

**PROGRAMMATIC AGREEMENT
AMONG
U. S. CUSTOMS AND BORDER PROTECTION,
THE HISTORIC PRESERVATION OFFICERS OF THE STATES OF ARIZONA,
CALIFORNIA, NEW MEXICO, AND TEXAS,
GENERAL SERVICES ADMINISTRATION, U.S. DEPARTMENT OF AGRICULTURE,
U.S. DEPARTMENT OF THE INTERIOR,
U.S. INTERNATIONAL BOUNDARY AND WATER COMMISSION,
NEW MEXICO STATE LAND OFFICE,
CALIFORNIA VALLEY MIWOK TRIBE, COCOPAH INDIAN TRIBE,
DELAWARE NATION, FORT YUMA-QUECHAN TRIBE,
PECHANGA BAND OF LUISENO MISSION INDIANS,
RINCON BAND OF LUISENO MISSION INDIANS,
TOHONO O'ODHAM NATION, TONKAWA TRIBE OF OKLAHOMA,
YAVAPAI-PRESCOTT INDIAN TRIBE,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
CBP UNDERTAKINGS IN STATES LOCATED ALONG THE SOUTHWEST BORDER
OF THE UNITED STATES**

WHEREAS, U.S. Customs and Border Protection (CBP), pursuant to various authorizing statutes, including the Homeland Security Act of 2002, Pub. L. 107-296, codified at 6 U.S.C. Parts 101 *et seq.*, and other Acts amendatory thereof and supplementary thereto, is statutorily mandated to control and guard the borders and boundaries of the United States, including the Nation's southwest border, through the enforcement of customs, immigration, and agriculture laws and regulations, while at the same time facilitating legitimate trade and travel; and

WHEREAS, CBP contains multiple offices including the Office of Administration, Office of Border Patrol, Office of Field Operations, Office of Air and Marine, Office of Information and Technology, and the Office of Technology Innovation and Acquisition which are responsible for the operation, maintenance and repair of all facilities, equipment, and tactical infrastructure required by the agency to carry out its mission along the southwest border of the United States. There is a continuing need for CBP to maintain and improve the effectiveness of its southwest border security program while also facilitating legitimate trade and travel; and

WHEREAS, in carrying out its statutory mandate to control and guard the southwest border of the United States, CBP performs a number of operational, administrative, and management-related activities and projects that would be considered undertakings subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. Part 470f, and its implementing regulations, 36 CFR Part 800 (referred to herein as Undertakings); and

WHEREAS, the Environmental and Energy Division (EED), located within CBP's Office of Administration, is responsible for developing environmental policies and procedures and providing oversight and approvals for the agency's Section 106 consultation process; and

WHEREAS, CBP has determined that the implementation of these Undertakings may affect historic properties that are listed or eligible for listing in the National Register of Historic Places (National Register), and has consulted with the State Historic Preservation Officers (SHPOs) of

Arizona, California, New Mexico, and Texas pursuant to 36 CFR Part 800; and

WHEREAS, CBP recognizes that each state has its own unique challenges, topography, and resource types that CBP must consider when addressing its Undertakings; and

WHEREAS, CBP has defined the Area of Potential Effects (APE) as the states located along the southwest border of the United States extending from the Pacific Ocean to the Gulf of Mexico and encompassing the entirety of the states of California, Arizona, New Mexico, and Texas; and

WHEREAS, given the scope and scale of the Undertakings and APE, CBP will complete a phased identification and evaluation of historic properties pursuant to 36 CFR Part 800.4(b)(2); and

WHEREAS, CBP has previously received clarification and guidance in May 2010 from the Advisory Council on Historic Preservation (ACHP) regarding its compliance with 36 CFR Part 800 for CBP's Tactical Communications Modernization Program and has incorporated that guidance into this Programmatic Agreement (the Agreement); and

WHEREAS, CBP also carries out its mission at multiple locations on the southwest border at facilities and locations that CBP uses pursuant to authorizations provided by or agreements entered into with the property managers and owners, including Federal departments, state agencies, tribal governments, and private property owners; and

WHEREAS, CBP has consulted with other Federal departments, including the General Services Administration (GSA), U.S. Department of the Interior (DOI), U.S. Department of Agriculture (USDA), and the United States Section of the International Boundary and Water Commission (USIBWC) regarding CBP Undertakings on the lands and properties under their management and has invited these departments or agencies to be signatories to this Agreement; and

WHEREAS, CBP recognizes that these other Federal departments or agencies have responsibility for enforcing Federal laws relating to land and property management, resource protection, and other such functions on Federal lands and properties under their jurisdiction; and

WHEREAS, CBP recognizes that these other Federal departments or agencies have the primary decision-making authority on the land and property that they manage, including responsibility for the identification and evaluation of historic properties and issuing of permits on lands under their control; and

WHEREAS, CBP has consulted with other state agencies, including the New Mexico State Land Office, regarding CBP Undertakings on the lands and properties under their management and has invited these agencies to be signatories to this Agreement; and

WHEREAS, CBP recognizes that these state agencies have responsibility for enforcing Federal and/or state laws relating to land and property management, resource protection, and other such functions on state lands and properties under their jurisdiction; and

WHEREAS, CBP has invited the Tribal governments and Tribal Historic Preservation Officers (THPOs) of Indian Tribes (Tribes) located in or with historic interests in the states of Arizona, California, New Mexico, and Texas to be a Signatory to this Agreement; and

WHEREAS, CBP has consulted with the THPOs and impacted Tribal governments from the California Valley Miwok Tribe; the Cocopah Indian Tribe; the Delaware Nation; the Fort Yuma-Quechan Tribe; the Pechanga Band of Luiseno Mission Indians; the Rincon Band of Luiseno Mission Indians; the Tohono O'odham Nation; the Tonkawa Tribe of Oklahoma; and the Yavapai-Prescott Indian Tribe regarding CBP Undertakings on the lands under their management and geographic areas with demonstrated Tribal interests, and has invited these Tribes to be signatories to this Agreement; and

WHEREAS, CBP acknowledges the critical role that Tribes have in the Section 106 process and that Tribes possess special expertise in assessing the National Register eligibility of properties with Tribal religious and cultural significance and identifying traditional cultural properties, and will consult with them in identifying historic properties listed or eligible for listing in the National Register, in determining an Undertaking's effects on historic properties, and in resolving adverse effects to historic properties; and

WHEREAS, no provision of this Agreement will be construed by any of the signatories as abridging or debilitating any sovereign powers of any Tribal government; affecting the trustee-beneficiary relationship between the Secretary of the Interior and any Tribal government or individual Indian landowners; or interfering with the government-to-government relationship between the United States and any Tribal government; and

WHEREAS, execution of this Agreement recognizes CBP's authority and responsibility to conduct its government-to-government consultations with Federally recognized Tribes, as defined in 36 CFR Part 800.16(m) and in accordance with Executive Order 13175, *Consultation and Coordination With Indian Tribal Governments*, in matters related to potential effects of its Undertakings on historic properties of cultural and religious significance to the Tribes; and

WHEREAS, CBP has afforded the public an opportunity to comment on its Undertakings and CBP's compliance with Section 106 of the National Historic Preservation Act during a series of public meetings and comment periods conducted from 2008 to 2012. Comments received during this period have primarily focused on CBP's mission and programs, not CBP's Undertakings or compliance activities; and

WHEREAS, in accordance with 36 CFR Part 800.6(a)(1), CBP has notified the ACHP of the development of this Agreement in accordance with 36 CFR Part 800.14(b)(3), and the ACHP is a Signatory to this Agreement pursuant to 36 CFR Part 800.14(b)(2)(iii); and

WHEREAS, CBP; the SHPOs of Arizona, California, New Mexico, and Texas; GSA; USDA; DOI; USIBWC; New Mexico State Land Office; the Tribal governments of the California Valley Miwok Tribe, the Cocopah Indian Tribe, the Delaware Nation, the Fort Yuma-Quechan Tribe, the Pechanga Band of Luiseno Mission Indians, the Rincon Band of Luiseno Mission Indians, the Tohono O'odham Nation, the Tonkawa Tribe of Oklahoma, and the Yavapai-Prescott Indian Tribe; and the ACHP are the signatories to this Agreement (collectively The Signatories); and

WHEREAS, The Signatories acknowledge that implementation of CBP's programs will be more efficient if a Programmatic Agreement, pursuant to 36 CFR Part 800.14(b)(2), is in place to specify procedures for certain routine activities with no potential to adversely affect historic properties so that the effects of Undertaking on historic properties may be considered in a manner that streamlines CBP's Section 106 compliance process and minimizes adverse effects to

historic properties; and

NOW, THEREFORE, CBP; the SHPOs of Arizona, California, New Mexico, and Texas; GSA; USDA; DOI; USIBWC; New Mexico State Land Office; the Tribal governments of the California Valley Miwok Tribe, the Cocopah Indian Tribe, the Delaware Nation, the Fort Yuma-Quechan Tribe, the Pechanga Band of Luiseno Mission Indians, the Rincon Band of Luiseno Mission Indians, the Tohono O'odham Nation, the Tonkawa Tribe of Oklahoma, and the Yavapai-Prescott Indian Tribe; and the ACHP agree that CBP activities in states located along the southwest border of the United States shall be carried out in accordance with the following Stipulations to satisfy CBP's Section 106 responsibilities, and any corresponding responsibilities for the Signatories to this agreement, for its Undertakings.

STIPULATIONS

To the extent of its legal authority, CBP shall ensure that the following measures are carried out:

I. APPLICABILITY

- A. This Agreement is applicable to CBP's Undertakings within the states for which that state's SHPO is a signatory to this Agreement and on the lands administered by the Parties (hereinafter defined) that are signatories to the Agreement.
- B. For any matter regarding Section 106 compliance not addressed in this Agreement, the provisions of Section 106 of the NHPA and its implementing regulations (36 CFR Parts 800.3 thru 800.7) shall apply.
- C. If a Federal agency other than CBP has, within the previous five (5) years, concluded Section 106 compliance for an Undertaking related to border activities on the Southwest Border, and CBP has Section 106 responsibilities for that exact Undertaking, CBP may comply with its Section 106 responsibilities for that Undertaking by, prior to making a decision on the Undertaking:
 1. Reviewing the Section 106 compliance documents of that other Federal agency;
 2. Adopting that other Federal agency's Section 106 findings and determinations on the Undertaking;
 3. Agreeing to not take actions that would inhibit that other agency's ability to fully implement its Section 106 agreement for the Undertaking, if any such agreement was executed, or having the head of CBP consider and respond to the ACHP's formal comments to the head of that other Federal agency, if such comments were issued by the ACHP; and
 4. Providing written notice to the ACHP, the appropriate SHPO/THPO, and, as appropriate, other affected Parties confirming that the preceding steps have been followed by CBP.
 5. Use of Stipulation I.C does not exempt CBP responsibility to conduct its government-to-government consultations with Federally recognized Tribes.
- D. If a Party has a concomitant Undertaking, they may designate CBP as the Lead Federal

Agency, provided the scope of the concomitant Undertaking is subsumed within the scope of CBP's Undertaking. The agencies shall separately negotiate the terms of the lead agency designation, including limitations, tribal consultation roles and responsibilities, and cost sharing, as appropriate. SHPO/THPO, Tribes, and, as appropriate, other affected Parties shall be notified in writing of lead agency designations.

- E. This Agreement does not terminate, supersede, or modify the terms of the March 2006 *Memorandum of Understanding Among U.S. Department of Homeland Security and U.S. Department of the Interior and U.S. Department of Agriculture Regarding Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States' Borders* (2006 MOU); the January 2008 *Interagency Agreement Between U.S. Customs and Border Protection and United States Section [of the] International Boundary and Water Commission* (2008 MOA); any interagency agreement between GSA and the U.S. Department of Homeland Security (DHS) regarding the delegation of authority from GSA to DHS for the operation, maintenance and alteration of facilities under GSA's jurisdiction; or any other individual land access or use agreements.
- F. This Agreement does not terminate, supersede, or modify the terms of any existing and active Section 106 consultation agreements between CBP and any Signatory.
- G. This Agreement also applies to CBP operation and construction activities within the Roosevelt Reservation.

II. GENERAL

- A. Definitions: The definitions set forth in 36 CFR Part 800.16 are incorporated herein by reference and apply throughout this Agreement. The following terms are specific to this Agreement and are hereby defined:
 - 1. Commercial Towers: Towers owned by a for-profit entity from which CBP leases space. This definition includes guyed towers, monopoles, self-supporting towers, and utility poles.
 - 2. Credible Threat: A threat that is based on good intelligence and sources where it is reasonable to expect that the parties of interest would carry out the action if they had opportunity and means.
 - 3. Culturally Sensitive Vegetation: Plant species which have been identified by a tribe as having an established religious significance to the tribe, or ceremonial or traditional use.
 - 4. Existing Road: Existing roads, paved or unpaved, on which members of the general public operate motor vehicles on non-federal lands. On Federal or Tribal land, existing roads are defined as or those existing roads/trails, paved or unpaved, on which a Federal or Tribal land management agency allows members of the general public with specially authorized access to operate motor vehicles. This definition also includes existing administrative roads/trails on which the Federal or Tribal land management agency allows access to persons specially authorized but not members of the general public. These roads may be used by CBP, another Federal agency, or a Tribe's personnel, their agents, or contractors for the purposes of law enforcement patrols, land management activities, infrastructure and facilities access, or other mission related activities. These

roads may be owned and/or maintained by CBP, another Federal agency, a Tribe, or another party, including private landowners. This definition is not intended to include temporary roads created by law enforcement personnel acting under exigent circumstances or other roads created as a result of unauthorized or illegal activity.

5. Facility: Ports of Entry, U.S. Border Patrol Stations, Forward Operating Bases, Office of Air and Marine Facilities, Customs Quarters (housing), camps, checkpoints, or other CBP operated installations, which consists of the land, buildings, on-site roadways, and parking lots that CBP owns, leases, or uses as free space.
6. Facility Manager: Individual designated by their Department or Agency with primary management authority over a facility in which CBP leases space.
7. Ground Disturbance: Any man-made disturbance of the ground surface, which includes movements of soil, dirt, or rock, which may include, but is not limited to, excavation, trenching, disking, and grubbing activities.
8. Historic Property Monitor: An individual recognized by a Department, Agency, SHPO/THPO, or Tribe as having requisite cultural and historical knowledge specific to the cultural resources located within their territories or areas of responsibility. Historic Property Monitors will be properly trained in archeological or structural monitoring and will have appropriate technical experience and safety training.
9. Historic Landscape: Those landscapes that are eligible for listing in the National Register as outlined in the National Register Bulletins entitled *How to Evaluate and Nominate Designed Historic Landscapes* or *Guidelines for Evaluating and Documenting Rural Historic Landscapes*.
10. In Kind: Repair or construction activity that utilizes either the same or a similar material. In the case of properties that are 45 years of age or older, the material shall match all visual and physical characteristics, including form, color, and workmanship of those materials that they will replace. In kind mortar shall also match the strength, content, color, texture, rake, joint width, and tooling of historic mortar. All in kind work shall be done in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (SOI Standards)
11. Land Manager: Individual designated by their Department or Agency with primary management authority over a land unit.
12. Non-commercial Towers: Towers either owned by CBP or which are owned by a non-profit entity from which CBP leases space. This definition includes guyed towers, monopoles, poles, self-supporting towers, and utility poles.
13. Party: Any current or future signatory or concurring party to this Agreement, which shall be collectively referred to herein as the "Parties."
14. Previously Disturbed: Those areas previously impacted due to human activities such as construction, land clearing, or grading which have rendered the project area of no apparent archeological or historic value for research or documentation purposes.

Agricultural, forestry areas, two track roads, and ungraded roads are excluded from this definition as subsurface disturbance due to these activities is minimal.

15. Traditional Cultural Properties: Those properties that are eligible for listing in the National Register because of their association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community as outlined in the National Register Bulletin entitled *Guidelines for Evaluating and Documenting Traditional Cultural Properties*, revised 1998.
- B. Standards: All work conducted by CBP in conjunction with this Agreement shall be performed in a manner consistent with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*, as amended, including *Standards for Preservation Planning, Identification of Historic Properties*, and the *Standards for the Treatment of Historic Properties* (36 CFR Part 68), and state standards, as appropriate.
- C. Professional Qualifications: All work done in conjunction with this Agreement shall be carried out by Federal or contractor staff whose qualifications meet the Secretary of the Interior's *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines, Professional Qualifications Standards* in the appropriate areas of expertise, as determined by CBP's Federal Preservation Officer (FPO) or the Director of EED.
- D. CBP Personnel:
 1. EED: Coordinates with the Proponent and the Land or Facility Manager, as appropriate, to make the final agency determinations of eligibility and assessments of effect; consults with the SHPOs/THPOs, Tribes, Facility Managers, and Land Managers; is the agency lead for the CBP negotiation of agreement documents; and is the primary point of contact with the ACHP.
 2. Proponent: Overall project beneficiary who proposes and oversees the implementation of Undertakings and is responsible for managing the Section 106 consultation process for their projects; ensuring timely coordination with EED, consulting parties, and Federal land managing agencies, as appropriate; conducting a preliminary screening of projects for historic property issues; and engage the appropriate internal and external personnel, including the Cultural Resource Specialist, necessary to complete the consultation process. A Proponent may be an individual, facility, branch, or component.
 3. Cultural Resources Specialist: Individual who provides specialized cultural resources support to the Proponent and EED, including conducting the appropriate archaeological, historical, or architectural analyses; preparing consultation documentation; and engaging in consultation. Cultural Resources Specialists must meet the Secretary of the Interior's *Professional Qualifications Standards*, as defined in Stipulation II.C, and may be either CBP personnel or a CBP contractor.
- E. Section 106 Consultation Communications: Consultation communications, including the exchange of letters, reports, and supporting materials, may be carried out between CBP and those signatories to this Agreement that agree to do so by means of the U.S. Postal Service or express mail services except where electronic mail is specified.

F. Timeframes: All timeframes are in calendar days unless otherwise specified.

III. ROLES AND RESPONSIBILITIES

A. CBP:

1. CBP shall coordinate with the affected Parties as early in the project development process as practicable. This shall include discussions of alternate methods, routes, and locations for CBP Undertakings that will avoid or minimize impacts to historic properties while still meeting CBP operational needs.
2. CBP shall work cooperatively with all Parties to facilitate compliance with the NHPA and to avoid or minimize impacts to historic properties.
3. CBP shall work with the appropriate Facility and Land Managers to acquire the appropriate permits(s) and adhere to all permit stipulations.
4. CBP shall conduct internal training on the implementation of this Agreement and include discussion of its use in internal agency guidance documents within six (6) months of execution and as CBP determines needed thereafter. Copies of these materials shall be provided to any Party upon request.

B. SHPO/THPO:

1. The affected SHPO/THPO shall work cooperatively with CBP to facilitate compliance with the NHPA for CBP activities.
2. When requested, the affected SHPO/THPO shall assist CBP in identifying alternate methods, routes, and locations for CBP Undertakings that will avoid or minimize impacts to historic properties while still meeting CBP operational needs prior to conducting the Undertaking.
3. The affected SHPO/THPO shall provide the CBP FPO and Director of EED with access to any SHPO/THPO fee-free public on-line databases, including access to sensitive data as defined in Section 304 of NHPA. CBP shall not pay for database access unless specifically stated in a separate agreement. If the affected SHPO/THPO does not have a fee-free public on-line database, they shall facilitate alternative CBP access to data. Alternative access arrangements shall be agreed upon and documented in a separate agreement.

C. Facility Manager:

1. The affected Facility Manager shall work cooperatively with CBP to facilitate compliance with the NHPA for CBP activities at the facilities under their control.
2. When requested, the affected Facility Manager shall assist CBP in identifying methods and locations for CBP Undertakings that will minimize impacts to historic properties while still meeting CBP operational needs prior to conducting the Undertaking and as a general management principle.
3. The affected Facility Manager shall provide CBP with readily accessible information on the condition of the individual Undertaking's APE (e.g., has the ground been previously

disturbed); if the area has the potential to contain unknown historic properties; the likely nature and location of historic properties if present; and previous survey data within 60 days of CBP request. If no such information is readily accessible, then the Facility Manager will notify CBP about the lack of information and may provide information on how it may be obtained through contracted services or other means.

4. Information requests and communications shall be conducted in a manner consistent with any existing inter-agency protocols and/or agreements.

D. Land Manager:

1. The affected Land Manager shall work cooperatively with CBP to facilitate compliance with the NHPA for CBP activities on the lands under their control.
2. When requested, the affected Land Manager shall assist CBP in identifying methods, routes, and locations for CBP Undertakings that will minimize impacts to historic properties while still meeting CBP operational needs prior to conducting the Undertaking and as a general management principle.
3. The affected Land Manager shall provide CBP with readily accessible information on the condition of the individual Undertaking's APE (e.g., has the ground been previously disturbed); if the area has the potential to contain unknown historic properties; the likely nature and location of historic properties if present; and previous survey data within 60 days of CBP request. If no such information is readily accessible, then the Land Manager will notify CBP about the lack of information.
4. The affected Land Manager shall provide CBP with maps and information on existing roads under their management and the corresponding road designations. Any changes in road designation will be communicated to CBP within 30 days of the change.
5. Information requests and communications shall be conducted in a manner consistent with existing inter-agency protocols and/or agreements.

E. Tribal:

1. Tribal leader(s) and/or Tribal government(s) may designate a representative, including the THPO, to carry out the duties related to the actions and decisions delegated by this Agreement. Tribes shall notify CBP of their designated representative(s) and the scope of responsibilities delegated via a letter signed by the appropriate tribal official(s).
2. The affected Tribes shall work cooperatively with CBP to facilitate compliance with the NHPA for CBP activities.
3. When requested, the affected Tribes shall assist CBP in identifying methods, routes, and locations for CBP Undertakings that will minimize impacts to historic properties while still meeting CBP operational needs prior to conducting the Undertaking.
4. Affected Tribes shall provide as much information as possible given cultural sensitivity concerns, within 60 days of CBP request. CBP will request readily accessible information on the condition of the individual Undertaking's APE (e.g., has the ground

been previously disturbed); if the area has the potential to contain unknown historic properties; the likely nature and location of historic properties if present; if Traditional Cultural Properties are present; and previous survey data within 60 days of CBP request. At minimum, affected Tribes shall provide information on geographic areas of concern. If no such information is readily accessible, then the affected Tribe will notify CBP about the lack of information.

5. Affected Tribes shall provide CBP with maps and information on existing roads under their management and the road designations. Any changes in road designation will be communicated to CBP within 30 days of the change.
6. Information requests and communications shall be conducted in a manner agreed upon and documented in a separate agreement with each Tribe.

IV. CBP SECTION 106 PROJECT REVIEW PROCESS

Pursuant to this Agreement, CBP will carry out its Section 106 review of projects as outlined below.

- A. The Proponent shall determine if there is an Undertaking and coordinate with and gather information from the affected SHPO/THPO, Tribes, and, as appropriate, other affected Parties Based upon this information, the Proponent shall determine and document the APE; coordinate with any impacted Land or Facilities Manager or Tribes; and conduct a review of existing information on historic properties located within the individual Undertaking's APE.
- B. The Proponent, with assistance from a Cultural Resources Specialist, shall complete and submit to EED a project initiation form that will document the steps taken to fulfill Stipulation IV.A, provide information on any potential historic property issues and recommend if the Undertaking fully meets Stipulations VI or VII of this Agreement.
- C. Cultural Resources Specialists who meet the Secretary of the Interior's *Professional Qualifications Standards*, as defined in Stipulation II.C, shall review the project initiation form to recommend that either:
 1. The Undertaking is within the scope of Stipulations VI or VII of this Agreement. The project initiation form will constitute the necessary documentation that the agency has fulfilled its Section 106 obligations and CBP will maintain the documentation in the project file; or
 2. The Undertaking has no potential to cause effects as defined in 36 CFR Part 800.3(a)(1). The project initiation form will constitute the necessary documentation that the agency has fulfilled its Section 106 obligations and CBP will maintain the documentation in the project file; or
 3. The Undertaking is not fully within the scope of Stipulations VI or VII of this Agreement and has the potential to cause effects on historic properties. CBP will proceed in accordance with 36 CFR Parts 800.3 thru 800.7, using the process outlined in Stipulation V when conducting identification and evaluation efforts, or the processes and procedures

of another federal agency, when applicable and appropriate.

- D. For all Undertakings meeting Stipulation IV.C.3, EED shall ensure that the Section 106 consultation process is carried out by the Proponent and Cultural Resources Specialists in accordance with 36 CFR Parts 800.3 thru 800.7 and the timeframes specified therein.
- E. For Towers and Infrastructure to Support Communications and Surveillance Undertakings, the following additional Stipulations shall apply:
 - 1. The visual APE for all Towers and Infrastructure to Support Communications and Surveillance Undertakings shall be as follows: For heights less than 25', a 750' radius shall be used. For heights equal to or more than 25' but less than 100', a ¼ mile radius shall be used. For heights equal to or more than 100' but less than 200', a ½ mile radius shall be used. For heights equal to or more than 200' but less than 300', a ¾ mile radius shall be used. For heights equal to or more than 300' but less than 400', a 1 mile radius shall be used. For heights greater than 400', a 1-½ mile radius shall be used. In the event CBP determines, or Parties recommend during coordination and information gathering activities conducted in accordance with Stipulation IV.A, that an alternative APE for visual effects is necessary, the affected Parties may mutually agree to an alternative APE.
 - 2. If CBP cannot determine if a commercial or non-commercial tower is in compliance with Section 106 CBP shall consult on the collocation of its equipment in accordance with 36 CFR Parts 800.3 thru 800.7 and the timeframes specified therein. CBP shall use the visual APE defined in Stipulation IV.E.1 and consultation shall be limited to CBP's collocation Undertaking. CBP shall not be responsible for bringing another party's tower into compliance with Section 106.

V. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

- A. This Stipulation shall be followed when CBP conducts identification and evaluation efforts within the APE for this Agreement.
- B. In accordance with 36 CFR Part 800.4(b), CBP shall make a reasonable and good faith effort to carry out the identification of historic properties, including Traditional Cultural Properties, on an Undertaking-by-Undertaking basis. CBP's identification effort shall be guided by the nature and extent of the Undertaking; the potential for the project to impact historic properties; the condition of the individual Undertaking's APE (e.g., has the ground been previously disturbed); if the area has the potential to contain unknown historic properties; the likely nature and location of historic properties, if present; if previous survey data is available; and the extent of CBP's involvement. When justified by an assessment of the specific circumstances of the Undertaking, as described above, or when justified by previous research, appropriate sampling strategies may be considered for large geographic areas to determine the likelihood of archeological or historic resources.
- C. CBP shall determine the extent of its identification efforts based on the scope and scale of an individual Undertaking and its APE in coordination with the affected SHPO/THPO, Tribes, and other affected Parties, as appropriate, and obtain any appropriate permits and/or licenses

for such activities prior to beginning any field survey activities.

- D. CBP shall conduct all surveys in accordance with the appropriate state, tribal, facility managing or land managing agency survey guidelines. In the absence of tribal or land managing agency survey guidelines, CBP shall follow the appropriate state guidelines.
- E. CBP shall evaluate all properties more than 45 years of age for National Register eligibility and shall reassess the findings of all existing reports and survey data that are more than five (5) years old. CBP shall update older survey data as necessary to address deficiencies or reevaluation of previous eligibility determinations. If CBP is in agreement with older findings, it shall document that decision in correspondence to the SHPO/THPO, Tribes, and other affected Parties, as appropriate.
- F. CBP shall survey the properties for which it has property management responsibilities and maintain the information in accordance with the agency's "Historic Preservation and Identification and Evaluation Plan" for compliance with Section 110 of NHPA. Per this plan, CBP will regularly update and internally maintain the information, seek SHPO/THPO concurrence with its findings, and provide its survey data to the SHPO/THPO according to the appropriate SHPO/THPO guidelines. Upon request, CBP will provide an electronic copy of the "Historic Preservation and Identification and Evaluation Plan" to any Party for informational purposes only.
- G. When CBP proposes an Undertaking on lands or properties held by another federal agency, the affected Facility Managers or Land Managers shall provide within 60 days of CBP request readily available information on the condition of the individual Undertaking's APE (e.g., has the ground been previously disturbed); if the area has the potential to contain unknown historic properties; the likely nature and location of historic properties if present; and previous survey data to CBP to inform the identification efforts, if previous survey data or eligibility determination(s) are available. CBP shall not maintain this data within its systems upon completion of the Undertaking, but it shall retain copies of survey data prepared by CBP. CBP shall consult with the affected Facility Manager or Land Manager on its draft findings prior to the submission of releasable survey data to the SHPO/THPO, Tribes, or other consulting parties. Submitted survey data to other parties will include any facility manager or land manager comments or concerns provided to CBP.
- H. When CBP proposes an Undertaking on tribal lands, the affected THPO or Tribe shall provide as much information as possible given cultural sensitivity concerns, within 60 days of CBP request. CBP will request readily available information on the condition of the individual Undertaking's APE (e.g., has the ground been previously disturbed); if the area has the potential to contain unknown historic properties; the likely nature and location of historic properties if present; and previous survey data to CBP to inform the identification efforts. At minimum, affected Tribes shall provide information on areas of concern. The affected Tribe shall also indicate if Traditional Cultural Properties are present in the APE, but are not required to disclose the nature or boundaries of Traditional Cultural Properties. CBP shall not maintain this data within its systems upon completion of the Undertaking, but it shall retain copies of survey data prepared by CBP. CBP shall consult with the affected THPO or Tribe on its draft findings prior to the submission of releasable survey data to other consulting parties. Submitted survey data to other parties will include any THPO or Tribe

comments or concerns provided to CBP.

- I. Any designated SHPO/THPO, Tribe, Facility Manager, Land Manager, or their representative shall have access to the project area or APE during the CBP Undertaking for the purpose of historic property monitoring or to carry out other mission-related management activities. For monitoring on CBP property, the monitor must provide seven (7) days advance notice to CBP to allow any necessary security clearances to be obtained. Access to any project area or APE for the purpose of historic property monitoring may be denied by CBP if it is determined that such access would hinder law enforcement operations or present safety concerns. CBP shall not fund monitoring costs unless specifically stated in a separate agreement.
- J. CBP will provide copies of all reports and evaluations to the affected SHPO/THPO, Tribe, Facility Manager or Land Manager for their records.
- K. All Parties shall attempt to resolve disputes regarding CBP's identification and evaluation efforts in a timely manner, not to exceed 60 days.
 1. If a dispute regarding any finding of no historic properties affected cannot be resolved, CBP shall obtain ACHP comments pursuant to 36 CFR Part 800.4(d)(1)(ii).
 2. If a dispute regarding eligibility findings cannot be resolved, CBP shall obtain a determination of eligibility from the Keeper of the National Register pursuant to 36 CFR Part 63.

VI. ACTIVITIES EXEMPTED FROM FURTHER SECTION 106 REVIEW UNDER THIS AGREEMENT

Stipulation VI sets forth the CBP Undertakings that the Parties to this Agreement agree do not require further Section 106 review between CBP and the Parties, so long as all terms and conditions in the Agreement are satisfactorily met.

CBP shall determine, in accordance with Stipulation IV, if its Undertaking is within the scope of this Stipulation and is therefore exempted from further review. If so, CBP shall document this determination in the project file and may proceed with authorizing funding for, or otherwise approving, the Undertaking, subject to any other processes required for authorizing funding. If an Undertaking is not composed entirely of exempted activities, CBP will consult on the project as a whole in accordance with Stipulation IV.C.3.

A. Law Enforcement Activities and Operational Readiness

1. **Entry and Exit Processing**: Law enforcement activities involving the inspection of pedestrians, cargo, and/or vehicles to enforce customs, immigration, agricultural requirements, and other processing activities at a CBP facility. These activities may include, but are not limited to, searches, inspections of import and export items, examination of export documents, registration of valuable articles, and other commercial transactions.
2. **Canine Enforcement Teams (interdiction)**: Law enforcement activities involving the deployment of canine enforcement teams for contraband interdiction. This includes the construction of temporary stay and long-term kennel facilities at CBP facilities that will

not require ground disturbance.

3. Fraud Prevention: Law enforcement activities to prevent fraudulent activity ranging from the identification and seizure to the destruction of goods provided no ground disturbance occurs.
4. Aerial Surveillance: Law enforcement activities using aerial reconnaissance to detect illegal cross-border activities. Aircraft used for such missions range from small fixed-wing aircraft to helicopters to unmanned drones.
5. Ground Patrols and Line-Watch Operations: Law enforcement activities involving routine surveillance and patrol, including, but not limited to, sign-cutting (i.e., the detection and interpretation of any disturbances in natural terrain conditions that indicate the presence or passage of people, animals, or vehicles); road dragging on existing roads; the use and operation of low-light-level video observation; and the use and operation of forward looking infrared observation. Patrols include travel on foot, by horseback, or in vehicles, on existing roads with the intent of discovering smuggling or cross border violators.
6. Aircraft, Watercraft and Vehicle Maintenance: The repair and maintenance of CBP assigned vehicles.

B. CBP Facilities

The following work at undetermined, National Register eligible, or listed historic properties shall be consistent with SOI Standards, latest edition, and any applicable *Preservation Briefs*. Work done at facilities that are less than 45 years old or have been determined to be not eligible for the National Register are not required to be consistent with SOI Standards, latest edition, and any applicable *Preservation Briefs*.

1. Interior Work: In kind repair, replacement, restoration, preservation, protection, and/or maintenance of historic materials, finishes, or features on floors, walls, stairs, and ceilings.
 - a. Replacement of hazardous materials (e.g., asbestos floor tile) with contemporary materials of the similar dimension and thickness and similar texture or pattern.
 - b. Installation of grab bars and other such minor interior modifications required for compliance with the Americans with Disabilities Act (ADA) and federal accessibility requirements.
 - c. Minor utilities system work including interior mechanical, electrical, or plumbing work, which is limited to upgrading or in kind replacement. Historic fixtures, where exposed to view, shall be repaired in kind. This Stipulation shall not apply to installation of new, exposed ductwork.
 - d. Replacement, maintenance, or installation of interior fire detection, fire suppression, or security systems. This Stipulation does not apply to surface mounted wiring, conduits, piping, etc. unless previously existing.
2. Windows and Doors: In kind repair or replacement of damaged or deteriorated windows, shutters, storm shutters, and doors including all hardware. All window panes shall be

- replaced in kind. Clear plate, double, laminated, or triple insulated glazing can be used provided that it does not alter the existing window frame material or form. This Stipulation does not apply to the replacement of existing archaic or decorative glass.
3. Exterior Work: Cleaning, repair, or repainting of exterior surfaces provided that destructive surface cleaning and preparation treatments are not used (e.g., water blasting, media blasting, power sanding, chemical cleaning). The in kind repair or replacement of canopies, roofing, rafters, fascias, soffits, gutters, or downspouts.
 - a. In kind repair of concrete and masonry walls, columns, parapets, chimneys, or cornices using visually and physically compatible brick or mortar.
 - b. Replacement of hazardous materials (e.g., asbestos shingle) with contemporary materials of the similar dimension and thickness and similar texture or pattern.
 - c. Replacement of untreated wood shingles or shakes with similar items of fire resistant wood.
 - d. Replacement and maintenance of exterior lighting and security systems. This Stipulation does not apply to surface mounted wiring, conduits, piping, etc. unless previously existing or placed within previously disturbed areas.
 4. Weatherproofing and Insulation: In kind replacement or installation of insulation systems, caulking, and weather stripping provided that existing historic surfaces are not altered. The use of spray foam insulation is not covered under this stipulation.
 5. Testing: Non-destructive or concealed testing for hazardous materials (e.g., lead paint or asbestos) or for assessment of hidden damages.
 6. Underground Storage Tanks: Removal and replacement of existing underground storage tanks and associated lines, including septic tanks, in previously disturbed areas provided that the removal will not impact adjacent historic properties.
 7. Traffic Security Measures: Maintenance, repair, and operation of traffic-related security measures that either does not involve ground disturbance or involves linear ground disturbance within previously disturbed areas, such as existing roads and shoulders. Undertakings may include, but are not limited to, the use of traffic cones, rumble strips, Jersey barriers/concrete jersey barriers/K-4 rated barriers, fixed/removable/retractable bollards, speed bumps, guard rails, in kind perimeter/pedestrian fencing, in kind screening added to existing fencing and barriers, tire shredders, post and cable system, pedestrian turnstile, gate/lane closure gate, increase in gate height, concrete planter boxes, and concrete walls. This allowance does not apply to historic bridges, roads, and crossings.
 8. Signage: Installation, maintenance, and repair of signage, including regulatory, warning, or informational signs. Signs may be mounted to the face of the existing buildings or structures that are less than 45 years old and are not eligible or listed in the National Register or newly-installed stanchions or poles placed in previously disturbed areas, such as existing roads and shoulders. Installation of associated new linear electrical conduit is permitted provided the conduit is placed within previously disturbed areas, such as existing roads and shoulders.

C. Tactical Infrastructure

Tactical Infrastructure (TI) is defined by CBP as any physical component designed to consistently slow, delay, and act as an obstacle to illegal cross-border activity. This exemption shall not apply in locations where it has previously been determined through surveys and in consultation with the appropriate SHPO/THPOs, Tribes, and affected Parties that there are undetermined, National Register eligible, or listed historic properties located within the boundaries of the APE.

1. Fences and Gates: Maintenance, repair, or upgrade of existing fences and gates to meet current CBP standards, including metal fence components. Undertakings may include, but are not limited to, the replacement of damaged or structurally compromised members, reinforcing or bracing of foundations, and the removal of vegetation and accumulated debris.
2. Roads: Maintenance and repair of existing roads. Undertakings may include, but are not limited to, grading and adding gravel or amending the roadbed with in kind material; repair to existing footprint, width and curvature using in kind materials, number and width of lanes, shoulders, medians, curvature, grades, clearances, and side slopes; watering to control dust; application of selective chemical erosion or dust control materials; mowing or non-culturally sensitive vegetation removal that does not cause below-ground disturbance; and repair or replacement of traffic control devices such as traffic signs and signals, delineators, pavement markings, and traffic surveillance. The grading of roads that have not been previously graded by a responsible federal agency, as determined by a pre-construction visual inspection by CBP and coordination with the land or facility manager, is not covered under this stipulation and will require standard Section 106 review.
3. Bridges, Crossovers, and Low-water Crossings: Maintenance and repair of existing bridges, crossovers, and low-water crossings. Undertakings may include, but are not limited to, in kind repair of abutments, wing walls, piers, decks, fenders, culvert boxes and pipes, and ford reinforcement materials where no new construction is involved; and repair or replacement of non-historic bridges where repair work, including the establishment and use of staging areas, does not exceed the existing road right of way.
4. Drainage Management Structures: Maintenance or repair of existing drains and grates to ensure their continual operation. Undertakings may include, but are not limited to, digging in previously disturbed areas to clear drainage systems, importing fill from borrow pits or other existing licensed facilities, trimming bushes, removal of non-culturally sensitive vegetation and accumulated trash, and the maintenance, repair and in kind replacement of drains and grates.
5. Boat Ramps: Maintenance and repair of existing boat ramps. Undertakings may include, but are not limited to, repairing and restoring boat ramp surfaces, conducting non-culturally sensitive vegetation control to maintain unencumbered access, limited dredging immediately around the ramp where dredging has occurred in the past, and implementation of erosion-control measures where historic properties are not present.
6. Lighting and Ancillary Power Systems: Maintenance and repair of existing lighting and

ancillary power systems. Undertakings may include, but are not limited to, light bulb replacement, restoring/replacement of damaged power lines or on-site power generating systems (e.g., generators, fuel cells, wind turbine generators, and photovoltaic arrays), and, where necessary, non-culturally sensitive vegetation clearing and debris removal.

7. Remote Surveillance Systems: Maintenance and repair of existing remote video or sensor surveillance systems, including systems located on existing monopoles, water towers, radio towers, telephone poles, and structures less than 45 years of age, provided data lines are run above ground, are placed in existing conduit or new linear conduit is placed within previously disturbed areas, such as existing roads and shoulders and does not exceed the previously existing disturbance depth.
8. Mobile Detection and Inspection Technologies and Equipment: Fielding and operation of mobile detection and inspection systems where ground disturbance and/or mounting of equipment on buildings or structures is not required for installation and use. These systems may include, but are not limited to, gamma imaging and low energy and high energy x-ray inspection systems.
9. Underground Sensors: The installation and operation of underground sensors in previously disturbed areas. Installation will be limited to a depth of no more than 12 inches.
10. Traffic Checkpoints: The installation of temporary checkpoints along existing roads as long as ground disturbance does not occur outside of the road's existing footprint, width and curvature.
11. License Plate Readers (LPRs): The installation and operation of LPRs that have either wireless or cellular connectivity or have a tactical Deployment Command facility where data lines are run above ground, are placed in existing conduit or new linear conduit is placed within previously disturbed areas, such as existing roads and shoulders and does not exceed the previously existing disturbance depth. LPR systems may be either mobile handheld units or units fixed to structures less than 45 years of age with no historic properties located within the building's view shed.
12. Barriers to Prohibit Illegal Vehicle Entry: Maintenance, repair, reinforcement, or upgrades of existing vehicle barriers and trenches across existing roads to meet current CBP standards. Barrier types may include, but are not limited to, metal or concrete posts and railings, bollards, speed bumps, and trenches. Work shall not exceed beyond a road's existing footprint, width, and curvature.

D. Landscape and Vegetation

1. Landscaping: In kind repair or replacement of driveways, parking areas, walkways, fencing, gates, outdoor furniture (e.g., benches, flagpoles, picnic tables), and vegetation. Vegetation includes grasses (sod, seed, or native), shrubs, and/or trees. This allowance does not apply to historic landscapes.
2. Erosion Control: Repair, replacement, or reinforcement of slope stabilization systems. Undertakings may include, but are not limited to, the seeding and planting of hillsides, the use of rip-rap, re-establishing or armoring existing ditches, and grading, and the

installation of fiber rolls or silt fences. All work is limited to areas of previous ground disturbance in areas that have undergone historic property investigations in consultation with the appropriate SHPO/THPO, Tribes, and other affected Parties and no undetermined, eligible, or listed historic properties are present within the APE. Ground disturbance cannot exceed the previously existing disturbance depth.

3. Designated Open Observation Zones and Vegetation Clearing to Maintain Road Visibility: Non-culturally sensitive vegetation control to preserve clear line of sight and to deny natural hiding places at designated locations within CBP sectors through mowing and/or the application of selective herbicides.

E. Commercial Towers and Infrastructure to Support Communications and Surveillance

CBP communications and surveillance equipment includes, but is not limited to cameras; wireless or radio transmitters and receivers; motion detection devices; and remote detection systems. This stipulation shall not apply when any increase in tower height would lead to an increase in the APE, as defined in Stipulation IV.E.1, or require the installation of any new tower enhancements due to other laws.

1. In kind maintenance and repair of communication towers, support facilities, and associated equipment, including, but not limited to, welding, painting and other corrosion protection measures; minor grading for erosion control; and repair and replacement of power supplies, including fuel tanks, within areas that have been previously inventoried for historic properties and it has been determined that no historic properties are present on the property, access road, or within the visual APE.
2. In kind repair and replacement of damaged or outdated electronic surveillance and communication equipment where any increase in tower height is limited to no more than 20% of the height of the original tower and any change in width of the tower is limited to less than one-half its current width within areas that have been previously inventoried for historic properties and it has been determined that no historic properties are present on the property, access road, or within the visual APE.
3. Collocation on or enhancement of a tower and any associated excavation within the existing compound where any increase in height is limited to no more than 20% of the height of the original tower and any change in width of the tower is limited to less than one-half its current width within areas that have been previously inventoried for historic properties and it has been determined that no historic properties are present on the property, access road, or within the visual APE.
4. Collocation on an existing building or structure when equipment is mounted to the face of an existing building or structures that is less than 45 years old and is not eligible or listed in the National Register.
5. Decommissioning and removal of communications and surveillance equipment from commercial towers within areas that have been previously inventoried for historic properties and it has been determined that no historic properties are present on the property.

F. Non-Commercial Towers and Infrastructure to Support Communications and Surveillance

CBP communications and surveillance equipment includes, but is not limited to cameras; wireless or radio transmitters and receivers; motion detection devices; and remote detection systems. This stipulation shall not apply when any increase in tower height would lead to an increase in the APE, as defined in Stipulation IV.E.1, or require the installation of any new tower enhancements due to other laws.

1. In kind maintenance and repair of non-commercial towers, support facilities, and associated equipment, including, but not limited to, welding, painting and other corrosion protection measures; minor grading for erosion control; and repair and replacement of power supplies, including fuel tanks, within areas that have been previously inventoried for historic properties and it has been determined that no historic properties are present on the property, access road, or within the visual APE.
2. In kind repair and replacement of damaged or outdated electronic surveillance and communication equipment on a tower and within the existing compound where any increase in tower height is limited to no more than 20% of the height of the original tower and any change in width of the tower is limited to less than one-half its current width within areas that have been previously inventoried for historic properties and it has been determined that no historic properties are present on the property, access road, or within the visual APE.
3. Collocation on or enhancement of a non-commercial tower and any associated excavation within the existing compound where any increase in height is limited to no more than 20% of the height of the original tower and any change in width of the tower is limited to less than one-half its current width within areas that have been previously inventoried for historic properties and it has been determined that no historic properties are present on the property, access road, or within the visual APE.
4. Collocation on an existing building or structure when equipment is mounted to the face of an existing building or structures that is less than 45 years old and is not eligible or listed in the National Register.
5. Construction of a replacement for an existing non-commercial tower within the existing footprint and any associated excavation within the existing compound where any increase in height is limited to no more than 20% of the height of the original tower and any change in width of the tower is limited to less than one-half its current width within areas that have been previously inventoried for historic properties and it has been determined that no historic properties are present on the property, access road, or within the visual APE.
6. Installation of new non-commercial towers within areas that have been previously inventoried for historic properties and it has been determined that no historic properties are present on the property, access road, or within the visual APE.
7. Decommissioning and removal of non-commercial towers or communications and surveillance equipment within areas that have been previously inventoried for historic properties and it has been determined that no historic properties are present on the property. Clean fill from a commercial borrow site shall be used for any required

property restoration.

8. Installation of temporary mobile communications equipment that does not require ground disturbance, such as “cell on wheels” equipment in areas where there are no undetermined, National Register eligible, or listed historic properties located. Equipment shall be removed within six (6) months of installation.

VII. ACTIVITIES REQUIRING AFTER ACTION REPORTING AND THAT ARE EXEMPTED FROM FURTHER SECTION 106 REVIEW UNDER THIS AGREEMENT

Stipulation VII sets forth the CBP Undertakings that the Parties agree do not require further Section 106 review between CBP and the Parties, so long as all terms and conditions in the Agreement are satisfactorily met, including after action reporting.

CBP shall determine, in accordance with Stipulation IV, if its Undertaking is within the scope of this Stipulation and is therefore exempted from further review. If so, CBP shall document this determination in the project file and may proceed with authorizing funding for, or otherwise approving, the Undertaking, subject to any other processes required for authorizing funding. If an Undertaking is not composed entirely of exempted activities, CBP will consult on the project as a whole in accordance with Stipulation IV.C.3.

A. Law Enforcement Activities and Operational Readiness

CBP shall notify the affected Parties of any activities under Stipulation VII.A that may have impacted historic properties as soon as practicable after the event. A written report with the activity, location, and date(s) shall be submitted to the appropriate Parties. Damage to historic properties shall be addressed in accordance with Stipulation X.

1. Pursuit of Cross-Border Violators: Law enforcement activities conducted by CBP under exigent circumstances for the purpose of intercepting cross-border violators. Pursuit methods may include, but are not limited to, on or off-road travel on foot, by horseback, or in vehicles, with the intent of intercepting smuggling or cross-border violators.
2. Response to Credible Threat: Law enforcement activities taken in response to a credible threat to national security or CBP operations. This includes locating illegally created cross-border tunnels; emergency hardening of facilities, roads, or other structures through the placement, installation, or construction of barriers or other systems that will minimize or eliminate the ability to cause harm to individuals and/or damage to infrastructure and equipment; deployment of CBP assets; and clearing of vegetation in areas of concern. Clearing of vegetation is limited to the mowing of tall grasses or vines, and the pruning of lower tree limbs. Wholesale removal of shrubs and trees is not covered under this stipulation and will require standard Section 106 review.

B. Tunnel Remediation:

Tunnel remediation is conducted to close illegally created cross-border tunnels. CBP will notify the affected Parties of the Undertaking in advance of the tunnel remediation and provide as much information as possible, given security concerns. If a tunnel, or any portion thereof, that appears to be greater than 45 years of age is identified or if known historic

properties are located within the immediate vicinity of the tunnel, CBP will conduct appropriate evaluation to document the agency's identification of historic properties pursuant to 36 CFR Part 800.4 and assessment of adverse effects pursuant to 36 CFR Part 800.5. If previous ground disturbance, other than creation of the tunnel, in the APE cannot be established by CBP, the agency will ensure that an appropriately qualified Historic Property Monitor is present during the ground disturbance portions of the remediation activities to monitor for inadvertent discoveries. A monitoring report shall be provided to the affected Parties, as appropriate, within 30 days of the conclusion of the Undertaking. If previous ground disturbance, other than the creation of the tunnel, can be established by CBP, the agency will not be required to have a Historic Property Monitor present during the ground disturbance portions of the remediation activities.

1. The sealing of underground tunnels with steel plates, bricks, or concrete at the border, drilling approximately 4-6-inch diameter boreholes approximately every 100 feet along the surface to breach the top of the tunnels, filling in the tunnels with impervious materials, and restoring the boreholes to their previous condition. CBP ground disturbance will occur as a result of tunnel remediation methods and pilot holes drilled to identify tunnel locations. The APE for the Undertaking will consist of the entire length and width of the tunnels from the border to their exits within the U.S.; any necessary areas of ground disturbance, excavation or boring related to the identification and remediation; and any staging areas related to the tunnel remediation.

VIII. EMERGENCY REVIEW

- A. CBP Undertakings in response to an emergency on lands or properties under the control of another federal agency are not subject to this PA. If there is a CBP Undertaking in response to an emergency on lands or property under the control of another federal agency, CBP will defer to that agency's emergency review procedures.
- B. A disaster or emergency is one declared by the President, tribal government, or the governor of a state or other immediate threat to life or property. This Stipulation applies only to Undertakings that will be implemented in response to the disaster or emergency within 45 days after the disaster or emergency has been formally declared by the appropriate authority or, in the case of another immediate threat to life or property, within 45 days after such an event occurs.
- C. In accordance with 36 CFR Part 800.12(d), immediate rescue and salvage operations conducted to preserve life or property shall be exempt from the provisions of Section 106 regardless of whether there has been a declared disaster or emergency. CBP shall determine whether an Undertaking meets the criteria for this exemption.
- D. For any Undertakings that CBP determines are of an emergency nature and which are not exempt from further Section 106 review in accordance with Stipulation VIII.C above, CBP shall conduct the following expedited review process:
 1. CBP's FPO or the Director of EED shall certify in writing to the appropriate SHPO/THPO and Tribes of the need for CBP to conduct an expedited review. The expedited review period will begin at the date of CBP's notification and will remain in effect for 30 days, with the end date stated within the notice. CBP's initial notification

letter may be submitted up to 45 days after a disaster or emergency. Should CBP find it necessary to extend the expedited review period beyond 30 days, CBP shall request an extension from the ACHP in writing and copy the SHPO/THPO and Tribes on the ACHP's response.

2. Emergency Undertakings may proceed without SHPO/THPO or Tribal review if CBP determines that the Undertaking would not adversely affect any identified historic property; a Traditional Cultural Property; a Tribal property of religious or cultural significance; or any property determined to be 45 years old or older. CBP may elect to consult on such a determination in accordance with Stipulation VIII.D.3, if it so chooses. CBP will document its decision with a written record in the project file and notify the SHPO/THPO and/or tribe of the action.
3. If CBP determines that an emergency Undertaking does not meet Stipulation VIII.D.2 or may adversely affect a historic property, CBP shall provide the appropriate SHPO/THPO and Tribes with available information about the condition of the property, its eligibility, the proposed action, and any proposed treatment measures to address the adverse effect, requesting comments and recommendations from all appropriate parties.
 - a. CBP may provide this information through letter, electronic correspondence, telephone conversations, or meetings.
 - b. SHPO/THPO and Tribes shall respond via letter or electronic correspondence to any CBP requests for comments within seven (7) days after receipt of request and confirmation of contact with Tribal representatives. If CBP determines that the nature of the emergency Undertaking warrants a shorter time period for SHPO/THPO and Tribal review, CBP shall notify all parties when providing information about the Undertaking.
 - c. If no response is received within the expedited review period, CBP's responsibilities under Section 106 are fulfilled, CBP shall document the lack of response, and the Undertaking may proceed.
4. If a SHPO/THPO or Tribe objects to CBP's determination and/or proposed treatment measures, the parties shall attempt to resolve the dispute in a timely manner, not to exceed 15 days.
 - a. If CBP is unable to resolve the dispute, CBP shall seek ACHP comment. The ACHP shall provide its comments within seven (7) days after receipt of CBP's request. If CBP determines that the nature of the emergency Undertaking warrants a shorter time period for ACHP review, CBP shall notify the ACHP immediately.
 - b. CBP shall consider any timely advice from the ACHP before making a final decision on resolving the dispute and providing copies of the resolution to the affected Parties.

5. A Memorandum of Agreement (MOA) documenting the treatment measures to address the adverse effect will be prepared as soon as practicable. All parties shall review and make any recommendations concerning the agreement document within an agreed upon timeframe, not to exceed 30 days. The MOA must be executed before the emergency Undertaking occurs.

IX. CONFIDENTIALITY

- A. Nothing set forth in this Stipulation shall be construed to abrogate, set aside, or alter applicable law concerning disclosure or withholding from disclosure information concerning the location, character, or ownership of historic properties. Further, all Parties to this Agreement acknowledge and agree that this Stipulation shall be carried out in accordance with applicable law governing disclosure or withholding from disclosure information concerning the location, character, or ownership of historic properties.
- B. Consistent with Section 304 of NHPA, 36 CFR 800.11(c), the Archeological Resources Protection Act (ARPA), and other applicable laws, CBP, after consultation with the Secretary of the Interior, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause significant invasion of privacy; risk harm to a historic property; or impede the use of a traditional religious site by practitioners.
 1. Access to sensitive data, as defined in Section 304 of NHPA, will be limited within CBP to individuals designated by the FPO or Director of EED.
 2. Should CBP receive a request for access to sensitive data from an external party, CBP will, prior to any determination regarding the releases of such data, consult with and seek concurrence from the Secretary of the Interior and any affected Parties, as appropriate. Any and all disputes as to the release of sensitive data will be resolved in accordance with IX.C., below.
- C. All Parties shall attempt to resolve disputes regarding access to sensitive data in a timely manner, not to exceed 60 days. If a dispute regarding access to sensitive data cannot be resolved, CBP will, after giving due consideration to the views of any affected Parties, and taking into account any legal obligations imposed on CBP by statute or regulation, make a final decision regarding access to the sensitive data at issue.

X. POST-REVIEW DISCOVERIES

If historic properties are discovered or unanticipated adverse effects on historic properties located within an individual Undertaking's APE occur after the Undertaking has been approved, CBP shall implement the following procedures:

- A. The Proponent shall notify EED of the discovery of historic properties or unanticipated adverse effects within 24 hours. CBP shall immediately cease all operations for the portion of the Undertaking with the potential to adversely affect a historic property. EED shall notify the appropriate SHPO/THPO, Tribe, and, other affected Parties of the post-review discovery via letter or electronic correspondence within two (2) business days.
- B. CBP shall determine the National Register eligibility of the historic property and develop a

treatment plan that seeks to avoid or minimize further impacts to the historic property, as appropriate. CBP's eligibility determination and treatment plan shall be provided to the appropriate SHPO/THPO, Tribe, and other affected Parties within four (4) business days of notification of the discovery.

- C. Any Party receiving notice under Stipulation X. A. and B. above, shall have three (3) business days to respond to CBP's eligibility determination and treatment plan. If no response is received, CBP shall assume concurrence with its determination and treatment plan and may proceed. If a Party receiving notice objects to CBP's determination and/or treatment plan, the parties shall attempt to resolve the dispute within an agreed upon timeframe, not to exceed 15 days.
 - 1. If CBP is unable to resolve the dispute, CBP shall seek ACHP comment. The ACHP shall provide its comments within seven (7) days after receipt of CBP's request.
 - 2. CBP shall consider any timely advice from the ACHP before making a final decision on resolving the dispute and providing copies of the resolution to the appropriate Parties.
- D. CBP shall make every effort to avoid or minimize further impacts to the historic property. If effects cannot be avoided or minimized, CBP shall develop an agreement document with the appropriate SHPO/THPO, Tribe(s), and any other impacted Federal agency to mitigate the adverse effects. All parties shall review and make any recommendations concerning the agreement document within an agreed upon timeframe, not to exceed 30 days.

XI. DISPUTE RESOLUTION

- A. Should any Party object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, CBP shall consult with such party to resolve the objection. CBP shall notify other Parties if it believes that the objection requires additional Parties to achieve resolution. If CBP determines that such objection cannot be resolved, it will:
 - 1. Forward all documentation relevant to the dispute, including the CBP's proposed resolution, to the ACHP. The ACHP shall provide CBP with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, CBP shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and/or other Parties, and provide them with a copy of this written response. CBP will then proceed according to its final decision.
 - 2. If the ACHP does not provide its advice regarding the dispute within the 30 day time period, CBP may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, CBP shall prepare a written response that takes into account any timely comments regarding the dispute from the Parties, and provide them and the ACHP with a copy of such written response.
- B. CBP's responsibilities to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

XII. REPORTING AND MONITORING

- A. By February 15th of each year CBP shall provide a written report on the implementation of this Agreement to all signatories, with the exception of the ACHP who has requested not to receive reports, on CBP's activities under this Agreement for the previous calendar year. The report shall include the following items: total number of CBP Undertakings; number of Undertakings which fell under Stipulation VI of this Agreement, by state; number of Undertakings which fell under Stipulation VII of this Agreement, by state; number of adverse effect determinations and status of the resolution of those adverse effects, by state; legislative items which impact CBP's Section 106 compliance; recommendations for any proposed amendments or changes; issues encountered; disputes and their status; and objections received by CBP regarding the execution of this Agreement. Information on the use of each sub stipulation in Stipulation VI shall be provided. For Stipulation VII, detailed information on the types of instances when these items occurred shall be provided. The template for the annual report is attached to this Agreement as Appendix C.
- B. CBP shall arrange and host an annual teleconference meeting with all parties to this Agreement to summarize and discuss work carried out pursuant to its terms. The teleconference shall be conducted within 120 days of the transmittal of the written report.

XIII. AMENDMENTS

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

XIV. DURATION OF AGREEMENT

- A. This Agreement will be valid for five (5) years from the date of execution.
- B. Prior to the conclusion of the Agreement, the signatories to the Agreement may carry out a review of the Agreement in order to determine if revisions to the Agreement are needed and to determine if the Agreement may continue for an additional five (5) years. If the signatories agree to the extension, the agreement will be documented in an amendment to this Agreement which will be signed by the signatories in accordance with Stipulation XVI.

XV. WITHDRAWAL AND TERMINATION OF AGREEMENT

- A. If any Signatory to this Agreement determines that its terms will not or cannot be carried out, the Signatory may terminate their involvement in this Agreement by providing 30 days written notice to the other parties, provided that the parties will consult during this period to attempt to develop an amendment per Stipulation XIII, above, or reach agreement on other actions that would avoid termination. If within 30 days (or another time period agreed to by all signatories) an amendment cannot be reached, any Signatory may withdraw from the Agreement, which will no longer be applicable to that Signatory. After such a termination, all Undertakings involving the previous Signatory will be reviewed in accordance with 36 CFR Parts 800.3 through 800.7. These withdrawals do not terminate the Agreement with regard to other signatories.
- B. This Agreement may be terminated without further consultation by the execution of a subsequent Agreement signed by all signatories to this Agreement that explicitly terminates