

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL TRANSIT ADMINISTRATION,
THE MARYLAND STATE HISTORIC PRESERVATION OFFICE,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND TRANSIT ADMINISTRATION, AND
THE MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION
IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT
INCLUDING MINOR TRANSIT PROJECTS IN THE STATE OF MARYLAND**

WHEREAS, Region III of the Federal Transit Administration (FTA), under the authority of the Federal Transit Program authorized by 49 U.S.C. Chapter 53, provides federal financial assistance to the Maryland Department of Transportation Maryland Transit Administration (MDOT MTA) for transit projects in Maryland; and

WHEREAS, the FTA Region III Administrator is the "Agency Official" responsible for ensuring compliance with Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108), as amended, and codified in its implementing regulations, "Protection of Historic Properties" 36 C.F.R. Part 800, as amended (August 5, 2004); and

WHEREAS, FTA has determined that MDOT MTA undertakings receiving FTA funds may have effects on properties included in or eligible for inclusion in the National Register of Historic Places (NRHP); and

WHEREAS, FTA has determined that Minor Transit Projects may have an effect on historic properties included in or eligible for inclusion in the NRHP and has consulted with the Maryland State Historic Preservation Office (MD SHPO) and the Advisory Council on Historic Preservation (ACHP) in accordance with 36 C.F.R. § 800.14(b) of the regulations implementing Section 106 of the NHPA; and

WHEREAS, FTA, MD SHPO, and ACHP, are required signatories to this Programmatic Agreement Among the Federal Transit Administration, the Maryland State Historic Preservation Office, the Advisory Council on Historic Preservation, the Maryland Department of Transportation Maryland Transit Administration, and the Maryland Department of Transportation State Highway Administration Implementing Section 106 of the National Historic Preservation Act Including Minor Transit Projects in the State of Maryland, (Agreement); and

WHEREAS, FTA has invited MDOT MTA and the Maryland Department of Transportation State Highway Administration (MDOT SHA) to participate in the consultation for this Agreement and to be invited signatories to this Agreement; and

WHEREAS, required and invited signatories are collectively referred to as signatories in this Agreement; and

WHEREAS, FTA recognizes that it has a unique legal relationship with federally recognized Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions, and therefore, consultation with an Indian tribe must recognize the government-to-government relationship between the federal government and federally recognized Indian tribes; and

WHEREAS, FTA, MD SHPO, ACHP, MDOT MTA and MDOT SHA acknowledge that Indian tribes possess special expertise in assessing the NRHP eligibility of properties with tribal religious and cultural significance pursuant to 36 C.F.R. § 800.4(c)(1); and

WHEREAS, FTA will continue to conduct outreach and will actively seek and request the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by undertakings reviewed under the terms of this Agreement; and

WHEREAS, FTA has invited the following federally recognized Indian tribes that may attach religious or cultural significance to properties in Maryland to consult on this Agreement and has requested their comments: the Delaware Nation, the Delaware Tribe of Indians, the Absentee-Shawnee Tribe of Oklahoma, the Onondaga Nation, the Saint Regis Mohawk Tribe, the Tuscarora Nation, the Seneca-Cayuga Nation, the Eastern Shawnee Tribe, and the Shawnee Tribe; and

WHEREAS, the following federally recognized Indian tribes have participated in consultation on this Agreement, and FTA has taken any comments received into account: the Delaware Nation, the Delaware Tribe of Indians, and the Absentee-Shawnee Tribe of Oklahoma; and

WHEREAS, for any undertaking involving tribal lands as defined in 36 C.F.R. § 800.16(x), or any undertaking that may affect a property identified by a federally recognized Indian tribe as possessing traditional religious and cultural significance, FTA shall conduct government-to-government consultation with such tribes for the undertaking; and

WHEREAS, pursuant to the consultation conducted under 36 C.F.R. § 800.14(b), the signatories have developed this Agreement in order to establish an efficient and effective program alternative for taking into account the effects of the FTA's Minor Transit Projects on historic properties in Maryland and for affording ACHP a reasonable opportunity to comment on undertakings covered by this Agreement; and

WHEREAS, MD SHPO agrees that the fulfillment of the terms of this Agreement will satisfy the responsibilities of any Maryland state agency under the requirements of the Maryland Historical Trust Act of 1985, as amended, State Finance and Procurement Article 5A-325 and 5A-326 of the Annotated Code of Maryland, for those components of an undertaking which involve assistance, permitting and/or funding actions from Maryland agencies; and

WHEREAS, FTA has notified federal, state and local agencies, including potential consulting parties (Attachment 1) and the public about this Agreement, has requested their comments, and has taken any comments received into account; and

WHEREAS, FTA agrees to delegate certain responsibilities for conducting Section 106 to the MDOT MTA with the agreement that MDOT MTA employs Secretary of the Interior (SOI) qualified staff in a cooperative arrangement with MDOT SHA, and retains contracts with consultant firms who meet the Secretary of the Interior's Professional Qualifications Standards published in 48 FR 44738-44.739 in the fields of archaeology, architectural history, and history, to carry out its historic preservation programs and responsibilities; and

WHEREAS, ACHP has issued Program Alternatives (36 C.F.R. § 800.14) regarding consideration of effects to historic properties relevant to federal undertakings and may issue additional Program Alternatives in the future; and

WHEREAS, FTA provides financial assistance for Minor Transit Projects in the State of Maryland that may include undertakings included in ACHP Program Alternatives and MDOT MTA’s project review will be subject to the limitations and allowances of each; and

WHEREAS, other federal agencies that recognize FTA as the lead federal agency for an undertaking may fulfill their Section 106 obligations by adopting the process carried out by FTA as allowed under 36 C.F.R. § 800.2(a)(2); and

NOW, THEREFORE, FTA, ACHP, and MD SHPO agree that projects that receive FTA financial assistance and/or approval in the State of Maryland shall be carried out in accordance with the following stipulations in order to take into account the effects of these projects on historic properties in Maryland.

STIPULATIONS

FTA, with the assistance of MDOT MTA, will ensure that the following measures are carried out:

I. Purpose and Applicability

- A. This Agreement sets forth the process by which FTA will meet its responsibilities under Section 106 of the NHPA, with the assistance of MDOT MTA, including Minor Transit Projects in Maryland. This Agreement establishes the basis for MDOT MTA internal review of individual projects and establishes how FTA, MD SHPO, MDOT MTA and MDOT SHA will be involved in such review.
- B. This agreement may be applied to undertakings for which any other involved federal agency has designated FTA as the lead federal agency, and FTA has accepted and documented such designation. This Agreement acknowledges FTA delegation of certain Section 106 responsibilities to MDOT MTA and MDOT SHA, including implementation of ACHP Program Alternatives as applicable and direct consultation with MD SHPO and other consulting parties regarding federal undertakings in the State of Maryland.
- C. Through this Agreement, FTA and MDOT MTA establish two categories of Minor Transit Projects as set forth in Appendix 1 and Appendix 2 (“No Effect” and “Limited Potential for Effect”, respectively) that have minimal potential to cause effects to properties eligible for or listed in the NRHP.
- D. At any time, FTA or MDOT MTA may choose to review a Minor Transit Project by following the procedures in 36 C.F.R. Part 800 rather than by following the procedures in this Agreement. MDOT MTA and FTA will also review a Minor Transit Project under the procedures in 36 C.F.R. Part 800 if MD SHPO, ACHP or FTA so requests.
- E. This Agreement also applies to programs where MDOT MTA serves a primarily administrative role, as a grantor of funds, or is otherwise indirectly involved with an undertaking, such as local public agency programs and projects, where another entity, such as a county, is the primary project proponent or source of funding.
- F. FTA retains ultimate responsibility for compliance with Section 106 of the NHPA.

II. Responsibilities

The following section identifies the responsibilities of FTA, MDOT MTA, MDOT SHA, and MD SHPO in complying with the terms of this Agreement.

A. FTA Responsibilities:

1. In compliance with its responsibilities under NHPA and as a condition of its award of any assistance for undertakings that may affect historic properties, FTA will require MDOT MTA to carry out certain requirements of 36 C.F.R. Part 800, consistent with applicable ACHP standards and guidelines.
2. FTA delegates MDOT MTA the responsibility to establish undertakings and initiate Section 106 review and consultation in accordance with this Agreement.
3. Consistent with the requirements of 36 C.F.R. § 800.2(a) and 800.2(a)(1 – 4), FTA remains responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement by MDOT MTA and/or MDOT SHA under the authority of FTA. At any point in the Section 106 process, FTA may inquire as to the status of any undertaking carried out under the authority of this Agreement and may participate directly in any undertaking at its discretion.
4. FTA will ensure that federally recognized Indian tribes are identified and consulted in accordance with the requirements of Section 101(d)(6) of the NHPA and 36 C.F.R. Part 800. This Agreement recognizes the guidance titled "Limitations on the Delegation of Authority by Federal Agencies to Initiate Tribal Consultation under Section 106 of the National Historic Preservation Act" published by ACHP on July 1, 2011. Nothing in this Agreement abrogates the FTA's responsibility for government-to-government consultation with federally recognized Indian tribes. If a tribe agrees to coordinate directly with the MDOT MTA and/or MDOT SHA on undertakings subject to this Agreement, a written agreement or affirmative written permission from a tribe must be documented prior to this responsibility being delegated to any party other than the FTA.
5. Upon notification by the MDOT MTA that an undertaking may result in an adverse effect to historic properties, FTA will ensure the Section 106 review process is completed, including notifying ACHP of an adverse effect determination and offering ACHP the opportunity to consult, in accordance with 36 C.F.R. 800.6(a).
6. FTA will ensure coordination with other reviews, as outlined in 36 C.F.R. § 800.3(b), particularly with the requirements of the USDOT's Section 4(f) procedures in 23 C.F.R. Part 774 and the agency's regulations in 23 C.F.R. Part 771 implementing the National Environmental Policy Act.
7. FTA will determine, based on information provided by MDOT MTA, whether a *de minimis* impact would occur to a historic property.

8. FTA reserves the responsibility for determining excluded properties for the property-based approach of the *Program Comment To Exempt Consideration of Effects to Rail Properties Within Rail Rights-of-Way* (ACHP 2018).
9. FTA shall be responsible for resolving disputes and objections pursuant to Stipulation XIII of this Agreement.

B. MDOT MTA Responsibilities

Under the authority of FTA, MDOT MTA SOI-qualified cultural resources professionals may carry out the following steps with respect to undertakings covered by the Agreement.

1. Determine under 36 C.F.R. § 800.3(a) whether the undertaking is a type of activity that has the potential to cause effects on historic properties.
2. Solicit public comment and involvement in accordance with 36 C.F.R. § 800.3(e) using MDOT MTA's public involvement procedures.
3. Identify additional consulting parties as described in 36 C.F.R. § 800.3 and 36 C.F.R. § 800.10 and invite them to participate in the undertakings covered by this Agreement.
4. Prepare documentation for FTA's consultation with federally recognized Indian tribes relevant to the undertaking.
5. Determine and document the scope of identification efforts and level of effort as described in 36 C.F.R. § 800.4(a) and (b)(1) including the undertaking's Area of Potential Effects (APE).
6. Determine the boundaries and eligibility of properties within the APE for listing in the NRHP in consultation with the MD SHPO pursuant to 36 C.F.R. § 800.4(c).
7. Consult with MD SHPO as required by this Agreement.
8. If MDOT MTA finds that an undertaking that does not meet the exemptions in Stipulations IV and V, will have no adverse effect to historic properties, or that no historic properties are affected, MDOT MTA will make and submit the finding on behalf of FTA to MD SHPO for concurrence, and if MD SHPO does not concur, MDOT MTA will work with MD SHPO to resolve the disagreement informally to reach a finding and concurrence. If resolution cannot be reached, then the parties will follow Stipulation XIII.
9. The MDOT MTA will inform the MD SHPO of the FTA's intent to make a *de minimis* finding based on their concurrence in the finding of "no adverse effect" or "no historic properties affected" in accordance with 23 C.F.R. § 774.5(b)(1)(ii) and will coordinate with FTA on *de minimis* findings.
10. When MDOT MTA determines an undertaking may have an adverse effect on historic properties, it will notify and consult with FTA prior to initiating any further

consultation. MDOT MTA will include FTA in continuing consultation with MD SHPO and identified consulting parties to resolve the adverse effects in accordance with 36 C.F.R. § 800.6, including alternatives to avoid, minimize, or mitigate adverse effects to historic properties resulting from the undertaking. Such alternatives or agreed upon mitigation measures will be documented in a Section 106 Memorandum of Agreement or Programmatic Agreement drafted by MDOT MTA and executed by FTA, MDOT MTA, MD SHPO, and ACHP if participating in consultation. MDOT MTA will identify if other invited signatories to such agreements are appropriate and will be identified by MDOT MTA for approval by FTA.

11. MDOT MTA will immediately notify FTA of any request for government-to-government consultation conveyed by a federally recognized Indian tribe.
12. MDOT MTA will maintain adequate project records, documentation of consultation, and reports provided to signatories and consulting parties. MDOT MTA will additionally monitor inadvertent discovery plan compliance during project implementation and provide education and training on the inadvertent discovery procedures as appropriate.

C. MDOT SHA Responsibilities

1. As part of the cooperative arrangement between the MDOT SHA and the MDOT MTA, the MDOT SHA will retain SOI-qualified cultural resources staff and will assist MDOT MTA cultural resources professionals with consultation requirements for projects on an as-needed basis.
2. SOI-qualified MDOT SHA cultural resources staff may assume the role of MDOT MTA cultural resources professionals as necessary, and in that role, will adhere to the provisions of this agreement.

D. MD SHPO Responsibilities

1. The MD SHPO shall review MDOT MTA and FTA determinations of the Areas of Potential Effects (APE), National Register eligibility determinations, effect findings and other submittals and respond within the timeframes specified in this Agreement, or as specified in 36 C.F.R. Part 800.
2. As requested by MDOT MTA and FTA, MD SHPO staff shall be reasonably available as a resource and for consultation through site visits, meetings, written requests, telephone conversations or electronic media.
3. The MD SHPO shall coordinate with MDOT MTA and FTA to identify consulting parties, including any communities, organizations, or individuals that may have an interest in a specific undertaking and its effects on historic properties.

E. Other Federal Agencies

Other Federal agencies who recognize FTA as the lead agency for an undertaking and notify FTA and MD SHPO in writing may fulfill their obligations under Section 106 of the NHPA according to 36 C.F.R. § 800.2(a)(2), provided that FTA and MDOT MTA follow the requirements of this Agreement and the other Federal agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by MDOT MTA.

III. Guidelines, Standards and Regulations

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

- A. 36 C.F.R. Part 800: Protection of Historic Properties, as amended (2004);
- B. Standard Operating Procedures #21: Section 106 Process (FTA 2019);
- C. *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (1983);
- D. *Standards and Guidelines for Archeological Investigations in Maryland* (Shaffer and Cole 1994);
- E. *Standards and Guidelines for Architectural and Historical Investigations in Maryland* (Maryland Historical Trust Revised 2019);
- F. *Program Comment To Exempt Consideration of Effects to Rail Properties Within Rail Rights-of-Way, Appendix A* (ACHP 2018);
- G. *Program Comment to Avoid Duplicative Reviews for Wireless Communication Facilities Construction and Modification* (80 FR 58744);
- H. *Program Comment for Actions Affecting Post-1945 Concrete Steel Bridges* (77 FR 68790);
- I. *Program Comment for Positive Train Control* (79 FR 30867);
- J. *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* (ACHP February 2007); and
- K. Any other applicable Program Alternative issued relevant to Section 106 reviews.

It is the intention of the signatories to interpret this Agreement to incorporate any subsequent standards, revisions of standards, or applicable Program Alternatives promulgated by the Secretary of Interior, ACHP, or MD SHPO as then in force during this agreement.

IV. Projects with No Potential to Cause Effects (Appendix 1 Projects)

- A. Project types: The signatories to this Agreement agree that the projects limited to the activities listed in Appendix 1, by their nature and definition, constitute undertakings that have no potential to cause effects to historic properties [pursuant to 36 C.F.R. § 800.3(a)(1)]. Therefore, projects limited to the activities listed in Appendix 1 are exempt from further Section 106 review, provided the projects are limited to the activities listed and not part of a larger undertaking. SOI-qualified MDOT MTA or MDOT SHA cultural resources professionals will determine whether a particular activity meets the exemption categories listed in Appendix 1. Other types of minor actions may be exempted from review as having no potential to cause effects if deemed appropriate through consultation and mutual agreement between FTA, MDOT MTA, and MD SHPO as specified in Stipulation XIV of this Agreement.
- B. Notification and Coordination: For undertakings that are limited to the activities listed in Appendix 1, MDOT MTA will document its finding that the undertaking is exempt from

further review and maintain the documentation. Projects reviewed under Appendix 1 will be documented with information that includes at a minimum, the project name, county, use of federal funds, a description of the proposed work, exemption category designation, and the SOI-qualified cultural resources staff reviewing the action. MDOT MTA will document all projects exempted from additional review under Appendix 1 in its annual report to FTA and MD SHPO, as specified in Stipulation XI. MDOT MTA will provide project review documentation to MD SHPO or FTA for specific projects / activities upon request. Beyond the documentation noted above, MDOT MTA is not required to take any further consultation or review actions in the Section 106 process for undertakings exempt from review.

V. Minor Transit Projects (Appendix 2 Activities)

- A. Project types: For the purposes of this Agreement, "Minor Transit Projects" are broadly defined as those projects that: have limited areas of potential effects unlikely to contain historic properties; occur largely at grade within existing rights-of-way or within minimal new rights-of-way; do not introduce new structural or visual elements that are not in keeping with the character of an area; do not require substantial ground disturbance or which occur within previously disturbed soils; and/or involve the replacement of "consumable" elements that are non-contributing to a historic property (e.g. non-historic pavement, tire stops, non-historic seating, ticket machines, etc.). Such projects are therefore unlikely to affect historic properties, provided that the following stipulations are followed. Other types of minor actions may be exempted from review as having limited potential to cause effects if deemed appropriate through consultation and mutual agreement between FTA, MDOT MTA, and MD SHPO as specified in Stipulation XIV of this Agreement.
1. MDOT MTA will review and document Minor Transit Projects without further review by FTA or MD SHPO, provided the projects are not part of a larger undertaking and are otherwise limited to the activities listed in Appendix 1 or 2 of this Agreement and/or any applicable Program Alternatives.
 2. MDOT MTA will base its review upon information adequate to identify and evaluate properties and assess projects' effects on historic properties as specified in Stipulation V.B and consistent with 36 C.F.R. Part 800 and ensure that those decisions are based on the guidelines, standards and regulations identified in Stipulation III of this Agreement.
 3. MDOT MTA will consult with MD SHPO pursuant to 36 C.F.R. § 800.4 through 36 C.F.R. § 800.6 and Stipulation V.B.2 of this Agreement when making NRHP determinations of eligibility for historic properties.
 4. MDOT MTA will either determine that there are no historic properties present or there are historic properties present, but the undertaking will have no effect upon them.
 5. If MDOT MTA's project review suggests that a project may affect historic properties, MDOT MTA will consult on the undertaking in accordance with Stipulation VII of this Agreement or 36 C.F.R. § 800.4 through 36 C.F.R. § 800.6.
- B. MDOT MTA Review Process

1. Project Review:

- a. SOI-qualified MDOT MTA cultural resources professionals will determine the area of potential effects (APE) and review existing information on inventoried properties in the APE as well as assess the likelihood that unidentified properties exist in the APE based on that information and determine the degree of existing disturbance within the APE either through documentation, field inspection or both as warranted.
- b. For undertakings limited to activities listed in Appendix 2, SOI-qualified MDOT MTA cultural resources professionals will determine whether historic properties exist within the APE and determine if the undertaking will result in a finding of no historic properties present or no historic properties affected, as defined in 36 C.F.R. § 800.4(d)(1).
- c. Where warranted, SOI-qualified MDOT MTA cultural resources staff will conduct field surveys or oversee the efforts of a SOI-qualified cultural resources contractor conducting a field survey, in conformance with the applicable standards in Stipulation III.

2. Eligibility Evaluations and Assessments of Effect:

MDOT MTA will consult with MD SHPO pursuant to 36 C.F.R. § 800.4(c) on any NRHP determination(s) of eligibility. MDOT MTA will also consult on the undertaking in accordance with Stipulation VII of this Agreement and 36 C.F.R. § 800.4 through 36 C.F.R. § 800.6 in consultation with MD SHPO.

3. Notification and Coordination with MD SHPO and FTA:

For undertakings that meet the criteria included in Stipulation V.A., MDOT MTA will document and file the finding in accordance with Stipulation V.B.5. MDOT MTA may request written comment from MD SHPO on a determination of no historic properties affected for any project defined under this stipulation.

MDOT MTA will provide a list of all projects limited to the activities defined in Appendix 2 that are reviewed under the provisions of Stipulation V in quarterly and annual reports to MD SHPO, FTA, and consulting parties as specified in Stipulation XI. MDOT MTA will not provide FTA or MD SHPO with copies of the Appendix 2 documentation, unless a copy of the documentation for an activity is specifically requested.

4. Notification and Coordination with other Parties:

MDOT MTA will provide for local government and public notification on a quarterly basis by providing a link to the MDOT MTA website which will contain electronic copies of quarterly and annual reports. In the event of an objection from the public or a consulting party, MDOT MTA will consult with FTA, MD SHPO, and relevant parties to resolve the issue pursuant to Stipulation XII (Dispute Resolution) or address the review under the standard 36 C.F.R. Part 800 process.

5. Documentation:

For all undertakings meeting Appendix 2 exemption criteria reviewed under this Agreement, MDOT MTA will maintain applicable records and will retain the documentation in accordance with federal and state retention schedules. Pertinent records for each project covered under this Agreement may include the following as appropriate to the scale and nature of an undertaking:

- a. a description of the undertaking and its APE;
- b. the location of the project area on USGS 7.5-minute topographic maps and/or project mapping; or on mapping generated from the MDOT MTA Geographic Information System (GIS) at a scale of 1:90,000 or less for project location and 1:24,000 or less for cultural resources information;
- c. the type, extent, and degree of existing disturbance within the APE;
- d. an assessment of the potential for NRHP-eligible properties to exist within the APE, including justification, a listing of NRHP listed or eligible historic properties, and new or updated Maryland Inventory of Historic Properties forms, as warranted;
- e. justification for the determination of no effect or no historic properties affected (as appropriate);
- f. notation of Program Comment exemption activities applicable to the undertaking; and
- g. associated notes, photos, and correspondence as appropriate.

VI. Relationship to ACHP Program Alternatives

SOI-qualified MDOT MTA cultural resources professionals will review undertakings and identify if a Program Alternative including, but not limited to, those referenced in Stipulation III could apply to an undertaking. MDOT MTA will document its evaluation in accordance with the requirements of the applicable Program Alternative.

VII. Project Reviews-All Other Undertakings

MDOT MTA, FTA and MD SHPO will complete review of all remaining undertakings that do not meet the provisions in Stipulations IV, V, and VI in accordance with 36 C.F.R. Part 800. MDOT

MTA may initiate and carry out the steps of the process as delegated by FTA and as described in in Stipulation II and this Stipulation VII.

MDOT MTA Internal Review: For undertakings that are not listed in Appendix 1, Appendix 2, or exempted under a Program Alternative, SOI-qualified staff will employ a multidisciplinary approach that meets the requirements of 36 C.F.R. § 800.3 and 36 C.F.R. § 800.4. MDOT MTA may address multiple steps simultaneously.

A. Initiation of the Section 106 Process and Identification of Historic Properties

MDOT MTA will initiate the Section 106 process and identification of historic properties by carrying out the following steps in conformance with the process outlined in the regulations implementing Section 106:

1. Initiate the Section 106 process in accordance with the procedures in 36 C.F.R. § 800.3, including establishing whether there is an undertaking, coordinating with other reviews, planning to involve the public, and identifying and inviting other consulting parties, as appropriate;
2. Determine the Project's APE, as defined in 36 C.F.R. § 800.16(d);
3. Review existing information for the APE on file at MD SHPO including the Maryland Inventory of Historic Properties, Medusa – Maryland's Cultural Resource Information System, and National Register of Historic Places files;
4. Assess the likelihood that unidentified historic properties exist in the APE;
5. Determine the degree of existing disturbance within the APE and determine whether an archaeological and/or historic architectural survey is needed;
6. Perform archaeological and/or architectural field reconnaissance and/or intensive surveys, as warranted, in conformance with the Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation: Identification (1983, as revised in 48 FR 44716)* and MD SHPO as referenced in Stipulation III. If an archaeological survey is performed, an archaeological survey report will be completed and MD SHPO archaeological site survey and Determination of Eligibility (DOE) forms will be prepared for all identified archaeological sites or districts.
7. If a historic architectural survey is performed, MD SHPO Maryland Inventory of Historic Places and DOE forms will be prepared for any property evaluated for the NRHP that will be affected by an undertaking.

B. Eligibility Evaluations and Assessment of Effect

1. As part of MDOT MTA's performance under Stipulation VII.A of this Agreement, SOI-qualified staff will apply the NRHP criteria in 36 C.F.R. § 60.4 to properties identified within the APE that have not been previously evaluated to determine if such properties are NRHP-eligible in accordance with 36 C.F.R. § 800.4(c)(1), and, if so, make the eligibility determination. If properties not previously evaluated are found to not be NRHP-eligible in accordance with 36 C.F.R. § 800.4(c)(2), MDOT MTA will document this work as part of their assessment of effect.

2. If MDOT MTA's internal review under Stipulation VII.A suggests that an undertaking may affect NRHP listed or eligible properties, MDOT MTA will apply the criteria of adverse effect in 36 C.F.R. § 800.5(a), and make a finding of No Adverse Effect or a recommendation of Adverse Effect.

C. Notification and Consultation with FTA, MD SHPO, and Consulting Parties

1. **Finding of No Historic Properties Affected.** Where, as a result of its Stipulation VII.A review, MDOT MTA determines that there are no NRHP-listed or eligible properties within the APE, SOI-qualified staff shall make a finding, pursuant to 36 C.F.R. § 800.4(d)(1) of no historic properties affected. MDOT MTA will consult with FTA and the MD SHPO regarding application of the 36 C.F.R. § 800.4 criteria. No further review under Section 106 is required for a finding of no historic properties affected unless the scopes of the work or limits change, thus requiring additional review.
2. **Finding of No Adverse Effect.** For any undertaking that includes NRHP-listed and/or eligible historic properties within the APE, SOI-qualified staff will apply the criteria of adverse effect set forth in 36 C.F.R. § 800.5(a) to determine the effects of the undertaking on historic properties, and consult with FTA and MD SHPO on its determination.
 - a. MDOT MTA shall identify and engage parties for consultation as appropriate. If the effects are determined to not be adverse, or if the undertaking is modified and/or certain conditions are met such that adverse effects are avoided, SOI-qualified staff shall make a finding of no adverse effect.
 - b. In instances where an undertaking is modified to avoid adverse effects, MDOT MTA shall submit the modifications and/or conditions to MD SHPO for its review and concurrence prior to making a finding of no adverse effect.
 - c. MDOT MTA will seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties as part of MDOT MTA's public involvement procedures pursuant to the National Environmental Policy Act and as per 36 C.F.R. § 800.2(5)(d). No further review under Section 106 will be required for a finding of no adverse effect unless the scope of work or limits change, thus requiring additional review.
 - d. If MD SHPO does not respond within thirty (30) calendar days, its concurrence will be assumed.
3. **Finding of Adverse Effect**
 - a. Undertakings that include NRHP-listed or eligible properties within the APE that will or may be adversely affected, as defined by the criteria of adverse effect set forth in 36 C.F.R. § 800.5(a), shall be reviewed in accordance with the procedures of 36 C.F.R. Part 800.

- b. If SOI-qualified staff determine that an undertaking may adversely affect a National Historic Landmark, MDOT MTA shall request FTA, the MD SHPO, the ACHP, and the Secretary of the Interior (or its designate) to participate in consultation to resolve any adverse effects, as outlined in 36 C.F.R. § 800.10.
- c. If other federal agencies agree to the terms of this Agreement pursuant to Stipulation II.E and Stipulation XII, MDOT MTA and MDOT SHA will consult with FTA and with other agencies if they have any involvement with individual undertakings that have an adverse effect as required in 36 C.F.R. Part 800, and will seek their review and comment regarding the identification and evaluation of the historic properties, assessment of effects, and resolution of effects. The signatories understand that these agencies will not agree or disagree with any determinations or findings until they have had the opportunity to consult for a particular undertaking.

VIII. Post-Review Undertaking Changes

For projects that have completed review under Stipulations IV, V, VI, or VII of this Agreement, the MDOT MTA will review proposed changes. Provided the change in scope is limited to the types of activities described in Appendix 1, Appendix 2, or an applicable Program Alternative, MDOT MTA will document the change in a format consistent with the requirements of Stipulation IV.B for changes applicable to Appendix 1 exemption, Stipulation V. B. 5 for changes applicable to Appendix 2 exemption, and for changes meeting exemption criteria under a Program Alternative, documentation will adhere to the requirements specified in the applicable Program Alternative. Should the proposed change result in potential new effects to historic properties, MDOT MTA will consult in accordance with Stipulation VII.

IX. Post Review Discoveries

A. Archaeological Discoveries and Unforeseen Effects to Historic Properties

For all activities documented through exemptions under Appendix 1 or Appendix 2, Program Alternatives, or reviewed under Stipulation VII of this Agreement, MDOT MTA will require use of an Inadvertent Discovery Plan (IDP) as described in Appendix 3. MDOT MTA will make notifications and consult with FTA and MD SHPO in the event of discovery of potential historic properties, or inadvertent effects to historic properties (including damage or unintentional impacts to historic properties or damage to known or previously undocumented archaeological sites) as described in the IDP. MDOT MTA may make minor non-procedural modifications (such as inclusion/correction of contact or project information) to the IDP without requiring amendment of this Agreement. Project-specific IDPs may be developed for individual projects where the standard format is not desirable.

B. Discovery of Human Remains

In the event that the inadvertent discovery involves human remains, MDOT MTA will follow the applicable section of the IDP, which describes applicable Maryland State laws and consultation procedures regarding human remains.

X. Emergency Situations

For the purposes of this Agreement, emergencies are defined as occurrences that require emergency transit system and facility repairs or other actions that are necessary to 1) protect the life, safety, or health of the public; 2) minimize the extent of damage to the transit system and facilities; 3) protect remaining transit facilities; or 4) restore essential traffic or access. The following stipulations apply to emergency situations:

- A. Repairs to address emergency situations as defined above can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies.
- B. If the emergency action involves undertakings consistent with Stipulations IV, V, or VI, MDOT MTA will complete review under those provisions.
- C. If the emergency repair project could affect historic properties, MDOT MTA will notify FTA, MD SHPO, and other appropriate parties as soon as is practicable, but no more than seven (7) days after the emergency repair is identified or conducted. MDOT MTA will consult with FTA and MD SHPO on the nature of the emergency and any available options to avoid or minimize effects to historic properties. Federally recognized Tribal notification will be conducted by FTA. FTA and MDOT MTA will make a reasonable and good faith effort to provide for sufficient response time, but the comment period may be accelerated depending on the nature of the emergency.
- D. MDOT MTA will provide written notification of an emergency action to MD SHPO and FTA. The notice will be clearly and prominently marked as an emergency notification and will include an explanation of how the action meets the requirements for emergency as defined herein. The notice will also include a brief description of the eligibility and/or significance of the resource(s) involved, the nature, effect, and/or anticipated effect of the emergency action on the resource(s), and the anticipated time frame available for comment.
- E. Should the emergency action subsequently be defined to meet the requirements described in Stipulations IV, V, or VI, MDOT MTA will notify FTA and MD SHPO that review was completed under these provisions and provide the associated documentation upon request.
- F. For projects where the repair must be made within the first 30 days of the event that caused the emergency or the declaration of the emergency by an appropriate authority, the processing of environmental documentation will happen concurrently or after the fact. In these cases, MDOT MTA will comply with the procedures in Stipulation VII of this Agreement to the extent possible, but the reviews will likely be conducted after the emergency work is completed.
- G. When sufficient lead time prior to implementing repairs is possible, MDOT MTA will comply with the procedures in Stipulation VII.

XI. Review and Monitoring

MDOT MTA, FTA and MD SHPO will consult regularly to review implementation of the terms of this Agreement, including at a minimum one annual meeting with FTA in attendance. MDOT MTA will maintain a report of all its Appendix 1 and 2 undertakings reviewed under the Agreement for a 12-month period from January 1 through December 31. This report will also include a report of any Program Alternatives used subject to the requirements specified in each Program Alternative.

MDOT MTA will provide MD SHPO, MDOT SHA, FTA, and ACHP with a copy of this report by January 31 of each following year. This report will include an assessment of the effectiveness of the Agreement, a discussion of any concerns identified during that reporting year, and any recommendations for improvements. MD SHPO, MDOT SHA, FTA, and ACHP will review the report and assess the implementation of the Agreement for the year under review. If requested by any Signatory to this Agreement, all parties shall consult to resolve issues that arise as a result of the review.

XII. Cooperation with Other Federal Agencies

In the event that another federal agency not initially a party to or subject to this Agreement has a role in FTA-funded transportation projects in Maryland in the future, that agency may fulfill its Section 106 responsibilities by stating in writing that it concurs with the terms of this Agreement as it relates to the project at issue, and notifying the FTA, the MD SHPO, the ACHP, MDOT MTA, and MDOT SHA that it intends to join this Agreement for the subject Minor Transit Project, and will adhere to the terms of this Agreement. Any necessary amendments will be considered in accordance with Stipulation XIV of this Agreement.

XIII. Dispute Resolution

Should any signatory or consulting party to this Agreement or member of the public object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, FTA shall consult with such party to resolve the objection. If FTA determines that such objection cannot be resolved, FTA will:

- A. Forward all documentation relevant to the dispute, including the FTA's proposed resolution, to ACHP. ACHP shall provide FTA with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FTA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from ACHP, signatories and consulting parties, and provide them with a copy of this written response. FTA will then proceed according to its final decision.
- B. If ACHP does not provide its advice regarding the dispute within the thirty (30) day period, FTA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FTA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and consulting parties to the Agreement and provide them and ACHP with a copy of such written response.
- C. FTA's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

XIV. Amendment

Any signatory to this Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 C.F.R. § 800.14 to consider such an amendment.

Additional project types and actions may be classified as minor transit activities and, if deemed appropriate through consultation and mutual agreement between MDOT MTA and MD SHPO, may be added to Appendix 1 and/or 2. MDOT MTA will notify FTA and ACHP of additions to Appendix 1 and/or 2 as they are added. MDOT MTA will maintain a list of all such activities and

actions approved by this process and update Appendix 1 and/or 2 as part of the scheduled annual reports to MD SHPO, FTA and ACHP under Stipulation XI. Updates to Appendix 1 and/or 2 will become effective immediately upon mutual agreement between MDOT MTA and MD SHPO. Additions to or modifications of Appendix 1 or Appendix 2 do not require amendment of this Agreement.

XV. Termination

Any signatory to this Agreement may terminate it by providing 30 calendar days' notice in writing to the other signatories, provided that the signatories will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

If any signatory to this Agreement determines that a term will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation XIV, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.

In the event of termination, FTA will comply with 36 C.F.R. § 800.3 through 36 C.F.R. § 800.6 regarding individual undertakings.

XVI. Confidentiality

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

XVII. Duration


This Agreement will continue in full force and effect until five years subsequent to the date of execution of the Agreement. Within six months prior to this expiration, all signatories shall meet to review the effectiveness of the Agreement and consult to determine if the Agreement should be continued or amended. If no signatory requests amendment or termination of the Agreement, the Agreement shall continue in full force and effect until 10 years subsequent to the date of the execution of the Agreement. If a signatory requests amendment, the signatories will follow the procedures in Stipulation XIV.

Execution and implementation of this Agreement documents that FTA has delegated certain Section 106 responsibilities to MDOT MTA, and has afforded MD SHPO and ACHP a reasonable opportunity to comment and that FTA has taken into account the effects of the actions provided for in this Agreement on historic properties.

SIGNATORY PAGE

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL TRANSIT ADMINISTRATION,
THE MARYLAND STATE HISTORIC PRESERVATION OFFICE,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND TRANSIT ADMINISTRATION, AND
THE MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION
IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT
INCLUDING MINOR TRANSIT PROJECTS IN THE STATE OF MARYLAND**

MARYLAND STATE HISTORIC PRESERVATION OFFICE

By: 

Elizabeth Hughes, State Historic Preservation Officer

Date: 10-23-2020

SIGNATORY PAGE

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL TRANSIT ADMINISTRATION,
THE MARYLAND STATE HISTORIC PRESERVATION OFFICE,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND TRANSIT ADMINISTRATION, AND
THE MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION
IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT
INCLUDING MINOR TRANSIT PROJECTS IN THE STATE OF MARYLAND**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: 


Aimee Jorjani, Chair

Date: November 23, 2020

SIGNATORY PAGE

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL TRANSIT ADMINISTRATION,
THE MARYLAND STATE HISTORIC PRESERVATION OFFICE,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND TRANSIT ADMINISTRATION, AND
THE MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION
IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT
INCLUDING MINOR TRANSIT PROJECTS IN THE STATE OF MARYLAND**

**MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND TRANSIT ADMINISTRATION**

By:  Digitally signed by
Kevin B. Quinn, Jr.
Date: 2020.10.09

Kevin Quinn, Administrator

Date: 322; 4242

APPENDIX 1 Projects with No Potential to Cause Effects to Historic Properties

SOI-qualified MDOT MTA cultural resources professionals will determine whether a particular project meets the following exemption categories. This list is pertinent to transit projects for which MDOT MTA uses FTA funding to implement directly or administers as part of federally funded local grants, and for which ACHP Program Alternatives do not apply.

A: Administrative

- A-1 Federally funded activities that are administrative in nature and do not involve construction or ground disturbance, such as preliminary engineering, educational programs/training, technical studies, non-invasive inspections, program administration and all non-real estate purchasing do not require cultural resources professional review and approval.

B: Routine Maintenance

- B-1 Ordinary cleaning and repair or replacement of non-historic amenities or infrastructure that does not involve visible alteration, substantial new materials or new ground disturbance.
- B-2 Routine cleaning and maintenance of existing drainage, stormwater management, and other water quality infrastructure, provided that the cleaning does not require expansion of a facility footprint. Such activities include but are not limited to removal of sediment from stormwater management facilities, bioretention facilities and infiltration trenches.

C: Groundskeeping

- C-1 Mowing or spraying, seeding/reseeding, landscape planting, tree trimming, brush removal and other ground cover maintenance activities at all non-rail transit facilities provided that the action does not require or result in disturbance to previously undisturbed soils.
- C-2 Removal of debris, salt, or contaminated materials from parking lots, depots, stations, and other non-rail transit facilities provided the action does not require or result in ground disturbance.

D: Utilities

- D-1 Repair or replacement of above ground utilities provided that any replacement is in-kind¹.
- D-2 Repair or replacement of underground utilities provided that the activities occur within the existing disturbed utility footprint.

E: Improvements or Additions to Existing Facilities

¹ In kind means that new materials used in repairs or replacements match the material being repaired or replaced in design, color, texture, other visual properties, and, where possible, materials.

- E-1 Installation of new safety / security related infrastructure within the interior of a transit facility, including fire suppression systems and security cameras.
- E-2 Improvements to an existing bus shelter that have no or minimal visual impact to those outside of the shelter (e.g. the addition of lighting or signage within an existing shelter).

F: Minimally Invasive Subsurface Surveys for Planning Information Purposes

- F-1 Soil test pits that are manually excavated using shovels and/or augers for the purposes of delineating wetland boundaries, characterizing soils, or characterizing potentially hazardous materials.

APPENDIX 2 Minor Transit Projects Unlikely to Cause Effects to Historic Properties

Following the procedures outlined in Stipulation V, SOI-qualified MDOT MTA cultural resources professionals will determine whether a particular project meets the following exemption categories. This list is pertinent to activities that are unlikely to cause effects to historic properties, for which MDOT MTA uses FTA funding to implement directly or administers as part of federally funded local grants, and for which ACHP Program Alternatives do not apply.

A: Groundskeeping

- A-1 Landscaping not specified in Appendix 1, including but not limited to the removal or planting of mature trees, or other substantive new ground disturbance that is greater than ordinary herbaceous plantings.
- A-2 Removal of debris, salt or contaminated materials from facilities that may require disturbance to soils.

B: Installation of New Transit Amenities

- B-1 Installation of new bus shelters.
- B-2 Installation of new amenities and accommodations such as ramps, tactile warning strips, bathroom fixtures, handrails, etc.
- B-3 Curb and sidewalk repair, replacement or construction.
- B-4 Bus Rapid Transit improvements that include widening an existing roadway by less than a travel lane, or adding lanes, provided the widening does not extend beyond existing improved right-of-way, or modification of roadway facilities to accommodate Bus Rapid Transit capacity within existing improved right-of-way.

C: Utilities

- C-1 Installation of new above ground utilities such as electric transformers, heating or cooling units, solar panels, etc.
- C-2 Installation of new underground utilities within verified disturbance or in deposits that otherwise have minimal potential for intact archaeological deposits.

D: Construction and Improvements to Facilities

- D-1 Construction of new improvements to park and ride lots, composting facilities, and other transit related maintenance, storage, and office facilities.
- D-2 Installation of new fencing at a non-rail transit facility or property.
- D-3 Improvements or alterations to the exterior of a facility that would alter the existing external aesthetic (including bus shelters).

- D-4 Construction of new concrete bus pads.
- D-5 Minor safety related drainage improvements, including but not limited to the installation, replacement or removal of culverts; installation, replacement and extensions of pipes; addition of pipe end sections; and installation, replacement, or repairs of storm drains and inlets.
- D-6 Repair or construction of erosion control and protection measures including but not limited to slope stabilization, slide repair, rip rap, or retaining walls.
- D-7 Construction of new noise barriers.
- D-8 Installation of new lighting, traffic barriers, guardrails, traffic signals, curbs, gutters, sidewalks, and variable message signs other than that specified in Appendix 1.
- D-9 Installation of new water quality facilities including but not limited to stream stabilization and restoration, and installation of stormwater management facilities, bioretention facilities, and infiltration trenches that require ground disturbance.
- D-10 Wetland or other natural habitat mitigation and/or enhancement activities.

E: Invasive Subsurface Excavation

- E-1 Invasive preliminary engineering activities that involve mechanical excavation including soil borings/investigations; utility test pitting/identification; and geotechnical investigations.

Should these Preliminary Engineering activities be linked with or result in a subsequent defined undertaking requiring additional consultation, MDOT MTA will include documentation of the preliminary review in any subsequent consultation.

APPENDIX 3 Inadvertent Discovery Plan

APPENDIX 3

MDOT MTA Cultural Resources Inadvertent Discovery Plan

- A. **Unanticipated Impacts to Above Ground Historic Properties:** if the undertaking causes unanticipated impacts to any NRHP-eligible, listed, or contributing buildings, sites, structures, or objects of the built environment, the contractor must notify the engineer and immediately cease any activity causing ongoing damage until consultation occurs. MDOT MTA will, in consultation with MD SHPO and FTA, determine if adverse effects have occurred to the property/properties and develop a plan for the protection of the historic property and minimization or mitigation measures of impacts. If mitigation measures are identified, FTA, MDOT MTA and MD SHPO will execute a Memorandum of Agreement or amend an existing Memorandum of Agreement for the project to record the identified mitigation measure. MDOT MTA may hold its contractor liable for any or all costs resulting from this process following appropriate processes identified in its contract instruments.
- B. **Unanticipated Damage to Known Archaeological Resources:** if unauthorized excavation occurs outside the approved limits of disturbance or other approved boundaries designed to protect archaeological resources and thereby causes impacts to known, NRHP-eligible archaeological resources, MDOT MTA will require its contractor to cease any activity causing ongoing damage until consultation occurs. MDOT MTA will conduct a damage assessment consistent with the model used for such assessments under the Archaeological Resources Protection Act (<https://www.nps.gov/archeology/pubs/techbr/tchBrf20.pdf>). MDOT MTA will use the results of the assessment in consultation with MD SHPO and FTA to determine if the resource has been adversely affected and determine appropriate mitigation measures. If the resource is of known or potential Native American affiliation, FTA, with assistance from MDOT MTA, will consult with federally recognized Indian tribes and MDOT MTA will consult with other consulting parties as appropriate. If a mitigation measure(s) is identified, FTA, MDOT MTA and MD SHPO will execute a Memorandum of Agreement or amend an existing Memorandum of Agreement for the project to record the identified mitigation measure. MDOT MTA may hold its contractor liable for any or all costs resulting from this process following appropriate processes identified in its contract instruments.
- C. **Unanticipated Discovery of Human Remains:** Should any known or suspected burials, interments or human remains (hereafter, “remains”) be encountered during construction, all applicable construction work in the vicinity of the remains will be immediately stopped to prevent damage to the remains, or to any additional remains that might be present in the vicinity. A minimum 100-foot buffer around identified remains should be established free of disturbance, to be adjusted as appropriate for the site conditions. Construction may occur outside the buffer unless evidence of additional remains is found. If remains are suspected to be human but not confirmed, MDOT MTA will ensure that such confirmation is made by a qualified professional. Human remains will, at all times, be treated respectfully and access and visibility limited to the site of discovery to authorized personnel only. Pursuant to State of Maryland Criminal Code § 10-402, the State’s Attorney must authorize movement or removal of any remains until determined to be archaeological. If the remains are determined to be archaeological, FTA, MDOT MTA and MD SHPO will consult to determine treatment of the remains and any other necessary treatment such as work needed to define extent of remains in the most expeditious manner feasible. If the remains are determined archaeological and suspected to be of Native American origin, MDOT MTA, MD SHPO and FTA (as

appropriate) will provide notification within 24 hours or as soon as practicable. FTA will consult with affected federally recognized Indian tribes and MDOT MTA will consult with other consulting parties, as appropriate, regarding treatment of the remains.

In consultation with FTA, MD SHPO, federally recognized Indian tribes and other consulting parties as appropriate, MDOT MTA will develop a plan for the treatment or disposition of the remains. MDOT MTA will implement the provisions of the agreed Treatment Plan.

Should the remains be associated with or should the remains constitute an intact archaeological resource, provision **D** below is also applicable.

- D. Unanticipated Discovery of Archaeological Resources:** If previously unidentified archaeological features, artifacts, or other materials (hereafter, “resources”) are discovered during construction, all ground-disturbing work in the vicinity of the resource will be temporarily suspended or modified to prevent further damage to the resource, and provide a reasonable buffer for extent of the resource that may not be exposed.

The MDOT MTA archaeologist will perform a preliminary inspection to identify the resource and evaluate its NRHP eligibility. Following this inspection, construction may resume in the vicinity of but outside the boundary of the archaeological resource as defined by the MDOT MTA archaeologist. If the feature is potentially eligible for the NRHP, MDOT MTA will consult with MD SHPO on an eligibility determination and, if determined eligible for the NRHP, every effort will be made to avoid and/or minimize impacts through redesign or modification of construction methods. If the resource is of known or suspected Indian tribal affiliation, FTA will consult with federally recognized Indian tribes as appropriate.

In consultation with FTA and MD SHPO, MDOT MTA will develop a plan for the treatment of any resource determined eligible. MDOT MTA will describe actions proposed to avoid, minimize, or mitigate adverse effects and request MD SHPO, FTA and Indian tribal comments as appropriate within two (2) working days.

MDOT MTA will then implement the provisions of the agreed Plan.

ATTACHMENT 1

List of Consulting Parties Contacted for this Agreement

FEDERALLY RECOGNIZED TRIBES

- Oneida Indian Nation
- Onondaga Nation
- Saint Regis Mohawk Tribe
- Seneca-Cayuga Nation
- Delaware Nation
- Delaware Tribe of Indians
- Absentee-Shawnee Tribe of Oklahoma
- Eastern Shawnee Tribe
- Shawnee Tribe

MARYLAND STATE RECOGNIZED TRIBES

- Maryland Commission on Indian Affairs
- Piscataway Indian Nation
- Piscataway Conoy Tribe
- Accohannock Indian Tribe

FEDERAL CONTACTS

- Aberdeen Proving Ground
- National Capital Planning Commission (NCPC)
- National Historic Landmark Program
- National Historic Landmarks & National Register Coordinator
- National Capital Region, National Park Service
- National Capital Parks East
- National Capital Region of the National Park Service
- C&O Canal National Historical Park
- Office of Environmental Policy and Compliance
- United States Department of the Interior
- Civil War Preservation Trust
- U.S. Army Corps of Engineers (Maryland) Regulatory Branch
- General Services Administration

COUNTY AND LOCAL GOVERNMENTS

ALLEGANY COUNTY

- Allegany County Planning Department
- Canal Place Preservation and Development Authority
- Cumberland Historic Preservation Commission*
- Frostburg Historic District Commission

ANNE ARUNDEL COUNTY

- Anne Arundel County Office of Environmental & Cultural Resources
- Annapolis Historic Preservation Commission*
- City of Annapolis
- Arundel Center
- Deale Area Historical Society
- Historic Annapolis Foundation, Inc.
- Historic Owensville Civic Association
- London Town Foundation

* *Certified Local Government*

ATTACHMENT 1

List of Consulting Parties Contacted for this Agreement

- Odenton Heritage Society, Inc.

BALTIMORE CITY

- Baltimore City Commission for Historical and Architectural Preservation (CHAP)*
- Baltimore Heritage, Inc.
- Fells Point/Federal Hill Historic District Commission

BALTIMORE COUNTY

- Baltimore County Landmarks Preservation Commission*
- Preservation Alliance of Baltimore County, Inc.
- Historic Glyndon, Inc.
- Catonsville Historical Society
- Valleys Planning Council

CALVERT COUNTY

- Calvert County Historic District Commission*
- North Beach Historic Preservation Commission
- Mount Chase Corporation (Baltimore & Drum Point Railroad)

CAROLINE COUNTY

- Caroline County Planning Commission
- Ridgely Historic Area Commission

CARROLL COUNTY

- Carroll County Historic District Commission
- Sykesville Historic District Commission
- Westminster Historic District Commission
- The Historical Society of Carroll County
- City of Taneytown

CECIL COUNTY

- Cecil County Planning Commission
- Cecil Historical Trust, Inc.
- Charlestown Historic District Commission
- Chesapeake City Historic District Commission
- Port Deposit Historic Area Preservation Commission

CHARLES COUNTY

- Charles County Department of Planning and Growth Management
- Charles County Historic Preservation Commission*
- La Plata Historic District Commission

DORCHESTER COUNTY

- Dorchester County Planning and Zoning
- Cambridge Historic Preservation Commission*
- East New Market Historic District Commission
- Town of East New Market

* *Certified Local Government*

ATTACHMENT 1

List of Consulting Parties Contacted for this Agreement

FREDERICK COUNTY

- Frederick County Historic Preservation Commission
- Frederick County Landmarks Foundation
- City of Frederick Historic Preservation Commission Planning Department*
- New Market Historic District Commission
- Frederick Preservation Trust
- Burkittsville Planning and Zoning Commission

GARRETT COUNTY

- Garrett County Planning and Zoning

HARFORD COUNTY

- Harford County Government Department of Planning and Zoning Historic Preservation
- Aberdeen Heritage Trust
- Bel Air Historic Preservation Commission*
- Havre de Grace Historic District Commission
- Howard County Historic District Commission

KENT COUNTY

- Kent County Department of Planning, Housing and Zoning
- Kent County Heritage Trust
- Center for the Environment and Society Washington College
- Chestertown Historic District Commission*
- Still Pond Neighborhood Association

MONTGOMERY COUNTY

- Montgomery County Historic Preservation Commission*
- Montgomery Preservation, Inc.
- Heritage Tourism Alliance of Montgomery County
- Montgomery Countryside Alliance
- Gaithersburg Historic District Commission
- City of Gaithersburg*
- Rockville Historic District Commission
- Peerless Rockville
- Historic Takoma, Inc.
- Sandy Spring Ashton Rural Preservation Consortium

PRINCE GEORGE'S COUNTY

- Prince George's County Historic Preservation Commission*
- Parks & Recreation M-NCPPC Prince George's County Natural and Historical Resources Division
- Prince George's Heritage, Inc.
- Broad Creek Historic District Local Advisory Committee
- Laurel Historic District Commission

QUEEN ANNE'S COUNTY

- Queen Anne's County Department of Planning and Zoning
- Queen Anne's County Historical Society

* *Certified Local Government*

ATTACHMENT 1

List of Consulting Parties Contacted for this Agreement

ST. MARY'S COUNTY

- St. Mary's County Department of Land Use and Growth Management
- St. Mary's County Historic Preservation Commission*
- St. Mary's County Department of Land Use and Growth Management

SOMERSET COUNTY

- Somerset County Planning and Zoning Commission
- Somerset County Historical Trust, Inc.
- Princess Anne Historic District Commission

TALBOT COUNTY

- Talbot County Historic Preservation Commission*
- Easton Historic District Commission
- Oxford Historic District Commission
- St. Michaels Historic District Commission

WASHINGTON COUNTY

- Washington County Department of Planning and Zoning/
- Washington County Historic District Commission
- Washington County Historical Trust, Inc.*
- Hagerstown Preservation Design District Commission

WICOMICO COUNTY

- Wicomico County Department of Planning and Zoning
- Preservation Trust of Wicomico, Inc.
- Wicomico County Historic District Commission*
- Salisbury Historic District Commission*

WORCESTER COUNTY

- Worcester County Department of Development, Review and Permitting
- Berlin Historic District Commission
- Ocean City Department of Planning and Community Development

MULTI-COUNTY CONTACTS

- Preservation Maryland
- Maryland Department of Natural Resources
- Maryland National Road Association (*Baltimore, Howard, Carroll, Frederick, Washington, Allegany and Garrett Counties*)
- The National Road Heritage Foundation

HERITAGE AREAS

- Anacostia Trails Heritage Area, Inc.
- Baltimore (City) National Heritage Area
- Beach to Bay Heritage Area (*Somerset, Wicomico, Worcester Counties*)
- Canal Place Heritage Area
- Four Rivers Heritage Area (*Anne Arundel County*)
- Heart of the Chesapeake Heritage Area (*Dorchester County*)
- Heart of the Civil War Heritage Area (*Carroll, Frederick, and Washington Counties*)
- Lower Susquehanna Heritage Greenway, Inc. (*Cecil and Harford Counties*)
- Mountain Maryland Heritage Area (*Garrett County*)

* *Certified Local Government*

ATTACHMENT 1

List of Consulting Parties Contacted for this Agreement

- Montgomery County Heritage Area
- Patapsco Heritage Greenway (*Baltimore and Howard Counties*)
- Southern Maryland Heritage Area (*Charles, Calvert, St Mary's Counties*)
- Stories of the Chesapeake Heritage Area (*Caroline, Kent, Queen Anne's Talbot Counties*)
Eastern Shore Heritage, Inc.