

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION,  
THE CONNECTICUT DEPARTMENT OF TRANSPORTATION,  
THE CONNECTICUT STATE HISTORIC PRESERVATION OFFICER,  
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING IMPLEMENTATION OF MINOR TRANSPORTATION PROJECTS**

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

**WHEREAS**, the Connecticut FHWA Division Administrator is the "Agency Official" responsible for ensuring that the Program in the state of Connecticut complies with Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108), as amended, and codified in its implementing regulations, 36 CFR Part 800, as amended (August 5, 2004);

**WHEREAS**, CTDOT administers Federal-aid projects throughout the State of Connecticut as authorized by Title 23 U.S.C 302;

**WHEREAS**, the responsibilities of the Connecticut State Historic Preservation Officer (CTSHPO) under Section 106 of the NHPA and 36 CFR Part 800 are to advise, assist, review, and consult with Federal agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies' requests within a specified period of time;

**WHEREAS**, FHWA has determined that certain types of Minor Transportation Projects (as defined in Stipulation I herein) processed as categorical exclusions under National Environmental Policy Act (NEPA) may have an effect upon properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), hereafter referred to as "Historic Properties," and has consulted with the CTSHPO and the Advisory Council on Historic Preservation (ACHP) pursuant to § 800.14(b) of the regulations implementing Section 106 of the NHPA;

**WHEREAS**, FHWA 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 tribes;

**WHEREAS**, FHWA, CTDOT, and CTSHPO acknowledge that Indian tribes possess special expertise in assessing the NRHP eligibility of properties with tribal religious and cultural significance pursuant to 36 CFR § 800.4(c)(1);

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

**WHEREAS**, FHWA has consulted with Federally-recognized Indian tribes with ancestral lands in Connecticut ("Tribes") about this Agreement, has requested their comments, and has taken any comments received into account. These Tribes include the Mohegan Tribe, Mashantucket Pequot Tribal Nation, Narragansett Indian Tribe, Delaware Tribe of Indians, Delaware Nation, and Stockbridge Munsee Community;

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

**WHEREAS**, FHWA activated the *Program Comment for Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and Steel Bridges* (Federal Register 77(222):68793) for bridges under CTDOT's jurisdiction on July 11, 2017;

**WHEREAS**, FHWA, CTDOT, and CTSHPO have previously identified specific actions documented in Appendix A (incorporated herein by reference) as actions that will not require further review under Section 106;

**WHEREAS**, the agreement letter between FHWA and CTDOT from December 6, 2013 "Section 106 Determination Concurrence through Non-Response and Federal Highway Administration (FHWA) 4(f) De Minimis Impact Findings" is hereby voided;

**WHEREAS**, CTDOT employs cultural resources specialists and consultants who meet the Secretary of Interior's Professional Qualification Standards (Federal Register 48:44738-44739) in the fields of archaeology and architectural history, to carry out its cultural resource programs and responsibilities;

**WHEREAS**, pursuant to the consultation conducted under 36 CFR § 800.14(b), the signatories have developed this Programmatic Agreement (Agreement) in order to establish an efficient and effective program alternative for taking into account the effects of the Program on historic properties in Connecticut and for affording the ACHP a reasonable opportunity to comment on undertakings covered by this Agreement;

**WHEREAS**, FHWA has notified the public, Federal, and State agencies about this Agreement, has requested their comments, and has taken any comments received into account;

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

**WHEREAS**, this Agreement supersedes the following previous programmatic agreement among FHWA, CTSHPO, CTDOT, and the ACHP: *Programmatic Agreement Among the Federal Highway Administration, the Connecticut Department of Transportation, the Connecticut State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Implementation of Minor Transportation Projects (October 26, 2012)*;

**NOW, THEREFORE**, FHWA, the CTSHPO, the ACHP, and CTDOT agree that the Program in Connecticut shall be carried out in accordance with the following stipulations in order to take into account the effects of the Program on historic properties in Connecticut and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires or is terminated.

To aid the signatories of this Agreement, the stipulations are organized in the following order:

- I. Purpose and Applicability
- II. Responsibilities of FHWA and CTDOT for Minor Transportation Projects
- III. Consultation with Tribes
- IV. Professional Qualifications and Staffing
- V. Application of Appendices A and B
- VI. Review of Other Minor Transportation Projects
- VII. Participation of Other Consulting Parties and the Public
- VIII. Emergency Situations
- IX. Post-Review and Unanticipated Discoveries
- X. Treatment of Human Remains
- XI. Transfer of Archaeological Collections to the Office of the State Archaeologist
- XII. Annual Review, Auditing, and Monitoring
- XIII. Amendment
- XIV. Termination
- XV. Resolution to Objections to Implementation
- XVI. Confidentiality
- XVII. Duration

## **STIPULATIONS**

The FHWA, with the assistance of CTDOT, shall ensure that the following measures are carried out:

### **I. PURPOSE AND APPLICABILITY**

- A. This Agreement sets forth the process by which FHWA will meet its responsibilities under Section 106 of the NHPA, with the assistance of CTDOT, for minor transportation projects in the Federal Aid Highway Program classified as categorical exclusions under 23 CFR § 771.115 and 23 CFR § 771.117 (hereafter “Minor Transportation Projects”) in the State of Connecticut. This Agreement establishes the basis for CTDOT’s internal review of individual Minor Transportation Projects and how CTDOT will notify and consult with CTSHPO, FHWA, and individuals and organizations that may be invited to be Section 106 consulting parties. The objective of this Agreement is to make more efficient the methods by which FHWA and CTDOT review individual undertakings that may affect historic properties and to establish the process by which FHWA, CTDOT, CTSHPO, and the ACHP will be involved in any such review.
- B. This Agreement applies to Minor Transportation Projects. Projects that require an Environmental Assessment or Environmental Impact Statement for compliance with NEPA are not covered by this Agreement, and will be reviewed by FHWA and CTDOT in accordance with the procedures of 36 CFR Part 800.
- C. Through this Agreement, among other things, FHWA and CTDOT establish two categories of activities as set forth in Appendices A and B (“Screened” or “Unscreened,” respectively) for Minor Transportation Projects that have minimal potential to cause effects to properties eligible for or listed on the NRHP, but that may or may not require screening by Qualified Staff (as defined below) prior to approval.

- D. At any time, CTDOT may choose to process a Minor Transportation Project by following the procedures in 36 CFR Part 800 rather than by following the procedures in this Agreement. CTDOT and FHWA will also process a Minor Transportation Project under the procedures in 36 CFR Part 800 if CTSHPO, ACHP, or FHWA so requests.
- E. State-funded actions that do not involve FHWA Federal funding or permits are not subject to the terms of this Agreement.

## **II. RESPONSIBILITIES OF FHWA AND CTDOT FOR MINOR TRANSPORTATION PROJECTS**

The following section identifies the responsibilities of FHWA and of CTDOT in complying with the terms of this Agreement.

### **A. FHWA (lead Federal agency) Responsibilities**

1. Consistent with the requirements of 36 CFR §§ 800.2(a) and 800.2(a)(1) –(4), FHWA 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 CTDOT under the authority of FHWA notwithstanding any other provision of this Agreement. At any point in the Section 106 process, FHWA may inquire as to the status of any undertaking carried out under the authority of this Agreement and may participate directly in any undertaking at its discretion.
2. FHWA retains the responsibility for government-to-government consultation with Indian tribes as defined in 36 CFR § 800.16(m).
3. Pursuant to 36 CFR § 800.6(a)(1), FHWA is responsible for notifying the ACHP of an adverse effect determination and offering the ACHP the opportunity to become a consulting party.
4. FHWA shall provide ACHP copies of any Memoranda of Agreement (MOA) developed for undertakings with adverse effects to historic properties.
5. FHWA shall be responsible for resolving disputes and objections pursuant to Stipulation XV of this Agreement.
6. FHWA will ensure that the steps in the Section 106 process are coordinated with Section 4(f) of the Department of Transportation Act and the National Environmental Policy Act, in accordance with 36 CFR § 800.3(b).

### **B. CTDOT Responsibilities**

Under the authority of FHWA, CTDOT may carry out the following steps with respect to undertakings covered by this Agreement. Assignment of these responsibilities is based on adequate and appropriate performance by CTDOT as evaluated in monitoring by FHWA pursuant to Stipulation XII of this Agreement.

1. Determine under 36 CFR § 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 CFR § 800.3(e) and CTDOT's public involvement procedures.
3. Identify additional consulting parties as described in 36 CFR § 800.3, and invite them to participate in the undertakings covered by this Agreement.
4. Prepare appropriate documentation for FHWA's consultation with Tribes.
5. Determine and document the scope of identification efforts and level of effort as described in 36 CFR § 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.
  7. Consult with CTSHPO as required by this Agreement
    - a. **De minimis Impact Finding under Section 4(f).**  
 For the purposes of reaching a *de minimis* impact determination on the use of land from a historic property under Section 4(f) of the U.S. Department of Transportation Act of 1966, as amended, in accordance with 23 CFR §§ 774.3(b) and 774.5(b)(1), CTDOT will send the CTSHPO a request for concurrence in making the *de minimis* impact determination. If the CTSHPO does not respond within 30 days to CTDOT, FHWA may treat the non-response as concurrence in the *de minimis* impact determination.
  8. Determine whether historic properties may be affected by the undertaking by applying the criteria of adverse effect as described in 36 CFR §800.5(a)(1).
- C. In Compliance with its responsibilities under Section 106 and 36 CFR Part 800, and as a condition of its award of any assistance under the Federal-Aid Highway Program to CTDOT, FHWA shall require that CTDOT carry out the requirements as assigned to CTDOT under the terms of this Agreement, all applicable FHWA and ACHP policies and guidelines, and, where applicable, the requirements set forth in 36 CFR Part 800.

### III. CONSULTATION WITH TRIBES

- A. Where formal consultation agreements with Tribes exist, CTDOT may provide general coordination information to Tribes but FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with Tribes. Notwithstanding any other provision of this Stipulation III.A, FHWA shall honor the request of any Tribe for government-to-government consultation regarding an undertaking covered by this Agreement.
- B. Any Tribes that might attach religious and cultural significance to historic properties in the area of potential effects shall be identified by CTDOT and invited, in accordance with 36 CFR § 800.3(f)(2), by FHWA to be consulting parties.
- C. CTDOT shall provide FHWA information from which FHWA can initiate consultation with Tribes early in the project planning process to identify cultural, confidentiality, or other concerns and to allow adequate time for consideration.
- D. FHWA shall ensure that consultation continues with Tribes throughout the Section 106 review process prescribed by this Agreement whenever such Tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking. CTDOT will assist FHWA in such consultation if requested by FHWA.
- E. FHWA may ask CTDOT to assist in consultation if the individual Tribes agree to alternate procedures.

#### IV. PROFESSIONAL QUALIFICATIONS AND STAFFING

- A. CTDOT shall employ, at a minimum, two (2) full-time staff members, including an archaeologist and an architectural/structural historian (“Qualified Staff”). Qualified Staff will direct consultants who conduct Section 106 work, provide project reviews, and provide quality control on all Section 106 work. Qualified Staff responsible for project reviews and consultants who conduct Section 106 work must meet the Secretary of the Interior’s Professional Qualifications Standards (Federal Register 48:44738-44739). CTDOT will consult with CTSHPO in the selection of individuals to fill Qualified Staff positions. To ensure appropriate consultation coordination between CTDOT and CTSHPO, Section 106 review staff from both offices will meet periodically. CTSHPO will provide Qualified Staff workspace at the CTSHPO offices and access to all relevant CTSHPO records, reports, and inventories required by Qualified Staff.
- B. If CTDOT does not maintain the employment of the two specified Qualified Staff or if Qualified Staff are unable to meet their Program responsibilities due to extended leave or other circumstances, CTDOT will notify FHWA and CTSHPO within thirty (30) days of the staffing shortage. CTDOT may, in consultation with CTSHPO, appoint acting Qualified Staff who meet the Secretary of the Interior’s Professional Qualifications Standards (Federal Register 48:44738-39). If the vacancy is not filled with permanent Qualified Staff within one hundred and eighty (180) days of the start of the staffing shortage, this Agreement will be temporarily suspended until permanent Qualified Staff are retained unless FHWA, CTDOT, and CTSHPO agree in writing to an extension.

#### V. APPLICATION OF APPENDICES A AND B

- A. Referencing Appendices A and B of this Agreement, Qualified Staff may make a determination that an undertaking is a Minor Transportation Project and a type of activity/activities which has minimal potential to affect historic properties. As such, the undertaking will not require additional Section 106 review or consultation with CTSHPO as long as the undertaking is limited to the activities specified in Appendices A and B, meets all of the terms and conditions in Appendices A and B, and is not part of a larger undertaking. CTDOT may add Minor Transportation Projects to the list in Appendices A and B upon written concurrence by all parties to this Agreement.
- B. **Appendix A** lists activities that shall require no consultation with CTSHPO. For projects that are limited to the activities listed in Appendix A, Qualified Staff will document their finding that the project has no appreciable potential to affect historic properties and therefore requires no further coordination pursuant to 36 CFR § 800.3(a)(1) and maintain that document in its project file.
- C. **Appendix B** lists activities that require internal review by Qualified Staff to determine whether a project including the listed activities meets all of the terms and conditions in Appendix B and that no particular circumstances exist that would call for additional review. If no such circumstances exist, Qualified Staff will document their finding that the project does not require any further review and maintain that document in the project file. If the project does not meet the terms and conditions for Appendix B, or if there are special circumstances, the project shall be reviewed under the provisions of Stipulation VI.

## VI. REVIEW OF OTHER MINOR TRANSPORTATION PROJECTS

CTDOT Internal Review: For Minor Transportation Projects that are not listed in Appendices A and B but are considered Minor Transportation Projects, Qualified Staff will employ a multi-disciplinary approach meets the requirements of 36 CFR § 800.3 and 36 CFR § 800.4. Qualified Staff may address multiple steps simultaneously.

- A. CTDOT 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 CFR § 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 CFR § 800.16(d);
  3. Review existing information on file at CTSHPO (including the State and National Registers of Historic Places and the Archaeological Site Inventory) in the APE;
  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 or historic architectural survey is needed;
  6. Perform archaeological or historic architectural field reconnaissance and/or intensive surveys, as warranted, in conformance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation: Identification* (1983, as revised in the 48 FR 44716) and CTSHPO's *An Environmental Review Primer for Connecticut's Archaeological Resources* (as amended). If an archeological survey is performed, an archeological survey report will be completed and CTSHPO archaeological resource inventory forms will be prepared for all identified archaeological sites or districts.
  7. If a historic architectural survey is performed, CTSHPO inventory forms will be prepared for any property that will be affected by a project and that is found eligible for listing in the NRHP by CTDOT. The inventory forms will be prepared in accordance with industry standards and will meet the expectations of CTSHPO.
- B. Eligibility Evaluations and Assessments of Effect
  1. As part of CTDOT's performance under Stipulation VI.A of this Agreement, Qualified Staff will apply the NRHP criteria in 36 CFR § 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 CFR § 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 CFR § 800.4(c)(2), CTDOT will document this work as part of their assessment of effect.
  2. If CTDOT's internal review under Stipulation VI.A suggests that a Minor Transportation Project may affect National Register listed or eligible properties, CTDOT will apply the criteria of adverse effect in 36 CFR § 800.5(a), and make a finding of No Adverse Effect or a recommendation of Adverse Effect.

C. Notification and Consultation with FHWA, CTSHPO, and Consulting Parties

1. **Finding of No Historic Properties Affected.** Where, as a result of its Stipulation VI.A review, it is determined that there are no National Register listed or eligible properties within the APE, Qualified Staff shall make a finding, pursuant to 36 CFR § 800.4(d)(1) of no historic properties affected. CTDOT may consult with CTSHPO regarding application of the 36 CFR § 800.4 criteria. No further review under Section 106 is required for a finding of no historic properties affected unless the scope of work or limits change, thus requiring additional review.
2. **Finding of No Adverse Effect.** For any Minor Transportation Project that includes, within the APE, National Register listed or eligible properties, Qualified Staff will apply the criteria of adverse effect set forth in 36 CFR § 800.5(a) to determine the effects of the undertaking on historic properties.
  - i. CTDOT shall identify and engage parties for consultation as appropriate. If the effects are determined to not be adverse, or if the Minor Transportation Project is modified and/or certain conditions are met such that adverse effects are avoided, Qualified Staff shall make a finding of no adverse effect.
  - ii. In instances where a Minor Transportation Project is modified to avoid adverse effects, CTDOT shall submit the modifications and/or conditions to CTSHPO for its review and concurrence prior to making a finding of no adverse effect. If CTSHPO does not respond within thirty (30) days, its concurrence will be assumed.
  - iii. CTDOT shall make documentation concerning a finding of no adverse effect available for public inspection (subject to confidentiality provisions) prior to approving the undertaking. Contact information and instructions for public inspection of documentation shall be posted on CTDOT's website. No further review under Section 106 is required for a finding of no adverse effect unless the scope of work or limits change, thus requiring additional review.
3. **Finding of Adverse Effect.**
  - i. Projects that include, within the APE, National Register listed or eligible properties that will or may be adversely affected by the project, as defined by the criteria of adverse effect set forth in 36 CFR § 800.5(a), shall be reviewed in accordance with the procedures of 36 CFR Part 800.
  - ii. National Historic Landmarks. If Qualified Staff determine that an undertaking may adversely affect a National Historic Landmark, CTDOT shall request the CTSHPO, the ACHP and the Secretary of the Interior to participate in consultation to resolve any adverse effects, as outlined in 36 CFR § 800.10.



## **VII. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC**

### **A. Other Consulting Parties**

1. CTDOT shall identify additional consulting parties as described in 36 CFR § 800.3, and invite them to participate in the undertakings covered by this Agreement. Written requests by individuals, organizations, and agencies to become consulting parties will be evaluated on a case-by-case basis by CTDOT and FHWA.
  - i. Consulting parties shall be identified in writing by CTDOT in consultation with the CTSHPO pursuant to 36 CFR 800.3(c-f) and their participation in undertakings covered under this Agreement shall be governed by 36 CFR 800.3(f)(3).
  - ii. Individuals and organizations with a demonstrated interest in an undertaking shall be invited by CTDOT in consultation with FHWA to participate in the Section 106 process.
  - iii. Any land-managing agency whose land may be affected by an undertaking shall be invited by CTDOT to participate in the Section 106 process. Public Involvement
1. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by FHWA's and CTDOT's environmental compliance procedures. CTDOT's Public Involvement Plan provides guidance for identifying, informing, and involving the public. FHWA's Technical Advisory and similar and subsequent guidance documents will also be used. Public involvement and the release of information hereunder shall be consistent with 36 CFR §§ 800.2(d), 800.3(e), and 800.11(c)(1) and (3).
2. CTDOT shall continue to seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, and the likely interest of the public in the effects on historic properties, to remain consistent with the intent of 36 CFR Part 800.
3. For those actions that do not routinely require public review and comment (e.g., unscreened projects), appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of historic properties, and the undertaking's potential impacts on them.
4. CTDOT shall make FHWA and CTSHPO aware of any and all public controversy as it relates to the historic properties potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to Indian tribes.

## **XIII. EMERGENCY SITUATIONS**

For the purposes of this Agreement, emergencies are defined as occurrences that require that emergency action be taken on highway system and/or highway facilities that are necessary to 1) protect the life, safety, or health of the public; 2) minimize the extent of damage to the highway system and facilities; 3) protect remaining highway facilities; or 4) restore essential traffic. The following stipulations apply to emergency situations:

- A. Actions 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 actions could affect historic properties, Qualified Staff shall notify CTSHPO, FHWA, Tribes, and ACHP prior to any work taking place. CTSHPO, FHWA, ACHP, and any Tribe that may attach religious and cultural significance to historic properties likely to be affected will have seventy-two (72) hours to respond.

- C. For projects where the actions must be made within thirty (30) days of the occurrence 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, CTDOT will comply with the procedures in Stipulation IX of this Agreement to the extent possible, but the reviews will likely be conducted after the emergency work is completed.
- D. For Minor Transportation Projects taking longer than thirty (30) days, CTDOT will comply with the procedures set forth in Stipulations V and VI, as appropriate.
- E. CTDOT will provide written notification of an emergency action to CTSHPO. The notice shall be clearly and prominently marked as an emergency notification, and shall include an explanation of how the action meets the requirements for emergency as defined herein. The notice shall also include a brief description of the eligibility and/or significance of the resource(s) involved, the nature, effect, and anticipated effect of the emergency action on the resource(s), and the anticipated timeframe available for comment.

## **IX. POST-REVIEW AND UNANTICIPATED DISCOVERIES**

- A. Planning for Subsequent Discoveries. When CTDOT's identification efforts indicate that historic properties are likely to be discovered during implementation of an undertaking, CTDOT shall include in any environmental document a plan for discovery of such properties. Implementation of the plan as originally proposed, or modified as necessary owing to the nature and extent of the properties discovered, will be in accordance with 36 CFR § 800.4 through 36 CFR § 800.6
- B. Late Discoveries
  - 1. If previously unidentified archaeological or historic properties, or unanticipated effects, are discovered on a portion of the project after CTDOT has completed its review under this Agreement, that portion of the project will stop immediately, in accordance with CTDOT Form 817 Section 1.10.06.
  - 2. No further construction in the area of discovery will proceed until the requirements of 36 CFR § 800.13 have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property.
  - 3. CTDOT will consult with CTSHPO and Tribes, as appropriate to record, document, and evaluate NRHP eligibility of the property and the project's effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property.
  - 4. If neither CTSHPO nor a Tribe files an objection within seventy-two (72) hours of CTDOT's plan for addressing the discovery, CTDOT may carry out the requirements of 36 CFR § 800.13 on behalf of FHWA, and the ACHP does not need to be notified.

## **X. TREATMENT OF HUMAN REMAINS**

If human remains are discovered during construction, they will be handled in accordance with Connecticut General Statutes § 10-388. Should human remains be encountered, work in the general area of the discovery will cease immediately and the location will be secured and protected from damage and disturbance. No human remains or materials associated with the remains will be collected or removed until appropriate consultation has taken place and a plan of action has been developed. CTDOT shall immediately notify the office of the Chief Medical Examiner, State Archaeologist, Qualified Staff, and FHWA. The medical examiner will make the official ruling on the nature of the remains, being either forensic or archaeological. If human remains are determined to be Native American, a plan for their avoidance or recovery shall be generated in consultation with CTSHPO, Tribes, FHWA, CTDOT, and the State Archaeologist. If human remains are determined to be non-Native American, consultation with CTSHPO and other appropriate parties will be required to determine a plan of action.

## **XI. TRANSFER OF ARCHAEOLOGICAL COLLECTIONS TO THE OFFICE OF THE STATE ARCHAEOLOGIST**

FHWA and CTDOT will ensure that any significant cultural material collected during the course of archaeological reconnaissance and archaeological intensive surveys on State-owned land or donated materials recovered from privately-owned land will be transferred to the Office of the State Archaeologist. This will take place after the conclusion of a project following the guidance of the Memorandum of Understanding concluded between CTDOT and the Office of the State Archaeologist.

## **XII. ANNUAL REVIEW, AUDITING, AND MONITORING**

- A. CTDOT, FHWA, and CTSHPO will regularly consult to review implementation of the terms of this Agreement. CTDOT will prepare quarterly reports for submittal to CTSHPO and FHWA. Quarterly reports will include:
  - 1. Summary information on all Minor Transportation Projects processed under this Agreement;
  - 2. Copies of all Appendix A findings signed by Qualified Staff;
  - 3. Copies of all Appendix B findings signed by Qualified Staff;
  - 4. Copies of all determinations of National Register eligibility signed by Qualified Staff; and
  - 5. Copies of all determinations of effect signed by Qualified Staff.
- B. CTDOT will also submit annual reports to FHWA, ACHP, and CTSHPO. The annual report shall include an assessment of the effectiveness of the Agreement, discuss concerns with the Agreement, and include recommendations for changes to the Agreement, if any. CTDOT will provide FHWA, ACHP, and CTSHPO with a copy of this annual report by March 1 each year for the duration of this Agreement. FHWA, ACHP, and CTSHPO will review the annual report and, if requested by any signatory to this Agreement, all parties shall consult to resolve issues that arise as a result of the review.
- C. FHWA, ACHP, and CTSHPO may monitor activities carried out pursuant to this Agreement. CTDOT will cooperate with these parties in carrying out their monitoring efforts.
- D. CTDOT will organize an annual meeting with FHWA and CTSHPO to discuss the status of all Section 106 Memoranda of Agreement and Programmatic Agreements. The meeting will take place by April 30 of each calendar year for the duration of this Agreement.

## **XIII. AMENDMENT**

Any party to this Agreement may request that it be amended, whereupon the parties will consult to consider such an amendment. Amendments will not be effective unless in writing and signed by authorized representatives of the parties to this Agreement.

## **XIV. TERMINATION**

Any party to this Agreement may terminate it by providing thirty (30) calendar day notice in writing to the other parties explaining the reason for termination, 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 § 800.3 through 36 CFR § 800.6 with regard to individual Minor Transportation Projects covered by this Agreement.

## **XV. RESOLUTION TO OBJECTIONS TO IMPLEMENTATION**

### **A. Resolving Objections to Implementation of this Agreement**

1. Should any signatory party object in writing to FHWA regarding the way the terms of this Agreement are carried out, FHWA shall notify all other signatory parties immediately of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory party to participate in the consultation and will take any comments provided by such parties into account. FHWA shall establish a reasonable timeframe for such consultations.
2. If the objection—other than a determination of eligibility—is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.
3. If after initiating such consultation, FHWA determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to ACHP and other signatory parties, including FHWA's proposed response to the objection. Within thirty (30) days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
  - i. Advise FHWA that ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly; or
  - ii. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
  - iii. Notify FHWA that the objection will be referred for comment pursuant to 36 CFR § 800.7(a)(4) and proceed to refer the objection and comment. In this event, FHWA, as the Agency Official shall ensure that the resulting comments into account in accordance with 36 CFR § 800.7(c)(4).
4. Should ACHP not exercise one of these options within thirty (30) days after receipt of all pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the objection.
5. FHWA shall take into account any ACHP recommendation or comment, and any comments from the other signatory parties to this Agreement, in reaching a final decision regarding the objection. FHWA's responsibility to carry out all actions under this Agreement that are not the subject of the objection shall remain unchanged.
6. FHWA shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this Section.
7. FHWA may authorize any action subject to objection under this Section to proceed, provided the objection has been resolved in accordance with the terms of this Section.

8. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party of this Agreement, that signatory party shall immediately notify FHWA. FHWA shall immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to FHWA. FHWA shall establish a reasonable timeframe for this comment period. FHWA shall consider the objection, and in reaching its decision, FHWA will take all comments from the other parties into account. Within fifteen (15) days following closure of the comment period, FHWA will render a decision regarding the objection and respond to the objecting party. FHWA will promptly notify the other parties to its decision in writing, including a copy of the response to the objecting party. FHWA's decision regarding resolution of the objection will be final. Following the issuance of its final decision, FHWA may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

- B. Objections to Determination of Eligibility:** Should any signatory party object to a determination of eligibility, FHWA will submit the determination to the Keeper of the National Register of Historic Places for resolution.

## **XVI. CONFIDENTIALITY**

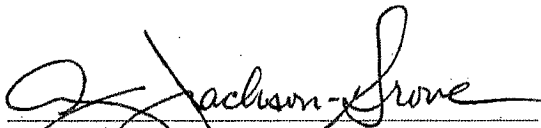
All parties to this Agreement acknowledge that information about historic properties, potential historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of Section 304 of NHPA. Section 304 allows FHWA to withhold from disclosure to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

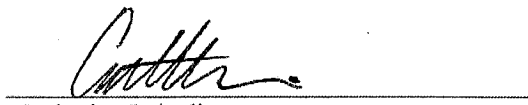
## **XVIII. DURATION**

This Agreement shall remain in effect for a period of five (5) years after the Effective Date (as defined herein), unless it is terminated prior to that time pursuant to Stipulation XIV of this Agreement. No later than ninety (90) days prior to the conclusion of the five (5) year period, CTDOT will notify all parties in writing. If there are no objections from the signatory parties, the term of this Agreement will automatically be extended for an additional five (5) years up to a limit of ten (10) years. If any party objects to extending the Agreement, or proposes amendments, CTDOT will consult with the parties to consider amendments or other actions to avoid termination. The ninety (90) day notification requirement in this Stipulation may be waived by the parties. The Effective Date shall be the date the last party signs this Agreement.

Execution and implementation of this Agreement are evidence that FHWA has delegated certain Section 106 responsibilities to CTDOT, and has afforded ACHP a reasonable opportunity to comment on the Program and its individual undertakings in Connecticut; that FHWA has taken into account the effects of the Program and its individual undertakings on historic properties, and that FHWA has complied with Section 106 of the NHPA and 36 CFR Part 800 for the Program and its individual undertakings.

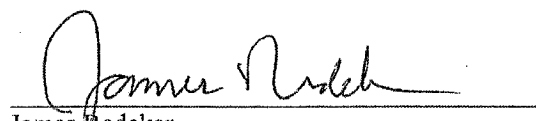
[Signatures immediately follow this paragraph]


  
\_\_\_\_\_  
Amy Jackson-Grove  
Connecticut Division Administrator  
Federal Highway Administration

  
\_\_\_\_\_  
Catherine Labadia  
Deputy State Historic Preservation Officer  
Connecticut State Historic Preservation Office

4/24/2018  
Date

4/17/18  
Date

  
\_\_\_\_\_  
James Redeker  
Commissioner  
Connecticut Department of Transportation

  
\_\_\_\_\_  
John M. Fowler  
Executive Director  
Advisory Council on Historic Preservation

4/18/18  
Date

5/4/18  
Date

## APPENDIX A

### UNSCREENED UNDERTAKINGS NOT REQUIRING CONNECTICUT CTSHPO REVIEW

CTDOT, CTSHPO, and FHWA have jointly concurred that the following list describes activities that have minimal potential to cause effects to historic properties. Based on their past experience with similar actions, the signatories agree that projects limited to activities listed in Appendix A have no appreciable potential to affect historic properties (36 CFR § 800.3(a)(1)). To be applicable, an undertaking must be limited to any one or a combination of the actions specified below. These projects are stand-alone transportation activities that, based on the signatories' past experience with similar actions, will not result in any significant impacts to the human or natural environment. These actions (project types) meet the criteria for categorical exclusions (CEs) in the Council on Environmental Quality (CEQ) regulation (40 CFR § 1508.4) and 23 CFR § 771.117 (a) and under 23 CFR § 771.117(c) and do not normally require any further NEPA approvals by the FHWA.

- A. Highway markings
- B. Pothole filling, crack sealing, joint repair
- C. Pavement milling or grooving
- D. Surface treatments
- E. Resurfacing or repair of existing ramps within the previously disturbed right-of-way
- F. Resurfacing of roadways within the previously disturbed right-of-way
- G. Repair or in-kind replacement (essentially the same size, material, color, and texture) of curbs, curbing, and sidewalks, including street furniture, highway signage, and existing traffic signals (no new underground work)
- H. New pavement markings or renewal of pavement markings (normal or raised), rumble strips, traffic sensors, snow and ice detectors, or other similar features on existing ramps and roadways
- I. The in-kind replacement or relocation of existing utility poles between edge of sidewalk and roadway except within a State Archaeological Preserve or within fifty (50) feet of a marked cemetery boundary
- J. Beam end and bearing repair of bridges less than fifty (50) years old

## APPENDIX B

### SCREENED UNDERTAKINGS NOT REQUIRING CONNECTICUT CTSHPO REVIEW

Projects limited to activities listed in Appendix B require internal review by Qualified Staff to determine whether a project including the listed activities meets all of the terms and conditions in Appendix B and that no particular circumstances exist that would call for additional review. If no such circumstances exist, Qualified Staff will document the finding that the project does not require any further review and maintain that document in the project file.

#### **Interstate Related Projects**

1. Interstate bridge or roadway projects (excluding air rights development) where all work occurs within the previously disturbed areas of the roadway right-of-way.

#### **Roadway Related Projects**

2. Reconstruction activities on the existing roadway within the previously disturbed areas of the roadway right-of-way. Reconstruction activities may include roadway restoration, roadway rehabilitation, repair, replacement or resetting of existing guardrail (wood or weathering steel guardrail to be consistent with that existing), widening less than one (1) full travel lane, addition of shoulders, construction of cross-overs on median strips, and addition or extension of emergency turnouts.
3. Correcting substandard roadway geometrics and intersections, provided that such improvements do not extend beyond the limits of previously disturbed areas of the roadway right-of-way. These improvements would include, but are not limited to, turn lanes, improved turning radii, channelization, divisional, and refuge islands, acceleration/deceleration lanes; and installation of curbs and gutters.
4. Modifications to sidewalks and curbs to satisfy the requirements of the Americans with Disabilities Act.
5. Removal of trees, as part of a roadway project.
6. Landscaping, including weeding; thinning; in-kind replacement of existing specimens; and shallow bed preparation in areas previously landscaped within the existing right-of-way except within NRHP eligible or listed Parkways.
7. Installation of new underground utilities or the replacement/repairing of existing underground utilities within existing roadway footprints.
8. The in-kind replacement or relocation of existing utility poles between the edge of the sidewalk and roadway except within a State Archaeological Preserve.
9. Rehabilitation, reconstruction or refurbishing of existing active at-grade railroad crossings, including installation of railroad warning signs and devices, such as flashing lights and gates.
10. Construction of wetland mitigation areas in previously disturbed areas of the roadway right-of-way.



### **Bridge/Culvert Related Projects**

11. All bridge/culvert related work, up to and including replacement of bridges with a NRHP eligibility determination of "Not Eligible" on file with CTDOT and CTSHPO;
12. All bridge/culvert related work, up to and including replacement of steel stringer bridges (except those with documented pre-1900 construction dates) and concrete slab bridges.
13. All bridge/culvert related work, up to and including replacement of bridge/culvert superstructures with less than a twenty- (20)-foot span length with an APE wholly confined to disturbed soils; and excluding stone slab culverts, stone arches, brick arches, and stone abutment bridges or culverts.
14. All bridge/culvert related work, up to and including replacement of common concrete and steel bridges and culverts built after 1945, as defined in the ACHP's *Program Comment for Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and Steel Bridges*.

### **Roadside Safety Related Projects**

15. Highway safety improvement activities, including installation, replacement, modification, or removal of safety appurtenances, such as impact attenuators, median glare screens, roadway delineators, guiderails, and safety barriers. These improvements may also include pole countermeasures (reflectors, breakaway devices, and shielding systems), installation of panel mounted reflective object markers, installation of reflective object markers not mounted on panels, and removal of fixed objects (utility poles, non-breakaway signs, and pipe headwalls).

### **Drainage Related Projects**

16. Routine cleaning, maintenance, and repair of existing drainage system elements, such as catch basins, pipes, stormwater management, and water quality facilities and devices.
17. Retrofitting or redesign of existing drainage system elements as long as such work occurs within the previously disturbed areas of the roadway right-of-way.
18. Minor safety-related improvement activities involving drainage system elements, including but not limited to, converting existing drop inlets to traversable designs; installation, replacement, or removal of pipes and headwalls; installation, replacement, and extensions of pipes; and addition of pipe end sections as long as such work occurs within the previously disturbed areas of the roadway right-of-way.

### **Electrical Related Projects**

19. Traffic signal and safety improvement projects where all work occurs within previously disturbed areas of the roadway right-of-way. Note: This would only involve existing traffic signal replacement or upgrade projects. CTDOT is not expected to conduct subsurface archaeological identification efforts for traffic signal replacement or revisions projects, provided that no acquisition of new transportation right-of-way is involved and there are no known archaeological resources in the immediate vicinity of the APE.
20. Intelligent Transportation System Projects (except for NRHP eligible or listed bridges, districts, or properties), such as installation of ramp metering systems; installation of closed circuit television cameras or highway advisory radio systems, support structures; and installation of computer links to monitor and control traffic volumes throughout the roadway system.

### **Roadway Related Facilities Projects**

21. Excluding NRHP eligible or listed parkways, maintenance and minor improvements to existing rest areas, fringe parking facilities, park and ride lots, weigh stations and other highway-related maintenance, storage, and office facility construction provided that no new right-of-way is required, and that no excavation occurs outside of previously disturbed areas. (Examples of “minor improvements” include repaving parking lots and access ramps, re-striping, installing truck-car related conveniences such as electric plug-in equipment, interstate fencing repairs, routine maintenance/repair of weight-in-motion (WIM) equipment, adding lighting, picnic benches, sidewalks within previously-disturbed right-of-way)

### **Bicycle/Pedestrian Facility Projects**

22. Projects involving construction of bicycle and pedestrian lanes, paths, and facilities; and multi-use paths and facilities provided that work is confined to areas of previous ground disturbance. These projects include, but are not limited to, handicapped access ramps and ways, designations of certain highways as bike routes, painting of existing paved shoulders as bike lanes, and bikeway/pedestrian ways. They also include rail-to-trail projects provided that all disturbance activities occur within the existing railroad alignment; and the project does not require the modification or removal of existing bridges or viaducts.

### **Lighting and Signing Projects**

23. Excluding NRHP eligible or listed parkways, restoration, replacement, upgrading, or addition of highway lighting systems (includes under-deck, conventional, high mast and offset lighting systems) on controlled access highways. For other highways, in-kind replacement or repair of highway lighting systems (essentially the same size, material, color or texture).
24. Excluding NRHP eligible or listed parkways, installation or replacement of highway signs (including overhead and electronic variable message signs) on controlled access highways. For other highways, in-kind replacement or repair of highway signs (essentially the same size, material, color or texture).

### **Miscellaneous Projects**

25. Removal and disposal of any hazardous waste materials from the existing right-of-way.
26. Replacement or repair of highway fencing where the location of the fencing is unchanged.
27. The installation, repair, and maintenance of noise barriers within the existing roadway right-of-way or alterations to existing publicly owned buildings to provide for noise reduction, provided that public comment was sought and a record of that public comment was kept.
28. Emergency erosion control measures such as the emplacement of riprap or grout bags to prevent undermining or other major damage to culverts, bridges, dams, or roadways caused by flooding events.