

**AMENDED PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION,  
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
AND  
NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER,  
FOR  
MINOR TRANSPORTATION PROJECTS IN NORTH CAROLINA**

**WHEREAS**, the Federal Highway Administration (FHWA) administers the Federal Aid Highway Program in North Carolina, authorized by (23 U.S.C. 101 et seq.), through the North Carolina Department of Transportation (NCDOT) (23 U.S.C. 315); and,

**WHEREAS**, the Division Administrator, FHWA, is the "Agency Official" responsible for compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 USC 300101 et seq.) and its implementing regulations (36 CFR Part 800, as amended) for Federal Aid Highway Programs; and

**WHEREAS**, the FHWA and NCDOT desire to streamline consultation for Section 106 of the NHPA on Federally funded and/or permitted minor transportation projects in North Carolina that may affect properties included in or eligible for inclusion in the National Register of Historic Places ("historic properties"); and

**WHEREAS**, FHWA and NCDOT have consulted with the North Carolina State Historic Preservation Officer (SHPO), including the Office of State Archaeology (OSA), and the Advisory Council on Historic Preservation (ACHP) to develop and execute this Programmatic Agreement (PA) pursuant to 36 CFR 800.14(b) to establish an efficient and effective program alternative for taking into account the effects of minor transportation projects on historic properties in North Carolina and afford the ACHP a reasonable opportunity to comment on undertakings covered by the PA; and

**WHEREAS**, FHWA, Council, SHPO, and NCDOT executed a PA for Administration of the Federal Aid Highway Program on March 20, 2000 (Federal Aid Highway PA) that allows NCDOT's qualified Cultural Resource Specialists (CR Specialists) to perform the work and consultation with the SHPO described in specific sections of 36 CFR 800.3 through 800.5 on behalf of the FHWA; and

**WHEREAS**, the Section 106 Federal Aid Highway PA (signed in 2000 and included in Appendix D) remains in force for FHWA undertakings, except for those defined herein as minor transportation projects; and

**WHEREAS**, the US Army Corps of Engineers (USACE), Tennessee Valley Authority (TVA), United States Forest Service (USFS), United States Coast Guard (USCG), and National Park Service (NPS), may manage Federal lands affected by or be responsible for issuing permits or licenses related to the construction of minor transportation projects by NCDOT, and have been invited to participate in the development of and to be a concurring party to this PA; and

**WHEREAS**, FHWA notified the Eastern Band of the Cherokee Indians, the Cherokee Nation of Oklahoma, the United Keetoowah Band of Cherokee Indians in Oklahoma, the Catawba Indian Nation, and the Tuscarora Nation, and these tribes have been invited to participate in the development of and to be a concurring party to this PA; and

**WHEREAS**, the definitions contained in 36 CFR 800.16 shall be used in this PA; and

**WHEREAS**, NCDOT has a staff of CR Specialists and employs consultants, who meet the professional qualifications defined in the *Secretary of the Interior's Professional Qualifications Standards* at 36 CFR Part 61; and 48 FR 44716 in the fields of archaeology, architectural history, or historical architecture, to carry out NCDOT's historic preservation programs and responsibilities; and

**WHEREAS**, this PA applies to projects administered directly by NCDOT, not to projects administered by a sub-recipient of federal-aid highway funds, commonly referred to as locally-administered projects (LAP); and

**WHEREAS**, NCDOT and SHPO agree that NCDOT may use the provisions of this PA to address the applicable requirements of North Carolina General Statute (NCGS) 121-12(a) for minor transportation projects;

**NOW THEREFORE**, FHWA NCDOT, ACHP, AND SHPO agree that minor transportation projects are defined as Federal or state transportation projects that qualify as Categorical Exclusions and Environmental Assessments under the National Environmental Policy Act (NEPA), as defined in 23 CFR 771, and by the FHWA (NC Division), or the state equivalent (State Environmental Policy Act, SEPA), as defined in NCGS 113A-1 et seq. and 19A NCAC 02F.0102; and

FHWA, NCDOT, ACHP, and SHPO agree that minor transportation projects carried out by NCDOT with Federal-aid funding and/or requiring Federal permits shall be administered in accordance with the following stipulations to ensure that all federal responsibilities under Section 106 of NHPA are implemented; and as agreed to between the NCDOT and SHPO, all state responsibilities under NCGS 121-12(a) are implemented.

#### STIPULATIONS

FHWA in coordination with NCDOT, will ensure that the following measures are carried out:

## I. Purpose and Applicability

- A. This PA sets forth the process by which FHWA, with the assistance of NCDOT, will meet its responsibilities under Section 106 of NHPA for minor transportation projects of the Federal Aid Transportation Program. This PA establishes the basis for NCDOT's internal review of individual minor transportation projects and establishes how FHWA will be involved in any review.
- B. This PA also sets forth, as agreed to between NCDOT and SHPO, procedures for NCDOT compliance with NCGS 121-12(a) for minor transportation projects carried out by NCDOT without any federal involvement, including funding, approvals, or permits.
- C. Projects involving archaeological sites with human skeletal remains and associated grave goods are not covered under this PA.

## II. Responsibilities of FHWA, NCDOT, and SHPO

- A. NCDOT will initiate consultation with federally recognized Indian tribes for projects that may affect tribal lands or properties to which a tribe /tribes ascribes traditional cultural and religious significance.
  1. FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to direct government-to-government consultation with Indian tribes.
  2. Notwithstanding any other provision of this PA, FHWA shall honor the request of any federally recognized Indian tribe for direct government-to-government consultation regarding an undertaking covered by this PA.
  3. For projects that occur on Tribal lands or may affect a historic property on Tribal lands, FHWA, in coordination with NCDOT, will complete Section 106 review for that project following 36 CFR 800.3 through 800.6 and the project shall be excluded from this PA.
- B. FHWA will require NCDOT to carry out the requirements of this PA or of 36 CFR Part 800, and applicable Council guidelines for all NCDOT's minor transportation projects that receive Federal assistance. FHWA will participate in the process as specified in subsequent stipulations.
- C. NCDOT shall employ personnel and consultants trained and qualified in the fields of archaeology, historic architecture, and architectural history whose duties shall include activities implementing this PA.
  1. These personnel/consultants shall meet the *Secretary of the Interior's Professional Qualifications Standards* in the fields of archaeology, architectural history, or historical architecture.
  2. NCDOT and SHPO shall provide regular cultural resource management and Section 106 compliance training, as described in Appendix A, for personnel responsible within NCDOT for activities described in this agreement.
  3. Consultants employed by NCDOT shall attend training workshops as agreed upon or described in Appendix A.

- D. NCDOT, in consultation with SHPO, FHWA, and ACHP, will maintain a user's manual to aid in the implementation this PA.
1. The user's manual shall include detailed procedures for Section 106 and NCGS 121-12(a) reviews and be titled *NCDOT's Programmatic Agreement Implementation Manual for Minor Transportation Projects (Manual)*.
  2. NCDOT shall distribute updates to the *Manual* throughout all NCDOT Divisions and Units to aid in their education and understanding of the terms and procedures encompassed by this PA.
- E. NCDOT will follow the curation guidelines developed by OSA to ensure long-term preservation of the State's archaeological collections and associated field records. OSA will waive all fees for the curation of archaeological collections that result from NCDOT investigations, when those collections are documented, conserved, and submitted according to OSA's guidelines.
- F. To prevent the risk of harm, and in accordance with NCGS 70-18, FHWA and NCDOT will ensure that the specific locations of archaeological sites are not placed in public documents or otherwise distributed to members of the public. FHWA and NCDOT personnel will be provided this information on a need-to-know basis with the understanding that these locations are privileged information.

### III. Guidelines, Standards and Regulations

Guidelines, standards and regulations relevant to this PA and its purposes include:

- 36 CFR Part 61: *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*;
- *North Carolina Office of State Archaeology: Guidelines for Preparation of Archaeological Survey Reports* (1988);
- *North Carolina Office of State Archaeology: Archaeological Curation Standards and Guidelines* (1995);
- *North Carolina Historic Preservation Office Survey Manual: Practical Advice for Recording Historic Resources* (2002);
- North Carolina General Statute 121-12 (Archives and History);
- North Carolina General Statute 70-18 (Confidentiality)
- North Carolina Administrative Code T07:04R.0206;
- 23 CFR Part 771.117 FHWA Categorical Exclusions;
- 23 CFR Part 771.119 FHWA Environmental Assessments;
- 23 CFR Part 771.121 FHWA Findings of No Significant Impact;
- 36 CFR Part 800: Protection of Historic Properties;
- 40 CFR 1508 - CEQ - Regulations for Implementing NEPA and
- *North Carolina Department of Transportation: Historic Architecture Group Procedures and Work Products* (2015).

### IV. Projects with Little or No Potential to Cause Effects

The project types listed in and meeting the conditions listed in Appendix B by their nature and definition, constitute undertakings that should pose minimal or no effects to historic properties.

- A. Minor transportation projects that comprise the activity/ies listed in Appendix B and, in the best judgment of the NCDOT Project Manager or Engineer, meet all the conditions outlined, shall undergo no further Section 106 review.
- B. Projects, which are certified as meeting the conditions and are exempt from further review, must be documented by the NCDOT project manager or Engineer using the *Programmatic Agreement Screening Checklist (Checklist)* (Appendix C).
  1. The *Checklist* shall be completed for every project or, in some cases, for a batch of similar projects whose actions have little or no potential for significant effects.
  2. A copy of the *Checklist* will be placed in the project file.
  3. The *Checklist* will be distributed to the parties of this PA, upon request.
- C. Other minor actions may be approved as project types in Appendix B, if deemed appropriate by consultation and written agreement of FHWA, NCDOT, and SHPO.

#### V. Project Review - Minor Transportation Projects

For those projects considered Minor Transportation Projects and not exempt from review under terms of Stipulation IV, the review process shall be:

- A. Initiate Section 106 Process - 36 CFR Part 800.3  
NCDOT will initiate the Section 106 process on behalf of FHWA following the procedures in 36 CFR 800.3. NCDOT CR Specialists, including an archaeologist and architectural historian, will:
  1. Define the undertaking.
  2. Identify and invite other consulting parties (as identified in the NEPA or SEPA process, such as local governments and historic property owners) to participate in the consultation.
  3. Initiate consultation with appropriate Indian tribal governments, where applicable.
- B. Identify Historic Properties – 36 CFR 800.4
  1. NCDOT CR Specialists shall determine and document the archaeological and architectural Area of Potential Effects (APE), as defined in 35 CFR 800.16(d).
  2. Based upon the best available background information gathered via a literature and map search, including SHPO files of identified, eligible, or National Register listed historic properties, a NCDOT CR Specialist shall assess the likelihood that unidentified historic properties exist in the APE and shall determine the need for further field survey.
    - a. For those projects for which available information provides a reliable basis for reasonably predicting that there are no unidentified historic properties in either the archaeological or architectural APE, a NCDOT CR Specialist for archaeology and historic structures shall each issue a finding of No Survey Required for the project using the *No Survey Required Form* in Appendix C.
      - i. The *No Survey Required Forms* shall be included in the Categorical Exclusion or Environmental Assessment, as part of the

- NEPA project files. This document serves the consultation requirements under 36 CFR 800.4.
- ii. NCDOT shall provide copies of the completed *No Survey Required Forms* to the SHPO annually.
  - iii. If historic properties are discovered after the NCDOT CR Specialists issue the findings of No Survey Required, reasonable efforts will be made to avoid, minimize, or mitigate adverse effects to such properties per 36 CFR 800.13.
- b. For those projects for which available information does not provide a reliable basis for reasonably predicting that there are no unidentified historic properties in either the archaeological or architectural APE, a NCDOT CR Specialist shall issue a finding of *Survey Required* for the project using the *Survey Required Form* in Appendix C.
- i. NCDOT shall conduct or cause to be conducted a survey to identify historic properties in a manner consistent with the *Manual* and applicable guidelines, standards, and regulations listed in Stipulation III.
  - ii. NCDOT shall provide copies of the completed *Survey Required Forms* to the SHPO annually.
  - iii. Where potential historic properties are identified, a NCDOT CR Specialist shall evaluate their eligibility for listing in the National Register of Historic Places (NRHP) in accordance with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* and *National Register Bulletin 15, How to Apply the National Register Criteria for Evaluation*.
  - iv. For those projects which have no National Register-listed or eligible archaeological sites in the APE a NCDOT CR Archaeology Specialist shall document the finding, following the requirements in 36CFR 800.11(d) using the *No National Register of Historic Places Eligible or Listed Archaeological Sites Present Form*, in Appendix C.
    - 1) The *No National Register of Historic Places Eligible or Listed Archaeological Sites Present Form* will be included in the Categorical Exclusion or Environmental Assessment, as part of the appropriate NEPA project files as well the annual report for the PA.
  - v. Where historic property boundaries have not previously been established, a NCDOT CR Specialist shall identify recommended boundaries following standards set forth in *National Register Bulletin 21: Defining Boundaries for National Register Properties*.
  - vi. These determinations of eligibility and proposed boundaries shall be documented in separate eligibility reports for archaeology

and/or historic architecture resources, the content and layout of which will be specified in the *Manual* and applicable guidelines, standards, and regulations listed in Stipulation III.

- 1) Archaeology will provide OSA with the relevant site forms as completed and as a part of the annual report.
  - 2) Historic Architecture eligibility determinations will be sent to the SHPO for review and comment prior to the application of the criteria of effect outlined in Section C, below.
  - 3) If within thirty (30) days of receiving this notification, SHPO/OSA does not object or does not comment, NCDOT may proceed with the project without further review.
- c. For those projects for which available information provides a reliable basis for reasonably predicting that all of the historic properties have been identified and evaluated for National Register eligibility in the APE, and further survey work is not needed, but the effects need to be considered on the National Register-listed or eligible historic properties, a NCDOT CR Architectural Historian shall issue a finding of Effects Required for the project using the *Effects Required Form* in Appendix C and follow the procedures outlined in Section C, below.
- C. Apply the Criteria of Effect – 36 CFR 800.5
- For those undertakings in which there are National Register-listed or eligible historic properties in the APE, a NCDOT CR Specialist shall apply the Criteria of Effects in accordance with 36 CFR Part 800.5 in separate effects processes for archaeology and/or historic architecture resources as outlined below. The result of each process will be documented in writing using the corresponding effects forms provided in Appendix C. Copies of this documentation will be provided to the project's submitter and other consulting parties, as needed.
1. Archaeology:
    - a. No National Register of Historic Places Eligible or Listed Archaeological Sites Affected: For those projects which have no National Register-listed or eligible archaeological sites affected, a NCDOT CR Archaeology Specialist shall document the finding, following the requirements in 36CFR 800.11(d) using the *No National Register of Historic Places Eligible or Listed Archaeological Sites Affected Form*, in Appendix C.
      - i. The NCDOT CR Archaeology Specialist shall notify OSA, the project submitter, and other consulting parties, as needed, of the No National Register of Historic Places Eligible or Listed Archaeological Sites Affected finding for the project using the *No National Register of Historic Places Eligible or Listed Archaeological Sites Affected Form*. This form will be included in the Categorical Exclusion or

Environmental Assessment, as part of the appropriate NEPA project files as well the annual report for the PA.

- ii. If within thirty (30) days of receiving this notification, OSA or another consulting party does not object or does not comment, NCDOT may proceed with the project without further review. If OSA or another consulting party objects to NCDOT's finding, then one of the following shall take place:

- 1) For federal undertakings, the documentation will be submitted to the lead federal agency for consideration. If the federal agency and the objecting party(ies) reach consensus, the process will move forward in accordance with this PA, either to a finding of effect or documenting that no historic properties are affected. If consensus is not achieved, the undertaking will not be developed under this PA, but will proceed in accordance with 36 CFR Part 800.3 through 800.6.
- 2) For state undertakings, with no federal involvement, that do not adversely affect any property listed in the NRHP, NCDOT shall provide a copy of the determination to the SHPO, as staff of the North Carolina Historical Commission. For undertakings that may have an adverse effect on a National Register-listed property, NCDOT shall consult with the SHPO pursuant to the administrative procedures outlined in North Carolina Administrative Code T07:04R.0206.

- b. National Register of Historic Places Eligible or Listed Archaeological Sites Adversely Affected: For those projects which have adverse effects to National Register-listed or eligible archaeological sites NCDOT CR Archaeology Specialist shall document the finding and notify the OSA of the finding of adverse effect by forwarding the *Archaeological Adverse Effect Determination Form* provided in Appendix C.

- i. The *Archaeological Adverse Effect Determination Form* will be included in the Categorical Exclusion or Environmental Assessment, as part of the appropriate NEPA project files.
- ii. The NCDOT CR Archaeology Specialist will meet with OSA staff, lead federal agency (if applicable), and project submitter to discuss the adverse effect of the proposed project on the archaeological site(s).
- iii. If OSA or another consulting party proposes conditions or changes to the project that would result in a determination of No Effect and NCDOT agrees to implement the conditions or changes, the NCDOT CR Archaeology Specialist will document them on the *No National Register of Historic Places Eligible or Listed Archaeological Sites Present or Affected Form*, and no further consultation will be necessary.
- iv. Any conditions or changes to the project agreed to by NCDOT resulting in a determination of No Effect shall be included in the

Categorical Exclusion or Environmental Assessment, as part of the environmental commitments documentation.

- v. If SHPO, the lead federal agency (if applicable), or another consulting party objects to NCDOT's finding of No Effect they shall indicate the reasons for non-concurrence and will consult further to resolve this matter, either by identifying project alternatives that may result in the undertaking having no adverse effect on historic properties or proceeding in accordance with Stipulation X of this PA.

2. Historic Architecture:

- a. No National Register of Historic Places Eligible or Listed Historic Properties Present or Affected: For those projects which have no National Register-listed or eligible historic properties present or affected, a NCDOT CR Historic Architecture Specialist shall document a finding of No Historic Properties Present or Affected for the project, following the requirements in 36CFR 800.11(d) and using the *No National Register of Historic Places Eligible or Listed Historic Properties Present or Affected Form* in Appendix C.
  - i. The *No National Register of Historic Places Eligible or Listed Historic Properties Present or Affected Form* will be included in the Categorical Exclusion or Environmental Assessment, as part of the appropriate NEPA project files.
  - ii. The NCDOT CR Historic Architecture Specialist shall notify SHPO, the project submitter, and other consulting parties, as needed, of the No National Register of Historic Places Eligible or Listed Historic Properties Present or Affected finding for the project using the *No National Register of Historic Places Eligible or Listed Historic Properties Present or Affected Form*.
  - iii. If within thirty (30) days of receiving this notification, SHPO or another consulting party does not object or does not comment, NCDOT may proceed with the project without further review. If SHPO or another consulting party objects to NCDOT's finding, one of the following shall take place:
    - 1) For federal undertakings, the documentation will be submitted to the lead federal agency for consideration. If the federal agency and objecting party(ies) reach consensus, the process will move forward in accordance with this PA, either to a finding of effect or documenting that no historic properties are affected. If consensus is not achieved, the undertaking will not be developed under this PA, but will proceed in accordance with 36 CFR Part 800.3 through 800.6.
    - 2) For state undertakings, with no federal involvement, that do not adversely affect any property listed in the NRHP, NCDOT shall provide a copy of the determination to the SHPO, as staff of the North Carolina Historical Commission. For undertakings that may have an adverse effect on a National

Register-listed property, NCDOT shall consult with the SHPO pursuant to the administrative procedures outlined in North Carolina Administrative Code T07:04R.0206.

- b. No Effect or No Adverse Effects on National Register of Historic Places Eligible or Listed Historic Properties: If the NCDOT CR Historic Architecture Specialist determines that the undertaking will have No Effect or No Adverse Effects on National Register-listed or eligible historic properties, it will meet with SHPO staff, lead federal agency (if applicable), and project submitter to discuss the effects of the proposed project on the historic properties.
- i. The *National Register of Historic Places Eligible or Listed Historic Properties Effects Determination Form* in Appendix C will document the application of the criteria of effect and will contain signatures from NCDOT CR Specialist, SHPO staff, and federal agency with jurisdiction (if applicable).
  - ii. If SHPO or another consulting party proposes conditions or changes to the project that would result in a determination of No Effect or No Adverse Effect, and NCDOT agrees to implement the conditions or changes and will document them on the *National Register of Historic Places Eligible or Listed Historic Properties Effects Determination Form*, and no further consultation will be necessary.
  - iii. Any conditions or changes to the project agreed to by NCDOT resulting in a determination of No Effect or No Adverse Effect shall be included in the Categorical Exclusion or Environmental Assessment, as part of the environmental commitments documentation.
  - iv. If SHPO, lead federal agency (if applicable), or another consulting party objects to NCDOT's finding of No Effect or No Adverse Effect, they shall indicate the reasons for non-concurrence and will consult further to resolve this matter, either by identifying project alternatives that may result in the undertaking having no adverse effect on historic properties or proceeding in accordance with Stipulation X of this PA.
- c. National Register of Historic Places Eligible or Listed Historic Properties Adversely Affected: If the NCDOT CR Historic Architecture Specialist determines that the undertaking will have Adverse Effects on National Register-listed or eligible historic properties, it will meet with SHPO staff, lead federal agency (if applicable), and project submitter to discuss the effects of the proposed project on the historic properties.
- i. The *National Register of Historic Places Eligible or Listed Historic Properties Effects Determination Form* in Appendix C will document the application of the criteria of effect and will contain signatures from NCDOT CR Specialist, SHPO staff, and lead federal agency (if applicable).
  - ii. If SHPO or another consulting party proposes conditions or changes to the project that would result in a determination of No Effect or No

Adverse Effect, and NCDOT agrees to implement the conditions or changes and will document them on the *National Register of Historic Places Eligible or Listed Historic Properties Effects Determination Form*, and no further consultation will be necessary.

D. Adverse Effect – 36 CFR 800.6

For projects that have an Adverse Effect on historic properties, NCDOT will assist the lead federal agency in meeting its 36 CFR 800.6 responsibilities by undertaking the following steps:

1. The NCDOT CR Specialist will continue consultation with SHPO, lead federal agency, and other consulting parties to develop and evaluate alternatives or modifications to the project that could avoid minimize, or mitigate adverse effects on historic properties.
2. If the adverse effect cannot be avoided, then the NCDOT CR Specialist shall prepare a Finding of Adverse Effect for the lead federal agency so that they may notify the Council of the adverse effect finding in accordance with 36 CFR 800.11(e). Both the NCDOT CR Specialists for archaeology and historic architecture will contribute to the preparation of this document.
3. The lead federal agency shall provide all consulting parties the documentation specified in 36CFR 800.11(e), subject to the confidentiality provisions of 36CFR 800.11(c) and the federal agency shall also make this information available to the public.
4. The NCDOT CR Specialist will work with the SHPO, lead federal agency, and other consulting parties to negotiate terms of a Memorandum of Agreement (MOA).

E. Project Re-evaluation

1. If an undertaking changes in scope or APE, both the NCDOT CR Specialist for archaeology and historic architecture shall re-assess the previous findings issued by their respective specialties to determine if the findings remain valid or if additional survey or effects assessment is required.
2. In addition, the NCDOT CR Specialists will review the applicability of this PA to the project to determine if the project continues to qualify for treatment under Stipulations IV and V. If the undertaking no longer qualifies for such treatment, it will not be considered a minor project and will not be reviewed under the terms of this PA.
3. Should SHPO or a member of the public provide new information regarding a project that would alter the re-evaluation determination made above, NCDOT, SHPO, and consulting parties shall consult pursuant to 36 CFR 800.4 through 800.6 and 800.13. Such information shall be provided to NCDOT in a timely manner.

F. Unanticipated Discovery

All unanticipated discoveries made in conjunction with any project covered by this PA shall be treated in accordance with the procedures outlined in 36 CFR 800.13(b).

G. Historic Bridges

NCDOT shall use the findings of the Historic Bridge Inventory (NCDOT, 2004), or any updates thereof, to determine the National Register eligibility of bridges. Bridges considered not eligible for the National Register require no further evaluation unless the prior evaluation was incomplete or changing perceptions of significance after 2015 necessitate re-evaluation.

#### H. Emergency Situations

From time to time, NCDOT will be required to perform emergency actions in response to an immediate threat to the preservation of human life or property, in which case NCDOT will be allowed an emergency waiver from the review procedures set forth in this PA.

1. The emergency waiver for minor transportation projects shall begin at the time that NCDOT determines that an emergency action is required and will only be applicable if NCDOT reasonably anticipates that the emergency action will be initiated within ten (10) days.
2. In the event of such emergencies, NCDOT CR Specialists shall, within thirty (30) days of the emergency, provide a summary of the emergency undertaking to SHPO and note if and how National Register-listed or eligible properties were affected.
3. If a listed or eligible property was adversely affected by the emergency undertaking, NCDOT shall consult with SHPO and other parties to this PA, as appropriate, to determine if post-emergency mitigation is needed.

#### VI. Cooperation and Communication

NCDOT and SHPO will continue to share information developed or generated by each agency related to the identification, evaluation, management and treatment of North Carolina's cultural resources.

#### VII. Annual Review and Monitoring

- A. NCDOT and SHPO shall regularly consult to review implementation of the terms of the PA. NCDOT will maintain a list, sorted by Unit or Division, of all projects covered by this PA for a twelve (12)-month period from July 1 through June 30. NCDOT will provide all parties to this agreement with copies of this list called the *Annual Report on the Programmatic Agreement for Minor Transportation Projects in North Carolina (Annual Report)* by July 31 of each year.
  1. The content and format of the *Annual Report* will be described in the *Manual* for this PA.
  2. The FHWA, SHPO and other concurring parties (as requested) will review the *Annual Report* and assess the implementation of the PA for the year under review.
  3. If deemed appropriate by any signatory to this PA, NCDOT will notify the parties that they will meet to discuss and resolve any issues raised as a result of the review.
- B. FHWA, Council, and SHPO may monitor activities carried out pursuant to this PA. NCDOT shall cooperate with these parties in carrying out their monitoring efforts.

- C. The federal agency(ies), who have signed this PA, are responsible for ensuring that its terms are fulfilled. Should a federal agency and/or SHPO determine that a Unit or Division of NCDOT is not consistently complying with the provisions of this PA, it shall notify NCDOT managers, who will address the problem and report to all the parties of this PA on the corrective monitoring and/or coaching undertaken.

### **VIII. Amendment**

- A. Any of the primary signatories of this PA may request that it be amended, whereupon the parties will consult to consider such an amendment. An amendment to the PA will go into effect upon the written concurrence of the FHWA, SHPO, NCDOT and Council.
- B. The forms and *Manual* referenced in Appendix C may be revised with the written concurrence of the Parties to this PA.
- C. If a party invited to concur in this PA has not accepted by the time it is filed with the Council, they may become a concurring party for the duration of this PA upon the written concurrence of the primary signatories. Such action will not require an amendment to this PA.

### **IX. Termination**

Any party of the primary signatories of this PA may terminate it by providing written notice of thirty (30) calendar days to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments and other actions that would avoid termination. In the event of termination, FHWA will comply with 36 CFR Part 800.4 through 36 CFR Part 800.6 with regard to individual undertakings covered by this PA.

### **X. Dispute Resolution**

- A. Should SHPO or another consulting party on an individual undertaking subject to review under this PA, object within thirty (30) days to any plans or documentation provided for review pursuant to this agreement, the federal agency with jurisdiction shall consult with the objecting party(ies) to resolve the objection. If the federal agency determines that the objection cannot be resolved, it shall forward all documentation relevant to the dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council will either:
  1. Provide the federal agency with recommendations which the federal agency will take into account in reaching a final decision regarding the dispute, or
  2. Notify the federal agency that it will comment pursuant to 36 CFR Section 800.7(c) and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the federal agency in accordance with 36 CFR Section 800.7(c)(4) with reference to the subject of the dispute.

Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute and FHWA's responsibility to carry out all the actions under this agreement that are not the subject of the dispute will remain unchanged.

- B. Any member of the public, any agency or organization may request the Council review of section 106 compliance for an individual undertaking in accordance with 36 CFR Part 800.9(a).
- C. For projects with no federal involvement, state law requires that state undertakings be reviewed under NCGS 121-12(a). Should SHPO or another consulting party on an individual undertaking subject to review under this PA, object within thirty (30) days to any plans or documentation provided for review pursuant to this agreement, NCDOT shall consult with SHPO as staff of the North Carolina Historical Commission as per the administrative procedures outlined in North Carolina Administrative Code T07:04R.0206.

#### **XI. Duration**

This PA shall continue in full force and effect until June 30, 2020. During the six (6) month period prior to this date, the signatory parties will consult to consider an extension or amendment of the PA. No extension or amendment will be effective unless the primary signatories to the PA agree in writing.

Execution and implementation of this PA evidences that FHWA, in cooperation with NCDOT, has satisfied its responsibilities under Section 106 of NHPA for all individual undertakings of minor transportation projects covered under this PA.

**AGREE:**

**Federal Highway Administration**

  
\_\_\_\_\_  
John F. Sullivan, III, P.E.  
Division Administrator

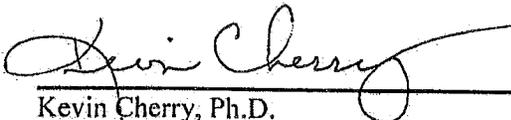
9/22/2015  
Date

**North Carolina Department of Transportation**

  
\_\_\_\_\_  
Nicholas J. Tennyson  
Secretary

9/15/2015  
Date

**State Historic Preservation Office**

  
\_\_\_\_\_  
Kevin Cherry, Ph.D.  
North Carolina State Historic Preservation Officer

9/21/2015  
Date

**Advisory Council on Historic Preservation**

  
\_\_\_\_\_  
John M. Fowler  
Executive Director

10/22/15  
Date