other consulting parties as appropriate, on standard treatments developed under 1 and 2 above.

I. Applying Standard Treatments

1. NDOT may propose the use of approved standard treatments for individual undertakings when it determines that the adverse effects of specific classes of undertakings are limited and can be avoided or mitigated by applying the standard treatment. NDOT shall document a finding of no adverse effects (Stipulation V.F.2) or adverse effects (Stipulation V.F.3) and provide such documentation to the SHPO, the federal or state land managing agencies with jurisdiction, participating Tribes, and consulting parties for a 30-calendar day review. If SHPO agrees in writing, and no other consulting party objects, NDOT may proceed with the undertaking in accordance with the standard treatment. Application of Standard Treatments in this case will be reported on in the reporting and consultation process of Stipulations V.F.2, V.F.3, and V.G.
2. Any standard treatment may include minor undertaking-specific changes by mutual agreement in writing by NDOT, FHWA, other signatories with jurisdiction, and SHPO, and if no other consulting parties object.
3. If a consulting party objects to use of a standard treatment for a particular undertaking, NDOT and FHWA will conclude consultation in accordance with Stipulation V.G. and/or V.J.

J. Resolving Objections for Adverse Effects

1. If FHWA, SHPO, NDOT, other signatories with jurisdiction, other federal agencies with jurisdiction, or other consulting parties are unable to agree on measures to resolve the adverse effects of an undertaking, then FHWA shall invite the ACHP to participate in the resolution pursuant to 36 CFR §800.6(b)(2).
2. Objections to measures to resolve the adverse effects of an undertaking will follow resolution procedures outlined in Stipulation X of this Agreement.

K. Project Re-evaluation

1. If NDOT project plans change, project scopes change, or a new project element is added to an undertaking during or after completion of Section 106 review, NDOT shall assess the previous findings to determine if they remain valid or if additional consultation with SHPO and other consulting parties is needed.
2. NDOT is not required to conduct additional consultation under the following conditions:
 - a. The APE has not changed beyond the vertical and horizontal limits of previous identification efforts; and
 - b. The scope change does not change the project finding of effect.
3. If NDOT determines that the previous findings are no longer valid or if additional consultation with SHPO and other consulting parties is needed, NDOT will review the project scope or plan changes following Stipulation V of this Agreement.

VI. EMERGENCY SITUATIONS

- A. For the purposes of this Agreement, emergencies are defined as occurrences that require emergency highway system/facility repairs that are necessary to:
 - 1. Protect the life, safety, or health of the public; or
 - 2. Minimize the extent of damage to the highway system/facilities; or
 - 3. Protect remaining highway facilities; or
 - 4. Restore essential traffic.
- B. These repairs can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies.
- C. If NDOT determines that an emergency repair undertaking could affect historic properties, NDOT shall notify SHPO, FHWA, Tribes, other signatories and invited signatories with jurisdiction, and other federal agencies with jurisdiction as appropriate, within 24 hours. SHPO, the signatory, the invited signatory, the federal agency with jurisdiction and any Tribe that may attach religious and cultural significance to historic properties likely to be affected will have 72 hours to respond.
- D. For undertakings where the repair must be made within the first 30 days of the occurrence of the event that caused the emergency or the declaration of the emergency by an appropriate authority, the processing of Section 106 documentation will happen concurrently or after the fact. In these cases, NDOT will comply with the procedures in Stipulation V of this Agreement to the extent possible, but the reviews will likely be conducted after the emergency work is completed.
- E. For undertakings taking longer than 30 days for repair, NDOT shall comply with the procedures in Stipulation V of this Agreement.
- F. NDOT will provide written notification of an emergency action to SHPO (per Stipulation VI.C) in seven days. The notice shall be clearly and prominently marked as an emergency notification and shall include an explanation of how the action meets the requirements for emergency as defined herein. The notice shall also include a brief description of the eligibility and/or significance of the resource(s) involved and the nature, effect, and anticipated effect of the emergency action on the resource(s), and the anticipated time frame available for comment.

VII. POST-REVIEW DISCOVERIES

- A. Planning for Subsequent Discoveries:
 - 1. When NDOT's identification efforts in accordance with Stipulation V of this Agreement indicate that historic properties are likely to be discovered during implementation of an undertaking, NDOT shall include a plan for discovery of such properties in any environmental document. Implementation of the plan as originally proposed or modified as necessary owing to the nature and extent of the properties discovered, will be in accordance with 36 CFR §800.4-6. FHWA, other signatories with jurisdiction, and appropriate federal land management agencies with jurisdiction shall review the draft discovery plan, to be included with draft reports for review. FHWA/NDOT shall determine whether a planned activity may result in intentional excavation of human remains, funerary objects, etc. subject to NAGPRA and follow

Stipulation VIII.A of this Agreement.

B. Discoveries Without Prior Planning:

1. If previously unidentified archaeological or architectural properties, or unanticipated effects, are discovered after NDOT has completed its review under this Agreement, activities within that area of the undertaking will stop immediately, in accordance with Section 107.12 of the NDOT Standard Specifications for Road and Bridge Construction (Handbook Chapter 8).
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.
3. NDOT will consult with FHWA, SHPO, the affected signatories, other federal agencies with jurisdiction and Tribes, as appropriate, to record, document, and evaluate the NRHP eligibility of the property and the undertaking's effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property.
4. If FHWA, SHPO, affected federal agency or a Tribe fails to file an objection within 72 hours of receipt 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. Discoveries of Native American human remains without prior planning will be handled per Stipulation VIII.B or VIII.C of this Agreement.

VIII. TREATMENT OF HUMAN REMAINS

- A. For planned excavation and/or removal activities on federal land, FHWA/NDOT shall apply for a permit under the Archaeological Resource Protection Act of 1979 (ARPA) (16 U.S.C. §470cc) from the appropriate federal land management agency. Consistent with 43 CFR §10.3 et seq., and as part of its application for an ARPA permit, FHWA/NDOT will provide the federal land management agency with information necessary to make a reasonable determination whether the planned activity may result in the excavation of Native American human remains, funerary objects, sacred objects or objects of cultural patrimony (collectively cultural items) from federal lands. Based on the information provided, the federal land management agency may determine that the ARPA permit will include for the excavation and removal of Native American cultural items and under Section 3(c) of the NAGPRA (25 U.S.C. §3002). If requested, the FHWA/NDOT shall assist the Federal land manager in consultation with Tribes and in developing a NAGPRA Plan of Action (POA), as determined by the federal land management agency. The NAGPRA POA shall be developed in consultation with appropriate Tribes for the treatment and disposition of any cultural items that may be anticipated. The federal land management agency must approve the ARPA permit and any required NAGPRA POA prior to authorizing excavation and/or removal of archaeological resources under ARPA, including cultural items subject to NAGPRA.
- B. In the event of an inadvertent discovery of human remains on federal land, FHWA/NDOT shall notify the appropriate federal land managing agency immediately by phone and follow up immediately with written confirmation of discovery, sent by certified mail. FHWA/NDOT shall be responsible for ensuring security and protection

of the inadvertent discovery and shall halt activities within 100 feet of the discovery, which may be adjusted as needed after field review of the discovery following Section 107.12 of the NDOT Standard Specifications for Road and Bridge Construction (Handbook Chapter 8). FHWA/NDOT shall also contact the county sheriff. The FHWA/NDOT and the appropriate federal land management agency may assist the county sheriff or other responsible local official, as requested, to examine the discovery and to determine if the remains are Native American and subject to NAGPRA. If the remains are not of forensic interest, the federal land management agency shall be responsible for determining the disposition and treatment of the human remains. If the federal land management agency determines the remains are subject to NAGPRA, and consistent with 43 CFR §10.4, FHWA/NDOT staff shall, as requested, assist the federal land management agency in taking reasonable steps to protect the remains and to consult with Tribes per 43 CFR §10.4. The federal land management agency may halt activity for up to 30 days. Activity may be resumed after 30 days if otherwise lawful and the federal land manager's responsibilities are met.

- C. Upon discovery of human remains on non-Federal lands, FHWA/NDOT shall halt activities within 100 feet of the discovery, which may be adjusted as needed after field review of the discovery following Section 107.12 of the NDOT Standard Specifications for Road and Bridge Construction (Handbook Chapter 8). FHWA/NDOT shall contact the county sheriff. FHWA/NDOT may assist the county sheriff or other responsible local officials, as requested, to examine the discovery and to determine if the remains are Native American. If the remains are not of forensic interest and are determined to be Native American, they will be treated by NDOT in accordance with NRS (Nevada Revised Statutes) §383.150 to §383.190.

IX. REPORTING AND MONITORING

A. Documentation

1. All documentation that supports findings and determinations made under this Agreement shall be consistent with 36 CFR §800.11, and any applicable guidelines and procedures of applicable signatories and federal land-managing agencies with jurisdiction that may be affected by the undertaking.
2. Documentation prepared by local agencies, or their consultants, in support of such findings shall be submitted to NDOT for review and approval. NDOT shall not transmit to FHWA, SHPO, or other consulting parties any documentation that it has not reviewed and approved.
3. All documentation prepared under this Agreement shall be kept on file at NDOT and made available to consulting parties and the public at their request, consistent with applicable confidentiality requirements per Stipulation XIII of this Agreement.

B. Annual Reporting

1. NDOT shall compile an annual report for submission to FHWA, SHPO, and ACHP. Information in the report shall include, but is not limited to, a summary of actions taken under the Agreement, including all findings and determinations, accomplishments, estimated time and cost savings, public objections, and inadvertent effects or foreclosures. The range and type of information included by NDOT in the report and the manner in which this information is organized and presented must be such that it facilitates the

ability of the reviewing parties to assess accurately the degree to which the Agreement, and its manner of implementation, constitutes an efficient and effective alternative procedure under 36 CFR Part 800, and to determine whether this Agreement should remain in effect, and if so, whether and how it should be improved through appropriate amendment.

2. NDOT shall include in the annual report a list of undertakings completed using Stipulation V of this Agreement.
3. NDOT shall prepare the report of these findings annually following execution of the Agreement. The reporting period shall be the Federal fiscal year. The initial report shall be prepared following completion of the first full Federal fiscal year under this Agreement. NDOT shall submit the annual reports to FHWA, SHPO, and ACHP no later than December 30. NDOT shall notify other affected signatories and/or other federal agencies with jurisdiction of the posting and location of this website notice.
4. NDOT, FHWA, and SHPO will meet annually to evaluate the Agreement, to suggest revisions to its provisions, and to evaluate the quality of the resource identification and protection activities carried out under the Agreement. Prior to any such meetings, the ACHP and consulting parties will be notified and may participate at their discretion.
5. NDOT shall post the annual report on their website so that it is available for public inspection at the time it is submitted to the signatories. The web posting shall include a provision that allows the public to comment on the report. NDOT will consider public comments along with comments from signatories. At the request of any other signatory or invited signatory FHWA shall ensure that a meeting is held to facilitate review of, and comment on, the report to address questions and issues, or to resolve adverse comments. The annual report will not contain confidential information as outlined in Stipulation XIII of this Agreement.

X. DISPUTE RESOLUTION

- A. Should any signatory or invited signatory object to FHWA regarding the manner in which the terms of this Agreement are carried out, FHWA will immediately notify the other signatories of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory or invited signatory to participate in the consultation and will take any comments provided by such parties into account. FHWA shall establish a reasonable time frame for such consultations.
- B. If the objection is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.
- C. If after initiating such consultation, FHWA determines that the objection cannot be resolved through consultation, FHWA, with the cooperation of NDOT, shall forward all documentation relevant to the objection to the ACHP and other signatory and invited signatory parties, including FHWA's proposed response to the objection. Within 30 calendar days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
 1. Advise FHWA that ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly; or

2. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
 3. Notify FHWA that the objection will be referred for comment consistent with the procedures at 36 CFR §800.7(a)(4) and proceed to refer the objection and comment. In this event, FHWA shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR §800.7(c)(4).
- D. Should ACHP not exercise one of the foregoing options within 30 calendar days after receipt of all pertinent documentation, FHWA may assume there is no objection from the ACHP in its proposed response to the objection.
- E. FHWA shall take into account any ACHP recommendation or comment and any comments from the other signatory or invited signatory parties in reaching a final decision regarding the objection.
- F. FHWA shall provide all other signatory or invited signatory parties with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
- G. FHWA may then authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.
- H. FHWA's responsibility to carry out all other actions under this Agreement that are not the subject of the objection shall remain unchanged.

XI. AMENDMENT

- A. Any signatory or invited signatory may at any time propose amendments to this Agreement, whereupon all signatory and invited signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory and invited signatory parties. The amendment will be effective on the date a copy is signed by all of the signatories and invited signatories.
- B. Any changes to the Handbook must be agreed upon in writing by the signatories and invited signatories and, upon approval, published on NDOT's Cultural Resources webpage.

XII. TERMINATION

- A. Any signatory may terminate this Agreement. If any signatory proposes termination of this Agreement the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, provide suggestions for resolution that would end the signatory's desire for termination, and consult with the other parties for no more than 30 calendar days to seek alternatives to termination.
- B. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement.
- C. Should such consultation fail, the signatory proposing termination may terminate this Agreement by promptly notifying the other parties in writing.
- D. Should this Agreement be terminated, FHWA would carry out the requirements of 36

CFR Part 800 for individual undertakings.

- E. As an alternative to terminating this Agreement, invited signatories may withdraw from this Agreement by notifying FHWA, NDOT and ACHP in writing of their intention to withdraw. If a resolution cannot be reached or alternatives agreed upon to prevent an invited signatory's withdrawal from this Agreement within 30 calendar days from the date written notification was received, the invited signatory proposing withdrawal may withdraw from this Agreement by promptly notifying the other parties in writing. Should an invited signatory withdraw from this Agreement, the federal agency would carry out the requirements of 36 CFR Part 800 for individual undertakings.

XIII. CONFIDENTIALITY

- A. All signatories acknowledge that information about historic properties is subject to the provisions of Section 304 of NHPA. Section 304 allows NDOT on behalf of FHWA to withhold from disclosure to the public, information about the location, character, or ownership of a historic property if NDOT determines that disclosure may 1) cause a significant invasion of privacy; 2) risk harm to the historic property; or 3) impede the use of a traditional religious site by practitioners. Having so acknowledged, all signatories will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

XIV. DURATION

- A. This Agreement shall remain in effect for a period of five (5) years after the date of execution of the Agreement, unless it is terminated or amended in accordance with Stipulation XI of this Agreement. Ninety days prior to the conclusion of the five-year period, NDOT will notify all parties in writing of the upcoming anniversary. Before the end of the five-year term, FHWA will consult with NDOT, SHPO, and ACHP to determine interest in renewing this Agreement. The Agreement may be extended for an additional five-year term upon the written agreement of the signatories and invited signatories.

EXECUTION and implementation of this Agreement evidence that FHWA has delegated certain Section 106 responsibilities to NDOT and has afforded ACHP a reasonable opportunity to comment on the Program and its individual undertakings in Nevada; that FHWA and other signatories have taken into account the effects of the Program and its individual undertakings on historic properties, and that FHWA and other signatories have complied with Section 106 of the NHPA and 36 CFR Part 800 for the Program and its individual undertakings.

**PROGRAMMATIC AGREEMENT AMONG
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AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE STATE OF
NEVADA**

SIGNATORY

FEDERAL HIGHWAY ADMINISTRATION

KHOA T NGUYEN

Digitally signed by KHOA T NGUYEN
Date: 2026.08.04 14:00:27 -07'00'

Date 08/04/2026

Khoa Nguyen
Division Administrator, Nevada Division

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
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NEVADA**

SIGNATORY

ADVISORY COUNCIL ON HISTORIC PRESERVATION



Reid Nelson
Executive Director

Date September 30, 2026

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
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IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE STATE OF
NEVADA**

SIGNATORY

NEVADA STATE HISTORIC PRESERVATION OFFICE

Arthur Krupicz

Digitally signed by Arthur Krupicz
Date: 2026.09.21 15:55:43 -07'00'

Date _____

Arthur Krupicz

Nevada State Historic Preservation Officer

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
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NEVADA**

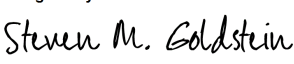
INVITED SIGNATORY

NEVADA DEPARTMENT OF TRANSPORTATION

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832931E930B041F... Date 07/28/2026

Tracy Larkin Thomason
Director

Signed by:

D708925924FA43D... Date 07/28/2026

Steven M. Goldstein
Senior Deputy Attorney General, Nevada Office of the Attorney General, Transportation
Division

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IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE STATE OF
NEVADA**

INVITED SIGNATORY

BUREAU OF LAND MANAGEMENT



Digitally signed by
JUSTIN ABERNATHY
Date: 2026.08.24
15:34:23 -07'00'

Date _____

Justin Abernathy
Acting Nevada State Director
Bureau of Land Management

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
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IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE STATE OF
NEVADA**

INVITED SIGNATORY

U.S. ARMY CORPS OF ENGINEERS

MCTIGHE.ROBERT.MATTH
EW.1014047391

Digitally signed by
MCTIGHE.ROBERT.MATTHEW.1014047391
Date: 2026.07.16 14:13:31 -06'00'

Date _____

Col. Robert M. McTighe
Commander, Sacramento District

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
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IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE STATE OF
NEVADA**

INVITED SIGNATORY

U.S. FOREST SERVICE

JON STANSFIELD

Digitally signed by JON
STANSFIELD
Date: 2026.06.25 14:02:18 -07'00'

June 25, 2026

Date

Jon Stansfield
Forest Supervisor, Humboldt-Toiyabe Forest

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
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IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE STATE OF
NEVADA**

INVITED SIGNATORY

U.S. FOREST SERVICE

AARON GAGNON

Digitally signed by AARON
GAGNON
Date: 2026.07.08 13:13:33 -07'00'

Date _____

Aaron Gagnon
Acting Forest Supervisor, Lake Tahoe Basin Management Unit

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
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IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE STATE OF
NEVADA**

INVITED SIGNATORY

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION

ADAM NICKELS Digitally signed by ADAM
NICKELS
Date: 2026.08.24 10:31:46 -07'00' _____ Date _____
Adam Nickels
Acting Interior Region 10 • California-Great Basin Regional
Director

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
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NEVADA**

INVITED SIGNATORY

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION

SHONNA DOOMAN

Digitally signed by SHONNA DOOMAN
Date: 2026.07.23 08:53:08 -07'00'

Date _____

Shonna L. Dooman

Region 8, Lower Colorado Basin Resource Management Office Chief

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
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NEVADA**

INVITED SIGNATORY

U.S. FISH AND WILDLIFE SERVICE

Paul Souza
Regional Director, Region 8 Pacific Southwest

Date _____

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IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE STATE OF
NEVADA**

CONCURRING PARTY

FORT MOJAVE INDIAN TRIBE

Timothy Williams
Chairman

Date _____

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
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NEVADA**

CONCURRING PARTY

TIMBISHA SHOSHONE TRIBE

Margaret Cortez
Chairperson

Date _____

Appendix A Excluded Undertakings

Project types and activities listed in Appendix A are undertakings excluded from further review (Stipulation V.C.), as the potential effects of the undertakings are likely to be minimal in accordance with 36 CFR §800.14(b)(2). Projects will be reviewed by an NDOT SOI qualified professional to determine whether the project meets the conditions detailed in Appendix A and to verify no circumstances exist that would merit further Section 106 review.

The following general conditions must be met for an undertaking to be excluded from further review:

1. The undertaking is limited to the existing right-of-way and/or existing material source site;
2. The undertaking is limited to areas that have been previously disturbed; or the undertaking is limited to areas that have been previously inventoried to current standards (Federal Register Vol. 48, No. 190) for historic properties with negative results;
3. The undertaking is limited to in-kind replacement of roadway features, such as signs, lighting, and signals;
4. The undertaking must not be located within or adjacent to a historic property as defined in 36 CFR §800.16(l); and
5. The undertaking may be carried out on roads that are historic properties and/or roads within historic districts that are not contributing elements and that will have no effect to the district's character defining features, provided that an NDOT SOI qualified professional determines the undertaking will have no effect to the historic property's character defining features.

The review process, to be conducted by an NDOT SOI qualified professional, must include one or more of the following:

1. Literature and records review using NVCRIS, NDOT CRS records, and any other relevant agency records and archives, to determine potential for involvement of historic properties.
2. Field check and/or review of the project area.
3. Review of project plans, including plan sets and special provisions.
4. Review of modern and historical aerial photography, historical maps, historical highway maps and as-built records.
5. Review of right-of-way, assessment parcel, or ownership data.
6. Contact of Tribes, land managing agencies, local historical societies, or other potential consulting parties who may have information or concerns.

If an undertaking is listed below and is identified by an NDOT SOI qualified professional to meet the conditions of an excluded undertaking, then no further Section 106 review will be required. An NDOT SOI qualified professional will internally document the finding with the project file.

The following project types and activities are determined to be excluded from further review:

ROADS

1. All work within interchanges and within medians of divided highways.
2. Roadway surface replacement, rehabilitation, resurfacing, reconstruction, milling, overlays, pavement repair, seal coating, crack-sealing, pothole repair, installation of rumble strips, dowel bar retrofits, profile grinding, joint sawing and sealing, pavement grinding, and pavement marking within areas previously disturbed by construction. (Condition: Does not apply to brick streets).

3. Construction of turning and auxiliary lanes (e.g., truck climbing, acceleration and deceleration lanes), existing interchange ramp expansion, chain control areas, and maintenance pullouts in areas previously disturbed by vertical and horizontal construction activities.
4. Erosion control to prevent erosion of roadways.
5. Routine roadside maintenance activities necessary to preserve existing infrastructure and maintain roadway safety, including but not limited to: cleaning ditches, mowing, replacing signs on existing poles, replacing non-historic guardrails, noxious weed removal, water control and water delivery systems including canals and ditches where no new ground disturbance is required.
6. Sub-base improvement limited to the depth of the existing sub-base.
7. Construction staging areas or other locations proposed for temporary use during construction within the demonstrated vertical and horizontal limits of previous construction or disturbance.
8. Geotechnical borings (8 inches in diameter or less), data collection, and non-invasive environmental sampling required to support the planning or design of an undertaking.

SHOULDERS AND SLOPES

9. Roadway shoulder treatments within the disturbed roadway prism.
10. Shoulder widening within the current right-of-way limits.
11. Borrowing of rock and rock removal and stabilization activities (e.g., rock scaling, bolting) within existing rights of way.
12. Slide corrections, slope corrections and slope flattening by placement of fill material on the side slopes to meet safety criteria, and other slope flattening done within the demonstrated vertical and horizontal limits of previous construction or disturbance.
13. Construction activities in areas of continuous slides, other mass wasting, or unstable landforms.

BRIDGES

14. Projects on bridges that include the following activities and meet the following conditions:
 - a. Bridge project activities:
 - 1) Bridge deck resurfacing, overlay, pavement repair, seal coating, pavement grinding, and pavement marking (define actions) provided the work is limited to the roadway cross section only and does not impact structural members of the bridge. Work under this category can only take place where the existing surface is already concrete or asphalt pavement.
 - 2) Scour protection projects for bridges that are not historic properties; and there are either no cultural resources, no historic properties, or historic properties can be avoided.
 - 3) Riprap and other erosion control methods on bridge piers in previously disturbed soils.
 - b. Conditions:
 - 1) The project takes place in previously disturbed soils; and
 - 2) Age of structure:

- (a) The bridge is less than 45 years old; or
- (b) The bridge is over 45 years old, and the bridge was determined, in consultation with the SHPO, to be ineligible in an historic bridge inventory less than twenty years old.; or
- (c) The bridge is over 45 years old and is part of the Interstate system, but was not determined a historic property under the Section 106 Exemption Regarding Effects to the Interstate Highway System adopted by the ACHP on March 10, 2005; or
- (d) The bridge has been evaluated as a historic property and the actions are limited to activities listed in (a) (1) above; or
- (e) The bridge has been determined exempt as part of the Bridge Program Comment.

WATERWAYS

- 15. Storm damage repairs, including but not limited to culvert cleaning or repair, shoulder reconstruction, or slide/debris removal.
- 16. Replacement, repair, lining, cleaning, or extension of culverts and other drainage structures (i.e., dikes, headwalls, ditches, drainage berms, etc.).
- 17. Re-establishment/reconstruction of existing drainages with no new ground disturbance.
- 18. Placement of riprap or other erosion control method to prevent erosion or waterways within the demonstrated vertical and horizontal limits of previous construction or disturbance.

ROAD FEATURES

- 19. Guardrail, cable barrier and bridge rail installation, repair, and replacement.
- 20. Traffic signals, intersection lighting, pedestrian signals, underpass lighting, railroad lighting, safety appurtenances and traffic control devices including but not limited to glare screens, snow and ice detectors, energy attenuators, cameras, automated traffic maintenance systems, raised pavement markers, thermoplastic tape, raised bars, or ramp metering sensors within existing right-of-way.
- 21. Installation, repair, replacement, and maintenance of lighting, signals, and other traffic control devices.
- 22. Installation, repair, replacement, and maintenance of Intelligent Transportation System elements, such as poles, cameras, weather stations, and traffic counters.
- 23. Installation, maintenance, and repair/replacement of signs, kiosks, markers, fences, retaining walls, noise barriers, landscaping guardrails, barriers, glare screens, and crash attenuators.
- 24. Installation, repair, or replacement of fencing including highway fencing, wildlife fencing, tortoise fencing, etc. within previous construction limits.

UTILITIES

- 25. Trenching or other excavation to install, replace, or repair electrical, water, sewer lines, fiber optics, telephone cable, or other utilities in areas demonstrated to have been previously disturbed by construction, fill, or prior trenching activities, when the depth and width of excavation is delineated.

CURBS AND SIDEWALKS

26. Construction or modification of sidewalks and curb ramps to satisfy the Americans with Disabilities Act unless on or adjacent to historic property constructed prior to 1945. Compliance under the Americans with Disabilities Act (ADA) includes but is not limited to the following: ramps, railing, re-surfacing, parking, signage, trail access and restrooms. Note: Construction of curbs and sidewalks after 1945 was largely standardized, including width, approaches, and materials. (Condition: Does not apply to historic-age brick sidewalks).
27. Modification of existing features, such as curbs, sidewalks, and driveways. (Condition: Does not apply to historic-age brick sidewalks).

MATERIAL PITS

28. Work within existing NDOT permitted material source pits, quarries or other borrow sources, or borrow pits that have been previously inventoried and where no historic properties were identified.
29. Installation of material source fencing in active material source applications, including wildlife and tortoise fencing, in previously inventoried applications.

RAILROADS

30. Resurfacing of railroad crossings including: abandonment, removal, reconstruction, or alteration of railroad grade crossings or separations or grade crossing protection within previously disturbed soils, unless the crossing is composed of historic materials.
31. In kind replacement of existing bolt connected railroad tracks, ballast and wood ties.

TRAILS

32. Construction, rehabilitation, maintenance, widening, and improvement of existing bicycle and pedestrian lanes, walkways, amenities, social trails and paths.
33. Maintenance of existing trails, bicycle lanes and pedestrian walkways such as: debris removal, brush clearing, surface re-grading, drainage structures, and course design features including:
 - a. trail way surface replacement; rehabilitation, resurfacing, or reconstruction; overlays; laying down of crushed stone or gravel and pavement marking.
 - b. shoulder treatments; pavement repair; seal coating; pavement grinding.
 - c. installation of new signals and other traffic control devices, landscaping, bike racks, fences, signage and/or kiosks, benches, trash cans, pit or vault toilets, and other amenities, excluding lighting.
 - d. trail heads and trail accesses that do not involve rehabilitation or alteration of historic properties and occur within areas previously disturbed by vertical and horizontal construction activities.
 - e. parking lots that occur within areas previously disturbed by vertical and horizontal construction activities when such activities when such do not take place adjacent to or within a historic property.

- f. replacement in kind of minor structures and facilities (comfort stations, pit toilets, fences kiosks, signs, displays) with little or no change in location, capacity, or appearance if they are not in or adjacent to historic properties.
- 34. Minor trail relocation or development of less than one mile on compatible trail networks using existing roads or other established routes.

BUILDINGS AND STRUCTURES

- 35. Construction or modification of bus transfer structures and bus turnouts.
- 36. Modernization of transit facilities within existing property boundaries including roadway resurfacing, installation of bus shelters, pullouts, park and ride facilities, bike racks, benches, etc.
- 37. Preliminary engineering tests, such as seismic, geologic, or hazardous materials testing that involve buildings or structures or require trenching or ground boring within previously disturbed soils unless the structure is a historic property.
- 38. Maintenance and minor improvements to existing Park and Rides, except lighting, where no excavation will take place outside of previously disturbed soils.
- 39. Improvements, additions, alterations, routine repair and maintenance to existing buildings and facilities, such as work on or in offices or equipment buildings, maintenance stations, warehouses, roadside rests, rest areas, minor transit facilities, weigh and inspection stations, toll facilities, truck weigh stations, equipment, or state-owned rentals.
- 40. Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety.

OTHERS

- 41. Acquisition of scenic easements.
- 42. Approvals for disposal of excess right-of-way or for joint or limited use of the right-of-way provided no cultural resources over 50 years old are located within the property.
- 43. Acquisition of land for hardship or protective purposes; advance land acquisition loans under section 3(b) for the UMT Act. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels, as long as those parcels do not contain cultural resources over 50 years old.
- 44. Construction or repair of fish screens or ladders, springs, waterholes, or stream channels (e.g., clearing of debris from streams, ditches, or culverts).
- 45. Hazardous waste removal and disposal constituting an immediate public hazard, and which require immediate removal.
- 46. Removal of vegetation and noxious weeds and other vegetation control, including activities such as mowing, brush trimming, and herbicidal spraying.
- 47. Subsurface boring, to include sending and receiving pits, where the bore extends well below the local strata for intact cultural resources and the sending and receiving pits are located on surfaces previously inventoried and negative for cultural resources. (Condition: Staging areas must be identified).