PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE MICHIGAN STATE HISTORIC PRESERVATION OFFICER, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND THE MICHIGAN DEPARTMENT OF TRANSPORTATION REGARDING THE FEDERAL AID HIGHWAY PROGRAM IN MICHIGAN

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

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

WHEREAS, MDOT administers Federal-aid projects throughout the State as authorized by Title 23 U.S.C 302;

WHEREAS, the responsibilities of the Michigan State Historic Preservation Officer (the SHPO Officer) under Section 106 of the NHPA ("Section 106") 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 the time frames detailed in 36 C.F.R. § 800 unless otherwise specified in this Programmatic Agreement (Agreement);

WHEREAS, the State Historic Preservation Office (the SHPO) was transferred to the Michigan Strategic Fund (MSF) pursuant to Executive Order 2019-13;

WHEREAS, the SHPO Officer is part of the SHPO;

WHEREAS, FHWA has consulted with Federally recognized Indian Tribes (individually, each a Tribe or Tribal Nation and collectively, Tribes or Tribal Nations) with ancestral lands in the State about this Agreement, have requested their comments, and has taken any comments received into account. These Tribes are listed in Appendix A;

WHEREAS, any project involving tribal lands as defined in 36 C.F.R. § 800.16(x), or any project that may affect a property identified by a Tribe as possessing traditional religious and cultural significance, shall not be governed by this Agreement, but shall be reviewed by FHWA in accordance with 36 C.F.R. § 800;

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

WHEREAS, FHWA has notified the public, Federal and State agencies, and Certified Local Governments about this Agreement, has requested their comments, and has taken any comments received into account;

WHEREAS, MDOT has participated in the consultation and has been invited to be a signatory to this Agreement;

WHEREAS, MDOT will utilize this Agreement to meet the Section 106 requirements for Program-funded Local Public Agency (LPA) transportation projects;

WHEREAS, this Agreement shall supersede the previous programmatic agreement among FHWA, the SHPO, and MDOT: Amended Programmatic Agreement Among the Federal Highway Administration, Michigan State Historic Preservation Officer, Advisory Council on Historic Preservation, and the Michigan Department of Transportation For the Administration of Federal-Aid Trunk Line Highway Projects in the State of Michigan executed July 25, 2011;

WHEREAS, MDOT has a staff of Cultural Resources Specialists and employs cultural resources consultants, all of whom meet the professional qualifications defined in the Secretary of the Interior's Professional Qualifications Standards at 36 C.F.R . § 61 and 48 FR 44716 in the fields of archaeology, architectural history, or historical architecture, to carry out MDOT's historic preservation programs and responsibilities and are capable of completing many of the steps of the Section 106 review process on behalf of FHWA;

WHEREAS, the definitions contained in 36 C.F.R. § 800.16 shall be used in this Agreement;

NOW, THEREFORE, FHWA, the SHPO, ACHP, and MDOT agree that the Program in the State 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 the State and that these stipulations shall govern compliance of the Program with Section 106 until this Agreement expires or is terminated, whichever occurs first.

STIPULATIONS

FHWA, with the assistance of MDOT, shall ensure that the following measures are carried out:

I. APPLICABILITY AND SCOPE

A. The Agreement sets forth the process by which FHWA, with the assistance of MDOT, will meet its responsibilities pursuant to Section 106 and Section 110 of the NHPA (54 U.S.C. § 306102 and 54 U.S.C. § 306108).

B. The objective of this Agreement is to make more efficient the methods by which FHWA and MDOT review individual undertakings processed under Section 106 that may affect historic properties and to establish the process by which FHWA (who retains ultimate Section 106 responsibility, except where such responsibility has been delegated to MDOT) carries out its Section 106 responsibilities.

C. Through this Agreement, FHWA authorizes MDOT to initiate and, in many cases, conclude consultation with the SHPO and other consulting parties for purposes of compliance with Section 106.

D. FHWA retains the responsibility to consult with Tribes as required under 36 C.F.R. § 800, as amended. MDOT may assist FHWA if individual Tribes agree to alternate procedures regarding day-to-day coordination pertaining to individual undertakings in accordance with FHWA Michigan Division/MDOT Guidelines for Section 106 Tribal Consultation and Coordination (the Tribal Guidelines) in Attachment A.

E. This Agreement shall not apply to undertakings that occur on or affect tribal lands as they are defined in 36 C.F.R. § 800.16(x). For such undertakings, FHWA shall follow the procedures in 36 C.F.R. § 800.

F. Cooperating Federal Agencies who recognize FHWA as the lead Federal agency for an undertaking may fulfill their obligations under Section 106, pursuant to 36 C.F.R. § 800.2(a)(2), provided that FHWA and MDOT follow the requirements of the Agreement and the cooperating Federal Agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and MDOT.

II. RESPONSIBILITIES

The following section identifies the responsibilities of FHWA, MDOT, the SHPO, and ACHP in complying with the terms of this Agreement.

A. FHWA Responsibilities

1. Consistent with the requirements of 36 C.F.R. § 800.2(a), FHWA remains legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement by MDOT. At any point in the Section 106 process, FHWA may inquire as to the status of any undertaking carried out by MDOT and may participate directly in any undertaking at its discretion.

2. FHWA retains the responsibility for government-to-government consultation with Tribes as defined in 36 C.F.R. §800.16(m). FHWA may ask MDOT to assist in coordination pertaining to specific projects if the individual Tribes agree to the procedures outlined in the Tribal Guidelines.

3. FHWA shall be responsible for resolving disputes and objections pursuant to Stipulation XII of this Agreement.

B. MDOT Responsibilities

1. MDOT, using staff and/or consultants meeting the Secretary of the Interior's professional qualifications standards (48 Fed. Reg. 44716), will independently perform

the work and consultation described in 36 C.F.R. § 800.3 – § 800.5 (including any succeeding revisions to the regulations) on behalf of FHWA. Assignment of these responsibilities is based on adequate and appropriate performance by MDOT as evaluated in monitoring by FHWA pursuant to Stipulation IX.A of this Agreement. These responsibilities include carrying out the following requirements:

a. 36 C.F.R. § 800.3(a). Determine whether the undertaking is a type of activity that has the potential to cause effects on historic properties.
b. 36 C.F.R. § 800.3(c) and (d). Determine whether the undertaking may occur on or has the potential to affect historic properties on tribal lands.
c. 36 C.F.R. § 800.3(e). Solicit public comment and involvement.
d. 36 C.F.R. § 800.3(f). Identify additional consulting parties who should be invited to participate in the undertakings covered by the Agreement.
e. 36 C.F.R. § 800.4(a) and (b). Determine and document, in consultation with the SHPO, the scope of identification efforts and level of effort, including the undertaking's area of potential effects (APE) as defined in 36 C.F.R. § 800.16(d).
f. 36 C.F.R. § 800.4. In consultation with the SHPO and any Tribes that might attach religious and cultural significance to properties within the area of potential effects, identify properties within the APE included in or eligible for listing in the National Register of Historic Places (NRHP).
g. 36 C.F.R. § 800.5(a)(1). Determine whether historic properties may be affected by an undertaking by applying the criteria of adverse effect in consultation with the SHPO/Tribal Historic Preservation Officer (THPO) and any Tribe that attaches religious and cultural significance to identified historic properties.
h. 36 C.F.R. § 800.6. In consultation with FHWA, the SHPO, the ACHP (if it has chosen to participate), and any other consulting parties, including Tribes, MDOT will address any adverse effects through the development, circulation, and execution of a memorandum of agreement (MOA) or programmatic agreement, as appropriate.
i. Provide FHWA copies of all correspondence sent out on its behalf (e.g., letters to the SHPO or Tribes).

2. MDOT shall continue to share information with the SHPO as they develop or generate data and processes related to the identification, evaluation, management, and treatment of the State's cultural resources, including technological innovations and Geographic Information Systems data (GIS).

C. SHPO Responsibilities

1. The SHPO Officer, pursuant to Section 106 and 36 C.F.R. § 800, will advise, assist, review, and consult with Federal agencies as they carry out their historic preservation responsibilities and respond to Federal agencies' requests within the time frames detailed in 36 C.F.R. § 800 unless otherwise specified in this Agreement.

2. The SHPO Officer and SHPO shall continue to share information with MDOT as they develop or generate data and processes related to the identification, evaluation,

management, and treatment of the State's cultural resources, including technological innovations and GIS.

D. ACHP Responsibilities

1. ACHP will be notified of findings of adverse effect by the applicable Lead Federal Agency and will be invited to participate in resolving the adverse effect of an undertaking in accordance to 36 C.F.R. § 800.6(a)(1).

2. ACHP will participate, in accordance with Stipulation XII, in the resolution of disputes that may occur through the implementation of this Agreement.

III. PROJECT REVIEW

A. Projects with no potential to cause effects on historic properties, pursuant to 36 CFR § 800.3(a)(1), are defined as those actions that by their nature, will not result in effects to historic properties. FHWA defines these actions as non-construction related activities. For example, purchasing equipment, planning, and design all fall under this portion of the regulation and do not require any further obligations under Section 106. All construction-related actions with a federal nexus must comply with 36 CFR § 800.4 – § 800.6. Questions about applicability of 36 CFR § 800.3(a)(1) should be referred to the FHWA Federal Preservation Officer.

B. Excepted Projects: Undertakings that, by their nature and definition, constitute activities that pose little/minimal potential to affect historic properties. Any project identified during the Early Coordination process by a Tribe as a project of concern will require tribal coordination and is no longer considered excepted.

1. Trunkline Project reviews. Trunkline refers to those routes designated with an I, US, or M, or otherwise funded with FHWA and MDOT funds and administered by MDOT. MDOT Trunkline Environmental Staff will review all projects by scope of work and coordinate with MDOT Cultural Resources Specialists to identify work types and actions that have little/minimal potential to affect historic properties. MDOT Trunkline Environmental Staff will document all projects with work types and actions that have little/minimal potential to affect historic properties. Projects with work types and actions that have little/minimal potential to affect historic properties will not be sent to Cultural Resources Specialists for review. MDOT will maintain that documentation in its project files.

2. LPA Project reviews:
   a. Transportation undertakings that comprise any of the excepted projects listed in Appendix B and, in the best judgement of the LPA Staff, the LPA consultant Engineer, the MDOT Project Engineer, the MDOT consultant Engineer, the MDOT LPA Environmental Staff, the MDOT LPA Cultural Resources Specialists, or the LPA qualified cultural resources staff, meet all the conditions

outlined in Appendix B shall undergo no further Section 106 review.

b. Excepted Projects:
   - Will be reviewed in their entirety
   - Will be limited to the activity(ies) and conditions specified in Appendix B
   - Will not be part of a larger undertaking
   - Will be on an existing transportation facility
   - Will not be segmented by activity or subject to differential review procedures

c. Undertakings certified as an Excepted Project are exempt from further review and will be documented by any one of the following: the LPA Staff, the LPA consultant Engineer, the MDOT Project Engineer, the MDOT consultant Engineer, the MDOT Environmental Staff, the MDOT LPA Cultural Resources Specialists, or the LPA qualified cultural resources staff. MDOT will maintain that documentation in its project files.

d. MDOT may add additional activities to, or remove activities from, Appendix B pursuant to the amendment process provided in Stipulation XIII of this Agreement.

C. Review of Transportation Undertakings: For those transportation undertakings that are not an Excepted Project, the review process shall be completed by MDOT Cultural Resources Specialists and/or by qualified cultural resources consultants under the supervision of MDOT Cultural Resources Specialists

1. No Historic Properties Affected. If, after completion of the requirements of 36 C.F.R. § 800.3 through § 800.4(c), MDOT determines that either there are no historic properties within the APE, or historic properties are present within the APE, but will not be affected by the undertaking, then MDOT shall document a finding of no historic properties affected, provide such documentation to consulting parties, if any, and make the documentation available for public inspection. Unless a signatory party has raised a dispute pursuant to Stipulation XII, MDOT may consider the Section 106 review process concluded.

2. If there are potential historic properties identified within the APE:
   a. MDOT will apply the NRHP Evaluation Criteria in coordination with the SHPO and any other consulting parties, as appropriate, to assess the need for any additional investigation and determine National Register eligibility in accordance with 36 C.F.R. § 800.4. If there are no historic properties affected, MDOT shall document a finding of no historic properties affected, provide such documentation to consulting parties, if any, and make the documentation available for public inspection. Unless a signatory party has raised a dispute pursuant to Stipulation XII, MDOT may consider Section 106 review process concluded.
   b. For projects that have the potential for impacting Traditional Cultural Properties (TCPs) and sites of religious significance to a Tribe or identified properties within the APE that may be of interest to the Tribes, MDOT will initiate coordination with the appropriate Tribes. If coordination reveals that no such properties or sites will be impacted, MDOT shall document a finding

of no historic properties affected, provide such documentation to consulting parties, if any, and make the documentation available for public inspection. Unless a signatory party has raised a dispute pursuant to Stipulation XII, MDOT may consider Section 106 review process concluded.

3. For those undertakings where historic properties may be affected, MDOT shall apply the Criteria of adverse effect in accordance with 36 C.F.R. § 800.5. If MDOT determines that the effect of the undertaking will not be adverse, MDOT will propose a finding of no adverse effect and will provide documentation of its finding to the SHPO and any other consulting parties, as appropriate. If, within fifteen (15) days of receipt of this documentation from MDOT, the SHPO or any another consulting party does not object or comment on the documentation, MDOT may assume concurrence and proceed with the project. In situations when properties of tribal significance are involved, MDOT will provide documentation of its finding to the THPO and/or Tribes. If the THPO and/or Tribes do not object within thirty (30) days of receiving this documentation MDOT may proceed with the project.

4. MDOT will request the written concurrence of the SHPO on findings of no historic properties affected and no adverse effect when necessary and for all projects for which an Environmental Assessment and Environmental Impact Statement is prepared.

5. For all undertakings in which adverse effects to historic properties cannot be avoided, MDOT will notify FHWA. FHWA will notify ACHP of the finding of adverse effect and consult with the SHPO, Tribes, and other consulting parties in order to resolve adverse effects and conclude the Section 106 process in accordance with 36 C.F.R. § 800.6.

6. For undertakings requiring preparation of a MOA, after all the steps in 36 C.F.R. § 800.5 and § 800.6 have been followed, MDOT will prepare a draft MOA or subsequent drafts for circulation to FHWA, the SHPO, Tribes (when properties of Tribal significance are involved), and any other consulting parties. FHWA, the SHPO, Tribes and any other consulting parties will have forty-five (45) calendar days from the receipt of the draft MOA to respond to the draft. Upon conclusion of the 45-day period, MDOT will consider all comments and proposed changes it has received and circulate a final version of the MOA for signature.

IV. CONSULTATION WITH TRIBES

Consultation is the timely, mutual, meaningful, and interactive process of collaboration between the Tribes, FHWA, MDOT, and the SHPO regarding historic properties of Tribal significance that may be affected by an undertaking.

A. FHWA shall take the lead in identifying and establishing consultation with Tribes consistent with the requirements of 36 C.F.R. §800.2(c)(2) and 36 C.F.R. § 800.3(c)-(f). MDOT may provide project-specific information to coordinate with Tribes but FHWA

shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with Tribes. FHWA may not delegate this responsibility to MDOT. However, as allowed in 36 C.F.R. § 800.2(c)(4), FHWA authorizes MDOT to carry out both day-to-day and project specific coordination with the Tribes and Tribal Historic Preservation Officers (THPOs), if agreeable to all parties. MDOT cannot delegate its responsibilities to another entity. If, at any time, a Tribe determines that it would like to consult directly with FHWA, it may do so. It may contact FHWA directly or state its wishes to MDOT who will then notify FHWA. This Agreement does not apply to undertakings on tribal lands or to undertakings that may affect historic properties on tribal lands within the exterior reservation boundaries and dependent Indian communities.

B. In accordance with 36 C.F.R. § 800.3(f)(2), any Tribes that might attach religious and cultural significance to historic properties in the APE shall be identified by MDOT pursuant to the Tribal Guidelines and invited by FHWA to be consulting parties.

C. Pursuant to the Tribal Guidelines, coordination with the Tribes will be initiated early in the project planning process and/or early in the design process to identify culturally significant historic properties, confidentiality, or other concerns and to allow adequate time for coordination. MDOT will establish procedures for the Early Coordination process with a target date of completion within three years of the signing of this Agreement and will provide Tribes with an opportunity to review and comment on such procedures prior to finalizing them.

D. Pursuant to the Tribal Guidelines, MDOT shall ensure that coordination continues with Tribes throughout the Section 106 review process as prescribed by this Agreement whenever Tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.

V. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. Additional Consulting Parties

1. In consultation with SHPO, MDOT will identify and invite individuals and organizations with a demonstrated interest in an undertaking to be consulting parties. Any land-managing agency whose land may be affected by an undertaking shall be invited by MDOT to participate in the Section 106 process. Written requests by individuals, organizations, and agencies to become consulting parties will be evaluated on a case-by-case basis by MDOT and FHWA in consultation with the SHPO.

B. Public Involvement

1. Consistent with current state and federal laws and regulations and MDOT policy, FHWA and MDOT shall, through the opportunities afforded by MDOT project

development process, seek and consider the views of the public, including municipalities and other interest groups. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by FHWA's and MDOT's environmental compliance procedures. MDOT's Public Involvement Plan provides guidance for identifying, informing, and involving the public. Public outreach will be conducted in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, and the relationship of the federal involvement to the undertaking.

2. MDOT shall make FHWA and SHPO aware of any and all public controversy as it relates to the historic properties potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to the Tribes.

VI. POST-REVIEW DISCOVERIES

A. Planning for Subsequent Discoveries. When MDOT's identification efforts indicate that historic properties are likely to be discovered during implementation of an undertaking, MDOT shall include in any environmental document, contract, and specifications a plan for discovery of such properties. 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 C.F.R. § 800.4, § 800.5, § 800.6.

B. Late Discoveries:

1. If previously unidentified archaeological or historic properties, or unanticipated effects are discovered during construction that portion of the project will stop immediately. For the inadvertent finds processes for human remains and archaeological sites, see Attachments B and C.

2. No further construction in the area of discovery will proceed until the requirements of 36 C.F.R. § 800.13 have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property. Tribes that are invited signatories or concurring parties to this Agreement are presumed to be tribes that may attach traditional cultural and religious significance to the discovered property for purposes of late discoveries.

3. MDOT will consult with the SHPO and Tribes, as appropriate, to record, document, and evaluate 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.

4. If neither the SHPO nor any Tribe files an objection within 72 hours of the receipt of MDOT's plan for addressing the discovery, MDOT may carry out the requirements of 36 C.F.R. § 800.13 on behalf of FHWA and is not required to notify the ACHP.

VII. IDENTIFICATION AND TREATMENT OF HUMAN REMAINS

A. In the event that human remains are identified prior to, during, or after project construction, MDOT will develop a treatment plan in consultation with FHWA and the SHPO. If it is determined that the human remains are Native American, MDOT and FHWA will consult with the Tribes prior to the development or execution of a project-specific treatment plan or follow the Inadvertent Finds of Human Remains process in Attachment B. Further, if there are questions about whether the human remains are Native American, FHWA and MDOT must consult with the Tribes and the SHPO and obtain their input on that determination.

B. All work conducted on human remains and abandoned cemeteries will comply with MCL 750.160, MCL 333.2853, MCL 324.76102, and Michigan Administrative Code R. 325.8051-2 1982 AACS regarding burials. In addition, the treatment of Native American Ancestors and Funerary Objects will be consistent with and follow the Protocol for Respectful Treatment of Native American Ancestors and Associated Funerary Objects in Attachment B.

VIII. EMERGENCY SITUATIONS

For the purposes of this Agreement, emergencies are defined consistent with 36 C.F.R. § 800.12 as occurrences that require emergency highway system and facility repairs that are necessary to (1) protect the life, safety, or health of the public; (2) minimize the extent of damage to the highway system and facilities; (3) protect remaining highway facilities; or (4) restore essential traffic. The following stipulations apply to emergency situations:

A. Repairs to address emergency situations as defined above can occur regardless of funding category or declarations made by federal, state, or local agencies. MDOT may take immediate remedial action without waiting for comment if such action is necessary to prevent further escalation of the emergency by the circumstances causing it.

B. If the emergency repair project could affect historic properties, MDOT's Cultural Resources Specialists shall notify the SHPO, FHWA, and Tribes within 48 hours, when feasible. If possible, the SHPO and any Tribe that may attach religious and cultural significance to historic properties likely to be affected shall be given at least seventy-two (72) hours to respond.

C. For projects 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 environmental documentation will happen concurrently or after the fact. In these cases, MDOT will comply with the procedures in Stipulation VIII to the extent possible, but the reviews will likely be conducted after the emergency work is completed.

D. For projects taking longer than 30 days for repair, MDOT will comply with the procedures in Stipulation III, and in the event any human remains are exposed,

Stipulation VII.

E. Any written notification of an emergency provided to the SHPO or the Tribes shall be clearly and prominently identified 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, the nature, effect, and anticipated effect of the emergency action on the resource(s), and the anticipated time frame available for comment.

IX. MONITORING AND REPORTING

A. FHWA, the SHPO, and ACHP may review activities carried out pursuant to this Agreement. When necessary, FHWA will establish an annual review meeting with all signatories to evaluate this Agreement. MDOT will cooperate with FHWA, the SHPO and the ACHP in carrying out any requested monitoring and review responsibilities. MDOT may conduct periodic reviews of Appendix B to determine if there are any additions, subtractions, or changes. When necessary and warranted, any proposed amendment to Appendix B will be made pursuant to the process provided in Stipulation XIII of this Agreement.

B. MDOT shall prepare a written report annually on a fiscal year basis. The report will provide a description of the number and types of projects that were reviewed during the calendar year and full documentation of a randomly drawn sample of LPA projects that utilized Appendix B. The report will also describe accomplishments/successes achieved over the course of the year as well as suggestions for improvements. MDOT shall submit the annual reports to FHWA, the SHPO, ACHP, and all other invited signatories and concurring parties no later than October 31 of each year until either the Agreement expires pursuant to Stipulation XV or is terminated pursuant to Stipulation XIV, whichever occurs first.

X. PROFESSIONAL QUALIFICATIONS STANDARDS

A. Actions prescribed by this Agreement that involve the identification, evaluation, recording, treatment, monitoring, or disposition of historic properties, 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 (published in 48 Fed. Reg. 44738-44739). However, nothing in this stipulation may be interpreted to preclude FHWA or MDOT 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 supervision of a person who does meet the standards.

B. Tribal monitoring, on or off tribal lands, will be conducted by individuals qualified and approved by the Tribal Nation, and are not required to meet the standards defined in

Stipulation X(A). FHWA and MDOT will defer to the Tribal Nation to determine how individuals from the Tribal Nation will be designated as a monitor.

XI. CONFIDENTIALITY

All parties to this Agreement acknowledge that information about historic properties, potential historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of Section 304 of the NHPA and Michigan Compiled Laws § 15.243(1)(o). These statutes allow MDOT to withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if MDOT determines that disclosure may: (1) cause a significant invasion of privacy; (2) risk harm to the historic resource; or (3) impede the use of a traditional religious site by practitioners. Having so acknowledged, all parties to this Agreement will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the above noted requirements.

XII. DISPUTE RESOLUTION

A. Should any signatory party object in writing to FHWA regarding the manner in which the terms of this Agreement are carried out, FHWA will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory party 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. Should any signatory party object to a MDOT or FHWA determination of eligibility, FHWA will submit the determination to the Keeper of the National Register of Historic Places for resolution.

C. If the objection is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.

D. If after initiating such consultation, FHWA determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to the ACHP and all other signatory parties, including FHWA's proposed response to the objection. Within thirty (30) 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 pursuant to 36 C.F.R. § 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 C.F.R. § 800.7(c)(4).

E. Should ACHP not exercise one of the foregoing options within thirty (30) days after receipt of all pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the objection.

F. FHWA shall take into account any ACHP recommendation or comment and any comments from the other signatory parties in reaching a final decision regarding the objection. FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

G. FHWA shall provide all other signatory parties with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.

H. FHWA may 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.

I. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party, that signatory party shall immediately notify FHWA and the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to FHWA. FHWA shall establish a reasonable time frame for this comment period. FHWA shall consider the objection and take all comments into account in reaching its decision. Within fifteen (15) days following closure of the comment period, FHWA will render a decision regarding the objection and respond to the objecting party. FHWA will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. FHWA's decision regarding resolution of the objection will be final. Following the issuance of its final decision, FHWA may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

XIII. AMENDMENT

A. Any signatory party may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment. This Agreement, including all Appendices, may be amended only upon written concurrence of all signatory parties.

B. Each Attachment to this Agreement may be individually amended through consultation of the signatory parties without requiring amendment of the Agreement, unless the signatory parties through such consultation decide otherwise.

C. Each Attachment may be amended by MDOT, on its own behalf or on behalf of another signatory. MDOT shall notify the signatories of its intent to amend the Attachment(s) and shall provide a draft of the updated Attachment(s) to all signatory parties for review. If no other signatory party objects in writing within thirty (30) days of receipt of the proposed amended Attachment(s), MDOT shall date and sign the amended Attachment(s) and provide copies to the other signatory parties; such amendment shall go into effect on the date MDOT transmits the amended copies to the signatory parties.

XIV. TERMINATION

A. If any signatory party proposes termination of this Agreement, that signatory party shall notify the other signatories in writing, explain the reasons for proposing the termination, and consult with the other signatories for no more than 30 days to seek alternatives to termination.

B. Should such consultation result in an agreement amongst the signatory party proposing termination and the signatories on an alternative to termination, the Agreement shall be amended pursuant to Stipulation XIII to incorporate the agreed upon terms.

C. Should such consultation fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the signatories in writing. The effective date of such termination is when all signatories have been notified in writing of the termination of this Agreement.

D. Should this Agreement be terminated, FHWA shall carry out the requirements of 36 C.F.R. § 800 for individual undertakings.

E. Beginning with the effective date of the termination, FHWA shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 C.F.R. §§ 800.4-800.6.

XV. DURATION OF AGREEMENT

This Agreement shall remain in effect for a period of five (5) years after the date it takes effect unless it is terminated pursuant to Stipulation XIV prior to that time. MDOT shall provide written notification to the signatory parties regarding extension of this Agreement at least six (6) months prior to the conclusion of the five-year period. If there are no objections from the signatory parties, the term of the Agreement will be extended for an additional five (5) years by amendment. If any signatory party objects to extending the Agreement, or proposes amendments to the Agreement, MDOT will consult with the signatory parties to consider amendments or other actions to avoid termination.

Execution and implementation of this Agreement is evidence that FHWA has delegated certain Section 106 responsibilities to MDOT and has afforded ACHP a reasonable opportunity to comment on the Program and its individual undertakings in the State; that FHWA has taken into account the effects of the Program and its individual undertakings on historic properties; and that FHWA has complied with Section 106 and 36 C.F.R.§ 800 for the Program and its individual undertakings.

Signatory

Federal Highway Administration

By: _____ Date:_____
Theodore G. Burch, Division Administrator

Signatory

Michigan State Historic Preservation Officer

By: _____ Date:_____
Mark Rodman, State Historic Preservation Officer

Signatory

Michigan Strategic Fund

By: _____ Date:_____
Valerie Hoag, Fund Manager

Signatory

Advisory Council on Historic Preservation

By: _____ Date:_____
[pending confirmation Sara Bronin], Chairman

Invited Signatory

Michigan Department of Transportation

By: _____ Date:_____
Paul Ajegba, Director

TRIBAL SIGNATURE PAGES:

FHWA invited all Tribes listed in Appendix A to participate in the consultation to develop this Agreement and to enter into this Agreement as an invited Signatory or Concurring Party. FHWA will incorporate additional executed signature pages by Tribal Invited Signatories or Concurring Parties into this Agreement in the order they are received by FHWA.

Invited Signatory

Miami Tribe of Oklahoma

By: _____ Date:_____
(Name and title)

Concurring Party

Bad River Band of the Lake Superior Tribe of Chippewa Indians

By: _____ Date:_____
(Name and title)

Concurring Party

Bay Mills Indian Community

By: _____ Date:_____
(Name and title)

Concurring Party

Chippewa Cree Indians of the Rocky Boy's Reservation of Montana

By: _____ Date:_____
(Name and title)

Concurring Party

Grand Traverse Band of Ottawa and Chippewa Indians

By: _____ Date:_____
(Name and title)

Concurring Party

Lac Vieux Desert Band of Lake Superior Chippewa Indians

By: _____ Date:_____
(Name and title)

Concurring Party

Little Shell Chippewa Tribe of Montana

By: _____ Date:_____
(Name and title)

Concurring Party

Little River Band of Ottawa Indians

By: _____ Date:_____
(Name and title)

Concurring Party

Little Traverse Bay Bands of Odawa Indians

By: _____ Date:_____
(Name and title)

Concurring Party

Match-e-be-nash-she-wish Band of Pottawatomi Indians

By: _____ Date:_____
(Name and title)

Concurring Party

Mille Lacs Band of the Minnesota Chippewa Tribe

By: _____ Date:_____
(Name and title)

Concurring Party

Nottawaseppi Huron Band of the Potawatomi

By: _____ Date:_____
(Name and title)

Concurring Party

Pokagon Band of Potawatomi Indians

By: _____ Date:_____
(Name and title)

Concurring Party

Saginaw Chippewa Indian Tribe of Michigan

By: _____ Date:_____
(Name and title)

Concurring Party

Sault Ste. Marie Tribe of Chippewa Indians of Michigan

By: _____ Date:_____
(Name and title)

Concurring Party

Seneca Nation of Indians

By: _____ Date:_____
(Name and title)

APPENDIX A

Tribes Consulted with on this Programmatic Agreement

There are 12 Federally recognized Michigan state tribes, and 38 Federally recognized out-of-state tribes that were consulted with on this Agreement.

Michigan State Tribes

Bay Mills Indian Community
Grand Traverse Band of Ottawa and Chippewa Indians
Hannahville Indian Community
Keweenaw Bay Indian Community
Lac Vieux Desert Band of Lake Superior Chippewa Indians
Little River Band of Ottawa Indians
Little Traverse Bay Bands of Odawa Indians
Match-e-be-nash-she-wish Band of Pottawatomi Indians
Nottawaseppi Huron Band of the Potawatomi
Pokagon Band of Potawatomi Indians
Saginaw Chippewa Indian Tribe of Michigan
Sault Ste. Marie Tribe of Chippewa Indians of Michigan

Out-of-State Tribes

Absentee Shawnee Tribe of Indians of Oklahoma
Bad River Band of the Lake Superior Tribe of Chippewa Indians
Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe
Chippewa Cree Indians of the Rocky Boy's Reservation of Montana
Citizen Potawatomi Nation
Delaware Nation
Delaware Tribe of Indians
Eastern Shawnee Tribe of Oklahoma
Fond du Lac Band of Lake Superior Chippewa Indians
Forest County Potawatomi Community
Grand Portage Band of Lake Superior Chippewa Indians
Kickapoo Traditional Tribe of Texas
Kickapoo Tribe of Indians of Kansas
Kickapoo Tribe of Oklahoma
Lac Courte Oreilles Band of Lake Superior Chippewa Indians
Lac du Flambeau Band of Lake Superior Chippewa Indians
Leech Lake Band of the Minnesota Chippewa Tribe
Little Shell Chippewa Tribe of Montana

Menominee Indian Tribe of Wisconsin
Miami Tribe of Oklahoma
Mille Lacs Band of the Minnesota Chippewa Tribe
Ottawa Tribe of Oklahoma
Peoria Tribe of Indians of Oklahoma
Prairie Band Potawatomi Nation
Red Cliff Band of Lake Superior Chippewa Indians
Red Lake Band of Chippewa Indians
Sac and Fox Nation
Sac and Fox Nation of Missouri in Kansas and Nebraska
Sac and Fox Tribe of the Mississippi in Iowa
Saint Croix Chippewa Indians of Wisconsin
Seneca Nation of Indians
Seneca-Cayuga Tribe of Oklahoma
Shawnee Tribe
Sokaogon Chippewa Community
Tonawanda Band of Seneca Indians of New York
Turtle Mountain Band of Chippewa Indians
White Earth Band of the Minnesota Chippewa Tribe
Wyandotte Nation

APPENDIX B

Excepted Projects

Appendix B consists of projects that by their nature and definition constitute activities that pose little/minimal potential to affect historic properties.

Any project identified during the Early Coordination process by a Tribe as a project of concern will require coordination with the Tribe and is no longer considered excepted.

The following project types are excepted as long as there is no other work included in the project:

- Rehabilitating, crushing/shaping, resurfacing, milling, and profiling pavement, pavement joint repair, ditch or culvert cleanout, culvert liners, pavement marking, signing with driven posts, all within the road footprint (see Images F and G for rural and urban road footprints).

All of the following conditions must apply to the project types below for a project to be excepted:

- There are no objects (like statues or monuments), buildings, historic districts, or structures (like bridges, stone curbs, or brick streets), cemeteries, or intentional/designed landscapes (a landscape is a collection of organized features that can range from something as small as a bird bath to large fields or orchards) that are 50 years old or older within 100 feet of the proposed work and the area is neither archaeologically sensitive nor contains TCPs. MDOT Cultural Resources Specialists will determine archaeological sensitivity and potential for impacts to TCPs.
- Construction will take place within the vertical and horizontal limits of previous construction (previously disturbed soils as documented via as-built plans or other construction documentation) or within 2 feet of existing features such as foundations, curbs/gutters, or culverts.
- Work will take place within the existing right-of-way, permanent easement or with temporary grading permits (a grading permit is permission from a property owner to perform work on their property during construction) for private driveways and side roads.

Project types and actions:

- New curb and gutter installation
- Replacement, upgrade, installation of guardrail

- Bridge Preventive Maintenance Work on all bridges (including historic bridges):
    - Hot mix asphalt (HMA) overlay with waterproofing membrane
    - Epoxy deck overlay (Concrete)
    - Shallow or deep deck overlay (removing and replacing concrete surface above or below the top mat of steel reinforcement)
    - Slope paving repair (erosion prevention under bridge)
    - Drainage system repair (bridge deck drains and bridge approach downspouts)
    - Concrete crack sealing
    - Concrete deck patching and repair
    - Approach pavement relief joint installation
    - Temporary supports
    - Expansion or construction joint repair
    - Scarifying and hydro-demolition for decks only
    - Water repellant treatment on deck surfaces
- Bridge Preventive Maintenance for bridges less than 50 years old:
    - Painting only (full, zone, or spot painting)
    - Pin and hanger replacement
    - Joint replacement and repair
    - Substructure patching

Other Work Types:

- Railroad (RR) crossing upgrades, provided no runarounds are used to reroute vehicular or RR traffic, all work is within the road footprint, all work is within the RR right-of-way and any signals are replaced in kind.
- Replacement, repair, or extension of culverts and other drainage structures that do not exhibit wood, stone or brick structures or parts therein. A culvert is a closed conduit under a roadway or embankment used to maintain flow from a natural channel or drainage ditch. The FHWA definition of a culvert requires that it have a span of 20 feet or less beneath the roadway, otherwise it is considered a bridge.
- Replacement or modifications of Americans with Disabilities Act compliant ramps, sidewalk transitions or bus loading pads.
- Culvert and bridge scour and erosion countermeasures within 25 feet of top of bank and 100 feet upstream and downstream, see Image A.
- Modification of existing signs, signals, markings, illumination, other warning devices and their supports, or poles.
- Temporary grading permits for work outside the right of way to match existing driveway or private road extensions, see Image B and C.
- Embankment material which includes processed granular materials placed in the right of way or in a permanent easement with no excavation, see Image D and Image A.

Image A

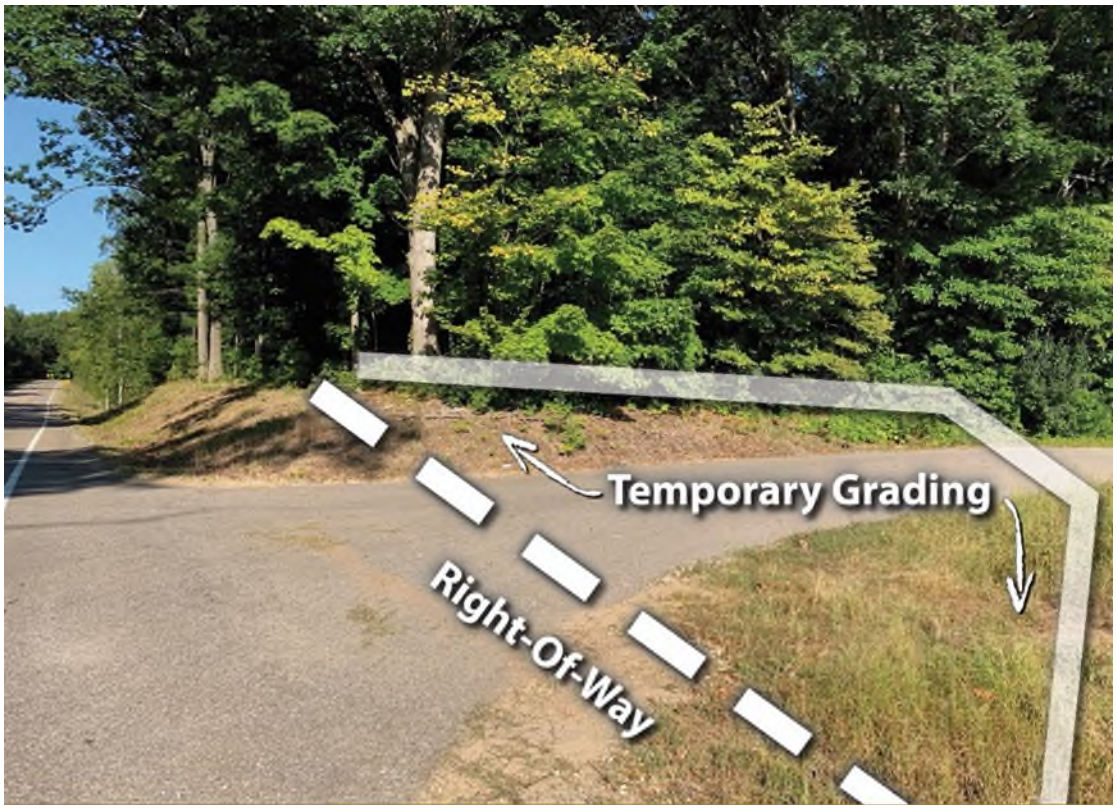


Image B

Image C

Slope stabilizing
embankment in ROW and
permanent easement
Permanent easement
Right-of-way

Image D

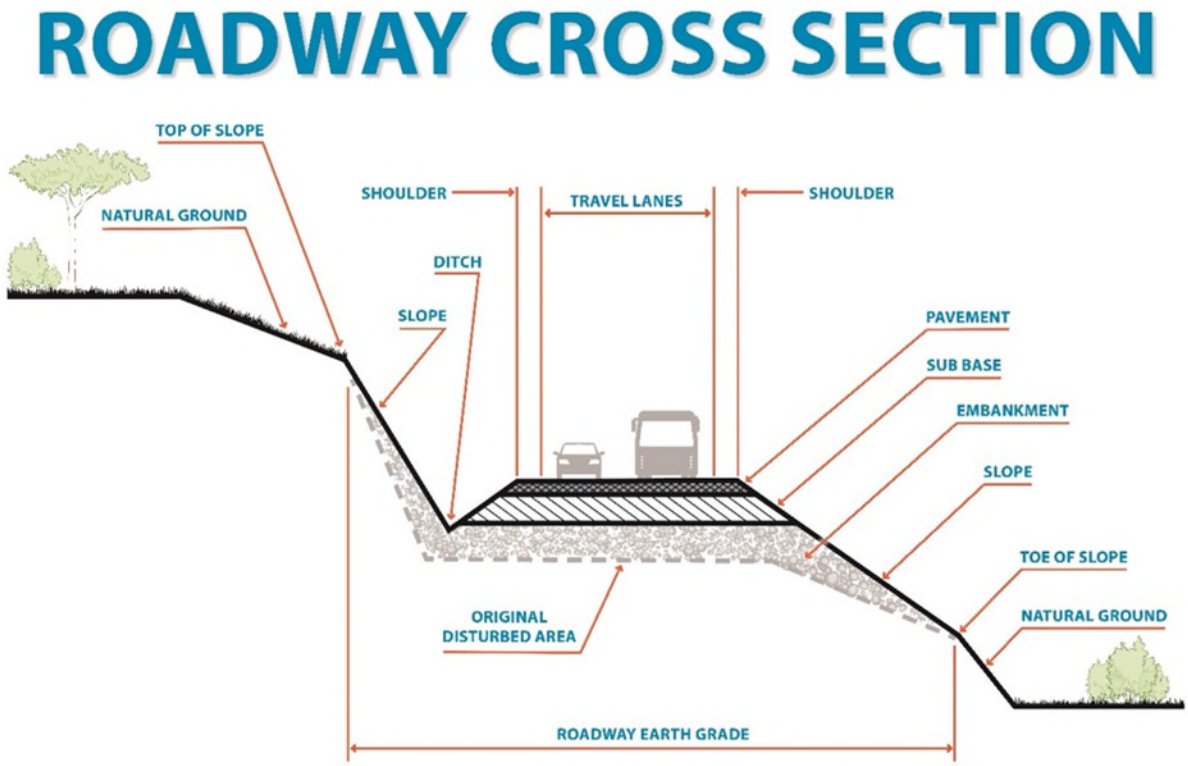


Image E

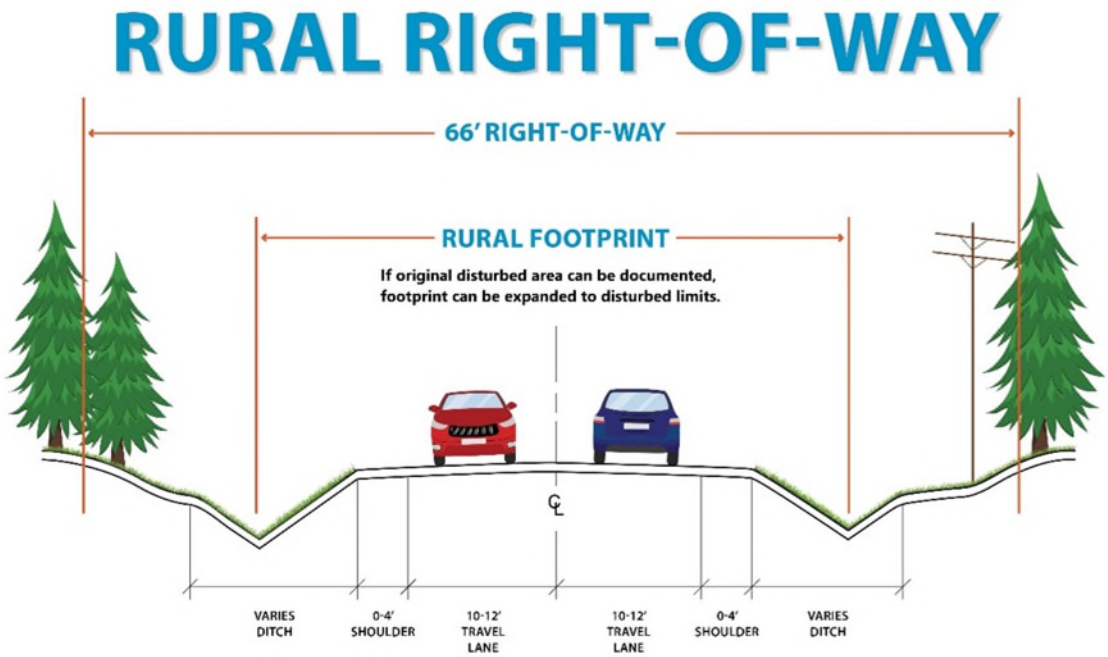


Image F

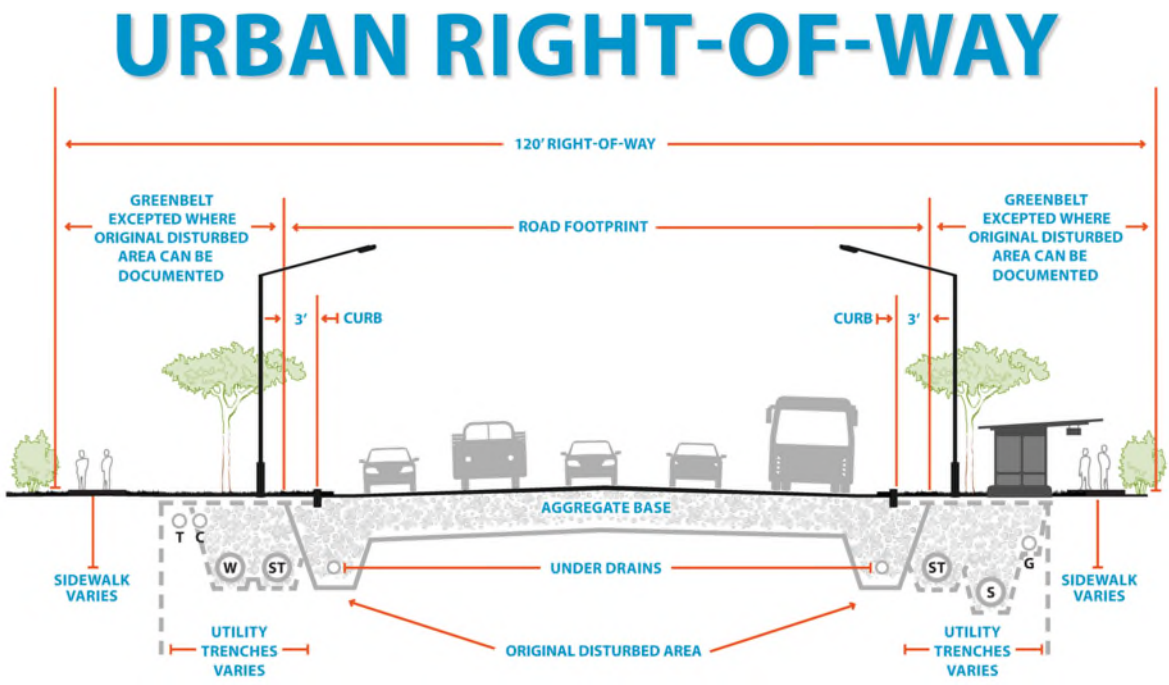

URBAN RIGHT-OF-WAY
120' RIGHT-OF-WAY
GREENBELT EXCEPTED WHERE ORIGINAL DISTURBED AREA CAN BE DOCUMENTED
ROAD FOOTPRINT
GREENBELT EXCEPTED WHERE ORIGINAL DISTURBED AREA CAN BE DOCUMENTED
3'
CURB
CURB
3'
AGGREGATE BASE
T
C
W
ST
UNDER DRAINS
ST
G
S
SIDEWALK VARIES
SIDEWALK VARIES
UTILITY TRENCHES VARIES
ORIGINAL DISTURBED AREA
UTILITY TRENCHES VARIES

Image G

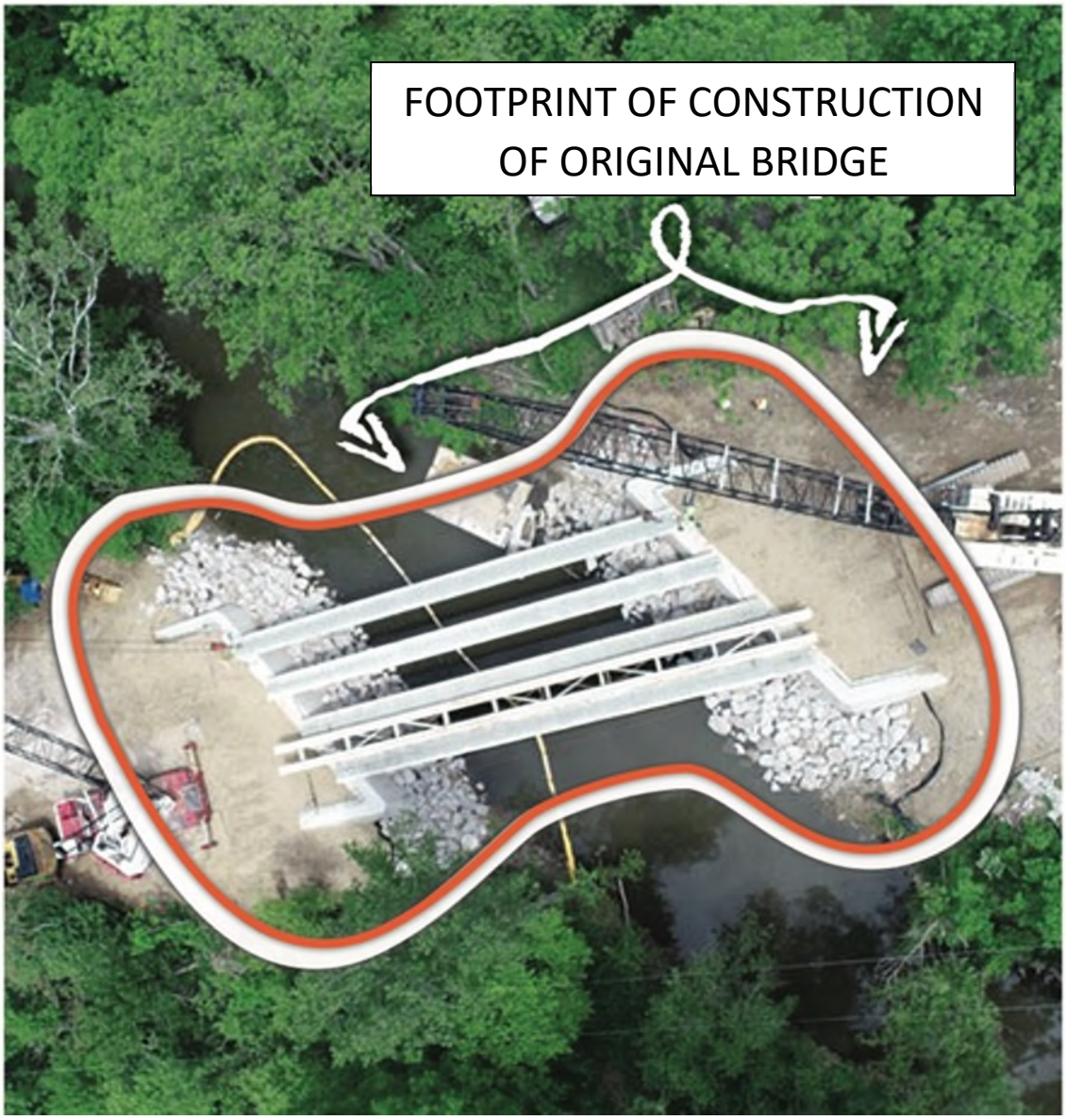


Image H

ATTACHMENT A

FHWA Michigan Division/MDOT Guidelines for Section 106 Tribal Consultation and Coordination

The Federal Highway Administration (FHWA) retains the responsibility for carrying out the government-to-government consultation with Federally recognized Indian Tribes. In so doing, FHWA is responsible for the overall consultation, including but not limited to conflict resolution and adherence to all federal requirements and related laws. The Michigan Department of Transportation (MDOT) will assist FHWA by providing information and project-specific coordination in alignment with the Stipulations found in the 2022 Programmatic Agreement (the 2022 PA). MDOT cannot delegate its coordination responsibilities to another entity. Consultation and coordination are defined as:

Consultation

Section 106 government to government consultation is between Federally recognized Tribal Nations (individually, each a Tribe or Tribal Nation and collectively, Tribes or Tribal Nations) and FHWA. Actions comprising government to government Section 106 consultation include but are not limited to: (1) ensuring that the regulations at 36 C.F.R. § 800 are implemented and carried out with due diligence with respect to all FHWA undertakings; (2) notifying and consulting with Tribal Nations regarding changes or modifications to FHWA policies and procedures in relation to 36 C.F.R. § 800; (3) developing Section 106 Programmatic Agreements in consultation with a Tribal Nation(s); (4) resolving the adverse effect of an undertaking affecting a Tribally-significant historic property in consultation with and in cooperation with the Advisory Council on Historic Preservation (ACHP); and (5) resolving Tribal Nations' disputes and objections to any aspect of Section 106 compliance covered by the regulations at 36 C.F.R. § 800 in consultation with the ACHP.

Coordination

FHWA authorizes MDOT to carry out the day-to-day and project-specific coordination with Tribal Nations' Tribal Historic Preservation Officer (THPO) and Section 106 compliance staff if agreeable to all parties. This includes Early Coordination regarding individual projects itemized in planning documents such as MDOT's Five-Year Plan and/or State Transportation Improvement Plan. It also includes coordination regarding project review to comply with the regulations at 36 C.F.R. § 800 in the planning stages or early design stages of specific projects that are FHWA undertakings. MDOT will also coordinate with Tribal Nations' staff regarding Emergencies, Post-Review Discoveries, and discovery of Ancestors on FHWA Undertakings. Coordination actions include Initiation, Notification, Input, Follow-up, and Action and Mitigation measures for specific projects, and are defined below in this guidance document.

OUTLINE:

I. General Procedures

A. Initiation
B. Notification
C. Input
D. Follow-up
E. Actions and Mitigation Measures

II. Early Coordination

III. Categories of Section 106 Tribal Coordination

IV. Project-specific Coordination

A. Projects Identified during Early Coordination
B. Projects Identified through Sensitivity and Risk Analysis

I. GENERAL PROCEDURES

Section 106 coordination will follow the steps below for consistent communication:

Step 1: Initiation to identify the need for coordination. Initiation can begin in one of two ways.

- Tribal Nation Initiated
- FHWA/MDOT Initiated

Step 2: Notification of intent to coordinate and convey materials to facilitate coordination discussions.

Step 3: Receive and consider input from Tribes or MDOT to ensure that coordination is a meaningful and interactive process.

Step 4: Follow-up with additional documentation and discussion, as warranted.

Step 5: Carry out any agreed upon actions and mitigation measures to comply with Section 106 regulations.

<u>Communication</u>

Tribal Nations will provide FHWA/MDOT with THPO contact information, or if a Tribe has no THPO, the individual's contact information who will participate in and represent the Tribe in Section 106 consultation and coordination. FHWA/MDOT will be apprised of any Tribal Nation personnel changes as soon as possible (within 30 days if feasible) of the appointment of the new THPO/Section 106 representative.

Coordination will utilize US Mail, E-mail, In-person Meeting(s), and Virtual Meeting(s) as warranted and appropriate for the circumstances. Time frames will vary with the types of coordination, below.

MDOT will provide a yearly summary to consulting Tribes of all projects for which Tribal coordination was undertaken and specify the location, the type of project, the results of coordination and any investigations, and the actions/mitigation measures undertaken. The yearly summary will also include any revisions to the 2022 PA Attachments. A virtual meeting to review and discuss the year-end results and consider process improvements will take place at a mutually agreeable time after receipt of the yearly summary.

Financial Considerations and Training

FHWA/MDOT will negotiate reimbursement for Tribal Nations' consultation and/or coordination under a mutually acceptable fee schedule. Reasonable reimbursement for Tribal Nation participation in monitoring, archaeological fieldwork, on-site meetings, and additional related activities will be discussed as part of the FHWA consultation/MDOT coordination process. Should ancestors and/or funerary objects be discovered, FHWA/MDOT will negotiate reimbursement for repatriation costs incurred by Tribal Nations.

FHWA/MDOT will work with Tribal Nations to develop materials, information, and presentations suitable for cultural sensitivity training for FHWA/MDOT staff. Cultural sensitivity training for project personnel will also be undertaken to address Tribal Nations' concerns that may occur on specific projects.

A. IDENTIFICATION

Coordination by MDOT and Tribal Nations will seek to identify locations with the potential for impacts to Native American archaeological sites and historic properties, and Native American cultural sites and burial sites, TCPs, and traditional cultural landscapes and their culturally significant resources.

FHWA/MDOT and Tribal Nations will work together and seek to avoid impacting sites, properties, and landscapes with culturally significant resources important to Tribal Nations to the extent possible and practicable.

B. NOTIFICATION

Initial Notification and the provision of coordination information by MDOT shall be by letter and attachments, delivered by e-mail. The letter and attachments will include but not be limited to: (1) a description of the project location and an aerial and/or topographic map depicting the project location; (2) description of known sites and properties, and landscapes with culturally significant resources of interest to Tribal Nations and their locations depicted

on the attached map(s); (3) description of the sensitivity and risk analysis results; and (4) actions (avoidance, survey, monitoring, etc.) proposed by MDOT or by Tribal Nations.

All participants in Tribal coordination will have 30 business days to comment upon receipt of notification and coordination materials. If project schedules allow, or if a Tribe requests additional time, longer commenting time frames of 45 or 60 days may be implemented. For projects where survey or monitoring are recommended, additional coordination through follow-up will take place.

C. INPUT

Receive and take into consideration Tribal comments on possible project impacts and if measures to avoid impacts without survey or further investigation provided by MDOT are acceptable. Evaluate any information provided by Tribes to determine whether follow-up is necessary or if coordination is complete.

D. FOLLOW-UP

Follow-up coordination will include but not be limited to (1) discussion of alternative solutions to avoid impacts; (2) discussion of Tribal participation through monitoring, if requested; (3) discussion of monitor reports by Tribes upon completion of construction; (4) description and discussion of the results of survey or monitoring and maps of new or re-located sites, properties, and landscapes with culturally significant resources of interest to Tribal Nations; (5) evaluation of resources in coordination with the Tribal Nation THPO and Section 106 representatives and the State Historic Preservation Office (the SHPO); and (6) next steps if any resources are listed or eligible for listing on the National Register of Historic Places (NRHP).

E. ACTIONS AND MITIGATION MEASURES

If avoidance of and/or protection from impacts to the identified sites, properties, and/or landscapes are not possible based on the information provided by survey or monitoring, MDOT will continue to coordinate with Tribal Nation THPO and Section 106 representatives and the SHPO. This coordination will continue throughout any additional testing and research to evaluate the NRHP significance of sites, properties, and landscapes with their culturally significant resources.

If avoidance and/or protection from impacts is not possible for any site, property, or landscape eligible for listing or listed on the NRHP, MDOT will continue to coordinate with Tribal Nation THPO and Section 106 representatives and the SHPO, the FHWA Federal Historic Preservation Officer and the ACHP to establish an adverse effect determination and resolve adverse effects through coordination and consultation.

Should the outcome of that consultation be data recovery excavations, MDOT will initiate and invite Tribal Nations to participate in an intensive coordination process to collaboratively develop a Tribal Involvement Plan. The Tribal Involvement Plan will define roles, relationships, and actions during the field work, analysis, report, and public outreach activities for the project, including a plan for the treatment of human remains if they are encountered during the excavations.

If sites, properties, and cultural landscapes with culturally significant resources important to Tribal Nations are inadvertently encountered during construction, MDOT will implement the Inadvertent Finds protocols as outlined in the 2022 PA.

II. EARLY SECTION 106 TRIBAL COORDINATION

Early Section 106 Tribal coordination will use the Statewide Transportation Improvement Program (the STIP), which provides locations and work types for all Federal Aid projects. Each year, the STIP has an open comment period in the spring. The Tribes will be invited to review and comment on proposed projects listed in the STIP during the open comment period. The STIP is the tool for Tribes to identify and notify MDOT early in the planning process about projects that are of interest to them, especially those projects for which Tribes have sensitive and/or confidential information about Native American archaeological sites and historic properties. These sites could include Native American cultural sites and burial sites, TCPs, and/or traditional cultural landscapes with culturally significant resources (e.g. Trail Marker Trees).

MDOT is creating an on-line, map-based portal for the STIP that will have a specific function for Tribal Nations to access in order to provide comments and/or request coordination. The portal will show all proposed projects with a project description on a map. Commenters can use the map to locate projects of interest and provide comments. Tribal comments will be sent to the appropriate MDOT staff person for response, if requested. MDOT has the portal available for comment on the MDOT 5-Year Plan and plans to have the STIP on-line by Spring of 2022. The MDOT Tribal Affairs Program Procedures and Guidelines will be updated with the new Early Coordination process and procedures, and outreach to the Tribes will take place.

During Early Coordination, Tribes can decide which Michigan counties they have an interest in coordinating on and notify MDOT. Otherwise, MDOT will assume Tribes wish to participate in all Section 106 Tribal Coordination statewide, during Project Specific Tribal Coordination discussed below, in Section IV.

Early Coordination opportunities will also be provided to non-federally recognized Tribes at their request. FHWA/MDOT will take into consideration non-federally recognized Tribes'

comments and concerns under Stipulation V (Participation of Other Consulting Parties and the Public) in the 2022 PA.

III. CATEGORIES OF SECTION 106 TRIBAL COORDINATION

MDOT groups projects into categories based on the National Environmental Policy Act (NEPA). Categories include Categorical Exclusions (CEs) that are typically minor projects with few, if any, environmental impacts, Environmental Assessments (EAs) that are projects for which the severity and types of environmental impacts cannot be determined without further detailed studies, and Environmental Impact Statements (EISs) that are projects with known significant environmental impacts that require full and detailed study.

- **Major Projects (EISs and EAs)** All major projects require Section 106 Tribal Coordination among MDOT and Consulting Tribal Nations. The intensity and duration of coordination will be specific to each project and follow the project specific guidelines discussed in detail below.
- **Minor Projects (CEs)** In the 2022 PA, FHWA/MDOT subdivides Minor Projects into two tiers with discrete courses of action and coordination. These are as follows:

  Excepted Projects: Excepted projects are undertakings that, by their nature and definition, constitute activities that pose little/minimal potential to affect historic properties. As detailed in Stipulation III(A) of the 2022 PA, projects will not be subject to Section 106 Tribal Coordination unless specific excepted projects are identified by Tribes during Early Coordination.

  Minor Projects Subject to Full Study (not excepted): All other minor projects are subject to full study by Qualified Professionals (as defined below) to determine if a project has the potential to impact sites, properties, and landscapes with any culturally significant resources of interest to Tribal Nations and require Tribal Coordination.

IV. PROJECT SPECIFIC TRIBAL COORDINATION

MDOT will begin the identification of the need for coordination through a sensitivity and risk analysis of each project area for all Major Projects and all Minor Projects, not including Excepted Minor projects, unless an Excepted Project has been initiated for coordination by a Tribal Nation(s).

Sensitivity and risk analysis of projects will be undertaken by MDOT Cultural Resources Specialists and/or qualified cultural resources consultants under the supervision of MDOT

Cultural Resources Specialists for projects receiving federal funds. MDOT Cultural Resources Specialists and qualified cultural resources consultants meet Stipulation X of the 2022 PA. The sensitivity and risk analysis shall take into consideration: (1) all information provided by Tribal Nations from Early Coordination; (2) the environmental characteristics, cartographic data, historical documents, and archaeological site file data of the Area of Potential Effects for the project, and (3) the limits of previous construction using As Built Plans and typical Cross-Sections specific to each project area and vicinity, if available. The goal of the sensitivity and risk analysis is to identify possible project impacts to sites, properties, and landscapes with culturally significant resources of interest to Tribal Nations. Tribal Nations may, at any time, request from MDOT documentation of the sensitivity and risk analysis for any proposed construction project.

Projects that require project specific Tribal coordination are identified in two ways, either by the Tribe during Early Coordination, or by Qualified Professionals during the NEPA process.

A. Projects Identified during Early Coordination

Projects identified by Tribal Nations during Early Coordination will be subject to sensitivity and risk analysis. Coordination will follow the step-wise process outlined in Section I above. In addition, coordination will include discussion of the sensitivity and risk analysis by MDOT and the corresponding concerns of the Tribal Nations with an expressed interest in the project's location.

B. Projects Identified through Sensitivity and Risk Analysis

Projects identified through Sensitivity and Risk Analysis as requiring coordination will follow the step-wise process outlined in Section I above. The first category of projects with the highest sensitivity and risk are those that possibly could impact Native American burial grounds and ancestors and funerary objects as a result of construction. For this category of projects, communication and mitigation measures can vary according to the specific project's impacts. Depending on the type and extent of ground disturbance and risk analysis, mitigation measures may include but not be limited to: (1) undertaking avoidance measures through design changes and/or protecting the sensitive area(s) with fencing or other suitable barriers; (2) issuing the instructions for inadvertent finds in the 2020 Construction Manual Subsection 107.09 "Archaeological and Historical Findings"; (3) issuing the instructions in the 2020 Construction Manual Subsection 107.09 and conducting a presentation at a pre-construction meeting explaining the risks of encountering human remains and the process for resolving the inadvertent finds of human remains if encountered; and/or 4) having a professional archaeologist and Tribal Nation representative monitor the sensitive area(s) during construction.

In all circumstances in which human remains are encountered, Tribal Nations will be notified and invited to coordination as soon as possible after the remains are identified as human and of possible Native American ethnicity. If this happens during construction, MDOT will follow the protocol outlined in the "Inadvertent Finds of Human Remains or Suspicious Bones Found During Construction" flow chart, which is attached to the 2022 PA as Attachment B.

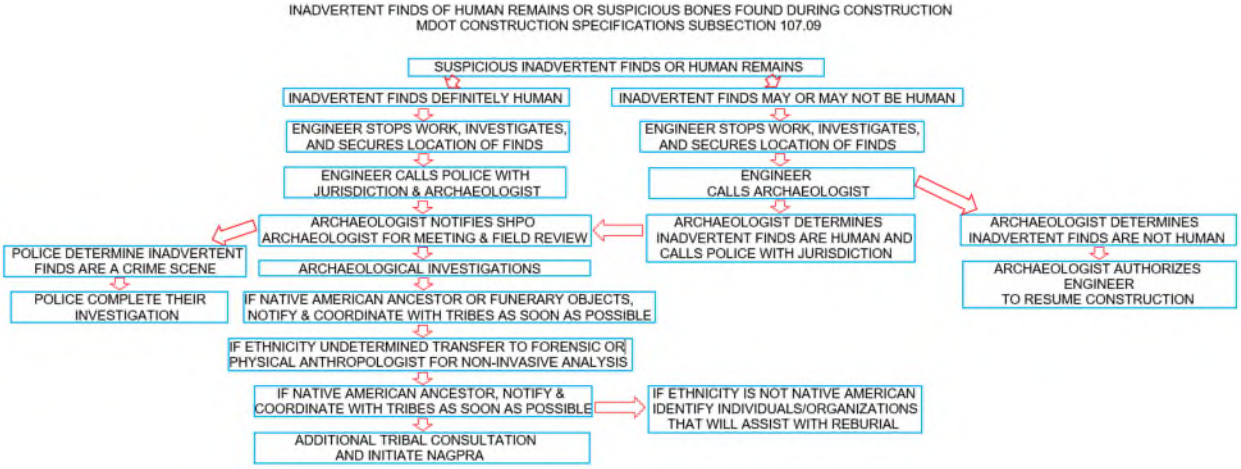
A second category of highly sensitive projects are projects that take place within Tribal Reservation lands or lands adjacent to Tribal Reservation lands. All projects of this type will require consultation and coordination with the Tribes whose lands or the adjacent lands the project may affect.

A third category of projects requiring coordination includes all those projects with a moderate to high sensitivity and risk of impacting sites, properties, and landscapes with culturally significant resources of concern to Tribal Nations or that have the potential to impact such sites. These are projects that will require survey or monitoring.

All projects determined to have a low to no sensitivity and low to no risk of impacting sites, properties, and landscapes with culturally significant resources of concern to Tribal Nations will neither be subject to survey or monitoring nor will they be the subject of coordination with Tribal Nations. If during the design phase of the project, the scope of work and conditions change such that the conditions resulting in the determination of low sensitivity and low risk are not valid, then Tribal Nation coordination will be initiated as moderate to high-risk project and follow the Guidelines specified above.

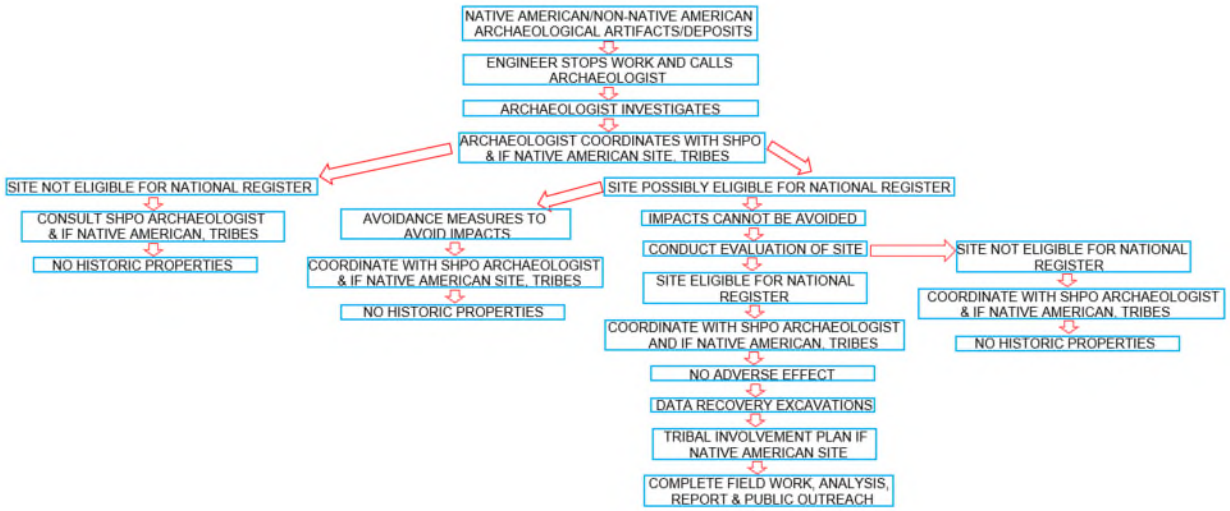
ATTACHMENT B

Inadvertent Finds of Human Remains or Suspicious Bones Found During Construction



PROTOCOL FOR RESPECTFUL TREATMENT OF NATIVE AMERICAN ANCESTORS AND ASSOCIATED FUNERARY OBJECTS

1. EXCAVATIONS SHALL BE RESPECTFUL AND BE CONDUCTED OUT OF PUBLIC VIEW, TO THE EXTENT POSSIBLE.
2. PHOTOGRAPHS SHALL NOT BE TAKEN, EXCEPT WHEN ABSOLUTELY NECESSARY FOR IDENTIFICATION AND DOCUMENTATION.
3. PHOTOGRAPHS WILL BE DESTROYED UPON COMPLETION OF NATIVE AMERICAN GRAVES PROTECTION AND REPATIRATION ACT (NAGPRA) OR RETURNED AS PART OF REPATRIATION.
4. ONLY STANDARD FIELD NOTES AND LINE DRAWINGS ARE PERMITTED AND TRIBES MAY REQUEST THEM TO BE RETURNED AS PART OF NAGPRA REPATRIATION.
5. TRIBES MAY REQUEST TO BE PRESENT OR HAVE A TRIBAL MONITOR DURING FIELD WORK.
6. ANALYSIS BY PHYSICAL ANTHROPOLOGIST OR FORENSIC ANTHROPOLOGIST SHALL BE NON-INVASIVE AND RESPECTFUL.
7. DURING NON-TRIBAL TEMPORARY CONTROL OF FUNERARY OBJECTS AND ANCESTORS PRIOR TO REPATRIATION, THE APPROPRIATE TRIBE(S) WILL BE AFFORDED OPORTUNITIES TO EMPLOY PROPER TRADITIONAL CULTURAL PRACTICES AND TREATMENTS.
8. THE NAGPRA PROCESS FOR REPATRIATION WILL BE EXPEDITED TO THE EXTENT FEASIBLE.

ATTACHMENT C

Inadvertent Finds of Archaeological Artifacts/Deposits During Construction