

**AMENDED
PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION,
MARYLAND TRANSPORTATION AUTHORITY,
THE MARYLAND STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT FOR
FEDERAL HIGHWAY ADMINISTRATION UNDERTAKINGS IN MARYLAND**

WHEREAS, the Maryland Division of the Federal Highway Administration (FHWA) administers the Federal-Aid Highway Program in Maryland authorized by 23 U.S.C. § 101 et seq. through the Maryland Department of Transportation State Highway Administration (SHA) and the Maryland Transportation Authority (MDTA) (23 U.S.C. § 315); and

WHEREAS, the FHWA Maryland Division Administrator is the “Agency Official” responsible for ensuring that the Federal-Aid Highway Program in the state of Maryland complies with Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108), as amended, and codified in its implementing regulations, “Protection of Historic Properties” 36 C.F.R. Part 800; and

WHEREAS, SHA and MDTA administer Federal-aid projects, including Local Government Assistance projects using Federal-aid funds, throughout the State of Maryland as authorized by Title 23 U.S.C. § 302, have participated in the consultations and in development of this Programmatic Agreement (PA), and are invited signatories to this PA; and

WHEREAS, the responsibilities of the Maryland State Historic Preservation Officer (MD SHPO) under Section 106 of the NHPA and 36 C.F.R. § 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 and has participated in the development of the PA and is a signatory to this PA; and

WHEREAS, FHWA has invited the Advisory Council on Historic Preservation (ACHP) to participate in development of this PA and the ACHP is a signatory to this PA; and

WHEREAS, FHWA has determined that certain FHWA undertakings, as defined in 36 C.F.R. § 800.16(y), may have an effect, as defined in 36 C.F.R. § 800.16(i), on historic properties as defined in 36 C.F.R. § 800.16(l); and

WHEREAS, FHWA has determined that certain types of minor projects typically have no effect upon historic properties, and has consulted with the MD SHPO and the ACHP in accordance with 36 C.F.R. § 800.14(b) of the regulations implementing Section 106, and this PA is adopted pursuant to those regulations; and

WHEREAS, FHWA recognizes that they have a unique legal relationship with federally-recognized Indian tribes as defined in 36 C.F.R. § 800.16(m) (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; and

WHEREAS, FHWA, SHA, MDTA, and MD SHPO acknowledge that Tribes possess special expertise in assessing the National Register of Historic Places (NRHP) eligibility of properties with tribal religious and/or cultural significance pursuant to 36 C.F.R. § 800.4(c)(1); and

WHEREAS, FHWA has consulted with Tribes with cultural heritage in Maryland about this PA, has requested their comments, and has taken any comments received into account. These Tribes include the Absentee Shawnee Tribe, Cayuga Nation, Chickahominy Indian Tribe, Chickahominy Indian Tribe – Eastern Division, Delaware Nation, Delaware Tribe, Eastern Shawnee Tribe, Lumbee Tribe of North Carolina, Monacan Indian Nation, Nansemond Indian Tribe, Oneida Indian Nation, Oneida Tribe of Indians of Wisconsin, Onondaga Nation, Pamunkey Indian Tribe, Rappahannock Tribe, Seneca-Cayuga Nation, Seneca Nation of Indians, Shawnee Tribe, St. Regis Mohawk Tribe, Stockbridge-Munsee Community Band of Mohican Indians, Tonawanda Seneca Nation, Tuscarora Nation, and the Upper Mattaponi Tribe; and

WHEREAS, pursuant to the consultation conducted under 36 C.F.R. § 800.14(b)(2), the signatories have developed this PA to establish an efficient and effective program alternative for taking into account the effects of the Program on historic properties in Maryland and for affording the ACHP a reasonable opportunity to comment on the undertakings covered by this PA; and

WHEREAS, FHWA has notified the public and invited the participation of all counties, Certified Local Governments in Maryland, and Maryland Certified Heritage Areas in this PA. The following organizations responded and have been identified as consulting parties, as defined in 36 C.F.R. § 800.2(c), for the development of this PA: Anne Arundel County Office of Environmental & Cultural Resources; Anne Arundel County Office of Transportation; Calvert County Historic District Commission; Charles County Preservation and Long Range Planning; Frederick County Division of Public Works; Harford County Department of Planning & Zoning/Harford County Historic Preservation Commission; Montgomery County Department of Transportation; Montgomery Parks/the Maryland-National Capital Parks and Planning Commission; Queen Anne’s County Planning and Zoning; St. Mary’s County Department of Public Works & Transportation; and the Valleys Planning Council; and

WHEREAS, FHWA invited the participation of other consulting parties with historical and genealogical ties in Maryland, including the Accohannock Indian Tribe, Inc.; Assateague Peoples’ Tribe; Baltimore American Indian Center; Cedarville Band of Piscataway Indians; Choptico Band of Indians; Conestoga-Susquehannock Tribe; Maryland Commission on Indian Affairs; Nause-Waiwash Band of Indians, Inc.; Piscataway Indian Nation; Piscataway-Conoy Tribe of Maryland; and the Pocomoke Indian Nation, Inc.; and has taken any comments received into account; and

WHEREAS, FHWA has delegated certain Section 106 responsibilities to SHA and MDTA, which are discussed below; and

WHEREAS, the FHWA, ACHP, MD SHPO, and SHA originally executed a PA for Minor Highway Projects on July 26, 1993 and subsequently amended it on February 22, 2001, June 30, 2008, and December 19, 2017, August 19, 2021, and the parties to the original and amended agreements have consulted and agreed to amend the PA, pursuant to Stipulation XIII of the 2021 agreement, and this PA herein supersedes the earlier PAs; and

WHEREAS, FHWA, MD SHPO, ACHP, and SHA have executed a PA regarding SHA’s Historic Highway Bridges (HHBPA) in Maryland on July 9, 2024, establishing a Section 106 review process for approximately 160 NRHP-eligible highway bridges; and

WHEREAS, this PA supersedes any and all prior letters or agreements related to Section 106 compliance for local public agency programs in Maryland funded by FHWA and administered by SHA; and

NOW, THEREFORE, FHWA, ACHP, MD SHPO, SHA, and MDTA agree that FHWA undertakings in Maryland shall be carried out in accordance with the following stipulations in order to take into account the effects of these undertakings on historic properties in Maryland and that these stipulations shall govern compliance of these undertakings with Section 106 of the NHPA until this PA expires or is terminated.

STIPULATIONS

FHWA, with the assistance of SHA and MDTA, will ensure that the following measures are carried out:

I. Purpose and Applicability

- A. This PA sets forth the process by which the FHWA, with the assistance of the SHA and MDTA, will meet its responsibilities under Section 106 of the NHPA. This PA establishes the basis for the SHA's and MDTA's internal review of individual projects and establishes how the FHWA and the MD SHPO will be involved in any review.
- B. This PA may apply to undertakings for projects involving other Federal agencies where FHWA has assumed Lead Agency responsibility under Section 106.
- C. This PA applies to FHWA undertakings where SHA and/or MDTA administer FHWA funds, such as local public agency programs and projects where another entity is the primary project proponent. Covered programs may include but are not limited to: Safe Routes to Schools, Recreational Trails Program, Transportation Enhancements and other applicable programs that may be instituted during the implementation of the PA.
- D. This PA authorizes SHA and MDTA to initiate and, in many cases, conclude consultation with the MD SHPO and other consulting parties for purposes of compliance with Section 106.
- E. This PA establishes the basis for review of projects carried out under the Program. The process for projects required to undergo delegated Section 106 consultation are discussed in Stipulation IX. The process for projects with minimal potential to cause effects is defined in Stipulations VI and VII. Undertakings that have no potential to cause effects to historic properties, pursuant to 36 C.F.R. § 800.3(a)(1), are defined as those actions that by their nature will not result in effects to historic properties. FHWA defines these as only 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 other construction, or undertakings involving substantial physical modification of property that includes a federal nexus, including applicable maintenance activities, new construction, and all construction related actions, must comply with 36 C.F.R. Part 800.

II. Professional Qualifications, Guidelines, Standards, and Regulations

A. Professional Qualifications Standards

SHA employs a staff of cultural resources professionals and contracts with consultant firms who meet the Secretary of the Interior's Professional Qualifications Standards published in 48 Fed. Reg. 44738-39 (including any succeeding revisions to the regulations) in the fields of archaeology, architectural history, and/or history to carry out its historic preservation programs and responsibilities (hereafter referred to as "cultural resources professionals"); and MDTA uses the services of these same cultural resources professionals in carrying out the terms of this PA. Should unforeseen circumstances result in SHA not having sufficient qualified staff to oversee implementation of the terms of this PA, this PA may be terminated by FHWA in accordance with the procedures in Stipulation XVI.

B. Guidelines, Standards and Regulations

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

- 36 C.F.R. Part 800: Protection of Historic Properties (2004);
- *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation: Identification* (1983);
- *Standards and Guidelines for Archeological Survey and Investigations in Maryland* (McKnight et. al 2026);
- *Standards and Guidelines for Architectural and Historical Investigations in Maryland* (Maryland Historical Trust Revised 2023);
- *Advisory Council on Historic Preservation Policy Statement on Burial Sites, Human Remains and Funerary Objects* (2023);
- Program Comment for Actions Affecting Post-1945 Concrete Steel Bridges (77 Fed. Reg. 68790); and
- Exemption Regarding Historic Preservation Review Process for Effects to the Interstate Highway System (70 Fed. Reg. 11928).

It is the intention of the signatories to interpret this PA in accordance with any standards, revisions of standards, or applicable Program Comments promulgated by the Secretary of Interior, ACHP, or MD SHPO as then in force during the course of this PA. The signatories also intend this PA to be construed in accordance with the National Historic Preservation Act in matters of interpretation. SHA will interpret guidelines in accordance with stated FHWA policy consistent with the authority delegated in this PA.

III. Responsibilities

- A. **FHWA Responsibilities:** Consistent with the requirements of 36 C.F.R. § 800.2(a), FHWA remains legally responsible for ensuring that the terms of this PA are carried out and for all findings and determinations made pursuant to this PA by SHA or MDTA. At any point in the Section 106 process, FHWA may inquire as to the status of any project carried out under the authority of this PA and may participate directly in any project at its discretion.

In compliance with its responsibilities under the NHPA and as a condition of its award of any assistance for undertakings that may affect historic properties under the Federal-Aid Highway

Program, the FHWA shall require the SHA to carry out certain requirements of 36 C.F.R. Part 800, consistent with applicable ACHP standards and guidelines.

1. FHWA delegates SHA the responsibility to establish the undertaking and initiate Section 106 review and consultation process in accordance with this PA.
2. FHWA retains responsibility for government-to-government consultation with Tribes as defined in 36 C.F.R. § 800.16(m). FHWA may ask SHA or MDTA to assist in consultation if the individual Tribes agree to alternate procedures. Upon receipt of a written request from any Indian tribe, or officially designated representative of an Indian Tribe, to consult with FHWA in lieu of or in addition to SHA and/or MDTA, FHWA shall consult with that Indian Tribe for the particular undertaking or program. FHWA shall ensure that federally recognized Indian Tribes are identified and consulted in accordance with the requirements of Section 101(d)(6) of the NHPA and 36 C.F.R. Part 800. This PA recognizes the guidance titled “Limitations on the Delegation of Authority by Federal Agencies to Initiate Tribal Consultation under Section 106 of the National Historic Preservation Act” published by the ACHP on July 1, 2011.
3. Upon notification by the SHA that a project may result in an adverse effect to historic properties, FHWA will ensure the Section 106 review process is completed, including notification of ACHP, in accordance with 36 C.F.R. § 800.6(a).
4. FHWA shall be responsible for resolving disputes and objections pursuant to Stipulation XIV of this PA.

B. SHA Responsibilities

1. SHA will determine and document the Area of Potential Effects (APE), as defined in 36 C.F.R. § 800.16(d); identify consulting parties for the specific undertaking (or “project”), including federally recognized Indian Tribes that may ascribe religious and cultural significance to properties in a project’s APE pursuant to 36 C.F.R. § 800.3(f)(2), and local public agencies with jurisdiction; identify historic properties and prepare documentation; and assess effects to historic properties in consultation with MD SHPO, consulting parties for the project, and in accordance with the principles and processes described at 36 C.F.R. §§ 800.3 – 6.
2. When SHA determines an undertaking will have an adverse effect on historic properties, it will notify the FHWA and, working with FHWA, will initiate further consultation with MD SHPO and identified consulting parties for the project to resolve the adverse effects in accordance with 36 C.F.R. § 800.6, including alternatives to avoid, minimize, or mitigate adverse effects to historic properties resulting from the undertaking. Such alternatives or mitigation will be documented in a Section 106 Memorandum of Agreement or PA executed by FHWA, MD SHPO, and SHA or MDTA, and ACHP if participating in consultation.
3. If SHA finds that an undertaking that does not meet the exemptions in Stipulations VI and VII will have no adverse effect to historic properties, or historic properties are not affected, SHA will follow Stipulation IX of this PA.

4. SHA shall immediately notify FHWA of any request for government-to-government consultation conveyed to SHA by a federally recognized Indian Tribe.
5. SHA will file e-106 notifications on behalf of FHWA with ACHP at required points in the consultation for all undertakings that fall within NEPA Programmatic Categorical Exclusion (PCE) or Categorical Exclusion (CE) classifications, with a copy provided to FHWA. FHWA will retain this role for Environmental Assessment or Environmental Impact Statement level projects.
6. **Local public agency programs.** On behalf of FHWA, SHA shall initiate Section 106 consultation for FHWA undertakings for local public agency programs, inclusive of those projects in which a local public agency, as defined in 23 C.F.R. § 635.102, is the primary project proponent and recipient of federal aid, either through SHA or MDTA. SHA shall provide Section 106 training and technical guidance, as necessary, to local public agencies for these undertakings, including direction on type and quality of documentation and/or field efforts the local public agency, as the project proponent, must provide to complete review. SHA shall complete review of these projects per the stipulations of this PA. Attachment 1 describes the general expected procedure for local public agency programs.
7. For MDTA projects, SHA cultural resources professionals will implement all steps on behalf of FHWA for MDTA as described in Stipulation III.B. and all subsequent stipulations of this PA including Appendices and Attachments, excepting where MDTA is specified. In these instances, because SHA is acting in support of MDTA, the term “MDTA” may be used in correspondence to refer to this arrangement in describing agency determinations, decisions, and other actions.

C. MDTA Responsibilities

MDTA, as a collaborating State of Maryland partner, will provide SHA with sufficient information and adequate resources (pursuant to an Interagency Memorandum of Understanding executed between SHA and MDTA) for SHA to identify historic properties and assess projects' effects on historic properties, and meet other requirements of this PA.

D. MD SHPO Responsibilities

MD SHPO reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with Section 101(b)(3) of the NHPA, 36 C.F.R. Part 800, and this PA, the MD SHPO will advise and assist FHWA in carrying out its Section 106 responsibilities and cooperate with SHA and MDTA to ensure that historic properties are taken into consideration in the implementation of this PA.

1. The MD SHPO shall review SHA and FHWA determinations of the APE, NRHP eligibility determinations, effect findings and other submittals and respond within the timeframes specified in this PA, or as specified in 36 C.F.R. Part 800.
2. As requested by SHA, FHWA, or MDTA, MD SHPO staff shall be reasonably available as a resource and for consultation through site visits, meetings, written requests, telephone conversations or electronic media.

3. The MD SHPO shall coordinate with SHA and FHWA to identify consulting parties for each project, including any communities, organizations, or individuals that may have an interest in a specific undertaking and its effects on historic properties.
4. MD SHPO agrees work conducted under the terms of this PA constitutes compliance with the requirement at § 5A-342 of the Annotated Code of Maryland for a terrestrial archaeological permit on Maryland state lands and certain other lands; SHA or MDTA will consult with MD SHPO and consulting parties on archaeological survey and excavation in this PA, including Stipulations IV, V, and IX, and a separate permit is not required. This exception to the terrestrial archaeological permit requirement does not apply to other MDOT modes or offices who are not party to this PA.

E. ACHP Responsibilities

5. The ACHP will be notified of findings of adverse effect by SHA or FHWA and will be invited by SHA or FHWA to participate in resolving the adverse effect of an undertaking in accordance with 36 C.F.R. § 800.6(a)(1).
6. The ACHP will participate, in accordance with Stipulation XIV, in the resolution of disputes that may occur through the implementation of this PA.

IV. Consultation with Federally Recognized Tribes

FHWA, with the assistance of SHA and MDTA, will identify and establish consultation with federally-recognized Tribes, consistent with the requirements of 36 C.F.R. § 800.2(c)(2) and 36 C.F.R. § 800.3(c)-(f). SHA and MDTA 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. As allowed under 36 C.F.R. § 800.2(c)(4), FHWA authorizes SHA and MDTA to carry out both day-to-day and project specific coordination with the Tribes and Tribal Historic Preservation Officers (THPOs)

V. Participation of Other Consulting Parties and the Public

A. Additional Consulting Parties

Consulting parties shall be identified in writing by SHA and MDTA in consultation with the MD SHPO pursuant to 36 C.F.R. § 800.3(c-f). Participation of the consulting parties in projects covered under this PA shall be governed by 36 C.F.R. § 800.3(f). SHA will make a good-faith effort to include parties with cultural and historical ties to project areas or affected resources. Written requests by individuals, organizations, and agencies to become consulting parties will be evaluated on a case-by-case basis by SHA, MDTA, and FHWA, in consultation with the MD SHPO. Individuals and organizations with a demonstrated interest in a project shall be invited by SHA and MDTA in consultation with FHWA to participate in the Section 106 process.

B. Public Involvement

1. Public involvement in planning and implementing projects covered by this PA shall be governed by SHA and MDTA's procedures for the National Environmental Policy Act.

2. Public involvement and the release of information hereunder shall be consistent with 36 C.F.R. § 800.2(d), 800.3(e), and 800.1(c)(1 and 3).
3. For those actions that do not routinely require public review and comment (e.g., projects with no potential to cause effects consistent with 36 C.F.R. § 800.3(a)(1)), appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of historic properties, and the project's potential impacts to them.
4. SHA and MDTA, to the extent they are aware of such issues, shall make FHWA and MD SHPO aware of any public controversy as it relates to the historic properties potentially affected by the proposed project, including, but not limited to, properties of religious and/or cultural significance to any Tribe.

VI. Projects with Minimal Potential to Cause Effects (Appendix 1 Projects)

- A. Project types: The signatories to this PA agree that the projects limited to the activities listed in Appendix 1, by their nature and definition, constitute undertakings that have minimal potential to cause effects to historic properties. Therefore, projects limited to the activities listed in Appendix 1 are categorically exempt from further review, provided the projects are limited to the activities listed and not part of a larger undertaking. Qualified SHA cultural resources professionals will determine whether a particular project meets the exemption categories listed in Appendix 1.
- B. Notification and Coordination: For projects which are limited to the activities listed in Appendix 1, the SHA shall document its finding that the action is exempt from further review and maintain the documentation in its files. Projects reviewed under Appendix 1 will be documented with information that includes at a minimum, the project name, route/limits, county, use of federal funds, a description of the proposed work, and the qualified cultural resources professionals reviewing the action. The SHA shall document all projects exempted from additional review under Appendix 1 in its annual report to the FHWA and MD SHPO, as specified in Stipulation XIII. The SHA will provide project review documentation to the MD SHPO for particular actions upon request. Beyond the documentation noted above, the SHA is not required to take any further action in the Section 106 process for projects exempt from review.
- C. Additions to or Modification of Appendix 1 Project Types: If deemed appropriate through consultation and mutual agreement between the SHA, FHWA, and MD SHPO, other types of minor actions may be exempted from review as having minimal potential to cause effects. SHA shall provide for a comment opportunity on proposed changes through email notification and/or posting the proposed additions or modifications on SHA's website. SHA will also notify ACHP of proposed additions or modifications to Appendix 1. If no consulting party to this PA has objected in writing to the proposed change, upon expiration of the comment period, which will be no less than 30 days, the addition(s) or modification shall become effective. Additions to or modifications of Appendix 1 using this process do not require formal amendment of this PA. In the event of an objection, the signatories shall consult to consider the objection and determine whether the addition or modification is appropriate, document the result of the consultation, and determine whether the addition or modification shall be made. The SHA shall maintain a list of all such categories and actions approved by this process and update Appendix 1 as part of the annual report to the FHWA and MD SHPO under Stipulation XIII.

VII. Minor Projects (Appendix 2 Activities)

A. Project Types: For the purposes of this PA, “Minor Projects” are broadly defined as those projects with limited APEs unlikely to contain historic properties (with the exception of previously evaluated historic bridges as noted in Stipulation VIII), that occur largely at grade within existing rights-of-way or within minimal new rights-of-way, do not introduce new structural or visual elements, and do not require substantial ground disturbance or that occur within previously disturbed soils, and are therefore unlikely to affect historic properties. By their nature, these project types typically result in findings of “No Historic Properties Affected” (36 C.F.R. § 800.4(d)(1)). SHA will review and document minor projects without further review by the FHWA or MD SHPO, provided:

- the projects are limited to the activities listed in Appendix 2;
- the projects are not part of a larger undertaking;
- SHA bases its review upon information adequate to identify properties and assess projects' effects on historic properties, as specified in Stipulation VII.B. and consistent with 36 C.F.R. Part 800;
- SHA decisions are consistent with the guidelines, standards and regulations identified in Stipulation II. B;
- SHA consults with the MD SHPO pursuant to 36 C.F.R. § 800.4(c) prior to making determinations of eligibility of properties for the NRHP; and
- SHA finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them.

B. SHA Review Process:

1. Internal Review: For undertakings limited to activities listed in Appendix 2, qualified SHA cultural resources professionals will implement the following internal review process to document that the undertaking qualifies for an Appendix 2 exemption, as appropriate to the project:
 - coordinate with the public in accordance with Stipulation V of this PA;
 - determine the APE;
 - review existing information (including but not limited to SHA’s Geographic Information System [GIS] Cultural Resources Database, MD SHPO’s databases, street view imagery, State Department of Assessment and Taxation information, etc.) on properties in the APE;
 - assess the likelihood that unidentified historic properties exist in the APE;
 - determine the degree of existing disturbance within the APE and, where warranted, perform a field inspection;

- conduct a field survey in conformance with the applicable standards in Stipulation II, where warranted;
 - determine whether historic properties are in the APE; and
 - determine whether the undertaking will result in no historic properties affected, as defined in 36 C.F.R. § 800.4(d)(1).
2. Eligibility Evaluations and Assessments of Effect: The SHA will consult with the MD SHPO pursuant to 36 C.F.R. § 800.4(c) prior to making any determination of eligibility of properties for the NRHP. If SHA's internal review suggests that a project may affect historic properties, the SHA will seek coordination on the project in accordance with Stipulation IX of this PA, 36 C.F.R. § 800.4 through 36 C.F.R. § 800.6 and in consultation with the MD SHPO.
 3. Notification and Coordination with MD SHPO: For projects that meet the criteria included in Stipulation VII.A and do not include properties within the APE, the SHA shall document and file the finding in accordance with Stipulation VII.B.5. The SHA **may** request written concurrence from the MD SHPO on a determination of no historic properties affected for any project defined under this PA. The SHA shall notify the MD SHPO of its Appendix 2 exemptions and provide a list of all projects limited to the activities defined in Appendix 2 that were reviewed under the provisions of Stipulation VII in its annual report to the MD SHPO, as specified in Stipulation XIII. The SHA does not need to provide the MD SHPO with copies of the Appendix 2 documentation, unless the MD SHPO specifically requests a copy of the documentation for a particular action.
 4. Notification and Coordination with other Parties: SHA will provide for tribal, public and local public agency notification by providing an electronic quarterly report of all SHA and MDTA projects exempted under the provisions of this stipulation to Indian tribal nations, local public agencies, the interested public, and other parties. SHA will regularly post each quarter's report on SHA and MDTA's websites. Subject to any applicable restrictions, SHA will provide documentation of project exemptions upon request. In the event of an objection from tribal nations, the public, or local public agencies on use of Appendix 2 in project review, SHA will provide a copy of the documentation to the MD SHPO and consult with all relevant parties to resolve the issue or conduct further consultation as described in Stipulation XIV.
 5. Documentation: For all undertakings reviewed under this PA, the SHA and MDTA will maintain records, including Appendix 2 documentation, photographs and field notes, if any. SHA and MDTA will make the documentation accessible, consistent with SHA, MDTA, and FHWA's records retention schedules and this PA. Pertinent records for each project covered under this PA should include:
 - a description of the project and its APE;
 - the location of the project area on USGS 7.5-minute topographic maps and/or project mapping; or on mapping generated from the SHA GIS at a scale of 1:90,000 or less for project location and 1:24,000 or less for cultural resources information;

- the type, geographic extent, and degree of existing disturbance within the APE;
 - the assessment by qualified SHA cultural resource professionals of the potential for properties within the APE, including justification, a listing of inventoried properties, and new or updated Maryland Inventory of Historic Properties forms, as warranted;
 - justification for the determination of no historic properties affected (as appropriate); and
 - associated notes and correspondence.
- C. Additions to or Modification of Appendix 2 Project Types: If deemed appropriate through consultation and mutual agreement between the SHA, FHWA, and MD SHPO, other types of projects or actions may be classified as minor projects. SHA shall provide for a comment opportunity on proposed changes through email notification and/or posting the proposed additions or modifications on SHA's website. SHA will also notify ACHP of proposed additions or modifications to Appendix 2. If no consulting party has objected in writing to the proposed addition, upon expiration of the comment period, which will be no less than 30 days, the addition(s) or modification shall become effective. Additions to or modification of Appendix 2 using this process do not require formal amendment of this PA. In the event of an objection, the signatories shall consult to consider the objection and determine whether the addition or modification is appropriate, document the result of the consultation, and determine whether the addition or modification shall be made. The SHA shall maintain a list of all such categories and actions approved by this process and update Appendix 2 as part of the annual report to the FHWA and MD SHPO under Stipulation XIII.

VIII. Incidental Involvement of Historic Bridges (Relationship to HHBPA)

Undertakings that may incidentally include Tier I, II or III Bridges (listed in HHBPA Attachments 1, 2, and 3) within their APE may be reviewed by SHA under the provisions of Stipulation VII of this PA provided the other provisions of Stipulation VII are met and the primary purpose of the undertaking is not modification of the bridge or bridges.

IX. Project Reviews – All Other Undertakings

SHA, FHWA and the MD SHPO shall complete review of all remaining undertakings, with the exception of those that meet the provisions in Stipulations VI and VII, in accordance with 36 C.F.R. Part 800 and the NHPA where applicable. SHA may initiate and carry out the steps of the process on behalf of FHWA as described in Stipulation III B. For these undertakings, SHA may make findings of No Adverse Effect, or No Properties Affected, without further involvement from FHWA. In the event of a disagreement with or failure to concur by MD SHPO on findings of No Adverse Effect or No Properties Affected, FHWA will participate in further consultation to resolve the effect finding.

X. Post-Review Undertaking Changes

For projects that have completed review under Stipulations VI, VII, VIII, or IX of this PA, SHA shall review proposed changes for effects to historic properties. Provided the change in scope is limited to the types of activities described in Appendix 1 and/or Appendix 2, SHA will document the change in a format consistent with the requirements of Stipulation VII. B. 5. Should the proposed change result in potential new effects to historic properties, SHA will consult in accordance with Stipulation IX.

XI. Post Review Discoveries Including Human Remains

For all projects requiring ground disturbing activities, whether documented through exemptions under Appendix 2 or reviewed under Stipulation IX of this PA, SHA and MDTA will require use of an Inadvertent Discovery Plan (IDP) during construction. The IDP is included as Appendix 3 of this PA and documents the process by which SHA, in coordination with MDTA for MDTA projects, will make notifications and consult in the event of discovery of archaeological human remains, potential historic properties, or inadvertent adverse effects to historic properties (including damage to known archaeological sites) resulting from construction. For local public agency programs, SHA will provide local public agencies a template IDP (Attachment 2) which requires contacting SHA in the event of a post review discovery. SHA may make minor non-procedural modifications (such as inclusion/correction of contact or project information) to the IDP without requiring amendment of this PA. Project-specific IDPs may be developed for individual projects reviewed under Stipulation IX where the standard format is not desirable.

XII. Emergency Situations

For the purposes of this PA, emergencies are defined as occurrences that require emergency highway system and facility repairs 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. Repairs to address emergency situations as defined above can occur regardless of funding category, and regardless of declarations made by federal, state, or local public agencies.
- B. If the emergency repair project could affect historic properties, SHA shall notify MD SHPO, the FHWA, federally recognized Indian Tribes that may attach significance to properties likely to be affected, and other appropriate parties as soon as is practicable. SHA will consult with MD SHPO and any federally recognized Indian Tribe or Tribes that may attach religious and cultural significance to historic properties that may be affected, on the nature of the emergency and any available options to avoid or minimize effects to historic properties. SHA will make a reasonable and good faith effort to provide for sufficient response time, but the comment period may be accelerated depending on the nature of the emergency.
- C. For projects where the repair must be made within the first 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, SHA will comply with the procedures in Stipulation IX of this PA to the extent possible, but the reviews will likely be conducted after the emergency work is completed.
- D. When sufficient lead time prior to implementing repairs is possible, SHA will comply with the procedures in Stipulation IX.
- E. Written notification of an emergency action shall be provided to MD SHPO. 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/or anticipated effect of the emergency action on the resource(s), and the anticipated time frame available for comment.
- F. Should the emergency action subsequently be defined to meet the requirements described in Stipulations VI or VII, SHA will notify MD SHPO that review was completed under these provisions and provide the associated documentation upon request.
 - G. In the event of a major disaster where work to address the situation may occur in multiple phases or independent undertakings, SHA, MD SHPO and FHWA will consult as soon as practicable to establish and document a framework for consultation to provide opportunities for comment where reasonable.
 - H. Where an emergency involves loss of life and rescue/recovery efforts, human remains are subject to jurisdiction of relevant authorities and the human remains provisions of Stipulation XI do not apply.

XIII. Review and Monitoring

FHWA, ACHP, SHA, MDTA, and the MD SHPO will consult regularly to review implementation of the terms of the PA, including at a minimum one annual meeting with FHWA and MDTA in attendance. The SHA shall maintain a list of all Appendix 1 and 2 projects covered under the PA for a 12-month period from January 1 through December 31. The SHA shall provide the MD SHPO, MDTA, ACHP, and FHWA with a copy of this report by January 31 of each following year. The MD SHPO will review the report and assess the implementation of the PA for the year under review. If deemed appropriate by the MD SHPO, MDTA or SHA, all parties shall meet to discuss and address any issues raised as a result of the review.

The FHWA, ACHP and MD SHPO may monitor activities carried out pursuant to this PA. The SHA and MDTA will cooperate with these parties in carrying out their monitoring efforts.

XIV. Dispute Resolution

- A. Objections related to review of individual actions or projects: Should any signatory, consulting party to the project, or member of the public object to any documentation submitted or actions taken pursuant to a project review under Stipulations VI, VII, IX, or other portions of this PA related to a specific review action, the FHWA will ensure that the SHA consults with the objecting party to resolve the objection in coordination with MDTA where relevant, provided the objection is made in writing to FHWA, SHA, or MDTA within 30 days of the action under dispute.
 - 1. If the objection is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.
 - 2. 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 the ACHP and other signatories, including FHWA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:

- a. Advise FHWA that ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly; or
 - b. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
 - c. Notify FHWA that the objection will be referred for comment pursuant to 36 C.F.R. § 800.7(a)(4) and proceed to refer the objection and comment. In this event, FHWA shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 C.F.R. § 800.7(c)(4).
 3. Should ACHP not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the objection.
 4. FHWA shall take into account any ACHP recommendation or comment and any comments from the other signatories to this PA in reaching a final decision regarding the objection. FHWA's responsibility to carry out all actions under this PA that are not the subjects of the objection shall remain unchanged.
 5. FHWA shall provide all other signatories to this PA with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
 6. FHWA may authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.
- B. Objections related to NRHP eligibility: Any signatory may object in writing within 30 days to an SHA or FHWA determination of eligibility. If SHA and FHWA are unwilling to revise the determination in response to the objection or other relevant information, FHWA (or SHA on its behalf) will submit the determination to the Keeper of the National Register of Historic Places for a determination pursuant to 36 C.F.R. Part 63.
- C. Objections to implementation or compliance with the PA, or issues unrelated to individual project review actions:
1. Should any signatory object in writing to FHWA regarding the manner in which the terms of this PA are carried out, or if FHWA has an objection related to other signatories, FHWA will immediately notify the other signatories of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory to participate in the consultation and will take any comments provided by such parties into account. The FHWA shall establish a reasonable time frame for such consultations.
 2. If consultation among the signatories results in agreement on specific actions, definitions, modifications of procedures or other mechanisms that will resolve the objection without formal amendment of this agreement, FHWA will document the resolution and provide such documentation to all signatories.
 3. If signatories agree that resolution of the objection requires amendment of this PA, the parties will follow procedures set forth in Stipulation XV.

4. If the objection cannot be resolved through consultation, informal action or amendment, the parties may consider termination of the agreement per Stipulation XVI.

D. Alternate Procedures:

1. Should circumstances or timelines warrant alternate procedures to resolve disputes, FHWA will present a written plan to all signatories with identified steps and timeframes to achieve resolution of the dispute, and meet with signatories upon request to discuss the plan. If the plan is agreed to by all signatories in writing, FHWA will follow the agreed-upon plan.
2. A plan prepared under this stipulation will not require amendment of this PA to implement such an alternate dispute resolution procedure.
3. Should the plan fail to achieve resolution, the signatories will follow Stipulations XV or XVI.

XV. Amendment

- A. Any signatory to this PA may request that it be amended, whereupon the signatories will consult in accordance with 36 C.F.R. § 800.14 to consider such an amendment. This PA may be amended only upon execution of an amendment signed by all signatories.
- B. Attachments to this PA may be individually amended by SHA or MDTA to provide minor factual or non-procedural updates without consultation (such as staff contact information, citations to code, website addresses, graphics etc.). Other minor amendments to attachments may be made in consultation with the signatory parties without requiring amendment of the PA.

XVI. Termination

Any signatory to this PA may terminate it by providing 30 calendar days' 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, the FHWA will comply with 36 C.F.R. Part 800 with regard to individual undertakings covered by this PA.

XVII. 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 the NHPA. Section 304 allows FHWA to withhold from disclosure to the public information about the location, character, or ownership of a historic resource if SHA or MDTA recommends 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. The Maryland Public Information Act General Provisions § 4-350(a) and the Maryland Historical Trust Act, as described in Md. Code Ann., State Fin. & Proc. § 5A-323(c), also limit the disclosure of such sensitive information. 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, the Maryland Public Information Act General Provisions

§ 4-350(a) and the Maryland Historical Trust Act, as described in Md. Code Ann., State Fin. & Proc. § 5A-323(c).

XVIII. Duration

This PA shall continue in full force and effect until five (5) years from the date of execution of the PA. At any time in the six-month period prior to this date, the signatories will consult to consider an extension or amendment of the PA. At such time, the signatories may consider an amendment to extend the PA unmodified for an additional five (5) year duration, or consult to amend the PA in accordance with Stipulation XV. No extension or amendment will be effective unless all parties to the PA have agreed to it in writing by amending the PA.

Execution and implementation of this PA evidences that FHWA has delegated certain Section 106 responsibilities to SHA and MDTA, and has afforded ACHP a reasonable opportunity to comment on the Federal-Aid Highway Program and its individual undertakings in Maryland; 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 C.F.R. Part 800 for the program and its individual undertakings.

Appendices and Attachments

Appendix 1: Projects with Minimal Potential to Cause Effects to Historic Properties

Appendix 2: Minor Projects

Appendix 3: Inadvertent Discovery Plan

Attachment 1: SHA Local Programs Cultural Resources and Section 106 Flowchart

Attachment 2: Inadvertent Discovery Plan Template for Local Public Agencies

SIGNATORY PAGE

**AMENDED
PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION,
MARYLAND TRANSPORTATION AUTHORITY,
THE MARYLAND STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT FOR
FEDERAL HIGHWAY ADMINISTRATION UNDERTAKINGS IN MARYLAND**

FEDERAL HIGHWAY ADMINISTRATION

By: **VALERIYA
REMEZOVA**
Valeriya Remezova, Division Administrator

 Digitally signed by VALERIYA
REMEZOVA
Date: 2026.06.23 12:31:23 -0400

Date: 6/23/2026

SIGNATORY PAGE

**AMENDED
PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE MARYLAND DEPARTMENT OF TRANSPORTATION
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MARYLAND TRANSPORTATION AUTHORITY,
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THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT FOR
FEDERAL HIGHWAY ADMINISTRATION UNDERTAKINGS IN MARYLAND**

ADVISOR

ON HISTORIC PRESERVATION

By:



Reid Nelson, Executive Director

Date: 06/26/2026

SIGNATORY PAGE

**AMENDED
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AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE MARYLAND DEPARTMENT OF TRANSPORTATION
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MARYLAND TRANSPORTATION AUTHORITY,
THE MARYLAND STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT FOR
FEDERAL HIGHWAY ADMINISTRATION UNDERTAKINGS IN MARYLAND**

MARYLAND STATE HISTORIC PRESERVATION OFFICER

By:  Date: 6-12-2026
Elizabeth Hughes, State Historic Preservation Officer

SIGNATORY PAGE

**AMENDED
PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
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STATE HIGHWAY ADMINISTRATION,
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THE MARYLAND STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT FOR
FEDERAL HIGHWAY ADMINISTRATION UNDERTAKINGS IN MARYLAND**

**MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION**

By: Will Pines Date: 6/17/2026
Will Pines, P.E., Administrator

SIGNATORY PAGE

**AMENDED
PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION,
MARYLAND TRANSPORTATION AUTHORITY,
THE MARYLAND STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT FOR
FEDERAL HIGHWAY ADMINISTRATION UNDERTAKINGS IN MARYLAND**

MARYLAND TRANSPORTATION AUTHORITY

By: *Bruce Gartner*
Bruce Gartner, Executive Director

Date: 06/18/26

APPENDIX 1

APPENDIX 1: Projects with Minimal Potential to Cause Effects to Historic Properties. Qualified SHA cultural resources professionals will determine whether a particular project meets the following exemption categories:

1. mowing, seeding/reseeding, planting of annual and perennial flowers, in-kind replacement of trees and shrubs, and other ground cover maintenance activities;
2. installation or replacement/repair of fixed static signs, trail signage/waysides, interconnection devices, surveillance cameras, closed circuit TV, co-location of antennae, and other minor incident and traffic management devices (not including variable message signs), accessible pedestrian signals, railroad warning devices, and improved rail crossing surfaces;
3. in-kind replacement, reconstruction, ADA retrofit or ordinary repair or modification of existing lighting, guardrails, modern fencing, traffic and pedestrian signals, curbs and gutters, sidewalks and ramps, variable message signs or other similar structures;
4. *(This number is no longer used per replacement by Stipulation I.E. defining undertakings with no potential to cause effects, but retained here as reference for actions reviewed under prior versions of the PA.)*
5. overlay, milling, grooving, repairing, striping, or resurfacing of existing ramp, roadway, parking lot, or similar surfaces where there will be no expansion of wearing surface; or addition of rumble strips, pavement markings (normal and raised), bus pads, bumper stops, bike racks, and snow and ice detectors to the same; or maintenance of existing trail surfaces;
6. routine bridge and structure maintenance and repair actions, including and limited to: cleaning of the bridge; in-kind painting of bridge; in-kind replacement of bridge decking and expansion joints and compression seals; deck overlay with the same or similar materials; overlay of existing approach roads for all bridges, where there will be no expansion of the wearing surface; cleaning scuppers or other drainage conveyances; modifications of expansion joints; deck patching with in-kind material; repair of guardrails which are already attached to parapets; in-kind replacement or repair of existing modern fencing; in-kind replacement or repair of steel beam plates and/or bridge bearings; placement of grout bags; repair of cracks in superstructure and substructure with mortar; in-kind replacement of rip rap, steel caps, protective jackets, and dolphins; and other similar routine actions;
7. repairs to an existing concrete box culvert; or concrete rigid frame small structure (less than 20 feet), or pipe, so long as the remedial work is aesthetically and functionally in-kind and in the same footprint (no new elements or expansion); minor repairs to cross-road pipes, including the installation of replacement liners; in-kind replacement of roadside or driveway pipes, including access to these facilities, temporary dewatering, in-kind replacement of rip-rap, and associated ditch repair, provided the work does not include expansion or extension of these facilities. This includes use of temporary crossing over channels or streams using spanning structures;
8. retrofitting, redesign, routine cleaning, maintenance and repair of existing ditches, drainage, stormwater management, and water quality facilities and devices, installation of traversable grates, and conversion of drop inlets to traversable designs. This does not include projects

that seek to expand or extend such facilities. Activities may include stream diversion, temporary access, in-kind replacement of rip-rap, placement of construction matting, temporary crossing over channels or streams using spanning structures and other similar activities;

9. removal of salt, contaminated soil, and materials from median and shoulder;
10. routine building maintenance and infrastructure upgrades and maintenance of SHA owned facilities where no new ground disturbance is involved. Such projects activities may include, but are not limited to: mechanical, electrical and plumbing system upgrades including HVAC systems, fire protection/suppression systems, surveillance systems and in-kind septic systems; building upgrades including replacement of interior/exterior doors, replacement of garage doors, replacement of windows, replacement of gutters and roof alterations/replacement; replacement of restroom and kitchen fixtures; cleaning and painting including the debris removal and the removal of graffiti; and the replacement of hydraulic lifts (may include removal of contaminated soil under the lift) and other indoor industrial machinery; and
11. debris removal provided the efforts do not involve stabilization, excavation, or alterations to structures.

APPENDIX 2

APPENDIX 2: Minor Projects. Qualified SHA cultural resources professionals will determine whether a particular project meets the following exemption categories:

1. minor bridge and small structure rehabilitation, deck replacement, bridge rails, or substructure alterations where the work is confined to the bridge itself, and
 - a) bridges are no older than 50 years at the date of SHA's project review, or
 - b) the bridge has been determined ineligible for the National Register of Historic Places;
2. construction or modification of bicycle and pedestrian lanes, trails, paths and facilities and amenities, including but not limited to trail parking, gangways, docks, boardwalks, pedestrian bridges, boat ramps, and wheelchair mats;
3. landscaping not specified in Appendix 1;
4. water quality activities including but not limited to: stream stabilization and restoration (including removal of natural waterway obstructing debris or sediment), and installation of stormwater management facilities, bioretention facilities, infiltration trenches, and fish weirs;
5. construction of or improvements to rest areas, truck weigh stations, park and ride lots, composting facilities, and other highway related maintenance, storage, and office facilities; or park/recreational facility-related amenities,
6. modernization of an existing highway by widening less than a travel lane or adding lanes, provided such widening does not extend beyond the limits of existing improved right-of-way;
7. correcting substandard roadway geometrics and intersections (i.e., spot improvements and roundabouts), provided such corrections do not extend beyond the limits of existing improved right-of-way;
8. minor safety related drainage improvements, including but not limited to: installation, replacement or removal of culverts and headwalls; installation, replacement and extensions of pipes; addition of pipe end sections; and installation, replacement, or repairs of storm drains and inlets;
9. fencing installation and repair, including safety fencing on bridges;
10. repair or construction of erosion control and protection measures including but not limited to: slope stabilization, slide repair, rip rap, or retaining walls;
11. noise barrier installation;
12. installation of new lighting, traffic barriers, guardrails, traffic signals, curbs, gutters, sidewalks, hazard identification beacons, and variable message signs;
13. the disposal of excess properties that do not contain structures more than 50 years of age, or have previously been determined not eligible, are not within an historic district, and have no

previously determined NRHP eligible archaeological resources and/or limited potential to contain NRHP eligible archaeological resources;

14. installation, repair, or replacement of underground cable not specified in Appendix 1;
15. reforestation activities;
16. wetland mitigation and/or enhancement activities;
17. invasive preliminary engineering activities:
 - a) soil borings/investigations
 - b) utility test pitting/identification
 - c) geotechnical investigations
 - d) field surveys for preliminary engineering and right of way plat development

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

18. sidewalk retrofit activities when the following conditions are met:
 - a) project area does not contain NRHP listed or eligible structures, districts, or archaeological resources and has limited potential to contain NRHP eligible archaeological resources; and
 - b) activities will not impact existing historic streetscape materials and/or features (such as brick walkways, stone curbs, markers, mounting blocks, etc.).

Work items may include placement of concrete sidewalks and/or replacement of existing concrete sidewalks; curb ramp placement and replacement; concrete curb and gutter placement and replacement; concrete and asphalt entrances and/or driveways; and upgrading existing pedestrian signals to accessible pedestrian signals. Existing sidewalks may be widened from three feet to five feet to meet ADA requirements.

19. full-delivery projects, defined as those projects where SHA or MDTA expends federal or state funds to purchase completed projects or implement completely designed projects from a third party proponent; provided effects to historic properties have already undergone review with MD SHPO under Section 106 of the NHPA or the Maryland Historical Trust Act of 1985 as amended, State Finance and Procurement Article §§5A-325 and 5A-326 of the Annotated Code of Maryland, and no changes potentially affecting historic properties have been made to the full-delivery project subsequent to previous review.
20. bridge and bridge superstructure replacement projects where the APE is limited to the structure being replaced, and verified disturbed or low archaeological potential soils, and the existing bridge meets the criteria at the Program Comment for Actions Affecting Post-1945 Concrete Steel Bridges (77 Fed. Reg. 68790) and/or the Exemption Regarding Historic Preservation Review Process for Effects to the Interstate Highway System (70 Fed. Reg. 11928).

APPENDIX 3

Inadvertent Discovery Plan

- A. Unanticipated Impacts to Standing Structure Historic Properties:** if the undertaking causes unanticipated impacts to any National Register of Historic Places (NRHP) eligible, listed, or contributing buildings, sites, structures, or objects of the built environment, the contractor must notify the engineer and immediately cease any activity causing ongoing damage until consultation occurs. The SHA, and MDTA where applicable, shall, in consultation with the MD SHPO, determine if adverse effects have occurred to the property/properties and develop a plan for the protection of the historic property, and minimization or mitigation of impacts. If mitigation is identified, FHWA, SHA, MD SHPO, and other signatories as necessary will execute a Memorandum of Agreement or amend an existing Memorandum of Agreement for the project to record the identified mitigation. SHA may hold its contractor liable for any or all costs resulting from this process following appropriate processes identified in its contract instruments.
- B. Unanticipated Damage to Known Archaeological Resources:** if unauthorized excavation occurs outside the approved limits of disturbance or other approved boundaries designed to protect archaeological resources and thereby causes impacts to known, NRHP-eligible archaeological resources, SHA and/or MDTA will require its contractor to cease any activity causing ongoing damage until consultation occurs. SHA and/or MDTA shall conduct a damage assessment consistent with the model used for such assessments under the Archaeological Resources Protection Act (<https://www.nps.gov/archeology/pubs/techbr/tchBrf20.pdf>). SHA will use the results of the assessment in consultation with the MD SHPO to determine if the resource has been adversely affected and determine appropriate mitigation. If the resource is of known or suspected Native American affiliation, SHA and/or FHWA shall consult with federally recognized Indian Tribes as appropriate. If mitigation is identified, FHWA, SHA, MD SHPO, and other signatories as necessary will execute a Memorandum of Agreement or amend an existing Memorandum of Agreement for the project to record the identified mitigation. SHA and/or MDTA may hold its contractor liable for any or all costs resulting from this process following appropriate processes identified in its contract instruments.
- C. Unanticipated Discovery of Human Remains:** Should any burials, interments, or human remains (hereafter, “remains”) be encountered during construction, all applicable construction work in the vicinity of the remains will be immediately stopped to prevent damage to the remains, or to any additional remains that might be present in the vicinity. A minimum 100-foot buffer around identified remains should be established free of disturbance, to be adjusted as appropriate for the site conditions. Construction may occur outside the buffer unless evidence of additional remains is found. If remains are suspected to be human but not confirmed, SHA will ensure that such confirmation is made by a qualified professional. Human remains will at all times be treated respectfully and access and visibility limited to the site of discovery to authorized personnel only. Pursuant to Md. Code Ann., Crim. Law § 10-402, the State’s Attorney must authorize movement or removal of any remains until determined to be archaeological. If the remains are determined to be archaeological, SHA and MD SHPO will consult to determine treatment of the remains and any other necessary treatment such as work needed to define extent of remains in the most expeditious manner feasible. If the remains are determined archaeological and suspected to be of Native American origin, SHA, in coordination with FHWA, shall provide notification to tribal governments in accordance with any expressed tribal consultation preferences within 24 hours or as soon as practicable. SHA and/or FHWA will consult with affected federally recognized Indian Tribes, the Maryland Commission on Indian Affairs and relevant Maryland Indian groups as appropriate regarding treatment of the

remains. SHA and/or MDTA will accommodate tribal cultural preferences to the extent practicable during such an event. If remains can be associated with other known descendant communities or organizations, SHA, MDTA and FHWA will also notify and consult with such parties.

In consultation with the MD SHPO, Federally Recognized Indian Tribes, and FHWA as appropriate, the SHA shall develop a plan for the treatment or disposition of the remains. The SHA and/or MDTA shall implement the provisions of the agreed Treatment Plan.

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

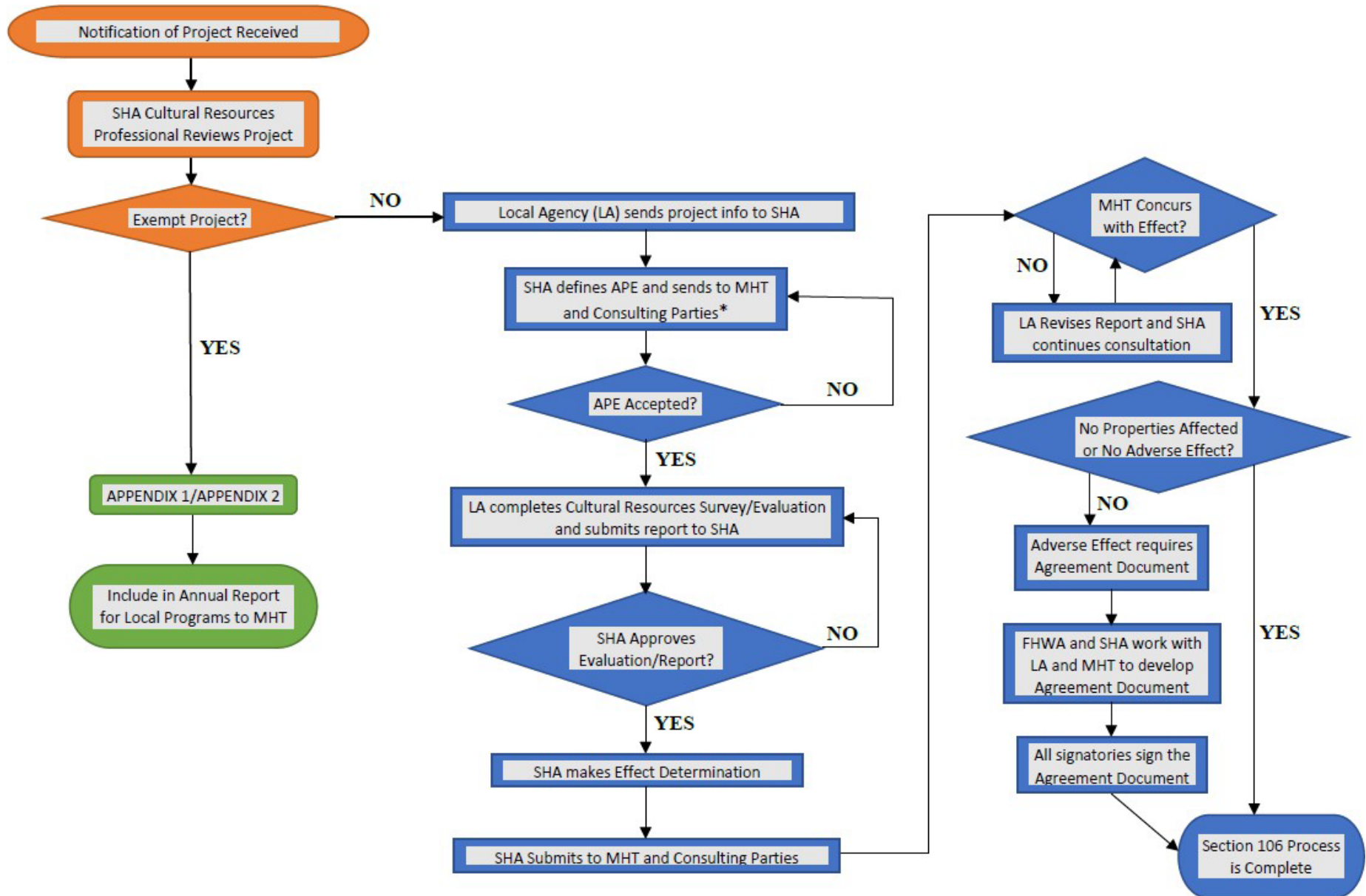
- D. Unanticipated Discovery of Archaeological Resources:** If previously unidentified archaeological features, artifacts, or other materials (hereafter, “resource”) are discovered during construction, all ground-disturbing work in the vicinity of the resource shall be temporarily suspended or modified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

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

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

SHA, and/or MDTA as appropriate, shall then implement the provisions of the agreed-upon plan.

Attachment 1. SHA Local Programs Cultural Resources and Section 106 Flowchart



*For smaller projects, APE and Cultural Resources Evaluation may be combined where appropriate.

ATTACHMENT 2
Inadvertent Discovery Plan
For the (Local Agency Name) (Project Name)

The (Local Agency) plans to construct the (Project) project, located in (County), Maryland. The purpose of this project is to (Purpose).

Approval and funding of this project is conditioned on review of effects to historic properties under Section 106 of the National Historic Preservation Act and/or the Maryland Historical Trust Act of 1985 (MHT Act). As a condition of this approval, in the event of inadvertent discovery of previously unknown and potentially significant cultural resources, or unforeseen effects to historic properties, the following procedure must be implemented.

--Failure to follow the Inadvertent Discovery Plan (IDP) risks violation of state and federal law and loss of project funding--

If an inadvertent discovery is determined by the SHA to require further evaluation and consultation, SHA and FHWA will assume responsibility to consult to resolve the discovery and determine whether construction activities will have adverse effects on the resource, in accordance with the terms outlined in the *Amended Programmatic Agreement Among the Federal Highway Administration, the Maryland Department of Transportation State Highway Administration, Maryland Transportation Authority, the Maryland State Historic Preservation Officer, and the Advisory Council on Historic Preservation Implementing Section 106 of the National Historic Preservation Act for Federal Highway Administration Undertakings in Maryland* (PA). Further detail for all inadvertent discoveries is included in Appendix 3 of the PA, and can be found at this link:

<https://www.roads.maryland.gov/mdotsha/pages/Index.aspx?PageId=729>.

A. Recognizing Cultural Resources:

A cultural resource discovery could involve precontact (Native American) or historic period discoveries. These can include:

- Discovery of buried bone, concentrations of oyster shells, arrowheads, old bottles, or dark brown soil containing this type of material.
- Discovery of stone or brick walls, building foundations, cellars, cisterns, privies, wells, etc.
- Accidental damage to a known archaeological site (if indicated on plans as a restricted area) or to a historic building or structure.

B. On-Site Responsibilities:

STEP 1: STOP WORK. If at any point in the project a (Local Agency) employee, contractor, or subcontractor believes that they have uncovered any human skeletal remains, potential archaeological materials, or identifies damage to a standing structure, building, or known archaeological resource, heavy equipment operation is required to immediately **STOP** in the discovery area and a surrounding buffer (minimum 100 feet) must be established to protect the find. **Any reasonable suspicion that a discovery may be archaeological requires implementation of this procedure.** No media, agency (other than SHA), or other external contacts should be made until an archaeologist evaluates the discovery and provides additional direction.

STEP 2: NOTIFY ARCHAEOLOGICAL MONITOR. If an archaeological monitor is present at the project, notify them immediately. If there is a monitoring plan in place, the monitor will follow its provisions.

STEP 3. NOTIFY PROJECT MANAGEMENT AND SHA. Contact the (Local Agency) Project Manager and the Maryland Department of Transportation State Highway Administration (SHA) Cultural Resources Local Programs Lead. Contact information is provided at the end of this document. SHA will follow procedures identified in its statewide Programmatic Agreement or a project-specific agreement if applicable. SHA will work with the Federal Highway Administration (FHWA), Maryland Historical Trust, and other parties as required. The SHA Cultural Resources Local Programs Lead or other designate will serve as liaison to keep the (Local Agency) informed of the process and resolution.

C. (Local Agency) Project Manager's Responsibilities:

- **Protect the Discovery.** The Project Manager is responsible for taking appropriate measures to protect and secure the discovery site. All work at the location of the discovery must immediately stop, including a 100-foot buffer around the location of the discovery that allows the location to be secure, protected, and intact. Vehicles, equipment, and unauthorized personnel may not traverse

the discovery site. Work in the immediate area of the discovery will not resume until treatment of the discovery has been completed as set forth in this document. If additional discoveries are made outside the initial buffer zone, this procedure applies to each new discovery location.

- **Known Resources.** If the inadvertent discovery involves damage to a known resource (structure, building or archaeological site), the Project Manager must immediately stop any activity causing damage and take any appropriate immediate steps to stabilize or minimize further damage.
- **Direct Construction Elsewhere On-site.** The project manager may direct construction activities to other areas outside the buffer or affected resource, so that work may continue.
- **Contact SHA Cultural Resources Local Programs Lead.** If the SHA Cultural Resources Local Programs Lead has not yet been contacted, the Project Manager must do so.

D. SHA Cultural Resources Local Programs Lead Responsibilities:

- **Verify the Discovery.** The Cultural Resources Local Programs Lead will ensure that a qualified archaeologist is available immediately to provide guidance and ensure any work delays are minimized. The qualified archaeologist will identify and evaluate the discovery. If the SHA staff or designated qualified personnel determines the discovery requires no further evaluation or consultation, construction may immediately proceed.
- **Consultation.** If the SHA determines further consultation is required, the Cultural Resources Local Programs Lead will continue with the process of notification and resolution per SHA's PA requirements and continue to serve as liaison with the (Local Agency).
- **Human Remains.** If the discovery appears to be human remains or funerary objects, the Cultural Resources Local Programs Lead will ensure that a qualified individual examines the discovery to confirm if remains are human and assist with notifications required by law.
- **Communication.** SHA will conduct all required notifications and consultation pursuant to state and federal law, including tribal notifications. (Local Agency) may follow any county or local requirements that are not obligations of SHA. The Cultural Resources Local Programs Lead will keep the (Local Agency) informed of next steps during this process.

E. Proceeding with Construction

Project construction outside the discovery site, affected resource and/or the buffer zone(s) may continue while inadvertent discoveries are being addressed.

Construction at the discovery site or affected resource may continue after the inadvertent discovery and effects have been resolved in accordance with the terms of the PA, and SHA and FHWA have determined that compliance with state and federal laws is complete. SHA will provide written notice of this compliance to the (Local Agency).

Attachment 2: Inadvertent Discovery Plan Template for Local Public Agencies

(Local Agency) Contact Information

(Local Agency) Project Manager
(Name)
(Phone Number); (Email)

Alternate Contact:

(Title)
(Name)
(Phone Number); (Email)

SHA Contact Information

Call down list until connecting **directly** with SHA personnel to complete notification requirements. Email should only be used as a secondary means of notification.

Cultural Resources Local Programs Lead

Office (Phone Number); Cell (Phone Number) (Email)

Cultural Resources Team Leader

Office (Phone Number); Cell (Phone Number) (Email)

Division Chief - Program Manager

Office (Phone Number); Cell (Phone Number); (Email)