PROGRAMMATIC AGREEMENT

UTAH DIVISION, FHWA, PROGRAMMATIC AGREEMENT REGARDING SECTION 106 IMPLEMENTATION FOR FEDERAL-AID HIGHWAY PROJECTS.

DESCRIPTION OF PROGRAM:
The Utah Division, FHWA, executed its first statewide programmatic agreement (PA) on April 16, 2007. That PA was amended on April 16, 2010, in part, to address the assignment of the National Environmental Policy Act (NEPA) and Section 106 responsibilities to the state for projects classified as Categorical Exclusions under NEPA. The PA was again amended on June 3, 2013 and replaces and supersedes the two earlier agreements.

The Utah Department of Transportation (UDOT) retains its responsibility for environmental review, including Section 106, for all projects classified as Categorical Exclusions under NEPA, pursuant to 23 USC 326. The PA recognizes this assignment with UDOT having sole responsibility to conclude Section 106 for projects processed as Categorical Exclusions. The PA also includes the following provisions:

- The PA establishes two tiers of project review, dependent on the type of impacts to historic properties: Tier 1 projects are those with the potential to affect historic properties, but following screening, may be determined to require no case-by-case review or consultation with SHPO because they result in a finding of no historic properties affected.
- Tier 2 projects are those resulting in findings of either no adverse effect or adverse effects to historic properties, and require further consultation and review by SHPO and other consulting parties in accordance with the regulations at 36 CFR 800, with UDOT acting on behalf of the Federal agency. FHWA must participate in resolving adverse effects and be a signatory to an MOA developed to resolve adverse effects.
- FHWA remains responsible for government-to-government consultation with Indian tribes, and initiates consultation with tribes except where a tribe has entered into a PA with FHWA and UDOT. Currently, four Indian tribes have signed such Tribal PAs, each authorizing UDOT to consult with the tribe on matters pertaining to the agreements.
- The PA does not apply to undertakings on tribal lands.
- The USACE, as a signatory to the PA, delegates responsibility for Section 106 review to UDOT and FHWA pursuant to the terms of the PA for transportation undertakings requiring a USACE permit.
- The PA clarifies the requirements of Section 4(f) of the DOT Act to ensure that the PA does not contradict current FHWA policy on reaching a finding of *de minimis* impact under 4(f).

As with earlier versions, this PA is very well written and fairly concise, and should serve as a good model for other states wishing to (1) incorporate the US Army Corps of Engineers into the PA as a signatory; (2) delegate responsibility to the state DOT; (3) address the FHWA's government-to-government responsibility for consultation with federally-recognized Indian tribes; and (4) eliminate SHPO and FHWA review of projects that result in no effect to historic properties.

June 11, 2013