

1 **PROGRAMMATIC AGREEMENT AMONG THE FEDERAL**
2 **HIGHWAY ADMINISTRATION, THE NEW MEXICO**
3 **DEPARTMENT OF TRANSPORTATION, THE ADVISORY**
4 **COUNCIL ON HISTORIC PRESERVATION, AND THE NEW**
5 **MEXICO STATE HISTORIC PRESERVATION OFFICER**
6 **REGARDING IMPLEMENTATION OF THE FEDERAL-AID**
7 **HIGHWAY PROGRAM IN NEW MEXICO**
8

9 WHEREAS, the Federal Highway Administration (FHWA) proposes to administer its
10 Transportation Program in New Mexico authorized by 23 U.S.C. 101 et seq. through the New
11 Mexico Department of Transportation (NMDOT) (23 U.S.C. 315); and
12

13 **WHEREAS**, the FHWA has been designated to serve as the lead federal agency for compliance
14 with the National Environmental Policy Act (NEPA) (42 U.S.C. §4321-4347) and Section 106 of
15 the National Historic Preservation Act (NHPA), as amended (54 U.S.C. §306108) for the
16 undertaking and has delegated Section 106 responsibilities to the NMDOT as the agency official
17 pursuant to 36 CFR §800.2 (a) (2); and
18

19 WHEREAS, FHWA has determined that undertakings under the National Transportation Act may
20 have an effect upon properties included in or eligible for inclusion in the National Register of
21 Historic Places; and
22

23 WHEREAS, FHWA has consulted with the New Mexico State Historic Preservation Officer
24 (SHPO) pursuant to 36 CFR 800.14(b) during development of this Programmatic Agreement (PA)
25 and the SHPO is a Signatory to this PA; and
26

27 WHEREAS, FHWA has consulted with the Advisory Council on Historic Preservation (ACHP)
28 pursuant to Section 36 800.14(b) and the ACHP has have opted to participate as a Signatory to the
29 PA; and
30

31 WHEREAS, FHWA, NMDOT, ACHP, and SHPO agree to engage in meaningful, long-term
32 planning for the protection of historic properties and, toward that end, shall: 1) develop a
33 comprehensive and efficient process to implement the Section 106 process on all FHWA-funded
34 projects; 2) simplify procedural requirements to the maximum extent possible; and 3) eliminate or
35 minimize unnecessary consultation paperwork; and
36

37 WHEREAS, the FHWA, NMDOT, ACHP, and SHPO share a common desire to develop a
38 flexible, programmatic approach for implementing Section 106 of the NHPA that shall take into
39 account the effects of FHWA undertakings on historic properties, provide for appropriate tribal
40 consultation and public participation; and reduce the need for case-by-case review when historic
41 properties will not be affected or when standard protocols and treatments can be applied; and
42

43 WHEREAS, FHWA recognizes that it has a unique legal relationship with Indian Tribes set forth
44 in the Constitution of the United States, statutes, and court decisions, and that consultation with
45 all Tribes must, therefore, recognize the government-to-government relationship between the
46 federal government and the Tribes; and

47
48 WHEREAS, FHWA has requested that NMDOT provide assistance to FHWA in complying with
49 Section 106 of the NHPA and the Act's revised implementing regulations as set forth in 36 CFR
50 800.2(c)(2), effective on August 5, 2004; and.

51
52 WHEREAS, the FHWA and NMDOT invited the Tribes in Appendix A to be concurring parties
53 and have provided them the opportunity to participate in the development of and comment on this
54 PA pursuant to 36 CFR 800.2(c)(2) and 36 CFR 800.14(f) and they have opted to participate as
55 consulting parties; and

56
57 WHEREAS, the FHWA and NMDOT have provided interested parties and the general public the
58 opportunity to participate in the development of and comment on this PA pursuant to 36 CFR
59 800.2(c)(5); and

60
61 WHEREAS, FHWA and NMDOT are committed to the design of transportation systems that: 1)
62 achieve a safe and efficient function and respond to the needs of New Mexico communities, 2)
63 recognize that investment in cultural heritage is critical to New Mexico's continued growth and
64 prosperity and that projects are appropriately placed within specific cultural contexts of New
65 Mexico, and 3) avoid, minimize and mitigate adverse effects on historic properties; and

66
67 NOW THEREFORE, the FHWA, ACHP, NMDOT, and SHPO hereby agree that FHWA-funded
68 NMDOT undertakings and actions shall be administered according to the following stipulations in
69 order to satisfy FHWA's Section 106 responsibilities and to integrate, to the maximum extent
70 feasible, the manner in which FHWA meets its historic preservation responsibilities with its
71 responsibilities to provide safe and efficient transportation facilities under Federal and State
72 statutory or regulatory authorities and policies.

73 The FHWA, with the assistance of NMDOT, shall ensure that the following measures are carried
74 out:

75
76 **STIPULATIONS**

77
78 I. **Applicability and Scope:** This PA sets forth the process by which FHWA and NMDOT
79 shall meet their responsibilities for undertakings pursuant to aforementioned state and federal
80 cultural resources laws and regulations. To the extent of their legal authority, and in
81 coordination with the SHPO, the FHWA and NMDOT shall ensure that the measures in this
82 PA are implemented. This PA establishes an alternative to the standard consultation process
83 for FHWA/NMDOT undertakings and specifies the streamlined manner in which the FHWA
84 and NMDOT consult with the SHPO, Indian tribes, consulting parties and the interested
85 public in considering the effects of their undertakings on historic properties.

86
87 A. *FHWA Responsibilities:* FHWA is legally responsible for government-to-
88 government consultation with Tribes and all findings and determinations associated with
89 federal undertakings made under this PA. As a condition of its award to NMDOT of any
90 assistance under the Federal Aid Highway Program, FHWA shall ensure that NMDOT
91 fulfills its duties as specified in this PA, follow applicable ACHP standards and
92 guidelines, and the Secretary of the Interior's Standards and Guidelines for Archaeology
93 and Historic Preservation (36 CFR Part 61) for undertakings subject to this PA.

94
95 B. *NMDOT Responsibilities:* NMDOT, in cooperation with the FHWA, the lead
96 federal agency, shall initiate consultation pursuant to 36 CFR 800.2(c) with federal and
97 state agencies, municipalities, and tribal governments as described in Stipulation II and
98 Stipulation III. The FHWA and NMDOT shall initiate consultation on an annual or semi-
99 annual basis on all FHWA funded NMDOT projects, as shown in the NMDOT Statewide
100 Transportation Improvement Program (STIP).

- 101
102 1) NMDOT shall employ a professional cultural resource staff consisting of a
103 Cultural Resources Supervisor and other personnel that meet *the Secretary of the*
104 *Interior's Historic Preservation Professional Qualification Standards* (48 FR
105 44738-44739).
106
107 2) NMDOT on behalf of FHWA shall ensure that all work carried out pursuant to
108 this PA and Exhibit A, whether performed by NMDOT staff or consultants, is
109 conducted under the supervision of individuals who meet the qualifications set
110 forth in the *Secretary of the Interior's Historic Preservation Professional*
111 *Qualification Standards*, are listed in the SHPO Directory for state land, and
112 possess the appropriate Cultural Properties Review Committee permit for the
113 investigation.
114
115 3) NMDOT shall designate one person as their agency contact to coordinate projects
116 and communicate NMDOT project schedule priorities. NMDOT shall also
117 designate an alternate contact person who can fulfill the same responsibility when
118 the primary contact person is not available.

119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163

- 4) NMDOT will initiate consultation and seek SHPO guidance and advice, as soon as practical, when undertakings are large, complex, multi-phased, or controversial. NMDOT will seek SHPO guidance and advice, as soon as practical, on project-specific details for undertakings within a historic district listed on the National Register of Historic Places (NRHP).
- 5) NMDOT shall ensure the Tribal/Local Public Agency (T/LPA) prepares and submits project consultation to NMDOT as described in Stipulation I.E.
- 6) FHWA and NMDOT, in collaboration with SHPO, shall include a public education and interpretation component in its undertakings when appropriate. These efforts shall comprise part, or all, of the mitigation measures for the undertaking. If FHWA, NMDOT or SHPO identifies a project that may significantly contribute to our knowledge of the prehistory or history of New Mexico as a result of mitigation, archival research, built environment documentation or oral history, than NMDOT will share this information with the general public through outreach efforts that include, but are not limited to, site tours, brochures, portable exhibits, public presentations, popular publications, or educational curricula modules.

C. *SHPO Responsibilities:* The SHPO reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with Section 101(b)(3) of the NHPA, the SHPO shall advise and assist the FHWA, NMDOT, and local governments in carrying out their responsibilities under Section 106 and state statute and shall cooperate with FHWA and NMDOT to ensure that historic properties are taken into consideration at all levels and stages of planning and development.

- 1) The SHPO shall designate one person as the primary point of contact for the review of all NMDOT cultural resource compliance requests and any review issues and concerns. The SHPO shall also designate an alternate contact person who can fulfill the same responsibility when the primary contact person is not available.
- 2) When NMDOT forecasts that undertakings are, but not limited to, large, complex, multi-phased, or controversial and provides project-specific details within a historic district listed on the National Register of Historic Places (NRHP). The SHPO will provide comments to NMDOT on initial written consultation within ten (10) business days.
- 3) The SHPO shall provide comments within twenty-one (21) calendar days of receipt (i.e. physical or digital date stamp) of a request for review of a finding or determination, unless otherwise noted in this PA. Requests for additional information shall be made within the first ten (10) business days of the twenty-one (21) calendar day time frame. Any information requests shall not reestablish

164 a new twenty-one (21) calendar day review period, but an alternate time frame
165 may be agreed upon in consultation with NMDOT.
166

- 167 4) The SHPO shall contact the NMDOT within the first ten (10) business days of
168 the review period if circumstances prevent completion of a specific review of a
169 finding or determination within twenty-one (21) calendar days. The SHPO and
170 NMDOT shall agree on an alternate time frame.
171
- 172 5) If the SHPO fails to respond within twenty-one (21) calendar days, or the agreed
173 upon time frame, from receipt of a request for review of a finding or
174 determination under the terms of the PA, the NMDOT may assume concurrence
175 with the finding or determination and proceed accordingly, except for NMDOT
176 requests under Stipulation I B.(4).
177
- 178 6) The SHPO shall provide general technical assistance and guidance to NMDOT
179 on cultural resources and historic preservation matters, within an agreed upon
180 time frame.
181

182 D. *Relationship of this PA to Other Agreements:* Two Memorandums of Agreement
183 (MOA) and a Programmatic Agreement (PA) are listed in Appendix B; these shall remain
184 in effect until the termination date indicated or as amended and will then be incorporated
185 into this PA. Two Memorandums of Understanding (MOU) establishes FHWA as lead
186 Federal Agency for NEPA and NHPA on United States Department of the Interior,
187 Bureau of Land Management, New Mexico State Office (MOU 2013-NM-932-004) and
188 on United States Department of Agriculture, Forest Service, Southwest Region 3 (MOU
189 16-MU-1 1031600-054) administered land and these shall remain in effect until the
190 termination date indicated or as amended. Agency responsibilities as stipulated in these
191 existing or amended agreements shall be followed even though they may vary somewhat
192 from the procedures outlined in this PA. Other PAs and MOAs may be developed
193 pursuant to 36 CFR Part 800.14 when needed to define procedures or resolve adverse
194 effects for specific undertakings that are not covered under this PA.
195

196 E. *Tribal/Local Public Agency (T/LPA) Lead projects:* T/LPA projects are federally
197 funded local assistance program undertakings. NMDOT shall ensure that the T/LPA-
198 lead agency receiving FHWA funding prepare and submit the project consultation
199 documentation to NMDOT for review. Federally funded T/LPA projects shall follow
200 standard 36 CFR Part 800 regulations in order to fulfill its Section 106 responsibilities.
201

202 F. *Multi-Agency Undertakings:* When an undertaking includes lands administered by
203 other federal agencies or Indian Tribes within New Mexico and FHWA is the lead agency
204 for NHPA, FHWA shall follow this PA for the entire undertaking. In cooperation with
205 FHWA, NMDOT shall include consultation in the administrative record of lead agency
206 status.
207

- 208 1) When a federal agency or Indian Tribe objects to the application of this PA to
209 lands they administer, then NMDOT shall notify SHPO that a federal agency or

210 Indian Tribe has chosen to remain individually responsible for compliance with
211 Section 106 on the portion of the undertaking that occurs on land managed by the
212 federal agency or Indian Tribe.

213
214 2) When an undertaking includes lands within New Mexico administered by more
215 than one federal agency, or funding or licensing is provided by another federal
216 agency and another federal agency is the lead, consultation procedures used by
217 the lead federal agency will be followed for the entire undertaking if this is
218 acceptable to the FHWA/NMDOT, other federal agencies, and Indian Tribes.

219
220 3) When state and locally sponsored NMDOT transportation projects include lands
221 administered by several different agencies within New Mexico and another
222 federal agency is the lead, consultation procedures used by the lead federal
223 agency will be followed by the NMDOT.

224
225 4) When state and locally sponsored NMDOT transportation projects include lands
226 administered by several different state agencies within New Mexico without
227 FHWA or other lead federal agency, NMDOT shall follow this PA for lands under
228 those other jurisdictions, unless those agencies object (see Stipulation I.F.2). The
229 NMDOT shall follow this PA and indicate in its transmittal to SHPO that this is
230 a multi-agency state-funded project submitted without a federal lead.
231

232 II. **Consulting Parties:** Consulting parties include the SHPO, THPO, Indian Tribes, local
233 governments, applicants for federal assistance, permits, licenses and other approvals (see 36
234 CFR 800.2[c]). NMDOT will seek to identify organizations, individuals, land managing
235 agencies, and local governments with demonstrated interest in the project and invite them to
236 participate in the Section 106 process.

237
238 A. NMDOT shall provide copies of the survey or inventory report(s), related
239 documents, and eligibility and effect determinations to all consulting parties, prior to
240 submittal of effect determinations and documents to the SHPO. These parties will be
241 offered thirty-days (30) to review and provide comments to NMDOT. NMDOT will take
242 these comments into consideration prior to preparing concurrence submittals to SHPO.

243
244 B. Confidentiality concerns expressed by Indian tribes, private individuals and
245 business shall be addressed in accordance with Stipulation VIII.A.

246
247 III. **Consultation with Indian Tribes:** The NMDOT, at the request of and cooperatuin of
248 FHWA, shall consult with Tribes and shall respect the government-to-government nature of
249 consultation and not delegate that responsibility to project sponsors, other government
250 agencies, or consultants.

251
252 A. Upon receipt of a written request from any THPO or officially designated
253 representative of a Tribe to consult with FHWA in lieu of or in addition to NMDOT,
254 NMDOT shall forward the request to FHWA. FHWA shall consult with that Tribe in
255 coordination with NMDOT.

256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301

B. In accordance with 36 CFR 800.2(c)(2)(ii)(E), the FHWA will work towards developing consultation Memorandum of Understanding (MOU) with Indian Tribes, or at a minimum, a consultation process that meets the needs of both the Tribe and FHWA. Such MOUs will recognize government-to-government relationships and will specify how individual Indian tribes wish to be consulted in the Section 106 process. Copies of signed MOUs, or documentation of the agreed upon consultation process, will be provide by FHWA to the Indian Tribe, the SHPO, and the ACHP. The processes outlined in that agreement may supplement or replace the process in Attachment A without amending this PA.

C. The FWHA and NMDOT shall be sensitive to tribal concerns and rights regarding confidentiality and privacy in accordance with the Confidentiality provisions in Stipulation VIII.A of this agreement.

D. NMDOT, on behalf of FHWA, shall initiate project-specific consultation with Federally-recognized Tribal Historic Preservation Officers (THPO) for Tribes that have assumed SHPO functions. For Tribes that have not assumed SHPO functions and do not have a federally-recognized THPO, NMDOT will consult with a representative designated by the Tribe and with SHPO.

E. For historic properties that may be affected by an FHWA-funded undertaking and that are of significance to Indian tribes, regardless of the property’s location or land status, pursuant to 36 CFR 800.2(c)(2)(ii), 800.3(f)(2), and 800.4(a)(4):

- 1) The FHWA and NMDOT shall initiate consultation on an annual or semi-annual basis on all FHWA funded NMDOT projects, as shown in the NMDOT Statewide Transportation Improvement Program (STIP), with all Federally-recognized Tribes that have identified land areas in New Mexico that might have traditional, cultural, or religious significance to those Tribes. This process is outlined in Attachment A.
- 2) The NMDOT Environmental Bureau’s Tribal Consultation Coordinator shall use the New Mexico Historic Preservation Division’s County-by-County list and/or counties indicated by the tribe to NMDOT through consultation to identify which tribes to contact for each project. This list shows the Federally-recognized Tribes that have identified land areas in each county that might have traditional, cultural, or religious significance to those Tribes.

IV. **Public Involvement:** FHWA and the NMDOT shall seek and consider views of the public through the NEPA public notification process taking into account the likely interest of the public in the undertaking’s effect(s) on historic properties, the nature and complexity of the undertaking and its effect(s) on historic properties, and the level of federal involvement.

V. **NMDOT Standards and Guidelines.** The NMDOT shall continue to provide standards and guidelines on addressing NMDOT-specific cultural resource identification and project

302 administration. The guidelines may be accessed from NMDOT's website at
303 ([https://dot.state.nm.us/content/dam/nmdot/Infrastructure/EDS/NMDOT_CR_Guidelines.](https://dot.state.nm.us/content/dam/nmdot/Infrastructure/EDS/NMDOT_CR_Guidelines.pdf)
304 pdf). Any proposed revisions to the guidelines shall be forwarded to the SHPO and the
305 FHWA local office. These parties will be provided thirty (30) calendar days to comment
306 on the proposed revisions or changes. The NMDOT will take comments received during
307 the review period into consideration in the final draft. Changes will not require an
308 amendment to this PA. Copies of the final revised guidelines will be provided to the SHPO
309 and all other parties.

310
311 **VI. SHPO Consultation.** The undertakings listed in Appendix C shall be exempt from Section
312 106 consideration and further consultation with the SHPO. These undertakings do not have
313 the potential to effect historic properties or their effects are foreseeable and likely to be
314 minimal. Additional undertakings may be added to Appendix C by mutual written agreement
315 of the FHWA, NMDOT, SHPO, ACHP, Indian Tribes.

316
317 **VII. Standard Consultation and Review:** NMDOT shall implement the following process for
318 undertakings that have the potential to affect historic properties and are not exempt from
319 SHPO consultation (Appendix C). In agreement between FHWA/NMDOT and the SHPO
320 revisions to Appendix C shall be made without amending this PA

321
322 A. *Area of Potential Effects:* The NMDOT shall be responsible for establishing the
323 undertaking and defining the area of potential effects (APE). The NMDOT and SHPO
324 have established appropriate APEs for the most common undertakings. These standards
325 are the maximum APE limits for evaluating potential effects. The undertaking-specific
326 APEs will conform to NMDOT guidelines (Stipulation V) and as specified below. The
327 NMDOT will provide SHPO with maps clearly delineating the APE and locations of
328 surveyed resources on project plans or project maps.

- 329
330 1) The NMDOT shall consult with the SHPO on undertakings for which a standard
331 APE has not been developed, where a variance to standard APE's listed in VII.B-
332 F is proposed, or where defining the APE is difficult or controversial. The SHPO
333 will provide comments within ten (10) business days of receipt of the NMDOT
334 consultation. When an APE is larger than the standard, consultation with the
335 SHPO is not required.
- 336
337 2) The NMDOT will submit standard APE variance documentation including maps
338 and brief narrative explanation to SHPO, who shall have ten (10) business days
339 for review and comment. The NMDOT may assume concurrence with the APE
340 determination if SHPO does not respond within ten (10) business days.
- 341
342 3) The NMDOT may, in consultation with the SHPO, modify defined standard
343 APEs or create new standard APEs that are suitable for common types of
344 undertakings. These modified or new APEs will be appended to NMDOT revised
345 guidelines.

347 B. *Federal (FHWA) and State (NMDOT) Lead Projects:* The APE for NMDOT
348 owned or NMDOT right-of-way (ROW) easements and proposed ROW acquisitions or
349 easements will include both sides of the road (fence-to-fence) from beginning of the
350 project (BOP) to the end of the project (EOP). The APE will also include 1000 feet
351 beyond the BOP and EOP. This additional 1000 feet will accommodate areas of use
352 during the undertaking, or any administrative adjustments to the BOP and/or EOP.
353

354 1) Other land managing agencies may require that the APE be extended beyond the
355 ROW.
356

357 2) In cases where a site is significant, in part, based on its setting, (for example, a
358 cultural site that receives visitation or was developed for visitation), or an
359 archaeological site identified as a traditional cultural property, the APE will be
360 extended beyond the highway ROW, where land status allows, in consultation
361 with the SHPO and land managing agencies.
362

363 C. *Historic Roads:* The APE for potential historic roads will extend 50ft beyond the
364 ROW edge so that survey can identify other property types spatially associated with the
365 road. The FHWA/NMDOT may develop a variance from this standard through
366 consultation with the SHPO and other consulting parties.
367

368 1) The APE for road improvement projects that do not significantly increase the
369 number of travel lanes, add shoulders, and/or rights of way (i.e. minor investment
370 projects; NMDOT Technical Series 2004-1, pp. 20-21) will be 50 feet beyond the
371 edge of the ROW.
372

373 2) The APE for undertakings where new alignments or other significant changes to
374 the horizontal or vertical alignment are proposed (i.e. major investment project;
375 NMDOT Technical Series 2004-1, pp. 20-21) will be will be 500 feet beyond the
376 ROW or proposed project footprint to assess direct and indirect effects such as
377 visual, audible, and atmospheric considerations.
378

379 D. *Historic Buildings:* If road improvement undertakings do not have the potential to
380 effect historic buildings the APE will be limited to the existing ROW. If there is a
381 potential to affect the characteristics that qualify an individually listed property or historic
382 district in the State or National Register, the APE will be 50 feet beyond the ROW or
383 proposed project footprint. The FHWA/NMDOT shall consult with the SHPO and other
384 consulting parties on the APE when the undertaking includes a listed property or is located
385 within a listed district.
386

387 E. *Contractor Located Activities:* The APE for contractor located activities is 100 feet
388 beyond the proposed project footprint.
389

390 F. *Permitted Projects:* The APE for permitted projects, such as utilities, will be 50 feet
391 beyond the proposed construction area within the existing ROW.
392

393 **VIII. Identification of Historic Properties:** The NMDOT shall be responsible for making a
394 reasonable and good faith effort to identify historic properties that may be affected by the
395 undertaking. When the NMDOT proposes to perform an inventory of the entire APE as
396 described in Stipulation VII, consultation with the SHPO is not required.
397

398 A. *Confidentiality.* In accordance with Section 304 of the NHPA, 36 CFR 800.11(c),
399 and Section 18-6-11.1 of the Cultural Properties Act the FHWA and NMDOT shall
400 withhold from public disclosure information about the location, character, or ownership
401 of a historic property when disclosure may cause a significant invasion of privacy; risk
402 harm to the historic property; or impede the use of a traditional religious site by
403 practitioners.
404

405 B. *Determining Level of Identification Effort.* When the NMDOT determines through
406 Class I desktop research that the project APE has been inventoried to current standards as
407 defined by SHPO and NMDOT guidelines, or the inventory and documentation is
408 sufficient to evaluate eligibility and effects, the NMDOT may determine that additional
409 inventory is not necessary.
410

- 411 1) Inventories more than 10 years old shall be evaluated for sufficiency by NMDOT
412 and considered for re-examination if they do not reflect current standards and
413 knowledge levels or are inadequate for making eligibility or effect
414 determinations.
415
- 416 2) When the NMDOT determines that previous ground disturbance or development
417 has extensively modified the APE or portions of the APE so that the probability
418 of finding intact archaeological resources is unlikely, these areas may be exempt
419 from the inventory.
420
- 421 3) When the NMDOT determines that previous inventory coverage is incomplete or
422 insufficient to make an eligibility or effect determination, an intensive 100%
423 survey of the undisturbed or uninvestigated portions of the APE and a re-
424 examination of areas previously surveyed will be conducted. If NMDOT Cultural
425 Resource Staff identify two or fewer cultural resources and can be avoided by all
426 project activities NMDOT Cultural Resource Staff will document these resources
427 on the appropriate forms and submit them, along with a positive NIAF, in the
428 batch “No Effect” determinations to SHPO for concurrence on eligibility as
429 outlined in Stipulation X.B.
430
- 431 4) When the NMDOT proposes to perform a sample inventory, resource-specific
432 inventory, or other alternative identification effort, the NMDOT will consult with
433 SHPO on the proposed level, extent, and design of the inventory. The SHPO will
434 provide comments within ten (10) business days of receipt of the NMDOT sample
435 inventory design. The NMDOT will consider SHPO comments in making a final
436 determination of the design of the inventory.
437

438 IX. **Property Types Requiring No Formal Documentation.** The property types listed in
439 Attachment B shall be exempt from National Register evaluation and formal documentation.
440 Formal documentation is defined as a completed Laboratory of Anthropology (LA) form,
441 Historic Cultural Property Inventory (HCPI) form, Historic Building Inventory (HBI) form,
442 or other current state recording forms. The existence of these property types within the
443 survey area and justification for their exclusion from formal documentation will be discussed
444 in the cultural resources survey report. The property types listed in Attachment B do not
445 include significant properties more than fifty (50) years old, properties that exhibit significant
446 architectural or engineering features, or properties within the boundaries of or contributing
447 to a listed National or State Register property or district, or an eligible property.
448

449 X. **Determination of Eligibility:** The NMDOT shall apply the National Register eligibility
450 criteria (36 CFR 60.4) and criterion considerations to properties identified in the APE for
451 inclusion in the National Register of Historic Places. NRHP evaluations will be guided by
452 the *Secretary's Standards and Guidelines for Evaluation*, the National Register Bulletin *How*
453 *to Apply the National Register Criteria for Evaluation*, other applicable National Register
454 bulletins and appropriate historic contexts.
455

456 A. When FHWA is the only federal agency or established lead federal agency as
457 described in Stipulation I.F. and the undertaking affects cultural resources on lands owned
458 or managed by another federal agency or state agency, the NMDOT shall seek the views
459 of each land managing agency on determinations of National Register eligibility and
460 potential project effects for identified resources each agency manages.
461

462 1) In consultation with consulting parties, the NMDOT, in cooperation with FHWA,
463 shall ensure that properties or portions thereof that will be affected by an
464 undertaking are evaluated conclusively for eligibility. When an undertaking may
465 affect a property identified by a consulting party as having traditional cultural or
466 religious significance, the NMDOT shall consult further with that descendant
467 community or party on eligibility and effect.
468

469 B. *Previous Determinations:* Incomplete or outdated evaluations may require
470 NMDOT to reevaluate properties previously determined eligible, not eligible or
471 undetermined. If a cultural resource has been repeatedly determined ineligible, multiple
472 attempts to relocate the property have been unsuccessful, or repeated documentation
473 demonstrates that a property has been completely removed, razed, or mislocated then the
474 property does not need to be updated or reevaluated.
475

476 C. *Current Determinations:* The NMDOT may contact the SHPO concerning
477 determinations of eligibility when assistance or additional perspectives relating to a
478 specific eligibility determination are needed. This guidance and assistance by SHPO will
479 be provided within the agreed upon time frame, and clearly explained, supported in the
480 letter and intent of federal regulations.
481

482 D. *Unresolved Determinations.* The eligibility of a property may remain unresolved
483 provided it is considered as eligible for the purposes of making an effect determination.

484 Where a NRHP eligibility determination remains unresolved and the property will be
485 affected by the undertaking, NMDOT will conduct additional studies, as appropriate, to
486 make a final determination of NRHP eligibility.
487

488 E. *Final Determinations:* The NMDOT will complete the agency determination of
489 eligibility section on current state site forms or electronically in the New Mexico Cultural
490 Resource Information System (NMCRIS), if available. The SHPO shall review land
491 managing agency and NMDOT determinations of eligibility and provide NMDOT with
492 written comments and explain any disagreement within twenty-one (21) days or the
493 agreed upon timeframe. The SHPO will complete the determination of eligibility section
494 in NMCRIS. NMDOT shall take SHPO comments into account on future eligibility
495 determinations.
496

497 1) When NMDOT and SHPO do not agree on the eligibility determination of a
498 property that will be affected by an undertaking, or if the ACHP or Secretary of
499 the Interior so requests, the FHWA shall obtain a determination of eligibility from
500 the Keeper of the National Register of Historic Places pursuant to 36 CFR Part
501 800.4(c)(2). The process detailed in 36 CFR Part 63, the National Park Service
502 regulations on Eligibility for Inclusion in the NRHP shall be followed. The
503 Keeper's decision shall be final.
504

505 XI. **Assessment of Effect:** The NMDOT will make a finding of effect for the undertaking, and
506 take into account comments provided by Indian Tribes and other consulting parties if
507 participating in the consultation. The NMDOT will submit the effect finding and associated
508 documentation to the SHPO as described in this section.
509

510 A. The NMDOT will assess the direct and indirect effects of an undertaking on historic
511 properties. The assessment of effect shall consider reasonably foreseeable effects caused
512 by the undertaking that may occur later in time, be farther removed in distance or be
513 cumulative.
514

515 1) The NMDOT will attempt to avoid or minimize effects to historic properties
516 where possible during project design by integrating engineering standards and
517 measures or Context Sensitive Solutions (CSS)
518 (<https://www.fhwa.dot.gov/planning/css/>). The final project design must
519 incorporate all agreed upon engineering standards and measures and these will be
520 included as stipulations in the relevant authorization. Standard measures (i.e.
521 fencing, adjust slope limits, low-vibratory equipment, etc.) and CSS are
522 avoidance and minimization measures; not mitigation measures for revolving
523 adverse effects.
524

525 1) *No Historic Properties Affected.* When the NMDOT internal Class I evaluation
526 or any pedestrian survey only identifies isolated occurrences, previously
527 determined ineligible sites, buildings, structures or objects (see Stipulation X.B),
528 or no cultural resources are present, then a determination of "No Effect " is
529 appropriate. If historic properties are present in the APE but will not be affected

530 by the undertaking, then a “No Effect” determination is appropriate. The
531 NMDOT will notify consulting parties of a “No Effect” determination, if
532 participating, and may proceed with the undertaking following completion of the
533 NIAF or internal Class I evaluation by the NMDOT Cultural Resources Section
534 staff.
535

536 B. For no historic properties affected, the NMDOT will notify the SHPO as follows:
537

538 1) NMDOT will submit a list of No Effect undertakings and copies of applicable
539 reports with associated NMCRIS forms monthly to SHPO following the
540 documentation standards in Stipulation XV.C.
541

542 2) The SHPO will review the monthly submittals and provide any questions or
543 concerns to the NMDOT with in the twenty-one (21) calendar review period and
544 in accordance with Stipulation XV.C(2).
545

546 C. *Historic Properties Affected.* When the NMDOT determines that one or more
547 historic properties may be affected by an undertaking, the NMDOT shall apply the criteria
548 of adverse effect, 36 CFR Part 800.5(a)(1).
549

550 1) A “No Adverse Effect” determination is defined in 36 CFR 800.5(b) and is
551 appropriate in the following situations:
552

553 a. When a historic property is being affected by a proposed undertaking, but
554 the effect will not diminish the aspects of integrity nor alter, directly or
555 indirectly any of the characteristics that make the property eligible for
556 listing in the NRHP.
557

558 b. When FHWA/NMDOT can demonstrate that the portion of the property
559 that will be affected lacks integrity. For archaeological sites this will
560 involve documentation and discussion of site formation processes and the
561 methodology used to evaluate the integrity of deposits within the APE.
562

563 c. When a proposed undertaking will be visible from a historic property but
564 the project elements will not overshadow the setting or attract the attention
565 of the casual observer.
566

567 d. When the FHWA/NMDOT proposes preservation, stabilization,
568 rehabilitation, or reconstruction of NRHP eligible sites, buildings,
569 structures, or objects and the work is consistent with the *Secretary of the*
570 *Interior’s Standards for the Treatment of Historic Properties* (SOI
571 Standards), or the NMDOT modifies the undertaking or imposes
572 conditions on the undertaking to ensure consistency with the SOI
573 Standards.
574

575 2) When the FHWA/NMDOT determines that an undertaking will not have an
576 adverse effect on historic properties, they will notify SHPO and other consulting
577 parties in writing and provide a copy of the inventory report and associated
578 NMCRIS forms, if applicable, or internal evaluation by NMDOT Cultural
579 Resources Section staff.

580
581 a. When no other consulting party objects to the finding within thirty (30)
582 calendar days from receipt and the SHPO concurs with the finding as
583 described in Stipulation XI.C.1 the FHWA/NMDOT may proceed with
584 the undertaking.

585
586 b. When the SHPO objects to the FHWA/NMDOT finding of no adverse
587 effect, the SHPO and NMDOT will consult to resolve the objection. If
588 the objection cannot be resolved, or unresolved objections from other
589 consulting parties exist, the NMDOT shall seek the views of the ACHP
590 following the dispute resolution process in Stipulation XVIII.

591
592 D. *Adverse Effect.* When NMDOT determines that the undertaking will have an
593 adverse effect on historic properties, the NMDOT shall document this finding and notify
594 ACHP, SHPO, Indian Tribes, consulting parties and the interested public pursuant to 36
595 CFR 800.6(a). The NMDOT shall continue to consult with the SHPO, Indian Tribes and
596 consulting parties to develop and evaluate alternatives or modifications that could avoid,
597 minimize, or mitigate adverse effects. The NMDOT shall proceed with the resolution of
598 Adverse Effect procedures below.

599
600 E. *Resolving Adverse Effect:* The FHWA/NMDOT shall resolve adverse effects
601 through one of two processes, with a template agreement document for data recovery or
602 with an agreement document developed through consultation.

603
604 1) If no Indian tribe, consulting party, interested member of the public, or another
605 state or federal agency is participating in the resolution of adverse effects on
606 properties eligible under Criterion D only the NMDOT and SHPO will resolve
607 adverse effects through data recovery under this PA using the template MOA
608 agreement document and following the process as described in Attachment C.

609
610 2) Data recovery may not be the only mitigation measure or the most appropriate
611 especially when the affected properties are eligible under criterion A, B, or C.
612 The NMDOT will prepare, or cause to be prepared, a plan to mitigate the adverse
613 effects on these historic properties including but not limited to those listed in
614 Attachment D.

615
616 2) When an Indian tribe or consulting party wishes to participate in the resolution of
617 adverse effects, the NMDOT, upon receipt of SHPO concurrence of a
618 determination of adverse effect, will follow the process outlined in 36 CFR 800.6
619 and will prepare an agreement document. FHWA/NMDOT will continue

620 consultation with SHPO, Indian tribes, consulting parties, interested public, and
621 the ACHP, if participating, to develop an agreement document.
622

623 XII. **Standard Mitigation Protocols.** The FHWA and NMDOT, in consultation with the SHPO
624 and the ACHP, may develop standard mitigation measures for certain types of properties
625 where the mitigation approach or strategy is similar and repetitive. In such protocols, the
626 FHWA and NMDOT shall consult with parties that have a demonstrated interest in the class
627 of historic properties that may be affected by proposed projects or undertakings. Upon
628 mutual written agreement by the FHWA/NMDOT, the SHPO, and the ACHP, such standard
629 protocols shall be appended to this PA and may be followed in lieu of standard case-by-case
630 consultation for the specified class of properties.
631

632 XIII. **Emergency Situations:** Should an emergency situation occur which represents an imminent
633 threat to public health or safety, or creates a hazardous condition, the FHWA shall
634 immediately notify the SHPO and the ACHP of the condition which has initiated the situation
635 and the measures taken to respond to the emergency or hazardous condition. Should the
636 SHPO or the ACHP desire to provide technical assistance to the FHWA, they shall submit
637 comments within seven (7) calendar days from notification, if the nature of the emergency
638 or hazardous condition allows for such coordination.
639

640 XIV. **Discovery Situations:** If previously unidentified historic properties are discovered or if there
641 are unanticipated effects on historic properties after NMDOT has completed its review under
642 this PA, then construction within 50 feet of the discovery shall stop immediately. The project
643 engineer or manager shall immediately contact the NMDOT Environmental Bureau, Cultural
644 Resource Section who will in turn contact the land managing agency (if other than NMDOT),
645 the SHPO, the THPO (if applicable), and any Indian Tribe(s) that may ascribe traditional
646 cultural and religious significance to the discovered property. FHWA and NMDOT shall
647 consult with the appropriate agencies and the SHPO to record, document and evaluate the
648 National Register eligibility of the discovery and design a plan for avoiding or mitigating
649 adverse effects if necessary.
650

651
652 XV. **Human remains:** If human remains are uncovered during construction, construction
653 activities within 50 feet shall stop immediately. The remains shall be respectfully covered
654 and the project engineer or manager will immediately contact the NMDOT Cultural
655 Resource Section Supervisor and notify the appropriate law enforcement agency as set
656 forth below.
657

658 A. . If the human remains are from state or private lands, the Cultural Properties Act
659 (§ 18-6-11.2, NMSA 1978) will apply. The local law enforcement with jurisdiction and
660 the SHPO will be notified immediately. The law enforcement agency will notify the
661 Office of the Medical Investigator. The consultation process detailed in 4.10.11 NMAC
662 will be followed for both Native American remains and non-Native American remains
663

664 B. If the human remains are from federal or Indian lands, the appropriate federal law
665 enforcement officer will be notified immediately. If the remains are determined to be

666 Native American, the FHWA and federal land manager or Tribe with jurisdiction shall
667 consult with the proper tribal representatives per the Native American Graves Protection
668 and Repatriation Act (NAGPRA)(Public Law 101-601; 25 USC 3001 et seq.).
669
670

671 **XV. Documentation and Reporting Standards.** Documentation assembled by the NMDOT
672 Cultural Resources Section staff or consultants to support determinations of eligibility and
673 findings of effect under this PA, shall be consistent with 36 CFR 800.11 and conform to
674 NMDOT guidelines and NMAC Title 4 Cultural Resources, Chapter 10 Cultural Properties
675 and Historic Preservation. In all cases, resource documentation shall meet requisite land
676 managing agency standards. For all FHWA undertakings reviewed pursuant to this PA,
677 FHWA and NMDOT shall observe the following submission requirements to SHPO:
678

679 A. The NMDOT shall submit electronically as appropriate, or upon request, scoping
680 reports, corridor studies, environmental documents, up to 60% engineering plans (if
681 available), alignment alternative studies, or other studies to nm.shpo@state.nm.us with an
682 email copy to the primary point of contact.
683

684 B. The NMDOT shall provide documentation of identification efforts, determinations
685 of eligibility, treatment and management plans, final treatment reports, survey forms, and
686 other relevant cultural resource information. NMDOT shall ensure that cultural resource
687 investigations are registered in NMCRIS pursuant to 4.10.19 NMAC.
688

689 C. NMDOT shall submit a list of the No Historic Properties Affected undertakings,
690 copies of reports and NMCRIS forms if applicable, monthly to SHPO. The list will be
691 organized so that FHWA, NMDOT, and multi-agency projects are listed separately as
692 follows:
693

- 694 1) Each monthly submittal shall list the results of NMDOT's internal review or the
695 NMCRIS number, report title, report author, total number of identified resources
696 recorded during the inventory and eligibility determinations.
697
- 698 2) The SHPO will review monthly submittals and, if SHPO has questions or
699 concerns, they will provide comments to the NMDOT within the twenty-one (21)
700 calendar day review period. NMDOT shall take these comments into account on
701 future submittals and evaluations of eligibility and effect. The SHPO and
702 NMDOT may conduct onsite meetings or implement other measures as
703 appropriate to reach consensus.
704

705 **XVI. Annual Review and Evaluation.** NMDOT, FHWA, and SHPO shall, on or before August
706 10th of each year, meet to review and update any changes to staff, federal or state regulations,
707 or guidance relating to work performed under this PA, assess the effectiveness of the PA,
708 and evaluate resource identification and protection activities carried out under the PA. At
709 least thirty (30) calendar days prior to the annual evaluation, NMDOT shall submit a report
710 to FHWA, ACHP, SHPO and any consulting parties. The SHPO shall review this report and
711 provide suggestions for improving the Section 106 process as defined in this PA, discuss

712 determinations of eligibility and recommendations to improve consensus if necessary;
713 concerns with determinations of effects if necessary, and recommendations for any
714 amendments to improve the effectiveness of the PA.

715
716 A. This report shall include, but is not limited to listing or describing the following:

- 717 1) proposed project areas considered so urbanized that no historic property
718 inventory was required;
- 719 2) post review discoveries;
- 720 3) instances in which SHPO did not concur on FHWA/NMDOT determinations of
721 eligibility or effect;
- 722 4) accomplishments, concerns, and recommendations regarding any changes to this
723 PA or to the NMDOT Guidelines.
- 724 5) adverse effect findings resolved using the streamlined process outlined in
725 Stipulation XI.E.1.

726
727
728
729
730
731
732 **XVII. Specialized Capabilities:**

733
734 A. *Historic Preservation Initiatives.* To facilitate historic and archaeological
735 preservation in New Mexico, NMDOT shall promote programs and activities of mutual
736 interest to, and in consultation with, FHWA, SHPO, ACHP, Indian Tribes, or local
737 communities. Such initiatives include but are not limited to publication of reports in the
738 NMDOT Cultural Resources Technical Series; analysis and synthesis of past data
739 accumulated through FHWA and NMDOT projects for professional or general audiences;
740 enhanced web-based materials to promote public education initiatives; and development
741 of mitigation treatment plans that include public education and/or special studies that
742 advance preservation of historic properties.

743
744 B. *Archaeology Planning and Research.* FHWA and NMDOT shall provide for
745 archaeological planning and research that includes, but is not limited to:

- 746 1) Appropriate care, access, and interpretation of data and collections recovered
747 from the above undertakings.
- 748 2) FHWA and NMDOT, in consultation with SHPO, will partner with other
749 organizations that maintain or are responsible for New Mexico collections to
750 assess needs, identify alternative solutions, and implement the most appropriate
751 collections care, research, and interpretation program for New Mexico.

752
753 C. *Curation.* Archaeological research centers (curation facilities) shall meet the
754 federal curation standards set forth by the US Department of the Interior in 36 CFR 79.
755
756

757 NMDOT will maintain a current curation agreement with Museum of Indian Arts and
758 Culture.

759
760 D. *Professional Development.* NMDOT cultural resource staff shall maintain
761 continuing education credits to, be listed in the SHPO Directory for state land, and possess
762 the appropriate CPRC permit for cultural resource investigations (4.10.8 New Mexico
763 Administrative Code).

764
765 XVIII. **Dispute Resolution.** Differences on eligibility determinations are discussed under
766 Stipulation X.E.1 of this Agreement. Should any signatory or concurring party to this
767 MOA object at any time to any actions proposed or the manner in which the terms of this
768 agreement are implemented, FHWA shall consult with such party to resolve the objection.
769 If the FHWA determines that such objection cannot be resolved, The FHWA will:

770
771 A. Forward all documentation relevant to the dispute, including the FHWA's proposed
772 resolution, to the ACHP. The ACHP shall provide FHWA with its advice on the
773 resolution of the objection within thirty (30) days of receiving adequate documentation.
774 Prior to reaching a final decision on the dispute, FHWA shall prepare a written response
775 that takes into account any timely advice or comments regarding the dispute from the
776 ACHP, signatories and concurring parties, and provide them with a copy of this written
777 response. FHWA will then proceed according to its final decision.

778
779 B. If the ACHP does not provide its advice regarding the dispute within the thirty (30)
780 day time period, FHWA may make a final decision on the dispute and proceed 3
781 accordingly. Prior to reaching such a final decision, FHWA shall prepare a written
782 response that takes into account any timely comments regarding the dispute from the
783 signatories and concurring parties to the MOA, and provide them and the ACHP with a
784 copy of such written response.

785
786 C. FHWA's responsibility to carry out all other actions subject to the terms of this
787 MOA that are not the subject of the dispute remain unchanged.

788
789 XIX. **Amendment.** This MOA may be amended when such an amendment is agreed to in writing
790 by all signatories. The amendment will be effective on the date a copy signed by all of the
791 signatories is filed with the ACHP.

792
793 XX. **Right to Terminate.** FHWA, NMDOT, ACHP, or SHPO may terminate this PA by
794 providing thirty (30) calendar days written notice to the other parties, provided that the
795 parties will consult during the period before termination to seek PA on amendments or other
796 action that would avoid termination. In the event of termination, the FHWA shall comply
797 with 36 CFR 800 with regard to future undertakings.

798
799 XXI. **Duration.** This PA shall be in effect for five (5) years from the date of execution and may
800 be amended for an additional five years upon written agreement by FHWA, NMDOT,
801 ACHP, and SHPO.

802

Execution and implementation of this PA evidences that the FHWA and NMDOT have outlined a procedure for completing its Section 106 responsibilities for all individual undertakings of the Federal-aid Highway Program in New Mexico.

803 **Federal Highway Administration – Division Administrator**

804

805

806

807

By: _____ Date: _____

808

J. Don Martinez

809

FHWA-New Mexico Division

810

DRAFT

Execution and implementation of this PA evidences that the FHWA and NMDOT have outlined a procedure for completing its Section 106 responsibilities for all individual undertakings of the Federal-aid Highway Program in New Mexico.

811 Execution and implementation of this PA evidences that the FHWA and NMDOT have outlined
812 a procedure for completing its Section 106 responsibilities for all individual undertakings of the
813 Federal-aid Highway Program in New Mexico.

814
815
816

New Mexico Department of Transportation

817
818
819

820 By: _____ Date: _____
821 Michael R. Sandoval
822 NMDOT Cabinet Secretary
823

DRAFT

Execution and implementation of this PA evidences that the FHWA and NMDOT have outlined a procedure for completing its Section 106 responsibilities for all individual undertakings of the Federal-aid Highway Program in New Mexico.

824 Execution and implementation of this PA evidences that the FHWA and NMDOT have outlined
825 a procedure for completing its Section 106 responsibilities for all individual undertakings of the
826 Federal-aid Highway Program in New Mexico.

827

828

829

830 **Advisory Council on Historic Preservation**

831

832

833

By: _____ Date: _____

834

Aimee Jorjani

835

Chairman, Advisory Council on Historic Preservation

836

DRAFT

Execution and implementation of this PA evidences that the FHWA and NMDOT have outlined a procedure for completing its Section 106 responsibilities for all individual undertakings of the Federal-aid Highway Program in New Mexico.

837 Execution and implementation of this PA evidences that the FHWA and NMDOT have outlined a
838 procedure for completing its Section 106 responsibilities for all individual undertakings of the
839 Federal-aid Highway Program in New Mexico.

840
841

842

843 **New Mexico State Historic Preservation Officer**

844

845

846 By: _____

Date: _____

847 Jeff Pappas, PhD.

848 State Historic Preservation Officer

849

APPENDIX A

850

List of Tribes Invited to be Consulting Parties

851

852

853 Apache Tribe of Oklahoma

854 Comanche Nation

855 Fort Sill Apache Tribe

856 Hopi Tribe

857 Jicarilla Apache Nation

858 Kiowa Tribe of Oklahoma

859 Mescalero Apache Tribe

860 Navajo Nation

861 Ohkay Owingeh

862 Pawnee Nation

863 Pueblo of Acoma

864 Pueblo of Cochiti

865 Pueblo of Isleta

866 Pueblo of Jemez

867 Pueblo of Laguna

868 Pueblo of Nambe

869 Pueblo of Picuris

870 Pueblo of Pojoaque

871 Pueblo of San Felipe

872 Pueblo of San Ildefonso

873 Pueblo of Sandia

874 Pueblo of Santa Ana

875 Pueblo of Santa Clara

876 Pueblo of Santo Domingo/Kewa Pueblo

877 Pueblo of Taos

878 Pueblo of Tesuque

879 Pueblo of Zia

880 Southern Ute Tribe

881 Ute Mountain Ute Tribe

882 White Mountain Apache Tribe
883 Wichita and Affiliated Tribes
884 Ysleta del Sur Pueblo
885 Zuni Tribe
886

DRAFT

887 **APPENDIX B**
888

889 List of Agreement documents between FHWA, NMDOT, ACHP and SHPO:
890

- 891 • Programmatic Agreement among the Federal Highway Administration, the Advisory
892 Council on Historic Preservation, the New Mexico Department of Transportation, and
893 the New Mexico Historic Preservation Officer Regarding Rehabilitation, Management,
894 and Preservation of Historic Bridges in New Mexico, Expires December 31, 2024
895

896 List of Agreement documents between NMDOT, the Department of Cultural Affairs (DCA)
897

- 898 • Memorandum of Agreement Between New Mexico Department of Transportation and
899 the Department of Cultural Affairs, Contract U900181, expires June 30, 2021
900

901 Establishes that NMDOT provides financial support to the Department of Cultural Affairs
902 (DCA), Historic Preservation Division (HPD) to meet its consultation responsibilities
903 under Section 106 of the National Historic Preservation Act (NHPA), as amended, and
904 Section 18-6-8.1 of the New Mexico Cultural Properties Act. The NMDOT submits all
905 manners of cultural resource documents prepared for proposed highway construction
906 projects such as, inventory reports, management plans, traditional cultural property
907 studies, and any administrative records (i.e. recording forms, plan sets, photographs, etc)
908 to DCA/HPD for review and comment. It also establishes that reasonable and timely
909 consultation with the State Historic Preservation Officer (SHPO) is facilitated by
910 designating an individual within DCA/HPD as the point of contact with the primary
911 responsibility, on behalf of the SHPO, to oversee the review of cultural resource
912 documents submitted by FHWA/NMDOT. This individual also participates in the
913 development of FHWA/NMDOT construction projects and offers guidance and expertise
914 to the NMDOT regarding the evaluation and management of affected historic properties
915 within the state.
916

- 917 • Memorandum of Agreement Between New Mexico Department of Transportation and
918 the Department of Cultural Affairs, Contract U900111, expires June 30, 2021
919

920 Establishes that NMDOT provides financial support to the Department of Cultural Affairs
921 (DCA), Archaeological Records Management Section (ARMS), for the development and
922 maintenance of the New Mexico Cultural Resource Information System (NMCRIS) to
923 meet the requirements of Section 101(3) of NHPA, as amended, 36 CFR 61.4, and
924 Sections 18-6-5 and 18-6-8 of the Cultural Properties Act. And, it acknowledges that
925 ARMS/NMCRIS is the central archive for all FHWA/NMDOT records prepared by a
926 cultural resources professionals. It also establishes a streamlined process for the NMDOT
927 to acquire current cultural resource information submitted to ARMS and entered into the
928 NMCRIS for the identification, protection and management of cultural properties and
929 resources within the state to help meet its responsibilities under Section 106 and state
930 statute.
931
932

933 **APPENDIX C**

934 **List of Activities Exempt From Further Section 106 Consultation**

935 The following types of undertakings are activities in which NMDOT routinely utilizes Federal
936 Aid Highway and State Capital Outlay funds. These projects generally do not have potential
937 to affect historic properties and are exempt from the review procedures in Stipulation VII of
938 this PA. They are limited to the activities specified and shall not be part an undertaking within
939 a listed historic property or historic district.
940
941

- 942
- 943 A. Planning studies, research studies, professional services, or other administrative projects
944 that do not include any construction activity.
945
- 946 B. The addition of bicycle and pedestrian lanes on existing pavement.
947
- 948 C. Alterations to existing facilities (i.e. curb ramps, detectable warning surfaces, elevation
949 changes, median cut-through, driveway slopes, pedestrian signals, etc.) in order to make
950 them compliant with the Americans with Disabilities Act (ADA).
951
- 952 D. Pavement milling, overlay, chip seal, or rehabilitation on existing roads when the
953 typical section is not increased to include new shoulders or travel lanes.
954
- 955 E. Chemical surfacing treatments applied to roads to protect or preserve existing pavement.
956
- 957 F. Installation or replacement of traffic signs, interpretive signs, traffic signals and signal
958 interconnect systems, or overhead lighting on existing roads, .
959
- 960 G. Stockpiling road construction and pavement surfacing material at existing stockpile
961 locations.
962
- 963 H. Routine maintenance of existing roads, guardrail, drainage structures, drainage ditches,
964 fences, and bridges that does not include fence replacement, changes to the alignment or
965 typical section of the roadway, or changes in the location or extent of drainage structures
966 and ditches.
967
- 968 I. Roadway striping, pavement marking, and vehicle monitoring equipment installation.
969
- 970 J. Safety projects at existing railroad crossings that do not involve new ground disturbance.
971
- 972 K. Landscape projects located within limits of existing facilities and construction
973 areas or described in previously concluded consultations.
974
- 975 L. Localized geotechnical and other investigations such as drilling test bores for soil
976 sampling within the existing roadway prism.
977
978

ATTACHMENT A

979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023

FHWA/NMDOT Environmental Bureau Protocol for Tribal Consultation on Historic Properties of Significance to Indian Tribes Regardless of the Location of the Property

In cooperation with FHWA, the NMDOT assists in identifying appropriate consulting parties as well as properties of significance to American Indian Tribes, under 36 CFR 800.2(c)(2)(ii), 800.3(f) and 800.4(a)(4), the NMDOT Environmental Bureau Tribal Coordinator uses a process designed to invite tribes to be consulting parties to projects as early as possible in project development. This process provides tribes the opportunity to identify only the projects of interest or concern, while concluding consultation on the others. This allows the Tribes and the agencies to focus on the projects of greatest interest to them.

The NMDOT Environmental Bureau Tribal Coordinator sends to tribes a table with a list of current and upcoming projects along with vicinity maps at least once a year, and no more often than quarterly. This table is generated from the Statewide Transportation Improvement Program (STIP), which is the known and public list (eSTIP <https://estip.dot.state.nm.us/>) of proposed federally funded (and some state funded) transportation projects. The eSTIP is created through the formal statewide transportation project planning process and is frequently updated

This consultation protocol is outlined below.

- The STIP list: To initiate consultation, NMDOT sends a hardcopy and/or electronic packet including a table of proposed projects to each federally recognized American Indian Tribe that has identified traditional interests in places in New Mexico as indicated in the publically available New Mexico Historic Preservation Division county-by-county working list (<http://www.nmhistoricpreservation.org/outreach/native-american-consultations.html>), and/or counties indicated by tribes directly to NMDOT through consultation. The table contains a brief description of the nature and location of each proposed project, the lead agency, and production date, if known, and is accompanied by a cover letter and GIS maps showing the proposed project locations. If the STIP list of projects contains fewer than 20 proposed projects, it may be sent to all tribes, regardless of where the project is located.
- The STIP projects: The proposed projects listed in each table are undertakings that the Tribal Coordinator has identified as having potential to cause effects on historic properties. The table will not include STIP projects that are administrative in nature or of the types that can qualify as exempt activities as specified in Appendix C of this PA. Signature and date lines are provided to easily allow for the Tribe’s response and general written comment.
- The Environmental Bureau process: The NMDOT sends the hard copy consultation packet via Certified Mail with a return receipt card, and requests a response within

1024 45 days after receipt. NMDOT also will send a digital copy via electronic mail if
1025 email is available or, if previous consultation has indicated it is appropriate, will
1026 send only a digital copy. The NMDOT attempts to contact each Tribe by telephone
1027 and/or email within 30 days of the return receipt date as shown on the return receipt
1028 card to provide an opportunity to discuss the project list, the consultation process,
1029 and specific projects; to arrange face-to-face meetings; or address any other
1030 questions or concerns. After 45 days, NMDOT will attempt to contact tribes to
1031 confirm that they want to decline/participate as consulting parties. If no response is
1032 received NMDOT assumes no concerns and moves forward with the Section 106
1033 process.

1034

- 1035 • The Consultation results: Tribes generally use the table to identify projects to which
1036 they would like to be consulting parties, those for which they need more
1037 information, and those on which they do not want to consult further.
1038 FHWA/NMDOT follows standard Section 106 consultation protocols for those
1039 projects on which a Tribe requests to participate as a consulting party and for those
1040 they request additional information, and considers consultation concluded for those
1041 proposed projects for which the Tribe has explicitly declined to participate as a
1042 consulting party. If no response is received NMDOT assumes no concerns and
1043 moves forward with the Section 106 process.

- 1044
- 1045 • The NMDOT Environmental Bureau Tribal Coordinator: The Tribal Coordinator
1046 informs Environmental Bureau staff of tribal interest in projects under their
1047 management, maintains a record of tribal responses, and the results of consultation.
1048

1049 **ATTACHMENT B**

1050
1051 List of Property Types Requiring No Formal Documentation
1052

1053 The following property types and list of cultural materials are exempt from State and National
1054 evaluation and formal documentation as they are likely to be less than fifty (50) years old or lack
1055 significance This list may be modified or additions developed as necessary by the NMDOT in
1056 consultation with SHPO. The following list is not meant to be exhaustive, but to provide
1057 guidance when considering significance. Examination using professional judgment, common
1058 sense, and standard historic research and analysis shall be applied to determine if these property
1059 types are exempt from documentation procedures in Stipulation IX of the PA:
1060

1061 A. Infrastructure:

- 1062 1. Disposal pits; underground storage tanks; underground vaults; septic tanks.
- 1063 2. Underground pipelines; sewer lines; and steam, storm-water, or electrical manholes.
- 1064 3. Aboveground fuel and water tanks
- 1065 4. Road-block barriers
- 1066 5. Mobile homes and trailers, modular buildings, or pre-manufactured outbuildings
- 1067 6. Utility lines (i.e., power lines, towers, telephone lines, fiber optic cable, etc.) less than
1068 fifty (50) years old
- 1069 7. Rip-rap (cobble, rock, or wood to stabilize riverbanks, stream banks, drainages, etc.) less
1070 than fifty (50) years old

1071
1072 B. Road-side debris and activity:

- 1073 1. Debris associated with the construction of well pads, roads, pipelines, and related
1074 infrastructure or facilities that are less than fifty (50) years old
- 1075 2. Pipelines for gas, water, etc. (Does not include early wooden pipelines)
- 1076 3. Recent short-term camps associated with transient occupation and use (i.e. fire-rings,
1077 temporary shelters, supply caches, etc.)
- 1078 4. Recent isolated stock dams, troughs, spring boxes, and associated windmills
- 1079 5. Slash piles and isolated woodpiles
- 1080 6. Car banks (abandoned cars, farm machinery, appliances, etc. used to stabilize riverbanks,
1081 stream banks, drainages, etc.)
- 1082 7. Isolated abandoned motorized vehicles, appliances, and mobile homes

1083
1084 C. Land management and use:

- 1085 1. Elevation, bench, and section markers
- 1086 2. All survey or cadastral markers
- 1087 3. Fences and enclosures (i.e., barbed wire, chain link, buck-and-pole, or other types of
1088 pasture or right-of-way fence.) This does not include corrals, roundup or load-out
1089 facilities.

1090
1091 D. Roads (*see note below*):

- 1092 1. Roads segments that have been constructed or reconstructed within the last fifty (50)
1093 years.

- 1094 2. Abandoned road segments not associated with a named road or road over fifty (50) years
1095 old.
1096 3. Unnamed two-track roads (i.e. pipeline, ranch roads, seismic roads, etc.)
1097 4. Abandoned segments not associated with an eligible road or district
1098

1099 **NOTE:** Standard archival research (i.e. General Lands Office (GLO) check, county records,
1100 USGS historic maps, etc.) is required to determine if the roads are named or over fifty (50) years
1101 old. Named roads and unnamed roads over 50 years old need to be formally recorded on
1102 appropriate recording forms. Generally, unnamed roads less than 50 years old do not need to be
1103 recorded. Discuss in the report the historic research conducted to support results. If the unnamed
1104 road is shown on a map and is 50 years or older, documentation on appropriate recording forms
1105 is required
1106

DRAFT

1107

ATTACHMENT C

1108

1109

1110

Template Memorandum of Agreement for Data Recovery

1111

Included below is a template for a two-party Memorandum of Agreement (MOA) between FHWA/ NMDOT and NMSHPO for data recovery.

1114

1115

1116

MEMORANDUM OF AGREEMENT

1117

BETWEEN FEDERAL HIGHWAY ADMINISTRATION, THE NEW MEXICO

1118

DEPARTMENT OF TRANSPORTATION, AND THE NEW MEXICO STATE

1119

HISTORIC PRESERVATION OFFICER

1120

REGARDING THE [insert project name and location]

1121

1122

1123

WHEREAS, the Federal Highway Administration (FHWA), in cooperation with the New Mexico Department of Transportation (NMDOT) proposes to ["carry out" or "fund" or other appropriate verb] the [insert project name] pursuant to the [insert name of the substantive statute authorizing the federal agency involvement in the project], [insert legal cite for that statute]; and

1128

WHEREAS, the undertaking consists of [insert a brief explanation of the undertaking (Project FHWA/NMDOT CN#; hereinafter referred to as the Project)]; and

1131

WHEREAS, the FHWA/NMDOT has defined the Project's area of potential effects (APE) as [insert written description] as shown on the map in Attachment 1; and

1134

WHEREAS, the FHWA/NMDOT has determined that the Project may have an adverse effect on [insert name of historic property(ies)], which ["is" or "are"] ["listed in" or "eligible for listing in"] the National Register of Historic Places, and has consulted with the New Mexico State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

1140

WHEREAS, the FHWA/NMDOT has consulted with the [insert name of Indian tribe(s)], for which [insert name of historic property(ies)] ["has" or "have"] religious and cultural significance; and

1144

WHEREAS, the [insert names of Indian tribes who have responded] [declined further consultation on the Project] or [requested to be consulted if unmarked human remains, funerary objects or other culturally sensitive items are uncovered during the Project or insert other language] and;

1149

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), the FHWA/NMDOT has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with

1151

1152 specified documentation, and the ACHP has chosen not to participate in the consultation
1153 pursuant to 36 CFR § 800.6(a)(1)(iii); and
1154

1155 **NOW, THEREFORE**, the FHWA/NMDOT and the SHPO agree that the Project shall be
1156 implemented in accordance with the following stipulations in order to take into account the
1157 effect of the undertaking on historic properties.

1158 **STIPULATIONS**

1159 **I. MITIGATION MEASURES**

1160 When the NMDOT proposes to resolve adverse effects through data recovery, the
1161 NMDOT will prepare, or cause to be prepared, a treatment plan. This plan involves
1162 properties eligible under Criterion D only. The NMDOT shall submit the treatment
1163 plan to SHPO for review and comment. If the SHPO does not respond within 21 days,
1164 the NMDOT may assume SHPO concurrence with the plan. Comments submitted by
1165 the SHPO shall be taken into consideration by the NMDOT and the data recovery plan
1166 revised, if necessary. The NMDOT will take into consideration SHPO comments prior
1167 to implementation of the plan.
1168
1169

1170 A. To the extent of its legal authority, and in coordination with the FHWA and the
1171 SHPO, the NMDOT shall ensure that the measures and procedures specified in
1172 the approved treatment plan are implemented. The treatment plan has been
1173 developed and prepared in a manner consistent with the Secretary of the Interior's
1174 Standards and Guidelines for Archeological Documentation, the ACHP's
1175 guidance found in Recovery of Significant Information from Archeological Sites,
1176 and the ACHP Policy Statement Regarding Treatment of Burial Sites, Human
1177 Remains, and Funerary Objects, dated February 23, 2007.
1178

1179 1. The NMDOT shall ensure that its consultant(s) will obtain the appropriate
1180 permit(s) from the Cultural Properties Review Committee to implement
1181 the treatment plan [insert archaeological site numbers] and shall ensure
1182 that all state and federal rules are applied.
1183

1184 2. The NMDOT shall ensure that its consultant(s) prepare a preliminary
1185 report (status report) discussing the findings in accordance with the
1186 treatment plan within 30 days after completion of the fieldwork following
1187 the guidance in [insert applicable NMAC rule] New Mexico
1188 Administrative Code (NMAC). The preliminary report will serve to
1189 document completion of the fieldwork and to recommend additional
1190 protection measures for intact cultural deposits outside of, but adjacent to,
1191 the Project APE if necessary.
1192

1193 3. The NMDOT shall submit a copy of the preliminary report to the SHPO
1194 [and insert names of Native American tribes if they requested a copy].
1195 The SHPO shall then have 21 days from receipt to review and comment
1196 on the preliminary report. [Insert if necessary, The NMDOT shall afford
1197 the (names of Native American tribes) 30 days from receipt to review and
1198 comment on the preliminary report.]
1199

- 1200 4. The NMDOT shall ensure that its consultant(s) prepares a final report
1201 discussing the findings resulting from the treatment plan within 12 months
1202 of acceptance of the preliminary report by the SHPO. The SHPO shall
1203 then have 21 days to review and comment on the draft final report. [Insert
1204 if necessary, The NMDOT shall afford the (names of Native American
1205 tribes) 30 days from receipt to review and comment on the preliminary
1206 report.]
1207
- 1208 B. All artifacts and records resulting from the data recovery shall be curated at the
1209 Museum of Indian Arts and Culture in accordance with state law (18-6-6 NMSA
1210 1978) and federal regulations (36 C.F.R. Part 79).
1211
- 1212 C. [Insert if needed. Collections from privately owned or controlled lands will be
1213 returned to their owners. FHWA/NMDOT will encourage private landowners to
1214 donate any recovered collections to a repository meeting the standards in 36 CFR
1215 Part 79.]
1216

1217 II. DISCOVERY SITUATIONS 1218

- 1219 A. If previously unknown cultural resources are exposed by construction activities
1220 associated with the Project, work will stop in the immediate vicinity, the resources
1221 will be protected, and the SHPO and Indian Tribes that might attach traditional
1222 cultural and religious importance to the property will be notified within 24 hours.
1223 If, in consultation with the SHPO, it is determined that the resource is significant
1224 and warrants preservation or treatment, the location of the cultural resource will
1225 be documented for the New Mexico Cultural Resource Information System
1226 (NMCRIIS) in accordance with the standards for survey on state land (4.10.15
1227 NMAC).
1228
- 1229 B. If FHWA/NMDOT determines that the resource cannot be avoided by
1230 construction, FHWA/NMDOT shall consult with the SHPO to develop a
1231 treatment plan to mitigate the effects of the Project on the property. The SHPO
1232 shall have 21 days to review and provide comments on the proposed plan.
1233 FHWA/NMDOT shall take all comments into consideration and revise the plan as
1234 necessary. A revised plan shall be provided to the SHPO.
1235
- 1236 C. If unmarked human burials or funerary objects are discovered during
1237 construction, FHWA/NMDOT shall ensure that the contractor will stop work in
1238 the immediate vicinity, take steps to secure and protect the discovery, and
1239 immediately notify the local law enforcement agency with jurisdiction, the SHPO,
1240 and the FHWA/NMDOT, respectively. The local law enforcement agency will
1241 notify the Office of the Medical Investigator (OMI) pursuant to Section 18-6-11.2
1242 of the Cultural Properties Act and implementing rule 4.10.11 NMAC. If the OMI
1243 terminates jurisdiction to the SHPO, the FHWA/NMDOT and the SHPO will
1244 consult to determine the steps to be taken to protect or remove the remains in
1245 accordance with 4.10.11 NMAC.

1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291

III. DURATION

This MOA will expire if its terms are not carried out within five (5) years [or specify other appropriate time period] from the date of its execution. Prior to such time, the FHWA/NMDOT may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation [insert stipulation number] below.

IV. DISPUTE RESOLUTION

- A. Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the FHWA/NMDOT shall consult with such party to resolve the objection. If the FHWA/NMDOT determines that such objection cannot be resolved, the FHWA/NMDOT will:
- B. Forward all documentation relevant to the dispute, including the FHWA’s proposed resolution, to the ACHP. The ACHP shall provide FHWA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. FHWA will then proceed according to its final decision.
- C. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA/NMDOT shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
- D. FHWA’s responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

V. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VI. TERMINATION

- A. If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30)

1292 days (or another time period agreed to by all signatories) an amendment cannot be
1293 reached, any signatory may terminate the MOA upon written notification to the
1294 other signatories.

1295
1296 B. Once the MOA is terminated, and prior to work continuing on the Project,
1297 FHWA/NMDOT must either (a) execute an MOA pursuant to 36 CFR § 800.6 or
1298 (b) request, take into account, and respond to the comments of the ACHP under
1299 36 CFR § 800.7. FHWA/NMDOT shall notify the signatories as to the course of
1300 action it will pursue.

1301
1302
1303 Execution of this MOA by the FHWA/NMDOT and the SHPO and implementation of its terms
1304 evidence that FHWA/NMDOT has taken into account the effects of this Project on historic
1305 properties and afforded the ACHP an opportunity to comment.

1306
1307
1308
1309
1310
1311

1312 **SIGNATORIES:**

1313
1314 **Federal Highway Administration**

1315
1316 _____ Date _____
1317 [insert agency official name and title]

1318
1319
1320

1321 **New Mexico Department of Transportation**

1322
1323 _____ Date _____
1324 [insert name and title]

1325
1326
1327

1328 **New Mexico State Historic Preservation Office**

1329
1330 _____ Date _____
1331 [insert name and title]

1332
1333
1334
1335

ATTACHMENT D

Other Mitigation Plans

1336 Data recovery may not be the only mitigation measure or the most appropriate especially when the
1337 affected properties are eligible under criterion A, B, or C. The NMDOT will prepare, or cause to
1338 be prepared, a plan to mitigate the adverse effects on these historic properties.
1339

1340 NMDOT will submit the mitigation plan to the SHPO for review and comment. If the SHPO does
1341 not respond within twenty-one (21) days, NMDOT may assume concurrence with the proposed
1342 treatment plan. The NMDOT shall take SHPO comments into consideration and revise the report
1343 if necessary.
1344

1345 Mitigation plans may include but are not limited to the following:
1346

1347 Historic American Buildings Survey/Historic American Engineering Record/Historic American
1348 Landscapes Survey (HABS/HAER/HALS): Typically HABS/HAER documentation will be
1349 prepared for buildings and structures eligible under Criterion C or Criterion A and C.
1350

1351 Preservation, Rehabilitation, Restoration or Reconstruction: Mitigation plans involving
1352 preservation (including stabilization), rehabilitation, restoration or reconstruction will follow the
1353 Secretary of Interior's standards and guidance found at <http://www.nps.gov/history/tps/>.
1354

1355 Archival Research: Mitigation may involve researching the history of the historic property and/or
1356 the region and its people to address research themes. This may include primary research at sources
1357 including national, state or local archives, university collections, museum collections,
1358 HABS/HAER documentation, census data, General Land Office (GLO) records, local newspapers,
1359 family histories, land deeds, photos, maps, regional and economic data on precipitation averages,
1360 livestock and cash crop prices.
1361

1362 Oral Histories: Oral histories should follow the guidance found in the Handbook for Oral History-
1363 NPS, 2004 by Janet A. McDonnell: <http://www.cr.nps.gov/history/oh/oralh1.htm>; and Oral
1364 History Association: Principles and Best practices, 2009:
1365 <http://www.oralhistory.org/about/principles-and-practices/>;
1366

1367 Ethnography: Mitigation plans involving ethnography should follow the guidance found in NPS
1368 Essential Competencies for an Ethnography; American Anthropological Association's statement
1369 on Ethnography. <http://www.aaanet.org/stmts/irb.htm>; NPS NRHP Bulletin 38-TCPs, Appendix
1370 II, Professional Qualifications for Ethnography:
1371 <http://www.nps.gov/nr/publications/bulletins/nrb38/nrb38%20apendix%202.htm>.
1372

1373 Mitigation may involve workforce training and education on cultural sensitivity; preparation of
1374 papers, brochures, articles, books or booklets, web-based digital and video materials written for
1375 the general public in jargon-free language and include professional quality photographs and/or
1376 drawings as appropriate; preparation of a curriculum for use in schools; a public interest story to
1377 be posted on the NMDOT's web site, press release, article for NewsMAC; and exhibits, including
1378 formal displays, posters, wayside exhibits, etc.
1379

1380 Preliminary reports will be provided to the SHPO within the time frame specified in the plan.
1381 Comments submitted by the SHPO shall be taken into consideration by the NMDOT and the

1382 preliminary report will be revised, if necessary. If the SHPO does not respond with the agreed
1383 upon time-frame, the NMDOT may assume SHPO concurrence.

1384
1385 Final reports will be submitted by the SHPO within the time frame specified in the plan. If the
1386 SHPO does not intend to provide comments, the SHPO will notify the NMDOT immediately upon
1387 making this decision. If SHPO has concerns regarding the report, the SHPO will provide
1388 comments to the NMDOT. NMDOT shall take SHPO comments into consideration and revise the
1389 report if necessary.

1390
1391 **EXHIBIT A**

1392
1393
1394
1395 **LETTER OF AGREEMENT BETWEEN THE NEW**
1396 **MEXICO DEPARTMENT OF TRANSPORTATION**
1397 **AND NEW MEXICO DEPARTMENT OF**
1398 **CULTURAL AFFAIRS, HISTORIC**
1399 **PRESERVATION DIVISION**

1400
1401 **PROGRAM PURPOSE:**

1402 The New Mexico Department of Transportation (NMDOT) and Historic Preservation Division
1403 (HPD)/State Historic Preservation Officer (SHPO) wish to create a mutually beneficial
1404 agreement that will strengthen NMDOT relationship with the SHPO and to promote good
1405 stewardship in order to protect and preserve and avoid adverse effects to cultural properties of
1406 the State of New Mexico when implementing programs and projects under state law

1407 This letter serves as a formal agreement between the NMDOT and the HPD/SHPO whereby the
1408 parties agree to the following principles set forth below.

1409
1410 **AUTHORITIES:**

1411 This Agreement shall be governed and construed in accordance with the laws of the
1412 State of New Mexico.

1413 New Mexico Cultural Properties Act of 1969, as amended (NMSA 1978, 18-6-1 et seq);
1414 New Mexico Cultural Properties Protection Act of 1993 (NMSA 1978, 18-6A-1 et seq);
1415 New Mexico Prehistoric and Historic Sites Preservation Act of 1987, as amended (NMSA 1978,
1416 18-8-1 et seq)

1417
1418 **RESPONSIBILITIES**

1419 The NMDOT and the HPD/SHPO shall follow the policy of the State of New Mexico to:

- 1420
1421 A. Consider the historical and cultural heritage of the state as one of the state's most
1422 valued and important assets and to provide for the preservation, protection and

- 1423 enhancement of structures, sites, and objects of historical significance within the State:
1424 and
- 1425 B. To identify, evaluate and register cultural properties on lands owned, controlled,
1426 or managed by departments or agencies of the state;
 - 1427 C. To cooperate with federal and state agencies, local governments, organizations
1428 and individuals to ensure that cultural properties are taken into consideration at all levels
1429 of planning and development;
 - 1430 D. To promote effective communication and collaboration between state agencies
1431 and Indian Nations, tribes, and pueblos on a government to government basis on agency
1432 policies, agreements and programs that may directly affect American Indians; and
 - 1433 E. To carry of the responsibilities of the state in a manner conforming with, but not
1434 limited by, the provisions of the National Historic Preservation Act.

1435
1436 **NMDOT Responsibilities:**

- 1437 1. NMDOT shall ensure that cultural properties not listed in Appendix C or
1438 Attachment B and the applicable processes set out in stipulations I.B through
1439 XVII in the attached Programmatic Agreement (PA) between the Federal
1440 Highway Administration, the New Mexico Department of Transportation, the
1441 Advisory Council on Historic Preservation, and the New Mexico State Historic
1442 Preservation Officer Regarding Implementation of the Federal Aid Highway
1443 Program in New Mexico are given full consideration in all planning and
1444 management decisions in accordance with the applicable state statutes and
1445 implementing rules
- 1446
1447 2. NMDOT shall ensure that all cultural resource work performed under this
1448 agreement conform to the standards in Title 4 (Cultural Resources) and Chapter
1449 10 (Cultural Properties and Historic Preservation) of the New Mexico
1450 Administrative Code (NMAC).
- 1451
1452 3. NMDOT shall maintain and keep current all state cultural resource permits
1453 to support NMDOT activities and programs as required pursuant to Sections 18-6-
1454 5(O) and 18-6-11.2 of the Cultural Properties Act.
- 1455
1456 4. State funding only Tribal/Local Public Agency (T/LPA) lead projects on a
1457 non-NMDOT facility do not require NMDOT Environmental Bureau oversight or
1458 review beyond a level of effort form to advise the T/LPA about the presence of
1459 historic properties. The T/LPA receiving the funds is responsible to comply with
1460 state statute.
- 1461
1462 5. State funding only Tribal/Local Public Agency (T/LPA) lead projects that
1463 follow or cross an NMDOT facility require a level of effort form and NMDOT
1464 Environmental Bureau review and certification. NMDOT shall provide oversight
1465 to the T/LPA to ensure proposed projects conform to state statute. With NMDOT
1466 assistance, T/LPA will make necessary document revisions and forward
1467 documentation to SHPO for concurrence on eligibility and project effects, and

1468 implement proposed protection, preservation, or mitigation measures. which are
1469 reviewed.

1470
1471 6. When state and locally sponsored NMDOT transportation projects include
1472 lands administered by several different state agencies within New Mexico without
1473 FHWA or other lead federal agency, NMDOT shall follow the PA for lands under
1474 those other jurisdictions, unless those agencies object (see Stipulation I.F.2). The
1475 NMDOT shall indicate in its transmittal to SHPO that this is a multi-agency state-
1476 funded project submitted without a federal lead.

1477
1478 **SHPO responsibilities:**
1479 The SHPO shall consult with NMDOT and provide timely comment set forth in
1480 accordance with applicable state statutes and implementing rules and the applicable
1481 processes set forth in Stipulations I.C through XV in the attached PA.

1482
1483 **DURATION:**
1484 The duration of this agreement shall be five (5) years from the date of execution of the PA and
1485 may be amended for an additional five years per Stipulation XXI of the PA.

1486
1487 **TERMINATION**
1488 The NMDOT or the HPD/SHPO may terminate this Agreement with or without
1489 cause at any time by giving thirty (30) days written notice when it is determined that
1490 termination is in both parties best interest.

1491 **GENERAL**
1492 This instrument contains the entire agreement between the parties with respect to
1493 the subject matter hereof, and any representation, promise or condition in
1494 connection therewith not incorporated herein shall not be binding on either party. If
1495 any term of this Agreement is held invalid or unenforceable, such term shall be
1496 considered omitted from this Agreement and shall not affect the validity or
1497 enforceability of the rest of this Agreement. No modification of the terms of this
1498 Agreement shall be valid unless made in writing and signed by authorized
1499 representatives of the parties.

1500 **IN WITNESS THEREOF**, the parties have executed this agreement as of the day
1501 and year last written below.

1502
1503
1504 **SIGNATORIES:**

1505
1506 **New Mexico Department of Transportation**

1507
1508
1509 By: _____ Date: _____

1510 Michael R. Sandoval
1511 NMDOT Cabinet Secretary

1512

1513
1514
1515
1516
1517
1518
1519
1520

New Mexico State Historic Preservation Officer

By: _____ Date: _____
Jeff Pappas, PhD.
State Historic Preservation Officer

DRAFT