

DRAFT
PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE FEDERAL RAILROAD ADMINISTRATION,
THE U.S. ARMY CORPS OF ENGINEERS,
THE MAINE STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE MAINE DEPARTMENT OF TRANSPORTATION,
FOR
THE TRANSPORTATION PROGRAM IN MAINE

WHEREAS, the Federal Highway Administration (FHWA) under the authority of 23 U.S.C. 101 et seq. and 49 U.S.C. Chapter 53, implements the Federal-aid Highway Program in the state of Maine by funding and approving state and locally sponsored transportation projects that are administered by the Maine Department of Transportation (Maine DOT); and

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

WHEREAS, the Federal Railroad Administration (FRA) issues a variety of dedicated and competitive grants; and pursuant to 49 C.F.R. § 1.81(a)(6), FRA carries out the responsibilities under Section 106 for rail projects for which credit assistance is provided by the U.S. Department of Transportation's Build America Bureau, which administers the U.S. Department of Transportation's credit and loan programs; and

WHEREAS, the FRA Administrator is the "Agency Official" responsible for ensuring that FRA complies with Section 106; and

WHEREAS, FRA has determined that projects funded through FRA grant programs or with credit assistance provided by the Build America Bureau are undertakings pursuant to Section 106 and may have an effect on Historic Properties, and FRA will utilize this Programmatic Agreement for undertakings in the state of Maine for which Maine DOT is the applicant and/or project sponsor; and

WHEREAS, the U.S. Army Corps of Engineers, New England District (Corps) administers a Department of the Army permit program under the authority of the Rivers and Harbors Act of 1899, Section 10 (33 U.S.C. 401 and 403), and the Clean Water Act of 1973, Section 404 (33 U.S.C. 1344), hereafter referred to as Permits, to which highway projects in Maine may be subject; and

WHEREAS, for State funded projects, the Corps District Commander is the "Agency Official" responsible for ensuring that the Permits in the State of Maine comply with Section 106 and is the Lead Federal Agency for state funded projects when a permit is required; and

WHEREAS, the Corps has determined that projects authorized by Department of the Army Permits are undertakings pursuant to Section 106 and may have an effect on Historic Properties and the Corps will utilize this Programmatic Agreement for MaineDOT projects subject to its Permits; and

WHEREAS, Maine DOT administers Federal-aid projects throughout the State of Maine as authorized by Title 23 U.S.C 302, and may receive financial assistance from FRA or the Build America Bureau, and administers projects that are subject to USACE Permits; and

WHEREAS, the responsibilities of the Maine State Historic Preservation Officer (SHPO) under Section 106 and 36 CFR Part 800 are to advise, assist, review, and consult with Federal agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies' requests; and

WHEREAS, FHWA, FRA and the USACE have determined that certain types of transportation projects, identified in Appendix A, would have minimal potential to effect properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with the Maine State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR § 800.14(b); and

WHEREAS, FHWA, FRA, and the USACE (herein collectively referred to as the Federal Agencies or separately each as Lead Federal Agency) have consulted with Federally-recognized Indian tribes (Tribes) with ancestral lands in Maine about this Agreement, requested their comments, and taken any comments received into account. These Tribes include Mi'kmaq Nation; the Houlton Band of Maliseet Indians; the Passamaquoddy Tribe; and the Penobscot Nation; and

WHEREAS, any project involving tribal lands as defined in 36 CFR 800.16(x), or any project that may affect a historic property identified by a federally recognized Indian tribe as possessing traditional religious and cultural significance, shall not be governed by this agreement, but shall be reviewed by the Federal Agencies in accordance with 36 CFR 800; and

WHEREAS, pursuant to the consultation conducted under 36 CFR 800.14(b), the signatories (MaineDOT, FHWA, FRA, Army Corps, SHPO, ACHP) have developed this Programmatic Agreement (Agreement) in order to establish an efficient and effective program alternative for taking into account the effects of the Federal Agencies' transportation undertakings for which MaineDOT is the applicant or project sponsor on historic properties in Maine and for affording the ACHP a reasonable opportunity to comment on undertakings covered by this agreement; and

WHEREAS, the ACHP's *Program Comment to Exempt Consideration of Effects to Rail Properties with Rail Rights-of-Way* (August 17, 2018) (ACHP's Program Comment for Rail Rights-of-Way) determined that certain activities have minimal to no potential to affect historic properties, whether or not there may be historic properties in the project area; and

WHEREAS, the public has been invited to consult in the development of this PA through a Virtual Public Input website, and has taken any comments received into account; and

WHEREAS, Certified Local Governments (CLGs) and state agencies have been invited to consult in the development of this PA through a Virtual Public Input website and have taken any comments received into account; and

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

WHEREAS, the Advisory Council on Historic Preservation (ACHP) has been consulted pursuant to 36 CFR 800.14(b), and the ACHP has opted to participate as a signatory to this PA;

WHEREAS, this Agreement shall supersede the following previous programmatic agreement: Statewide Agreement for the Federal Aid Highway and Federal Transit Programs in Maine (November 5th, 2004); and

NOW, THEREFORE, the Federal Agencies, the SHPO, the ACHP, and Maine DOT, together the Signatories, agree that the Federal Programs in Maine shall be carried out in accordance with the following stipulations in order to take into account the effects of the Federal Agencies' transportation undertakings on historic properties in Maine and that these stipulations shall govern compliance of the Federal Agencies' transportation undertakings with Section 106 of the NHPA until this Agreement expires or is terminated.

The stipulations of this Agreement are organized in the following order:

- I. Applicability and Scope
- II. Cooperating Federal Agencies
- III. Professional Qualifications Standards
- IV. Responsibilities
- V. Consultation with Tribes
- VI. Participation of Other Consulting Parties and the Public
- VII. Project Review
- VIII. Emergency Situations
- IX. Post-Review Discoveries
- X. Identification and Treatment of Human Remains
- XI. Monitoring and Reporting
- XII. Dispute Resolution
- XIII. Amendment

- XIV. Termination
- XV. Confidentiality
- XVI. Duration of Agreement

STIPULATIONS

The Federal Agencies, with the assistance of Maine DOT, shall ensure that the following measures are carried out:

I. APPLICABILITY, SCOPE & GOALS

- A. The purpose of this Agreement is to streamline consultation for Section 106 of the NHPA for the Federal Agencies' federally funded and/or authorized transportation undertakings in Maine for which Maine DOT is the applicant and/or project sponsor.
- B. This Agreement sets forth the process by which the Federal Agencies, with the assistance of Maine DOT, will meet their responsibilities pursuant to Section 106 Section of the NHPA (54 U.S.C. § 306102). The Agreement is meant to be a general guide outlining major responsibilities of each signatory party.
- C. More detailed project review procedures will be updated periodically via Maine DOT's Section 106 *Standard Operating Procedures*.
- D. Through this Agreement the Federal Agencies authorize Maine DOT to initiate and, in many cases, conclude consultation with the SHPO and other consulting parties for purposes of compliance with Section 106 of the NHPA the Federal Agencies' federally funded and/or authorized transportation undertakings in Maine for which Maine DOT is the applicant and/or project sponsor.
- E. This Agreement shall not apply to undertakings that occur on or affect tribal lands as defined in 36 CFR 800.16(x).

II. COOPERATING FEDERAL AGENCIES

Cooperating Federal Agencies who delegate FHWA, FRA, or USACE as a lead Federal agency for an undertaking may fulfill their obligations under Section 106 of NHPA according to 36 CFR 800.2(a)(2), provided that the Lead Federal Agency and Maine DOT follow the requirements of this Agreement and the cooperating agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by the Federal Agencies and Maine DOT.

For undertakings otherwise subject to this Agreement that have been previously reviewed by another federal agency and for which FRA and USACE have verified that the scope of work remains unchanged, FRA or USACE may utilize any existing Section 106 reviews pursuant to 36

CFR Part 800.3(b) to satisfy its Section 106 requirements. FRA and USACE remain responsible for any portions of the undertaking not addressed via previous Section 106 consultation and may utilize this Agreement to satisfy those responsibilities.

III. PROFESSIONAL QUALIFICATIONS STANDARDS

Actions prescribed by this Agreement that involve the identification, evaluation, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meets the Secretary of the Interior's Professional Qualifications Standards (published in 48 FR 44738-44739) and the Maine State Historic Preservation Officer's Standards for Archaeological Work in Maine, Chapter 812 (94-089). However, nothing in this stipulation may be interpreted to preclude the Lead Federal Agency, Maine DOT or any agent or contractor thereof from using the services of persons who do not meet these qualifications standards, providing their activities are conducted under the supervision of a person who does meet the standards.

Maine DOT employs contractors and consultants meeting the requirements of the Secretary of the Interior's Professional Qualifications Standards (48FR 190 :44738- 44739) and the Maine State Historic Preservation Officer's Standards for Archaeological Work in Maine, Chapter 812 (94-089).

IV. RESPONSIBILITIES

The following section identifies the responsibilities of the signatories in complying with the terms of this Agreement.

A. FHWA Responsibilities

1. Consistent with the requirements of 36 CFR 800.2(a) and 800.2(a)(1-4), FHWA remains legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement by Maine DOT under the authority of FHWA. At any point in the Section 106 process, FHWA may inquire as to the status of any undertaking carried out under the authority of this Agreement and may participate directly in any undertaking at its discretion.
2. FHWA will notify the ACHP of findings of adverse effect and invite ACHP to participate in resolving the adverse effect of an undertaking in accordance to 36 CFR 800.6(a)(1).
3. FHWA retains the responsibility for government-to-government consultation with Tribes as defined in 36 CFR 800.16(m). FHWA may ask Maine DOT to assist in consultation if the individual Tribes agree to alternate procedures.
4. FHWA shall be responsible for resolving disputes and objections pursuant to Stipulation XII of this Agreement when acting as the Lead Federal Agency for Section 106.

B. FRA Responsibilities

1. Consistent with the requirements of 36 CFR 800.2(a) and 800.2(a)(1-4), FRA remains legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement by Maine DOT under the authority of FRA. At any point in the Section 106 process, FRA may inquire as to the status of any undertaking carried out under the authority of this Agreement and may participate directly in any undertaking at its discretion.
2. FRA will notify the ACHP of findings of adverse effect and invite ACHP to participate in resolving the adverse effect of an undertaking in accordance to 36 CFR 800.6(a)(1) FRA is for that undertaking.
3. FRA retains the responsibility for government-to-government consultation with Tribes as defined in 36 CFR 800.16(m). FRA may ask Maine DOT to assist in consultation if a Tribe agrees to alternate procedures.
4. FRA shall be responsible for resolving disputes and objections pursuant to Stipulation XII of this Agreement when acting as the Lead Federal Agency for Section 106.

C. USACE Responsibilities

1. The USACE remains legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement by Maine DOT on behalf of the USACE. At any point in the Section 106 process, the USACE may inquire as to the status of any undertaking carried out under the authority of this Agreement and may participate directly in any undertaking at its discretion.
2. The USACE will notify the ACHP of findings of adverse effect and invite ACHP to participate in resolving the adverse effect of an undertaking in accordance to 36 CFR 800.6(a)(1).
3. The USACE retains the responsibility for government-to-government consultation with Tribes as defined in 36 CFR 800.16(m). The USACE may ask Maine DOT to assist in consultation if the individual Tribes agree to alternate procedures.
4. The USACE shall be responsible for resolving disputes and objections pursuant to Stipulation XII of this Agreement when acting as the Lead Federal Agency for Section 106.

D. Maine DOT Responsibilities

1. Maine DOT, using staff and/or consultants meeting the Secretary of the Interior's professional qualifications standards (48 FR 44738-9) and the Maine State Historic Preservation Officer's Standards for Archaeological Work in Maine, Chapter 812 (94-089), will independently perform the work and consultation described in 36 CFR 800.3

– 36 CFR 800.6 (including any succeeding revisions to the regulations) on behalf of the Federal Agencies for the Federal Agencies’ federally funded and/or authorized transportation undertakings in Maine for which Maine DOT is the applicant and/or project sponsor. Delegation of these responsibilities is based on ongoing adequate and appropriate performance by Maine DOT as evaluated in monitoring by the Federal Agencies pursuant to Stipulation XIII.A of this Agreement. These responsibilities include carrying out the following requirements:

- a. Determining whether the ACHP’s Program Comment for Rail Rights-of-Way is fully or partially applicable.
- b. Reviewing all documentation prepared by consultants or subcontractors prior to submittal for SHPO or Federal Agency review.
- c. 36 CFR 800.3(a) Determine whether the undertaking is a type of activity that has the potential to cause effects on historic properties.
- d. 36 CFR 800.3(c) and (d) Determine whether the undertaking may occur on or has the potential to affect historic properties on tribal lands.
- e. 36 CFR 800.3(e) solicit public comment and involvement.
- f. 36 CFR 800.3(f) identify additional consulting parties who should be invited to participate in the undertakings covered by this Agreement.
- g. 36 CFR 800.4(a) and (b) determine and document, in consultation with the SHPO, the scope of identification efforts and level of effort, including the undertaking's area of potential effects (APE).
- h. 36 CFR 800.4 In consultation with the SHPO, identify properties within the APE included in or eligible for listing in the NRHP.
- i. 36 CFR 800.5(a)(1) Determine whether historic properties may be affected by the undertaking by applying the criteria of adverse effect.¹
- j. 36 CFR 800.6 In consultation with the Lead Federal Agency, the SHPO, the ACHP (if it has chosen to participate), and any other consulting parties address any adverse effects through the development, circulation, and execution of a MOA, as appropriate.
- k. Provide the Lead Agency copies of all correspondence sent out on its behalf (e.g. letters to SHPO or Tribes).

2. Maine DOT will organize an annual meeting (if needed) and invite the Federal Agencies, interested Federally Recognized Tribes, ACHP and the SHPO to assess activities conducted under this Agreement, and the status of the Agreement.

E. SHPO Responsibilities

1. The SHPO will consult with the applicable Lead Federal Agency, Maine DOT, or their designee on the definition of the APE, identification of historic properties,

¹ Note: For undertakings for which FRA is the Lead Federal Agency, FRA will review, approve, and sign all Adverse Effect determinations.

- evaluation of National Register eligibility, assessment of effects and resolution of adverse effects, according to the terms of this PA.
2. The SHPO will respond to requests from the applicable Lead Federal Agency, Maine DOT, or their designee, for information about historic properties held by the SHPO. Only Lead Federal Agency staff, Maine DOT staff, or their designee, who are qualified professionals, will be allowed access to historic property information held by the SHPO. Access to historic property information may be through online systems or hard copy site files, Geographic Information Systems (GIS) data, survey reports, or other records.
 3. SHPO will review and monitor activities carried out pursuant to this Agreement, which includes reviewing summary reports on 1) projects exempted from Section 106 review, and 2) project scope changes that did not require additional consultation with SHPO. The SHPO will participate in the annual meeting to evaluate implementation of this PA.

F. ACHP Responsibilities

1. ACHP will attend annual meetings to evaluate implementation of this PA, as needed.
2. ACHP will participate in the resolution of disputes that may occur through the implementation of this PA.

V. CONSULTATION WITH TRIBES

- A. The Lead Federal Agency, Maine DOT shall identify and establish consultation with Tribes consistent with the requirements of 36 CFR 800.2(c)(2) and 36 CFR 800.3(c)-(f). Maine DOT, may provide general coordination information to Tribes, but the Lead Federal Agency shall retain ultimate responsibility for all federal requirements pertaining to government-to-government consultation.
- B. Maine DOT shall help ensure that consultation with Tribes is initiated early in the project planning process to identify cultural, confidentiality, or other concerns and to allow adequate time for consideration of Tribal input.
- C. Currently, per 36 CFR 800.3(f)(2), all federally recognized Tribes are invited to consult regardless of project location. Formal procedures and areas of interest for individual Tribes will be addressed in a separate tribal agreement initiated within 3 years.
- D. The Lead Federal Agency, with assistance from Maine DOT, shall ensure that consultation continues with Tribes throughout the Section 106 review process prescribed by this Agreement whenever such tribes express a concern about an undertaking or about historic properties that may be affected.
- E. The Lead Federal Agency may ask Maine DOT to assist in consultation if the individual Tribe agree.

VI. PARTICIPATION OF CONSULTING PARTIES AND THE PUBLIC

A. Consulting Parties

1. Consulting parties for each undertaking shall be identified in writing by Maine DOT, in consultation with the SHPO, pursuant to 36 CFR 800.3(c-f) and consulting party participation in undertakings covered under this Agreement shall be governed by 36 CFR 800.3(f)(3). Individuals and organizations with a demonstrated interest in an undertaking shall be invited by Maine DOT, in consultation with the Lead Federal Agency, to participate in the Section 106 process. Any land-managing agency whose land may be affected by an undertaking shall be invited by Maine DOT to participate in the Section 106 process. Written requests by individuals, organizations, and agencies to become consulting parties will be evaluated on a case-by-case basis by Maine DOT and the Lead Federal Agency in consultation with the SHPO.

B. Public Involvement

1. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by FHWA's and Maine DOT's environmental compliance procedures. Maine DOT's Public Involvement Plan provides further guidance for identifying, informing, and involving the public. Public involvement and the release of information hereunder shall be consistent with 36 CFR 800.2(d), 800.3(e), and 800.1 l(c)(1 and 3).
2. The Maine DOT shall continue to seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, and the likely interest of the public in the effects on historic properties, to remain consistent with the intent of 36 CFR Part 800, as amended.
3. As soon as possible, the Maine DOT shall make the Lead Federal Agency and SHPO aware of any and all public controversy as it relates to the historic properties potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to the Tribes.

VII. PROJECT REVIEW

Project review procedures are outlined below. Directions for MaineDOT staff on tracking and processing projects is found in the *MaineDOT's Section 106 Standard Operating Procedure (SOP)*, as amended.

A. Projects that have no potential to cause effects to historic properties:

1. Pursuant to 36 CFR 800.3(a)(1), are defined as those actions that by their nature, will not result in effects to historic properties. FHWA and FRA limit these to only non-construction related activities. For example, purchasing equipment, release of

funds for planning studies and design² all fall under this portion of the regulation and do not require consideration under Section 106.

2. Projects that have no potential to cause effects to historic properties do not include construction and maintenance. Questions about applicability should be referred to the Lead Federal Agency's Federal Preservation Officer (FPO).

B. Projects with minimal potential to affect historic properties (Exempted Projects):

1. Certain types of transportation projects have minimal potential to affect historic properties, whether or not there may be historic properties in the project area. The signatories to this Agreement agree that minor projects limited to the activities listed in Appendix A will require no further coordination under Section 106.
2. Maine DOT, the SHPO, and Federal Agencies may petition to add or remove additional activities to the list in Appendix A upon written amendment to and concurrence from all signatories to this agreement.
3. For projects that are limited to the activities listed in Appendix A, Maine DOT will document its finding that the action is exempt from further review and maintain that documentation in its project files.

C. Projects with potential to affect historic properties:

1. No Historic Properties Affected. MaineDOT shall consult as needed with the Lead Federal Agency on the scope of the undertaking and its APE. For those undertakings in which there are: a) no previously recorded historic properties within the Area of Potential Effects (APE) and b) no newly identified historic properties within the APE, Maine DOT's cultural resource staff will issue a finding of "no historic properties affected" and will forward this finding and supporting documentation to the SHPO for concurrence. Copies of this documentation will be provided to all consulting parties.
2. If there are potential historic properties identified within the APE:
 - a. Maine DOT's cultural resource staff will apply the National Register Evaluation Criteria in consultation with the SHPO to assess the need for any additional investigation and determine National Register eligibility in accordance with 36 CFR 800.4.
 - b. If the APE may contain properties of traditional cultural and religious significance to Indian tribes or identified properties within the APE may be of interest to tribes, the Lead Federal Agency will initiate consultation with appropriate tribes.
3. No Adverse Effect
 - a. Maine DOT will apply the Criteria of Adverse Effect to any historic

² Although non reporting, some planning studies may be screened early to determine National Register listing/eligibility. Design or early planning activities in this section will not constrain the full consideration of impacts to historic properties.

properties in consultation with the Maine SHPO and other consulting parties, as appropriate, in accordance with 36 CFR 800. 5.

- b. If Maine DOT determines that the undertaking will have no adverse effect on historic properties, it will notify SHPO and any other consulting parties in writing and make it available for public review. The SHPO will review the determination and provide written comments within 30 days from receiving Maine DOT's finding and supporting documentation as set forth in 36 CFR 800.11.
- c. If SHPO concurs with Maine DOT's no adverse effect determination, Maine DOT shall document that finding, and proceed with the undertaking as planned.
- d. The Maine DOT shall include the following documentation in the project file:
 - i. Any records on consultation.
 - ii. Any records on efforts to identify historic properties.
 - iii. Any findings of eligibility.
 - iv. Any findings of effect.

4. Adverse Effect

- a. If Maine DOT determines that the undertaking will have an adverse effect on historic properties:
 - i. MaineDOT shall continue consultation with SHPO, the Lead Federal agency, and other consulting parties to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.
 - ii. If the adverse effect cannot be avoided, MaineDOT shall prepare a Finding of Adverse Effect for the lead federal agency so that it may notify ACHP in accordance with 36 CFR 800.11(e).
 - iii. For FRA lead projects, MaineDOT will provide a draft Finding of Adverse Effect for FRA to review, approve, and sign before distribution to the SHPO.
- b. Maine DOT's cultural resource staff will then consult with the SHPO and other consulting parties to resolve adverse effects and conclude the Section 106 process in accordance with 36 CFR 800.6.

D. Changes in Scope

- a. At any time, if an undertaking changes (e.g., lead federal agency designation, scope, funding, or APE), MaineDOT shall re-assess the previous findings to determine if the APE and findings remain valid or if additional survey or effects assessment is required. These findings will be documented in the project file, MaineDOT will alert the Lead Federal Agency to the results of the re-assessment.
- b. Additional Section 106 consultation shall be required if more than 5 years have passed since conclusion of Section 106.

VIII. EMERGENCY SITUATIONS

In the event that the State of Maine (or a county or counties in Maine) experiences a disaster (natural or otherwise) event triggering a state of emergency, as declared by the President of the United States and/or the Governor of Maine, the guidance in the MaineDOT Section 106 SOP expedites review for Emergency Repairs as defined in 36 CFR § 800.12 and 23 CFR 668.103 for federally funded projects where FHWA and FRA are the Lead Federal Agency. On State funded projects where the Corps is the Lead Federal Agency, emergency procedures will be conducted in accordance with 33 CFR 325.2(e)(4) and include notification and request for comment to SHPO and appropriate Tribal Historic Preservation Officers (THPO)(s) and any Indian tribe that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking.

IX. POST-REVIEW DISCOVERIES

A. Planning for Subsequent Discoveries

When MaineDOT's identification efforts indicate that historic properties are likely to be discovered during implementation of an undertaking, MaineDOT shall include in any environmental document, contract, and specifications, a plan for discovery of such properties. Implementation of the plan as originally proposed, or modified as necessary owing to the nature and extent of the properties discovered, will be in accordance with 36 CFR 800.4-6

B. Late Discoveries

1. If previously unidentified archaeological or historic properties, or unanticipated effects, are discovered after MaineDOT has completed its review under this Agreement, that portion of the project will stop immediately, in accordance with *State of Maine Standard Specification 105.9* (Revised March 2020).
2. No further construction in the area of discovery will proceed until the requirements of 36 CFR 800.13 have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property.
3. MaineDOT, in coordination with the Lead Federal Agency, will record, document, and evaluate NRHP eligibility of the property and the project's effect on the property, then consult with SHPO and Tribes, as appropriate to design a plan for avoiding, minimizing, or mitigating adverse effects on any eligible property.
4. If neither the SHPO nor a Tribe files an objection within 72 hours of Maine DOT's plan for addressing the discovery, MaineDOT may carry out the requirements of 36 CFR 800.13 on behalf of the Lead Federal Agency, and the ACHP does not need to be notified.

X. IDENTIFICATION AND TREATMENT OF HUMAN REMAINS

A. In the event that human remains are identified prior to, during, or after project

construction, Maine DOT will develop a treatment plan in consultation with the Lead Federal Agency and the SHPO. If it is determined that the human remains are associated with a historic property of religious or cultural significance to Tribes, Maine DOT and the Lead Federal Agency will consult with the Tribes prior to the development or execution of a treatment plan.

- B. All work conducted on human remains and abandoned cemeteries will comply with Title 30-A, §3107: *Abandoned cemeteries*.

XI. MONITORING AND REPORTING

1. FHWA shall monitor the provisions of this Agreement no more than every 24 months after the date of execution of this agreement. The monitoring effort shall consist of a review of project records and interviews of staff at Maine DOT, SHPO, as well as interviews with other consulting parties. FHWA shall prepare a report that summarizes the conclusions of monitoring that will be posted and publicly available on the Maine DOT website. FHWA will also transmit the monitoring report to the ACHP for review.
2. FRA shall monitor the implementation of this Agreement when Maine DOT submits NEPA documentation to FRA for review and approval, which should include all relevant Section 106 documentation.
3. Maine DOT shall prepare a written report annually on a calendar year basis. The report will provide a description of the number and effect finding type for projects that were reviewed during the calendar year. The report will also describe accomplishments/successes achieved over the course of the year as well as suggestions for improvements. Maine DOT shall submit the annual report to the Federal Agencies, the SHPO, and ACHP no later than March 31 of each year. If any party requests, a meeting will be held to discuss the annual report.
4. The Federal Agencies, the SHPO, and ACHP may review activities carried out pursuant to this Agreement. Maine DOT shall facilitate this review by compiling specific categories of information to document the effectiveness of the Agreement and by making this information available on an annual basis to FHWA, FRA, the SHPO, and ACHP in the form of a written report. Categories of information can include, but are not limited to, a summary of actions taken under the Agreement, including all findings and determinations, accomplishments, estimated time and cost savings, public objections, and inadvertent effects or foreclosures.
5. The range and type of information included by Maine DOT in the written report and the manner in which this information is organized and presented must facilitate the ability of the reviewing parties to assess accurately the degree to which the Agreement and its manner of implementation constitute an efficient and effective program alternative under 36 CFR 800, and to determine whether this Agreement should remain in effect, and if so, whether and how it should be improved through appropriate amendment.

XII. DISPUTE RESOLUTION

Resolving Objections to Implementation of this Agreement

1. Should any signatory party object in writing to the Federal Agencies regarding the manner in which the terms of this Agreement are carried out, the Federal Agencies will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. The Agencies will honor the request of any signatory party to participate in the consultation and will take any comments provided by such parties into account. The Agencies shall establish a reasonable time frame for such consultations.
2. Should any signatory party object to a Maine DOT determination of eligibility, the Lead Agency will attempt to resolve the dispute through further consultation.
3. If these methods are not successful, the Lead Agency will submit the eligibility determination to the Keeper of the National Register of Historic Places for resolution.
4. If the objection is resolved through consultation, the Lead Federal Agency may authorize the disputed action to proceed in accordance with the terms of such resolution.
5. If after initiating such consultation, the Lead Agency determines that the objection cannot be resolved through consultation, the Lead Agency shall forward all documentation relevant to the objection to the ACHP and other signatory parties, including the Lead Agency's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
 - i. Advise the Lead Agency that ACHP concurs in their proposed response to the objection, whereupon the Lead Agency will respond to the objection; accordingly, or
 - ii. Provide the Lead Agency with recommendations, which the Lead Agency shall take into account in reaching a final decision regarding its response to the objection; or
 - iii. Notify the Lead Agency that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4) and proceed to refer the objection and comment. In this event, the Lead Agency shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR 800.7(a)(4).
6. Should ACHP not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, the Lead Federal Agency may assume ACHP's concurrence in its proposed response to the objection.
7. The Lead Federal Agency shall take into account any ACHP recommendation or comment and any comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection. The Lead Federal Agency's responsibility to carry out all actions under this Agreement that are not the subject of the objection shall remain unchanged.
8. The Lead Federal Agency shall provide all other signatory parties to this Agreement

- with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
9. The Lead Federal Agency may authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.
 10. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify the other signatories. Any signatory party may choose to comment on the objection. The signatories shall establish a reasonable time frame for this comment period. The signatories shall consider the objection, and in reaching its decision, the signatories will take all comments from the other parties into account. Within 15 days following closure of the comment period, the signatories will render a decision regarding the objection and respond to the objecting party. The signatories will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. The decision regarding resolution of the objection will be final. Following the issuance of its final decision, the signatories may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

XIII. AMENDMENT

- A. Any signatory party to this Agreement may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory parties.
- B. Each attachment to this Agreement may be individually amended through consultation of the signatory parties without requiring amendment of the Agreement. MaineDOT will file all updated attachments with ACHP and provide a copy to all signatories.

XIV. TERMINATION

- A. Any signatory party may terminate this agreement. If this Agreement is not amended as provided for in Stipulation XIII, or if any signatory party proposes termination of this Agreement, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than 30 days to seek alternatives to termination.
- B. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement.
- C. Should such consultation fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the other parties in writing.
- D. Beginning with the date of termination, the Federal Agencies shall ensure that until and

unless a new Agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 CFR 800.

XV. CONFIDENTIALITY

All parties to this Agreement acknowledge that information about historic properties, potential historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of Section 304 of NHPA. Section 304 allows the Federal Agencies to withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if Maine DOT determines that disclosure may 1) cause a significant invasion of privacy; 2) risk harm to the historic resource; or 3) impede the use of a traditional religious site by practitioners. Having so acknowledged, all parties to this Agreement will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

All parties in this agreement must also adhere to Maine State Statute *Protection of Site Location Information* 27 MRS § 377, as amended. In order to protect the site or protected site from unlawful excavation or harm, any information in the possession of the Maine Historic Preservation Commission, the State Museum, the Bureau of Parks and Lands, other state agencies or the University of Maine System about the location or other attributes of any site or protected site may be designated by the Maine Historic Preservation Commission or State Museum as confidential and exempt from Title 1, chapter 13. Such data must be made available for the purpose of archaeological research.

XVI. DURATION OF AGREEMENT

This Agreement shall remain in effect for a period of seven (seven (7) years after the date it takes effect unless it is terminated prior to that time. Six months prior to the conclusion of the five-year period, Maine DOT will notify all parties in writing. If there are no objections from the signatories, the term of the Agreement will be extended for an additional seven years through an amendment, consistent with Stipulation XIII. If any party objects to extending the Agreement, or proposes amendments, Maine DOT will consult with the parties to consider amendments or other actions to avoid termination.

Signatories:

Federal Highway Administration

By: _____

Todd D. Jorgensen
Division Administrator

Date: _____

Federal Railroad Administration

By: _____ Date: _____
Katherine Zeringue
Federal Preservation Officer

U.S. Army Corps of Engineers

By: _____ Date: _____
Tammy R. Turley
Chief, Regulatory Division

State Historic Preservation Officer

By: _____ Date: _____
Kirk Mohny
Maine Historic Preservation Commission

Advisory Council on Historic Preservation

By: _____ Date: _____
Jordan E. Tannenbaum
Vice Chairman

Maine Department of Transportation

By: _____ Date: _____
Joyce Taylor
Chief Engineer

APPENDIX A

Exempted Projects

The following are activities in which Maine DOT routinely utilizes Federal Aid Highway and Federal Railroad Assistance funds and which have minimal potential to affect historic properties, provided they are limited to the activities listed and are not part of a larger project. Maine DOT Cultural Resource staff will review projects to ensure that proposed exemptions are consistent with this section. Projects limited to these activities shall not require Section 106 consultation with SHPO nor any further consideration under Section 106:

A. Replacement (same type/size and no impact outside of previously constructed limits)

- ADA tip-downs, warning fields
- Road base, pavement
- Historic bridges: wearing surfaces, protective coating or sealing, paint (same color as existing)
- Non-historic bridges: decks, wearing surfaces, railings, wing walls, paint (excludes railroad bridges)
- Culverts (excludes railroad culverts and stone boxes)
 - Added length will not exceed ten feet in total (sum of both sides)
- Rail: track structure, ballasts, ties
- Signs, traffic signals
- Guardrail, curb, sidewalks
- Fences (not including stone walls), plant material
- Marine facility infrastructure: transfer bridges, pen, dolphins, piers, pilings, floats, moorings, boats

B. Maintenance and replacement activities with visual changes where effects on historic properties are foreseeable and likely to be minimal or not adverse

- Replacement/upgrades to signs, traffic signals, and associated equipment
 - Must be approximate in size, appearance, and location to existing and not outside of previously constructed limits
- Guardrail end-treatment replacement/upgrades
 - Added impervious pavement for end-treatment replacement/upgrades not to extend beyond six feet and toe of slope not to extend beyond six feet
- Extending/adding curb on existing sidewalk (must use in-kind materials)
- Adding new ADA tip-downs and warning fields

C. Routine maintenance and repair that restores original/constructed conditions (no visual changes apparent and no impact to previously undisturbed ground)

- Items listed under B above
- Vegetation management
- Drainage systems

- Crack sealing
- Scour countermeasures (e.g., filling in scour holes, eroded areas)
- Removing winter sand (all methods)
- Re-establishing ditches

E. Structural/Strengthening work limited to non-historic, non-eligible bridge, not within an historic district (includes abutment repair above ground only - subsurface disturbance needs review)

- Piers
- Abutments
- Joints

F. Work on the Interstate or other controlled access highways within existing interchanges, medians, and travel ways within previously constructed slope limits

G. Work within previously constructed limits with no visual changes apparent

- Paving over existing paved surface
- Installing in-pavement or in-fill technologies (e.g., scales)
- Slip and invert lining of non-historic culverts
- Rail lines

H. Activities causing minimal or no disturbance to natural ground

- Installing signs with wooden or “u” channel posts
- Placing or removing above ground temporary or easily moved items (e.g., benches, boulders)
- Planting within plow layer (12-16 inches)
- Loaming, seeding

I. Archaeology Only - work within existing non-interstate intersections, medians, highways, rail lines, within previously constructed limits

- Paving shoulders
- Installing signals

Appendix B – Definitions

DEFINITIONS

- A. *Exempted Projects*: Undertakings which typically have minimal potential to cause effects to historic properties. Work is limited to the activities listed in Appendix A. An undertaking will not qualify as excepted from review if conditions must be imposed to ensure that potential historic properties would not be affected.
- B. *Ground disturbance* is defined as any work or activity that results in a disturbance of the earth, including excavating, digging, trenching, drilling, augering, backfilling, clearing, and grading.
- C. *Review Period (Days)*: All time designations are in calendar days unless otherwise stipulated. If a review period ends on a Saturday, Sunday or federal holiday, the review period will be extended until the next business day. All review periods start on the day the documents are provided to the relevant parties, which constitutes notification, unless otherwise stipulated in this PA.
- D. *Other Terms*: For purposes of this agreement, all definitions provided in 36 CFR Part 800.16 (a) through (y) shall apply.