

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE FLORIDA DEPARTMENT OF TRANSPORTATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE FLORIDA STATE HISTORIC PRESERVATION OFFICER
REGARDING IMPLEMENTATION OF THE FEDERAL-AID
HIGHWAY PROGRAM IN FLORIDA**

WHEREAS, on March 14, 2016, the Federal Highway Administration (FHWA), the Florida Department of Transportation (FDOT), the Advisory Council on Historic Preservation (ACHP), and the Florida State Historic Preservation Officer (SHPO) entered into a *Programmatic Agreement for the Implementation of the Federal-Aid Highway Program in Florida* (Original Agreement) which delegated certain tasks related to compliance with the *National Historic Preservation Act* of 1966 (NHPA), as amended [*54 United States Code (U.S.C.) § 306108 et seq.*] pursuant to the regulatory provision at *Title 36 Code of Federal Regulations Section 800.14 (36 C.F.R. § 800.14)*; and

WHEREAS, this Programmatic Agreement (Agreement) supersedes and replaces the Original Agreement and the 2017 Amended Agreement (June 7, 2017); and

WHEREAS, *36 C.F.R. § 800.14(b)* permits Federal Agencies to fulfill their obligations under Section 106 of the NHPA through the development and implementation of programmatic agreements; and

WHEREAS, FHWA funds the Federal-Aid Highway Program (Program) in the State of Florida as authorized by *23 U.S.C. § 101 et seq.*; and

WHEREAS, the United States Department of Transportation (USDOT) Secretary, acting through FHWA and under the authority of *23 U.S.C. § 327*, has assigned responsibilities for compliance with the *National Environmental Policy Act* of 1969 (NEPA) and other federal environmental laws to the FDOT through a Memorandum of Understanding (MOU) dated May 26, 2022 (the 2022 MOU); and

WHEREAS, FHWA has retained responsibility for any projects under the Recreational Trails program (*23 U.S.C. 206*) and any projects advanced by direct recipients of Federal-aid Highway funds (other than FDOT except when pursuant to a Local Agency Program (LAP) Agreement between FDOT and the direct recipient) as described in Section 3.3.2 of the 2022 MOU, and shall utilize the processes contained within this Agreement and other FDOT processes to manage said projects; and

WHEREAS, FHWA, as a federal agency, has a unique legal relationship with Native American Tribes as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions, and while Federally Recognized Native American Tribes (Tribes) may agree to work directly with FDOT as part of the *36 C.F.R. Part 800* compliance process, the FHWA remains legally responsible for government-to-government consultation with Tribes, as described in Section 3.2.3 of the 2022 MOU; and

WHEREAS, FDOT has determined that certain transportation projects constitute “undertakings” as defined in *36 C.F.R. § 800.16(y)* which may have an effect on properties included in or eligible for inclusion in the *National Register of Historic Places* (NRHP), hereafter referred to as “historic properties”; and

WHEREAS, the ACHP issues regulations to implement Section 106, provides guidance and advice on the application of the procedures in *36 C.F.R Part 800*, and generally oversees the operation of the Section 106 process and was, therefore, consulted during the drafting of this Agreement pursuant to *36 C.F.R. § 800.14*, and is a signatory to this agreement; and

WHEREAS, FDOT is organized into a Central Office, which sets forth statewide environmental policies through the Office of Environmental Management (OEM), and seven Districts and Florida's Turnpike Enterprise (Districts), which implement FDOT undertakings and is a signatory to this agreement; and

WHEREAS, the Director of OEM is the "Agency Official" responsible for compliance with Section 106 of the NHPA and implementing regulations under *36 C.F.R. Part 800*; and

WHEREAS, the Director of the Florida Division of Historical Resources (FDHR) serves as the SHPO for the State of Florida and is responsible under *Chapter 267, Florida Statutes (F.S.)*, Sections 106 and 110 of the NHPA, and *36 C.F.R. Part 800* to advise, assist, review, and consult with State and Federal agencies as they carry out their historic preservation responsibilities and is a signatory to this agreement; and

WHEREAS, FDOT intends to integrate its historic and archaeological preservation planning and management decisions and related policies and programs with the provisions of *Section 267.061, F.S.*; and

WHEREAS, FDOT and SHPO have executed an *Agency Operating and Funding Agreement (AOFA)*, with FDOT providing financial assistance for additional personnel, support, and equipment at the FDHR to ensure a streamlined review and consultation process for Program undertakings in Florida; and

WHEREAS, FDHR project review specialists provided for under the AOFA meet or exceed the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (SOI)* (*36 C.F.R. Part 61 and 48 FR 44716*, September 29, 1983) and possess an understanding of Florida's historic preservation programs and processes; and

WHEREAS, FDOT and SHPO have executed a *Letter Agreement* (Attachment 2) documenting the agreement to utilize the processes contained within this Agreement for FDOT and FDOT-assisted undertakings using only state funds in accordance with *Section 267.061, F.S.*, and *Section 872.05, F.S.*, and other procedures enumerated therein, to ensure a streamlined review and consultation process; and

WHEREAS, FDOT provided copies of this Agreement to the Signatories for their review and feedback, and took any comments into account prior to the finalization of this Agreement; and

WHEREAS, FDOT consulted with the following Tribes that may ascribe traditional religious and cultural significance to historic properties that may be affected by the undertakings covered by this Agreement: Miccosukee Tribe of Indians of Florida, Mississippi Band of Choctaw Indians, Muscogee (Creek) Nation, Poarch Band of Creek Indians, Seminole Tribe of Florida, and Seminole Nation of Oklahoma; and

WHEREAS, FDOT provided these six Tribes copies of this Agreement, requested their review and feedback, took any comments received into account prior to the finalization of this Agreement, invited each of the six Tribes to be a Signatory to this Agreement, and no Signatory invitations were accepted; and

WHEREAS, FDOT notified the public of this Agreement via a notice in the Florida Administrative Register (FAR), requested their comments, and took any comments received into account prior to the finalization of this Agreement; and

NOW, THEREFORE, FHWA, FDOT, ACHP, and SHPO (collectively referred to as Signatories) hereby agree that the Program in the State of Florida will be administered according to the following stipulations in order to satisfy FDOT's Section 106 responsibilities set forth in *36 C.F.R. Part 800* and to integrate historic resources protection responsibilities with other responsibilities under Federal and State statutes, regulations, Executive Orders, policies, and procedures.

STIPULATIONS

FDOT and FHWA, as appropriate, shall ensure that the following measures are carried out:

I. Definitions

For purposes of this Agreement, the definitions for terms appearing in *36 C.F.R. §§ 800.16 (a) through (z)* are incorporated by reference and shall apply. In addition to these terms, another definition is included for the term “stand-alone project” which is a project funded, planned, designed, and reviewed independently from another project, and refers to an entire undertaking rather than a selected number of activities within a larger project.

II. Applicability

- A. The objective of this Agreement is to promote the efficiency and reliability of the FDOT reviews of individual Program undertakings that may affect historic properties, and to enhance the effectiveness of consultation among FHWA, FDOT, ACHP, SHPO, Tribes, the public, and other consulting parties as required by Section 106 of the NHPA.
- B. This Agreement shall apply to all FDOT undertakings administered under the Program in Florida. This Agreement does not apply when FDOT is not the lead federal agency unless the lead federal agency has accepted the FDOT procedures as meeting their requirements, or the lead federal agency adopts this Agreement in accordance with **Stipulation XI.D**.
- C. Should there be any undertakings in which FDOT is not the lead federal agency, such as federal permits, the District must ensure proper coordination with the lead agency for compliance with the appropriate federal laws. OEM may assist the Districts as appropriate.

III. Roles, Responsibilities, and Requirements

- A. **General Requirements.** All work carried out under this Agreement will be conducted in accordance with the procedures, policies, and standards set forth in the current versions of FDOT’s *Project Development and Environment (PD&E) Manual* and *Cultural Resource Management (CRM) Handbook*, Rules 1A-32 (*Archaeological Research*), 1A-44 (*Reporting Unmarked Human Burials*), and 1A-46 (*Archaeological and Historical Report Standards*) of the *Florida Administrative Code (F.A.C.)*, Section 872.05, *F.S. (Unmarked Human Burials)*, and the current version of Module 3 of the FDHR’s *Cultural Resource Management Standards and Operational Manual (Module 3)*.
- B. **Professional Qualification Standards.** All actions prescribed in this Agreement that involve the identification, evaluation, assessment of effects, treatment, monitoring, or disposition of historic properties and resources, or that involve the reporting or documentation of such actions, shall be carried out by or under the direct supervision of a person or persons meeting or exceeding the *Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation (36 C.F.R. Part 61 and 48 FR 44716 September 29, 1983)* in the fields of History, Archaeology, and/or Architectural History. Consultants working on projects on behalf of FDOT and project review specialists provided for under the AOFA must also meet or exceed these standards.

FDOT acknowledges that Tribes possess special expertise in assessing the eligibility of resources that may be of religious and/or cultural significance to them. In accordance with *36 C.F.R. § 800.2(c)(2)*, Tribes will be consulted when evaluating the NRHP eligibility of these resources.

C. **FDOT Authority and Responsibilities.**

1. **Authority.** Pursuant to the 2022 MOU and consistent with the requirements of 36 *C.F.R.* §§ 800.2(a) and 800.2(c)(4), FDOT, when acting as lead federal agency, is responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement. Delegation of these responsibilities may not be transferred to any other party or agency by FDOT. However, other agencies may seek to comply with their responsibilities under 36 *C.F.R. Part 800* using this agreement in accordance with **Stipulation XI.D.**
2. **FDOT Procedures and Guidance.** FDOT shall maintain policies and procedures in the *PD&E Manual* and *CRM Handbook* that conform to the requirements of 36 *C.F.R. Part 800, Chapters 267 and 872, F.S.*, and, as appropriate, in the *FDOT Standard Specifications for Road and Bridge Construction (FDOT Standard Specifications)*. If SHPO or ACHP finds that the *PD&E Manual* or the *CRM Handbook* are not in keeping with this Agreement, SHPO or ACHP may inform FDOT of their concerns and FDOT will consult with the parties to this Agreement to resolve any such concerns. FDOT shall maintain public access for the most current versions of the *PD&E Manual* and *CRM Handbook* at the OEM web page or provided upon request.
3. **FDOT OEM Responsibilities.** OEM maintains overall responsibility under the Section 106 process for the Program in the State of Florida. OEM establishes and oversees policy and procedures for the identification, evaluation, and assessment of effects to historic properties, as well as the treatment, monitoring, and/or disposition of historic properties, materials, and resources with regard to transportation projects under FDOT authority and:
 - i. oversees the implementation of this Agreement, including assisting the Districts, SHPO, and other consulting parties in fulfilling the requirements of this Agreement;
 - ii. manages professional CRM consultants assisting OEM staff in meeting their obligations under this Agreement;
 - iii. participates in the development of and is a signatory to Memoranda of Agreement (MOAs) and Programmatic Agreements (PAs) related to FDOT's statewide program;
 - iv. coordinates with Districts to provide training opportunities for FDOT staff, consultants, and others, as appropriate, in the areas of cultural and historic resources management associated with FDOT programs and projects;
 - v. assists Districts in coordination and consultation with other Federal agencies;
 - vi. provides notifications and documents to the ACHP as outlined in the regulations at 36 *C.F.R. Part 800*, as required;
 - vii. consults to develop phased methodologies for the identification of historic properties, in accordance with 36 *C.F.R. § 800.4(b)(2)*, when appropriate;
 - viii. makes determinations to undertake archaeological research and fieldwork beyond standard systematic subsurface testing and surface examination for the presence or absence of cultural materials;
 - ix. consults to resolve disputes related to compliance with 36 *C.F.R. Part 800* regardless of the nature of the dispute;
 - x. consults to resolve adverse effects under 36 *C.F.R. § 800.6*;

- xi. conducts coordination with Tribes, and provides project and cultural resources survey information for comment to Tribes as appropriate and as requested by Tribes;
 - xii. provides opportunities for Tribal comment on potential effects to historic resources of religious and/or cultural significance to any Tribe having cultural affiliation with Florida in accordance with the requirements established in Sections 106 of the NHPA; and
 - xiii. provides notification, as necessary, to FHWA to initiate government-to-government consultation when requested to do so by a Tribe in accordance with Section 3.2.3 of the 2022 MOU, as may be amended.
4. **FDOT District Responsibilities.** The Districts follow FDOT policies and procedures, including those set forth in this Agreement, and ensure that individual undertakings and associated documentation meet the requirements of this Agreement, and:
- i. oversee services performed by cultural resources consultants pursuant to this Agreement;
 - ii. initiate the Section 106 process for individual program undertakings in accordance with *36 C.F.R. § 800.3*;
 - iii. inform OEM of official correspondences, consultations, and findings developed pursuant to this Agreement by copying OEM on the correspondences or by other appropriate means;
 - iv. seek and consider the views of the consulting parties and the public in a manner that remains consistent with *36 C.F.R. § 800.8* and the *FDOT PD&E Manual*;
 - v. document all findings and determinations made under this Agreement in accordance with *36 C.F.R. § 800.11*, and are consistent with applicable standards and guidelines promulgated by the FDOT and the FDHR;
 - vi. perform quality assurance and quality control reviews of documentation prepared pursuant to this Agreement;
 - vii. determine the level of effort and documentation required for program undertakings based on the nature and complexity of the undertaking, and the potential magnitude of effects to historic properties in accordance with *36 C.F.R. § 800.4*;
 - viii. maintain documentation prepared pursuant to the Agreement in appropriate project files;
 - ix. complete all necessary Florida Master Site File (FMSF) forms to record historic resources;
 - x. develop Memoranda of Agreement (MOA) in consultation with OEM for the resolution of project-related adverse effects to historic properties;
 - xi. consult and coordinate Section 106 activities with other Federal agencies that have funding, regulatory, or land management interests in the potential effects of an FDOT undertaking on historic properties under the direction of OEM; and
 - xii. provide OEM with appropriate documentation pursuant to Section 106 and *36 C.F.R. Part 800* for coordination with the ACHP, Tribes, and other Federal and State agencies, as necessary.

- D. FHWA Authority and Responsibilities.** As detailed in the 2022 MOU, FHWA assigned many responsibilities to FDOT and retained some responsibilities under NEPA Assignment, two of which directly relate to compliance with the Section 106 process and its implementation measures (see 2022 MOU for the exhaustive list of retained responsibilities). Pursuant to *36 C.F.R. § 800.2(ii)(c)* and the 2022 MOU, FHWA retains the responsibility to conduct Government to Government consultation with any of the six (6) Tribes having historic and cultural associations with Florida. A Tribe may request government-to-government consultation with FHWA for any project which may impact resources of religious and/or cultural significance to the Tribe or for confidentiality purposes. If, at any time during consultation for any project where FDOT is the lead federal agency, a Tribe should request government-to-government consultation, the District shall inform OEM and OEM will proceed in accordance with *36 C.F.R. § 800*, this Agreement, and the 2022 MOU, as may be amended.

Further, in accordance with Section 3.3.2 of the 2022 MOU, FHWA also retains the responsibility for any projects under the Recreational Trails program (*23 U.S.C. 206*) and any projects advanced by direct recipients of Federal-aid Highway funds other than FDOT except when pursuant to a Local Agency Program (LAP) Agreement between FDOT and the direct recipient. FHWA shall utilize the processes contained within this Agreement and other FDOT processes to manage these two project types.

- E. ACHP Authority and Responsibilities.** The ACHP issues regulations to implement Section 106, provides guidance and advice on the application of the procedures in *36 C.F.R Part 800*, and generally oversees the operation of the Section 106 process. As such, the ACHP is invited to participate in the consultation process when historic properties are at risk of being adversely affected by a federally funded project. The ACHP will be notified of undertakings having an adverse effect on historic properties and their participation in dispute resolutions will be requested, as needed, in accordance with *36 C.F.R Part 800* and this Agreement.
- F. SHPO Authority and Responsibilities.** The Director of the FDHR serves as the SHPO for the State of Florida and is responsible under *Chapter 267, F.S.*, Sections 106 and 110 of the NHPA, and *36 C.F.R. Part 800* to advise, assist, review, and consult with State and Federal agencies as they carry out their historic preservation responsibilities. The SHPO and their designee(s) review Planning and Program Screening projects submitted through the Electronic Submission Tool (EST) and projects submitted directly from Districts under **Stipulations V, VI, and VII** in accordance with the timeframes and parameters outlined in *36 C.F.R. Part 800* and this Agreement.
- G. Tribal Coordination and Consultation.** FDOT shall coordinate with Tribes having historic and cultural associations with Florida as part of the *36 C.F.R. Part 800* compliance process whenever a proposed FDOT undertaking may affect resources of religious and/or cultural significance to one or more Tribes.

FDOT may work directly with Tribes according to their individual preferences on coordination including, but not limited to, Advanced Notification of federally funded projects, identification and evaluation of cultural resources of religious and/or cultural significance to a Tribe, determinations of project effects on historic properties, and the resolution of adverse effects in accordance with *36 C.F.R. Part 800* and **Stipulation VII**.

For a project occurring in whole or in part on Tribal Lands, FDOT shall develop the appropriate measures to be carried out independent of this Agreement and pursuant to Section 106 in consultation and coordination with the appropriate Tribal officials, the SHPO when required, the ACHP if participating in consultation, other State and Federal agencies as appropriate, and other identified consulting parties.

H. Participation of Other Consulting Parties and the Public. In addition to the previously named consulting parties, other agencies, groups, and individuals may participate in the Section 106 Process and be identified as consulting parties and can be involved as Invited Signatories or Concurring Parties, as defined by *36 C.F.R. § 800.6(c)*.

1. **Additional Consulting Parties.** Consulting parties shall be identified by FDOT pursuant to *36 C.F.R. §§ 800.3(c-f)* and their participation in undertakings covered under this Agreement shall be governed by *36 C.F.R. § 800.3(f)(3)*.
 - i. Individuals and organizations with a demonstrated interest in an undertaking shall be invited by FDOT to participate in the Section 106 process.
 - ii. Any land-managing agency whose land may be affected by an undertaking shall be invited by FDOT to participate in the Section 106 process.
 - iii. Written requests by individuals, organizations, and agencies to become consulting parties will be evaluated on a case-by-case basis by FDOT in consultation with SHPO.
 - iv. Any objections by consulting parties will be handled in accordance with **Stipulation XI.B.**
2. **Public Involvement.** Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by FDOT's environmental compliance procedures. FDOT's Public Involvement PD&E Manual Chapter and FDOT OEM Public Involvement webpage provides guidance for identifying, informing, and involving the public. Public involvement and the release of information hereunder shall be consistent with *36 C.F.R. §§ 800.1(c), 800.2(d), and 800.3(e)*.
 - i. FDOT 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, in compliance with the intent of *36 C.F.R. Part 800*, as amended.
 - ii. For those actions that do not routinely require public review and comment, 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.
 - iii. FDOT shall make SHPO and Tribes aware of any public controversy as it relates to the historic properties potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to Tribes.
 - iv. Should any member of the public raise an objection in writing to any Signatory pertaining to the implementation of this Agreement, that Signatory shall immediately notify FDOT. FDOT shall immediately notify the other Signatories of the objection in writing. FDOT shall establish a reasonable time frame for this comment period and any Signatory may choose to comment on the objection to FDOT. FDOT shall consider the objection, and in reaching its decision, will take all comments from the other parties into account. Within fifteen (15) days following closure of the comment period, FDOT will render a decision regarding the objection and respond to the objecting party. FDOT will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. FDOT's decision regarding resolution of the objection will be final. Following the issuance of its final decision, FDOT may authorize the action subject to dispute to proceed in accordance with the terms of that decision.

IV. Program Process for Projects with No Potential to Cause Effects to Historic Properties

If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, FDOT has no further obligations under Section 106 in accordance with *36 C.F.R. § 800.3(a)(1)*. These actions are defined as non-construction related activities. For example, purchasing equipment, planning, and design all fall under this portion of the regulation and do not require any further obligations under Section 106. All construction-related actions with a federal nexus must comply with *36 C.F.R. §§ 800.4 to 800.6* including any maintenance, new construction, and all construction related actions. Questions about applicability of *36 C.F.R. § 800.3(a)(1)* should be referred to OEM.

V. Program Process for Minor Projects with Minimal Potential to Affect Historic Properties

In accordance with *36 C.F.R. § 800.14(b)(1)(iii)*, FDOT has established a program alternative for minor projects that have minimal potential to affect historic properties provided the conditions below are met. If at any point in the Section 106 process an objection or dispute arises, dispute resolution will proceed according to **Stipulation XI.B**.

Upon initiating the Section 106 process in accordance with *36 C.F.R. § 800.3*, FDOT SOI qualified staff and/or consultants will determine if the undertaking meets the criteria of this Stipulation. Processing an undertaking in accordance with this Stipulation using forms developed by OEM fulfills FDOT's Section 106 responsibilities for the undertaking.

- A.** Due to their nature and definition, FDOT identified activities listed in **Appendix 1** that have minimal potential to cause effects to historic properties, provided that the following conditions are confirmed to be true:
1. The undertaking is a stand-alone project;
 2. The undertaking does not occur on tribal lands;
 3. The undertaking's activities are limited to those specified in **Appendix 1**;
 4. The undertaking's APE does not include any historic resources; and
 5. The SHPO has been notified of the finding of *No Historic Properties Affected*, and the rationale for the finding via the form developed by OEM, and they have not objected to the finding within thirty (30) days of receipt of the notification.
- B.** The nationwide program alternatives to standard Section 106 review listed in **Attachment 1** may be applied to undertakings processed in accordance with this Stipulation, as appropriate.
- C.** If any of the conditions listed above under **Stipulation V.A** are not confirmed to be true, the project should be evaluated in accordance with **Stipulation VI** or **VII**.

VI. Program Process for Minor Projects Considered Unlikely to Affect Historic Properties

In accordance with *36 C.F.R. § 800.14 (b)(1)(iii)*, FDOT has established a program alternative for minor projects that are unlikely to affect historic properties. Upon initiating the Section 106 process in accordance with *36 C.F.R. § 800.3*, FDOT SOI qualified staff and/or consultants will determine if the undertaking meets the criteria of this Stipulation. Processing an undertaking in accordance with this Stipulation fulfills FDOT's Section 106 responsibilities for the undertaking. If at any point in the Section 106 process an objection or dispute arises, dispute resolution will proceed according to **Stipulation XI.B**.

- A.** Due to their nature and definition, FDOT has identified activities listed in **Appendix 2** that are unlikely to cause effects to historic properties. These minor projects will result in *No Historic Properties Affected* pursuant to *36 C.F.R. § 800.4(d)(1)* provided the following conditions are confirmed to be true:

1. The undertaking is a stand-alone project;
 2. The undertaking does not occur on tribal lands;
 3. The undertaking's activities are limited to those listed in **Appendix 1** and/or **Appendix 2**;
 4. The undertaking's activities do not involve ground disturbance within or adjacent to a cemetery;
 5. The undertaking's APE includes one or more of the following situations:
 - i. There are no historic resources in the project APE;
 - ii. There are historic resources that have been evaluated by SHPO as ineligible for listing on the NRHP within the last ten (10) years;
 - iii. There are resources that are exempt from Section 106 review per the nationwide program alternatives listed in **Attachment 1**; or
 - iv. There are linear resource segments that have been evaluated by SHPO as non-contributing, ineligible segments of a larger resource determined eligible or potentially eligible for NRHP listing or which has insufficient information for a definitive NRHP determination for the whole resource.
 6. The SHPO has been notified of the finding of *No Historic Properties Affected*, and the rationale for the finding via the form developed by OEM, and they have not objected to the finding within thirty (30) days of receipt of the notification.
- B.** Upon establishing an undertaking, FDOT will review the proposed project activities to identify the appropriate Section 106 program process. FDOT will conduct a desktop analysis and/or field review to identify the minor projects comprised of activities considered unlikely to affect historic properties and which result in *No Historic Properties Affected*. FDOT will document each of these minor projects and the evaluation efforts on the Stipulation V/VI Form.
- C.** In conducting the desktop review, FDOT will use, to the extent possible, the FDHR's digital database of survey and site file records; the Florida Geographic Data Library (FGDL) available through the Efficient Transportation Decision Making (ETDM) Environmental Screening Tool (EST) or other Geographic Information System (GIS) tools; county property appraiser records; the current NRHP list; and other relevant research materials as appropriate.
- D.** If the undertaking requires new ground disturbance in areas not previously surveyed for archaeology, or areas previously surveyed but which do not meet current archaeological standards as set forth in FDHR's *Module 3*, field review and/or survey is recommended and should be considered at the discretion of the District and should be based on the degree of proposed ground disturbance, the severity of existing disturbance, and the potential for unrecorded archaeological sites and historic structures as described in FDHR's *Module 3* and FDOT's *CRM Handbook*. This undertaking should be processed in accordance with **Stipulation VII** and documented to an appropriate degree as outlined by the available guidance promulgated by SHPO and OEM.
- E.** The nationwide program alternatives to standard Section 106 review listed in **Attachment 1** may be applied to undertakings processed in accordance with this Stipulation, as appropriate.
- F.** If any of the conditions listed under **Stipulation VI.A** are not confirmed to be true, the project should be evaluated in accordance with **Stipulation VII**.

VII. Standard Program Process

For Program undertakings that are not reviewed pursuant to **Stipulation V** or **Stipulation VI**, FDOT will carry out Section 106 requirements in accordance with *36 C.F.R. §§ 800.3 through 800.6*, summarized briefly below, and in conformity with FDOT's *PD&E Manual* and *CRM Handbook*. FDOT will ensure that all findings, determinations, and agreements are documented in accordance with *36 C.F.R. § 800.11* and are consistent with applicable standards and guidelines promulgated by the FDOT and the FDHR. If at any point in the Section 106 process an objection or dispute arises, dispute resolution will proceed according to **Stipulation XI.B**.

- A. **Initiating the Section 106 Process.** Upon establishing an undertaking, FDOT will identify, invite, and document all consulting parties including the SHPO, Tribes, and members of the public, as appropriate. FDOT will involve the public pursuant to *36 C.F.R. § 800.8* and in accordance with FDOT's *PD&E Manual*.
- B. **Program Alternatives to Standard Section 106 Review.** The ACHP established nationwide program alternatives to standard Section 106 reviews (**Attachment 1**) which apply to federally funded or permitted transportation projects.

Each of these program alternatives is unique and should be reviewed pursuant to the guidance and provisions established in the individual program alternative. When applying these program alternatives to an undertaking, or to a portion of an undertaking, the project documentation must be submitted for review and approval in accordance with **Stipulation V, VI, or VII**.

- C. **Identification and Evaluation.** FDOT, in consultation with SHPO and consulting parties as appropriate, will carry out and document the following activities:

1. **Establish the project APE.** APEs will be defined in accordance with *36 C.F.R. §§ 800.4 and 800.16(d)* and the guidance outlined in FDHR's *Module 3* and FDOT's *CRM Handbook* and *PD&E Manual*. Whenever an undertaking is revised, the District must determine if the changes require modifying the APE.
2. **Determine the scope of identification efforts.** Different survey methods within the project APE may be considered for the different project locations or types of historic resources that may be present. A phased approach, such as instances where parcels are not available for archaeological survey until right-of-way acquisition is completed, may be appropriate in accordance with *36 C.F.R. § 800.4(b)(2)* but must be coordinated with OEM prior to developing the phased approach.
3. **Research and survey.** Conduct the appropriate level of research and field survey to determine the presence or absence of historic resources within the APE.
4. **Process survey results.** Evaluate the significance of all historic resources identified in the APE in accordance with the National Register Criteria for Evaluation, as found in *36 C.F.R. Part 60.4*, and in consultation with the SHPO, Tribes, and consulting parties, as appropriate.
 - i. If either no historic properties are present, or there are historic properties present but the undertaking will have no effect upon them, the District will make a determination of **No Historic Properties Affected** and shall provide the supporting documentation to the SHPO, Tribes, and consulting parties with a request for concurrence and comments.
 - a. If the SHPO, Tribes, and consulting parties do not object to the District's finding of **No Historic Properties Affected** within thirty (30) days, FDOT's

consultation responsibilities under Section 106 are fulfilled and the project may proceed.

- ii. If historic properties are located in the APE and the project may have an effect upon them, the District shall proceed with the application of the criteria of adverse effects in accordance with *36 C.F.R. § 800.5* and **Stipulation VII.D**.

D. Findings of Effect. If historic properties are identified within the project APE that may be affected by the undertaking, the District in consultation with SHPO, Tribes, and consulting parties, will assess adverse effects. Prior to proceeding, the District must notify OEM if a potential adverse effect is identified or anticipated.

1. **No Adverse Effect.** When the District determines that the Criteria of Adverse Effect set forth in *36 C.F.R. § 800.5* do not apply to the historic properties within the project APE, the District will make a finding of **No Adverse Effect** and will provide the supporting documentation for the finding to the SHPO, Tribes, and consulting parties, with a request for concurrence and comments.

- i. If the SHPO, Tribes, and consulting parties do not object to the District's finding of **No Adverse Effect** within thirty (30) days, the District can proceed in accordance *36 C.F.R. § 800.5(d)(1)*. Implementation of the undertaking in accordance with the finding, as documented, fulfills FDOT's responsibilities under Section 106.

2. **Adverse Effect.** When the District determines that the Criteria of Adverse Effect apply to one or more historic properties within the project APE, the District must make a finding of **Adverse Effect** and will provide the supporting documentation for the finding to the SHPO, Tribes, and consulting parties, with a request for concurrence and comments.

- i. If the SHPO, Tribes, and consulting parties do not object to the District's finding of **Adverse Effect** within thirty (30) days, the District must proceed with the resolution of adverse effects per *36 C.F.R. § 800.6* and **Stipulation VII.E**.

E. Resolution of Adverse Effects. FDOT Districts, in coordination with OEM will consult with SHPO, Tribes, and consulting parties to develop effective and appropriate measures to avoid, minimize, or mitigate the adverse effects of the proposed undertaking on historic properties. The District will ensure that the appropriate public involvement procedures are followed so that a good faith effort is made to receive public input.

1. **Successful Resolution.** If FDOT, SHPO, Tribes, and consulting parties agree on measures to resolve the adverse effect, they shall execute a Memorandum of Agreement (MOA) in accordance with *36 C.F.R. § 800.6(b)*. When the ACHP elects not to participate, the District shall provide a copy of the executed MOA to OEM for submission to the ACHP pursuant to *36 C.F.R. § 800.6(c)*.

2. **No Resolution.** If there is a failure to resolve the adverse effect, or if FDOT is unable to execute the MOA, FDOT will request the ACHP comment in accordance with *36 C.F.R. § 800.7*.

F. Effects to National Historic Landmarks. Pursuant to *36 C.F.R. § 800.10*, OEM will notify and consult with the NPS for undertakings that may adversely affect a National Historic Landmark (NHL). OEM shall request the ACHP participate in any consultation to resolve adverse effects to NHLs, and shall notify the Secretary of the Interior of any consultation involving an NHL and invite the Secretary to participate in the consultation where there may be an adverse effect, in accordance with *36 C.F.R. § 800.10(c)*.

- G. Reevaluations.** If, upon the District's reevaluation of a project, the District identifies project changes which result in new or modified project footprints, where additional ground disturbing activities are required beyond what had been initially reviewed, where the relationship of the project with historic resources has changed, and/or where the significance of historic resources may have changed due to the passage of time or other factors, the District will review the project and determine if updated documentation is required. If such work is required, the District will conduct the appropriate level of additional survey, evaluation, and effects analysis as set forth in this Agreement.

VIII. Emergency Situations

Pursuant to *36 C.F.R. § 800.12*, FDOT will implement the following procedures to address historic properties if a disaster or emergency situation arises. This Stipulation applies only to undertakings that will be implemented within thirty (30) days after a disaster or emergency is declared by the President of the United States, a Tribal government, or the Governor of Florida, or to other undeclared emergency situations which present similar urgent emergency threats and recovery challenges. In accordance with *36 C.F.R. § 800.12*, immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106, except as otherwise stated in this Agreement.

- A.** In most cases, emergency repairs will not affect historic properties as defined in *36 C.F.R. § 800.16* and can be processed in accordance with **Stipulations V** or **VI** of this Agreement. In cases where emergency repairs have the potential to cause effects, the District will notify OEM to determine appropriate procedures as required by *36 C.F.R. § 800.12*.
- B.** In the event of a declared emergency or the identification of an emergency situation, FDOT will take the necessary steps to make historic properties safe and secure. Within forty-eight (48) hours of the initial declaration or identification of the emergency, or as soon as practicable, FDOT will notify the SHPO, and Tribes, if applicable, of such activities, providing a brief description of the nature of the emergency and proposed corrective work.
- C.** For repairs initiated within the first thirty (30) days of the emergency declaration/identification, and which have the potential to affect historic properties, the processing of environmental documentation will happen concurrent with or after the emergency work is completed. Processing of project documentation pursuant to Section 106, including consultation with SHPO, Tribes, and other consulting parties must be completed within six (6) months of the completion of the emergency repair action. In all cases, FDOT shall comply to the extent possible with the Stipulations of this Agreement.
- D.** In certain situations, it may be impractical to initiate or completely identify every repair required within the first thirty (30) days following a catastrophic event such as a hurricane or other declared emergency. In these cases, FDOT may request an extension of the period of applicability from ACHP prior to the expiration of the 30 days. FDOT shall also notify the SHPO, Tribes, and consulting parties of the delay and the reasons for the delay of the identification, implementation, or notification prior to the passing of the thirty (30) days.
- E.** Any work beyond the scope of the emergency operation will comply with the procedures outlined in **Stipulations V**, **VI**, and **VII** of this Agreement, as appropriate. In these situations, FDOT may request an expedited review by SHPO and other consulting parties.

IX. Post-Review Discoveries

If previously unidentified historic properties are discovered, or if the potential to affect previously identified or potential unidentified historic properties changes after FDOT has completed its appropriate reviews under this Agreement but before construction has started, the consultation process outlined in **Stipulations V**, **VI**, or **VII** will be followed.

In accordance with *36 C.F.R. § 800.13*, if previously unidentified historic resources are discovered during construction, or if unanticipated impacts to known or previously unidentified historic properties occur during construction, the following procedures shall be followed:

- A. All construction-related activity in the vicinity of the discovery shall stop and the contractor shall immediately notify FDOT of the discovery. Necessary security measures will be taken to protect the discovery as appropriate.
- B. FDOT will notify the SHPO of the discovery within forty-eight (48) hours and invite them to accompany FDOT to the location of the discovery.
- C. When the discovery involves a resource that may be of significance to one or more Tribes, FDOT will notify these Tribes and FHWA within forty-eight (48) hours of the discovery and invite them to accompany FDOT to the location. In such cases, the Director of OEM serves as the Native American Coordinator for communication with the Tribes.
- D. Within forty-eight (48) hours of their receipt of notification, FDOT shall consult with the SHPO, Tribes, and appropriate consulting parties to document and evaluate the project effects and the need, if any, for further investigation.
- E. If FDOT determines that the discovery does not warrant further investigation, they will provide written notification to the SHPO, Tribes, and appropriate consulting parties outlining FDOT's reasons and requesting their concurrence within two (2) business days of the visit to the discovery location. The SHPO, Tribes, and appropriate consulting parties will have two (2) business days after receipt to respond.
 - 1. If no comments are received within this period, concurrence will be assumed, and project construction may resume.
 - 2. If comments are received, FDOT shall consult with the appropriate consulting parties to address the comments.
 - 3. If any consulting party disagrees with the determination, FDOT will proceed in accordance with **Stipulation XI.B.**
- F. If FDOT determines that the site warrants further investigation, FDOT will develop a scope of work and timeline for completion within forty-eight (48) hours of the site visit. The scope of work will be submitted to the SHPO, Tribes, and appropriate consulting parties, and they will have two (2) business days after receipt to review and comment.
 - 1. If no comments are received within this period, concurrence will be assumed, and the work will be implemented in accordance with the scope.
 - 2. If comments are received, FDOT shall take them into account and carry out the scope of work.
 - 3. If any consulting party objects to the proposed work plan, FDOT will proceed in accordance with **Stipulation XI.B.**
- G. A report of the investigations will be completed within the time frame established by the scope of work and copies provided to all consulting parties.
 - 1. If no comments are received within the review period outlined in the scope of work, concurrence will be assumed, and construction may proceed as planned.
 - 2. If comments are received, FDOT shall take them into account and construction may proceed according to an updated plan.
 - 3. If any consulting party objects to the results, FDOT will proceed in accordance with **Stipulation XI.B.**

- H. When the discovery consists of human remains, graves, or grave-associated artifacts, the FDOT and/or its contractor/agent must comply with *Section 7-1.6 of the FDOT Standard Specifications*, the procedures for inadvertent discovery of human remains contained in *Section 872.05, F.S.*, and **Stipulation X**.

X. Treatment of Human Remains

- A. **Legal Protection.** Human remains are protected under *Chapters 267 and 872, F.S.*, the *Native American Graves Protection and Repatriation Act (NAGPRA) of 1990* (Pub. L. No. 101-601) if on federal lands, and Sections 106 and 110 of the NHPA. The treatment of human remains encountered during FDOT project-related activities other than SHPO/FDHR-authorized archaeological excavations must comply with *Section 872.05, F.S.*, *Rule 1A-44, F.A.C.*, FDOT's *PD&E Manual* and *CRM Handbook*, and as appropriate *Section 7-1.6 of the FDOT Standard Specifications*. The ACHP's *Policy Statement on Burial Sites, Human Remains, And Funerary Objects* issued on March 1, 2023, established a set of standards and guidelines that FDOT will seek to implement in order to provide burial sites, human remains, and funerary objects the consideration and protection they deserve.
- B. **Discovery During SHPO-Authorized Archaeological Excavation.** In situations where unmarked human burials are uncovered during the course of archaeological research, the discoverer will follow the procedures set forth in *Section 872.05, F.S.*, and will inform the FDOT District Cultural Resources Coordinator managing the archaeological research effort and coordinate compliance with *Rule 1A-44.003 F.A.C.*
- C. **Discovery During All Other FDOT Project-Related Activities.** All work shall cease immediately in the area of the discovery, FDOT and/or its contractor/agent will contact the District Medical Examiner or the State Archaeologist as appropriate, and the applicable process as described in the PD&E Manual will be followed based upon the nature and age of the discovery. Necessary measures will be taken to secure and protect the remains, including, as appropriate, stabilization and covering. No further activity shall be undertaken in the area of the human remains until the District Medical Examiner or the State Archaeologist, as appropriate, specifically authorize the resumption of work.
- D. **Tribal Coordination.** The OEM Director, serving as the Native American Coordinator, will be consulted by the District to ensure that the Tribes receive the proper information and are included in the determination of effects, if applicable. OEM will notify FHWA when coordinating with Tribes on instances of inadvertent discovery of human remains which have potential Tribal affiliation. For Native American human remains and/or grave goods discovered on Federal lands, the Federal land managing agency will be responsible for consultation under NAGPRA.

XI. Administrative Provisions

- A. **Confidentiality.** Archaeological site locations and related information are exempt from the Florida's open government laws as set forth in the Florida Constitution under Article I, § 24(c) and *Section 267.135, F.S.* Should a Tribe indicate that they do not want FDOT to share sensitive information with any other parties, FDOT will coordinate with the appropriate Tribal authorities to ensure project development and delivery occurs without revealing such information. In accordance with *Section 304(c)* of the NHPA and *36 C.F.R. § 800.11*, FDOT will consult with the ACHP when information on sensitive site data may need to be withheld.

Dispute Resolution. Should any Tribe or consulting party to this Agreement object in writing regarding any undertaking or finding covered by this Agreement, including eligibility determinations, FDOT shall consult with the objecting party to try to resolve the objection.

If FDOT determines that it cannot resolve the objection, OEM will complete the review of the undertaking in accordance with *36 C.F.R. Part 800*, and will:

1. Forward all documentation relevant to the dispute to the ACHP in accordance with *36 C.F.R. § 800.5(c)(2)*. Upon receipt of adequate documentation, the ACHP shall review and advise FDOT on the resolution of the objection within thirty (30) days. Any comment provided by the ACHP, and the parties to this Agreement, will be taken into account by FDOT in reaching a final decision regarding the dispute.
2. If the ACHP does not provide comments regarding the dispute within thirty (30) days after receipt of adequate documentation, FDOT may render a decision regarding the dispute. In reaching its decision, FDOT will take into account all comments regarding the dispute from the parties to this Agreement.
3. If the objecting party is a Tribe, OEM shall inform FHWA and FHWA will consult with the party in accordance with *36 C.F.R. § 800.7* and follow the procedures outlined in Section 3.2.3 of the 2022 MOU, as may be amended.
4. FDOT'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. FDOT will notify all parties of its decision in writing before implementing that portion of the undertaking subject to dispute under this Stipulation. FDOT's decision will be final.

B. Annual Reports. OEM will produce an Annual Report in the third quarter of the year (July-September) following the execution of this Agreement, and every subsequent twelve-month period thereafter. The first Annual Report shall include activities conducted under this Agreement through June 30, 2023, as well as activities conducted under the Amended Agreement (previous agreement) which took place after the close of the previous Annual Reporting period (ending March 13, 2022) and up through the execution of this Agreement. Subsequent reports shall document the projects and findings made by FDOT pursuant to this Agreement for the twelve-month period of July 1st through June 30th of the following year.

OEM will notify the FHWA, ACHP, SHPO, and Tribes of the availability of the Annual Report which may include, but is not limited to:

1. A list of all projects processed and documented in accordance with **Stipulations V, VI, and VII**;
2. Identification of projects which resulted in a finding of *Adverse Effect to Historic Properties*; and
3. An accounting of MOAs or other agreement documents that 1) were executed pursuant to this Agreement during the reporting period, 2) that remain unfulfilled regardless of the date of execution, 3) that have yet to be implemented, and 4) that were fulfilled during the reporting year.

C. Coordination with Other State and Federal Reviews. If FDOT receives a written request from any agency wishing to meet its Section 106 responsibilities by adhering to this Agreement, FDOT will consider such a request and notify the Signatories. If there are no objections to the request, then the requesting agency may meet its responsibilities under Section 106 by concurring in writing to the terms of this Agreement.

D. Amendment. This Agreement may be amended when such an amendment is agreed to in writing by all Signatories. Amendments are required to alter the content of the main document, content of any appendices, and to extend the current Agreement. All parties must signify their acceptance of the proposed changes to the Agreement in writing within thirty (30) days of their receipt of the request. The amendment will be effective on the date signed

by the last Signatory. FDOT will provide a copy of the signed amendment for filing to the ACHP. Where no consensus can be reached, the Agreement will not be amended. Attachments or the forms referenced in this Agreement can be completed with FDOT and SHPO written agreement.

- E. Termination.** Any Signatory to this Agreement may terminate it by providing a thirty (30) day notice in writing to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments and other actions that would avoid termination. In the event of termination, FDOT will comply with the requirements of *36 C.F.R. Part 800* with regard to individual undertakings covered by this Agreement.
- F. Duration.** This Agreement will remain in effect for ten (10) years from the date of its execution. To determine if the Agreement shall be renewed for an additional term, modified, or terminated, FDOT will notify the Signatories six (6) months prior to the Agreement expiration. If no changes are proposed and no Signatory objects, the term of the Agreement will be extended for another ten (10) years according to amendment procedures outlined in **Stipulation XI.E**. Acknowledgement of the extension process and results will be documented in the Annual Report.
- G. Effective Date.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement and shall take effect following the full execution, as completed below by FHWA, FDOT, ACHP, and SHPO. Additional appendix or amendments to this Agreement shall take effect on the last signature date once fully executed by the Signatories if no effective date is specified.

Execution and implementation of this Agreement is evidence that FDOT and FHWA have satisfied their respective Section 106 responsibilities for all individual undertakings of the Federal-Aid Highway Program in Florida and has afforded the ACHP, the public, and consulting parties a reasonable opportunity to comment on the Program and its undertakings.


SIGNATORIES

**PROGRAMMATIC AGREEMENT
REGARDING IMPLEMENTATION OF THE FEDERAL-AID HIGHWAY PROGRAM
IN FLORIDA**


FLORIDA DEPARTMENT OF TRANSPORTATION

DocuSigned by:
By:  Date: 08/15/2023 | 2:53 PM EDT
022E6284290B41A
Will N. Watts, Jr., P.E.
Assistant Secretary for Engineering and Operations


STATE HISTORIC PRESERVATION OFFICER

DocuSigned by:
By:  Date: 08/25/2023 | 1:17 PM EDT
4980FE39EF874D0
Alissa Slade Lotane
State Historic Preservation Officer

FEDERAL HIGHWAY ADMINISTRATION

JAMES
By:  Digitally signed by JAMES CHRISTIAN
CHRISTIAN Date: 2023.09. 4
13:30:14 -040 ' Date:
Jamie Christian, P.E.
Division Administrator

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 9.27.2023
Reid Nelson
Executive Director

APPENDIX 1

Minor Project Activities with Minimal Potential to Affect Historic Properties

1. Installation of fencing, signs, pavement markings, rumble strips, small passenger shelters, traffic signals, and railroad warning devices within the existing footprint of the roadbed, curbing, medians, swales, drainage structures or sidewalks where no substantial land acquisition or traffic disruption will occur.
2. In-kind replacement or repair of existing lighting, guardrails, traffic signals, curbs, and sidewalks.
3. Activities included in the State's highway safety plan under *23 U.S.C. § 402*.
4. Preventive maintenance activities such as joint repair, pavement patching, shoulder repair, and the removal and replacement of old pavement structure that does not extend beyond the horizontal or vertical extent of the original construction footprint.
5. Restoration, rehabilitation, and/or resurfacing of existing pavement that does not extend beyond the horizontal or vertical extent of the original construction footprint.
6. Restoration and rehabilitation of an existing bridge (including painting, crack sealing, joint repair, scour repair, scour counter measures, fender repair, bridge rail or bearing pad replacement, seismic retrofit, etc.).

APPENDIX 2

Minor Project Activities Considered Unlikely to Affect Historic Properties

1. Approval of utility installations along or across a transportation facility.
2. Construction of bicycle and pedestrian lanes, paths, and facilities.
3. Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.
4. The installation of noise barriers, or alterations, to existing publicly-owned buildings to provide for noise reduction.
5. Landscaping within the horizontal and vertical extent of previous ground disturbance and/or the original construction footprint.
6. Emergency repairs under 23 U.S.C. 125.
7. Acquisition of scenic easements.
8. Determination of payback under 23 C.F.R., Part 480 for property previously acquired with Federal-aid participation.
9. Minor improvements to existing rest areas and truck weigh stations.
10. Ride-sharing activities.
11. Bus and rail car rehabilitation.
12. Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
13. Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.
14. Track and rail-bed maintenance and improvements when carried out within the existing right-of-way.
15. Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.
16. Adding or lengthening turning lanes (including continuous turn lanes), intersection improvements, channelization of traffic, dualizing lanes at intersection and inter-changes, auxiliary lanes, and reversible lanes.
17. Flattening slopes; improving vertical and horizontal alignments.
18. Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.
19. Restore, replace, and rehabilitate culverts, inlets, drainage pipes, and systems including safety treatments.
20. Widening, adding roadway width and/or roadway reconstruction shoulders without adding through traffic lanes.
21. Roadway skid hazard treatment.
22. Upgrade, removal, or addition of guardrail.
23. Upgrade median barrier.
24. Install or replace impact attenuators.
25. Upgrade bridge end approaches/guardrail transition.
26. Upgrade railroad track circuitry.

27. Improve railroad crossing surface.
28. Improve vertical and horizontal alignment of railroad crossing.
29. Improve sight distance at railroad crossing.
30. Railroad crossing elimination by closure, and railroad overpass removal within right-of-way.
31. Clear zone safety improvements, such as fixed object removal or relocation.
32. Screening unsightly areas.
33. Freeway traffic surveillance and control systems.
34. Motorist aid systems.
35. Highway information systems.
36. Preventive maintenance activities such as joint repair, pavement patching, shoulder repair and the removal and replacement of old pavement structure.
37. Restore, rehabilitate, and/or resurface existing pavement.
38. Computerized traffic signalization systems.
39. Widening of substandard bridge to provide safety shoulders without adding through lanes.
40. Replacement of existing bridge (in same location) with current design criteria.
41. Transportation enhancement projects involving acquisition of historical sites and easements, or historical preservation.
42. Preservation of abandoned railway corridors, including the conversion and use for pedestrian, equestrian, or bicycle trails.
43. Rehabilitation and operation of historic transportation buildings, structures, or facilities, including railroad facilities and canals.
44. Mitigation of water pollution due to highway runoff.
45. Bridge removal.
46. Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.
47. Rehabilitation or reconstruction of existing rail and bus transit buildings and ancillary buildings where only minor amounts of additional land are required, and there is not a substantial increase in the number of users.
48. Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks, and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
49. Acquisition of land for hardship or protective purposes for a particular parcel or a limited number of parcels; advance land acquisition loans under section 3(b) of the Urban Mass Transportation Act.
50. Animal crossings.
51. Changes in access controls.
52. Minor right-of-way acquisition for roadway and bridge projects without the addition of through traffic lanes.

ATTACHMENT 1

Program Alternatives to Standard Section 106 Review

Interstate Highway Exemption. The ACHP's *Exemption Regarding Historic Preservation Review Process for Effects to the Interstate Highway System* issued on March 10, 2005, relieves FHWA and FDOT from the Section 106 requirement of taking into account the effects of their undertakings on the Interstate Highway System, except for those components of the system listed below (*70 Federal Register (FR) 11928*).

In the State of Florida, four (4) exceptionally significant elements of the Interstate Highway System are excluded from the Exemption ("Final List of Nationally and Exceptionally Significant Features of the Federal Interstate Highway System," issued on December 19, 2006 (*71 FR 76019*)). When Program undertakings have the potential to affect these properties, the Section 106 review process is required. Elements of the Interstate Highway System that are excluded from the exemption, and therefore require review under Section 106, are:

1. Bob Graham/Sunshine Skyway Bridge, Pinellas and Hillsborough Counties
2. Alligator Alley, Collier and Broward Counties
3. I-75 Snake Wall, Alachua County
4. Myrtle Avenue Overpass, Downtown Jacksonville

For all other elements of the Interstate Highway System, FDOT will not carry out Section 106 consultation.

Any non-Interstate System historic resources that may be affected by an undertaking, such as archaeological sites within Interstate Right-of-Way (ROW), will still be considered under Section 106.

Common Post-1945 Concrete and Steel Bridges. The ACHP's *Program Comment Issued for Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and Steel Bridge* issued on November 2, 2012, relieves FDOT from the requirement under Section 106 of the NHPA to consider the effects of its undertakings on common bridges and culverts constructed of concrete or steel after 1945 (*77 FR 68790*). Under the Program Comment, with limited exceptions, FDOT will not individually evaluate the significance of, or consider the effects of undertakings on, these modern bridge types unless the structure is excluded from the exemption.

In the State of Florida, nineteen (19) exceptional post-1945 bridges are excluded from the Program Comment. These bridges, see **Table 1**, will require review pursuant to Section 106.

Other than for the common bridge(s) itself, FDOT will complete Section 106 review for its undertakings, including the identification of historic properties and consideration of effects of such undertakings, on historic properties.

FDOT shall inform SHPO of the bridge(s) and their status as exempted from Section 106 by this Program Comment.

Table 1. Florida Post-1945 Bridges Excluded from the Exemption

Bridge Number	Name	Location	Bridge Type	Year Built	Brief Description of Significance
054015	CR-721A/ Harney Pond Canal	Glades County	Prestressed Concrete slab	1958	Very early or particularly important example of its type in the State or the nation
910001	SR-70/ Kissimmee River	Okeechobee/ Highlands Counties	Steel girder	1966	Has distinctive engineering or architectural features that depart from standard bridge designs
910009	SR-78/ Kissimmee River	Okeechobee County	Steel girder	1964	Has distinctive engineering or architectural features that depart from standard bridge designs
720075	SR-109/ SR-10A	Duval County	Concrete Tee beam	1952	Has distinctive engineering or architectural features that depart from standard bridge designs
720087	US-1/ Miami Road	Duval County	Continuous Steel girder	1968	Has distinctive engineering or architectural features that depart from standard bridge designs
720100	SR-115A Flyover/ SR-10A	Duval County	Concrete Box beam	1961	Very early or particularly important example of its type in the State or the nation
760002	SR-19/ Proposed Cross Florida Barge Canal	Putnam County	Continuous Steel girder	1967	Associated with an event or individual. Features spans of exceptional length or complexity. Displays other elements that were engineered to respond to a unique environmental context.
580951	SR-399/ ICWW	Santa Rosa County	Steel girder	1960	Features spans of exceptional length or complexity. Displays other elements that were engineered to respond to a unique environmental context.
460019	US-98 (SR-30)/ ICWW	Bay County	Concrete girder	1965	Features spans of exceptional length or complexity. Displays other elements that were engineered to respond to a unique environmental context.
570034	US-98 (SR-30)/ ICWW	Okaloosa County	Steel girder	1964	Features spans of exceptional length or complexity. Displays other elements that were engineered to respond to a unique environmental context.
880005	James H. Pruitt Memorial/ SR-A1A over Sebastian Inlet	Indian River County	Prestressed concrete girder	1964	Very early or particularly important example of its type in the State or the nation
364040	CR-316/ Proposed Cross Florida Barge Canal	Marion County	Continuous steel girder	1969	Associated with an event or individual. Features spans of exceptional length or complexity. Displays other elements that were engineered to respond to a unique environmental context.
360055	SR-40/ Ocklawaha River	Marion County	Continuous steel girder	1972	Associated with an event or individual. Features spans of exceptional length or complexity. Displays other elements that were engineered to respond to a unique environmental context.
904603	Bimini Drive/ Sam's Canal	Monroe County	Prestressed concrete channel beam	1955/ 1982	Associated with an event or individual. Has distinctive engineering or architectural features that depart from standard bridge designs
904604	Harbour Drive/ Joe's Canal	Monroe County	Prestressed concrete channel beam	1955/ 1982	Associated with an event or individual. Has distinctive engineering or architectural features that depart from standard bridge designs
904606	Seaview Drive/ Un-Named Canal	Monroe County	Prestressed concrete channel beam	1955/ 1982	Associated with an event or individual. Has distinctive engineering or architectural features that depart from standard bridge designs
870078	SR-826 SB Flyover to SR-836	Miami-Dade County	Prestressed concrete box beam	1967	Very early or particularly important example of its type in the State or the nation
None	Florida Kennels Rock Bridge/ driveway over Red Canal	Miami-Dade County	Concrete and rock culvert	1947	Has distinctive engineering or architectural features that depart from standard bridge designs
None	Rock Bridge over Red Road Canal	Miami-Dade County	Concrete and rock culvert	1947	Has distinctive engineering or architectural features that depart from standard bridge designs

Rail Properties within Rail Rights-of-Way. The ACHP's *Program Comment to Exempt Consideration of Effects to Rail Properties Within Rail Rights-of-Way* issued on August 17, 2018, relieves FDOT from the requirement to conduct reviews under Section 106 of the NHPA for certain activities affecting rail properties located within railroad and rail transit ROW (83 FR 42920). FDOT implements this program comment in accordance with the activities-based approach developed by the Federal Railroad Administration (FRA), Federal Transit Administration (FTA), and the ACHP. The current exempt activities list is available in 84 FR 31075 (June 28, 2019).

All projects processed in accordance with this Program Comment must be approved by FDOT as the lead federal agency prior to using any federal funds associated with the program undertaking. If FRA, FTA, or another agency of the USDOT is funding or approving the proposed action, then it must be coordinated with the lead USDOT agency.

Undertakings Involving Electric Vehicle Supply Equipment (EVSE). The ACHP's *Exemption Regarding Historic Preservation Review Process for Undertakings Involving Electric Vehicle Supply Equipment* issued on October 26, 2022, relieves FDOT from the requirement to conduct reviews under Section 106 of the NHPA for effects on historic properties related to installation of certain electric vehicle supply equipment (EVSE) provided they meet the below conditions (87 FR 66201).

Except as noted below, all federal agencies are exempt from the Section 106 requirements of taking into account the effects of the installation, maintenance, repair, or expansion of EVSE and Level 1, 2, or 3 (also known as Direct Current (DC) Fast Charging) charging stations, provided these:

1. take place in existing parking facilities with no major electrical infrastructure modifications and are located as close to an existing electrical service panel as practicable;
2. use reversible, minimally invasive, non-permanent techniques to affix the infrastructure;
3. minimize ground disturbance to the maximum extent possible, and ensure that it does not exceed previous levels of documented ground disturbance;
4. use the lowest profile EVSE reasonably available that provides the necessary charging capacity;
5. place the EVSE in a minimally visibly intrusive area; and
6. use colors complementary to surrounding environment, where possible

FDOT remains responsible for considering the effects of components of its undertakings not subject to this exemption on historic properties, in accordance with this Agreement. Definitions applicable to this exemption presented in 87 FR 66201 are incorporated by reference herein.

This exemption shall not apply on Tribal Lands, or to activities that may affect historic properties located on Tribal Lands, unless the Tribal Historic Preservation Officer, Tribe, or a designated representative of the Tribe has provided prior written notification to the ACHP that it agrees with the use of the exemption on its lands. ACHP shall provide notice on its website of any such agreements with Tribes.

While the ACHP does not expect that activities carried out consistent with this exemption will affect historic properties of religious and cultural significance to Tribes, the ACHP advises that, where the installation of EVSE may occur in a location on or near an existing archaeological site, feature, or district, or any other property with known potential significance to Tribes, the federal agency (FDOT) should coordinate with interested Tribes to determine whether they ascribe significance to the site or property. Should a Tribe ascribe significance to the site area, FDOT should undertake a Section 106 review in accordance with this Agreement.

ATTACHMENT 2
Letter of Agreement Between FDOT and SHPO

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**LETTER OF AGREEMENT
BETWEEN FLORIDA DEPARTMENT OF TRANSPORTATION
AND THE STATE HISTORIC PRESERVATION OFFICER**

WHEREAS, This document serves as a Letter of Agreement between the Florida Department of Transportation (FDOT) and State Historic Preservation Officer (SHPO) to utilize the process and procedures contained within the *Programmatic Agreement Among the Federal Highway Administration, the Florida Department of Transportation, the Advisory Council on Historic Preservation, and the Florida State Historic Preservation Officer Regarding Implementation of the Federal-Aid Highway Program in Florida* (2023 PA) for FDOT and FDOT-assisted undertakings as well as regulatory compliance coordination not included in the 2023 PA and enumerated as follows:

- A. Compliance with State Regulations.** The 2023 PA may be applied to FDOT and FDOT-assisted undertakings using only state funds in accordance with *Section 267.061, Florida Statute (F.S.)*, and *Sections 872.02 and 872.05, F.S.* For FDOT-assisted undertakings, compliance with state laws regarding the treatment of historic resources remains the responsibility of the District managing the project.
- B. Program Alternatives to Standard Section 106 Review.** The ACHP established nationwide program alternatives to standard Section 106 reviews (2023 PA, Attachment 1) which apply to federally funded or permitted transportation projects. SHPO will apply these nationwide program alternatives to all FDOT projects submitted for review to the SHPO in accordance with the *Agency Operating and Funding Agreement (AOFA)*.
- C. SHPO as the Official with Jurisdiction over Section 4(f) Protected Properties.** For the purposes of reaching a *de minimis* finding under Section 4(f) of the U.S. Department of Transportation Act of 1966, as amended, if SHPO is the official with jurisdiction (OWJ) over the historic property, as defined in *23 Code of Federal Regulations (C.F.R.) § 774.17*, and concurs with a FDOT finding of **No Historic Properties Affected** for a project or to **No Adverse Effect** on a specific historic property, SHPO shall presume that FDOT will proceed with a *de minimis* Section 4(f) finding at its discretion.

In these cases, FDOT will include the following statement in the Concurrence Letter submitted to SHPO which seeks concurrence for the historic property subject to compliance with and protection under Section 4(f):

In accordance with the *Programmatic Agreement Among the FHWA, the FDOT, the ACHP, and the SHPO Regarding Implementation of the Federal-Aid Highway Program in Florida* (2023 PA), and appended materials, if providing concurrence with a finding of **No Historic Properties Affected** for a whole project, or to **No Adverse Effect** on a specific historic property, SHPO shall presume that FDOT may pursue a *de minimis* use of the affected historic property in accordance with Section 4(f) as set forth within *23 C.F.R. Part 774* and its implementing authorities, as amended, and that their concurrence as the official with jurisdiction (OWJ) over the historic property is granted.

No additional notification or coordination with the SHPO regarding this finding will be required unless there is a change to the undertaking, to the status of the historic property, or to the effect finding related to the historic property.

In situations where Section 4(f) applies to a post-review discovery as set forth at *23 C.F.R §§ 774.11(f) and 774.13(b)*, the District will prepare, and the Office of Environmental Management (OEM) will expedite, to the extent possible, the appropriate Section 4(f) applicability or approval decision. Should a use of the property within the meaning of Section 4(f) be required, FDOT may

consider the level of investment already committed to the alternative using the Section 4(f) protected property. When the post-review discovery is a historic property, FDOT and SHPO shall expedite, to the greatest extent possible, the Section 106 and Section 4(f) consultation and compliance, as appropriate.

- D. Reference and Citation.** This Letter of Agreement shall be attached to the 2023 PA and referenced singularly as the 2023 PA in all consultative efforts between FDOT and SHPO requiring regulatory or procedural acknowledgements.
- E. Amendments.** This Letter of Agreement can be amended by either signatory. Amendments must be submitted in writing to the other signatory prior to altering or implementing the operational process(es) under consideration. Amendments will be appended to this document in sequential order and will take effect following both parties' signatures. Executed amendments will be attached to the 2023 PA in sequential order.
- F. Effective Date.** This Letter of Agreement shall take effect following FDOT and SHPO signature and upon full execution of the 2023 PA.
- G. Duration.** This Letter of Agreement shall remain in effect for the duration of the 2023 PA, inclusive of any amendments to or extensions of the 2023 PA, unless terminated per clause **H**.
- H. Termination.** This Letter of Agreement can be terminated by either signatory. The intent to terminate must be submitted, in writing, to the other signatory at least 30 days prior to discontinuing the operational processes addressed within this document and both signatories must agree, in writing, to alternate operational procedures to replace the procedures enumerated in this document. Written agreement to terminate this Letter Agreement must be attached to the 2023 PA.

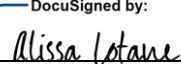
FLORIDA DEPARTMENT OF TRANSPORTATION

By:  DocuSigned by:

Date: 08/15/2023 | 2:53 PM EDT

Will N. Watts, Jr., P.E.
Assistant Secretary for Engineering and Operations

STATE HISTORIC PRESERVATION OFFICER

By:  DocuSigned by:

Date: 08/25/2023 | 1:17 PM EDT

Alissa Stadelor
State Historic Preservation Officer