

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION,  
THE WEST VIRGINIA DIVISION OF CULTURE AND HISTORY,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE WEST VIRGINIA DIVISION OF HIGHWAYS  
REGARDING THE FEDERAL AID HIGHWAY PROGRAM IN WEST VIRGINIA**

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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 West Virginia by funding and approving state and locally sponsored transportation projects that are administered by the West Virginia Division of Highways (WVDOH);

WHEREAS, the West Virginia FHWA Division Administrator is the "Agency Official" responsible for ensuring that the Program in the state of West Virginia complies with Section 106 of the National Historic Preservation Act (NHPA), as amended, and codified in its implementing regulations, 36 CFR Part 800, as amended (August 5, 2004);

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

WHEREAS, the responsibilities of the West Virginia Division of Culture and History (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;

WHEREAS, FHWA has determined that certain types of minor transportation projects processed as categorical exclusions under National Environmental Policy Act (NEPA) 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 SHPO and the Advisory Council on Historic Preservation (ACHP) pursuant to Section 800.14(b) of the regulations implementing Section 106 of the NHPA (16 U.S.C. 470f);

WHEREAS, FHWA has consulted with Federally-recognized Indian tribes (Tribes) with ancestral lands in West Virginia about their programs and project-specific interests, has requested their comments, and has taken any comments received into account. FHWA and WVDOH have developed a guidance document to clarify roles and responsibilities for Tribal consultation (the Tribal Consultation Guidance) which is included in Appendix E.

WHEREAS, any project involving tribal lands as defined in 36 CFR 800.16(x), or any project that may affect a property identified by a federally recognized Indian 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 CFR 800;

WHEREAS, pursuant to the consultation conducted under 36 CFR 800.14(b), the signatories have developed this Programmatic Agreement (Agreement) in order to establish an

efficient and effective program alternative for taking into account the effects of the Program on historic properties in West Virginia and for affording 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 (CLGs) about this Agreement, has requested their comments, and has taken any comments received into account;

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

WHEREAS, this Agreement shall supersede the following previous programmatic agreement among FHWA, SHPO, ACHP and WVDOH: *Programmatic Agreement between the West Virginia Division of Highways and the West Virginia State Historic Preservation Officer (September 14, 1998)*.

NOW, THEREFORE, FHWA, SHPO, ACHP, and WVDOH agree that the Program in West Virginia 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 West Virginia and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires or is terminated.

To aid the signatories of this PA, the stipulations are organized in the following order:

- I. Applicability and Scope
- II. Definitions
- III. Professional Qualifications Standards
- IV. Responsibilities
- V. Consultation with Tribes
- VI. Participation of Other Consulting Parties and the Public
- VII. Project Review
  - a. Projects with No Potential to Cause Effects
  - b. Screened Projects
- VIII. Emergency Situations
- IX. Post-Review Discoveries
- X. Identification and Treatment of Human Remains
- XI. Monitoring and Reporting
- XII. Dispute Resolution
- XIII. Amendment
- XIV. Termination
- XV. Confidentiality
- XVI. Duration of Agreement

## STIPULATIONS

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

## I. APPLICABILITY AND SCOPE

- A. This Agreement sets forth the process by which FHWA, with the assistance of WVDOH, will meet its responsibilities pursuant to Section 106 and 110 of the NHPA (16 U.S.C. 470f and 470h-2).
- B. This Agreement only applies to highway projects classified as categorical exclusions under 23 CFR 771.115 and 23 CFR 771.117. Projects that require an Environmental Assessment or Environmental Impact Statement for compliance with NEPA will follow the procedures in 36 CFR 800.
- C. The objective of this Agreement is to make more efficient the methods by which FHWA and WVDOH 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 WVDOH) carries out its Section 106 responsibilities.
- D. Through this Agreement, FHWA authorizes WVDOH to initiate and, in many cases, conclude consultation with SHPO and other consulting parties for purposes of compliance with Section 106 of the NHPA.
- E. Through this Agreement, FHWA and WVDOH establish two tiers of projects (Projects with No Potential to Cause Effects and Screened Projects) that require different levels of review and consultation with SHPO.
- F. FHWA retains the responsibility to consult with Tribes as required under 36 CFR 800, as amended. The WVDOH may assist FHWA if individual Tribes agree to alternate procedures.
- G. This Agreement shall not apply to undertakings that occur on or affect tribal lands as they are defined in 36 CFR 800.16(x). For such undertakings, FHWA shall follow the procedures in 36 CFR Part 800.
- H. Cooperating Federal Agencies who recognize FHWA as the lead Federal agency for an undertaking may fulfill their obligations under Section 106 of NHPA according to 36 CFR 800.2(a)(2), provided that FHWA and WVDOH follow the requirements of this Agreement and the cooperating agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and WVDOH.

## II. DEFINITIONS

- A. ***Projects with No Potential to Cause Effects:*** Undertakings which typically have no appreciable potential to cause effects to historic properties. Examples include pavement resurfacing, installation of fencing, construction of bicycle/pedestrian lanes, installation of rumble strips, and landscaping in previously disturbed ground. Work is limited to the activities listed in Appendix A. An undertaking will not qualify for this category of

projects if conditions must be imposed to ensure that potential historic properties would not be affected.

- B. **Screened Projects:** Undertakings that have some potential to affect historic properties. Following appropriate screening by qualified professionals, some may be determined to not cause effects and no further Section 106 review under this agreement.
- C. **Ground disturbance** is defined as any work or activity that results in a disturbance of the earth, including excavating, digging, trenching, drilling, augering, backfilling, clearing, and grading.
- D. For purposes of this agreement, the definitions provided in 36 CFR Part 800.16 (a) through (y) shall apply whenever applicable.

### III. PROFESSIONAL QUALIFICATIONS STANDARDS

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 FR 44738-44739). However, nothing in this stipulation may be interpreted to preclude FHWA or WVDOH 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.

### IV. RESPONSIBILITIES

The following section identifies the responsibilities of FHWA and of WVDOH in complying with the terms of this Agreement.

#### A. FHWA Responsibilities

1. Consistent with the requirements of 36 CFR 800.2(a) and 800.2(a)(1-4), 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 WVDOH under the authority of FHWA. At any point in the Section 106 process, FHWA may inquire as to the status of any undertaking carried out under the authority of this Agreement 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 CFR 800.16(m). FHWA may ask WVDOH to assist in consultation if the individual Tribes agree to alternate procedures.
3. FHWA shall be responsible for resolving disputes and objections pursuant to Stipulation XI(B) of this Agreement.

#### B. WVDOH Responsibilities

WVDOH, using staff and/or consultants meeting the Secretary of the Interior's professional qualifications standards (48 FR 44738-9), will independently perform the work and

consultation described in 36 CFR 800.3 – 36 CFR 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 WVDOT as evaluated in monitoring by FHWA pursuant to Stipulation XIII.A of this Agreement. These responsibilities include carrying out the following requirements:

1. 36 CFR 800.3(a) Determine whether the undertaking is a type of activity that has the potential to cause effects on historic properties.
2. 36 CFR 800.3(c) and (d) Determine whether the undertaking may occur on or has the potential to affect historic properties on tribal lands.
3. 36 CFR 800.3(e) solicit public comment and involvement.
4. 36 CFR 800.3 identify additional consulting parties who should be invited to participate in the undertakings covered by this Agreement.
5. 36 CFR 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).
6. 36 CFR 800.4 In consultation with SHPO, identify properties within the APE included in or eligible for listing in the NRHP.
7. 36 CFR 800.5(a)(1) Determine whether historic properties may be affected by the undertaking by applying the criteria of adverse effect.
8. 36 CFR 800.6 Participate in consultation with FHWA, SHPO, ACHP (if it has chosen to participate), and any other consulting parties, to address adverse effects through the development, circulation, execution, and implementation of an MOA, as appropriate.
9. Provide FHWA copies of all correspondence sent out on its behalf (e.g. letters to SHPO or Tribes).

## **V. CONSULTATION WITH TRIBES**

- A. FHWA shall take the lead in identifying and establishing consultation with Indian tribes consistent with the requirements of 36 CFR 800.2(c)(2) and 36 CFR 800.3(c)-(f). WVDOT may provide general coordination information to Tribes but FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with Tribes. The Tribal Consultation Guidance outlines the process for program and project-specific consultation with interested Tribes and is included in Appendix E
- B. In accordance with 36 CFR 800.3(f)(2), any Tribe that might attach religious and cultural significance to historic properties in the APE shall be identified by WVDOT and invited by FHWA to be consulting parties.
- C. WVDOT 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.
- D. WVDOT 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.

E. FHWA may ask WVDOH to assist in consultation if the individual Tribe agrees.

## **VI. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC**

### **A. Additional Consulting Parties**

1. Consulting parties shall be identified in writing by WVDOH in consultation with SHPO pursuant to 36 CFR 800.3(c-f) and their participation in undertakings covered under this Agreement shall be governed by 36 CFR 800.3(f)(3). Individuals and organizations with a demonstrated interest in an undertaking shall be invited by WVDOH in consultation with FHWA to participate in the Section 106 process. Any land-managing agency whose land may be affected by an undertaking shall be invited by WVDOH 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 WVDOH and FHWA in consultation with the SHPO.

### **B. Public Involvement**

1. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by FHWA's and WVDOH's environmental compliance procedures. WVDOH's Public Involvement Plan (Attachment 1) provides guidance for identifying, informing, and involving the public. FHWA's Technical Advisory 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), 800.3(e), and 800.1 l(c)(1 and 3).
2. The WVDOH shall continue 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 (e.g., unscreened projects), 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. The WVDOH shall make FHWA and SHPO aware of any and all public interest as it relates to the historic properties potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to the Tribes.

## **VII. PROJECT REVIEW**

### **A. Projects with No Potential to Cause Effects**

1. Certain projects have no appreciable potential to affect historic properties, whether or not there may be historic properties in the project area. The signatories to this Agreement agree that minor projects limited to the activities listed in Appendix A will require no further coordination pursuant to 36 CFR

800.3(a). Projects comprising additional activities not included in Appendix A will be subject to screening as provided for in stipulation VII.B of this agreement.

2. The WVDOH may add additional activities to the list in Appendix A upon written notice to and concurrence from all parties to this agreement.
3. For projects that are limited to the activities listed in Appendix A, WVDOH will document its finding that the action has no potential to cause effects and maintain that documentation in its project files.

B. Screened Projects with potential to affect historic properties

1. WVDOH cultural resource staff will evaluate each undertaking for potential effects to historic properties. At a minimum, evaluations shall follow the processes outlined in Appendices B, C and D and include a review of the state's cultural resource records and a review of aerial photography and mapping records. Field investigations will be performed at the discretion of WVDOH's cultural resource staff. Provided an undertaking is limited to the activities listed in Appendix A, is not located within or adjacent to historic property, and has no known public controversy related to historic properties, no further coordination pursuant to Section 106 shall be required.
2. For those undertakings in which there are a) no previously recorded historic properties within the Area of Potential Effect (APE) and b) no newly identified historic properties within the APE, WVDOH's cultural resource staff may issue a finding of "no historic properties affected" and will consult with SHPO and others as WVDOH determines appropriate.
3. WVDOH will document each project with the forms contained in Appendices B, C and D.
4. If there are potential historic properties identified within the APE:
  - a. WVDOH's cultural resource staff will apply the National Register Evaluation Criteria in coordination with SHPO and other consulting parties, as appropriate, to assess the need for any additional investigation and determine National Register eligibility in accordance with 36 CFR 800.4.
  - b. If the APE may contain properties of traditional cultural and religious significance to Indian tribes, or identified properties within the APE may be of interest to Indian tribes, FHWA will initiate consultation with such tribes.
  - c. WVDOH will apply the Criteria of Adverse Effect to any historic properties in consultation with SHPO and other consulting parties, as appropriate, in accordance with 36 CFR 800. 5.
  - d. WVDOH shall include the following documentation in the project file:

- i. Any records on consultation
  - ii. Any records on efforts to identify historic properties
  - iii. Any findings of eligibility.
  - iv. Any findings of effect.
  - v. Any records on resolving adverse effects.
5. For all undertakings requiring the preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under NEPA; OR for undertakings in which adverse effects to historic properties cannot be avoided, WVDOH's cultural resource staff will notify FHWA, and FHWA will notify ACHP of the finding of adverse effect. WVDOH, on behalf of FHWA, shall consult with SHPO and other consulting parties in order to resolve adverse effects and conclude the Section 106 process in accordance with 36 CFR 800.6.

## VIII. EMERGENCY SITUATIONS

For the purposes of this Agreement, emergencies are defined 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 operations. The following stipulations apply to emergency situations:

- A. Repairs to address emergency situations as defined above can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies.
- B. If the emergency repair project could affect historic properties, WVDOH's cultural resource staff shall notify SHPO and FHWA prior to any work taking place. SHPO will have 72 hours (3 days) to respond to such notification.
- 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, WVDOH will comply with the procedures in Stipulation VII of this Agreement 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, WVDOH will comply with the procedures in Stipulation VIII.

## IX. POST-REVIEW DISCOVERIES

- A. Planning for Subsequent Discoveries

When WVDOH's identification efforts indicate that historic properties are likely to be discovered during implementation of an undertaking, WVDOH shall include in any contract, project specifications or environmental document 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 CFR 800.4-6.

**B Late Discoveries**

1. If previously unidentified archaeological or historic properties, or unanticipated effects, are discovered after WVDOH has completed its review under this Agreement, that portion of the project will stop immediately.
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. WVDOH will consult with SHPO, 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 SHPO files no objection within 72 hours (3 days) of WVDOH's plan for addressing the discovery, WVDOH may carry out the requirements of 36 CFR 800.13 on behalf of FHWA, and ACHP does not need to be notified.

**X. IDENTIFICATION AND TREATMENT OF HUMAN REMAINS**

- A. In the event that human remains are identified prior to, during, or after project construction, WVDOH will develop a treatment plan in consultation with FHWA and SHPO. If it is determined that the human remains are associated with a Native American occupation, WVDOH and FHWA will consult with the Tribes prior to the development or execution of a treatment plan.
- B. All work conducted on human remains and abandoned cemeteries will comply with applicable state laws.

**XI. ADMINISTRATIVE STIPULATIONS**

**A. Monitoring and Reporting**

1. FHWA, SHPO, and ACHP may review activities carried out pursuant to this Agreement. WVDOH shall facilitate this review by compiling specific categories of information to document the effectiveness of the Agreement and by making this information available on an annual basis to FHWA, SHPO, and ACHP in the form of a written report. Categories of information can include, but are 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 WVDOH in the written 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 constitute an efficient and effective

program alternative under 36 CFR 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. FHWA shall monitor the provisions of this Agreement no more than every 12 months after the date of execution of this agreement. The monitoring effort shall consist of a review of project records and consultation documentation with SHPO and other consulting parties.
3. WVDOH shall prepare a written report annually on a calendar year basis. The report will provide a description of the number and type of projects that were reviewed during the calendar year. The report will also describe accomplishments/successes achieved over the course of the year as well as suggestions for improvements. WVDOH shall submit the first report to FHWA, SHPO, and ACHP no later than March 31 following execution of this Agreement and each subsequent annual report will be submitted by March 31 of each year.

B. Resolving Objections to Implementation of this Agreement

1. 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.
2. Should any signatory party object to a WVDOH or FHWA determination of eligibility, FHWA will submit the determination to the Keeper of the National Register of Historic Places for resolution.
3. If the objection is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.
4. 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 ACHP and other signatory parties, including FHWA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
  - a. Advise FHWA that ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly; or
  - b. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or

- c. Notify FHWA that the objection will be referred for comment pursuant to 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(a)(4).
5. Should ACHP not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the objection.
6. FHWA shall take into account any ACHP recommendation or comment and any comments from the other signatory parties to this Agreement 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.
7. FHWA shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
8. 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.
9. 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 to this Agreement, that signatory party shall immediately notify FHWA. FHWA shall immediately notify 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 in reaching its decision, FHWA will take all comments from the other parties into account. Within 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.

## **XII. Amendment**

- A. Any signatory party to this Agreement may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment. This Agreement 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.

### **XIII. Termination**

- A. Any signatory party may terminate this agreement. If this Agreement is not amended as provided for in Stipulation XIII, or if any signatory party proposes termination of this Agreement for other reasons, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than 30 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 party 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. Beginning with the date of 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 CFR 800.4-800.6.

### **XIV. 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 NHPA. Section 304 allows FHWA to withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if WVDOH 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 requirements of Section 304 of the NHPA.

### **XV. Duration of Agreement**

This Agreement shall remain in effect for a period of ten (10) years after the date it takes effect, unless it is terminated prior to that time. Ninety days prior to the conclusion of the ten year period, WVDOH will notify all parties in writing. If there are no objections from consulting parties, the term of the Agreement will automatically be extended for an additional ten years. If any party objects to extending the Agreement, or proposes amendments, WVDOH will consult with the parties to consider amendments or other actions to avoid termination.

Execution and implementation of this agreement evidence that FHWA has delegated certain Section 106 responsibilities to WVDOH, and has afforded ACHP a reasonable opportunity to comment on the Program and its individual undertakings in West Virginia; 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 of the NHPA and 36 CFR 800 for the Program and its individual undertakings.

Signatories:

Federal Highway Administration

By: \_\_\_\_\_ Date: \_\_\_\_\_

West Virginia State Historic Preservation Officer

By: \_\_\_\_\_ Date: \_\_\_\_\_

Advisory Council on Historic Preservation

By: \_\_\_\_\_ Date: \_\_\_\_\_

John M. Fowler, Executive Director

West Virginia Division of Highways

By: \_\_\_\_\_ Date: \_\_\_\_\_

## **APPENDIX A**

### **PROJECTS WITH NO POTENTIAL TO CAUSE EFFECTS**

*These are undertakings which typically have no appreciable potential to cause effects to historic properties. An undertaking will not qualify for this category of projects if conditions must be imposed to ensure that potential historic properties would not be affected.*

1. General highway maintenance and repair, including filling potholes, crack sealing, joint grinding, milling, cleaning, painting and resurfacing.
2. Guardrail replacement where no new bank stabilization is required.
3. Installation or maintenance of highway signs, pavement markings and/or contemporary fencing within existing operational ROW.
4. General pavement marking, line painting, or installation of sensors in existing pavements.
5. Installation of raised pavement markers.
6. Herbicidal spraying within existing ROW.
7. Mowing or brush removal/trimming within existing ROW.
8. Improvements to existing maintenance facilities.
9. Study-type projects (e.g. feasibility studies).
10. Acquisition of property for conservation purposes, including scenic easements.
11. Storm damage repairs, such as culvert clearing or repair, shoulder reconstruction, slide correction or debris removal.
12. Congestion mitigation, emission reduction and air quality preservation activities.
13. Activities that do not involve construction or ground disturbance, such as planning, preliminary engineering, training, technical studies, non-invasive inspections or assessments, educational programs, development of educational/interpretive information and non-infrastructure programs, capital investment, funding, marketing and lease renewals, including those related to a scenic or historic highway program.
14. Archaeological planning and research and activities relating to impacts from implementation of transportation projects.
15. Maintenance and restoration of existing recreational trails, provided no construction activities occur within the designated easement.

### **SCREENED PROJECTS**

*These are undertakings that have some potential to affect historic properties. Following appropriate screening by qualified professionals, some may be determined to not cause effects and require no further Section 106 review under this agreement.*

1. Minor widening of existing highways, adding lanes in the median, or adding paved shoulders.
2. Minor modification of interchanges and realignments of on/off ramps.
3. Approval of highway project utility accommodations along or across a transportation ROW.
4. Installation of noise barriers, retaining walls, or bank stabilization.
5. Addition of bicycle lanes, pedestrian walkways, or shared use paths.
6. Modification of existing features, such as slopes, ditches, curbs, sidewalks, driveways, dikes, stream banks or headwalls, within or adjacent to the ROW.

7. Minor operational improvements, such as culvert or other small structure replacements or extensions and median or side-ditch paving.
8. Addition or replacement of devices, such as glare screens, median barriers, fencing, guardrails, safety barriers, energy attenuators, guide posts, markers, safety cable, ladders, lighting, hoists, expansion joints, piling walls, gabion baskets or signs.
9. Abandonment, removal, reconstruction, improvement or alteration of railroad grade crossings or separations or grade crossing protection.
10. Additions or alterations to existing buildings, such as work on or in office or equipment buildings, maintenance stations, warehouses, roadside rest areas, vista points, minor transit facilities, weigh and inspection station, or toll facilities.
11. Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety.
12. Any work on non-eligible, non-contributing bridges, including rehabilitation, reconstruction or replacement.
13. Modification of traffic or railroad control systems or devices utilizing existing infrastructure, including installation, removal, or modification of regulatory, warning, or informational signs or signals.
14. Installation of freeway surveillance or ramp metering equipment.
15. Replacement of existing highway signs.
16. Removal or control of outdoor advertising.
17. Establishment, replacement, or removal of landscaping, vegetation, or irrigation systems on state or local property, including highway and local roads ROW and building sites.
18. Joint or multiple use permits with other agencies or encroachment permits.
19. Minor maintenance on historic bridges and tunnels.
20. Planning, construction and maintenance of streetscape projects where the amenities are consistent with the existing streetscape.
21. Development, construction and rehabilitation of trailside/trailhead facilities/ and linkages.
22. Development, construction and rehabilitation of turnouts, overlooks, viewing areas, interpretive informational displays, and access to recreational areas.

**APPENDIX B**

**HISTORIC RESOURCES CHECKLIST AND FLOWCHART**

**WVDOH PROJECT REVIEW**  
**HISTORIC RESOURCES**

For projects meeting Appendix A of the Programmatic Agreement

**APPENDIX B**

**Initial  
Environmental Screening  
Historic Resources**



**Apply Pre-Screening  
Checklist**



**No Historic Resources  
present**



**PROGRAMMATIC  
AGREEMENT Applies -  
Historian Completes  
State Exempt  
Form to Finalize NHPA  
Section 106 Review**



**Historic Resources  
potentially present -  
Project Needs Additional  
Review and Assessment by a  
Historian**



**No resources present  
PROGRAMMATIC AGREEMENT  
Applies -  
Historian Completes State Exempt  
Form to finalize NHPA Section 106  
Review**



**Potentially eligible resources  
identified – evaluate Historic  
Resource NR eligibility and, if  
applicable, potential effects  
associated with proposed  
project**



**Coordinate Historic Resource  
eligibility and effects  
determination(s) with SHPO**



**West Virginia Division of Highways  
Historical Pre-Screening Checklist**

**Project Name:**

**County/Rt/Milepost:**

Unit Leader:

Historian Name:

Date:

**Project Information:**

Bridge Replacement

Was the bridge evaluated in the Historic Bridge Survey? Yes or No  
Summarize response:

Bank Stabilization/Slide Repair

Intersection Improvement

Road Widening/Realignment

Other

Culvert Replacement

Grant Project Scope of Work:

**Sources:**

Historic Maps

National Register Listings

County Histories

Historic Bridge Survey Historic Context

Turnpike Maps

Historic Bridge Survey - Do Not Survey List

SHPO Survey

Other (list):

Newspapers

**Project Area Information:**

Where is the bridge project located?

What are the nearest towns or county seats? (Distance to them?)

What body of water does the bridge cross?

What transportation link does this bridge or location serve?

Was this area used for?

- Agriculture
- Timber Industry
- Oil and Gas Industry
- Other

Are there previously surveyed resources in the area of potential effect? Yes or No  
If yes, list the resources.

Are there resources greater than 50 years old with the APE? Yes or No  
If yes, attach the Historic Property Inventory Forms.

**Historic District:**

Name of city/town/community:

Number of other structures in the viewshed: None 1-5 5-20 20-50 50+

General era of construction of surrounding structures:

Potential Historic District? Yes No  
If yes, please summarize your evaluation.

Criteria A

Criteria B

Criteria C

Criteria D

9-16-15

Does the project propose to take a contributing resource? Yes  
If yes, proceed with report to the SHPO.

No

**Historical Groups: (List contact and attach correspondence)**

- Historic Landmarks Commission
- Preservation Alliance of West Virginia
- Historical Society
- Local Genealogy Group
- Other Groups

Notes:

**Review Exempt under Programmatic Agreement Appendix A**

- Yes     No

Provide Justification as to yes or no:

Attach SHPO Survey website printout, photographs of project area and Historic Property Inventory Forms.

Signature: \_\_\_\_\_(Unit Leader)

Signature: \_\_\_\_\_(Historian Name)

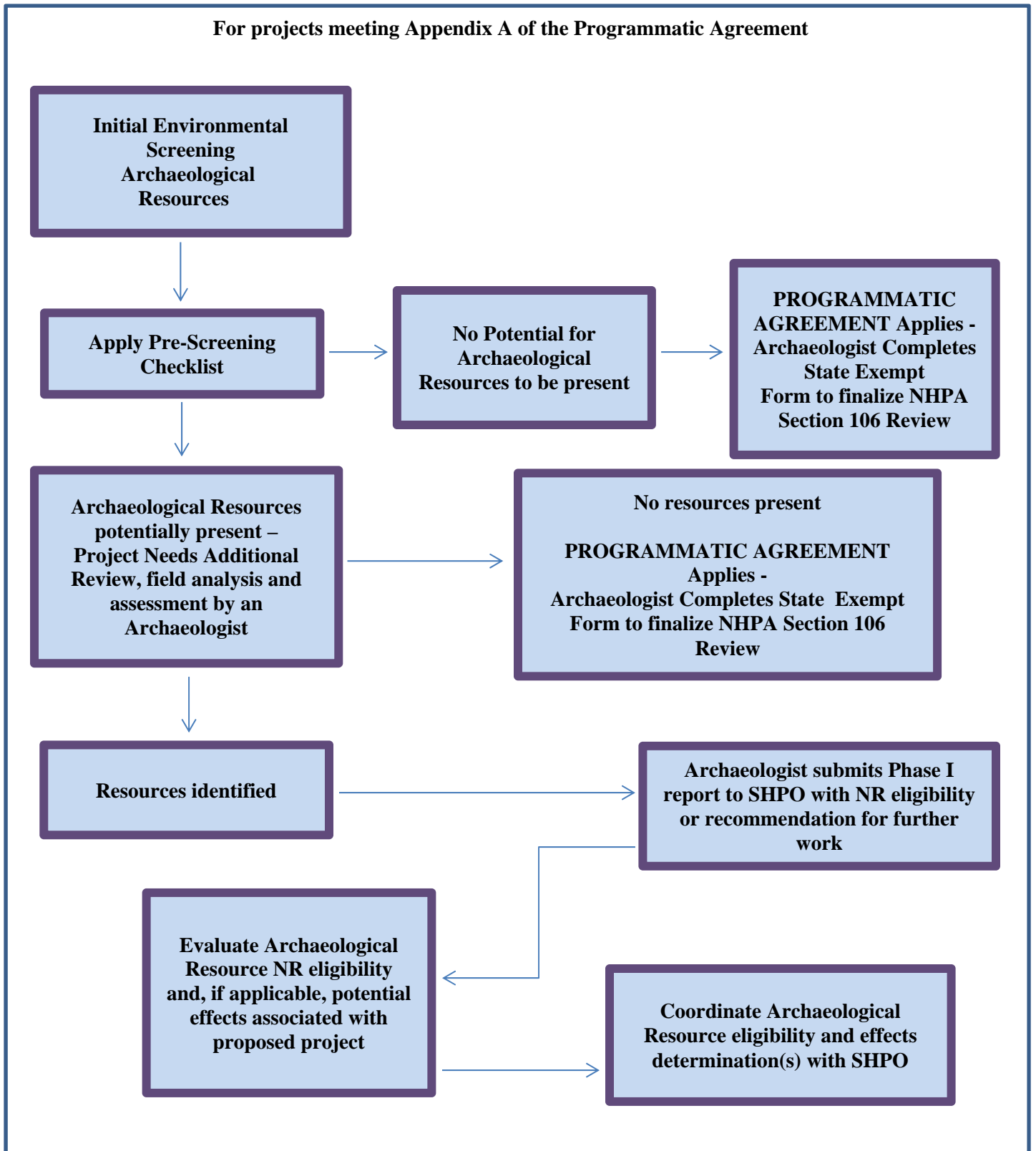
APPENDIX C

ARCHAEOLOGICAL RESOURCES CHECKLIST AND FLOWCHART

WVDOH PROJECT REVIEW

ARCHAEOLOGICAL RESOURCES

For projects meeting Appendix A of the Programmatic Agreement



**West Virginia Division of Highways  
Archaeology Pre-Screening Checklist**

**Project Name:**

**County/Rt/Milepost:**

Initial Screener:

Archaeologist:

Date:

**Project Information:**

Bridge Replacement

Culvert Replacement

Bank Stabilization/Slide Repair

Intersection Improvement

Road Widening/Realignment

Other

**Sources:**

SHPO Survey

Design Plans

Aerial Photographs

Geology Maps

Topographic Maps

Other (list):

On-Site photographs

Historic Maps

**Project Area Information (Summarize each response):**

Previous disturbances visible or known?

ROW/Easement areas to be acquired?

Known sites within the area?

Landforms present?

Soil Type(s) Present:

Degree of Slope:

What is the distance to water/type of water source?

**Review Exempt under Programmatic Agreement Appendix A**

Yes, Appendix A Activity # \_\_\_\_\_       No, submit documentation for SHPO review

Notes:

Signature: \_\_\_\_\_ (Archaeology Services Unit Leader)

Signature: \_\_\_\_\_ (Archaeologist Name)

## **Appendix D**

### **Review Exempt Form for Screened Projects**

# Cultural Resources Management Report

## For Projects Exempt from SHPO Review

### 1. Project identification

Project: \_\_\_\_\_ Date: \_\_\_\_\_  
County: \_\_\_\_\_ Author: \_\_\_\_\_  
State Project: \_\_\_\_\_  
Federal Project: \_\_\_\_\_  
USGS 7½' Topographic Quadrangle: \_\_\_\_\_  
UTM: NAD 83, Zone 17N, E, N

### 2. Description of undertaking

### 3. Pre-field research

National Register of Historic Places (NR)       SHPO Files       County Records  
 Reports, Documents, Publications       Maps       Informants (list below)  
Other: \_\_\_\_\_

### 4. Results of pre-field research

a. Previous surveys or investigations conducted near the project area?       No     Yes  
b. National Register properties located within 1 mile of the project area?       No     Yes  
c. Other cultural resources reported within 1 mile of the project area?       No     Yes

### 5. Physical Setting

a. Topography:  
b. Geology:  
c. Soils:  
d. Ground cover:  
e. Observations:

### 6. Field tests recommended?      No    Yes

If no, explain:

### 7. Field research

a. Methodology (how the area was examined, shovel test program; coverage map attached):  
b. Parts of the project area receiving incomplete coverage, and special problems encountered:

### 8. Results of field research (visual examination, interviews, shovel testing, artifacts collected)

a. Prehistoric site investigation:  
b. Built environment survey:  
c. Cultural resources recorded (inventory forms and site location map attached):  
Field No. \_\_\_\_\_ Photo No. \_\_\_\_\_ Site Type \_\_\_\_\_

### 9. Evaluation of recorded resources for eligibility for the National Register.



**10. Will the proposed undertaking affect eligible resources?**  No  Yes  
If eligible resources are present but will not be effected, explain why.

**11. Conclusions and recommendations**

**12. Supplemental data attached**

- |   |  |
|---|--|
| <input type="checkbox"/> Photos                                 | <input type="checkbox"/> Continuation Sheet(s)             |
| <input type="checkbox"/> Undertaking Vicinity Map               | <input type="checkbox"/> Historic Bridge Evaluation Form   |
| <input type="checkbox"/> Project Map                            | <input type="checkbox"/> Historic Property Inventory Forms |
| <input type="checkbox"/> Cultural Resources Map (USGS 7.5 Quad) | <input type="checkbox"/> Shovel test profiles              |
| <input type="checkbox"/> Topographic Map (USGS 7.5 Quad)        | <input type="checkbox"/> Archaeological site form          |
| <input type="checkbox"/> HPU file search form                   | <input type="checkbox"/> Other:                            |

**13. Bibliography**

Cardwell, D.H., R.B. Erwin and H.P. Woodward.

1986 1968 Geologic Map of West Virginia (Slightly Revised 1986). West Virginia Geological and Economic Survey, Morgantown.

United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS)

2007. Web Soil Survey (WSS). Electronic database, <http://websoilsurvey.nrcs.usda.gov/app/> accessed September 22, 2015

West Virginia Division of Highways, Federal Highway Administration, West Virginia State Historic Preservation Office, & Advisory Council on Historic Preservation. Federal Programmatic Agreement. 14 September 1998.

West Virginia Division of Highways, State Historic Preservation Office. State Programmatic Agreement. 14 September 1989.

## **Appendix E**

### **Draft Tribal Consultation Guidance**

**Tribal Consultation Guidance for the  
Federal Highway Administration, WV Division and the  
West Virginia Department of Transportation, Division of Highways**

The Section 106 (36 CFR 800) of the National Historic Preservation Act (NHPA), United States Department of Transportation Order 5301.1 and Executive Order 13175, obligate federal agencies to work closely with Indian tribes in reaching decisions. As a federal agency, the Federal Highway Administration (FHWA), and by extension the West Virginia Department of Transportation, Division of Highways (WVDOH), need to make a reasonable and good faith effort to identify and consult with Indian tribes that may attach religious and cultural significance to historic properties affected by Federal-aid projects. For the purposes of this consultation policy, Indian tribe refers to a federally recognized Indian tribe, as defined in 36 CFR 800.16(m), unless otherwise noted.

Historic properties of religious or cultural significance to Indian tribes may be located on tribal lands and/or on ancestral, aboriginal or ceded lands. While there are no tribal lands located within West Virginia, historic properties significant to Indian tribes may be present throughout the state and could be affected by WVDOH projects. Therefore, the purpose of this guidance is to advise WVDOH project managers how to best approach tribal consultation. As has been demonstrated in other states, developing a good working relationship with Indian tribes takes time.

At this time, a total of nineteen (19) federally recognized tribes have been identified that are likely to have an interest in West Virginia projects. Contact information for these Indian tribes can be found in Attachment A. A list of federally recognized tribes is maintained at the Bureau of Indian Affairs web site: <http://www.bia.gov> (click on “How Do I”). Federally recognized tribes have special status as a consulting party<sup>1</sup> under the regulations even for historic properties off tribal lands. In addition, each tribe is a sovereign nation. Therefore, FHWA as part of the Federal Government engages in government-to-government relations with federally recognized tribes. These responsibilities are established by treaty, reaffirmed by statute and cannot be delegated.

### **Specific Guidance**

WVDOH, on behalf of FHWA and with the consent of the Indian tribes, will solicit interest in consultation, transmit project documentation and otherwise perform routine coordination with the tribes. FHWA at its discretion or through request of an Indian tribe may take over coordination at any time. A matrix identifying the relevant Indian tribes and notification procedures is located in Attachment A. It should be noted that tribal contacts change frequently; therefore, WVDOH, in consultation with FHWA, will update the list on an annual basis. This guidance and list will be incorporated into WVDOH Design Directive 202.

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<sup>1</sup> Consulting party, as formally defined under 36 CFR Part 800.2 (C)(2)(ii). “*Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations.* Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.”

**Goals**

The purpose of consultation with Indian tribes is on par with consultation with the State Historic Preservation Office (SHPO) or consultation with other interested parties, which is to reach an informed and supported decision on identifying, assessing effects, and consulting as to how to treat the effects of projects on historic properties. Where historic properties are of religious and cultural significance to Indian tribes, we expect that the Indian tribes will bring a unique and added perspective to the consultation process. When Indian tribes are provided with a reasonable opportunity to provide advice on the identification and evaluation of such properties, articulate views on the project's effects on such properties and participate in the resolution of adverse effects to such properties, better decisions and outcomes will result.

**Initial Consultation**

Consultation between WVDOH/FHWA and each Indian tribe is to be done in a manner that is sensitive and respectful of tribal sovereignty. In principle, consultation should begin early in a project's planning process so that all parties have ample time to identify and discuss relevant tribal historic preservation issues and resolve concerns about the confidentiality of information concerning historic properties of religious and cultural significance. The attached matrix (Attachment A) identifies the circumstances that trigger a particular tribe's interest, as well as the point in the project development process when the Indian tribe has requested to be notified of a project.

**Program Level Consultation**

Five (5) Indian tribes have requested to receive a copy of the West Virginia Statewide Transportation Improvement Plan (STIP). WVDOH's Planning Division is responsible for ensuring the document is made available to interested tribes according to the matrix in Attachment A.

**Project Level Consultation**

Under the 1998 Programmatic Agreement among FHWA, SHPO, the Advisory Council on Historic Preservation (ACHP), and WVDOH, FHWA has delegated its review of undertakings under Section 106 of the responsibilities the WVDOH. While FHWA retains its lead agency responsibility to consult with Indian tribes; however, this guidance outlines the process that will be followed by WVDOH's Engineering Division, in consultation with its cultural resource specialists and environmental project managers, to transmit project-level documentation to the Indian tribes, and to ensure that copies of the notification are provided to FHWA, to the attention of the environmental manager. Coordination with the Indian tribes will take place according to Attachment A. Not all Indian tribes require notification at the same stage in a project, so it is important to review the matrix in Attachment A at the start of a project. The Indian tribes will be given thirty (30) days to either accept or reject the invitation for continued participation in the project development. An example of a tribal contact letter can be found in Attachment B.

In almost all cases, based on coordination with Indian tribes with an interest in West Virginia, tribal interest is limited to archaeological resources of either the Pre-Contact or Contact periods. Consequently, only projects involving ground-disturbing activities in previously undisturbed

areas are likely to be of interest. For Categorical Exclusion (CE)<sup>2</sup> level projects, notifications will only be sent if the initial archeological analysis results in the potential for encountering resources of religious or cultural significance to the tribes.

For larger projects requiring an Environmental Impact Statement (EIS)<sup>3</sup>, or Environmental Assessment (EA)<sup>4</sup>, initial notification to the Indian tribes should occur when WVDOH and FHWA initiate the agency and public scoping process. Materials to be transmitted should include a copy of the Notice of Intent, as well as any relevant summary materials. Indian tribes electing to participate in the project development process will be incorporated into the coordination plan for the project.

If multiple Indian tribes express interest in a project, it is possible that some Indian tribes may terminate consultation or designate a lead Indian tribe as new information, including the identification of archaeological sites, becomes available during the project development process.

### **Initial Consultation for Pre-Existing Projects**

Projects that have begun prior to the issuing of this guidance can and should benefit from tribal consultation. Further, the fact that a project has begun does not alleviate FHWA's and WVDOH's responsibilities to consult. Within thirty (30) days of finalizing this guidance, WVDOH will ensure that coordination for existing projects will be done according to Attachment A.

Bringing tribal consultation into an ongoing Section 106 process should be dictated by a common-sense approach that emphasizes the potential value of that consultation, not only for the purposes of Section 106, but also for the National Environmental Policy Act (NEPA), and to some extent Environmental Justice. Attachment C lists the evolving steps in Section 106 and the appropriate response by WVDOH to initiate consultation.

### **Continuing Consultation**

Once an Indian tribe has received notification of a project, WVDOH will continue to transmit relevant information, until the Indian tribe directs otherwise. Tribes may enter consultation on a project at any time, but even when not choosing not to participate actively, tribes still be provided project information at key decision points (i.e., identification of properties, determination of effect, and consultation to resolve any adverse effects) unless they specifically request not to receive information. Copies of all formal tribal coordination should be forwarded to FHWA. Informal consultation, including telephone conversations, on-site meetings, web sites, and e-mail is to be encouraged, and documented in the project file. At critical decision points and where decisions are documented, each consulting Indian tribe, SHPO and FHWA should all receive a copy of the documentation.

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<sup>2</sup> Categorical Exclusions are projects that which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts, per 23 CFR Part 771.117(a).

<sup>3</sup> Actions that significantly affect the environment, per 23 CFR Part 771.115(a)

<sup>4</sup> Actions in which the significance of the environmental impact is not clearly identified, per 23 CFR Part 771.1159(c).

**Attachment A**

**Tribal Consultation Contact Matrix**

<b>Tribal Contact Information</b>	<b>WV STIP</b>	<b>EA or EIS NEPA Document</b>	<b>Potential Impacts To Historic Properties of Religious or Cultural Significance</b>	<b>Discovery of Human Remains or Culturally Significant Items Identified Post NEPA</b>
Seneca-Cayuga Tribe of Oklahoma 23701 S. 655 Road Grove, OK 74344 Contact: Paul Barton, Tribal Historic Preservation Officer	X	X	X	X
Seneca Nation of Indians 90 Ohi:yo' Way Salamanca, NY 14779 Contact: Melissa Bach, Tribal Historic Preservation Officer	X	X	X	X
Eastern Shawnee Tribe of Oklahoma 10080 S. Bluejacket Road Wyandotte, OK 74370 Contact: Robin Dushane, Tribal Historic Preservation Officer	X	X	X	X
Eastern Band of Cherokee Indians P.O. Box 455 Cherokee, NC 28719 Contact: Russell Townsend, Tribal Historic Preservation Officer	X	X	X	X
The Delaware Nation PO Box 825 Anadarko, OK 73005-0825 Contact: Tamara Francis-Fourkiller, Cultural Preservation Director	X	X	X	X
Oneida Indian Nation 2037 Dream Catcher Plaza Oneida, NY 13421 Contact: Mr. Raymond Halbritter, Nation Representative				X
Shawnee Tribe P.O. Box 189 Miami, OK 74355 Contact: Mr. Ron Sparkman, Chief				X

Tribal Contact Information	WV STIP	EA or EIS NEPA Document	Potential Impacts To Historic Properties of Religious or Cultural Significance	Discovery of Human Remains or Culturally Significant Items Identified Post NEPA
Absentee-Shawnee Tribe of Oklahoma 2025 S. Gordon Cooper Drive Shawnee, OK 74801 Contact: Mr. Joesph Blanchard, Cultural Preservation Director				X
Cayuga Nation of New York 2540 SR-89 P.O. Box 803 Seneca Falls, NY 13148 Contact: Mr. Clint Halftown, Federal Representative				X
Oneida Tribe of Indians of Wisconsin P.O. Box 365 Oneida, WI 54155 Contact: Ms. Corina Williams, Tribal Historic Preservation Officer				X
Onondaga Nation of New York 3951 Route 11 Nedrow, NY 13120 Contact: Irving Powless, Head Chief				X
Saint Regis Mohawk Tribe 412 State Route 37 Akwesasne, NY 13655 Contact: Mr. Arnold Printup, Tribal Historic Preservation Officer				X
Tonawanda Band of Seneca Indians of New York 7027 Meadville Road Basom, NY 14013 Contact: Mr. Roger Hill, Chief				X
Tuscarora Nation 206 Mount Hope Road Lewistown, NY 14092 Contact: Mr. Leo Henry, Chief				X

Tribal Contact Information	WV STIP	EA or EIS NEPA Document	Potential Impacts To Historic Properties of Religious or Cultural Significance	Discovery of Human Remains or Culturally Significant Items Identified Post NEPA
<p>United Keetoowah Band of Cherokee Indians of Oklahoma                      P.O. Box 746                      Tahlequah, OK 74465                      Contact: Mr. George Wickliffe, Chief</p>				<p>X - Only the following Counties:                      Boone, Braxton, Cabell, Clay, Fayette, Greenbrier, Kanawha, Lincoln, Logan, McDowell, Mason, Mercer, Mingo, Monroe, Nicholas, Pocahontas, Putnam, Raleigh, Randolph, Roane, Summers, Wayne, Webster, Wyoming</p>
<p>Cherokee Nation of Oklahoma                      P.O. Box 948                      Tahlequah, OK 74465                      Contact: Mr. Bill John Baker, Principal Chief</p>				<p>X</p>
<p>Osage Nation                      627 Grandview                      P.O. Box 779                      Pawhuska, OK 74056                      Contact: Ms. Rebecca Brave, Interim Director</p>				
<p>Tunica-Biloxi Indian Tribe of Louisiana                      P.O. Box 1589                      Marksville, LA 71351                      Contact: Mr. Earl Barby, Jr., Tribal Historic Preservation Officer</p>				
<p>Omaha Tribe of Nebraska                      P.O. Box 368                      Macy, NE 68039                      Contact: Mr. Calvin Harlan, Tribal Historic Preservation Officer</p>				



**Attachment B**

**Mr. or Ms. XXXXX**

**XXXXXXXXXXXXXXXX**

XXXXX, XXXXXX

**Dear Mr. or Ms. XXXXX:**

**State Project XXXXXX**

**Federal Project XXXXXX**

**Project Name XXX**

**Summers County**

In accordance with Section 106 of the National Historic Preservation Act, United States Department of Transportation Order 5301.1 and Executive Order 13175 the West Virginia Division of the Federal Highway Administration (FHWA) and West Virginia Department of Transportation (WVDOT) has identified your tribe as potentially having an interest in Federally funded highway projects undertaken in the state of West Virginia.

This purpose of this correspondence is to initiate consultation with your Tribe per WVDOT's Tribal Consultation Policy of XXXX, 2014. WVDOT respectfully requests comments by XXXXX.

**Should you have any questions, please contact XXXXX of the Environmental Services Section, at 304-558-XXXX.**

**Very truly yours,**

**Raymond J. Scites, P.E., Director**

**Engineering Division**

## Attachment C

<b>Project has reached this Section 106 Stage:</b>	<b>Guidance</b>
Scoping Field View	Provide a project description and project map and assessment of archaeological potential – continue to involve Indian tribes.
APE Established	Provide a project description, project map showing APE for archaeology, and assessment of archaeological potential – continue to involve Indian tribes.
Execution of project-specific Programmatic Agreement	Provide above documentation, a copy of the PA, and a written statement from FHWA that Tribes will be consulted on this project – continue to involve Indian tribes.
Identification of Historic Properties (archaeological sites)	Provide above documentation and Phase I and/ or II archaeological report (most likely draft) – continue to involve Indian tribes.
Determination of Eligibility of Historic Properties (archaeological sites)	Provide above documentation and Phase I and II archaeological report, and SHPO’s comments – continue to involve Indian tribes.
Determination of Effect	Provide above documentation and Phase I and II archaeological report, and SHPO and other consulting party comments – continue to involve Indian tribes.
Resolution of Adverse Effect	Provide project documentation relevant to adversely affected archaeological sites, including Phase I and II reports and proposed mitigation plans. Unless an MOA has been executed, involve Indian tribes in consultation to resolve Adverse Effects, which includes sharing draft MOA’s, and determining whether any Indian tribe(s) should be signatory or concurring party(ies).
Executed Memorandum of Agreement to Resolve an Adverse Effect	Provide project documentation relevant to adversely affected archaeological sites, including Phase I and II reports, and proposed mitigation plans, and a copy of the MOA. – continue to involve Indian tribes in the mitigation efforts, including progress reports and site visits.
Data Recovery Excavations or other mitigation completed	Provide NEPA document, relevant Phase I and II reports, including interim mitigation reports. – continue to involve Indian tribes in review of reports.
Draft Report Completed	Provide NEPA document, relevant Phase I and II reports, including interim mitigation reports. – seek Tribal comment in review of reports.
Final Report Completed	Provide NEPA document, relevant Phase I and II reports, and copy of Final Report for any final report completed.